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DEPARTMENT OF DEFENSE

Base Reuse Implementation Manual



Guidance for Implementing
the Base Closure Community Assistance Act of 1993 and
the Base Closure Community Redevelopment and Homeless Assistance Act of 1994

DECEMBER 1997

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(Industrial Affairs and Installations)

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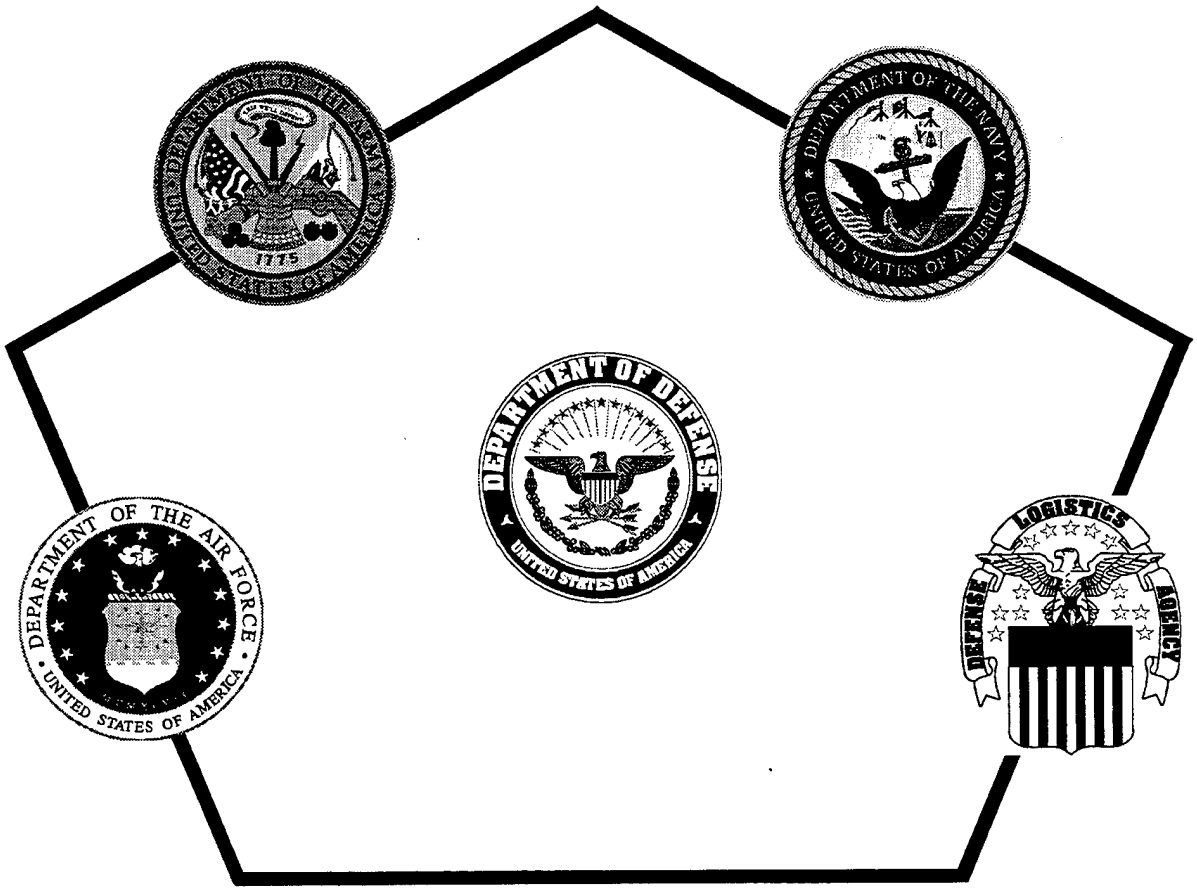
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OFFICE OF THE UNDER SECRETARY OF DEFENSE

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FOREWORD

This Manual is reissued under the authority of DoD Directive 4165.66, "Revitalizing Base Closure Communities and Community Assistance," February 12, 1996. It contains guidance as to the Department's implementation of "Revitalizing Base Closure Communities and Community Assistance" (32 CFR Parts 174, 175, and 176) by providing greater detail about the issues addressed in them. DoD 4165.66-M, "Base Reuse Implementation Manual," July 1995, is hereby canceled.

This Manual applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as the "DoD Components"). The guidance provided is effective immediately and is mandatory for use by all the DoD Components.

This Manual was developed and updated by a working group made up of representatives from both OSD and the Military Departments. The goal of the working group was to create a document that could be used Department-wide without additional "Component-specific" instructions. As a result, the Heads of the DoD Components may only issue supplementary instructions, when necessary, to provide for unique requirements within their organizations that are not addressed in this Manual. All supplementary instructions must be approved by the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

Please send your comments and suggestions on ways we can improve this Manual in later printings to: Base Closure and Community Reinvestment Office
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It is my sincere hope that this Manual will make the base reuse process better by providing the Service implementors with common guidance that is flexible enough for site-specific solutions.

John B. Goodman
Deputy Under Secretary
(Industrial Affairs and Installations)

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Acronyms, Abbreviations and Definitions

Acronyms and Abbreviations

ACM	Asbestos Containing Material
AHPA	Archeological and Historic Preservation Act, 16 U.S.C. § 469
AHERA	Asbestos Hazard Emergency Response Act, Pub. L. 99-519
AIRFA	American Indian Religious Freedom Act, 42 U.S.C. § 1996
AQCR	Air Quality Control Region
ARARs	Applicable or Relevant and Appropriate Requirements
AST	Aboveground Storage Tank
BCCRHAA 94	Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Pub. L. 103-421 (known as the "Redevelopment Act")
BCRA 88	Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Pub. L. 100-526, as amended
BCP	BRAC Cleanup Plan
BCT	BRAC Cleanup Team
BEC	BRAC Environmental Coordinator
BEST	Building Economic Solution Together
BGEPA	Bald and Golden Eagle Protection Act, 16 U.S.C. § 668
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BOQ	Bachelor Officers Quarters
BRAC	Base Realignment and Closure
BTC	Base Transition Coordinator
BCTO	Base Closure and Transition Office
CAA	Clean Air Act, 42 U.S.C. § 7401 *et seq.*, as amended
CATEX	Categorical Exclusion from NEPA environmental impact analysis
CDBG	Community Development Block Grant
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended
CERFA	Community Environmental Response Facilitation Act, Pub. L. 102-426
CFR	*Code of Federal Regulations*
CO	Commanding Officer
CWA	Clean Water Act, 33 U.S.C. §§ 1251–1387, as amended
CZMA	Coastal Zone Management Act, 16 U.S.C. §§ 1451–1464
DBCRA 90	Defense Base Closure and Realignment Act of 1990, Pub. L. 101-510, as amended
DDESB	Department of Defense Explosive Safety Board
DEIS	Draft Environmental Impact Statement
DERP	Defense Environmental Restoration Program
DoD	Department of Defense
DOEd	Department of Education

DOI	Department of the Interior
DOJ	Department of Justice
DOT	Department of Transportation
DRMO	Defense Reutilization and Marketing Office
DSMOA	Defense-State Memorandum of Agreement
DWCF	Defense Working Capital Fund
EA	Environmental Assessment
EBS	Environmental Baseline Survey
EDA	Economic Development Administration
EDC	Economic Development Conveyance
EIS	Environmental Impact Statement
E.O.	Executive Order
EPA	Environmental Protection Agency
ERC	Emission Reduction Credit
ESA	Endangered Species Act, 16 U.S.C. §§ 1531–1544
FAA	Federal Aviation Administration
FEIS	Final Environmental Impact Statement
FFA	Federal Facility Agreement
FIFRA	Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*
FMV	Fair Market Value
FONSI	Finding of No Significant Impact
FOSL	Finding of Suitability to Lease
FOST	Finding of Suitability to Transfer
FPASA	Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 471 *et seq.*, as amended
FPMR	Federal Property Management Regulations, 41 CFR Part 101-47
FWCA	Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661–666
GAO	General Accounting Office
GSA	General Services Administration
HHS	Department of Health and Human Services
HUD	Department of Housing and Urban Development
IAG	Interagency Agreement
IRP	Installation Restoration Program
IVDA	Inland Valley Development Authority
LBPPPA	Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. §§ 4801–4846
LRA	Local Redevelopment Authority
MBTA	Migratory Bird Treaty Act, 16 U.S.C. §§ 703–712
NAGPRA	Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001-3013
NAF	Non-Appropriated Fund
NCP	National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300
NDAA 92/93	National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. 102-190
NDAA 93	National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102-484

NDAA 94	National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103-160
NDAA 95	National Defense Authorization Act for Fiscal Year 1995, Pub. L. 103-337
NDAA 96	National Defense Authorization Act for Fiscal Year 1996, Pub. L. 104-106
NDAA 97	National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104-201
NEPA	National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, as amended
NHPA	National Historic Preservation Act, 16 U.S.C. § 470
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NPL	National Priorities List
ODUSD(ES)	Office of the Deputy Under Secretary of Defense (Environmental Security)
ODUSD(IA&I)	Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations)
OEA	Office of Economic Adjustment
OMB	Office of Management and Budget
OSD	Office of the Secretary of Defense
Pub. L.	Public Law
PBC	Public Benefit Conveyance
PBCUA	Public Buildings Cooperative Use Act, 40 U.S.C. §§ 490, 601a, 606, 611, 612a
PCBs	Polychlorinated Biphenyls
RAB	Restoration Advisory Board
RCRA	Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as amended
RLBPHRA	Residential Lead-Based Paint Hazard Reduction Act, Title X of Pub. L. 102-550
ROD	Disposal Record of Decision under NEPA
ROI	Return on Investment
SAAD	Sacramento Army Depot
SASP	State Agency for Surplus Property
SDWA	Safe Drinking Water Act, 42 U.S.C. §§ 300f–300j-26
SIP	State Implementation Plan
SPA	Surplus Property Act of 1944, 50 U.S.C. App. § 1622(d), and 49 U.S.C. §§ 47151–47153, as amended
TSCA	Toxic Substances Control Act, 15 U.S.C. §§ 2601–2671
URARPAPA	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646
U.S.C.	*United States Code*
UST	Underground Storage Tank
WPFPA	Watershed Protection and Flood Prevention Act, 16 U.S.C. § 1001 *et seq.*
WSRA	Wild and Scenic Rivers Act, 16 U.S.C. § 1271

Definitions

Base Closure Law. The provisions of Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526, 102 Stat. 2623, 10 U.S.C. § 2687 note), or the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C § 2687 note).

Closure. All missions of the installation have ceased or have been relocated. All personnel positions (military, civilian and contractor) have either been eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves.

Communities in the Vicinity of the Installation. The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation. If no redevelopment authority is formed at the local level, and the State is serving in that capacity, the communities in the vicinity of the installation are deemed to be those political jurisdiction(s) (other than the State) in which the installation is located.

Consolidated Plan. The plan prepared in accordance with the requirements of 24 CFR Part 91.

Consultation. Explaining and discussing an issue, considering objections, modifications, and alternatives; but without a requirement to reach agreement.

Date of approval. The date on which the authority of Congress to disapprove Defense Base Closure and Realignment Commission recommendations for closures or realignments of installations expires under Title XXIX of Pub. L. 101-510 (104 Stat. 1808), as amended.

Excess property. Any property under the control of a Military Department that the Secretary concerned determines is not required for the needs of the Department of Defense.

Installation. A base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

Local Redevelopment Authority (LRA). Any authority or instrumentality established by State or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

Realignment. Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as "closed" for purposes of this part.

Representative(s) of the homeless. A State or local government agency or private nonprofit organization, including a homeless assistance planning board, which provides or proposes to provide services to the homeless.

Rural. An area outside a Metropolitan Statistical Area.

Similar Use. A use that is comparable to or essentially the same as the use under the original lease.

Substantially equivalent. Property that is functionally suitable for the proposed use. For example, if the representative of the homeless had an approved application for a building which would accommodate 100 homeless persons in an emergency shelter, the replacement facility would also have to accommodate 100 at a comparable cost for renovation.

Substantially equivalent funding. Sufficient funding to acquire a substitute facility. For example, if the approved homeless assistance submission was for an emergency shelter that would accommodate 100 homeless, substantially equivalent funding would mean the funds necessary to acquire a comparable facility at another location.

Surplus property. Any excess property not required for the needs and the discharge of the responsibilities of all Federal agencies. Authority to make this determination, after screening with all Federal agencies, rests with the Military Departments.

1
Introduction

1.1 PURPOSE

This Manual has been prepared by the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations)[1], in cooperation with the Military Departments, and the Office of the Secretary of Housing and Urban Development, to:

- Provide supplemental guidance for those carrying out the regulations for revitalizing base closure communities and community assistance [32 Code of Federal Regulations (CFR) Parts 174, 175, and 176].

- Identify common-sense approaches and general practices for the Military Departments to follow during various aspects of base reuse implementation.

- Provide a common set of guidelines that allow flexibility for the Military Departments' base reuse implementation teams. Manual users are encouraged to adapt the guidance in this Manual to their own installation-specific circumstances.

1.2 PHILOSOPHY AND GOALS

The disposal and reuse of closing military installations represents a critical challenge. The Department of Defense (DoD) needs to accomplish disposal quickly and efficiently to save money for readiness and other responsibilities. The reuse of these installations through their transition to civilian use is an equally critical part of our task. The Defense Department has a responsibility to assist the communities that hosted our installations, one that it has recognized for more than 30 years. The President of the United States and the Secretary of Defense have articulated the goals of this effort:

- Close bases quickly, but in a manner that will preserve valuable assets to support rapid reuse and redevelopment.

- Give high priority to local economic redevelopment when disposing of available real and personal property.

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[1]A Deputy Secretary of Defense memorandum of May 15, 1996, "OUSD (Acquisition and Technology) Reorganization" disestablished the Office of the Assistant Secretary of Defense for Economic Security and established the Office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

- Put available property to productive use as quickly as possible through leases and conveyances to spur rapid economic recovery and reduce DoD caretaker costs.

- Expedite the "screening" process, which identifies interests in excess and surplus property at closing and realigning bases.

- Fast-track environmental cleanup by removing needless delays while protecting human health and the environment.

- Make every reasonable effort to assist the Local Redevelopment Authority (LRA) in obtaining the available personal property needed to implement its redevelopment plan.

- Support the local redevelopment process through sufficient planning grants and on-site Base Transition Coordinators.

- Coordinate Federal resources to assist community economic recovery.

To achieve these goals, the Department of Defense developed this Manual around three key themes:

- **Consultation.** The Military Department and the LRA should be in constant contact throughout the base closure and reuse process. Problems can be avoided through consultation.

- **Partnership.** The Military Departments and LRAs should work together honestly and with full disclosure. Their efforts should be coordinated to minimize duplicative efforts and avoid misunderstandings. Mutual goals can be achieved between parties that treat each other as partners, not adversaries.

- **Flexibility.** To maximize flexibility and allow for site-specific solutions, discretion has been left, where possible, to allow for common-sense decisions by the implementors.

This Manual reflects the Administration's effort to create a flexible process that works better and costs less. Provisions that are intended to cover all situations could straightjacket Federal employees and confuse the public. This Manual is written to maintain flexibility while providing guidance to Military Department implementors by offering examples of how to address specific problems.

KEYS TO SUCCESSFUL DISPOSAL OF CLOSING MILITARY INSTALLATIONS

The President, the Secretary of Defense, and the Secretaries of the Military Departments have each given this issue personal attention, and each is committed to this program's success. The base closure and reuse process is a new and complex task that requires creative solutions and a break from "business as usual." Many communities affected by base closure face an uncertain economic future and are presented with tremendous challenges to their local economic base. To assist our customers, the local communities, **you need to**:

- *WORK COOPERATIVELY.* Reaching agreements with the LRA will make the process smoother in the long run. Treat the LRA as if it is your partner.

- *CONSIDER COMMUNITY NEEDS.* Think about how decisions will affect the ability of communities to redevelop the base.

- *COMPROMISE.* Reaching agreements early in the process will save time and money later.

- *BE FLEXIBLE.* Do not be wedded to a particular approach to a problem. Creativity, within the applicable laws and regulations, is essential to successful base closure and reuse.

- *BE INNOVATIVE.* Do not be hamstrung by past practices. This is a new process, and decisions *should* be new and different.

- *EXERCISE COMMON SENSE.* Solutions should be site-specific. There will rarely be cookie-cutter solutions that apply to all cases.

- *DELEGATE.* Allow front-line employees to make as many decisions as possible, especially when an issue is routine or when the policy has already been formulated; requiring layers of approval will only delay the process.

- *CUT "RED TAPE."* The Department of Defense is seeking to eliminate as much red tape as possible. By itself, each additional procedure may make sense, but the accumulation of them over time grinds matters to a halt. Cutting across bureaucratic lines to slash red tape is essential to getting the job done and additional levels of bureaucracy can lead to higher costs and wasted taxpayer money.

1.3 HISTORY

The Department of Defense is engaged in a phase of downsizing, resulting in fewer military bases to support defense missions. The Base Realignment and Closure (BRAC) process has resulted in the closing of hundreds of military facilities throughout the country.

A military base often represents a major employment center and provides significant economic stimulus to the local economy. A base closure can be a serious blow to the local community. As a result, the Department of Defense recognizes that the manner in which real and personal property at closing bases is transferred can have an important impact on the local community's prospects for economic recovery.

Lessons learned in previous rounds of base closures have shown that the traditional Federal property disposal process has not always met the economic recovery needs of the local community. Therefore, in July 1993, the President announced a plan to provide for more rapid redevelopment and job creation in communities affected by base closure decisions. This Presidential initiative gave top priority to helping affected communities realize early reuse of base assets to spur economic recovery.

A Presidential Initiative

The President's Five-Part Plan for Revitalizing Base Closure Communities (1993) consists of the following:

- Jobs-centered property disposal that puts local economic redevelopment first.
- Fast-track environmental cleanup that removes needless delays while protecting human health and the environment.
- Assignment of on-site Base Transition Coordinators at major bases slated for closure to assist communities and the Military Departments with property disposal and economic redevelopment.
- Easy access to transition and redevelopment help for workers and communities.
- Quick economic development planning grants to base closure communities.

The Administration's new approach to make base property more readily available to communities for economic development and job creation represents a fundamental change in the policy of Federal property disposal at closing bases.

Congressional Support and Defense Implementation

In November 1993, Congress supported the President's plan by enacting the Base Closure Community Assistance Act (Subtitle A of Title XXIX of the National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103–160), referred to here as "Title XXIX." This legislation substantially amended the base closure laws and provided the Department of Defense with tools it needed to carry out the President's plan. A copy of the law is provided in Appendix B.

In April 1994, the Department of Defense issued an interim final rule, codified at 32 CFR Parts 174 and 175. The interim final rule provided guidance to the Military Departments for implementing provisions of Title XXIX, specifically real property screening to aid disposal planning, property conveyances at or below fair market value (referred to as "Economic Development Conveyances"), interim leasing, personal property inventory and disposal, and minimum maintenance levels necessary to support civilian use. The rule was available for public comment until August 1994.

In response to public comments, the Assistant Secretary of Defense for Economic Security (now the Deputy Under Secretary of Defense (Industrial Affairs and Installations)) convened a BRAC Implementation Working Group with representatives from the Military Departments and from the Office of the Secretary of Defense. The Working Group was tasked to address the public's concerns and to develop needed revisions for the final rule, as well as to identify and foster DoD-wide approaches to base reuse implementation. One of the Working Group's first products was an amendment to the April 1994 interim final rule, issued by the Department of Defense in October 1994, that addressed the requirements for Economic Development Conveyances (EDCs). The

amendment eliminated certain requirements, including a "market test" to determine marketability of property, and provided more detailed instructions on EDC application and review criteria.

In October 1994, Congress enacted the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Pub. L. 103–421 ("Redevelopment Act"). This law, in amending Pub. L. 101-510, exempts most closing bases (including some BRAC 88, BRAC 91, and BRAC 93 bases, and all BRAC 95 bases) from the Stewart B. McKinney Homeless Assistance Act and establishes a new process by which homeless assistance needs can be satisfied in base closure communities.

In July 1995, the Department of Defense issued a final rule, addressing public comments to the interim final rule and the amendment to the interim final rule. In conjunction with the Department of Housing and Urban Development, the Defense Department also issued an interim final rule, codified at 32 CFR Part 176, to provide a uniform regulatory framework for implementing the new homeless assistance procedures outlined in the Redevelopment Act. The interim final rule was available for public comment until October 16, 1995.

On February 10, 1996, the President signed the National Defense Authorization Act for FY 1996 (NDAA 96). Title XXVIII of that Act contained several sections that further amended the base closure laws including:

- Section 2832: Eliminated the requirement that a substantial part of the installation be leased in order for the Military Departments to accept in-kind lease payments performed on any portion of the installation.

- Section 2833: Authorized, in certain circumstances, interim lease terms that extend beyond the expected completion date for the disposal Environmental Impact Statement.

- Section 2834: Clarified that DoD can enter into long-term leases (also called "leases in furtherance of conveyance") while environmental remediation is ongoing.

- Section 2837: Authorized DoD to transfer property still needed by a Federal Department or Agency to an LRA, provided the LRA leases the property back to the Federal entity at no cost.

- Section 2838: Amended the Redevelopment Act.

In response to the changes to the Redevelopment Act contained in Section 2838 and to address public comments received on the interim final rule, DoD published a final rule implementing the Redevelopment Act on July 1, 1997. In addition, on February 21, 1997, DoD published a proposed rule establishing procedures for implementing the leaseback authority granted in Section 2837. The proposed rule was open for public comments until April 22, 1997. A final rule implementing the leaseback authority is being developed.

Sections 2833 and 2834 of the NDAA 96 were implemented in policy memoranda signed by the then Principal Assistant Deputy Under Secretary of Defense

(Industrial Affairs and Installations) on June 12, 1996. Copies of these memoranda can be found in Appendix D. In addition, Chapter 5 contains language reflecting the new authority granted by Section 2832 of the NDAA 96.

The National Defense Authorization Act for FY 1997 (NDAA 97) also contained several provisions affecting the base closure and reuse process including:

- Section 334: Authorized the Department to transfer property, under certain conditions, prior to the completion of remedial actions. Under this "Early Transfer Authority" it is also possible for the new property owner to undertake environmental remediation activities (instead of DoD) concurrently with redevelopment efforts.

- Section 2811: Restored the Department's authority to complete intragovernmental transfers at BRAC '88 locations.

- Section 2812: Expanded the Department's authority to enter into agreements (e.g., contracts, cooperative agreements) with local governments for the provision of caretaker services.

- Section 2814: Restored the Department's authority to make grants, conclude cooperative agreements, and supplement other Federal funds to assist States in providing assistance and support to local adjustment and diversification efforts.

Information on the implementation of Section 334 can be found in Chapters 2 and 5 and Appendix F.

1.4 MANUAL CONTENTS

This Manual supplements the existing rules and provides guidelines for Federal decision-makers and staff and others involved in implementing base reuse. This Manual does not instruct the LRA or the general public, but allows them to understand the instructions and guidance that the Military Departments are required to follow.

This Manual is written in an easy to read question and answer format to help you quickly find answers to specific questions on the base closure and reuse process. It contains guidance on real property screening and disposal, inventory and disposal of personal property, leasing, maintenance of closing installations, transfers of real property under an EDC, and transfers of property using the leaseback authority. In addition, the appendices contain laws, regulations, and policy guidance relevant to base reuse.

This Manual does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Pub. L. 103-160, Pub. L. 103-421, or Title XXVIII of Pub. L. 104-106.

1.5 AVAILABILITY ON LINE

This Manual is available via the World Wide Web at:

http://emissary.acq.osd.mil/bctoweb/brim.nsf.

1.6 UPDATES

This Manual will continue to be updated as determined appropriate. Comments are welcome, especially suggestions on how to improve the document's usefulness. Suggestions or questions should be addressed to:

Base Closure and Community Reinvestment Office
400 Army Navy Drive, Suite 200
Arlington, VA 22202
E-mail address: base_reuse@acq.osd.mil

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2
Base Reuse Process Overview

To achieve the optimum reuse potential of every closing or realigning base, it is essential that both Military Department implementors and the LRA understand the basic elements of the entire process. Each action taken in the process should be conducted with the whole process in mind. The purpose of this Chapter is to describe the framework for the base reuse process and the general context for the rest of the information in this Manual.

The base reuse process is affected by a myriad of Federal real property and environmental laws and regulations, along with volumes of implementing guidance. Some of these laws (e.g., the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (BCRA 88) and the Defense Base Closure and Realignment Act of 1990 (DBCRA 90)) were specifically enacted to govern certain parts of this process. The remainder, however, were enacted to address more routine Government property transactions or specific problems such as environmental cleanup. Collectively, they have a great effect on the process (see Appendix A for further information on many of these laws and regulations).

When does the base reuse process begin?

What's the best way to look at the process?

Bases are selected for realignment or closure according to a process prescribed in the BCRA 88 and the DBCRA 90. Once a base has been approved for closure or realignment, laws and regulations identify the requirements that (see Appendices A–C and E) shape the rest of the process to be followed—the beginning of base reuse implementation. The general timeline for events associated with BRAC 95 reuse implementation is shown in Figure 2-1. Some of the milestones shown in Figure 2-1 may be extended by mutual agreement between the Military Department and the LRA.

Although Figure 2-1 depicts a seemingly linear and sequential series of events, the base reuse process is best viewed as a series of concurrently conducted activities that can be subdivided into three principal phases: **base-wide reuse planning, disposal decision making,** and **parcel-by-parcel decision implementation.** Figure 2-2 shows how the three phases and various principal base reuse activities relate to one another.

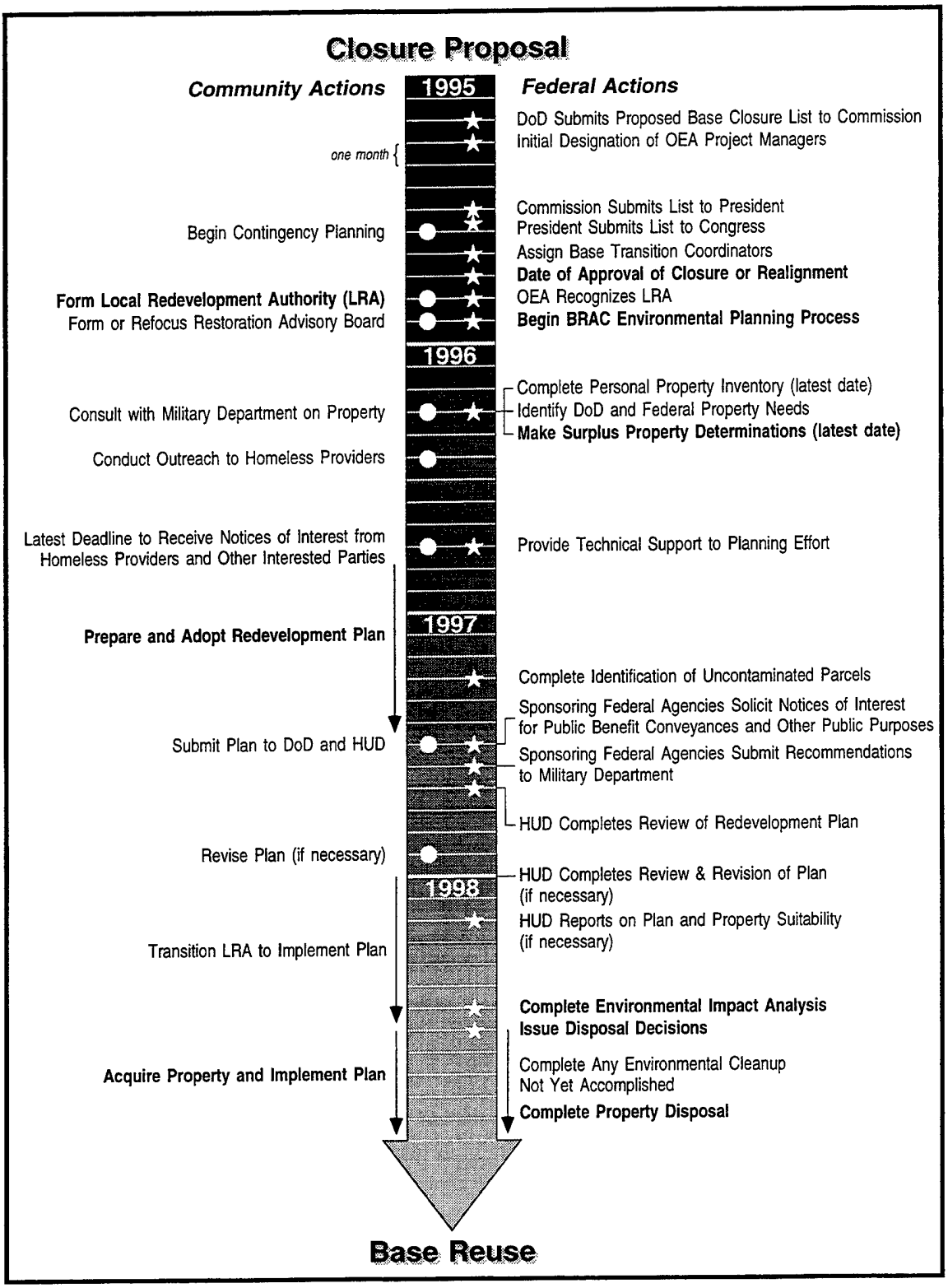


Figure 2-1. Illustrative timeline for selected reuse implementation activities at BRAC 95 bases

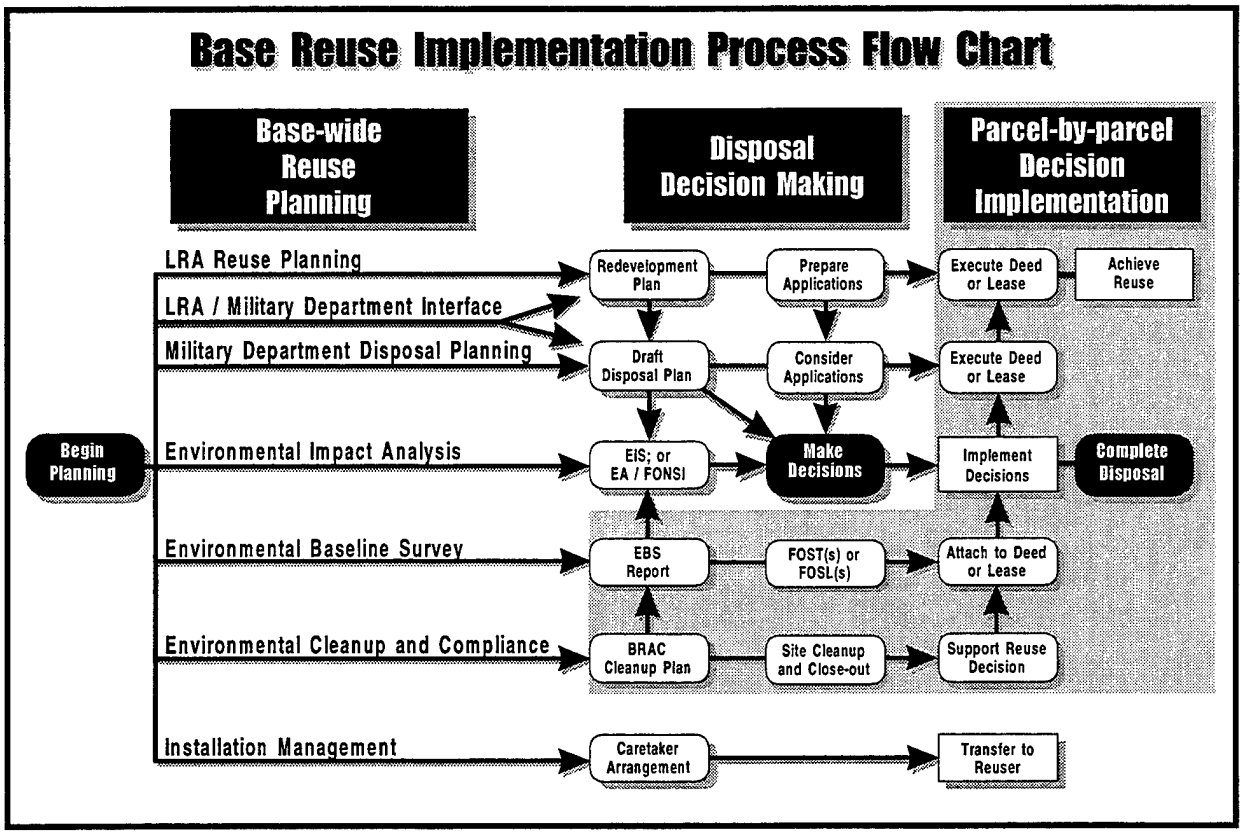


Figure 2-2. Phases of Base Reuse Implementation

Implementation of the overall base reuse process (including the actual closure and the base's conversion from military to civilian uses) can be an enormously complex undertaking, involving literally hundreds or thousands of individuals, collectively devoting many hours of hard work.

Phase One: The first phase, **base-wide reuse planning** (further described in Section 2.1), consists of the many activities that occur while the LRA prepares its redevelopment plan and before the Military Department, in its role as the Federal property disposal agent, makes decisions on how the base will be conveyed to end users. These activities include the LRA's redevelopment planning process and the Military Department's required environmental impact analysis activities, natural and cultural resources determinations and consultations, identification of uncontaminated property, and many environmental cleanup- and compliance-related activities.

Phase Two: The second phase includes activities associated with the Military Department's **disposal decision making** (further described in Section 2.2). This phase may include the issuance of one or more Disposal Record(s) of Decision (RODs), or similar decision documents. It also includes the approval of applications submitted by the LRA or others for property under various public

purpose conveyance authorities (e.g., public airport, economic development, and other public purpose conveyances).

Phase Three: After final disposal decisions have been issued by the Military Department, the last phase, **parcel-by-parcel decision implementation** (further described in Section 2.3), occurs for each disposal parcel. This phase lasts until the property has been conveyed and includes completion of environmental activities that must be performed.

Who gets involved in the base reuse process?

Who can I get in touch with to get more help?

For this complex undertaking to be successfully implemented, teamwork is critical. Individuals from the Military Department, the on-site Base Transition Coordinator, the DoD Office of Economic Adjustment (OEA) Project Manager, the LRA, local and State government, and other Federal, State and local reuse planning and implementation organizations will all play key roles.

Many of the organizations that will be involved in the process at a closing or realigning installation are not explicitly identified in this Manual. However, Federal points of contact to assist with base reuse implementation are identified in Appendix G. Also, a comprehensive list of available organizations, including individuals to contact, can be found in the Appendix of the *Community Guide to Base Reuse*, published by OEA. The Guide may be obtained by contacting OEA (See page G-1 for address) or by visiting OEA's home page at http://emissary.acq.osd.mil/bctoweb/oea/oeahome.nsf. The Guide also provides information intended for local officials, LRAs, and the general public, including practical advice on organizing an LRA and developing and implementing a redevelopment plan.

2.1 PHASE ONE: BASE-WIDE REUSE PLANNING

Reuse planning requires the concurrent execution of numerous activities, most of which are required by law. Generally, this phase begins at the approval date for the closure or realignment of the installation (see Figure 2-1) and ends when the LRA's redevelopment plan has been prepared and submitted to the Military Department, which must then complete any required environmental impact analyses and analyze any other information needed to make final disposal decisions. OEA has grant moneys available to assist LRAs with reuse planning.

To be successful, reuse planning efforts must be well organized and well coordinated. For example, the **LRA** will generally accomplish the following activities during reuse planning:

- Form, be recognized by the Department of Defense, and receive economic adjustment planning assistance.
- Solicit, identify, and consider various interests in installation property.
- Conduct outreach activities that focus on community needs, including homeless assistance needs.
- If useful, request interim leases of available installation facilities.
- Identify its own interests in available personal property.

- Develop a comprehensive land-use plan.
- Consider the environmental condition of the property (especially areas with ordnance and explosives), on-going, and planned environmental remediation activities into account when developing the redevelopment plan.
- Conduct market research and marketing activities to attract prospective property users.
- Prepare a comprehensive redevelopment plan and other essential reuse-related planning documents.

Concurrently, and in coordination with the LRA's activities described above, the **Military Department** will complete these tasks:

- Identify installation property, which is excess to DoD's needs and surplus to the Federal Government's needs, that will be made available for reuse.
- Inventory personal property and consult with the LRA to identify the personal property that will be made available to the LRA for reuse.
- Provide the LRA with existing facility and environmental data, as appropriate, to assist the LRA with developing a redevelopment plan.
- Conduct National Environmental Policy Act (NEPA) analysis to determine environmental impacts that may occur on the property as a result of the disposal actions.
- Identify potentially impacted natural or cultural resources on the property and any mitigation measures that may have to be taken.
- Conduct an environmental baseline survey to identify the environmental condition of installation property, including property that is uncontaminated and can be made available for reuse without further environmental actions (i.e., Community Environmental Response Facilitation Act (CERFA) report).
- Provide the LRA with copies of applicable environmental analyses, including Environmental Baseline Surveys and natural and cultural resource studies, as they become available, to assist the LRA with developing a redevelopment plan.
- Refocus current environmental cleanup, compliance, and natural and cultural resources strategies and schedules in light of the LRA's land-use plan and redevelopment priorities.
- Relocate active mission elements (mission drawdown).
- Plan for and carry out protection and maintenance (caretaking) of installation property and facilities not immediately reused at the time of active mission departure/base closure.

As shown in Figure 2-2, reuse planning activities should be concurrently conducted to the extent possible, so the Military Department can have the information it needs to make property transfer and environmental cleanup decisions. Reuse planning activities can be grouped into four principal categories:

- *Comprehensive land-use and redevelopment planning*, including LRA formation, recognition, and reuse planning activities, Military Department/LRA community interface activities, and Military Department disposal planning activities (including interim leasing of facilities no longer needed by the active mission), conducted to assist LRA reuse planning efforts (see also Section 2.1.1).

- *Environmental impact and other impact analysis* (see also Section 2.1.2).

- *The BRAC Environmental Process*, including environmental baseline surveys and environmental cleanup activities (which includes mission/operational- and closure-related compliance activities) (see also Section 2.1.3).

- *Installation management*, including active mission drawdown, protection and maintenance of facilities, and caretaker operations (see also Section 2.1.4).

2.1.1 Comprehensive land-use and redevelopment planning

Both DBCRA 90 and the Redevelopment Act identify specific reuse planning phase requirements and timelines (see Appendix B of this Manual for the full text of these statutes and Figure 2-1, which depicts significant milestones). Many of these requirements and timelines relate to LRAs soliciting interest in the installation, conducting homeless assistance outreach activities, identifying personal property needs, considering expressions of interest in property, consulting with the Military Department while it determines initial maintenance levels for installation facilities, and preparing and submitting the redevelopment plan. The timely submission of both a redevelopment plan and any necessary property applications will facilitate the Military Department's ability to make final property disposal and environmental cleanup decisions that will best meet community reuse goals. The *Community Guide to Base Reuse* contains essential information on LRA formation, organization, and recognition, reuse planning strategies, and strategies for creating a viable redevelopment plan. This Manual provides guidance for many of the real and personal property–related activities.

2.1.2 Environmental impact and other impact analyses

What affect does the National Environmental Policy Act (NEPA) have on the planning process?

As part of the reuse planning phase, the Military Department, under NEPA, must consider all reasonable disposal alternatives and their respective environmental consequences. This is accomplished by means of a formal environmental impact analysis, which takes the form of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) depending on the level of analysis required. The Military Department is required to analyze impacts to natural and cultural resources (e.g., historic structures, wetlands, threatened and endangered species, Native American sites and others), and may be required to consult with other Federal and State agencies before making final property disposal decisions.

REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The NEPA process is intended to help the Military Department make informed and environmentally responsible disposal decisions. The NEPA process requires the Military Department to conduct environmental analysis concerning:

- The environmental impact of the proposed disposal action, including reasonably anticipated reuse activities.
- Alternatives to the proposed disposal and reuse action, including the "no-action" alternative.
- Adverse impacts.
- Any appropriate environmental impact mitigation actions.

For disposal of closing or realigning installations, the NEPA process (described in 40 CFR Parts 1500–1508) is typically completed in one of three ways:

- **Categorical Exclusion.** If applicable, a categorical exclusion may be used by the Military Department when a parcel is to be transferred to another Military Department or Federal Agency.

  A categorical exclusion may also be used by the Military Department for interim leases where there is no substantial change in land use.

- **Environmental Assessment (EA)/Finding of No Significant Impact (FONSI).** The EA provides the Military Department with sufficient evidence and analysis for determining whether a FONSI or an EIS should be prepared. A FONSI is a determination that, based on the EA, the disposal action will not significantly affect the environment and a full EIS is not necessary. The Military Department may receive public comments on the EA and the applicability of a FONSI. After a FONSI, the Military Department can issue a formal disposal decision for the property.

- **EIS/Disposal Record of Decision (ROD).** Preparation of an EIS involves a more formal public involvement process, which can be summarized as follows:

  — The Military Department publishes a Notice of Intent in the *Federal Register* that a property disposal action may be undertaken and that an EIS will be prepared and considered.

  — A public scoping meeting will be held in the geographical area to obtain public comments about the possible environmental impacts of the proposed disposal action and likely reuses, as well as the reasonable alternatives that should be considered in the analysis. It is therefore important for the LRA and other interested community leaders to participate in the scoping meeting.

— Data are collected and analyzed by experts in different fields, and the results are published in a Draft EIS (DEIS). The DEIS will be made available for public review and comment. Interested agencies, organizations, and individuals normally have 45 days to review and comment. Also during this time, a public hearing is held in the community to explain DEIS findings and to receive oral comments.

— The Final EIS (FEIS) is completed no later than 12 months after the submittal of the LRA's redevelopment plan. The FEIS will address public and other comments received on the DEIS. A Notice of Availability (NOA) of the FEIS will be published in the *Federal Register*.

At least 30 days after publication of the FEIS, a disposal ROD is issued. The disposal ROD indicates the disposal actions that have been selected, the alternatives considered, the potential environmental impacts of each alternative, and any specific mitigation activity to support the decision. After the ROD is signed and issued, the availability of the disposal ROD is announced in the *Federal Register*. Then, the Military Department may dispose of the property.

What is DoD's policy on NEPA?

It is DoD policy (*DoD Guidance on Accelerating the NEPA Process for Base Disposal Decisions*, Deputy Secretary of Defense Memorandum "Fast Track Cleanup at Closing Installations," May 1996—see Appendix F) that the LRA's redevelopment plan, if available and to the extent legally permissible, will be a primary factor in the development of the proposed action, reasonable alternatives, and effects analysis in the Military Department's NEPA process for the disposal action. If the elements of the redevelopment plan do not constitute a reasonable alternative for disposal and reuse of the base, the Military Department will identify the problematic elements of the plan and work with the LRA to devise mutually acceptable plan modifications. Designation of the LRA's redevelopment plan as the proposed action does not affect the Military Department's obligation under NEPA to consider reasonable alternatives for the disposal and reuse of installation property. In the event that the LRA does not reach a consensus or fails to prepare an acceptable or timely redevelopment plan, the Military Department will prepare the NEPA analysis using reasonable assumptions as to the likely reuse scenarios and their reasonable alternatives.

Section 2911 of Title XXIX and DoD policy (as referenced above and found in Appendix F) require that any required NEPA analysis be completed no later than 12 months after the LRA submits its adopted redevelopment plan. In conducting the NEPA analysis the Military Departments consider, where applicable, any available similar State analysis.

State agencies can participate in the NEPA process as cooperating agencies. Accordingly, when an LRA is acting as a legal entity of the State, and recognized by OEA as such, it should be considered by the Military Department for cooperating agency status as long as there are no other issues unique to the installation that would preclude such status. The decision to make such a determination should be made after a careful review of the factors surrounding the closure or realignment, as well as consideration of the liabilities associated with the designation. However, the responsibility for the NEPA analysis and resulting ROD rests with DoD.

A similar NEPA analysis process will apply when property is reused under an interim lease (see Chapter 5). Normally, a categorical exclusion or an EA/FONSI is sufficient to support a lease action.

2.1.3 The BRAC Environmental Process

How are other environmental issues addressed?

Many environmental issues must be addressed to prepare an installation for closure and transfer. These issues may be generally referred to as environmental restoration, compliance, and conservation (natural and cultural resources). The environmental process is emphasized and expedited at closure bases to facilitate rapid transfer for community reuse. Many environmental activities will occur during the reuse planning phase and some activities may continue through implementation.

Environmental decisions are based on how the land is to be reused. Therefore, it is very important for the Military Department to be aware of the LRA's reuse concepts as soon as they are formulated so that cleanup actions, in particular, may be conducted in a manner that is consistent, to the extent practicable, with reuse plans. It is also important for the Military Department to communicate environmental issues to the LRA early in the process, to ensure reuse planning is compatible with the more significant environmental conditions that may limit certain types of land use. This way, environmental priorities can be reconciled with community reuse priorities, and appropriate cleanup levels can be established to reflect anticipated future land uses. Further guidance on future land use considerations in environmental cleanup is contained in the *DoD Policy on Responsibility for Additional Cleanup After Transfer of Real Property*. A copy of this policy can be found at Appendix F.

BRAC Environmental Restoration Program

Environmental cleanup programs have been ongoing for many years as part of the Department of Defense Environmental Restoration Program. The BRAC environmental restoration program consists of five principal steps as outlined in the DoD BRAC Cleanup Plan Guidebook, Fall 1995. The steps are as follows:

- A **BRAC Cleanup Team** (BCT) is established for each base where property will be made available to the local community for reuse. The BCT will include a BRAC Environmental Coordinator (or BEC—a Military Department employee), and representatives appointed by the State environmental agency and the U.S. Environmental Protection Agency's (EPA's) regional office. The BCT members act with the authority of the State, EPA regulatory offices, and the Military Department. A Project Support Team (PST), made up of specialists and technical experts, assists the BCT in developing the comprehensive BRAC Cleanup Plan. The LRA is a valuable participant in the BRAC environmental restoration program and should provide input in support of the development, update, and implementation of the cleanup program. The LRA is encouraged to participate in the environmental program as a member of the PST. In addition, the BCT should work closely with the LRA, particularly the environmental subcommittee. The LRA should receive cleanup information from the BCT and should, in turn, provide the BCT with input on reuse priorities and decisions. The Base Transition Coordinator (BTC) helps facilitate communication and coordination between the BCT and the LRA. The BTC is responsible for informing both the BCT and

the LRA of new information, as it becomes available, regarding reuse planning and the environmental cleanup program for the installation.

- The BCT reviews the status of all base environmental programs (including cleanup, compliance, and natural and cultural resources programs), as well as the LRA's redevelopment plan. If the LRA's redevelopment plan is not available, the LRA should provide the BCT general land use information to assist them in selecting any necessary cleanup standards.

- The BCT considers the land use concepts in identifying action items requiring further effort, and develops a strategy that incorporates both reuse priorities and environmental cleanup as required by Federal and State environmental laws.

- A BRAC Cleanup Plan (BCP) is prepared, describing the status of base environmental programs, and identifying strategies and schedules for integrating the required environmental cleanup with the community reuse plan.

- As contamination is remediated, the BCP is updated to reflect cleanup and site close-out actions that have been taken, as well as any changes in community redevelopment needs.

Most property can be put into productive reuse by either lease or deed, while the Military Department and the BCT work to ensure that cleanup is conducted in accordance with Federal and State laws.

Restoration Advisory Boards (RABs)

What is the Restoration Advisory Board ?

All DoD installations being closed or realigned will establish a RAB, if property will be available for transfer. RABs are co-chaired by community and installation representatives and serve as a forum for information exchange and partnership among citizens, the installation, EPA, and the State on environmental restoration issues.

RABs offer an opportunity for communities to have a voice in the cleanup process by bringing together people who reflect the diverse interests within the local community. Community members on RABs can actively participate in a timely and thorough manner. This participation includes reviewing restoration documents and providing advice as individuals to the decision-makers from the Military Department and the regulatory agencies on restoration issues. The LRA is encouraged to participate in the RAB to keep both the RAB and the BCT informed about reuse issues.

While RABs are not intended to replace other community involvement activities, the RAB should act as a focal point for the exchange of information between an installation and the local community regarding environmental restoration activities. Members will be expected to serve as a liaison with the community and be available to meet with community members and groups. Through the RAB, community input on environmental investigation, cleanup, and priorities can be raised directly to DoD, EPA and State regulatory representatives. Further guidelines for establishing and operating RABs can be found at Appendix F in

the *Restoration Advisory Board Implementation Guidelines, September 1994*, jointly issued by DoD and EPA.

ENVIRONMENTAL SUITABILITY FOR TRANSFER OR LEASE

What is CERFA?

What are FOSTs and FOSLs?

What's an EBS?

To facilitate reuse planning efforts, the Military Department, under the Community Environmental Response Facilitation Act (CERFA), will identify "uncontaminated" base property no later than 18 months after the date of approval for closure or realignment. This identification procedure includes consultation with appropriate State or EPA regulators. In addition, no property can be conveyed by deed or leased until the Military Department makes a Finding of Suitability to Transfer (FOST) or a Finding of Suitability to Lease (FOSL), respectively.

The FOST/FOSL process is intended to determine whether property is environmentally suitable for its intended use and whether there should be any restricted use of the property. An Environmental Baseline Survey (EBS), which is similar to the environmental site assessments commonly used in commercial real estate transactions, is used to support the FOST/FOSL. An EBS includes the identification and analysis of all available and relevant records, a visual and physical inspection of the base and adjacent property, a recorded chain-of-title documents review, interviews with past and current base employees and local officials, and other activities.

Where can I find more guidance on FOSTs/FOSLs, EBSs, and CERFA?

Military Department implementors, in consultation with the LRA, should provide input to the BCT well in advance on properties to be reused so that a FOST/FOSL can be developed, and so that the BCT can ensure that there are no environmental impediments to the intended reuse. Further guidance on the EBS/FOSL/FOST/CERFA processes can be found in the DoD guidance documents included in Appendix F.

Appendix A of this Manual identifies and summarizes pertinent environmental laws and regulations that affect base reuse implementation. Further information on the BRAC environmental process can be found in *DoD Guidance on Establishing Base Realignment and Closure Cleanup Teams* (May 1996), which can be found in Appendix F of this Manual.

2.1.4 Installation management

As an installation goes through the process of closure or realignment, duties assigned to active units, including operation of utilities and maintenance of buildings, roads and other facilities, must eventually be assumed by others. Representatives of the Military Department, in consultation with the LRA, will identify an initial level of maintenance that facilities will require to support reuse after the active mission departs (see Chapter 6 of the Manual for further information on how initial maintenance levels are determined).

Another aspect of Military Department/LRA consultation is that of establishing procedures and responsibilities for providing common services, including fire protection, security, telephones, roads, and snow/ice removal. How these common services will be provided after the base closes should be discussed and resolved in the earliest stages of consultation. Once closure occurs, the Military Departments will sustain an appropriate level of maintenance to support reuse

for a set period of time (see Chapter 6). Such protection and maintenance at a closed military base is provided through contracts, agreements with local communities, or other caretaker arrangements. Maintenance by the Military Department will end when the property is leased or disposed of, or at the expiration of the set maintenance period. Once property is leased or disposed of, its maintenance becomes the responsibility of the Lessee or property recipient.

2.2 PHASE TWO: DISPOSAL DECISION MAKING

How and when are final property disposal decisions made?

The second major phase of the base reuse process, disposal decision making, includes the activities associated with the Military Department's disposal decisions and the LRA's reuse decisions. After reuse planning activities are completed, the LRA will submit its adopted redevelopment plan to DoD and as part of an application made to the Secretary of Housing and Urban Development (HUD), in accordance with the Redevelopment Act. HUD will review and approve the LRA's application.

After completing its NEPA analysis and associated documentation, the Military Department will issue final disposal decisions. This is generally accomplished by issuing a disposal decision document as a public statement of the disposal decisions. The decision document (ROD or FONSI) describes the disposal decisions that the Military Department has made, as well as potential mitigation that may be required if certain activities occur. In certain circumstances, supplements to the initial disposal decision may also be issued.

This phase also includes the Military Department's decisions on requests for specific property conveyances (briefly described in Section 2.3) to approved applicants. Applications (see Chapter 3 and Appendix E of this Manual for additional information on public benefit conveyance applications) are required for most discounted conveyances of property for public benefit conveyances. For example, the Department of Education must review and approve an application prior to the Military Department's implementation of an education public benefit conveyance. EDCs also require an application. Title XXIX and the final rule (32 CFR Part 175; see Appendices B and C of this Manual for the complete text of each, and Chapter 7 for further Military Department guidance) identify the requirements for LRAs who want to apply for EDCs and the criteria the Military Departments should use in evaluating EDC applications.

The Military Department always retains ultimate authority to make property disposal decisions and will resolve any conflicting property interests at the time the final disposal decisions are issued.

2.3 PHASE THREE: PARCEL-BY-PARCEL DECISION IMPLEMENTATION

After necessary applications have been submitted, reviewed, and accepted, and after final disposal decisions are issued by the Military Department, the reuse process enters the decision implementation phase. This phase includes Military Department conveyance of installation property (or property "**disposal**"). In this phase, the Military Department will proceed to dispose of property in accordance with its documented disposal decisions, using conveyance authorities established by the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 471 *et seq.*), the Surplus Property Act of 1944 (49 U.S.C. §§ 47151-47153), the Act of May 19, 1948 (16 U.S.C. § 667b), Title XXIX, the Redevelopment Act, and other

authorizing statutes, as implemented in the Federal Property Management Regulations (41 CFR Part 101-47), 32 CFR Parts 175 and 176, and elsewhere.

The Military Departments can assign property *to another Federal Agency* before the completion of remedial actions required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and before the issuance of a NEPA disposal ROD. However, CERCLA requires the Military Departments to complete environmental cleanup before transferring the property by deed to non-Federal entities. This allows the Military Departments to write covenants in the deed that guarantee that the quality of the environmental cleanup is fully protective of human health and the environment. In certain circumstances, a deed transfer may be made before all remedial actions have been fulfilled using the new "Early Transfer Authority" which is described in more detail in Chapter 5 and in a memorandum contained in Appendix F. In addition, for property with ongoing cleanup efforts, leases may be used to achieve prompt reuse.

Base property will be conveyed (usually by one or more parcels), as soon as possible, by deed for civilian reuse. One of nine property conveyance methods can be used:

What methods can be used to convey property at BRAC installations?

- **Federal Agency transfers** of excess base property to non-DoD organizations within the Federal Government. These transfers require reimbursement to the Military Department of the full fair market value of the property, unless:

  — The Secretary of the Military Department and the Office of Management and Budget grant a waiver; or

  — A law specifically exempts the transfer from reimbursement.

- **Public purpose conveyances** for such public uses as airports, education, health, historic monuments, ports, parks and recreation, and wildlife conservation. Generally, a Federal Agency with specific expertise in a conveyance category (e.g., the National Park Service for park land and recreation conveyances) is authorized to serve as a sponsoring or approving Agency. Approved recipients may receive these conveyances at a substantial discount (up to 100 percent of fair market value), following DoD consultation with the appropriate Agency.

- **Homeless assistance conveyances** (under the Redevelopment Act) at no cost, either to the LRA or directly to the representatives of the homeless. Any deeds prepared by the Military Department for conveyance of property directly to representatives of the homeless should provide for transfer of the property to the LRA if no longer required for homeless needs. Personal property may be conveyed to the local redevelopment authority for use by the homeless assistance provider. The LRA will be responsible for monitoring implementation of the homeless assistance provisions of its redevelopment plan.

- **Negotiated sales** to public bodies or other qualified entities require payment of not less than the fair market value, although payment terms are negotiable. Terms of negotiated sales are subject to review by Congress.

- **Advertised public sales** may be made to the party that submits the highest bid, provided it is not less than the fair market value. Sales to private parties for amounts over $3 million are subject to Attorney General review.

- **EDCs** to an LRA, for creating jobs and economic revitalization of the community, are approved by the Military Department. Under an EDC, property may be sold at or below the estimated present fair market value with flexible payment terms and conditions. EDCs are discussed in detail in Chapter 7.

- **Conveyances for the cost of environmental remediation** may be made to those parties who enter into an agreement to pay the costs of environmental remediation on the property, provided that the total cost to the recipient is no less than the property's fair market value. Implementing regulations for this conveyance authority, required by Section 2908 of Title XXIX, have been promulgated as a proposed rule. By law, this authority expires on November 30, 1998.

- **Depository institution facilities** may be conveyed to the operating depository institution, by sale at fair market value, when the institution constructed or substantially improved the facilities.

- **Leaseback conveyances** to allow LRA ownership of property while ensuring that Federal real property needs are met. Under a leaseback, property that is still needed by another Federal Department or Agency is conveyed to the LRA with the condition that the LRA lease it back to the Federal entity. The lease cannot require rental payments. Leasebacks are discussed in more detail in Chapter 8.

2.3.1 Asbestos containing materials

Some buildings and facilities on BRAC property may contain asbestos containing materials (ACM). Some common examples of ACM are spray acoustic ceilings, acoustic tiles, various plasters, duct wrap, non-bituminous roofing felt, wallboard, and thermal insulation on pipes and boilers. Friable ACM may pose a threat to human health and is regulated. Non-friable ACM is typically bound up with cement, vinyl, asphalt, or some other type of hardening binder and consequently does not pose a threat to human health and is not regulated. Some examples of non-friable asbestos building products are transite (cement) siding, vinyl asbestos floor tiles, and asphalt roofing shingles.

In accordance with DoD policy, ACM that poses a threat to human health at the time of transfer shall be remediated by the Military Department, or by the transferee under a negotiated requirement of the contract for sale or lease. Consistent with this policy, ACM that poses a threat to human health may be left in-place and the property transferred "as is" only when the hazardous ACM will be otherwise addressed through demolition, renovation, repairs or other arrangements made between the Military Department and the new owner. See

Appendix F for the DoD policy on ACM and additional information regarding this matter.

2.3.2 Institutional controls

Institutional controls are a commonly used tool in property transactions. Institutional controls are structural or legal mechanisms used to limit access to, or restrict the use of, property. A familiar example of an institutional control would be a deed restriction prohibiting television satellite dishes in planned communities. For BRAC property transfers, institutional controls may be imposed by the Military Department or other governmental entities. Institutional controls are commonly used to protect historic buildings, wetlands, floodplains, and/or endangered species. They may also be used to protect the general public from exposure to possible residual contamination. LRAs and other future land users should be aware that under some circumstances, institutional controls may be a necessary element of the transfer of closing base property.

In general, institutional controls fall into two categories: proprietary controls and governmental controls.

- Proprietary controls are private contractual mechanisms contained in the deed or other transfer documents. Proprietary controls involve the placement of restrictions on land use by means of easements, covenants, and reversionary interests.

- Governmental controls are restrictions that are within the traditional police powers of State and local governments to impose and enforce. Examples of governmental controls include permit programs and planning and zoning limits on land use.

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3

Identifying Interests in Real Property and Reuse Planning

Frequently Asked Questions About Identifying Interests in Real Property and Reuse Planning

- *What is the general practice for real property disposal at BRAC installations?* Section 3.1
- *How does the Military Department determine whether there are DoD or Federal needs for property at the base?* Section 3.2
- *How are other property interests sought and identified?* Section 3.3
- *What information is required with a notice of interest?* Section 3.3
- *What information is typically contained in a redevelopment plan and how are homeless assistance needs incorporated?* Section 3.4
- *How does HUD evaluate a redevelopment plan?* Section 3.5
- *What are the procedures for accommodating homeless assistance needs at BRAC 88, 91, and 93 installations?* Section 3.6



3.1 INTRODUCTION

The Department of Defense recognizes that to promote economic development and rapid job creation, it must expedite the process of making real property available for reuse at closing and realigning bases.

3.1.1 Philosophy and goal

What is DoD's philosophy and goal for real property disposal?

To speed the economic recovery of communities affected by base closures and realignments, it is DoD policy to identify the real property at closing and realigning military bases that will be made available to the local community as quickly as possible, and to enable the Local Redevelopment Authority to complete reuse planning based upon the community's needs. The Military Department having responsibility for the closing or realigning base shall identify the interest of DoD Components and Federal Agencies in portions of the affected

facility. The Military Department will keep the LRA informed of its progress in identifying the real property to be made available to the community.

When real property becomes available at closing and realigning bases the Military Department will inform other DoD Components and other Federal Agencies of the potential availability of property at the closing base. All interested parties will be encouraged to contact and work with the LRA to have their needs considered as part of a comprehensive local planning process.

What is the general practice for property disposal at BRAC installations?

3.1.2 A New Reuse Planning Process—General practice for BRAC 95

Under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 *(hereinafter referred to as the "Redevelopment Act")*, a new community-based reuse planning process begins upon the final selection of the base for closure or realignment ("date of approval"). Through this process, the LRA identifies local reuse needs and creates a redevelopment plan for the Military Department to consider in the disposal of base property.

Figures 3-1 and 3-2 show some of the principal activities and milestones associated with the overall base reuse process. Although many of these milestones are prescribed by statute, service implementors should realize that, within legal limits, every effort should be made to accommodate the community's particular circumstances. The LRA's reuse planning activities and the Military Department screening activities can generally be grouped and described in terms of the number of months following the date of approval.

- **First 6 Months.** The Military Department will determine which parts of the base are not needed by the Department of Defense ("excess" property) or another Federal Agency ("surplus" property), and will publish a notice identifying the surplus property as being available for reuse, following this Federal screening process.

- **6 to 12 Months.** The LRA undertakes outreach to solicit notices of interest in the base from State and local governments, representatives of the homeless, and other interested parties. This outreach may include working with the Department of Housing and Urban Development (HUD) as well as the Federal Agencies that sponsor public benefit transfers. The LRA will prescribe the dates for receiving these notices, publicize them locally, and notify the Military Department.

- **12 to 18 Months.** After considering the notices of interest received, the LRA prepares a redevelopment plan, incorporating environmental considerations such as cleanup activities, natural resource concerns such as endangered or threatened species and habitat, and cultural and historical requirements. This plan identifies the LRA's overall reuse strategy for the base. The LRA and the community, through public comment, must ensure that the plan adequately balances local community and economic development needs with those of the homeless.

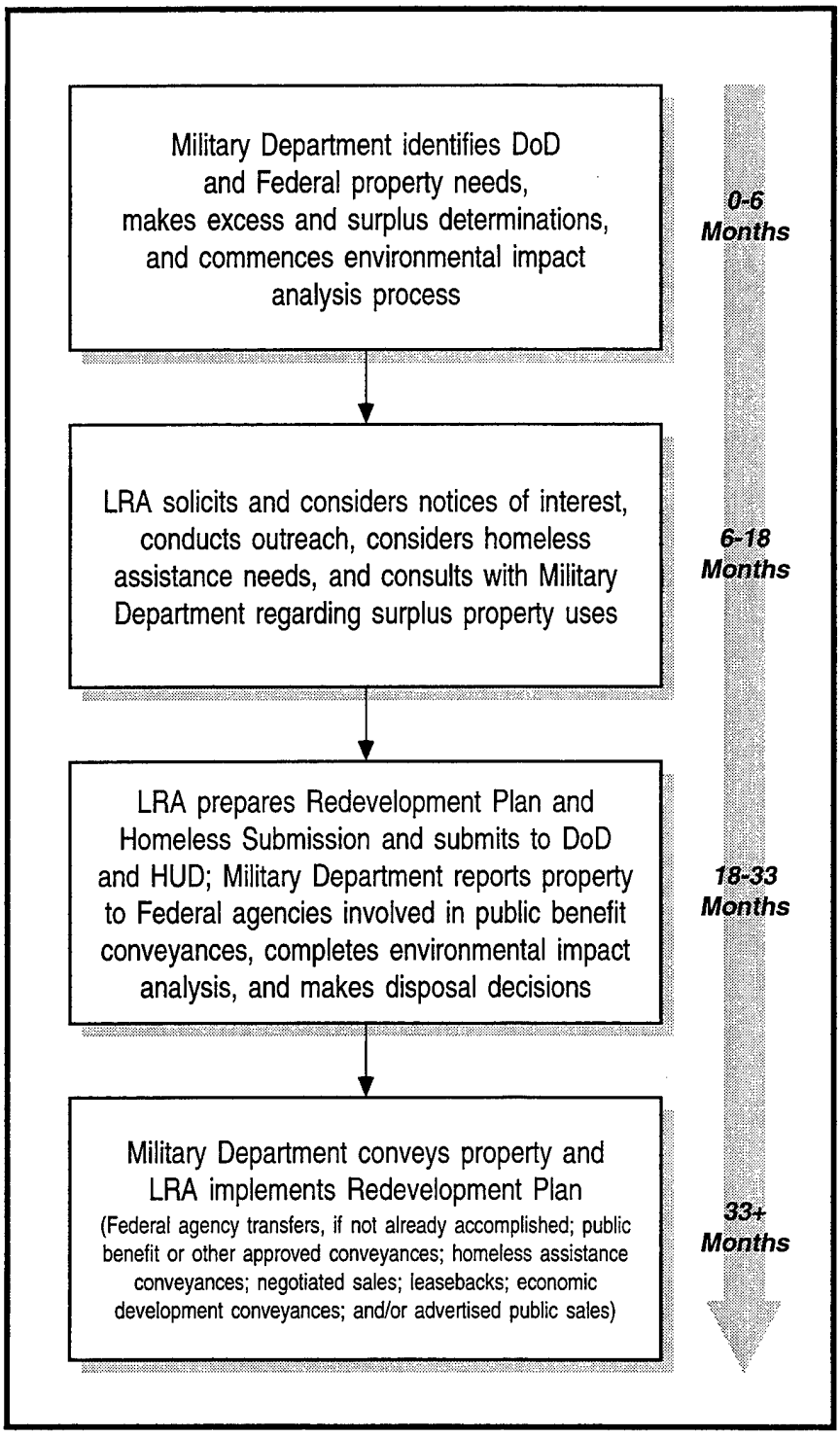


Figure 3-1. General Disposal Process Flow Diagram

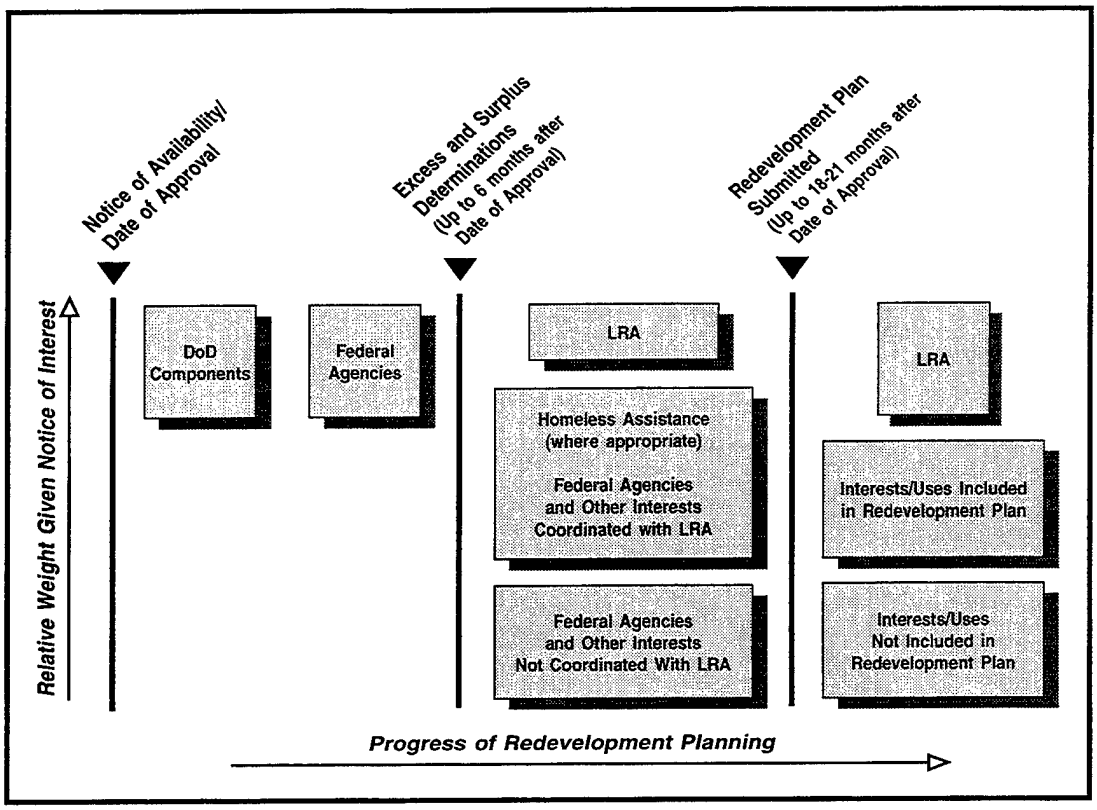


Figure 3-2. Milestones for Submitting and Considering Notices of Interest

- **Approximately 18 to 24 Months.** The LRA's completed redevelopment plan is submitted to the Military Department. Not later than this time, the Military Department also notifies sponsoring Federal Agencies of property that may become available for public benefit conveyances. The LRA may request that the notification be done sooner and could find it helpful in identifying public interest in the property. This "screening" for public benefit users should be based upon the property uses outlined in the community redevelopment plan (see Section 3.5.4). The sponsoring Federal Agency will make recommendations to the Military Department on proposed users of property. The Military Department will, in turn, keep the LRA apprised of any interests.

  The community's plan is also submitted to HUD as part of an application to help address the community's homeless needs. HUD will review the application to determine whether, in its judgment, the LRA has adequately balanced local community and economic development needs with those of the homeless. If HUD determines that the application does not strike this balance, the LRA will be provided with an opportunity to address HUD's concerns and revise its plan accordingly.

- **Approximately 24+ Months.** The Military Department will complete its environmental impact analysis no later than 12 months after receiving the LRA's redevelopment plan. In this analysis, the LRA's plan is normally used as a primary factor in the development of the proposed action, reasonable alternatives, and effects analysis. During the disposal and reuse decision phase, final Military Department disposal decisions will resolve any

competing requests for the property and will, in most cases, be consistent with the LRA's redevelopment plan. It is DoD and the Military Department's desire to have the LRA's local planning process resolve any conflicting land use proposals prior to the completion of the redevelopment plan. Once disposal decisions are made, the Military Department initiates final disposal actions in accordance with its disposal plan.

3.2 Identifying DoD and Federal Property Needs

How does the Military Department determine whether there are DoD or Federal needs for property at the base?

The Military Departments are required by law (Section 2903 of Title XXIX of Pub. L. 103-160) to identify DoD and Federal property needs at closing and realigning installations no later than six months after the date of approval of closure or realignment.

3.2.1 Issuing notices of availability

Notice of Potential Availability

Upon the President's submission of the recommended list of base closures and realignments to Congress in accordance with the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of Pub. L. 101-510), the Military Department shall issue a notice of potential availability—including a list of property and buildings at closing or realigning installations that will potentially become available—to the other DoD Components and other Federal Agencies. This notice should be made available to the public, upon request. Potential recipients could include, but are not limited to, the LRA (if recognized), elected officials from the communities in the vicinity of the installation, the governor, local developers, and businesses. Federal Agencies are encouraged to review this list with regard to their prospective property requirements and to evaluate whether they might have a requirement for the listed properties. Any interest received should be forwarded to the LRA, if one exists. For installations that wholly or partially consist of withdrawn public domain lands (*see box below*), the Military Department should begin consulting with the Bureau of Land Management at this time.

Withdrawn Public Domain Lands

Withdrawn public domain lands are those lands that have been transferred from the Department of the Interior to a Military Department (i.e., withdrawn from the public domain) for military use. Public domain lands that are suitable for return to the public domain are not real property governed by the Federal Property and Administrative Services Act of 1949, as amended, and are not governed by the property management and disposal provisions of the Defense Base Closure and Realignment Act of 1990 or the Defense Authorization Amendments and Base Closure and Realignment Act of 1988. Public domain lands are under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM) unless the Secretary of the Interior has withdrawn the lands and reserved them for another Federal Agency's use.

The Military Department responsible for the closing installation will provide the BLM with the notice of potential availability, as well as information about which, if any, public domain lands will be affected by the installation's closing. The BLM will review the notice of potential availability to determine if any installations contain withdrawn public domain lands. Before the date of approval of the closure, the BLM will review its land records to identify any withdrawn public domain lands at the closing installation, and any record discrepancies between BLM and the Military Department

Withdrawn Public Domain Lands (concluded)

should be resolved during this time period. The BLM will notify the Military Department of the final agreed-upon withdrawn public domain lands. Upon agreement on the withdrawn lands, the BLM will begin determining whether the lands are suitable for Department of the Interior programs.

The Military Department will transmit a Notice of Intent to Relinquish (43 CFR 2372) to the BLM as soon as the property is identified as excess to DoD needs. The BLM will complete its suitability determination within 30 days of receiving the Notice of Intent to Relinquish. If public domain lands are to be used by a DoD Component, BLM will determine whether the existing authority for DoD use must be modified.

If BLM determines that the land is suitable for return to the public domain, it shall notify the Military Department that the Secretary of the Interior will accept the Military Department's relinquishment. If the land is not found to be suitable for return to the public domain, the land will be disposed of pursuant to the authorities in the BRAC statutes.

Military Departments should consider LRA input in making determinations on the retention of property (i.e., the size of cantonment areas), if provided. Generally, determinations on the retention of property and the size of cantonment areas should be made prior to the date of approval of the closure. The Deputy Under Secretary of Defense (Industrial Affairs and Installations) must approve the proposed cantonment areas, unless such a retention is specifically authorized by the Defense Base Closure and Realignment Commission.

Air Traffic Control and Air Navigation Equipment

Within 90 days of the notice of availability, the Federal Aviation Administration (FAA) will survey any air traffic control and air navigation equipment at the installation to determine what is needed to support the air traffic control, surveillance, and communications functions supported by the Military Department. The FAA will also identify the facilities needed to support the National Airspace System. FAA requests for property to manage the National Airspace System will not be subject to the application process described in Section 3.2.2; instead, the FAA will work with the Military Department to prepare an agreement to take over the facilities and obtain the real estate rights necessary to control the air space being relinquished by the Military Department.

NOTICE OF AVAILABILITY

Within one week of the date of approval of the closure, the Military Department shall issue an official notice of availability to other DoD Components and Federal Agencies. This notice will identify and describe the buildings and property ("real property") at the installation that will be available for transfer. This notice will contain substantially the same information as the notice of potential availability, but will confirm the property's availability. Withdrawn public domain lands that the Secretary of the Interior has determined to be suitable for return to the public domain (*as described above*) will not be included in this notice.

Reversionary Rights

Property for military installations was sometimes obtained from State and local governments at a reduced price or at no cost. In such cases, the deed or other instrument conveying the property to the military may contain reversionary rights or reverter clauses that provide for return of the property to its former owner once the military need has ended. Therefore, the Military Department should review the provisions of its title(s) to the property in order to identify any pre-existing claims. If such claims or rights exist, the availability of the property for other Federal uses may be limited, and property subject to reversionary rights will generally not be available for disposal as surplus property. The mere fact that property had been donated to the military does not *per se* establish a reversionary right on the part of the donor.

Any interested DoD Component or Federal Agency is required to provide, within 30 days of the notice of availability, a written, firm expression of interest for identified real property (see Figure 3-3). An expression of interest must explain the intended use and corresponding requirement for the real property. Within 60 days from the date of the notice of availability, any interested DoD Component or Federal Agency ("requester") must submit a written request to the Military Department for transfer of such real property. If the requests are not made in a timely fashion, Federal interests can still be met at the base. In these cases, the Federal Agency needs to participate in the reuse planning process and request that its proposed use become part of the LRA's plan. *(See Section 3.2.3 below for information on withdrawing a surplus determination.)* The Military Department will keep the LRA informed of the progress in identifying DoD and Federal interests in real property at the installation.

Native American Indian Interests

Native American Indian interests in property at closing or realigning installations can be addressed through two processes:

- Native American Indian tribes can submit expressions of interest to the Bureau of Indian Affairs (BIA), which is held to the same timetables and criteria as other Federal Agencies (described in this Section). For BRAC 95 installations, BIA has announced that it will only assist tribes at the Federal screening level if the tribe is located within the area economically effected by the closure and if the tribe itself is impacted by the closure. Interested tribes should contact BIA for information about its policy for expressions of interest.
- Tribal governments may participate in the local comprehensive planning process and express their interests to the LRA. Tribes adversely affected by the base closure should be part of the LRA and should work within this process to see their needs addressed through a single, comprehensive plan.

Interested DoD Components and Federal Agencies are encouraged to discuss with the LRA, if one exists, their plans and needs to determine the extent to which their proposed uses fit the anticipated redevelopment plan. Requesters are encouraged to notify the responsible Military Department of the results of this non-binding consultation. The Military Department, DoD Base Transition Coordinator (BTC), and Office of Economic Adjustment (OEA) Project Manager will facilitate coordination between Federal Agencies and DoD Components and the LRA.

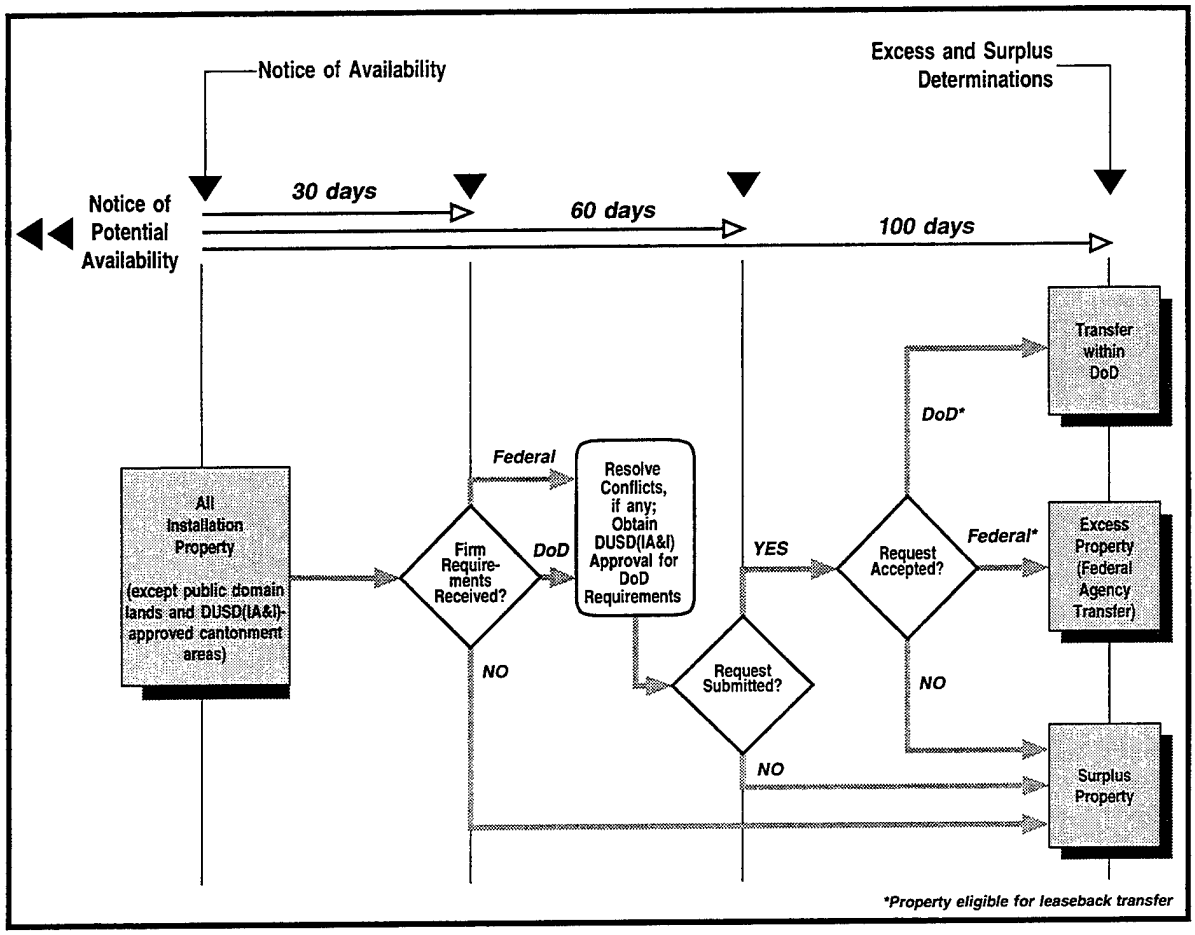


Figure 3-3. DoD and Federal Agency Screening Process

3.2.2 Receiving and evaluating requests for property

What information is needed in DoD and Federal property requests?

A request from a DoD Component or Federal Agency must contain the following:

- A completed General Services Administration (GSA) Form 1334, "Request for Transfer of Excess Real and Related Personal Property" (for requests from other DoD Components a DD Form 1354 is required). This must be signed by the head of the component of the Department or Agency requesting the property. If the authority to acquire property has been delegated, a copy of the delegation must accompany the form.

- A statement from the head of the requesting component or Agency that the request does not establish a new program (i.e., one that has never been reflected in a previous budget submission or Congressional action).

- A statement that the requester has reviewed its real property holdings and cannot satisfy its requirement with existing property. This review must include all property under the requester's accountability, including permits to other Federal Agencies and outleases to other organizations.

- A statement certifying that the requested property would provide greater long-term economic benefits than acquisition of a new facility or other property for the program.

- A statement that the program for which the property is requested has long-term viability.

- A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of the requested property clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility.

- A statement certifying that the size and location of the property requested is consistent with the actual requirement.

- A statement that fair-market-value reimbursement to the Military Department will be made within two years of the initial request for the property, unless this obligation is waived by the Office of Management and Budget (OMB) and the Secretary of the Military Department or a statute provides for a non-reimbursable transfer.

- A statement that the requester agrees to accept the care and custody costs for the property on the date the property is available for transfer, as determined by the Military Department.

What criteria are used to evaluate DoD and Federal requests for property?

The following criteria from the Federal Property Management Regulations (41 CFR § 101-47.201-2) shall be used by the Military Department in reviewing applications from DoD and Federal requesters:

- The requirement upon which the request is based is both valid and appropriate.

- The proposed Federal use is consistent with the highest and best use of the property.

- The requested transfer will not have an adverse impact on the transfer of any remaining portion of the base.

  — *In making the decision on the appropriateness of the use, the highest and best use, and whether the proposed transfer will have an adverse impact of the disposal of the remainder of the base, the Military Department is encouraged to discuss the proposed use with the LRA.*

- The proposed transfer will not establish a new program or substantially increase the level of an Agency's existing programs.

- The application offers fair market value for the property, unless waived.

- The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Military Department.

- The proposed transfer is in the best interest of the Federal Government.

Requests from DoD Components should be forwarded by the Secretary of the Military Department responsible for the installation to the Deputy Under Secretary of Defense (Industrial Affairs and Installations) for review before final approval by the Military Department of the application.

Should competing demands arise (e.g., two Federal Agencies submit *acceptable* applications for the same property), the responsible Military Department will resolve the conflict. The following additional factors should be considered:

- The needs of the military to carry out its mission.
- The proposal's potential for economic development and job creation.
- The LRA's comments.
- Other factors in the determination of highest and best use.

3.2.3 Making final determinations

When does the Military Department decide that property is available for non-Federal use?

The responsible Military Department shall make determinations of excess and surplus property within 100 days of the notice of availability, and shall inform the LRA of its determinations. If requested by the LRA, the Military Department may postpone this determination for no more than six months after the date of approval of closure or realignment.

- Extensions beyond six months can only be granted by the Deputy Under Secretary of Defense (Industrial Affairs and Installations) and will only be granted in unusual circumstances, with good cause shown.
- Extensions of the deadline for surplus determination should be limited to the portions of the installation on which there is an outstanding interest or controversy. Every effort should be made to make surplus decisions on as much of the installation as possible, within the specified timeframes.
- Surplus determinations for previously announced base closures should have already been made unless an extension has been granted by the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

RECONSIDERATION OF SURPLUS DETERMINATION

At the discretion of the Military Department, a surplus determination may be withdrawn and a request reconsidered, when a Federal request is not made in a timely fashion, or when an LRA requests that the denial of a Federal request be reconsidered.

- Requests for transfer shall be made to the Military Department, provided that property disposal has not already occurred, and the Military Department will notify the LRA of the request. Review of the request must employ the criteria specified in Section 3.2.2 above.
- Comments received from the LRA and the time and effort invested by the LRA in the planning process should be considered when the Military Department is reviewing a late request. Generally, the Military Department should not entertain such a request unless the requested transfer is included in the redevelopment plan.

3.3 IDENTIFYING INTERESTS IN SURPLUS PROPERTY

How are general property interests sought and identified?

The Military Departments and the LRA will comply with the Redevelopment Act, as amended, in identifying interests of State and local governments, representatives of the homeless, and other interested parties in surplus Federal property.

Note: the provisions of the Redevelopment Act apply only to BRAC 95 bases and those BRAC 88, 91, and 93 bases whose LRAs properly elected to follow the Redevelopment Act procedures. All other BRAC 88, 91, and 93 bases are subject to the homeless assistance procedures established by Title V of the Stewart B. McKinney Homeless Assistance Act ("McKinney Act") and Title XXIX of Pub. L. 103-160 (see Section 3.6 for details). Homeless needs can only be addressed under one set of procedures; the Department of Defense and HUD generally will not treat portions of an installation under both the Redevelopment Act and the McKinney Act .

The Redevelopment Act states specific timelines for LRA and HUD actions throughout the process. After consultation with the LRA and HUD, DoD, through the Director of OEA, may extend or postpone any deadline in the Redevelopment Act based upon a finding that it is in the interest of the communities affected by the closure of the installation.

3.3.1 Publicizing the availability of property

Once the surplus determination has been made, the responsible Military Department shall:

- Provide information on the surplus real property to HUD and the installation's LRA. If there is no recognized LRA at the time of the surplus determination, the Military Department will provide this information to the Chief Executive Officer of the appropriate State.

- Publish information about the surplus real property in the *Federal Register* and in a newspaper of general circulation in the communities in the vicinity of the installation. The published information shall generally be the same as that furnished to DoD Components and Federal Agencies in the notice of availability.

- As soon as practicable after the list of installations recommended for closure or realignment is approved, DoD, through OEA, should recognize an LRA for the installation. Upon recognition, OEA shall publish information about the LRA (including name, address, telephone number, and point of contact) in the *Federal Register* and in a newspaper of general circulation in the vicinity of the installation.

3.3.2 Soliciting notices of interest

How are potentially interested parties made aware of the available property?

The Redevelopment Act requires that the LRA receive notices of interest from State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the installation ("interested parties"). The representative of the homeless need not be located in the vicinity of the installation as long as the representative proposes to serve the homeless population in the vicinity of the installation. The LRA also has the option to solicit notices of interest from State and local governments and other interested parties that are interested in facilities that are eligible for public benefit transfers under the Federal Property and Administrative Services Act of 1949 or the

Surplus Property Act (49 U.S.C. 47151-47153), such as schools, public health facilities, parks, prisons, historic monuments, etc. It is in the LRA's interest to identify all interests in the property before developing the redevelopment plan. If the Military Department receives any notices of interest, it should provide them to the LRA for consideration as potential uses in its redevelopment planning.

Representatives of the responsible Military Department, the BTC, and the OEA Project Manager should assist the LRA in identifying interests in base property (including how to conduct outreach efforts) and addressing expressions of interest in its redevelopment plan. The Military Department, BTC, and OEA Project Manager should also assist the LRA in identifying and enlisting the aid of Federal Agencies that sponsor or approve public-purpose property conveyances that could support the redevelopment plan.

What are the timeframes for expressing interest to the LRA?

LOCAL TIMEFRAMES

Although the process may begin at any time, the local reuse planning process and identification of interests in surplus property must begin no later than the completion of Federal screening which is deemed to be the date of the *Federal Register* publication of available surplus property *(for pre BRAC 95 installations, the LRA is not required to wait for a surplus determination to proceed with local screening and HUD will, on a case by case basis, determine whether these requirements have been fulfilled)*. The deadline for expressing interest will be set by the LRA, but it can be no earlier than three months and no later than six months after the LRA's publication in the local newspaper, which should be made no later than 30 days after the Military Department's surplus publication as described below *(for pre-BRAC 95 installations that have elected to follow the Redevelopment Act, the LRA shall accept notices of interest for not less than 30 days)*. The LRA is responsible for informing interested parties of its process, including the required format, content, deadline, and address for submitting formal notices of interest.

The LRA is required to publish the details of its process in a newspaper of general circulation in the vicinity of the installation and notify the Military Department of the deadline. Publication and notification of the deadline shall occur no later than 30 days after the Military Department's *Federal Register* surplus publication (see Section 3.3.1). LRAs are strongly encouraged to make this publication as soon as possible within the permissible 30-day period in order to expedite the disposal process.

OUTREACH

What types of outreach will the LRA conduct?

The Military Department and the LRA should assist State and local governments, representatives of the homeless, and other interested parties in evaluating surplus property at the installation. The LRA should coordinate this evaluation with the installation commander to ensure that there is no disruption to any ongoing military activity at the base. Furthermore, the LRA is required to conduct outreach efforts to provide information on the identified surplus real property to representatives of the homeless. LRAs are encouraged to contact the local HUD field office which can provide an updated list of persons and organizations that are representatives of the homeless in the vicinity of the installation, and the LRA should invite these representatives of the homeless to participate in the reuse planning process. These meetings should be in conjunction with a workshop, seminar, or forum in which the LRA and representatives of the homeless discuss homeless needs in the vicinity of the

installation and whether there is appropriate property at the installation to meet those needs. The LRA is responsible for formulating and undertaking this outreach effort to make redevelopment planning as inclusive as possible.

The LRA should, while conducting its outreach efforts, work with the Federal Agencies that sponsor public benefit transfers under the Federal Property and Administrative Services Act of 1949 and the Surplus Property Act. Those Agencies can provide a list of parties in the vicinity of the installation that might be interested in and eligible for public benefit transfers. The LRA should make a reasonable effort to inform such parties of the availability of the property and incorporate their interests within the planning process. Expressions of interest from such parties are not required to be incorporated into the redevelopment plan, but must be considered.

3.3.3 Information required in a notice of interest

What supporting information must accompany a notice of interest in property?

Are there specific information requirements for homeless assistance providers?

For representatives of the homeless, a notice of interest (to the LRA) must contain the following information:

- A description of the proposed homeless assistance program, including the purposes to which the property or facility will be put, which may include uses such as supportive services, job and skills training, employment programs, shelters, transitional or unlimited-stay housing, food and clothing banks, treatment facilities, or any other activity that clearly meets an identified need of the homeless.
- A description of the need for the program.
- A description of the extent to which the program is or will be coordinated with other homeless assistance programs or public uses in the communities in the vicinity of the installation.
- Information about the physical requirements necessary to carry out the program and a listing of potential buildings that meet those requirements.
- A description of the representative of the homeless that is submitting the notice, including its capacity for carrying out the program and its financial plan for the program's implementation.
- An assessment of the time required to begin carrying out the program.

LRAs may publicly disclose the identity of the representative of the homeless which submitted a notice of interest. But, an LRA may not publicly release any information submitted to the LRA regarding the capacity of the representative of the homeless to carry out its program, a description of the organization, or the organization's financial plan for implementing the program without the consent of the homeless provider, unless such a release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located. The notices of interest from entities other than representatives of the homeless should specify the name of the entity and specific interest in property or facilities, along with a description of the planned use. LRAs may also wish to request that these entities submit a description of the planned use to the sponsoring Federal Agency as well.

3.4 Preparing the Redevelopment Plan and Accommodating Homeless Assistance Needs

What are the elements of a redevelopment plan?

How are homeless assistance needs incorporated?

Within nine months after the deadline for notices of interest, the LRA is required to complete its redevelopment plan for the closing installation, and submit its application (containing the redevelopment plan and proposed homeless assistance) to HUD and the Military Department. In the event no application is submitted and no extension is requested as of the deadline to submit an application, and the State turns down a written DoD request for the State to become the LRA, the absence of such application will trigger an adverse determination by HUD effective on the date of the elapsed deadline. Under these conditions, HUD will follow the process identified in paragraph 3.5.3.

Under the provisions of the Redevelopment Act, the LRA must provide an opportunity for public comment before submitting its plan to HUD as part of its application for homeless assistance conveyances. At least one public hearing should be held and a summary of comments received during the process of developing the application should be submitted with the application.

3.4.1 Considering and accommodating notices of interest

Under the Redevelopment Act, the LRA is required to consider the notices of interest received from the representatives of the homeless and from other interested parties, then balance those interests with the community's economic development needs.

In considering and accommodating homeless assistance needs, the LRA should be mindful of the criteria used by HUD in evaluating the homeless assistance provisions of redevelopment plans (see Section 3.5.2). In particular, the LRA should ensure that its planning effort is consistent with the Consolidated Plan prepared for HUD's Community Development Block Grant program (CDBG), or equivalent plan for addressing homeless needs in the vicinity of the installation.

LRAs were required to provide special consideration for those representatives of the homeless at BRAC 88, 91, and 93 bases that were awaiting approval from the Department of Health and Human Services (HHS) on applications pending under Title V of the McKinney Act when the LRA elected to proceed under the Redevelopment Act. LRAs were required to specifically address all pending requests in their redevelopment plan and their proposed homeless assistance submitted to HUD (see Section 3.5).

Special Consideration

What are the requirements for approved McKinney Act applications?

In the case of representatives of the homeless whose applications have been approved by HHS under Title V of the McKinney Act, but the property applied for had not been transferred when the LRA elected to proceed under the Redevelopment Act, the LRA was required, in its redevelopment plan, to accommodate the provider with one of the following:

- The property requested;
- Properties, on or off the installation, that are substantially equivalent to those requested;
- Sufficient funding to acquire such substantially equivalent properties;

- Services and activities that meet the needs identified in the application; or
- A combination of the properties, funding, and services and activities described above.

Case Studies of Successful Homeless Assistance Planning

The redevelopment planning process must include the identification of homeless needs and reflect a balance with local community and economic development needs. LRAs will need to establish linkages to local homeless providers as a catalyst for effective planning. The following case studies illustrate two effective community-based efforts.

Charleston Naval Base, Charleston, SC—At the request of the Building Economic Solutions Together (BEST) Committee, a tri-county consortium of homeless providers was organized. The Task Force, representing over 75 local provider organizations, attempted to coordinate all homeless interests in the site under one planning process. Assistance and reuse follow-up is focused on transitional housing, a medical clinic, a service center, child-care facilities, a dining hall, warehousing, and job training sites. All of these uses were consistent with the efforts of, and fully supported by, the BEST Committee.

Homestead AFB, Homestead, FL—Hurricane Andrew greatly exacerbated a housing supply problem that had historically plagued the area. South Dade's homeless population was estimated at 1,800 when the reuse plan was developed. The reuse committee's subgroup on housing and the homeless teamed with Dade County's Homeless Trust to bring together areawide homeless providers to identify, negotiate, and lead public outreach. The Trust is a quasi-governmental group that was created in 1992 to oversee the county's homeless policies, as well as the moneys raised through a county meal-and-beverage tax that are given to homeless providers. Strong leadership from the Deputy Assistant Secretary of HUD, who was assigned to the area to coordinate the Federal response to the hurricane rebuilding, assisted the effort. The result: 75 acres were set aside for homeless use; mental health, substance abuse, vocational training, transitional housing and other services will also be made available to the residents.

3.4.2 Contents of the redevelopment plan

The redevelopment plan is a document created by the LRA to meet the needs of its member jurisdictions. The format and contents of the redevelopment plan are not prescribed—they will vary widely depending upon the individual circumstances unique to each local community organization and facility to be disposed. It will often be structured to serve as a "blueprint" for local base redevelopment and economic adjustment activity as well as provide input for the Military Department's NEPA analysis. Remember that each reuse plan is different—it needs to be custom-designed by the LRA to meet the individual needs of the community. While there isn't any one format or model for a redevelopment plan, often they contain many of the following elements:

What information is generally found in a redevelopment plan?

- A statement of the problem/impact (should be kept to a minimum).
- An assessment of the strengths and weaknesses of the regional economy in which reuse will occur.
- A marketing strategy for attracting private sector tenants.

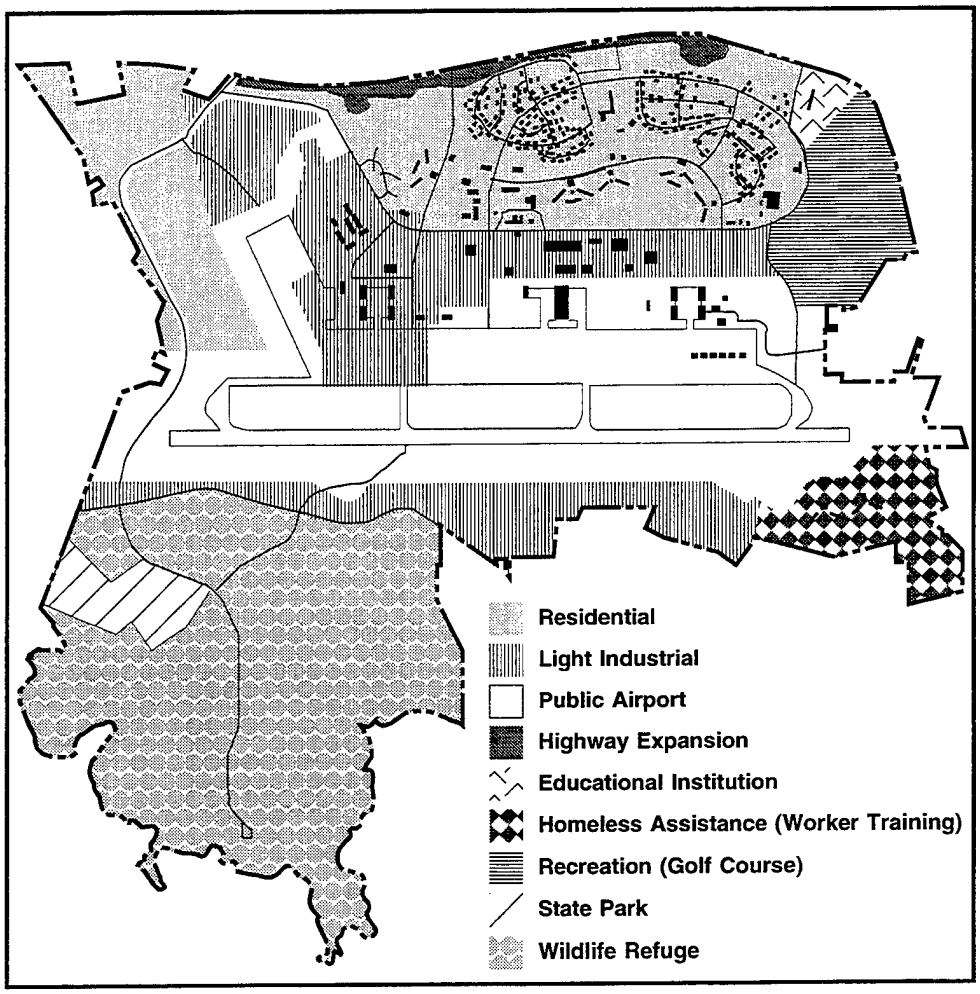


Figure 3-4. Example Redevelopment Plan—Land-Use Map

- A determination of infrastructure requirements and how they are to be financed.

- An articulation of community goals, both short- and longer- term, particularly as they relate to job creation and economic activity. This should include a discussion of how the community goals are balanced with homeless assistance needs.

- An identification of proposed land uses supportive of the community's goals and any specifically identified uses along with the intended conveyance method for achieving the reuse (e.g., previously approved Federal requests or DoD cantonment areas, public benefit conveyances, economic development conveyances, public or negotiated sales; see Section 2.3 and Appendix A). With respect to public benefit conveyances, the LRA's plan makes a recommendation on *uses*. During the formal public benefit screening process, sponsoring Federal Agencies make a recommendation on *users*.

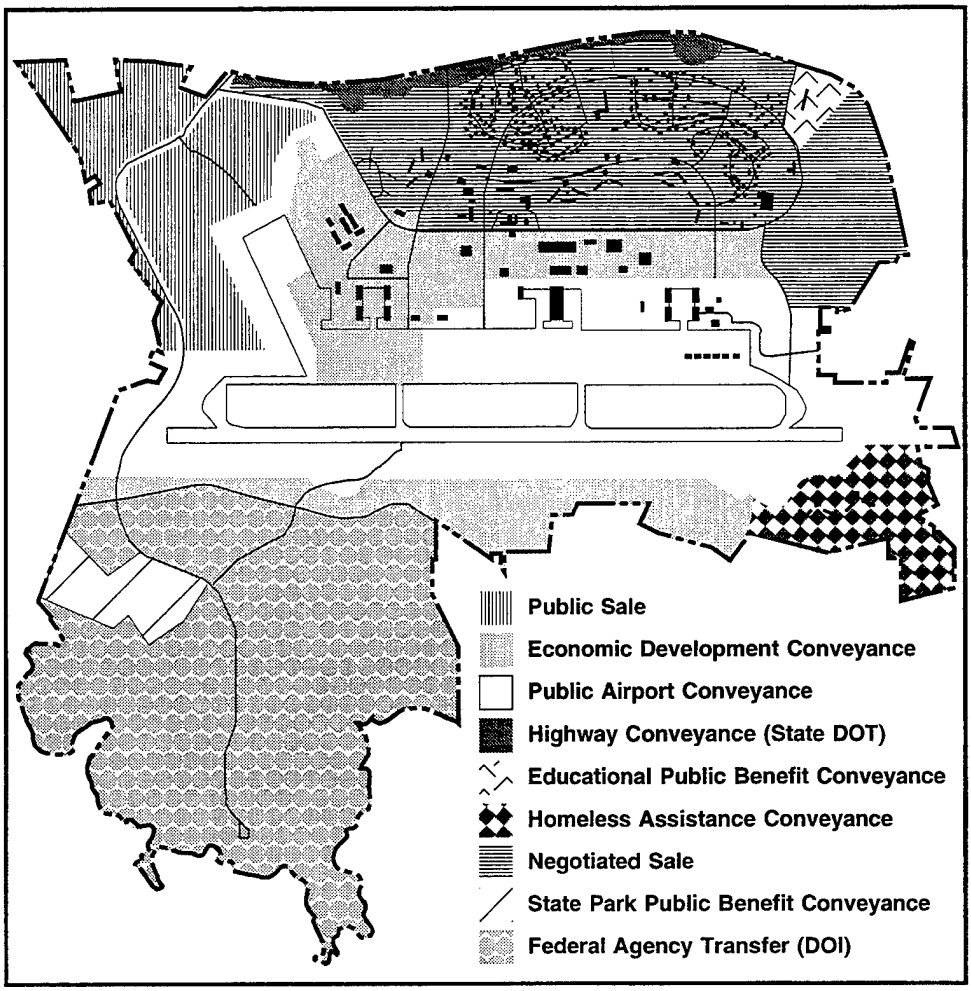


Figure 3-5. Example Redevelopment Plan—Conveyance Methods

- An implementation strategy and an identification of the organization needed to carry out the plan.

Figures 3-4 and 3-5, respectively, show the proposed land uses and conveyance methods contained in a fictional redevelopment plan. This notional plan combines a broad variety of public, private, commercial, and recreational land uses to achieve a balanced reuse program.

During redevelopment planning, property recipients and/or uses and conveyance methods may also be identified; for example, the State park, wildlife refuge, highway expansion, and public airport land uses are most straightforwardly achieved through specific conveyance methods that can only be granted to certain agencies (i.e., State Department of Parks and Recreation, Department of the Interior, State Department of Transportation, local airport authority) that should have already been identified. Other land uses (e.g., light

industry) can be achieved through various conveyance methods and the users may not be specifically identified until the implementation phase of redevelopment.

Figure 3-5 emphasizes the LRA's proposed conveyance methods for achieving reuse. Where appropriate, public-purposes conveyances are used; for example, the community college will acquire a facility through an educational public benefit conveyance. In addition, the LRA proposes to acquire a large segment of the developed area of the base by an Economic Development Conveyance, for light industrial uses (see Figure 3-4). On the other hand, in the undeveloped area of the installation, the LRA will achieve light industrial and residential land uses through zoning and public sale, because the LRA does not want to assume development responsibilities for that area. The developed residential area and golf course will be conveyed by negotiated sale to the local government for low-income housing and recreation, respectively, and a homeless assistance conveyance will be used to satisfy a local need for worker training.

Comparison of Figures 3-4 and 3-5 shows that a broad variety of land uses and conveyance methods can and should be used to achieve reuse of an installation. A particular land use can be achieved through multiple conveyance methods and, conversely, a single conveyance method can be used to obtain multiple land uses. Effective redevelopment depends on selecting a combination of land uses and conveyance methods that is appropriate to the local economic environment.

Figure 3-6 illustrates the evolution of interests and proposed uses for property that can occur throughout the redevelopment planning process.

3.5 Review of Homeless Assistance Application for Approval

3.5.1 Application to HUD

What information does HUD require?

Under the provisions of the Redevelopment Act, the LRA is required to submit its application containing the redevelopment plan and proposed homeless assistance to the Secretary of the Military Department and the Secretary of HUD. This application will show how the LRA has addressed the needs of the homeless in the vicinity of the installation and must, at a minimum, include the following:

- A copy of the redevelopment plan with a summary of any public comments received during the process of developing the plan.

- A description of the homeless assistance needs in the units of general local government that comprise the LRA and a listing of those political jurisdictions.

- A copy of each notice of interest for use of buildings and property to assist the homeless, including a description of the manner in which the plan addresses the interest expressed, and, if the plan does not address the interest, an explanation. If the LRA decides not to accommodate a particular notice of interest, the application must include an explanation of why the LRA determined not to support the notice of interest. The reasons given in the explanation may include the impact the program would have on the community.

- A description of the impact that the implemented redevelopment plan will have on the community.

- A summary of the LRA's outreach actions to representatives of the homeless including a list of the representatives the LRA contacted during the outreach process.

- Information about the property proposed for homeless assistance purposes, including infrastructure and the availability of services and utilities.

- A description of the proposed activities to be carried out on or off the installation and a discussion of how these activities meet a portion or all of the needs of the homeless.

- A description of how buildings, property, funding, and/or services either on or off the installation will be used to meet the needs of the homeless and an explanation of the suitability of the buildings and property for that use.

- An assessment of the manner in which the application balances the needs of the homeless and the needs of the communities in the vicinity of the installation for economic and other development.

- An explanation of how the application is consistent with the Consolidated Plan or equivalent long-term plan for addressing homeless needs in the vicinity of the installation.

- Copies of any legally binding agreements that the LRA proposes to enter into with representatives of the homeless.

3.5.2 HUD review of the application

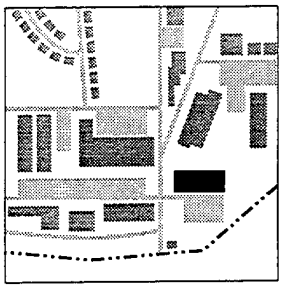
What factors does HUD consider in reviewing an application?

HUD must complete its review of the LRA's application (with respect to the expressed homeless interests) within 60 days after its receipt of a completed application. It will then notify the Military Department and the LRA of its findings. In particular, HUD will determine whether the application and the redevelopment plan, with respect to expressed homeless interests:

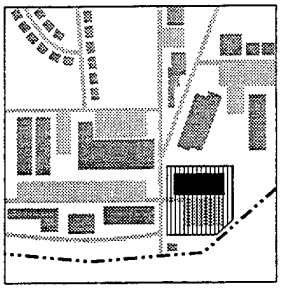
- Takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to assist the homeless in such communities, and the suitability of the buildings and property covered by the redevelopment plan for the use and needs of the homeless in such communities.

- Takes into consideration any economic impact that the homeless assistance provisions of the plan have on the communities in the vicinity of the installation, including:

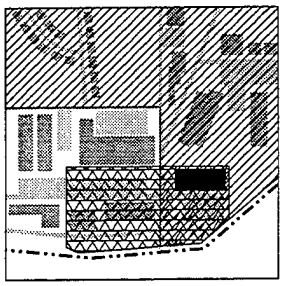
  — Whether the plan is feasible in light of demands that would be placed on available social services, police and fire protection, and infrastructure in the community.



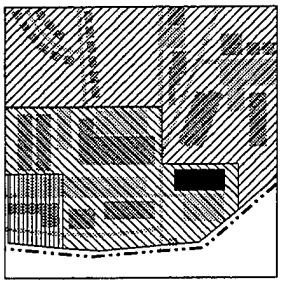
Building 329 is a new administration building located near the installation's front gate. Its age and location make it highly attractive for reuse.



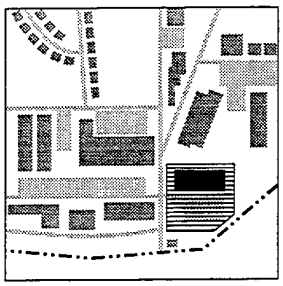
During Federal agency screening, the Department of the Treasury indicates that it needs Building 329 for a regional office for the United States Customs Service. However, a timely request is not submitted and the building is declared surplus.



During redevelopment planning, the State University approaches the LRA and proposes including Building 329 in an educational public benefit conveyance for a local campus. A local engineering firm proposes to relocate its operations into several buildings, including Building 329. The Customs Service works with the LRA to satisfy its needs.



In its redevelopment plan, the LRA elects to include Building 329 in an application for an Economic Development Conveyance. Following negotiations, the boundaries of the campus are reconfigured and the Customs Service's need is accommodated with an alternate facility. The local engineering firm's proposal is not included in the plan.



During implementation of its redevelopment plan, the LRA leases Building 329 to a national electronics firm for use as a new regional headquarters, creating 350 local jobs.

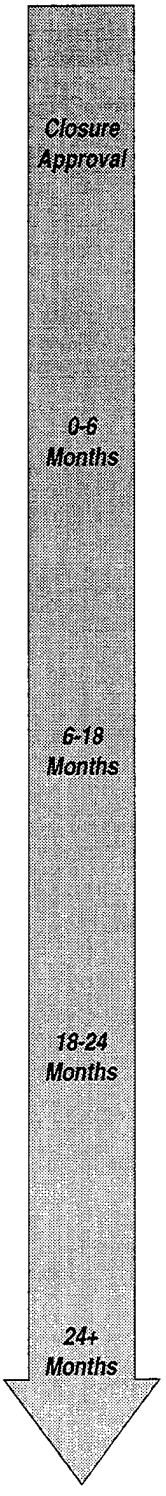


Figure 3-6. Evolution of Interests and Uses for a Notional Facility

— Whether the selected notices of interest are consistent with the Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the political jurisdictions in the vicinity of the installation.

- Specifies the manner in which the buildings, property, funding, and/or services on or off the installation will be made available for homeless assistance purposes.

- Balances, in an appropriate manner, a portion or all of the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities.

- Was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation and whether the outreach requirements have been fulfilled by the LRA. HUD will carefully review the outreach process to ensure that the LRA has adequately advertised the availability of installation properties to representatives of the homeless and may compare the list of homeless representatives contacted by the LRA against contacts maintained by HUD.

In the course of the review, the Secretary of HUD should take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan. HUD may also consult and negotiate with an LRA before or during its review to resolve any concerns, such as a preliminary determination that the application and plan do not meet relevant requirements. The LRA may modify the redevelopment plan and its application in accordance with such negotiations and consultations.

At the completion of the review, HUD will provide its written determination to the LRA and the Secretary of the Military Department. If the Secretary of HUD determines that the application does not meet the review criteria, the Secretary will also provide a summary of the deficiencies in the application, an explanation of the determination, and a statement of the actions needed to address the determination.

3.5.3 Revision of the application and redevelopment plan

Can the LRA revise its application and plan?

The LRA will be given 90 days to address HUD's determination and submit a revised application, if necessary. After reviewing the LRA's revised application, HUD will report to the Military Department and to the LRA on the results of its review within 30 days. Failure to submit a revised application (or to obtain an extension) shall result in a final determination, effective 90 days from the LRA's receipt of HUD's preliminary determination, that the application fails to meet HUD's review criteria.

If HUD determines the revised application is unacceptable or if no resubmission is received, HUD will review the original application including the notices of interest submitted by representatives of the homeless. In addition to reviewing the original application, and when no original application was submitted, HUD:

- Shall consult with the homeless representatives, if any, for the purpose of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless. This

consultation can include a request that the representatives of the homeless submit information regarding its program as outlined in Section 2905(b)(7)(L)(ii) of DBCRA 90, as amended;

- May consult with the applicable Military Department to determine the suitability of the buildings and property at the installation for use to assist the homeless; and

- May otherwise consult with representatives of the homeless and other parties as necessary.

Within 90 days of its receipt of a revised application which HUD previously determined did not meet the review criteria, HUD shall, based upon its reviews and consultations, notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless, and the extent to which the revised application meets the review criteria.

In the event that an LRA does not submit a revised application, HUD shall, based upon its reviews and consultations, notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless either:

- Within 190 days after HUD sends its preliminary notice of adverse determination if an LRA has not submitted a revised application; or

- Within 390 days after the Military Department's publication of its surplus determination, if no application has been received and no extension has been approved.

If HUD approves the LRA's application, the Military Department, upon notice of HUD's determination, will dispose of buildings and property at the installation in accordance with the record of decision or other NEPA decision document prepared for the installation.

If the LRA's application does not meet the review criteria, upon notice from HUD regarding the suitability of property and/or the extent to which the LRA's application meets the criteria, DoD will dispose of the buildings and property in consultation with HUD and the LRA.

How is property conveyed for homeless assistance purposes?

HUD's approval of the LRA's application in no way dictates what property conveyance methods should be used to transfer property to accomplish the uses outlined in the redevelopment plan. Rather, the Military Department, as the disposal authority, determines what disposal method should be used. For property designated for homeless assistance purposes, one such method is a homeless assistance conveyance (see Section 2.3 and Appendix A). Under a homeless assistance conveyance, property can be conveyed at no cost, either to the LRA or directly to the representative(s) of the homeless. The Military Department does not need approval from HUD to dispose of property using this authority.

- Under the Redevelopment Act, the LRA shall be responsible for the implementation of and compliance with legally binding agreements under the application.

- If a building or property reverts to the LRA under a legally binding agreement under the application, the LRA shall (according to the Redevelopment Act) take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. An LRA is not required to utilize the building or property to assist the homeless.

3.5.4 Determining eligibility to receive property under public-purpose conveyances

How are recipients of public-purpose conveyances identified?

No later than the LRA's submission of its redevelopment plan, the Military Department should formally notify the appropriate Federal sponsoring Agencies of the availability of the property for their screening under the Federal Property Management Regulations. *Remember, the LRA has made a recommendation on use, and the sponsoring Agencies will make a recommendation on the user.* This notification should be based upon the LRA's redevelopment plan. The Federal sponsoring Agencies should formally notify eligible public and non-profit parties that the property is available for public use. Any party requesting this property must prepare an application for use of the property in accordance with the rules of the sponsoring Federal Agency and submit the application to this Federal Agency. In approving any application for public benefit or other public-purpose conveyance of the property, the Military Department will exercise its discretion based on the recommendation of the appropriate Federal sponsoring agency and the LRA, as well as other relevant factors (e.g., environmental impacts and condition of the property). Only in unusual circumstances will a proposal be considered if the application for property is not consistent with the redevelopment plan. At the request of the LRA, the Military Department may conduct the State and local public benefit screening at any time after the Military Department's publication of surplus property.

3.6 Accommodating Homeless Assistance Needs Under Title XXIX of Pub. L. 103-160 (BRAC 88, 91, and 93 bases)

How are homeless assistance needs accommodated at BRAC 88, 91, and 93 bases?

This section outlines the procedures for the identification of real property to fulfill the needs of the homeless that were created by Title V of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. § 11411), as implemented by Section 2905(b)(6) of Pub. L. 101-510 and Section 204(b)(6) of Pub. L. 100-526, according to the amendments in Title XXIX of Pub. L. 103-160. These procedures apply to BRAC 88, 91, and 93 bases for which the LRA did not choose to provide for the homeless under the alternate procedures in Section 2905(b)(7) of Pub. L. 101-510, as amended by Pub. L. 103-421, the Redevelopment Act. The alternate procedures apply to BRAC 95 bases and those BRAC 88, 91, and 93 bases for which the LRA chose to follow the Redevelopment Act (see Sections 3.3–3.5 for details on this procedure).

The surplus determination for installations covered by this section should have been made prior to publication of the rule, unless a postponement of the determination was requested by the LRA and approved by the Deputy Under Secretary of Defense (Industrial Affairs and Installations).

Not later than the date of the surplus determination, the Military Department shall complete any determinations or surveys necessary to identify those properties available to assist the homeless. The Military Department shall submit the list of available properties to HUD. HUD shall make a determination of the suitability of each property to assist the homeless in accordance with the

McKinney Act. Within 60 days from the date of receipt of the information from the Military Department, HUD shall publish a list in the *Federal Register* of suitable properties that shall become available when the base closes.

The listing of properties in the *Federal Register* under this procedure shall contain the following statement. [*The listing of 1988 base closure properties that will be reported to HUD shall refer to Section 204(b)(6) of Pub. L. 100-526 instead of Section 2905(b)(6) of Pub. L. 101-510*]:

> *The properties contained in this listing are at closing and realigning military installations. This report is being accomplished pursuant to Section 2905(b)(6) of Pub. L. 101-510, as amended by Pub. L. 103-160. In accordance with Section 2905(b)(6), this property is subject to a one-time publication under the McKinney Act after which property not provided to homeless assistance providers will not be published again unless there is no expression of interest submitted by the local redevelopment authority in the one-year period following the end of the McKinney screening process pursuant to this publication.*

After the surplus determination, the Military Departments shall, unless already completed, sponsor a workshop or seminar, where feasible, prior to publication by HUD of the available properties in the *Federal Register*, in communities that have closing or realigning bases.

Providers of assistance to the homeless shall have 60 days from the date of the *Federal Register* publication in which to submit to HHS expressions of interest in any of the listed properties. If a provider indicates an interest in a listed property, it shall have an additional 90 days after submission of its written notice of interest to submit a formal application to HHS, a period that HHS can extend. HHS shall then have 25 days after receipt of a completed application to review and complete all actions on such applications.

During this screening process (from 60 to 175 days following the *Federal Register* publication, as appropriate), disposal Agencies shall take no final disposal action or allow reuse of property that HUD has determined suitable and that may become available for homeless assistance unless and until:

- No timely expressions of interest from providers are received by HHS;
- No timely applications from providers expressing interest are received by HHS; or
- HHS rejects all applications received for a specific property.

The Military Department should promptly inform the affected LRA, the governor of the State, local governments, and Agencies that support public benefit conveyances of the date that surplus property will be available for community reuse if:

- No provider expresses an interest in a property to HHS within the allotted 60 days;
- There are expressions of interest by homeless assistance providers, but no application is received by HHS from such a provider within the subsequent

90-day application period (or within the longer application period if HHS has granted an extension); or

- HHS rejects all applications for a specific property at any time during the 25-day HHS review period.

The LRA shall have one year from the date of notification to submit a written expression of interest to incorporate the remainder of the property into a redevelopment plan.

During the allotted one-year period for the LRA to submit a written expression of interest for the property, surplus properties not already approved for homeless use shall not be available for homeless assistance. The surplus properties will also not be advertised by HUD as suitable during these one-year periods. The surplus property may be available for interim leases consistent with existing leasing regulations and guidance.

If the LRA does not express in writing its interest in a specific property during the allotted one-year period, the disposal Agency shall again notify HUD of the date of availability of the property for homeless assistance. HUD may then list the property in the *Federal Register* as suitable and available after the base closes following the procedures of Title V of the McKinney Act.

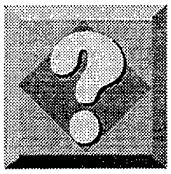
The listing of properties in the *Federal Register* under this procedure shall contain the following statement. [*The listing of 1988 base closure properties that will be reported to HUD shall refer to Section 204(b)(6) of Pub. L. 100-526 instead of Section 2905(b)(6) of Pub. L. 101-510*]:

> *The properties contained in this listing are at closing and realigning military installations. This report is being accomplished pursuant to Section 2905(b)(6) of Pub. L. 101-510, as amended by Pub. L. 103-160. In accordance with Section 2905(b)(6), this property is subject to a one-time publication under the McKinney Act after which property not provided to homeless assistance providers will not be published again unless there is no expression of interest submitted by the local redevelopment authority in the one-year period following the end of the McKinney screening process pursuant to this publication.*

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4
Personal Property

Frequently Asked Questions About Personal Property	
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➢ *What is personal property?*	Section 4.1
➢ *How, when, and why is personal property inventoried?*	Section 4.2
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4.1 INTRODUCTION

4.1.1 Philosophy and goal

What is DoD's philosophy and goal for personal property?

The Department of Defense realizes that the manner in which personal property is disposed of at a closing base can have an important impact on the local community's prospects for economic recovery. The communities should also realize that some personal property on the base is needed for the Military Department to carry out its mission. In making decisions on the disposal of personal property, the Military Department should strive to find the best use for the property while making every reasonable effort to assist the LRA in obtaining the available personal property needed to implement its redevelopment plan. The needs of the Military Department should be balanced against the needs for community redevelopment.

4.1.2 Definition of personal property

What is personal property?

Personal property includes all property except land and fixed-in-place buildings, naval vessels, and records of the Federal Government.

4.1.3 General practice

Personal property is often useful to the redevelopment of real property, but is also important to the functioning of the military mission. Figure 4-1 shows the general practice by which personal property is identified for reuse and subsequently disposed of at a closing base. This process can be summarized as follows:

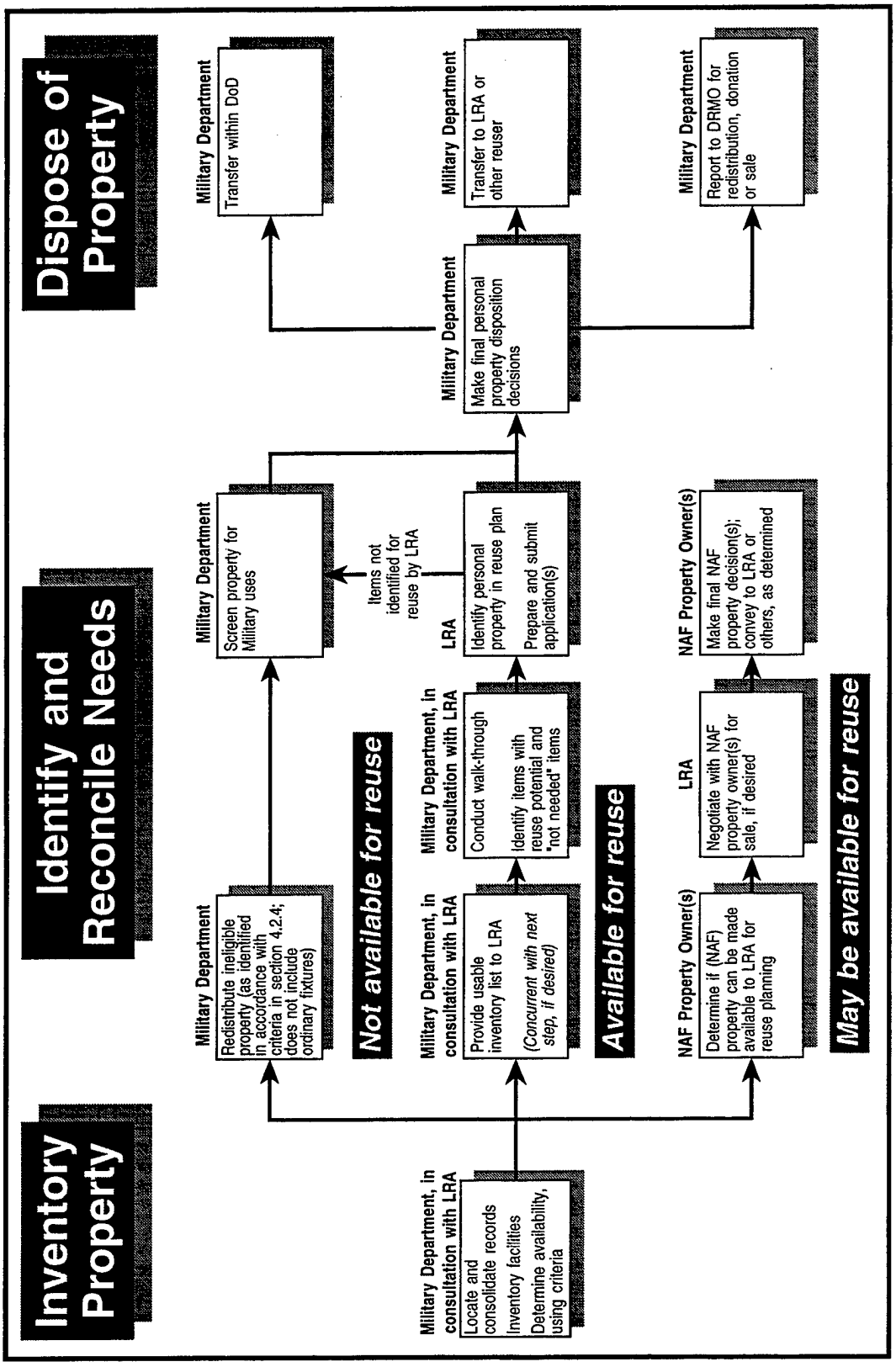


Figure 4-1. BRAC Personal Property General Practice Flow Chart

- The installation commander will, in consultation with the LRA, inventory the personal property at the installation no later than six months after the date of closure or realignment approval, and prepare usable inventory records. This will help the LRA identify assets with reuse potential. Property items will be generally identified as either **available for reuse,** or **not available for reuse.**

- LRA consultation should include a walk-through of the base so that LRA officials can view available personal property and should continue during redevelopment planning. The Military Departments will be sensitive to the planning needs of the LRA and will not move ordinary fixtures and other property that are likely to be suitable for reuse during redevelopment planning. However, personal property necessary to meet specific military requirements or non-Military Department-owned property is subject to off-base relocation.

- The Military Department should advise the LRA to identify in its redevelopment plan the property necessary for the effective implementation of the plan. Personal property may be conveyed to an LRA or other recipients under various authorities, including an EDC. The LRA may separately negotiate with non-appropriated fund (NAF) instrumentalities for NAF-owned property.

- Payment for personal property may be at or below fair market value, or may be at no cost, depending on the conveyance authority used. Purchases of NAF-owned property may be negotiated between the NAF property owner(s) and the LRA.

- The basic steps in this procedure and the party(ies) principally responsible for each are shown in Figure 4-1. The procedure depicted has been compiled from Military Department-specific practices, but may be executed somewhat differently at a particular BRAC installation.

4.2 PERSONAL PROPERTY INVENTORY

4.2.1 Inventory requirement

When should personal property be inventoried?

Why is it necessary?

Who is responsible for the inventory?

The installation commander at a closing or realigning base must conduct an inventory of <u>all</u> property owned by the Department of Defense on the installation, including any non-contiguous parcels of property to be disposed of in conjunction with the main site, within six months after the approval date of closure or realignment. The goal of the inventory is to identify, as early as possible, personal property that will be made available to the LRA for reuse planning purposes, as well as property that may be relocated. To facilitate this process, the installation commander, with input from tenant commanders, if applicable, is required to identify items of personal property that are:

- Needed to support a military mission.

- Needed to support the LRA's redevelopment plan.

- Ordinary fixtures.

- Available for redistribution within or outside of the Department of Defense.

What's the personal property inventory procedure?

4.2.2 Procedure

Personal property records should be assembled and made available as soon as possible after the date of approval. This activity should be followed by a physical inspection and count, where necessary, to determine the condition and quantity of personal property that will be made available to the LRA for reuse planning purposes. The personal property inventory should be performed under the direction of the installation commander, with input from tenant commanders, if applicable, in consultation with the LRA. The inventory should:

- Include all DoD tenant organizations including the National Guard and Reserves, if applicable (see Section 4.2.4).

- Exclude non-DoD tenant organizations and transient property (e.g., other Federal Agency offices, General Services Administration (GSA) vehicles, contractor equipment), property located on any portion of the base retained by DoD and not related to the productive capacity or minimum maintenance requirements of the installation, and NAF-owned property.

- Identify personal property as **available for reuse,** or **not available for reuse.** Fixtures shall be identified as **available for reuse** (see also Section 4.2.3).

If installation personal property records and inventories are not in an easily usable format, the installation commander should consider creating simplified personal property inventory summaries for use by the LRA and others. The Military Departments will keep copies of all shipping records, transfer orders and other records associated with all transfers of personal property.

What inventory categories should be used?

What about non-accountable items?

4.2.3 Personal property categories

The following descriptions and categories of personal property are provided to facilitate LRA and Military Department dialogue during the redevelopment planning period. This information is also provided to help installation and tenant commanders determine items of personal property that will be made available to the LRA for redevelopment purposes. Personal property will be identified according to the following categories:

- **Available for reuse** and **not available for reuse.** Both accountable and non-accountable personal property will be initially identified as either **available for reuse** or **not available for reuse.** This identification will be made by the installation commander or tenant commander, depending on what entity owns the property, in consultation with the LRA. Except for specifically exempted items (see also Section 4.2.4), personal property may be identified as **available for reuse** at any time during the redevelopment planning process. Personal property can only be identified as being **not available for reuse** if it meets the criteria provided in Section 4.2.4.

- **Ordinary fixtures.** This category includes items commonly referred to as fixtures in typical real estate transactions. It includes, but is not limited to, such items as blackboards, sprinklers, lighting fixtures, electrical and plumbing systems, built-in furniture, fuse boxes, etc.

- **Not needed for redevelopment.** After the inventory and LRA consultation (see Section 4.3), the inventory list or other identification records may be updated to include items **not needed for redevelopment** (see also Section 4.2.4). Items initially identified as being **not available for reuse** or **not needed for redevelopment** need not be included on a detailed inventory list. This determination can be made at any time.

- **Status under disagreement.** If the installation commander or tenant commander and the LRA cannot agree on an item's category, the item will be included in the detailed inventory list and identified as **status under disagreement** until resolved by the process described in Section 4.3.1.

Additionally, all personal property is either **accountable** or **non-accountable.** This distinction affects the level of detail required for the inventory records to be provided to the LRA.

- **Accountable personal property.** Property for which a continuously updated itemized inventory is maintained. Inventorying accountable property should be straightforward, using installation inventory procedures and records.

- **Non-accountable personal property.** Property for which an updated itemized inventory is not maintained. For example, some office furnishings (e.g., desks, chairs, file cabinets) and consumables (e.g., paper, pencils) not physically attached to the buildings are non-accountable. All non-accountable personal property determined to be **available for reuse** should be inventoried. Consumables do not have to be included, however. The level of detail of inventory information to be provided to the LRA should be determined by the installation or tenant commander in consultation with the LRA. Non-accountable personal property may be inventoried on a gross basis by facility, and provided to the LRA in summary format, as illustrated below:

  — Bachelor Officers' Quarters (BOQ)—25 rooms and offices, furnished.

  — Administration Building—10 offices, furnished.

- **Unserviceable but repairable.** Certain items of personal property may be in unserviceable but repairable condition. These items should be specifically noted on the inventory record, including any safety precautions that apply.

Note that all personal property will be conveyed to the LRA or recipient "**as-is**" and will not be repaired by the Military Department or Defense Agency, regardless of condition at the time of conveyance.

4.2.4 Eligibility criteria for personal property items identified as "not available for reuse" or "not needed for redevelopment"

What criteria determine personal property to be "not available for reuse" or "not needed for redevelopment?"

The installation or tenant commander may initially identify items as **not available for reuse** if they meet one of the following seven criteria:

- **The property, other than ordinary fixtures, is required for the operation of a transferring unit, function, component, weapon, or weapon system.** This category includes property belonging to a unit or activity relocating to another installation where equivalent property does not exist, and for which

relocation is cost-effective. For example, a unit being transferred to another location may take with it any property it needs to function properly as soon as it arrives at its new location.

- **The property is required for the operation of a unit, function, component, weapon, or weapon system at another installation within the Military Department or Defense Agency.** Property in this category can only be categorized as "not available for reuse" after the Military Department or Defense Agency has consulted with the LRA. With respect to disputed items, the approval of an Assistant Secretary of the Military Department or appropriate Defense Agency official is required.

- **The property is uniquely military in character and is likely to have no civilian use (other than use for its material content or as a source of commonly used components).** Such property includes classified items; nuclear, biological, chemical items, weapons and munitions; museum-owned property, military heritage property, and items of significant historic value that are maintained or displayed on loan from a museum or other entity; and similar military items.

- **The property is stored at the installation for distribution.** This category includes spare parts or stock items; e.g., materials or parts used in a manufacturing or repair function, but does not include maintenance spare parts for equipment that will be left in place. This category includes supplies and property stored for purposes of distribution and/or maintenance (including spare parts, consumables or stock items), except for those items needed for maintenance of equipment left in place.

- **The property meets the known requirements of an authorized program of another Federal Department or Agency that would otherwise have to purchase similar items,** and the property has been requested in writing by the head of the Department or Agency. If the authority to acquire personal property has been delegated, a copy of the delegation must accompany the request. The requesting Federal Department or Agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property.

- **The property is needed elsewhere in the national security interest of the United States,** as determined by the Secretary of the Military Department or Director of the Defense Agency concerned. This authority may not be delegated below the Assistant Secretary level or equivalent. In exercising this authority, the Secretary or Director may transfer the property to any DoD entity or other Federal Agency.

- **The property belongs to non-appropriated fund (NAF) instrumentalities or other non-Defense Department entities.** This category includes property purchased with funds generated by Government employees and their dependents for religious; morale, welfare or recreational activities; post exchanges; ship stores; military officer or enlisted clubs; or veterans' canteens. This property is not owned by the Military Department. The following three subcategories merit further explanation:

— *Non-DoD personal property.* DoD does not own certain items of personal property (e.g., it belongs to a lessee renting space on the active installation). Thus, it is outside of the Military Department's or Agency's control, and cannot be identified as being available for reuse. Unless specific arrangements are otherwise made, this property will not be subject to availability for planning purposes or for transfer to the LRA or any other recipient.

What about the personal property DoD doesn't own?

— *NAF property.* The Military Department should advise the LRA to make arrangements to purchase NAF property (including negotiating the purchase price) directly with the NAF property owner as early in the redevelopment planning process as possible.

— *State-owned National Guard-used property.* At bases hosting National Guard units, some items of personal property may have been purchased with State funds. Items demonstrably identified as being purchased with State funds are not available for reuse planning or subject to transfer for redevelopment purposes, unless so identified by the State property officer. However, certain items of personal property used by National Guard units at closing bases have been purchased with Federal funds. These items are subject to inventory and may be made available for redevelopment planning purposes.

Only those items of personal property meeting the following criterion, may be identified as personal property **not needed for redevelopment**:

- **The property is not required for the reutilization or redevelopment of the installation.** This determination must be made by the Military Department or Defense Agency in consultation with the LRA. This determination will not generally be made until one of the following occurs:

  — The LRA indicates that it does not need the property (e.g., during the installation walk-through).

  — The LRA does not include the property in its redevelopment plan.

  — The LRA indicates that it will not submit a redevelopment plan.

4.3 Required LRA Consultation

4.3.1 Initial LRA consultation

How should the LRA be involved?

Who consults with the LRA?

When should the LRA be consulted?

Consultation between the installation commander and the LRA is required throughout the redevelopment planning period. The following guidelines should be used to facilitate personal property consultation.

- **Consult early.** The installation commander or designate and applicable tenant commanders should coordinate personal-property-related decisions with the LRA early in the redevelopment planning process. The DoD Base Transition Coordinator will participate in this consultation.

- **Provide a usable inventory record.** The installation commander or designate will provide a usable inventory record to the LRA. The level of detail for this record should be determined in consultation with the LRA. This record should help the LRA to identify the personal property to support its redevelopment plan. All property should be identified. However, property to accompany a realigning unit need be only broadly identified.

- **Offer a walk-through.** As part of the personal property inventory and consultation process, the installation commander or designate should invite the LRA to walk through the installation. This can take place concurrently with the personal property inventory (see Figure 4-1), and will assist the LRA in determining the type(s) and condition(s) of the personal property listed on the inventories. The walk-through will also help the LRA identify items of personal property it wants to include in the redevelopment plan.

- **Identify items available for reuse.** The installation commander and applicable tenant commanders should identify personal property with the potential to support the redevelopment of the installation including ordinary fixtures. The identification of available items should be made to the LRA following the inventory and should be updated, as necessary.

What if an LRA disagrees with an installation or tenant commander's decision on personal property?

- **Resolve disagreements as they arise.** Personal property disposal is at the discretion of the Military Department or Defense Agency, but decisions should be made in consultation with the LRA. If the LRA disagrees with an installation commander or tenant commander's decision regarding the personal property that will be made available for reuse, the LRA may seek to resolve its disagreement within the property-owning Military Department or Defense Agency's chain of command. Input from the LRA should be considered when resolving disagreements.

  — The Military Department or Defense Agency should strive to respond within 30 days to all requests by the LRA to reconsider an issue related to personal property availability or disposal decisions made by the installation commander or tenant commander.

  — Final authority for resolving personal property issues rests with the Military Department or Defense Agency having jurisdiction over the property.

4.3.2 Follow-up LRA consultation

The installation commander or designate and applicable tenant commanders will continue to consult with the LRA throughout the redevelopment planning period. The objectives of further consultation are:

- To make sure the LRA knows which items of personal property are available to it for incorporation in its redevelopment plan, and which items are being relocated off-base or disposed of by other means.

- To allow for timely disposal of personal property identified by the LRA as not being needed for its redevelopment planning.

4.3.3 Off-base movement of personal property

Can personal property be moved off base while the LRA is planning for reuse?

Throughout the mission drawdown period, the installation commander or designate and applicable tenant commanders will ensure that, with the exception of items identified as **not available for reuse** or **not needed by the community** (see Section 4.2.4), and any unserviceable items to be reported to the Defense Reutilization and Marketing Office (DRMO), the personal property will remain at the installation until a time that is determined by the installation commander or tenant commander in consultation with the LRA.

- Typically, the Military Departments and Defense Agencies will move personal property to another base only when it makes economic sense to do so. A cost-benefit analysis may be employed at any time by the installation commander, tenant commander, or designate as a tool in reaching a decision to move accountable and non-accountable personal property.

- Items identified as **not available for or not needed by the community** (see Section 4.2.4) may be moved off base at the discretion of the Military Department or Defense Agency. This movement will not typically occur before the installation commander or designate and/or applicable tenant commander informs the LRA of the impending property movement and makes sure the LRA understands why the property is to be moved. If the LRA disagrees with an installation commander or tenant commander's decision regarding the off-base movement of personal property, the LRA may request reconsideration of the move within the property-owning Military Department or Defense Agency's chain of command (see Section 4.3.1).

- Items identified by the installation commander or tenant commander as **unserviceable** may be reported to DRMO at any time. No consultation with the LRA is required, but a courtesy notice to the LRA should be given whenever possible.

4.4 Personal Property Transfer Methods

4.4.1 Principal authorities affecting personal property transfers

What authorities affect personal property transfers?

(See Appendix A, *Laws and Regulations Affecting Base Reuse Implementation*, for a summary of legal authorities).

- 32 CFR Parts 175 and 176 (Economic development conveyances to LRAs and homeless assistance conveyances to LRAs or homeless providers).

- 41 CFR Part 101–47.308 (Special disposal provisions for public airports; historic monuments; education and public health uses; shrines, memorials or religious uses as part of another public benefit conveyance; public park or recreation uses; housing for displaced persons; and non-Federal correctional facility uses).

- 41 CFR Part 101–47.304 (Negotiated sales and public sales).

- 41 CFR Part 101–43 (Utilization of personal property).

- 41 CFR Part 101–44 (Donation of personal property).

- 41 CFR Part 101–45 (Sale, abandonment, or destruction of personal property).
- Stevenson-Wydler Technology Innovation Act of 1980, P.L. 96-480, as amended (15 U.S.C. 3710(i)) (Donation of research equipment to educational institutions and non-profit organizations).
- Executive Order 12999 (Donation of personal property; e.g., computers, to further math and science education).

4.4.2 Leases

Personal property associated with a lease will typically be included in the leasehold (see Chapter 5 of this Manual for additional information on leasing).

How will personal property be transferred?

4.4.3 Public airport conveyances

Surplus personal property may be transferred as part of an airport conveyance. Personal property that is desirable for developing, improving, operating, or maintaining a public airport or is needed for developing sources of revenue from non-aviation businesses at a public airport (and the interest is not best suited for industrial use) can be transferred by the Military Department by gift. The Federal Aviation Administration (FAA) must approve all public airport transfers.

4.4.4 Public benefit conveyances and similar approved, sponsored, or requested conveyances

When personal property is required for the reuse of real property subject to a public benefit conveyance (PBC), the personal property may be related and treated as part of the real property conveyance. These transfers can be further categorized as follows:

Sponsored public benefit conveyances. These include PBCs for education, public health, public park or recreation, and port facility purposes. Surplus personal property may be transferred by the sponsoring Federal Agency in accordance with its rules implementing its authorized programs. The terms and conditions attached to the reuse and the value (or the discount allowed) of the personal property are determined by the Federal sponsoring Agency. In this type of conveyance, the Military Department assigns the real, related, and other qualifying related personal property to the Federal sponsoring Agency for transfer to the sponsored applicant.

Approved public benefit conveyances. These include PBCs for non-Federal correctional facilities, historic monuments, and power transmission lines. The terms and conditions attached to the reuse are determined by the Military Department. The Military Department transfers the qualifying personal property directly to the approved PBC recipient.

How will personal property be transferred to homeless assistance providers?

4.4.5 Homeless assistance conveyances

Personal property may be transferred to an LRA or to a homeless assistance provider for homeless assistance purposes under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (see also Chapter 3 of this Manual). Property transferred under this authority may be used by a homeless assistance provider either on or off the installation.

After providing the LRA with the personal property inventory, the installation commander or designate should recommend to the LRA that the following strategy be used for identifying and transferring personal property intended for use by homeless assistance providers:

- Coordinate with the proposed provider(s) to identify any personal property to be conveyed.
- Incorporate the agreed-to disposition of any identified personal property in any binding contract(s) negotiated between the LRA and any selected homeless provider(s).
- Include identification and intended use of the personal property in the homeless assistance portion(s) of the adopted redevelopment plan.

4.4.6 Economic development conveyances

How is personal property included in an economic development conveyance?

GENERAL INFORMATION

- Under an Economic Development Conveyance (EDC), the Military Department can convey land and buildings to the LRA for consideration at or below fair market value, at no cost, or for other consideration that may be subject to recoupment. Such conveyances can be made when the Military Department determines that the installation, or significant portions of it, cannot be conveyed under other authorities to rapidly create new jobs. Personal property may be transferred as part of an EDC of the real property (see also Chapter 7 of this Manual).

Does personal property in an EDC always have to be conveyed with real property?

When should a Personal Property EDC be used?

- Personal property may also be transferred **without** real property under a separate EDC, referred to in this Manual as a "Personal Property EDC," if (1) the transfer is necessary for the effective implementation of the redevelopment plan for the installation, and (2) cannot be transferred under other authorities. However, by completing an application in which the personal property is identified using inventory information already provided to the LRA by the Military Department (e.g., inventory summaries), Personal Property EDCs are relatively straightforward to execute.
- Personal Property EDCs can be made only to the LRA.
- Personal Property EDCs are not subject to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. §§ 483–484), which governs property disposal.
- To approve a Personal Property EDC, the Military Department must provide an explanation why the transfer cannot be carried out in accordance with the other personal property conveyance authorities listed in this Chapter.
- Personal property may not be acquired by the LRA under an EDC solely for the purpose of immediately leasing or re-selling it to finance base reuse. However, the LRA may provide the property to others for use in accordance with the redevelopment plan for the installation.

Applying for a Personal Property EDC

This subsection describes the process by which an LRA can apply for a separate (from real property) Personal Property EDC.

The Personal Property EDC application should be comprehensive with regard to any and all property requested at the installation. It should also explain why a Personal Property EDC is necessary for economic redevelopment and job creation. It will probably be necessary for the LRA to ask the Military Department for assistance while completing the transfer order described below. If necessary, the Military Department may ask the LRA for additional information. The application should contain the following elements:

- A narrative including the following:
  - — Identification of the personal property requested. Copies of the personal property inventories prepared for the LRA's use, as described in Section 4.1, may be used to identify the personal property requested. This list may be amended during the redevelopment planning process, as long as the use of the additional property is consistent with the overall economic redevelopment goals described in the application package.
  - — A statement of how a Personal Property EDC will support the installation's redevelopment.
- A statement describing why other authorities, including sale or donation, cannot be used to acquire the personal property.
- If the transfer is requested for less than fair market value, a statement justifying why a discount should be provided. The inventory record will state the Standard Cost of the property. The Military Department will estimate the fair market value of the property for the purposes of the transaction.
- A statement of the LRA's legal authority to acquire the personal property.

After receiving the application, it will be subject to Military Department review, using criteria similar to those for real property EDCs. These criteria are fully described in Chapter 7 of this Manual.

After an application is approved, a completed Transfer Order for Surplus Personal Property at a Closing or Realigning Installation (which can be found at the end of this Chapter), should be prepared under the direction of the installation commander in consultation with the LRA. Copies of the personal property inventories prepared for the LRA's use, as described in Section 4.1, may be attached to the Transfer Order. The Transfer Order will state the Standard Cost of the property.

Are there conditions on Personal Property EDCs?

Conditions Placed on Personal Property EDCs

At a minimum, the Military Department shall place the following conditions and limitations on personal property transferred under an EDC:

- The LRA must make an application for personal property within the application period established by the Military Department. This period may begin after the Military Department receives an adopted redevelopment plan and may conclude as soon as 90 days later.

- The Military Department can require the LRA to take custody of and become accountable for the requested personal property 60 days after receiving notice that the application for personal property has been approved by the Secretary of the Military Department.

- The Military Department may screen personal property for military reutilization and report any surplus items to the DRMO for screening and disposal if the LRA decides not to accept the personal property.

- The Military Department and the LRA are not required to account for a non-accountable item with a Standard Cost of less than $500. The Military Department is, however, required to provide an estimate of the total value of all such items. Office furniture with a Standard Cost of more than $300 is considered accountable.

- Non-accountable items with an individual Standard Cost of less than $500 may be accounted for in aggregate if the total value of all like items with a remaining economic or serviceable life of more than three years is greater than $5,000.

- The use of personal property must support base redevelopment. The redevelopment plan should generally identify how the property will be used.

- A recipient LRA shall certify its compliance with the conditions of the transfer of personal property. These certifications will be made at the end of each calendar year and may be subject to random audits by the Government.

Can the LRA lease or sell the personal property acquired under a Personal Property EDC?

- As a general rule, the Military Departments will restrict the LRA's ability to acquire personal property at less than fair market value solely for the purpose of leasing or reselling it. This limitation, however, does not preclude the LRA from subsequently leasing or selling personal property to entities who will place it into productive use in accordance with the redevelopment plan for the installation.

- Typically, if the Military Department leases or sells an item of personal property for less than fair market value, or leases or conveys an item of personal property under a no-cost EDC, it will require the LRA to use or hold that item for one year. If the item is valued at more than $5,000, the LRA must use or hold that item for two years.

- Any proceeds from subsequent leases or sales of usable items must be used to pay for protection, maintenance, repair, or redevelopment of the base.

These restrictions will be a condition of lease, sale, or transfer of the personal property transferred under an EDC.

4.4.7 Negotiated sales of related personal property to public entities

What other ways can personal property be transferred?

Under a negotiated sale, related personal property should be valued with the realty as an economic unit. Negotiated sales, however, are at no less than fair market value.

4.4.8 Public sales of personal property with real property

Under a public sale, personal property is sold and conveyed as an economic unit with the realty to the highest bidder at no less than fair market value. The Federal disposal agent is not obligated to accept less than fair market value bids.

4.4.9 Leases in furtherance of conveyance

Personal property associated with a lease in furtherance of conveyance (as defined in Chapter 5 of this Manual) will typically be conveyed to the recipient at the inception of the lease.

4.4.10 Special transfer categories

NON-APPROPRIATED FUND (NAF) PERSONAL PROPERTY

If the NAF personal property owner(s) makes personal property available for disposal, the LRA or other interested parties may negotiate purchase terms directly with the property owner.

DEFENSE WORKING CAPITAL FUND (DWCF) EQUIPMENT

Available equipment of this type is sold at fair market value unless:

- It is included in an EDC to the LRA.
- It is determined to be related personal property and valued with the real property (e.g., shop equipment or dry dock cranes).
- The Military Department determines the DWCF equipment has an actual cash value below $500 per item, with all like items having a total value of less than $5,000.
- The Military Department determines a no-cost or discounted conveyance is desirable. Below-cost conveyances for DWCF equipment having an original cost of more than $25,000 must be accompanied by a written justification approved by the Secretary of the Military Department.

4.4.11 Sale and donation of surplus personal property

Personal property not needed by the LRA in support of its redevelopment plan can be redistributed within the Military Department. If it is not claimed by the Military Department, it will be reported to the DRMO, the DoD personal property disposal agent.

Surplus personal property may be disposed of by the DRMO by either donation or sale. Priority for donation should be given to either the LRA or the local community.

- Federal law authorizes the Federal Government to allocate Federal surplus personal property for transfer to State agencies, which in turn distribute such property for public purposes to eligible recipient agencies.

- The major categories of eligible recipients are:

  — Public agencies.

  — Nonprofit educational and public health activities.

  — Nonprofit and public programs for the elderly.

  — Educational activities of special interest to the Armed Forces.

  — Public airports.

  — Homeless assistance providers.

- Under this donation program, communities and LRAs may ask for personal property that did not qualify for an EDC. Such community or LRA requests for property must be made through the closing base installation commander or other authorized official to the appropriate State Agency for Surplus Property (SASP).

  — Personal Property donated under this procedure must meet the usage and control requirements of the applicable SASP.

  — Property subsequently not needed by the LRA or community shall be disposed of as required by the SASP.

- The DRMO will dispose of surplus property not selected through the donation program.

- Under special circumstances, property may be sold by negotiation. Such sales, typically for property valued at less than $15,000, are infrequent and must be justified in advance by the DRMO to the Secretary of Defense.

4.5 Functionally Equivalent Personal Property

4.5.1 Substitution of functionally equivalent similar items

Can the Military Department substitute similar items of personal property for those requested by the LRA?

- The Military Department or Defense Agency may substitute an item of personal property similar to one requested by the LRA.

- It is the Military Department or Defense Agency's responsibility to ensure that the substitute item is functionally equivalent to the requested item.

- Should a dispute arise about the suitability of a substitute item, the original item in question should not be removed from the base until the disagreement process described in Section 4.3.1 is complete.

4.5.2 Definition of "similar"

In the context of substituted items of personal property, "similar" means that the original item and the proposed substitute item have the same functional capability and that the substitute item is serviceable for the same intended use.

4.6 AIR EMISSION RIGHTS TRADING GUIDANCE

What are Clean Air Act Emission Trading Programs?

4.6.1 Clean Air Act

The Clean Air Act Amendments of 1990 (CAAA) require reduction in emissions by activities all over the nation, both military and civilian, in order to meet the national ambient air quality standards for clean air. The amendments introduced the marketplace into emission control regulations. To further reductions through market trading, the CAAA and implementing State regulations may allow movement or transfer of emission rights between parties at the same site, to other locations within the State, or, in some instances, to other States.

- **Non-attainment**—The CAAA designates acceptable ambient levels of selected ("criteria") pollutants. Areas that exceed those levels are designated as "non-attainment" areas and the State's control plan ("State Implementation Plan" or "SIP") must be adequate to reach attainment within a specified time. The required reduction controls and the time required to achieve those reductions depend on the severity of the air pollution problem.

- **Economic Incentive Programs**—To encourage innovative approaches to reduce air pollution, the CAAA authorized development of programs to trade emission rights—rights to emit specific amounts of criteria pollutants. Various State trading programs have been developed such as cap-and-trade allocation and emission reduction credit (ERC) banking. In addition, some States have entered into agreements with other States which allow interstate trades.

What tradable or transferable emissions programs impact base reuse implementation?

- **Emissions Trading Programs**—There is a variety of individual trading programs throughout the country. Current programs allow trading reductions from stationary, mobile, and area sources and may allow intrastate and interstate trading. Local, State, or regional programs for trading/transferring ERCs, allowances, or other economic incentives must first be approved by EPA and then incorporated into the SIP(s). ERCs must be surplus (i.e., go beyond existing CAAA requirements), enforceable, permanent (source of pollution must be permanently reduced), and quantifiable. ERCs, allowances, or similar tradable incentives are issued or available only when there is an approved SIP in the area where generated. Generally, if there is an approved program, when an owner permanently shuts down an emission source, ERCs can be created by submitting an application and fee to the State or air quality control region (AQCR). The AQCR may discount or retain some of the ERCs as part of a reserve bank to support future economic growth or to meet attainment requirements. Even in States that do not have a formal program for ERCs (including mobile source emission reductions), DoD has successfully quantified and traded these "offsets" to other DoD Components or other Federal Agencies to support conformity requirements. Because programs differ from State to State, and regulatory changes are frequent, consultation with experts within the Military

Departments is strongly encouraged. The trading and transfers of mobile source emissions raise special considerations, including transfers that support conformity, and should be referred to the Secretary of the Military Department.

- **Permit Transfers**—Stationary sources may be issued air permits by the State or AQCRs to emit specific levels of criteria pollutants during a year. Regulators usually allow the transfer of these air permits with transfer of the stationary source.

- **General Conformity**—The CAAA requires a Federal Agency to demonstrate that a new Federal action, or a Federally approved or supported action, will not cause deterioration of air quality or impact attainment status in a non-attainment or maintenance (former non-attainment) area. Because military bases gaining units, functions, or weapons systems as a result of a BRAC action are required to comply with conformity, gaining facilities need to determine whether emission reductions or offsets which are needed to demonstrate conformity can be transferred from closing or realigning bases.

4.6.2 Guidance and implementation

What is DOD's general guidance regarding emission rights?

Emission rights are important to both the military and the community. Consistent with full protection of national defense imperatives, distribution of emission rights from closing bases (if available under applicable law) should reasonably accommodate military needs, community redevelopment needs, and State and local air quality attainment goals. Decisions on the distribution of any such emission rights will be made by the Secretary of the Military Department only after full consultation with the LRA, the local AQCR, and other Military Departments with vital needs.

All DoD installations being closed should first consult with the AQCR or State to obtain current information on local air quality conditions (attainment status); conformity rules; conditions for permit transfer; status of approved trading programs; and availability of community bank credits for redevelopment. All DoD installations being closed should also inventory all existing emission sources, including all stationary and mobile sources and existing air permits with expiration dates. The goal of the inventory is to have complete and accurate information for discussions with the LRA, the local AQCR, neighboring DoD installations, and other Federal Agencies. After completing the inventory, the installation should enter into discussions with the LRA, the AQCR, other Military Departments, DoD Components, or Federal Agencies. The LRA should be encouraged to identify emission rights reasonably needed to support planned economic development. Where allowed by local rule, transfer of existing permits with transfer of ownership of the emission source should be considered.

When a receiving installation is located in an area that could receive credits, offsets, or allowances from a closing installation, the receiving installation should determine its emission needs as early as possible. Every effort should be made to reduce or spread out the need for credits, offsets, or allowances. If additional emission rights are needed, the receiving installation should advise the closing installation immediately in writing with a specific emission transfer/trading request and justification. Special consideration to the receiving installation's needs should be given in the distribution decision.

Transfer Order **Personal Property at a Closing or Realigning Installation**	Page 1 of ____pages
To: (*Name and address of redevelopment authority*)	**Personal property EDC type** (*check one*): ❑ Full fair market value (standard cost) ❑ Less than fair market value ❑ Donation
From: (*Military organization and address*)	**Total acquisition cost:**

Conditions for transfer:

(*List the transfer conditions here or attach a separate sheet of paper with the list of transfer conditions*)

Property List:

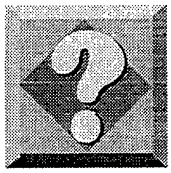
(*It is not necessary to complete this section if an inventory list containing the required information is attached*)

Identification Numbers	Description	Demil Code	Cond. Code	Quantity/Unit of Issue	Standard Cost Unit	Standard Cost Total

Transferee Action Transferee certifies and agrees that transfers and donations are made in accordance with 32 CFR Part 175	**Transferee** (*Name and address of redevelopment authority*):	**Signature and title** (*Representative of redevelopment authority*)	**Date**
Administrative Action I certify that the administrative action pertinent to this order is in accordance with 32 CFR Part 175	**Determining Officer** (*as determined by Military Department*):	**Signature of determining officer**	**Date**
	Approving Officer (*as determined by Military Department*):	**Signature of approving officer**	**Date**

5
Leasing for Reuse

Frequently Asked Questions About Leasing for Reuse	
➢ *What is DoD's philosophy and goal for BRAC leasing?*	Section 5.1
➢ *What types of leases are available for reuse?*	Section 5.1
➢ *Do the Military Departments have a common leasing approach?*	Section 5.1
➢ *What are the guidelines for interim leases?*	Section 5.2
➢ *Who is eligible to apply for an interim lease?*	Section 5.2
➢ *How is rental consideration type and amount determined?*	Section 5.2
➢ *Are there specific guidelines for subleases?*	Section 5.2
➢ *What is the Early Transfer Authority?*	Section 5.2
➢ *How does an LRA apply for a lease?*	Section 5.3



5.1 INTRODUCTION

5.1.1 Philosophy and goal

What is DoD's philosophy and goal for leasing BRAC property?

What commitments are the Military Departments willing to make?

Early leasing of property at a BRAC installation can spur rapid economic recovery and job creation and can reduce the Military Department's caretaker costs before the ultimate disposal of installation property. Therefore, leasing is one of the most important tools available to the Military Department and LRA for reaching common goals.

To help the LRA realize the maximum benefit from leasing BRAC property, the Military Departments are committed to working with the LRA by:

- Helping the LRA identify early leasing opportunities.
- Hosting pre-leasing conferences to explain leasing process details, including what is required of both the Lessee and the Military Department.
- Providing timely responses to leasing requests.
- Processing lease applications within a reasonable time period.
- Providing recommendations for a leasing strategy that will best suit the LRA's plans and needs.

5.1.2 Summary

What information can be found in this Section of the Manual?

This Chapter, along with the information found in Appendix D of this Manual, consolidates Military Department policies and practices on leasing and is intended to provide a summary of and guidance for the BRAC leasing process. It is not intended to replace specific lease provisions, nor to create an enforceable right in any party. Laws and regulations that govern leasing are summarized in Appendix A (Laws and Regulations Affecting Base Reuse Implementation). Each installation or base will have site-specific real estate, environmental, and natural and cultural resources compliance requirements. The Military Department will inform prospective Lessees of all requirements as early in the leasing process as practicable.

5.1.3 Definition of lease types

What is an "interim lease?"

INTERIM LEASE

- Generally, an interim lease is a short-term lease that makes no commitment to the Lessee for future use or conveyance of title to the property to the Lessee upon its disposal. An interim lease is usually entered into before final disposal decisions are made by the Secretary of the Military Department.

- In the past, the term of an interim lease could only last for up to five years, including options to renew. Recently, Section 2833 of the NDAA 96 granted the Department the authority to enter into interim leases with terms that extend beyond the expected completion date for the disposal Environmental Impact Statement (EIS). This is true even if final property disposal is consequently delayed because the Lessee's use of the property differs from that outlined in the NEPA Record of Decision (ROD). This authority, however, is only available if the proposed lease can be supported by a Categorical Exclusion (CATEX) or an EA/FONSI. Additional information about the Department's policies regarding Section 2833 can be found in Appendix D.

- At the completion of the NEPA process, the interim lease can convert into a long-term lease or deed transfer. Separate NEPA analyses—as well as air pollution, wetlands, floodplains, historic structures, and other natural and cultural resources determinations and consultations—may be required prior to a decision to lease.

- An interim lease must be preceded by an EBS and by a FOSL. The restrictions and lease conditions in the FOSL must be incorporated into the lease.

- Interim leases will generally terminate at the time that final reuse and disposal decisions are implemented.

- Interim leases may be for consideration at or below the estimated fair market rental value for the leasehold.

- Capital improvements may be made by the Lessee except where, in the judgment of the Military Department, they will trigger a requirement for an EIS under NEPA.

LEASE IN FURTHERANCE OF CONVEYANCE

What is a "lease in furtherance of conveyance?"

- A lease entered into after the Secretary of the Military Department has complied with NEPA and has issued a final disposal decision for the property. A lease in furtherance of conveyance provides immediate possession of the property to the entity identified in the disposal decision as the recipient of the property.

- Leases in furtherance of conveyance are authorized by CERCLA. Section 2834 of the NDAA 96 amended CERCLA to clarify that the deed covenant requirements do not apply to leases at DoD installations regardless of whether the Lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. See Appendix D for more information about Section 2834.

- Such a lease may be long-term and may be for all or for a portion of the property identified for conveyance to the Lessee in the disposal decision.

- If ongoing environmental remediation is the only reason property is not being considered for deed transfer, use of the Early Transfer Authority discussed in Section 5.2.3 should be considered.

- A lease in furtherance of conveyance must be preceded by an EBS and a FOSL. The restrictions and lease conditions in the FOSL must be incorporated into the lease.

- A lease in furtherance of conveyance will terminate when a deed transfer can be accomplished.

MASTER LEASE

What is a "master lease?"

- A master lease may be either an interim lease or a lease in furtherance of conveyance. It is a lease that serves as the principal lease instrument for the entire base or for major portions of it.

- Individual parcels and properties may be sublet under the terms of a master lease. Environmental requirements contained in the master lease must be carried through to subleases.

- Master leases and each subsequent sublease must comply with appropriate EBS, FOSL, NEPA, and other applicable natural and cultural resources determinations and consultation requirements.

5.1.4 General practice for leasing real property at BRAC installations

Does each Military Department follow a similar leasing process?

To facilitate timely review of lease applications and to ensure lease documents are completed as quickly as possible, the Military Departments shall delegate leasing authority from headquarters to the field level. Figure 5-1 shows the general practice that the Military Departments follow for processing applications and for entering into and closing out leases. Numerous factors influence how long it will take to review and approve a lease including how far the installation has progressed in the closure process and in the preparation of environmental documentation required for closure. As a result, the time it takes to complete the

process will vary from situation to situation. The leasing process can be summarized as follows:

PROCESS APPLICATION

- A party (generally the LRA) expresses an interest in leasing property. The Military Department meets with the Lessee to explain the application process and information requirements. Regulatory requirements, the timelines for processing a lease, examples of allowable "offsets," and the cost of government-furnished utilities should be part of the background provided at pre-leasing conferences. The BRAC Cleanup Team and BTC should participate in these meetings to ensure that environmental cleanup is closely coordinated with leasing needs and plans.

- If the facility is potentially available, the prospective Lessee completes and submits an application (see Appendix D for model application format).

- The Military Department reviews the application in a timely fashion (see Appendix D for model review criteria).

- The Military Department either accepts the application for further processing, rejects the application, or requests that it be revised.

PREPARE FOSL (AND NEPA/OTHER DOCUMENTATION)

- The Military Department consults with EPA and other regulatory Agencies and determines whether environmental conditions on the property trigger environmental notice requirements or present unacceptable risks to the prospective Lessee, or whether leasing will impact ongoing environmental cleanup efforts. This is accomplished by preparing, if necessary, and reviewing an EBS and issuing a FOSL.

- The Military Department determines whether environmental impacts, or impacts on any protected natural and cultural resources, will result from the proposed leasing activity. This is accomplished by completing appropriate NEPA analyses, and by making the other environmental determinations and consultations necessary.

PREPARE LEASE

- The Military Department and Lessee negotiate the consideration for the lease and draft lease terms and conditions, based upon standard model lease provisions (see Appendix D for model lease provisions). This may occur concurrently with the preparation of appropriate environmental and natural and cultural resources documentation.

- The Military Department makes the decision on whether to approve the lease and any reuse restrictions the lease will contain.

- The Military Department and Lessee agree on the environmental and physical condition of the property prior to lease execution.

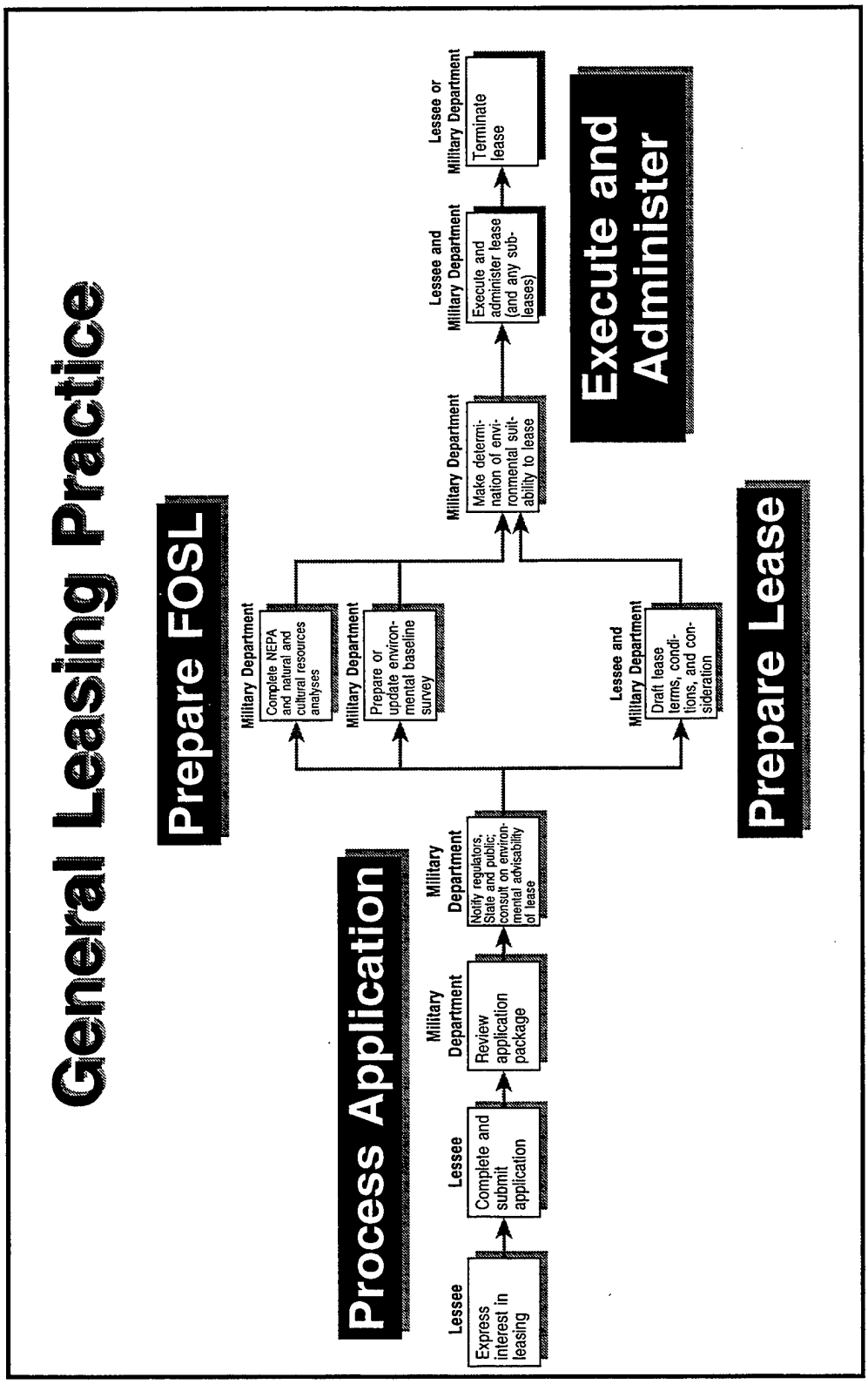


Figure 5-1. General Practice for Leasing Real Property at BRAC Installations

EXECUTE AND ADMINISTER LEASE

- The lease is signed and required notices are issued.
- The Lessee submits proposed subleases to the Military Department for their review and approval if the terms and conditions of the proposed sublease do not comply with or are not included in an approved master lease. In accordance with 10 U.S.C. 2692, subleases that involve the use of hazardous materials will require Military Department approval.
- The environmental and physical conditions of the leasehold are reevaluated at lease termination.

5.2 LEASING GUIDANCE

What guidelines apply to all leases?

Leasing from a Military Department is different from leasing in the private sector, because Federal laws and regulations define leasing requirements that must be met by the Military Department and the Lessee. Summaries of laws and regulations affecting base reuse implementation can be found in Appendix A of this Manual. This Chapter of the Manual describes processes designed to both simplify leasing and to more closely follow private-sector practice, within the framework of prescribed Federal laws and regulations.

5.2.1 General guidance

Following the approval of closure or realignment, property may be made available for leasing in the interest of speedy economic redevelopment or other acceptable purposes, if it can be done:

- Without interfering with environmental cleanup activities.
- In compliance with applicable real estate, homeless assistance, environmental and other requirements.
- Without interfering with the remaining Military Department mission, including disposal-related activities.

5.2.2 Interim leasing guidance

The following guidance applies to interim leasing activities:

Are there guidelines for interim leases?

Who will the Military Department lease to?

- The Military Department will generally lease property for interim use to the LRA. If there is no LRA, or if it is not authorized to lease property, the Military Department may lease the property to either:
  - — The local government in whose jurisdiction the property is located, or
  - — An appropriate local or State redevelopment agency, as designated by the Chief Executive Officer of the State in which the installation is located.
- Requests to lease property directly to other eligible entities will be approved only in exceptional circumstances. Ongoing (e.g., pre-closure approval) leasing programs, such as agricultural and grazing, youth programs, community outreach, etc., may be continued.

- The Military Departments should use model lease provisions that contain standard terms and conditions (see Table 5-1 and Appendix D). Many terms and conditions of Federal leases are required by Federal law, and by general landlord-tenant "common law" that has evolved over many years. These provisions, including environmental provisions required by Federal law and policy, are essentially non-negotiable. Additional terms and conditions may be added to reflect other site-specific operational, environmental, and natural and cultural resources requirements.

What provisions can be found in an interim lease?

List of Common Lease Provisions Used at BRAC Installations	
Use of the premises	Term of lease
Termination	Consideration
Notice	Authorized representatives
Supervision of the premises	Applicable rules and regulations
Condition of the premises	Transfers, assignments, subleasing
Utilities	Protection of the property
Insurance	Right to enter
Indemnity/hold harmless clause	Restoration
Non-discrimination	Subject to easements
Rental adjustment	Waste
Disputes clause	Environmental protection
Environmental baseline survey	Taxes
Covenant against contingent fees	Officials not to benefit
Accounts and records	Modification/agreement
No commitments for future use	Other provisions, as appropriate

Table 5-1. List of Provisions Common to BRAC Interim Leases
(See Appendix D for a detailed description of provisions)

- Installation commanders will be consulted regarding the availability of the site for the proposed use and regarding the compatibility of the proposed leasing activity with the ongoing mission. Special lease provisions may be required to prevent interference with base operations or closure or with environmental cleanup activities.

- The following factors are among those that will be considered in determining the lease term:

How is the term of an interim lease determined?

  — Date of operational closure.

  — Proposed use of the property.

  — Compatibility with the base operations before closure.

  — Compatibility with the LRA's redevelopment plan.

— Date of anticipated final disposal decisions and actions by the Secretary of the Military Department.

— Environmental condition of the property.

How are interim leases terminated?

- Historically, the Military Departments have included a termination-at-will clause in lease documents to be used if the property was ever found to be needed for military purposes. This practice is no longer required. Generally, the Military Department should only reserve the right to terminate and remove the tenant before the end of the stated term:

  — For non-compliance with the provisions of the lease;

  — In the event of a national emergency as declared by the President or the Congress of the United States.

- The Lessee will be provided with notice that termination is necessary and reasonable time to vacate the premises, which normally will be no less than 30 days.

What is the rent for an interim lease?

Are there guidelines for how it is determined?

- Consideration for the lease may be in cash or in kind. Services relating to the protection and repair, improvement, restoration and maintenance of the installation may constitute all or part of such consideration.

- Rent may be for fair market value. Rent may also be for less than fair market value when:

  — A public interest will be served as a result of the lease; and

  — The fair market value of the lease is *unobtainable,* or *not compatible with such public benefit.*

- Examples of criteria that will be used by the Military Department to determine when a public interest will be served as a result of the lease are as follows:

  — The lease will provide public benefits consistent with those that would be derived from the property's transfer under a public benefit conveyance (e.g., for historic monument, education, public health, public park or recreation, non-Federal correctional facilities, port facility, or other sponsored or approved purposes).

  — Job creation or job retention potential of the lease, including the number and quality of the jobs that will be created or retained.

  — The lease will foster needed economic development in the community.

  — The lease will provide economic benefit to the Federal Government (e.g., release from protection and maintenance costs).

  — The lease will foster reuse and redevelopment of the property.

— The lease will protect the property from degradation or deterioration.

— The lease will help to maintain the integrity of the property.

- Interim leasing promotes early reuse and helps local communities create jobs. To this end, the Military Departments should strive to offer Lessees attractive rental rates. If deemed appropriate and consistent with the goals of early reuse and job creation, the rental rate may include a charge for the pro rata costs of common support services provided by the Military Department that benefit the Lessee.

Can an interim lease be used as a first step toward property ownership?

Can a Lessee make property improvements?

- Interim leases will contain provisions reinforcing that such leases do not convey any right nor should they create any expectation on the part of the interim user, tenants, or subtenants to acquire the leased property.

- The Lessee may make improvements to the leased property, so long as doing so will not foreclose later consideration of any reasonable disposal and reuse alternative by the Military Department. Absent compelling circumstances, the Military Department will not permit improvements that will significantly affect the quality of the human environment (and therefore require preparation of a separate EIS). Generally, all leases will include a clause that may require any improvements made to the property by the Lessee to be removed and the property restored at the end of the lease term, or, if the Military Department decides to accept the improvements, they will become the property of the United States without compensation to the Lessee. Improvements made by the Lessee that the Military Department decides to accept should not be included in any future appraisals of the property when the property will be conveyed to the entity who made the improvements. This would not apply, however, to tenant improvements made in lieu of rental payments.

- The Military Departments may also allow some building modification, demolition, and new construction under an interim lease, if such activities can be supported by a CATEX or an EA/FONSI and do not preclude the selection of any reasonable final disposal alternative.

- Existing provisions of Federal law prohibit discrimination on the basis of race, color, national origin, handicap, or age. In addition, property used for public accommodations must not discriminate on the basis of sex and religion.

- Non-exclusive use may be granted without the use of a lease, in accordance with standard Military Department procedures. Licenses, permits, or rights-of-entry may be used as a substitute for a lease in these limited instances. If the property is used for conferring non-possessory access for single, specified purposes; e.g., to conduct an open house or air show; non-intrusive surveys of the premises; setting up potential Lessee equipment (but not beginning beneficial operations) pending lease finalization, a formal lease may not be needed.

Are leases required for all temporary uses of BRAC installations?

Example Scenario—BRAC Interim Leasing

An installation has been identified for closure. The EIS/ROD will not be completed for another 18 months. The EIS will consider alternatives for reuse based on heavy, medium, and light industrial reuse scenarios. A base-wide EBS has been completed. The Early Transfer Authority will not be used and it is anticipated that environmental remediation activities will not be completed (so as to allow the CERCLA deed covenant) three years following completion of the disposal ROD.

- Agricultural and grazing leases have been issued over a portion of the installation for many years. No remedial activity is identified for this area. This program may be continued under an interim lease.
- The installation has several warehouses. The LRA has two prospective Sublessees, one requesting a 12-month sublease to store seasonal merchandise, the other requesting a three-year lease to fulfill a short-term order to assemble computers. The only alterations required are the installation of a new lock, a fire sprinkler, and an alarm system to meet a local building code and insurance requirements. The merchandiser Sublessee will retool an internal box-delivery system to accommodate his or her merchandise. The Sublessee also wishes to do some cosmetic repairs and painting. The manufacturer plans on similar renovations, but will also install removable assembly equipment. Neither proposal would commit the property to any future use, the alterations do not change the property in a significant way, the upgrades are required to comply with local codes, retooling of any equipment is for the Sublessee's benefit, and painting and other cosmetic repairs have no significant impact on the facility. Interim leases could be approved upon completion of the EBS/FOSL processes.
- The LRA requests a lease for the entire installation. The proposal is to construct additional facilities, demolish several older buildings, dredge the harbor, construct additional railroad spurs, and make renovations to existing facilities to accommodate an industrial Sublessee. The LRA requests a 25-year term, beginning in one month. The Military Department can only agree to a term that does not extend beyond the expected completion date of the disposal EIS because the proposed actions could, as a practical matter, irreversibly commit the Military Department to a particular disposal decision.

SUBLEASING GUIDANCE

What are the guidelines for subleases?

- The Military Department will generally conduct all leasing-related activities with the Lessee, not the Sublessee(s).
- The rental value of subleases will be negotiated between the Lessee and Sublessee. The sublease rental may be for a different amount or expressed differently than that of the lease between the Military Department and the Lessee ("prime lease").
- Lessees are authorized to sublease property included in a master lease without obtaining Military Department approval of the sublease, provided the sublease incorporates the terms of the master lease (except for rental terms which may be different in amount or expressed differently) and does not include any provisions that are inconsistent with the master lease. A copy of the sublease must be provided to the Military Department. In accordance

with 10 U.S.C. 2692, if the sublease involves the use of hazardous materials, Military Department approval of the sublease is required.

- Rents from subleases will be applied by the Lessee to the protection, maintenance, repairs, improvements, and costs related to the installation including LRA marketing and management costs (e.g., LRA staff salaries and expenses).

- The term of a sublease cannot be longer than that of the prime lease.

- Subleases will contain provisions reinforcing that such leases do not convey any right or expectation on the part of the interim user or subtenants to acquire the leased property from the Military Department.

- The provisions of a sublease must be consistent with the provisions of the prime lease and must contain all environmental provisions included in the prime lease.

- In case of a conflict between the prime lease and any sublease, the prime lease will control.

5.2.3 Guidance for leasing in furtherance of conveyance

The following guidance applies to leasing in furtherance of conveyance activities.

Are there any guidelines for "long-term" leases?

- After the Secretary of the Military Department issues a final disposal decision, applications for conveyance of the property from the LRA or other qualified party and the terms of the conveyance can be negotiated and approved. However, in the past, immediate conveyance of the property following agreement on the terms was not possible, usually because environmental remedial action obligations under CERCLA § 120(h) had not been fulfilled (see explanation below).

What is the Early Transfer Authority?

- However, property can now be deeded before all remedial actions have been fulfilled. Section 334 of the NDAA 97 amended CERCLA to allow contaminated Federal property to be transferred to private parties before remedial action has been taken. Commonly referred to as the "Early Transfer Authority," the deferral of the requirement to comply with CERCLA § 120(h) can be granted by the Administrator of EPA with the concurrence of the Governor of the State (for National Priorities List (NPL) sites) or the Governor of the State alone (non-NPL sites). In doing so, the Administrator of EPA or the Governor must first determine that the property is suitable for transfer and that the deed or other agreement proposing to govern the transfer contains assurances that all necessary response actions will be undertaken. Initial guidance on the authority issued by the Office of the Deputy Under Secretary of Defense (Environmental Security) (ODUSD(ES)), states that it may be used by the Military Departments on a case-by-case basis after notice to and consultation with the ODUSD(ES). Pending the issuance of detailed guidance, it is anticipated that a process similar to the existing FOST process will be used in determining suitability and obtaining the Governor's or EPA's approval to defer the § 120(h) requirements.

Relevant Provisions of CERCLA Section 120

CERCLA § 120 establishes a framework for responding to hazardous substances, pollutants, or contaminants, and identifies specific requirements relating to deed transfers of any Federal property, which must be satisfied before a deed can be executed.

- On parcels of real property where hazardous substances, pollutants, or contaminants were stored for one year or more, released or disposed of, CERCLA § 120(h)(3)(A)(ii)(I) requires the Military Department to provide a covenant in all deeds stating that all remedial action necessary to protect human health and the environment with respect to any such [hazardous] substances remaining on the property has been taken.

- The Military Department can satisfy the requirement that "all remedial action," as described in CERCLA § 120(h)(3)(A)(ii)(I), "has been taken" prior to deed transfer if "the construction and installation of an approved remedial design has been completed, and the remedy has been demonstrated to the Administrator [of EPA] to be operating properly and successfully. The carrying out of long-term pumping and treating, or operation and maintenance, after the remedy has been demonstrated to the Administrator to be operating properly and successfully does not preclude the transfer of the property." [42 U.S.C. § 9620(h)(3)]

- Alternatively, in circumstances where a remedy has been accomplished, but no ongoing treatment or operation and maintenance is required; e.g., "clean closure" or excavation of soil with off-site treatment, all remedial action means that all action required to meet applicable State or Federal regulatory standards, including, as required, State or Federal regulatory approval, has been taken.

- Prior to the condition for a deed transfer being met (including an Early Transfer), immediate possession of all or portions of the installation may be granted to the ultimate transferee through a lease. This lease will terminate as soon as the deed conveying the property is accomplished. The reuse needs of the LRA or other recipients will be considered in determining the term of the lease.

- This document is a lease and is not a conveyance of title. It is an agreement that grants an exclusive possessory interest in real property for a period of time for a specified consideration.

- The lease must be preceded by an EBS and by a FOSL.

- If the proposed use or activity is outside the scope of existing NEPA reviews or the Military Department disposal decision, additional NEPA analysis may be required.

- The lease should contain provisions similar to the model interim lease provisions (shown in Appendix D) and all of the DoD standard environmental provisions (included in Appendix D in their entirety). The lease must include a right of termination for the Government for breach of the

material provisions of the lease and a right to terminate when the property is ready to be conveyed. In all cases, the environmental clauses are considered material provisions of the lease.

- The lease should also contain express provisions or conditions restricting the use of the property; e.g., the proposed use must be compatible with the disposal decision; major construction will require Government approval; a change in use must be approved by the Government. The Military Department, as landlord, must oversee the Federal interest in the property.

- Because of the unique circumstances of each proposed conveyance, a lease in furtherance of conveyance will be tailored to the specific situation. Additional terms may be added to reflect site-specific operational, environmental, natural and cultural resources, and other requirements. Attention should be given to impacts on wetlands and sensitive habitats.

- A lease in furtherance of conveyance should specify:

  — The price, terms, and conditions applicable under a negotiated sale; or

  — The terms and conditions of an EDC; if an EDC is anticipated, then the lease should be tied to an application that has been reviewed and approved according to the procedures in Chapter 7 of this Manual; or

  — The terms and conditions for disposal under alternate authorities.

5.2.4 Environmental/related guidance

Are there environmental requirements associated with leasing?

The Military Departments are required to complete a series of surveys and reports prior to leasing or disposing of property. These surveys and reports address environmental planning (i.e., NEPA), cleanup (i.e., CERCLA) and preservation (i.e., wetlands, floodplains, and historic resources). Generally, the schedule for completing this work is based on the projected property disposal date. However, because leasing requires that many of the same environmental issues be addressed, the Military Departments are encouraged to accelerate the schedule for these activities to support the community's efforts for economic development through the use of leasing. Below is a summary of the types of surveys and reports needed to support leasing:

- NEPA requirements for environmental impact analysis, in accordance with Council on Environmental Quality regulations, must be met for all leases (e.g., by categorical exclusion, EA/FONSI, or EIS/ROD).

- Appropriate natural and cultural resources determinations and consultations (e.g., Secretarial findings regarding wetlands [E.O. 11990] and floodplains [E.O. 11988], Section 106 consultation under the National Historic Preservation Act), and air quality conformity determinations under the Clean Air Act will be completed when required. Appropriate use restrictions, to the extent required, will be included in the lease.

- Consistent with current DoD policy and procedures contained in the Deputy Secretary of Defense memorandum entitled, "Fast Track Cleanup at Closing

Installations," dated May 18, 1996, or most recent version (see Appendix F), an EBS and FOSL are required prior to executing a lease. Consistent with this policy, environmental regulators will be notified at the inception of the EBS and the FOSL, and provided with copies of workable draft documents as they are available and with the opportunity to review and comment. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved comments will be included as attachments to the EBS report or the FOSL.

- Restrictions and conditions identified in the EBS or FOSL shall be incorporated into leases.

- A report documenting the environmental conditions identified in the EBS will be prepared and signed by both parties. This report will acknowledge all leasehold conditions identified in the EBS report, as well as any other environmental conditions that may not be specifically identified in the EBS.

- At the conclusion of the lease period, a similar report will be jointly prepared and signed by the Lessee and the Military Department.

- The Military Department, as required by CERCLA § 120(h)(5), shall notify the State prior to entering into any lease that will encumber the property beyond the date of termination of DoD's operations. Content of the notification is specified in the Fast Track Cleanup Policy. For NPL sites, EPA is also to be notified.

- If applicable, an environmental justice analysis will be performed to determine whether the lease will disproportionately impact minority or low-income populations in accordance with E.O. 12898.

5.3 APPLYING FOR AN INTERIM LEASE

What is the procedure for applying for an Interim Lease?

This subsection describes the process for expressing interest and applying for an interim lease. Prospective Lessees of BRAC installation real property should first review the model information included in this Manual as Appendix D.

5.3.1 Expression of interest

An expression of interest in an interim lease should be in writing and provided to the Military Department. This expression of interest may be submitted to the Military Department (installation commander and the Military Department's real estate division, or other designated Military Department representative involved in closing the base) after the approval of closure or realignment.

Generally, the Military Departments will accept expressions of interest only from the LRA. Any prospective Lessee should direct an expression of interest, preferably in writing, to the LRA. The LRA will provide notice of such expressions of interest to the Military Department. If an interest is expressed to the Military Department, that interest shall be forwarded to the LRA.

5.3.2 Initial meeting/application package

When the Military Department (or installation) receives an expression of interest, it will first seek the installation commander's concurrence that the facility is available and that the interim use will be compatible with ongoing missions.

The Military Department should also request a meeting with the prospective Lessee, especially prior to the first lease at the BRAC installation. The BRAC Cleanup Team and BTC should participate in these meetings to ensure that environmental cleanup is closely coordinated with leasing needs and plans. The purpose of this meeting is to:

- Describe the leasing process to the prospective Lessee, including the application procedure, application and processing timetables, and any other pertinent information.

- Discuss regulatory requirements, the timelines for processing a lease, examples of allowable "offsets," and the cost of Government-furnished utilities.

- Informally examine the scope of the proposed interim use to determine which environmental and realty issues must be addressed.

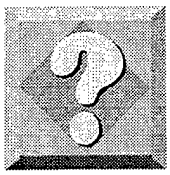
A model Interim Lease Application Package can be found in Appendix D of this Manual. An accurate and complete application package must be submitted by the prospective Lessee. The application package will be reviewed by the Military Department, using the model internal review criteria also found in Appendix D of this Manual. The internal review process may result in a request from the Military Department to the prospective Lessee for additional or more accurate information. The prospective Lessee will be notified that the application has been accepted for further processing and of the anticipated schedule for lease approval and execution.

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6
Maintenance, Utilities, and Services

Frequently Asked Questions About Maintenance, Utilities, and Services

- *What is DoD's philosophy and goal for maintenance, utilities, and services at BRAC installations?* Section 6.1
- *What is the general practice used to determine initial maintenance levels?* Section 6.1
- *How and when are maintenance levels determined?* Section 6.2
- *Who is responsible for determining maintenance levels and how will the LRA be involved?* Section 6.2
- *Who provides protection and maintenance during the various phases of base closure and disposal?* Section 6.3
- *Is there guidance for equipment and personal property maintenance?* Section 6.4
- *How will utility systems be maintained and conveyed?* Section 6.5



6.1 Introduction

6.1.1 Philosophy and goal

What is DoD's philosophy and goal for maintenance, utilities, and services?

The Department of Defense is closing installations to prevent the taxpayer from paying for infrastructure that is no longer needed to support a shrinking military. The Military Departments need to close bases rapidly to realize maximum cost savings, but DoD also recognizes the need to close bases in a manner that will preserve valuable assets and support rapid reuse and redevelopment. The maintenance of the installation, as well as the provision of utilities and services, will play a key, if unglamorous, role in ensuring that the base can be redeveloped for civilian use. Initial protection and maintenance levels after the installation is approved for closure or realignment will be set in consultation with the LRA at or above levels required to support the use of such facilities or equipment for nonmilitary reuse purposes. Such levels will be sustained for a reasonable period during redevelopment planning and implementation.

Title XXIX of the National Defense Authorization Act for Fiscal Year 1994 required the Military Departments to maintain the level of maintenance at closing bases until a reuse plan is submitted or closure of the installation takes place. Because of the importance of assisting community economic recovery, where communities have diligently worked toward reuse the Military Departments may maintain the properties for longer periods than those required by Title XXIX.

What is the general practice for providing maintenance at BRAC installations?

6.1.2 General practice

Each Military Department's goal is to close bases, transfer missions, minimize caretaker costs, and support implementation of the LRA's redevelopment plan. However, if no redevelopment plan is prepared, or if no reuse is actively being pursued for parts or all of the installation, the Military Department should, at its discretion, reduce maintenance levels to the minimum levels required for similar surplus government property. This reduction will generally occur within one year after operational closure or 180 days after the Secretary of the Military Department completes NEPA analysis and decision making, whichever is later. Continuance of maintenance is subject to availability of appropriated funds.

The Military Departments will follow a general practice for closing bases and establishing, maintaining, and transferring protection and maintenance responsibility to a reuser. This practice consists of the following elements:

- Initial maintenance levels for real property, and their durations, will be determined on a facility-by-facility basis by the Military Department in consultation with the LRA and within the limits described in Section 6.2.3. Such levels of maintenance may be adjusted over time as circumstances warrant.

- Military Department actions required by BRAC legislation or the relocation of military missions prior to the installation's operational closure may impact the level of maintenance for certain facilities.

- Maintenance of personal property will generally be limited to physical security in the expectation that this property will be quickly conveyed to the LRA. (See Chapter 4 of this Manual for more information on personal property.)

- Property will be transitioned from its active mission maintenance level to its initial maintenance level (also called the caretaker maintenance level) after the property is no longer put to military use or the active mission departs (see Section 6.3).

- The Military Department will maintain facilities on a building-by-building basis, relinquishing its responsibility when an individual facility is occupied for reuse (e.g., interim leases, leases in furtherance of conveyance, or deed transfers; see Chapters 3 and 5 of this Manual for additional information).

- Maintenance functions that are the responsibility of the Military Department can be performed by a variety of service providers, under funding arrangements with the Military Department. All such maintenance providers will sustain the maintenance levels agreed to and funded by the Military Department.

- The Military Department will notify the LRA of any intended change in an established initial maintenance level for a facility, or part thereof, or item of personal property, should such a change in maintenance level become necessary (e.g., closure or change in mission, no reuse apparent for the property, or expiration of the maintenance periods identified in Section 6.2.3). This notice will occur prior to the reduction in maintenance level, and the LRA will have a reasonable period of time, as determined by the Military Department, in which it can submit comments on the proposed reduction.

- Procedures and responsibilities for providing common services (fire protection, security, utilities, telephones, roads, snow/ice removal, etc.) must be discussed and resolved in the earliest stages of LRA consultation.

6.2 Establishing Initial Maintenance Levels in Consultation With the LRA

6.2.1 Determining initial maintenance levels

How are initial maintenance levels established?

How is the LRA involved?

The Military Department will meet with the LRA after the approval of the installation for closure or realignment (and again periodically during the redevelopment planning process, if necessary), to discuss the LRA's reuse plans and to work toward establishing initial and ongoing maintenance levels. Initial maintenance levels for all real property vacated as a result of BRAC will be at or above levels required to support the use of any such facilities or equipment for nonmilitary reuse purposes, but will not exceed the standard of maintenance in effect at the approval of the closure or realignment. Other criteria for establishing those levels include:

- Intended property reuse as identified in the redevelopment plan (as prepared according to the procedures described in Chapter 3).

- Projected date of property reuse as identified in the redevelopment plan or accompanying business plan.

- The cost of continued maintenance, including caretaker costs, when weighed against resource availability, as determined by the Military Department.

- The type(s) of maintenance and common services (roads, fire, security, utilities, etc.) required or requested.

- Property value (including replacement cost).

- Military Department obligations under Section 106 of the National Historic Preservation Act (for properties listed on or eligible for inclusion on the National Register of Historic Places), and other applicable statutes.

6.2.2 Maintenance levels at BRAC installations

The Military Departments use pre-established maintenance levels that generally exceed the minimum levels required for excess and surplus Federal property. These are based on reuse potential and the anticipated time until reuse, as well as a desire to support the local redevelopment of closing installations. Each Military Department will explain their maintenance levels (and how they are determined) to the LRA during the initial consultation. Initial maintenance levels will at a minimum ensure weather tightness, limit undue facility deterioration, and provide physical security.

The Military Departments have developed specific maintenance levels that consider several factors, including:

- Required operational status of the facility and the level of effort and scope of work necessary to sustain that status;
- Anticipated time until facility reuse (e.g., whether the facility should be "mothballed" or "pickled"); and
- Location-specific climatic conditions (e.g., air conditioning, dehumidification, and heat).

How long will the Services provide maintenance?

6.2.3 Maintenance periods

Where continuing maintenance would foster likely redevelopment, the Military Departments normally will sustain the initial level of maintenance or other levels that support the likely reuse for the later of:

- One year after operational closure of the base, or
- 180 days after the NEPA analysis and decision making for the relevant property (e.g., disposal ROD, post-FONSI disposal decision) has been approved by the Secretary of the Military Department,

unless reuse has already been achieved.

For such installations closed prior to the publication of the Department's Final Rule for Revitalizing Base Closure Communities (July 20, 1995) where maintenance is still ongoing, maintenance of property not in reuse will normally extend no longer than one year from the date of publication of the Rule. For installations affected by multiple rounds of BRAC, the above one-year/180-day rule will be in effect from the date of approval of the last round of BRAC that affected the installation.

Example timelines for initial maintenance levels are shown in Figure 6-1. Black bars in the figure indicate the durations for which post-closure initial maintenance levels will be sustained for the two cases shown. In Case 1, initial maintenance levels are sustained for a full year after closure because this period is longer than 180 days after disposal decisions. Case 2 shows a longer maintenance period because the maintenance levels are sustained for 180 days beyond approval of disposal decisions.

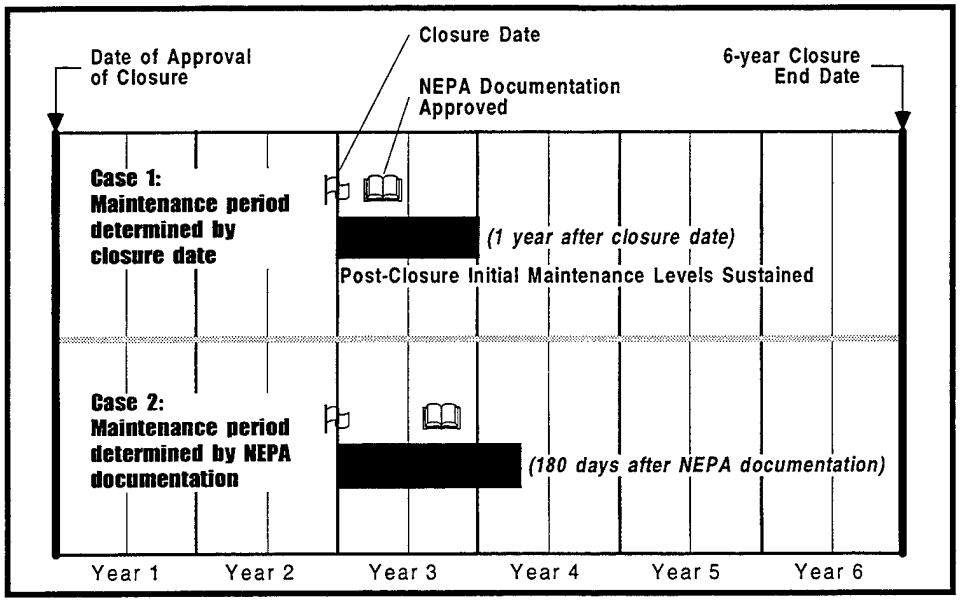


Figure 6-1. Example Timelines for Initial Maintenance Levels at BRAC Installations

The Military Department may extend the period for initial or adjusted maintenance levels for property still under its control, if the Secretary of the Military Department determines that the LRA is actively implementing a plan and such levels of maintenance are justified. Examples of active implementation include:

- Substantial portion(s) of the base have been leased to the LRA.
- A lease in furtherance of conveyance has been negotiated.
- The LRA or a local utility company has taken ownership of utility systems.

Periods of post-closure maintenance at levels to support likely reuse will in most cases significantly exceed the minimum periods required by BRAC legislation (Section 2902 of Title XXIX of NDAA 94, the Pryor Amendments).

Water supply, electrical power and sewage disposal facilities may have to be operated after mission departure at rates far below their designed capacity. Because of this, an engineering analysis should be performed to determine which structural and operating changes are necessary (e.g., valve closures in water supply systems or power shutoff in unused facilities) to ensure lawful and cost-effective operation.

All periods of initial maintenance will be terminated when an agreement for reuse of the property (i.e., interim lease or other transfer, lease in furtherance of conveyance, or deed) is executed. In the case of Federal Aagency transfers, the Military Department and the receiving Agency will coordinate the transition of maintenance responsibilities, but Federal Agencies will generally be expected to assume this responsibility as soon as the Military Department makes the property available for transfer.

6.2.4 Disagreements

Should the LRA disagree with the Military Department's determination of initial or subsequent maintenance level, every effort will be made to resolve that disagreement at the lowest possible level within the Military Department's chain of command. Final authority for resolving disagreements rests with the Secretary of the Military Department or the official to whom the Secretary delegates that authority.

6.3 Facility Maintenance and Common Services

Who provides maintenance and services?

6.3.1 Maintenance providers

Protection and maintenance of property can be performed by several different entities, depending on the particular phase of base closure and disposal (see Table 6-1). In general, funding for maintenance of property not in reuse will be provided by the Military Department; property that is being reused will be maintained at the expense of the user.

- **Pre-Closure.** Prior to operational closure, the Military Department will retain responsibility for protection and maintenance of the installation. However, property that is being reused under a lease will be maintained by the Lessee (typically the LRA; see also Chapter 5 of this Manual for more information on leasing). The departing mission will be required to place the facilities into the agreed-upon initial maintenance levels as they are vacated prior to operational closure. Pre-closure maintenance of vacated facilities may be provided through a caretaker contract or cooperative agreement (see definitions below).

- **Post-Closure, Pre-Disposal (initial maintenance levels).** Following operational closure, the active mission will no longer bear responsibility for property maintenance. It is to the Military Department's and the local community's benefit to establish operation and maintenance procedures for common services as early as possible but before operational closure. The Military Department will continue to fund initial maintenance levels after closure for the time periods identified in Section 6.2.3. Funding of protection and maintenance activities can occur through several mechanisms:

  — A **caretaker contract**, under which a military-procured contractor performs protection and maintenance.

  — A **cooperative agreement**, under which the LRA or another qualified community entity performs protection and maintenance caretaking on a non-profit, cost-reimbursement basis, under an agreement with the Military Department. Cooperative agreements may also be used in appropriate cases to provide for protection and maintenance of properties that will be disposed of at a realigning base.

  — A **support agreement** with another military organization.

  — A residual Government work force.

Protection and Maintenance Agent	Base Closure and Disposal Phase		
	Pre-Closure	Post-Closure, Pre-Disposal	Post-Disposal
Military Department		(Support Agreement**)	*Not Applicable*
Lessee	(Leased Property)	(Leased Property)	*Not Applicable*
LRA or Community	(Cooperative Agreement)	(Cooperative Agreement**)	*Not Applicable*
Caretaker Contractor	(Caretaker Contract)	(Caretaker Contract**)	*Not Applicable*
Transferee	*Not Applicable*	*Not Applicable*	(Deeded Property)

**Scope of work reduced when periods in Section 6.2.3 expire.

Table 6-1. Protection and Maintenance Agents at BRAC Installations

- **Post-closure, pre-disposal (minimum maintenance levels).** After expiration of the time periods identified in Section 6.2.3, the Military Department will normally reduce maintenance levels to the minimum level for surplus Government property required by 41 CFR § 101-47.402 and § 101-47.4913.

- **Leased property.** Protection and maintenance of property being reused under a lease will be the responsibility of the Lessee.

- **Post-disposal.** Once property has been disposed of, the Military Department will not provide funding for protection and maintenance. Protection and maintenance of leased or conveyed property will be the sole responsibility of the transferee.

6.3.2 Maintenance activities

Maintenance of real property, facilities, and equipment can entail a wide range of activities. Although specific maintenance activities will be determined by the Military Department in consultation with the LRA, such activities can include:

- Interior and exterior physical inspections of buildings, including building shells and exterior windows and doors, to verify security and structural soundness.

- Scheduled operational inspections and routine maintenance for utilities including heat, air conditioning, water supply and plumbing, electricity, sewage, gas, and fire protection systems.

- Maintenance and inspection of elevators and other installed mechanical equipment.

- Pest control, such as periodic termite inspections.
- Grounds maintenance, including grass mowing and fire breaks.

What activities aren't included in maintenance?

6.3.3 Activities not considered maintenance

Certain activities that may be desirable for reuse and redevelopment purposes are not considered normal maintenance responsibilities. For example:

- Building demolition.
- Asbestos abatement and lead-based paint removal beyond those actions required by law and regulation.
- Installation of facility-specific utilities or utility meters.
- Construction or modifications in order to meet Federal, State, or local building or utility infrastructure codes.

Property improvements or alterations that are not necessary to protect public health and safety will not be made as part of military-funded protection and maintenance.

6.3.4 Common services

Common services must also be arranged for the installation after mission departure, include the following:

- Road maintenance (snow/ice removal).
- Physical security (police).
- Utility services.
  - — Electricity
  - — Water/sewage
  - — Telephone
  - — Gas
- Fire/emergency services.

6.4 Equipment and Personal Property Maintenance

How are equipment and personal property maintained?

The Military Departments will generally follow a standard approach for establishing and maintaining minimum levels of maintenance for items of equipment and other personal property. This approach is based on the general practice described in Section 6.1. Some additional guidelines for personal property and equipment apply:

- Equipment and personal property will be transitioned to their initial maintenance levels as their mission use ceases or the active mission departs.
- Equipment and personal property will be physically secured, at the Military Department's option, in either a central location or in individual facilities.

Example: Initial Maintenance Levels

An installation in the Southwest has been identified for closure and a closure date determined. While facilities are occupied by active military units, they will maintain the buildings, but drawdown of base personnel will begin soon and will continue over a two-year period until all of the active mission has departed.

- Building 1 is a new, single-floor administrative building at a closing installation. During a building-by-building discussion of initial maintenance levels, the Military Department and the LRA estimate that the building should be converted to reuse within two years. The Military Department, in consultation with the LRA, sets the initial maintenance level of the building based on reuse and the location-specific climatic conditions (see Section 6.2.1). The building is then given a maintenance level (e.g., Level III) based on Military Department-specific guidelines. When the unit occupying the building departs, the building is converted to its assigned maintenance status and that status is maintained by the Military Department until closure. Because reuse is expected within a short timeframe, but not immediately, the building is maintained in an intermediate status. No heat is provided for the building because of the Southwestern climate. Provision of air conditioning to control humidity is considered, but is rejected because of naturally low humidity. The facility is inspected regularly and after special events such as severe thunderstorms, and repairs necessary to maintain the building in its initial maintenance level are performed. Building equipment is maintained through scheduled operational system checks and preventative maintenance inspections. The water is turned on monthly to toilets, urinals, faucets, fountains, etc., to keep them in working order. After closure the maintenance is transferred to the post-closure maintenance agent. In the case of Building 1, this is to the local community through a cooperative agreement. The post-closure maintenance agent continues to maintain the facility until it is leased to a local business. The Lessee then maintains the building as part of its lease.

- Building 15 is an old storage warehouse. The Military Department and the LRA discuss potential reuse, but cannot identify a probable one due to the poor condition and advanced age of the warehouse. The initial maintenance level is set to the lowest level, indicating no reuse identified. When the unit using the warehouse departs, the building is permanently closed. The windows and entrances are secured and unauthorized personnel and visitors are prevented from entering the facilities and grounds. All utilities are disconnected and properly terminated. The building is inspected annually and after severe storms, but only conditions adversely affecting public health, the environment, or safety will be addressed.

- Maintenance of installed equipment and related personal property will be at the initial levels for the associated real property, as set by the Military Department in consultation with the LRA. Duration of initial maintenance will be as specified in Section 6.2.3, after which time only physical security will be provided.

- Maintenance of non-installed equipment and non-related personal property is predicated on the LRA's ability to acquire control of these items independent of real property and is normally restricted to physical security.

- The Military Department will discontinue its responsibility for personal property maintenance upon reuse (e.g., when the personal property is included in interim leases or leases in furtherance of conveyance, is related to real property in deed transfers, or is transferred by bill of sale). Generally, this means the Military Department will maintain personal property for a period of no more than 60 days after the date on which the LRA (or other recipient) has been offered the opportunity to take possession of the property.

- The Military Department will notify the LRA of any intended change in an established maintenance level for equipment or personal property, should such a change become necessary (e.g., closure or change in mission, no reuse apparent, or expiration of maintenance periods in Section 6.2.3). This notice will occur prior to the reduction in maintenance level.

6.5 UTILITY SYSTEM MAINTENANCE, OPERATION, AND DISPOSAL

What is DoD's policy for utility systems?

6.5.1 DoD policy guidance

- DoD and the Military Departments will encourage the LRA to consider and address the operation, maintenance, and conveyance of utilities or utilities service contracts in its redevelopment plan. Utilities include:
  - — Water/sewage.
  - — Storm water.
  - — Electricity.
  - — Energy plants (heating/cooling).
  - — Waste collection and recycling.
  - — Gas (natural and liquid propane).
  - — Telecommunications lines (e.g., telephone and cable TV).

- The Military Department will encourage the LRA to find a mechanism (e.g., lease or license) and willing recipient in order to transfer a closing installation's utility systems to local entities (public or private) before the date of operational closure (or as soon as practicable after closure), in order to provide continuity of service.

- At realigning installations or when property is being retained by a Military Department, decisions about the transfer and disposal of utility systems are at the discretion of the Military Department and should be based upon the individual facts and circumstances.

When should utility systems be transferred?

- It is DoD's view that the community is best served when the Military Department transfers utility systems to local control (the LRA or other private or public concern) early in the closure process. For example, the sooner the LRA (or other private concern) accepts transfer of the utility systems, the sooner it can receive assistance (e.g., Economic Development Administration [EDA] grants) necessary to upgrade or rework systems to meet its specific requirements. Moreover, if the LRA or local utility company operate the utility systems, prospective tenants will have more confidence that they will have continued utility services once the base is closed.

- Generally, existing military base utility systems are operational. All utility systems will be transferred in an "as is" condition and will not be improved before transfer.

- The Military Department should offer technical assistance to the LRA throughout the process of utility transfer and consult with the LRA on options and negotiations concerning utilities.

- Military Departments will not make improvements or upgrades to utility systems to comply with local code or for other reasons. Some early transfer and EDA grants are available for improvements and upgrades.

- Operation of utility systems by the Military Department at a closed installation will be at the minimum level required to sustain caretaker operations. Operation to support reuse in excess of that required for caretaker operations will be the responsibility of the LRA.

6.5.2 Time periods for military operation of utilities

How long will the Services operate utility systems?

The Military Departments may operate the utility systems for the later of:

- One year after operational closure of the base, or

- 180 days after the disposal decisions for the relevant property by the Secretary of the Military Department,

unless reuse has already been achieved.

For installations closed prior to the publication of the Department's Final Rule on Revitalizing Base Closure Communities (July 20, 1995), where utility systems are still being operated, utility service may normally extend no longer than one year from the date of publication of the Rule. For installations affected by multiple rounds of BRAC, the above one-year/180-day rule will be in effect from the date of approval of the last round of BRAC that affected the installation.

The Military Department may extend the period for providing utility service if the Secretary of the Military Department determines that the LRA is actively implementing a redevelopment plan that will achieve necessary transfer of the utility systems.

6.5.3 Disposal authorities for utility systems

How are utility systems transferred?

It is DoD's policy to dispose of utility systems as early in the base closure process as possible. The Military Department will negotiate transfers of utility systems on a case-by-case basis. The installation should work with the local environmental authorities to convey existing environmental permits at the same time the utility is conveyed, regardless of the means of conveyance.

Utility systems may be transferred by lease, license, bill of sale or by deed, or by a combination of these. If by bill of sale, appropriate easements or franchises must be provided.

Several authorities exist for the conveyance of utility systems, including:

- **Power transmission lines** (including electric and gas lines). Sale at fair market value under 50 U.S.C. App. § 1622(d), 41 CFR § 101-47.308-1.

- **Water and sewer systems.** Public benefit conveyances for public health purposes under 40 U.S.C. § 484(k)(1), 41 CFR § 101-47.308-4.

- **Advertised and negotiated sales** under 40 U.S.C. § 484(k), 41 CFR § 101-47.304.

- **Economic Development Conveyance.**

In exercising the above options, the Military Department's primary goal is to foster economic development and ensure that the facilities can be serviced by utilities through local utility providers. Therefore the qualifications and financial capability of the provider are of the greatest importance.

Examples of Utility System Conveyances

Economic Development Conveyance (Sacramento Army Depot)

The Corps of Engineers estimated that utility infrastructure requirements at Sacramento Army Depot would total $22 million. Part of this estimate was based on a Pacific Gas and Electric (PG&E) electrical engineering study funded by the Army. The local utility providers, the Sacramento Municipal Utility District (SMUD) and Pacific Bell, were not interested in the electrical and phone systems. The City of Sacramento will receive the utilities as part of the Economic Development Conveyance for the Depot. Initially, the City will maintain and operate the utilities as a private developer for the entire parcel, later privatizing the systems. A lessee will use $17 million in City loans to upgrade the utilities and buildings. These costs will offset the fair market value rent due the Army. Tenant rates will initially include an estimated pro-rata utility charge.

Public Benefit Conveyance (Castle Air Force Base)

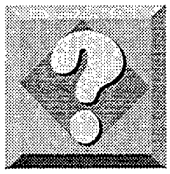
The City of Atwater requested a public benefit conveyance of the base water system with the Department of Health and Human Services (HHS) as the sponsoring Agency. In a supplemental Disposal Record of Decision (ROD), the Air Force assigned the water and wastewater systems to HHS upon a formal request for conveyance of these systems for use in the protection of public health. This request for a public benefit conveyance was authorized under the authority of 40 U.S.C. § 484(k)(1)(B).

Public Sale (Mather Air Force Base)

At Mather AFB a supplemental Disposal ROD offered the gas, electric, and telephone lines to Sacramento County under a negotiated sale or at public auction. When the County declined to buy these systems, the Air Force auctioned them. Two bids were received for the electric system, the larger of which was an offer of $10,000 from SMUD. SMUD estimated that it would take $3 million to bring the electric system at Mather up to code. There was one bid of $1,467 for the gas system and one bid of $2,151 for the telephone system.

7
Economic Development Conveyances

Frequently Asked Questions About Economic Development Conveyances	
➢ *What is an Economic Development Conveyance (EDC)?*	Section 7.1
➢ *Who is eligible to apply for an EDC?*	Section 7.1
➢ *What must an EDC application contain?*	Section 7.2
➢ *What criteria are used in evaluating an EDC application?*	Section 7.3
➢ *How are the terms and conditions for payment determined?*	Section 7.4
➢ *What justification is necessary to receive a discounted EDC?*	Section 7.4
➢ *What financing options are available for an EDC?*	Section 7.4
➢ *Are there examples of successful uses of an EDC?*	Section 7.5



7.1 INTRODUCTION

7.1.1 A new authority: an additional tool for communities

Following the July 1993 announcement of the President's program to revitalize base closure communities, Congress created a new property conveyance authority, designed specifically to ease the economic hardship caused by base closures. Section 2903 of Title XXIX gives the Department of Defense the authority to transfer property to Local Redevelopment Authorities, for consideration at or below estimated fair market value, to spur economic redevelopment and job creation. This tool is referred to as the "Economic Development Conveyance."

7.1.2 Philosophy behind an EDC—Keys to success

Property at a closing military installation can be a valuable resource to a community's future economic development. While some bases in their current condition represent a valuable and marketable asset today, many bases will require substantial infrastructure investment to be reused in the private real estate market. With appropriate investment of time and money, they can become a valuable asset. The EDC was created to facilitate property transfer for community economic recovery while obtaining fair and reasonable compensation for the Federal Government.

Economic Development Conveyances
GUIDING PRINCIPLES FOR THE MILITARY DEPARTMENTS

- **Job creation and rapid property transfers are the main goals.**
- Work with the community to reach these common goals.
- Remember that quicker property transfers will benefit the Government through savings of protection and maintenance expenses. Waiting for the highest theoretical price for property may result in lower present value, or nothing at all.
- Focus on reaching agreement on **realistic** market trends. Due to the wide range of conditions existing in affected communities, appropriate market trends could result in estimates of fair market value ranging from zero to hundreds of millions of dollars.
- Encourage the community to take as much property as can be justified as part of an EDC. The EDC parcel should include a variety of properties, some of which may not be of immediate value without improvement, and some of which must be used to leverage financing for needed improvements.
- Look at community investment and risk. The more the community is investing in the overall development, the more they are contributing to the overall value. The less the community is investing, the higher the risk for the Federal Government and the more the Government is contributing to the overall value.
- Look at the financial resources of the EDC applicant. Be wary of undercapitalized entities, because without proper capital, the development may not be able to support the necessary investments to create and maintain job generation.
- Remember that the EDC is a new tool, specifically designed to allow for flexibility. There is no single way to structure an EDC or a cookie-cutter answer that applies in all cases. Keep in mind you are not bound by typical GSA rules for valuation or payment terms and conditions. This new authority *should* be used in creative and innovative ways!

7.1.3 Definition of an EDC

What is an EDC?

An EDC was created as a new method for transferring real property to an LRA to help spur local economic development and job creation. An EDC may be with or without initial payment at time of transfer and may be at or below the estimated fair market value of the property. Terms and conditions of payment to the Department of Defense are fully negotiable. These negotiations should be fair and reasonable to both parties and strike a balance between compensation to the Federal taxpayer and the need for the EDC to spur redevelopment and job creation.

7.1.4 Appropriate uses of an EDC

When should an EDC be used?

The EDC should be used when an LRA wants to obtain property for job-generating purposes, and the uses proposed by the LRA's redevelopment plan cannot be accomplished under the other Federal property transfer authorities. While the primary use of the EDC must be for long-term job creation and

economic redevelopment, the inclusion of other properties that facilitate this goal (e.g., housing for factory workers) may be acceptable.

Other such Federal property transfer authorities include the Federal Property and Administrative Services Act (FPASA) of 1949 (40 U.S.C. § 471 *et seq.*) and public airport conveyance authorities (49 U.S.C. §§ 47151–47153) that allow for transfers of property to units of government or non-profit institutions that maintain the use of property for various public purposes including, but not limited to, parks, public health, education, aviation, historic monuments, and prisons. DoD will not supplant these existing public benefit transfer authorities with EDCs and will work to ensure transfers of property under public benefit transfers are in accordance with the sponsoring Federal Agency regulations. The FPASA also allows for negotiated sales at fair market value to eligible public entities for public purposes or direct sales through a public bid process. (See Federal Property Management Regulations and sponsoring Agency regulations in Appendix E.)

Utility distribution systems and transportation networks form an integral part of infrastructure, which will often serve new development in the creation of jobs. Where other disposal authorities are not appropriate, these systems may be considered for inclusion in an EDC application.

7.1.5 Eligible EDC recipients

Who is eligible to apply for an EDC?

An LRA officially recognized by the Secretary of Defense through OEA is the only entity eligible to receive property under an EDC. The LRA may be a State or local government or an authority or instrumentality established by a State or local government that is responsible for directing implementation of the redevelopment plan. It should have broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over the property. Consequently, applications submitted by entities other than LRAs will not be considered.

7.2 Application Procedures

An application must be prepared by the LRA as its formal request for property and to assist the Military Department in satisfying its statutory obligations under Title XXIX. Although it is the LRA's responsibility to prepare a complete application to justify both the use of the EDC as the transfer method and the specific terms they offer, the Military Department should assist them with developing the application. A great deal of the information necessary for an application is readily available to the LRA through the community planning process and supported through existing DoD technical and financial resources. To the extent information that would assist in redevelopment planning is available from existing studies, it should be made available. In general, the process should be a cooperative effort in furtherance of the goal of the Military Department to rapidly transfer property and the desire of the LRA to receive the property for long-term job creation.

Beyond the standard planning information, LRAs should incorporate a business/operational plan into their overall base reuse planning. This effort will assist LRAs in identifying necessary implementation resources and establishing a community-based proposal for the Military Department's consideration. This

business/operational plan will form the basis for community negotiations on the purchase price for the property. Accordingly, the Military Departments should share market trends underpinning their appraisal as soon as they are available and the LRA should strive to include this data in its analysis.

Before an application is prepared, the LRA should meet with the Military Department, the BTC, and the OEA Project Manager in a pre-application workshop to discuss: property acquisition alternatives; the requirements of an EDC application; the timetable for Military Department actions; and the LRA's timetable and needs to ensure that an adequate planning effort is undertaken.

When should an application be made?

7.2.1 Timing of the EDC application

Before an EDC application can be submitted, the LRA must adopt a redevelopment plan (see Section 3.4.2, Contents of the redevelopment plan) that will be included in its submission to HUD as well as provided to the Military Department for consideration in its review under NEPA. The Military Department responsible for the property shall then establish a reasonable timeframe for submission of an EDC application. The timeframe should not extend past one year from the submission of the redevelopment plan or the closure date for the installation, whichever is earlier. These timeframes should be communicated to the LRA in writing. If an application is not made within the timeframe established by the Military Department or the LRA no longer desires to apply for an EDC, disposal may proceed under alternative methods including a negotiated or public sale of the property. The LRA always has the option of acquiring property under the FPASA, and thus it may not be necessary to complete an application for an EDC within the stated timetables.

How much property should be included in an EDC application?

7.2.2 Amount of property included in an EDC

The EDC should be used by LRAs to obtain large parcels of the base rather than individual buildings. The income received from some of the higher-value property should be used to offset the maintenance and marketing costs of the less desirable parcels. While the LRA is not permitted to select only high-value facilities for the EDC parcel, they will not be required to take more property than could be supported by the long-term redevelopment efforts. Generally, there should be only one EDC application per installation, so the size of the EDC parcel should be carefully selected. At the LRA's discretion, personal property may be requested as soon as it is available for disposal through a separate EDC application.

7.2.3 Contents of the application

What must an EDC application contain?

The application should explain why an EDC is necessary for economic redevelopment and job creation. The application does not need to be overly complex, nor does it require a great deal of new information. In most cases the information should have been gathered as part of the overall planning process. ***Since this process was designed as a flexible tool to meet individual facts and circumstances, there is no requirement that all applications look the same. The Military Departments and the community should work together to agree on the types of information needed to properly evaluate an application.***

The application should contain the following elements:

- A copy of the adopted redevelopment plan.
- A project narrative including the following:
  - — A general description of property requested.
  - — A description of the intended uses.
  - — A description of the economic impact of closure on the local communities.
  - — A description of the financial condition of the community and the prospects for redevelopment of the property.
  - — A statement of how the EDC is consistent with the overall Redevelopment Plan.
- A job generation schedule, including a description of how the EDC will contribute to short- and long-term job creation and economic redevelopment of the base and community. The projected number and type of new jobs it will assist in creating should be estimated.
- A business/operational plan for the EDC parcel. This plan presents a blueprint for LRA implementation of the redevelopment plan, including the financing, management, and municipal service requirements for reuse. The overall analysis will depict how the recognized obligations will be met along with the following:
  - — A development timetable, phasing schedule, and cash-flow analysis.
  - — A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over the projected development period, the proposed consideration and payment schedule to the Department of Defense, and the estimated fair market value of the property.
    - ♦ A market analysis should explore the current availability and absorption of the type of property proposed in the EDC parcel and a projection of future demand for similar property. To ensure some connectivity between the business plan and the Military Department's appraisal efforts, the LRA's business planning activity should be scheduled so that it may incorporate market trend data from the appraisal.
    - ♦ See Table 7-1 for a potential format for a project pro-forma as a way of addressing this requirement. In this instance, the pro-forma reflects a predominately commercial development. Remember that each application is likely to be different and may not need to go into the same detail as the model provided.

— A cost estimate and justification for infrastructure and other investments needed for the development of the EDC parcel. For example:

- The estimated costs for improvements and a description of the need for that level of investment should be offered. This could include a description of the alternatives explored and the cost/benefit analysis of that type of investment. For example, if the LRA plans on creating a new park as a centerpiece for an office complex, contrast the costs and benefits of creating a $1 million park versus a $10 million park.

- A description of the income that may be generated from that investment. For example, if $10 million was needed to expand the water and sewer system, estimate the income received from the new customers at the base that could pay for a portion of the new investment.

Developer Spreadsheet
Pre-tax Cash Flow Analysis

	Symbols	YR1	YR2	YR3	YR4	YR5	YR.	YR.	YR.	YR.	YR15
REVENUES + Gross Rent + Other Income + Tenant Contribution	 + G. RENT + O. INCOME + T. CONTB.										
= Gross Income or Gross Rent – Vacancy Contingency ____% Vac. Rate x Gross Income	= G. INCOME – VAC										
= Effective Gross Rent (or Gross Collections) Operating Expenses Insurance ($___p.s.f.) Maintenance & Structural Repairs ($___p.s.f.) Management Fees Property Taxes ($___p.s.f.) Misc. Operating Expenses Reserves	= EGR										
– Total Operating Expenses	– OPR. EXP.										
= Net Operating Income – Debt Service (Annual Principal & Interest) – Debt Service	= NOI – D/S – D/S										
= Cash Flow Available for Distribution	= CF										
CASH-ON-CASH ROI Cash Flow Available for Distribution Original Equity Investment	 CF EQ	%	%	%	%	%	%	%	%	%	%

Table 7-1. Pro-Forma Developer Speadsheet for Cash Flow Analysis

— Local investment and proposed financing strategies for the development.

♦ This is probably the most important part of the application because it provides the basis for the Military Department's determination as to the project's feasibility. The LRA should describe how it will finance the project; e.g., through taxes, bond financing or partnership with private sector interests. This may include a statement from bond counsel or potential financial investors of their interest in assisting the overall development. In instances where the business plan analysis results in marginal values, detailed information on the source of any public or third party funds should be provided.

Bond Financing

- ***Ft. Devens, Mass.***—In January of 1994, the State of Massachusetts passed landmark legislation creating the Devens Enterprise Commission to guide the redevelopment of the former Ft. Devens. With this legislation, the State provided $200 million in bonding capacity for the Massachusetts Government Land Bank to use to fund the redevelopment efforts.
- ***NAS Glenview, Ill.***—Even before the base was closed, the Village of Glenview obtained the authority to issue $60 million in bonds for the specific purpose of making infrastructure improvements to NAS Glenview. The repayment of the bonds will be derived from the increase in property taxes the Village will receive once the base is transferred and placed on the tax rolls.

- A statement describing why other Federal property transfer authorities—such as public or negotiated sales and public benefit transfers—cannot be used to accomplish the economic development and job creation goals.

- A statement including the amount and form of the proposed discounted consideration, a payment schedule, the general terms and conditions for the conveyance, and the projected date of conveyance. If a transfer is requested for less than the community's estimated value, an analysis justifying the discount shall be provided.

- A statement of the LRA's legal authority to acquire and dispose of the property.

Additional information may be requested by the Military Departments to allow for a better evaluation of the application.

7.2.4 Valuation

A key to a successful EDC is a proper and *realistic* valuation of the property. This must be done in a cooperative fashion, with both the LRA and the Military Department using realistic market trends that are right for the local marketplace.

Title XXIX requires that the Secretary of the Military Departments determine the estimated fair market value of the property before conveying property through

an EDC. The estimated fair market value should be expressed as a range of values based on the intended land uses outlined in the redevelopment plan.

The Military Department should begin its appraisal as soon as possible following submission of the final redevelopment plan, ensuring the effort is underway within six months from the final plan submission. A copy of the appraisal instructions or scope of work shall be provided to the LRA at the earliest possible time. Once the appraisal is underway, market trends shall be provided iteratively to ensure the community's analysis benefits from the effort. To ensure some connectivity between the business plan and appraisal efforts, OEA shall inform the Military Department when it has approved community planning assistance for a business plan. Similarly, LRA business planning activity should be scheduled so that it may incorporate market trend data from the appraisal in its analysis.

- **Market trends** — Market trends provide a linkage between the community's business plan and Military Department's appraisal. As such, both efforts should strive for the inclusion of similar data in their respective analyses.

  When designing specific market trends, the following factors should be considered:

  — Escalation and market absorption rates for the different types of land use in the local redevelopment plan

  — Base rental/sale income at the base year for types and classes of property and a rate of inflation

  — Cost of infrastructure improvements needed to meet State and local codes and meet market demands to arrive at the target rent/sale price

  — Maintenance costs before sale/lease

  — Applicable discount and capitalization rates

  — Developer's profits

- In most cases, because of the lack of comparable sales for properties the size and complexity of EDC transactions and the physical obsolescence of many military buildings, a standard real estate appraisal using the comparable or cost approach to value should not be used. The income approach to valuation will probably be the preferred approach. The elements of the income approach, projecting net operating income based on market trends and selecting a capitalization rate, can be used as part of the process in determining value for an EDC, and will normally be a central element in the business/operational plan. Fair market value should be estimated in terms of its present value, not its value after development. Therefore, the valuation process should identify current and projected market rents for the uses defined in the Redevelopment Plan or create rental income trends to be used in determining the estimated fair market value. The capitalization rate chosen should also be a function of rates of return in the present-day marketplace

adjusted for risk. The estimation of fair market value then becomes a function of the economic value, derived from the projected net operating income and the capitalization rate using present-day market and absorption trends. The estimated fair market value then is the economic value minus the cost to cure the physical and infrastructure obsolescence of the base to make the space and land usable in present-day market conditions.

Example: Income Approach to Valuation of Property

GROSS ANNUAL REVENUE		
Gross Building Area		600,000 sq. ft.
Net Leasable Area	600,000 sq. ft. × 85% =	510,000 sq. ft.
Annual Rent/Sq. Ft.		$7.00
Annual Income at 100% Occupancy		$3,570,000
Vacancy Factor (10%)		–357,000
Gross Annual Revenue		**$3,213,000**
Total Operating Expenses		–1,120,000
Net Operating Income		**$2,093,000**
ECONOMIC VALUE		
Capitalization Rate		15%
Net Operating Income		$2,093,000
Economic Value		**$13,953,333**
CAPITAL INVESTMENTS (cost of cure)		
Building Renovation (@ $9.00/sq. ft.)		$5,400,000
Demolition		600,000
Infrastructure Repair/Replacement		6,200,000
Total Capital Investment		**$12,200,000**
ESTIMATED FAIR MARKET VALUE		
Economic Value		$13,953,333
Total Capital Investment		–12,200,000
Estimated Fair Market Value		**$1,753,333**

7.3 Application Review and Approval

7.3.1 Authority to approve an application

Who will approve or deny an EDC application?

After receipt of an application for an EDC, the Secretary of the Military Department will determine whether an EDC is consistent with the criteria stated in the regulation and is appropriate to spur economic redevelopment and job creation. The terms and conditions proposed will be examined to determine if the offer is fair and reasonable. The Military Department may also consider information independent of the application, such as views of other Federal Agencies, appraisals, caretaker costs, and other relevant information.

Upon receipt of an application, the Secretary should establish an estimated time period within which the application will be reviewed and inform the LRA of the time period.

7.3.2 Criteria used to evaluate an application

What criteria are used in evaluating an EDC application?

The following criteria and factors will be used, as appropriate, to evaluate the proposed terms and conditions of the EDC, including price, time of payment, and other relevant methods of compensation to the Federal Government. *These factors are not a checklist and therefore there is no requirement that all elements be met. Instead, these factors are meant to serve as guidance for decision makers.*

- Adverse economic impact of closure on the region and potential for recovery after an EDC.
  - — The greater the impact of closure, the greater the need for assistance.
- Extent of short- and long-term job generation.
  - — An EDC might create 1,000 construction jobs (short-term) and 3,000 permanent jobs in the community. An EDC that only produces short-term job creation is not acceptable.
- Consistency with the overall redevelopment plan.
- Financial feasibility of the development, including market analysis and the need and extent of proposed infrastructure improvements.
- Extent of State and local investment and level of risk incurred, as well as the ability of the LRA to implement the plan.
  - — The more the community is investing in the overall development, the more they are contributing to the overall value. The increased risk by the community should be viewed favorably.
  - — Approved zoning demonstrates an important step toward successful implementation of the plan and should be viewed favorably.
- Economic benefit to the Federal Government, including protection and maintenance cost savings and anticipated consideration from the transaction.
  - — Saving of protection and maintenance expenses can be more valuable to the Military Department than a (hypothetical) high sales price.
- Incorporation of other Federal Agency interests and concerns, and applicability of and conflicts with other Federal surplus property disposal authorities.
- Relationship to the Military Department disposal plan for the installation.
  - — If the LRA is not requesting the entire base through an EDC and/or public benefit transfers, the Military Department should explore its ability to dispose of the remaining parcels.
- Compliance with applicable Federal, State, and local laws and regulations.

7.3.3 Approach for application review

What will be the Service's approach in reviewing the application?

- The LRA's application will be the starting point for review of the proposed EDC. However, the Military Departments and the LRA are encouraged to work together before an application is submitted in order to ensure a quick review and approval process. This review and approval process should be fairly simple if both parties are open throughout the negotiations.

- The Military Department may request additional information from the LRA and may use additional information. Any additional information used in evaluating the application will be shared with the LRA unless doing so would compromise national security.

- The Military Department should review information contained in the application and ask the LRA for appropriate verification if needed for proper evaluation.

- The Military Department will evaluate the proposed terms and conditions of the EDC, including price, time of payment, and type of financing. If the proposal is not deemed to be acceptable, the Military Department should propose options for the LRA to consider.

In the event that an application is not approved and negotiations on an acceptable application are not concluded, the Secretary of the Military Department shall state the reasons for disapproval in writing.

An approved EDC application will be included in leasing documentation in the event that the LRA will obtain a lease in furtherance of conveyance (see Chapter 5, Leasing for Reuse).

7.4 CONSIDERATION

7.4.1 Guidelines for determining terms and conditions

How are the terms and conditions for payment considered?

In negotiating the terms and conditions of consideration with the LRA, the Secretary of the Military Department must determine that a fair and reasonable compensation to the Federal Government will be realized from the EDC. The individual circumstances of each community and each base mean that the amount and type of consideration may vary from base to base. The regulations implementing EDCs give great flexibility to the Military Department to negotiate with the LRA and arrive at an appropriate arrangement. A base's value may be high or low, depending on its particular circumstances. The range of the estimated present fair market value may be broad or narrow. The Department of Defense is required by Title XXIX of the National Defense Authorization Act for FY 1994 to obtain consideration within the estimated range of present fair market value or to justify why such consideration was not realized.

As stated above, the EDC application must propose general terms and conditions of the conveyance, as well as the amount and type of the consideration, a payment schedule, and projected date of conveyance. After reviewing the application, the Military Department has authority to enter into one of two types of agreements:

- **Consideration within the estimated range of present fair market value, as determined by the Secretary of the Military Department.** The Military Department can be flexible about the terms and conditions of payment, and can provide financing on the property. The payment can be in cash or in kind, and can be paid at time of transfer or at a time in the future. The Military Departments have the flexibility to enter into agreements that specify the form, amount and timing of consideration and ensure that consideration is within the estimated range of fair market value at the time of application. Such methods of payment could include: participation in the gross or net cash flow, deferred or triggered payments, mortgages, or other financing arrangements. For examples of financing options, see Section 7.4.3.

- **Consideration below the estimated range of fair market value, where proper justification is provided.** If the Secretary of the Military Department finds a discount necessary to foster local economic redevelopment and job creation, the amount of consideration can be below the estimated range of fair market value. Again, the terms and conditions of payment may be flexible to accommodate reasonable redevelopment requirements and will be negotiated between the Military Department and the LRA.

The terms and conditions should recognize the time value of money, and should offer incentives for early payment. If the consideration calls for payment at some time in the future and accrual and payment of interest is not included in the terms, it will be considered a discounted conveyance and proper justification must be given.

7.4.2 Justification for discount

What justification is necessary to receive a discounted EDC?

- Where property is transferred under an EDC at an amount less than the estimated range of fair market value, the Military Department shall prepare a written explanation of why the consideration was less than the estimated range of present fair market value.

- The LRA is given an opportunity to make its case for a discount in its application. The most important consideration for a discount from estimated fair market value is **job creation**: an LRA must demonstrate that the discount is needed to spur job creation. The LRA must show that it will immediately put the property to productive use and, as a result, cannot afford to pay the same price as a speculator would who would hold the property until the market demand increased.

- Proper justification shall be based upon the findings in the business/operational plan contained in the EDC application. Development economics, including absorption schedules and legitimate infrastructure costs, would provide a basis for such a discount by demonstrating that without such discount, the development would not occur at this time. **An inability to pay at time of conveyance or to obtain financing would not be a proper justification since payment can be deferred and terms and conditions can be negotiated.**

7.4.3 Rural bases

Any EDC approved by the Secretary of the Military Department for a base that is not within a Metropolitan Statistical Area (MSA, as defined by the Office of Management and Budget) shall be conveyed at no cost if the Secretary concerned determines that the base closure will have a *substantial adverse impact* on the economy of the communities in the vicinity of the installation and on the prospect for economic recovery. An LRA may be able to reduce the information requirements for its rural application following consultation with the Military Department. At a minimum, such an application must still include a job generation schedule and a limited business/operational plan. In bases located outside an MSA:

- A closure will be determined to have a *substantial adverse impact* on the economy of the communities in the vicinity of the installation if OEA has made a determination under 10 U.S.C. 2391 that the closure is likely to have a direct and significant adverse consequence on the community. The OEA Project Manager can provide information about whether such a determination has been made. Absent an OEA determination, a community will not be eligible for a rural, no-cost EDC.

- The Military Department should work closely with the LRA to learn of the local conditions affecting reuse and identify local economic indicators that would substantiate a finding that the base closure will have a "substantial adverse impact on the prospect of economic recovery." The LRA will provide such information in its application to assist the Military Department with its determination.

7.4.4 Financing

What financing options are available for an EDC?

The Military Department may negotiate any appropriate mechanism with the LRA that provides fair and reasonable compensation to the Federal Government. The Secretary of the Military Department will review the compensation arrangement to ensure that there is a reasonable prospect of payment.

CASH PAYMENT AT TIME OF TRANSFER

Cash payment at the time of transfer will generally happen for one of the following reasons:

— The LRA finds a major or single user willing to make an initial cash payment to the LRA.

— The LRA has a source of dollars with no repayment or with payment terms more favorable to the project than the terms of the Military Department.

— There is the opportunity for significant up-side potential in the redevelopment of the facility.

DEFERRED PAYMENT

— **Note.** Unless the property is being transferred at no cost or for a cash payment at the time of transfer, there will be a Note between the Military Department and the LRA. A Note is a promise to pay, at a future date, a specific amount with specific terms. For example, a Note between a

Military Department and the LRA could be for a purchase price of $4 million for the property with no payment due or interest accruing until the fifth year after the sale, at which time the loan for the purchase price would begin to amortize over a 20-year term at seven percent interest per annum. The loan could be structured to require payment on a regular schedule for the next 10 years, with a balloon payment at the end of the term for the remaining unpaid balance of the loan.

The terms of the Note are negotiated between the parties based primarily on the economics of the transaction and the capacity of the buyer to pay the seller from project cash flow.

- **Deferred payment (in cash or in kind).** A deferred payment is a future payment that is normally defined in a Note between the LRA and the Military Department. The Note will normally be secured by a mortgage, deed of trust, or other acceptable security arrangement on the property being financed. The two examples of completed EDCs described in Section 7.5 demonstrate the range of possible deferred-payment arrangements. At Norton Air Force Base, the payment is dependent on gross income or sale, with payment terms specified for specific parcels.

Example: Balloon Note

Purchase Price	$4,000,000
Payments, Years 1–5	None
Payments, Years 6–15	$377,571 yearly
Balloon payment due Year 15	2,651,905
Payment based upon 20-year amortization, 7% note	$377,571
Principal reduction, Years 1–10	$1,348,095
Remaining balance	*$2,651,905*

— **Subordinated notes.** Holders of subordinated notes are in a junior position to another lender with regard to the assets being financed. Subordinated notes are also known as Second Mortgages and Junior Lienholders. Being in a subordinated position means that in the event that a foreclosure occurs, the junior lienholder will be paid only the amount available after the senior lienholder has been paid. Payment of a note or mortgage can also be subordinated and the position of the lien can be moved to encourage additional investment. This is often termed a "soft" second mortgage and could be used as an effective way to encourage private investment to make the necessary infrastructure investments needed at many closing bases. The Military Departments should be willing to accept a subordinated position if doing so will help redevelopment.

PARTICIPATION IN THE CASH FLOW AND PARTICIPATION IN RESIDUALS AND BENEFITS OF SYNDICATION

— **Partnership Model.** When the Military Department receives its payment from cash flow, the Department functions like a partner with the LRA in the ownership of the property. Like any owner of real estate, the Department would receive its return from cash flow. No specific payment or return would be guaranteed to the Department. This is the highest-risk involvement for the Department, but it also has the highest potential for return because the Department shares in the up-side potential of the development.

— **Net Profit Model.** When the Military Department receives payment from net profits, it receives payment from the residuals of sales or refinancing. The net profits of sales or refinance are typically called "net proceeds." Net proceeds are defined as all proceeds from a sale less repayment of debt not being assumed by the buyer; normal costs associated with sale; and pre-agreed-upon expenses or returns to the LRA. In terms of refinancing, net proceeds represent the cash received from the issuance of new debt and the payment of debt being refinanced.

— **Syndication Model.** Depending on the real estate market, current tax laws, and Federal tax credits, the LRA may, at a point after the conveyance, create a Limited Partnership for the purpose of generating cash for the development with no financial repayment schedule. A Limited Partnership is a partnership that consists of a General Partner—usually the developer, and in this case, the LRA—and Limited Partners who invest for return (cash flow) and tax benefits. The partnership is managed by the General Partners, and the Limited Partners are passive investors.

- An LRA with a base that contains many old certified historic buildings may consider the formation of or transfer to a series of individual Limited Partnerships as a means of generating cash for investment in the renovation or as repayment to the Military Department.

7.5 CASE STUDIES OF TWO SUCCESSFUL EDCS

The following are case studies of how two successful EDCs were completed. They are provided by way of example, and in no way should they be viewed as the only appropriate terms for an EDC. Remember, there is no single way to structure an EDC or a cookie-cutter answer that applies in all cases.

Are there examples of successful uses of an EDC?

7.5.1 Sacramento Army Depot

Sacramento Army Depot (SAAD) was announced for closure in 1991. Initially, the reuse planning process was leading toward a reuse scenario in which a majority of the property would be retained by the Department of Defense or conveyed at no cost for public benefit purposes. These uses would bring no revenue to the Army and in most cases would not contribute new jobs to the community. In November 1994 the City of Sacramento, Calif., the recognized LRA, submitted to the Army an application for an EDC of 400 acres of SAAD, following guidelines from the October 1994 final rule. Under the EDC, the City

will lease 1.8 million square feet of the site to Packard Bell Electronics, which is projected to employ approximately 3,000 persons with an annual payroll of $60–80 million. The secondary impact of Packard Bell's activities is expected to result in an additional 2,000–2,500 jobs.

The purchase price of $5 million is based on estimates of the fair market value of the property, which ranged from $4.2 million to $6.2 million. In addition to the payment to the Army, the City will contribute $1.4 million for on-site infrastructure upgrades and $2.4 million for off-site improvements. Based on terms of a lease-purchase agreement negotiated between the LRA and Packard Bell Electronics, $17 million in building improvements will be financed by loans guaranteed by the City of Sacramento, with Packard Bell responsible for repaying those loans over the initial years of site occupancy. Packard Bell will pay a rental rate above the estimated fair market value, because the State of California passed special legislation allowing SAAD tenants to receive State tax credits that offset the higher occupancy costs. At Year 10, Packard Bell has an option to buy the property they are occupying, which has now increased in value because of improvement loans guaranteed by the LRA. The LRA has based their $6.8 million second trust deed offer at Year 10 on the revenue expected from Packard Bell's purchase options.

Terms of the Sacramento Army Depot EDC

Price:	$5 million
Discount:	3% per annum financing
Financing:	
• *Duration:*	10 years
• *Principal Payments:*	Lump-sum payment of $6.8 million in Year 10
• *Security:*	
–*Subordination:*	Army holds second-trust deed
–*Partial Releases:*	Second trust may be paid early if tenant exercises purchase option before Year 10

Utility systems and personal property are being conveyed to the City along with the real property. Conveyance of the utility systems confers responsibility to the City for their improvement or transfer to utility companies while minimizing the Army's caretaker requirements. The personal property items generally fall into three categories: furniture, computer equipment, and support equipment. The furniture consists primarily of office furnishings that make the office areas useful, and that were more cost-effective for the Army to transfer in place. Computers were somewhat outdated with only nominal market value, but may be useful for small companies or training. Support equipment will be used by the LRA to maintain common areas and thus the Army will not need to maintain a caretaker workforce.

7.5.2 Norton Air Force Base

Norton Air Force Base, located in San Bernardino, Calif., was announced for closure in 1988. The Inland Valley Development Authority (IVDA), the recognized LRA, requested approximately 580 acres at Norton AFB under an EDC. This property comprises the vast majority of the remaining Federal

property at Norton AFB—the airfield and associated property were disposed of as part of a public airport conveyance on January 19, 1994.

The IVDA provided a redevelopment plan with the potential for the creation of 1,000 jobs in the near term. The first interim final rules for EDCs, issued in April 1994, were used in evaluating the proposal. Based on the Air Force's evaluation, a Secretarial determination was issued to support the application. The Disposal Record of Decision was supplemented to reflect the EDC.

The purchase price essentially reflects the estimated fair market value as determined by an appraisal. The duration of financing (15 years) was initially adopted from the terms of the EDC envisioned in the April 1994 interim final rule and, although no particular duration is mandated by the latest version of the rule, the period was acceptable to the IVDA and the Air Force. The terms of payment were also based on the April 1994 EDC rule, which provided for a 60%/40% split of the *net* profits. However, because it was perceived that the accounting system required to verify proper application of expenses would be too burdensome, the parties ultimately agreed to a split of *gross* rents. Two additional terms were included to provide further assistance to redevelopment efforts: the Air Force agreed to subordinate its security interest to commercial construction loans and established a mechanism for the IVDA to obtain partial releases of property from the purchase-money lien that would encumber the property. In addition, as directed by the EDC rules, the standard excess profits covenant was incorporated into the transaction. Since this covenant has the potential to stifle property sales, its duration was limited to three years, the regulatory standard and perceived minimum.

Terms of the Norton Air Force Base EDC

Price:	$52 million
Discount:	0% financing
Financing:	
• *Duration:*	15 years
• *Principal Payments:*	40% of gross rents for 15 years with a balloon payment of any remaining debt due at the end of the 15th year (plus incremental payments of 100% of the proceeds from the sales of the property)
• *Security:*	Debt to be evidenced by a Promissory Note and secured by a purchase money Deed of Trust
–*Subordination:*	First Lien to be subordinated to construction loans only with payoff of Air Force interest with take-out or permanent financing
–*Partial Releases:*	Partial reconveyances (free of lien) for payment of an agreed release price or net sales price, whichever is greater

These terms were found to be consistent with the intent of the EDC. In general, they enabled the IVDA to obtain the property at no initial consideration and with payment obligations tied directly to the success of their efforts. Furthermore, assuming a successful redevelopment effort, the terms encourage the IVDA to "buy out" the Air Force's interest as soon as economically feasible. Payments to

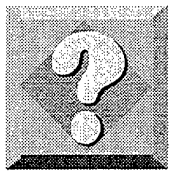
the Air Force of 40 percent of gross rents will likely exceed the debt service payments required if the property were financed through more conventional means, which will make conventional financing attractive when a steady tenant base has been established. Likewise, agreeing to subordinate only to construction loans and requiring a buy-out when take-out financing is obtained should result in incremental, but steady, partial reconveyances. All of which should contribute to the Air Force's receiving the purchase price before the 15th year.

Five documents are required to consummate the transaction: a contract (purchase and sale agreement); promissory note; deed of trust; quitclaim deed; and long-term lease in furtherance of conveyance. This array is necessary since most of the property is undergoing environmental remediation and Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act precludes immediate deed transfer. The contract provides that the IVDA must take full ownership when the Air Force can make the necessary covenants, but that the IVDA will enter into immediate possession under the long-term lease. When the Air Force is able to transfer by deed, the quitclaim deed and deed of trust will also be executed.

The long-term lease in furtherance of conveyance is similar to that used in other public benefit conveyance transactions. It differs to the extent necessary to make it consistent with the larger transaction, and includes a consideration (rents) provision that mirrors the 60%/40% split indicated in the contract and provides that all rents will be used to retire the debt evidenced by the Promissory Note. From a payment perspective the transition from lease to deed should appear seamless. And, the IVDA is not prejudiced by the Air Force's inability to immediately transfer the property by deed.

8
Leasebacks

Frequently Asked Questions About Leasebacks	
➢ *What is a leaseback?*	Section 8.1
➢ *When should a leaseback be used?*	Section 8.1
➢ *Can a Military Department transfer property to an LRA and then lease it back for its own use?*	Section 8.1
➢ *Who is eligible to apply for a leaseback?*	Section 8.1
➢ *Are Federal and homeless screenings required before transferring property under a leaseback?*	Section 8.2
➢ *How does an LRA apply for a leaseback?*	Section 8.3
➢ *How is leaseback property conveyed?*	Section 8.4
➢ *What terms are required in the lease?*	Section 8.5



8.1 INTRODUCTION

8.1.1 Legislative history

Large parcels of surplus BRAC property are frequently conveyed to an LRA for use in accordance with the LRA's redevelopment plan. But, because Federal users have priority claim on this property, small parcels or even individual buildings within or adjacent to the large parcel may be claimed by a Federal entity. Should the Federal entity depart at some point in the future, the property would be disposed of by the General Services Administration in accordance with the Federal Property and Administrative Services Act. This subsequent Federal action can disrupt local economic recovery efforts by requiring the community to go through another lengthy Federal real property disposal process, and could result in uses that are incompatible with the community's redevelopment plans.

Congress recognized that this piecemeal approach could be harmful to long-range planning and development opportunities and changed the law to enable more community control over redevelopment while still allowing the Federal Government the ability to utilize Government property without additional costs. Section 2837 of the National Defense Authorization Act for FY 1996 (Pub. L. 104-106) granted the Department a new property conveyance authority called a leaseback.

8.1.2 A new conveyance method—LRA property ownership while meeting Federal needs

What is a leaseback?

A leaseback is when the Department of Defense transfers nonsurplus BRAC property (property that is still needed by a Federal Department or Agency) by deed or through a lease in furtherance of conveyance to an LRA. The transfer requires that the LRA lease the property back to the Federal Department or Agency for no rent to satisfy a Federal need for the property. By law, only property at BRAC '91, '93, and '95 sites can be transferred under this authority.

8.1.3 Appropriate uses of a leaseback

When should a leaseback be used?

The leaseback authority is designed to be used in those situations where small parcels or individual buildings needed by a Federal entity are surrounded by, or adjacent to, a large parcel of property which will be conveyed to the local community. This authority is not intended to be used to convey property that is needed by DoD or another Federal entity that is easily segregated from the rest of the property being conveyed to the community for redevelopment purposes.

The leaseback authority is especially useful when a Federal entity only requires use of part of a building or structure. In these cases, DoD would transfer the entire building or structure to the LRA and the LRA would lease back only part of the building or structure to the Federal tenant.

Can a Military Department transfer property to an LRA and then lease the property back for its own use?

A Military Department cannot transfer property to an LRA and then lease it back unless it is acting in an executive agent capacity on behalf of a Defense Agency. Or, if the Military Department transfers property it will be leasing back for its own use, the Service Secretary must certify that the transaction is in the best interest of the Military Department. In making this determination, the Service Secretary should consider financial, mission, as well as property concerns. In all cases, the leaseback transfer must be consistent with the recommendations of the Defense Base Closure and Realignment Commission. In other words, when the Military Departments lease property at a closing or realigning installation, it is considered a property retention and should be treated as such. Guidance for the Military Departments on the procedures for making determinations on property retentions, including the size of cantonment areas, can be found in Section 3.2.1.

8.1.4 Other options to satisfy Federal property needs

The Federal Property and Administrative Services Act of 1949 gives Federal Departments and Agencies priority on the use of excess property, including property at base realignment and closure sites. The leaseback authority does not eliminate this "right of first refusal" to obtain ownership of property. As a result, the Department of Defense cannot require Federal Agencies to give up right of ownership in favor of a leasehold interest. Accordingly, the Military Department should not transfer property using the leaseback authority until it receives written consent from the prospective Federal tenant that it agrees to a leaseback arrangement. In addition, a leaseback will only be considered by a Federal Department or Agency upon the request of the LRA. If a leaseback is requested by the LRA, Federal Agencies are urged to give full consideration to leasing instead of owning the property.

In some cases, the LRA will not request a leaseback transfer or the Military Department or Federal Agency will not agree to a leaseback arrangement. If

property that will be used by a Federal Department or Agency is not transferred to the LRA under a leaseback and then leased back to the Federal entity, the Military Department will retain the property, or transfer it directly to another Federal entity under the normal Federal-to-Federal transfer procedures, as appropriate.

8.1.5 Eligible leaseback recipient

Who is eligible to apply for a leaseback?

A recognized LRA is the only entity eligible to receive property under a leaseback. After receiving property under a leaseback, an LRA is authorized to transfer ownership rights to one of the political jurisdictions that comprise the LRA. An LRA may also transfer ownership rights to other entities after obtaining the written consent of the Federal Agency occupying the property.

Transferring ownership to another entity may be useful in those situations when the leaseback property lies within or adjacent to property that has been conveyed to an entity other than the LRA (e.g., an airport authority or private developer).

8.2 Determining Possible Leaseback Transfers

Are Federal and homeless screenings required before transferring property under a leaseback?

8.2.1 Step 1 - Federal screening

Any property conveyed under a leaseback must first be screened for other DoD and Federal uses in accordance with 32 CFR Part 175, because only property that has been approved by the applicable Military Department for use by another Federal Department or Agency is eligible to be transferred under a leaseback. Property retentions at realigning installations are also eligible for leaseback conveyance provided the retention is consistent with the recommendations of the Defense Base Closure and Realignment Commission. For more information on the DoD and Federal screening process, see Chapter 3.

Federal Agencies that express an interest in BRAC property outside of the Federal screening process may, if the LRA is interested, lease property from the LRA that has been leased or transferred to the LRA under other authorities. In these cases, none of the lease restrictions associated with a leaseback apply. The Federal Agency must have the authority to lease property from the LRA.

8.2.2 Step 2 - Excess and surplus determination

As part of the Federal screening process, the Military Department makes the excess and surplus determinations, as appropriate. Normally, property that will be conveyed to the community for redevelopment purposes is declared surplus. But, by definition, property identified in the screening process as needed by another Federal entity is not surplus property. Accordingly, property that will transferred to an LRA under the leaseback authority should not be declared surplus by the Military Department. Due to a lack of clear guidance on this issue prior to the publication of the proposed rule implementing this authority, some Military Department officials determined that property to be transferred under a leaseback should be declared surplus. If the property to be transferred has been declared surplus, the Military Department may withdraw the surplus

declaration. For information about the procedures for withdrawing an excess/surplus declaration, see Section 3.2.3.

8.2.3 Step 3 - Initial discussions

The excess/surplus determination marks the start of the LRA's local reuse planning process as described in Chapter 3. During this time, the LRA should decide which parcels of property that are still needed by the Federal Government, if any, the LRA would like conveyed through a leaseback. The LRA should approach the applicable Federal Agency regarding its desire to lease back property and begin preliminary discussions on the terms of the lease agreement.

8.2.4 Step 4 - The Redevelopment Act process

In its application to HUD, as required by the provisions of the Redevelopment Act, the LRA should outline any information available regarding what parcels the LRA plans to request be transferred under a leaseback. This should include any preliminary information regarding the terms of the lease that have been agreed upon by both the LRA and Federal Agency. HUD will take a possible leaseback of property into consideration during its review of the LRA's application. The Redevelopment Act process, including the State and local screening process, the development of the redevelopment plan, and the LRA's application to HUD, is discussed in more detail in Sections 3.4 and 3.5.

8.3 REQUESTING A LEASEBACK

How does an LRA apply for a leaseback?

LRAs that are interested in obtaining property under a leaseback should, as soon as possible after the Military Department's excess/surplus determination, discuss this option with the applicable Military Department and the Federal Department or Agency which requires use of the property. In addition, as discussed above, the leaseback should be incorporated into the LRA's redevelopment plan. An LRA that has already submitted a redevelopment plan may still be able to take advantage of a leaseback if the LRA can reach an agreement with the Federal Department or Agency, and the Military Department has not progressed too far toward conveyance of the property under another authority.

LRAs should make a formal request for a leaseback transfer as soon as possible after submission of the redevelopment plan to DoD and HUD. The content of this request will be based upon whether the LRA is pursuing an EDC.

8.3.1 LRAs that <u>are</u> pursuing an EDC

If the LRA is pursuing an EDC, a leaseback transfer should be requested as part of the LRA's EDC application. To address the leaseback of property, the LRA will be required to include several items in addition to the EDC application items outlined in Chapter 7, Section 7.2. These items are:

- A description of the parcel or parcels the LRA proposes to have transferred to it and then lease back to a Federal Department or Agency.

- A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property.

- A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

8.3.2 LRAs that are not pursuing an EDC

If the LRA is not pursuing an EDC, the LRA will be required to submit a request for a leaseback to the applicable Military Department. The request should contain, at a minimum, the items listed in Section 8.3.1. If necessary, the Military Department may impose additional requirements.

8.4 Property Conveyance

How is leaseback property conveyed?

After a disposal Record of Decision has been issued for the property, but before deed transfer, the leaseback property can be leased (using a lease in furtherance of conveyance) to the LRA who would then sublease it back to the Federal Department or Agency. Alternatively, the Military Department can grant the Federal Department or Agency a permit to use the property until deed transfer can be accomplished. When deed transfer can be accomplished, leaseback property can be conveyed in one of two ways:

- An *EDC leaseback conveyance* where leaseback property is conveyed as part of an EDC.

- A *stand-alone leaseback conveyance* where leaseback property is conveyed as a stand-alone parcel.

8.4.1 EDC leaseback conveyance

As described in Section 8.3.1, LRAs that are pursuing an EDC should request a leaseback transfer in the EDC application. The leaseback property will be appraised as a package with the EDC property and consideration will be determined following existing EDC guidelines.

8.4.2 Stand-alone leaseback conveyance

For those sites where the LRA is not pursuing an EDC, the Department recognizes that the LRA may still be interested in taking advantage of a leaseback. Since the leaseback authority is a transfer authority, the Military Departments have the ability to transfer leaseback property as a stand alone parcel or parcels not tied to any other conveyance.

For stand-alone leaseback conveyances, the Military Department is required to determine the estimated present fair market value of the property before it is transferred to the LRA. Consideration may be at or below the estimated present fair market value and payments may be in cash or in-kind. As with EDCs, if the installation is in a rural area, the transfer shall be without consideration if the base closure will have a substantial adverse impact on the economy of the communities in the vicinity of the installation and on the prospect for their economic recovery.

The exact amount of consideration, or the formula to be used to determine the amount of consideration, as well as the schedule for payments, must be agreed upon in writing before the transfer.

8.5 LEASE TERMS

8.5.1 General guidance

What terms are required in the lease?

The terms of a lease under the leaseback authority should be negotiated between the LRA and the Federal entity. It is the responsibility of the LRA to offer the Federal Department or Agency lease arrangements that encourage choosing the leaseback option. The goal should be to offer terms that afford the Federal tenant rights as close to those associated with ownership of the property as is practicable. If the Federal Agency is a current tenant, the lease should, to the greatest extent possible, maintain the roles and responsibilities of the Federal government that existed prior to transfer of title to the LRA.

8.5.2 Statutory and regulatory requirements

The following statutory and regulatory requirements apply with respect to the LRA's lease to the Federal tenant:

- **Lease term:** The LRA's lease to the Federal entity may be for a term of no more than 50 years, but may provide for options to renew or extend the term of the lease at the request of the Federal entity. Within these statutory limitations, the length of the lease term should be tied to the needs of the Federal tenant.

- **End of Federal need before end of lease term:** All leases must include a provision specifying that should the Federal tenant no longer need the property before the end of the lease term, the remainder of the term may be satisfied by another Federal Department or Agency. The use of the property by the new Department or Agency must be similar to the use under the original lease and, like the use under the original lease, be compatible with the LRA's redevelopment efforts.

- **Rent:** The LRA may not charge rent.

- **Transferring ownership:** The lease must include a provision prohibiting the LRA from transferring ownership rights to another entity (other than one of the political jurisdictions that comprise the LRA) during the term of the lease without the written consent of the Federal Department or Agency occupying the leaseback property.

- **Municipal services:** The Federal Government cannot be required to pay for municipal services (e.g., fire protection, police protection, snow removal) that are normally provided by the locality using tax revenues.

- **Other services:** The Federal entity may pay for other services such as maintenance and repair, utilities, janitorial, grounds keeping, and similar services often provided by a landlord. If these services are the responsibility of the Federal tenant, they must be acquired in accordance with standard Federal Acquisition Regulation procedures or otherwise in accordance with applicable statutory and regulatory requirements. Such charges must be for services actually provided to the Federal tenant and at rates no higher than for non-Federal entities.

- **State and local codes:** The LRA will be responsible for building modifications or other actions necessary to meet local building codes or other state or local laws. The Federal tenant may pay for the modifications only to the extent that such modifications would be necessary if the Federal tenant owned, rather than leased, the property.

- **Improvements:** The lease shall provide that the Federal tenant may repair and improve the property at its expense after consultation with the LRA.

8.5.3 Applicability of existing Federal leasing authorities and requirements

The General Services Acquisition Regulation (GSAR) does not apply to a lease under the leaseback authority. However, to the extent these regulations are not inconsistent with the intent of the leaseback authority and the guidance provided in this Chapter, they may serve as a useful source of information and guidance.

The leaseback authority is a property transfer authority. It does not affect a Federal Department or Agency's leasing authorities. Those Federal entities who do not have the authority to lease property, but would like to lease back property transferred under this authority, must work through GSA to negotiate and secure a lease with the LRA. As an alternative, a Federal entity may request a delegation of authority from GSA to enter into a lease with the LRA. Leasing authority will be delegated from GSA to Federal entities on a case-by-case basis. In addition, a Military Department, acting in an Executive Agency capacity, may lease property on behalf of a Defense Agency.

8.6 End of Federal Use

When the Federal entity that is occupying the leaseback property no longer requires use of the property, one of two things will happen:

(1) If the Federal entity no longer requires use of the property *before the end of the lease term*, another Federal entity can serve out the term of the lease. Although no formal screening is required, the GSA will assist in identifying other Federal interest in leasing the property. In this case, the Federal entity serving out the remainder of the lease term must use the property for a use similar to the original Agency's use of the property. Before exercising this option, the Federal tenant is required to consult with the LRA or the elected body with jurisdiction over the property if the LRA no longer exists. If ownership of the leaseback property has been transferred to another entity, the Federal tenant must consult with that entity.

(2) If the Federal entity no longer requires use of the property *after serving out the lease term **and any possible renewals***, there is no requirement to screen for additional Federal interest. Instead, the property would immediately become available for use by the LRA.

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Appendix A

Laws and Regulations Affecting Base Reuse Implementation

The Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (BCRA 88, Title II of Pub. L. 100-526, 10 U.S.C. § 2687 note), and the Defense Base Closure and Realignment Act of 1990 (DBCRA 90, Part A of Title XXIX of Pub. L. 101-510, 10 U.S.C. § 2687 note), establish the basic requirements for identifying and implementing domestic military base closures and realignments.

Since their enactment, the base closure laws have been amended and supplemented by several key statutes, including:

- The National Defense Authorization Act for Fiscal Years 1992 and 1993 (NDAA 92/93, Pub. L. 102-190).
- The National Defense Authorization Act for Fiscal Year 1993 (NDAA 93, Pub. L. 102-484).
- The National Defense Authorization Act for Fiscal Year 1994, which includes the Base Closure Community Assistance Act, the "Pryor Amendments," as Title XXIX (NDAA 94, Pub. L. 103-160).
- The National Defense Authorization Act for Fiscal Year 1995 (NDAA 95, Pub. L. 103-337).
- The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 ("Redevelopment Act," Pub. L. 103-421).

Collectively, these laws contain provisions that authorize or require the Secretary of Defense to take actions to initiate and implement base realignment and closure (BRAC) decisions. Installations affected by BRAC decisions are referred to as BRAC installations. In addition, these laws identify other applicable legal authorities, thereby creating the current system of rules that govern base reuse implementation.

Provisions in the laws listed above authorize the Secretary of Defense to:

- Provide assistance to communities that experience adverse economic circumstances as a result of base closures or realignments.
- Work with local redevelopment authorities (LRAs) to identify and implement means of reutilizing or redeveloping BRAC installations.
- Designate a Base Transition Coordinator for each closing base to facilitate base reuse implementation.
- Ensure that the needs of the homeless within the local community are taken into consideration during redevelopment planning.
- Complete Federal, State, and local screening of excess and surplus real property within clearly specified timeframes.
- Inventory and transfer personal property to recipients of real estate under certain circumstances.
- When necessary to support economic redevelopment, convey items of personal property directly to LRAs.
- Complete environmental impact analysis activities within specified times to support disposal decision making.
- Maintain minimum levels of maintenance and repair necessary to support non-military reuse for specific time periods.
- Lease property to LRAs at less than fair market rental value when it is in the public interest.
- Convey real and personal property to LRAs at less than fair market value when appropriate to support economic redevelopment and when other authorized disposal methods cannot meet that goal.
- Establish separate transfer accounts to fund, and receive proceeds from, base reuse implementation activities.

Specific laws referenced in BCRA 88 and DBCRA 90, as amended by NDAA 94, and BCCRHAA 94 include the following:

- **The Stewart B. McKinney Homeless Assistance Act**, as amended (McKinney Act) [42 U.S.C. § 11301 *et seq.*], governs the identification and utilization of buildings and property that are suitable for homeless assistance on many BRAC 88, BRAC 91 and BRAC 93 installations. BRAC 95 bases have been specifically exempted from the provisions of the McKinney Act and are only subject to the provisions of the Redevelopment Act.

- **Sections 203 and 204 of the Federal Property and Administrative Services Act of 1949**, as amended (FPASA or "49 Act") [40 U.S.C. §§ 483, 484], govern the utilization of excess Federal property and the disposal of surplus Federal property.

- **Public Law 103-272 (1994), which recodified Section 13(g) of the Surplus Property Act of 1944** (SPA or "44 Act") [49 U.S.C. §§ 47151–47153], governs the disposal of surplus Federal property for use as a public airport. [formerly codified at 50 U.S.C. App. § 1622(g)].

- **The Act of May 19, 1948**, as amended [16 U.S.C. § 667b–d], governs the transfer of Federal property to State agencies, or to the Department of the Interior, for wildlife conservation purposes.

- **The National Environmental Policy Act of 1969**, as amended (NEPA) [42 U.S.C. § 4321 *et seq.*], requires the Federal Government to assess the potential environmental impacts of its proposed action to dispose of surplus Federal property prior to making final disposal decisions.

- Section 120 of the **Comprehensive Environmental Response, Compensation, and Liability Act**, as amended (CERCLA) [42 U.S.C. § 9601 *et seq.*], governs:

  — Responses to releases of hazardous substances, pollutants, or contaminants.

  — Deed notification and covenant and lease notification requirements for property transfer at BRAC installations. [Note: In some cases, property can now be transferred to private parties before remedial action has been taken and the covenant requirements have been fulfilled.]

- **Other applicable statutes** that protect natural and cultural resources and govern environmental responses on Federal lands.

The above statutes, their implementing regulations, and the provisions of BCRA 88, DBCRA 90, NDAA 92/93, NDAA 93, NDAA 94, NDAA 95 and the Redevelopment Act listed above, define the basic legal framework for base reuse implementation. This legal framework is depicted in Figure A-1, which identifies the two base closure laws, and other relevant laws or categories of laws (including certain statutory references) that affect base reuse implementation.

The statutes and regulations shown in Figure A-1 are summarized for easy reference in Table A-1. Table A-1 also includes items not depicted on Figure A-1 as well as pertinent Department of Defense (DoD) directives (not shown in Figure A-1) and other regulations that provide guidance for implementing the Federal requirements. Table A-2 summarizes the legal authorities governing the disposal of surplus Federal property. Table A-3 identifies deadlines that have been established by Federal law to encourage timely completion of base reuse implementation and economic conversion.

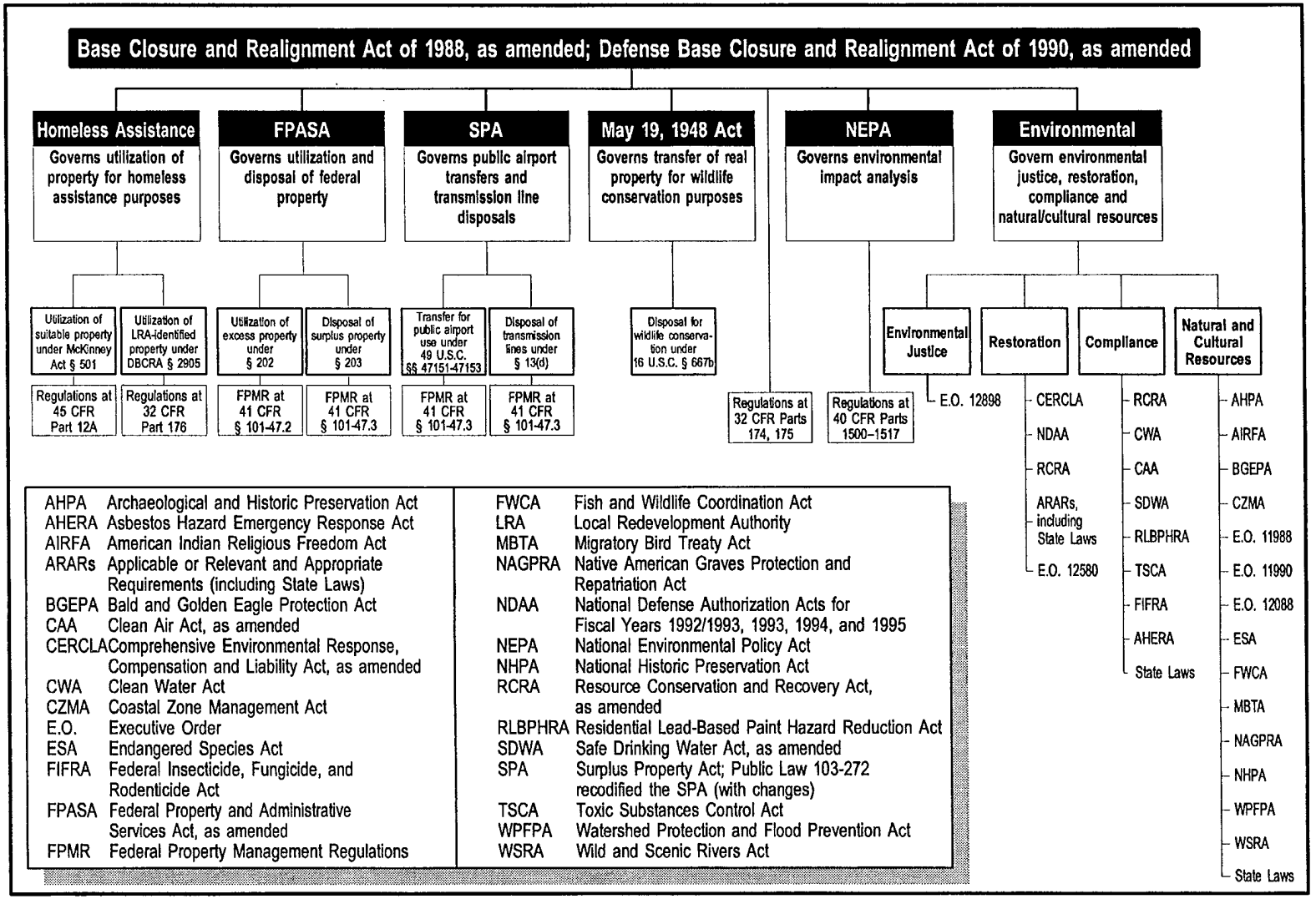


Figure A-1. Legal Authorities Affecting Base Reuse Implementation

Table A–1. Legal Authorities Affecting Base Reuse Implementation

LAW/REGULATION/ AUTHORITY	DATE	SUMMARY OF KEY PROVISIONS	RESPONSIBLE AGENCY (REQUIREMENT)
Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (BCRA 88), Pub. L. 100-526, 10 U.S.C. § 2687 note	24 October 1988	• Provides procedures to facilitate the closure and realignment of obsolete or unnecessary military installations • Requires compliance with the FPASA, SPA, NEPA and environmental laws • Calls for completion of all BRAC 88 actions by 30 September 1995	Secretary of Defense, with delegated authority to the DoD Components (base closure and conversion implementation)
Defense Base Closure and Realignment Act of 1990 (DBCRA 90), Pub. L. 101-510, 10 U.S.C. § 2687 note	5 November 1990	• Provides a process designed to result in timely closure and realignment of military installations • Requires compliance with the FPASA, SPA, the May 19, 1948 Act, environmental laws, and NEPA (but no EIS is required for closure) • Requires that all BRAC 91 base closures and realignments be complete by 10 July 1997	Secretary of Defense, with delegated authority to the DoD Components (base closure and conversion implementation)
National Defense Authorization Act for Fiscal Years 1992 and 1993 (NDAA 92/93), Pub. L. 102-190 §§ 334(a), 2821, 2827	5 December 1991	• Requires that Draft Final RI/FSs for BRAC 88 bases on the NPL be submitted to EPA by 4 December 1993 (24 months). Draft Final RI/FSs for BRAC 91 bases on the NPL must be submitted to EPA by 4 December 1994 (36 months) • Allows for a six-month extension under certain conditions • Amended DBCRA 90 to clarify requirements of the Commission and to establish the BRAC account as the sole source of environmental restoration funding	DoD Components
National Defense Authorization Act for Fiscal Year 1993 (NDAA 93), Pub. L. 102-484	23 October 1992	• Made funds available to the Economic Development Administration (EDA) for economic adjustment assistance with respect to base closures	Secretary of Defense

Defense Authorization Acts, including BRAC Statutes and amendments

Table A–1. Legal Authorities Affecting Base Reuse Implementation

LAW/REGULATION/ AUTHORITY	DATE	SUMMARY OF KEY PROVISIONS	RESPONSIBLE AGENCY (REQUIREMENT)
National Defense Authorization Act for Fiscal Year 1994 (NDAA 94), Pub. L. 103-160, Title XXIX, §§ 2901–2930; 32 CFR Parts 174, 175	30 November 1993	• Amends BCRA 88, DBCRA 90, 10 U.S.C. § 2667, 10 U.S.C. § 2391(b), FPASA, and NDAA 92/93 • Amendments are specific to personal property, real property screening, McKinney Act compliance, leasing, contracting with communities or small/disadvantaged businesses, transferring property at less than fair market value, and economic adjustment assistance • Also contains provisions for base transition coordinators, CERCLA § 120(h)(4) compliance, and NEPA compliance	Secretary of Defense, with delegated authority to the DoD Components (base closure and conversion implementation)
National Defense Authorization Act for Fiscal Year 1995 (NDAA 95), Pub. L. 103-337	5 October 1994	• Provides assistance for public participation in Department of Defense environmental restoration activities • Includes clarifying and technical amendments to BCRA 88 and DBCRA 90	Secretary of Defense, with delegated authority to the DoD Components (base closure and conversion implementation)
Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Redevelopment Act), Pub. L. 103-421; 32 CFR Part 176	25 October 1994	• Amends BCRA 88 and DBCRA 90 • Exempts BRAC 95 installations from the Stewart B. McKinney Homeless Assistance Act (others may request exemption) • Establishes a new process for LRA accommodation of homeless assistance needs during redevelopment planning	Secretary of Housing and Urban Development; Secretary of Defense, with delegated authority to the DoD Components (base closure and conversion implementation)
National Defense Authorization Act for Fiscal Year 1996 (NDAA 96), Pub. L. 104-106	10 February 1996	• Provides for longer term interim leases • Amends the Redevelopment Act • Establishes a new property transfer authority called a leaseback • Allows DoD to transfer BRAC property in exchange for the construction of family housing	Secretary of Defense, with delegated authority to the DoD Components (base closure and conversion implementation)

Table A–1. Legal Authorities Affecting Base Reuse Implementation

LAW/REGULATION/ AUTHORITY	DATE	SUMMARY OF KEY PROVISIONS	RESPONSIBLE AGENCY (REQUIREMENT)
National Defense Authorization Act for Fiscal Year 1997 (NDAA 97), Pub. L. 104-201	23 September 1996	• Restored authority for intragovernment transfers at BRAC 88 sites • Allows DoD to contract for police and fire protection at facilities remaining on property not yet transferred • Allows property to be transferred before cleanup is complete	Secretary of Defense, with delegated authority to the DoD Components (base closure and conversion implementation)
Federal Property and Administrative Services Act (FPASA), 40 U.S.C. § 471 *et seq.*; **Federal Property Management Regulations**, 41 CFR Part 101-47 (Real Property) and 41 CFR Parts 101-43–101-45 (Personal Property)	30 June 1949	Provides a mechanism for: • the utilization of excess Federal property • the disposal of surplus Federal property • the procurement and supply of personal property and non-personal services • records management	General Services Administration, with partial delegation (for the utilization of excess and the disposal of surplus Federal property) to the Secretary of Defense under BCRA and DBCRA
Surplus Property Act (SPA), 50 U.S.C. App. § 1622(d) and 49 U.S.C. §§ 47151–47153	3 October 1944	• Governs power transmission line disposals in cases of surplus Federal property, and provides for conveyance of surplus Federal property for use as a public airport (subject to approval by FAA)	General Services Administration, with partial delegation to the Secretary of Defense under BCRA and DBCRA, and Federal Aviation Administration
Act of May 19, 1948, 16 U.S.C. § 667b-d	19 May 1948	• Provides for transfer of Federal property to State agencies or the Department of the Interior for wildlife conservation purposes	General Services Administration
Stewart B. McKinney Homeless Assistance Act (McKinney Act), 42 U.S.C. § 11301 *et seq.*	22 July 1987	• Title V (Section 501) requires DoD Components to identify unutilized, underutilized, excess or surplus property (e.g., housing at installations being closed) that may be suitable for use by the homeless • Notification is to the Department of Housing and Urban Development (HUD). HUD notifies the Department of Health and Human Services of property suitable for the homeless • Does not apply to BRAC 95 bases, which are specifically exempted by the Redevelopment Act	Council on Homeless (reporting accomplished by DoD Components; screening by Department of Housing and Urban Development [HUD])

Federal Property Laws

Table A–1. Legal Authorities Affecting Base Reuse Implementation

Law/Regulation/ Authority	Date	Summary of Key Provisions	Responsible Agency (Requirement)
10 U.S.C. § 2667 (Military Leasing Act), as amended	10 August 1956	• Identifies requirements for leasing military property to prospective lessees when such a lease will promote the national defense or be in the public interest	DoD Components
Indian Self-Determination Act, 25 U.S.C. §§ 450f–450n	4 January 1975	• Provides for grants or contracts with tribal organizations for educational or health purposes or for strengthening tribal governments • Authorizes the Secretary of the Interior to acquire property in trust for such purposes	Department of the Interior (contracting and/or providing grants)
Indian Reorganization Act, 25 U.S.C. §§ 461–479	18 June 1934	• Provides for reorganization of tribal and non-tribal lands • Authorizes the Secretary of the Interior to acquire land to be held in trust for tribes	Department of the Interior (land acquisition and transfers)
Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a–1975d, 2000a–2000h-6	2 July 1964	• Provides for enforcement of voting rights • Prohibits discrimination in places of public accommodation and public facilities	DoD Components and their grantees (ensuring non-discrimination)
Rehabilitation Act of 1973, 29 U.S.C. §§ 701–709, 720–724, 730–732, 740, 741, 750, 760–764, 770–776, 780–787, 790–794	26 September 1973	• Guarantees equal opportunity for individuals with handicaps in order to maximize their employability and integration into the workplace and community	DoD Components and their grantees (ensuring handicapped accessibility)
Stevenson-Wydler Technology Innovation Act of 1980 (Pub. L. 96-480, as amended), 15 USC 3710(i)	21 October 1980	• Authorizes the transfer of excess research equipment to educational institutions and nonprofit organizations	Directors of laboratories; head of any Federal Agency or Department
Public Buildings Cooperative Use Act (PBCUA), 40 U.S.C. §§ 490, 601a, 606, 611, and 612a	18 October 1976	• Encourages adaptive reuse of historic buildings as administrative facilities for Federal Agencies or activities	Secretary of Defense in conjunction with Department of the Interior
Financial Assistance Laws **10 U.S.C. § 2391** (Military Base Reuse Studies and Community Planning Assistance)	1 December 1981	• Authorizes the Secretary of Defense to make grants to State and local governments, and regional organizations, to assist them in planning community adjustments in response to base closures	Department of Defense through a variety of Federal assistance programs

Table A–1. Legal Authorities Affecting Base Reuse Implementation

Law/Regulation/ Authority	Date	Summary of Key Provisions	Responsible Agency (Requirement)
National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 *et seq.*; Regulations for Implementing the Procedural Provisions of NEPA at 40 CFR Parts 1500–1508; **Executive Order 11514**, as amended by **Executive Order 11991**	1 January 1970	• Provides a process to help Federal officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment • Requires that the DoD Components analyze potential environmental impacts of proposed actions and alternatives for base disposal decisions	President's Council on Environmental Quality [CEQ]; NEPA process execution by DoD Components (Environmental Assessment, Categorical Exclusion, or Environmental Impact Statement)
Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 *et seq.*; 40 CFR Parts 300–311	11 December 1980	• Requires the conduct of any needed response actions to clean up contamination, addressing risks to human health and the environment posed by past releases of hazardous substances • Section 120(h) of this act, as amended by the Community Environmental Response Facilitation Act (CERFA), governs the identification of uncontaminated parcels and covenant requirements for deed transfers of contaminated parcels	DoD Components are execution agents under the Defense Environmental Restoration Program; U.S. EPA, and State oversight enforcement agencies; (consultation and approval requirements)
Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 *et seq.*; 40 CFR Parts 240–281	21 October 1976	• Requires the establishment of management systems for hazardous waste (Subtitle C), non-hazardous solid waste (Subtitle D), and underground storage tanks (Subtitle I) • Provides corrective action authority for cleanup of solid waste management units	U.S. EPA with delegation of the base RCRA program and the Hazardous and Solid Waste Amendments [HSWA] program to State agencies (permit requirements)
Clean Water Act (CWA), 33 U.S.C. §§ 1251–1387; 33 CFR Parts 320–330, 335–338; 40 CFR Parts 104–140, 230–233, 401–471; **Executive Order 11990** (Protection of Wetlands)	18 October 1972	• Establishes controls on point source and non-point source discharges to surface waters under the National Pollutant Discharge Elimination System. • Establishes permitting requirements for construction activities in waterways and wetlands	Army Corps of Engineers/U.S. EPA (permit requirements)

Table A–1. Legal Authorities Affecting Base Reuse Implementation

Law/Regulation/ Authority	Date	Summary of Key Provisions	Responsible Agency (Requirement)
Clean Air Act (CAA), 42 U.S.C. § 7401 *et seq.*; 40 CFR Parts 50, 60, 61, and 80	31 December 1970	• Mandates improvements to air quality through establishment of National Ambient Air Quality Standards; nonattainment requirements; technology and risk standards for air toxics; permit requirements for sources of air emissions; State Implementation Plans for implementing compliance with standards; and conformity determinations for Federal Agency actions except base closure final disposals	U.S. EPA with partial delegation to State agencies (permit requirements)
Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f–300j-26; 40 CFR Parts 141–149	16 December 1974	• Defines substances for which the U.S. EPA must set drinking water standards • Authorizes establishment of underground injection controls on wells used for waste disposal	U.S. EPA (permit requirements)
Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601–2671; 40 CFR Parts 700–799	11 October 1976	• Provides for the specific regulation of PCBs and asbestos • Requires maintenance of an inventory of manufactured chemicals and requires filing of a premanufacture notification for chemicals not in the inventory	U.S. EPA (permit requirements)
Asbestos Hazard Emergency Response Act (AHERA), 15 U.S.C. §§ 2641–2655; 40 CFR Part 763	22 October 1986	• Amends TSCA to govern inspection of asbestos-containing materials in schools and completion of appropriate response and abatement activities	U.S. EPA (inspection and response)
Lead-Based Paint Poisoning Prevention Act (LBPPPA), 42 U.S.C. §§ 4801–4846	13 January 1971	• Requires establishment of procedures for eliminating immediate hazards related to lead-based paint and for notifying purchasers of the presence of lead-based paint • Eliminates use of lead-based paint	Department of Housing and Urban Development and Department of Health and Human Services (establishment of procedures)
Residential Lead-Based Paint Hazard Reduction Act (RLBPHRA), Title X of Pub. L. 102-550	28 October 1992	• Governs transfers of pre-1978 Federal property for residential use • Requires inspection and notification for post-1960 structures • Requires inspection and abatement for pre-1960 housing	Department of Defense (inspection and notification or abatement)

Table A–1. Legal Authorities Affecting Base Reuse Implementation

Law/Regulation/ Authority	Date	Summary of Key Provisions	Responsible Agency (Requirement)
Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.*; 40 CFR Parts 152–186	21 October 1972	• Establishes a registration program for pesticide and other substances • Governs disposal of pesticides and pesticide containers	U.S. EPA (permit requirements)
American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996	11 August 1978	• Protects and preserves religious freedoms of Native Americans, including access to religious sites	Affected tribes (consultation requirements)
Archaeological and Historic Preservation Act (AHPA), 16 U.S.C. § 469	27 June 1960	• Governs activities that may affect historic or archaeological resources • Directs Federal Agencies to coordinate with the Department of the Interior	Department of the Interior (notification requirements if jeopardized resources found)
Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. § 668	8 June 1940	• Governs activities and facilities that may threaten protected birds	Department of the Interior (permit required if golden eagle nest is found)
Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451–1464; 15 CFR Parts 921–933	27 October 1972	• Encourages States along oceans and Great Lakes to adopt Coastal Zone Management Plans (CZMP), which require any applicant for a Federal permit to certify that its project is consistent with the State CZMP	Department of Commerce
Endangered Species Act (ESA), 16 U.S.C. §§ 1531–1544; 50 CFR Parts 17, 401–424, 450–453	28 December 1973	• Requires protection of threatened or endangered species by prohibiting activities and facilities that would have an adverse effect on them	U.S. Fish and Wildlife Service (requires biological assessment, mitigation plan if species found)
Fish and Wildlife Coordination Act (FWCA), 16 U.S.C. §§ 661–666	12 August 1958	• Requires persons to consult with Federal and State agencies when modifying, controlling, or impounding a surface water body over 4 hectares in size	U.S. Fish and Wildlife Service
Migratory Bird Treaty Act (MBTA), 16 U.S.C. §§ 703–712	13 July 1918	• Governs activities that may affect or threaten migratory birds or their habitats	Department of the Interior (consultation requirements if birds or nests are found)
Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001–3013	16 November 1991	• Governs discovery and handling of Native American human remains and objects	Department of the Interior (notification and consultation)

Table A–1. Legal Authorities Affecting Base Reuse Implementation

Law/Regulation/ Authority	Date	Summary of Key Provisions	Responsible Agency (Requirement)
National Historic Preservation Act (NHPA), 16 U.S.C. § 470; 36 CFR Parts 60, 63, 68, 800; Executive Order **11593** (Protection and Enhancement of the Cultural Environment)	15 October 1966; 13 May 1971 (E.O.)	• Establishes a program for the preservation of additional historic properties throughout the nation • Section 106 of the NHPA establishes a process to identify conflicts between historic preservation concerns (e.g., properties included or eligible for the National Register of Historic Places) and Federal undertakings	Advisory Council on Historic Preservation, State Historic Preservation Officers, Department of the Interior (consultation requirements)
Watershed Protection and Flood Prevention Act (WPFPA), 16 U.S.C. § 1001 *et seq.*; 33 U.S.C. § 701-1; Executive Order **11988** (Floodplain Management)	4 August 1954	• Governs reservoir development and stream modification projects including specific wildlife habitat improvements	Department of Agriculture—Soil Conservation Service
Wild and Scenic Rivers Act (WSRA), 16 U.S.C. § 1271 *et seq.*	2 October 1968	• Preserves and protects the free-flowing condition of selected rivers. Established a national Wild and Scenic Rivers System	Department of the Interior
Executive Orders **Executive Order 12088**		• Establishes process for ensuring Federal Agency compliance with Federal, State, and local pollution control requirements • Outlines a process for resolution of disputes between the Environmental Protection Agency and Federal Agencies, specifying the Office of Management and Budget as dispute resolution agent	Presidential order involving the Environmental Protection Agency, Department of Defense, State, and Office of Management and Budget
Executive Order 12372 (as amended by **Executive Order 12416**)	8 April 1983	• Requires Federal Agencies to provide opportunities for consultation by elected officials of State and local governments	DoD Components in consultation with community
Executive Order 12580	23 January 1987	• Addresses delegation of certain duties and powers assigned to the President in CERCLA to heads of Federal Agencies	Presidential Order delegating authority to the Secretary of Defense—DoD Components
Executive Order 12788	15 January 1992	• Creates the Defense Economic Adjustment Program to coordinate economic adjustment assistance for communities affected by Defense downsizing	Secretary of Defense, Economic Adjustment Committee
Executive Order 12999, Improving Mathematics and Science Education in Support of the National Education Goals	17 April 1996	• Gives preference to elementary and secondary schools in the transfer or donation of education-related Federal equipment such as computers	Military Department (identification and transfer of surplus property)

Table A–1. Legal Authorities Affecting Base Reuse Implementation

Law/Regulation/ Authority	Date	Summary of Key Provisions	Responsible Agency (Requirement)
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	11 February 1994	• Requires the creation of an Interagency Working Group on Environmental Justice to develop guidance for Federal Agencies on environmental justice strategies • Requires Federal Agencies to include diverse segments of the population in research, data collection, and analysis • Requires Federal Agencies to solicit public views and to consider environmental justice values in decision-making	Department of Defense (guidance) DoD Components (analysis; actions)
DoD Directive 1000.3	29 March 1979	• Safety and Occupational Health Policy for the Department of Defense	Department of Defense
DoD Directive 3030.1	29 November 1978	• Office of Economic Adjustment	Department of Defense
DoD Directive 4140.25	8 January 1993	• DoD Bulk Petroleum Management Policy	Department of Defense
DoD Directive 4150.7	24 October 1983	• DoD Pest Management Program	Department of Defense
DoD Directive 4165.6	1 September 1987	• Real Property Acquisition, Management, and Disposal	Department of Defense
DoD Directive 4165.60	4 October 1976	• Solid Waste Management—Collection, Disposal, Resource Recovery and Recycling Program	Department of Defense
DoD Directive 4165.66	12 Feb 1996	• Revitalizing Base Closure Communities • Implements the provisions of Title XXIX of NDAA 94; codified at 32 CFR Part 174 • Forms the basis for much of the material in this Manual	Department of Defense
DoD Directive 4210.15	27 July 1989	• Hazardous Material Pollution Prevention	Department of Defense
DoD Directive 4500.34	10 April 1986	• DoD Personal Property Shipment and Storage Program	Department of Defense
DoD Directive 4700.4	24 January 1989	• Natural Resources Management Programs	Department of Defense
DoD Directive 4710.1	21 June 1984	• Archeological and Historic Resources Management	Department of Defense
DoD Directive 5030.41	1 June 1977	• Oil and Hazardous Substances Pollution Prevention and Contingency Program	Department of Defense

DoD Directives and Instructions

Table A–1. Legal Authorities Affecting Base Reuse Implementation

Law/Regulation/ Authority	Date	Summary of Key Provisions	Responsible Agency (Requirement)
DoD Directive 5100.50	24 May 1973	• Protection and Enhancement of Environmental Quality	Department of Defense
DoD Directive 5410.12	22 December 1987	• Economic Adjustment Assistance to Defense-Impacted Communities	Department of Defense
DoD Directive 6050.1	30 July 1979	• Environmental Effects in the United States of DoD Actions	Department of Defense
DoD Instruction 4165.67	4 March 1996 (changes issued on 7 May 1997)	• Revitalizing Base Closure Communities—Base Closure Community Assistance • Implements Title XXIX of NDAA 94; codified at 32 CFR Part 175 • Forms the basis for much of the material in this Manual	Department of Defense
DoD Instruction 4165.68	4 March 1996 (reissued on 27 May 1997)	• Revitalizing Base Closure Communities and Community Assistance - Community Redevelopment and Homeless Assistance • Implements the Redevelopment Act, as amended, codified at 32 CFR Part 176 • Forms the basis for part of the material in this Manual	Department of Defense

Table A-2. Surplus Federal Property Transfer Methods

Type of Property, Purpose, or Method	Transfer Type[1]	Federal Agency with Authority	FMV Discount	Statutory and Regulatory Authority
PUBLIC AIRPORT CONVEYANCE	Approved	Federal Aviation Administration	100%	49 U.S.C §§ 47151–47153, 41 CFR 101-47.308-2
PUBLIC BENEFIT CONVEYANCE CATEGORIES				
Historic Monument	Approved	Department of the Interior	100%	FPASA § 203(k)(3), 41 CFR 101-47.308-3
Education	Sponsored	Department of Education	Up to 100%	FPASA § 203(k)(1), 41 CFR 101-47.308-4
Public Health	Sponsored	Department of Health and Human Services	Up to 100%	FPASA § 203(k)(1), 41 CFR 101-47.308-4
Public Park or Recreation	Sponsored	Department of the Interior	Up to 100%	FPASA § 203(k)(2), 41 CFR 101-47.308-7
Non-Federal Correctional Facility	Approved	Department of Justice	100%	FPASA § 203(p)(1), 41 CFR 101-47.308-9
Port Facility	Sponsored	Department of Transportation	100%	FPASA § 203(q)(1), 41 CFR 101-47.308-10
Shrines, Memorials, or Religious Uses [only as part of another public benefit conveyance][2]	Sponsored	Department of Education or Department of Health and Human Services	Up to 100%	41 CFR 101-47.308-5
Homeless Assistance [Public Health][3]	Sponsored	Department of Health and Human Services	Up to 100%	42 U.S.C. § 11411, FPASA § 203(k)
OTHER SPECIFIC CONVEYANCE CATEGORIES				
Power Transmission Lines	Approved	Military Department	None	SPA § 13(d), 41 CFR 101-47.308-1
Housing for Displaced Persons	Requested[4]	Military Department	Up to 100%	URARPAPA § 218, 41 CFR 101-47.308-8
Wildlife Conservation	Approved	Department of the Interior	Up to 100%	16 U.S.C. § 667b–d
Federal-Aid or Other Highways [to States]	Sponsored	Department of Transportation	100%	23 U.S.C. §§ 107, 317
Widening of Public Highways or Streets	Approved	Military Department	Up to 100%	40 U.S.C. § 345c
Homeless Assistance	Approved	Department of HUD	100%	BCCRHAA § 2
NEGOTIATED SALE	Sale	Military Department	None	FPASA § 203(e), 41 CFR 101-47.304
PUBLIC SALE	Sale	Military Department	None	FPASA § 203(e), 41 CFR 101-47.304
DEPOSITORY INSTITUTION FACILITIES	Sale	Military Department	None	NDAA 92/93 § 2825, NDAA 94 § 2928
LEASEBACK	Approved	Military Department	Up to 100%	NDAA 96, Title XXVIII, § 2837
ECONOMIC DEVELOPMENT CONVEYANCE	Approved	Military Department	Up to 100%	NDAA 94, Title XXIX, § 2903

Key to Table A-2

[1]Public benefit and other specific conveyances are typically either approved or sponsored by the authorized Federal Agency. In approved transfers, the Federal Agency must grant its approval but property conveyance is accomplished by the Military Department. In sponsored transfers, the Military Department assigns the property to the Federal Agency, upon request, and the Federal Agency is responsible for conveyance of the property to its recipient.

[2]Property for shrines, memorials or other religious purposes is eligible for public benefit conveyance (PBC) only as part of a parcel transferred under another PBC mechanism.

[3]42 U.S.C. § 11411 designates uses for homeless assistance as a specific public health category under FPASA § 203(k) and gives priority to such uses when considering PBCs.

[4]When the activities of a Federal Agency result in the displacement of persons from their housing, the Federal Agency may request surplus property for replacement housing. Transfer of property is directly from the Military Department to an eligible State agency.

Acronyms and Abbreviations used in Table A-2

CFR	*Code of Federal Regulations*
FMV	Fair Market Value
FPASA	Federal Property and Administrative Services Act, 40 U.S.C. § 471 *et seq.*
LRA	Local Redevelopment Authority
NDAA 92/93	National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. 102-190
NDAA 94	National Defense Authorization Act for Fiscal Year 1994, Pub. L. 103-160
SPA	Surplus Property Act, 50 U.S.C. App. § 1622(d) and 49 U.S.C. §§ 47151–47153
U.S.C.	*United States Code*
URARPAPA	Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646

Table A-3. Statutorily Imposed Deadlines for BRAC 95 Installations

REQUIREMENTS [SOURCE(S)]	DEADLINE
CLOSURE-RELATED ACTIVITIES	
Initiate Closure and Realignment Activities [DBCRA 90 § 2904(a)]	*2 years after Presidential approval for closure* **July 1997**
Complete Closure and Realignment Activities [DBCRA 90 § 2904(a)]	*6 years after Presidential approval for closure* **July 2001**
Withhold Relocation of Personal Property with Redevelopment Value **Sustain Maintenance at or Above Minimum Levels to Support Reuse** [DBCRA 90 § 2905(b), as amended by NDAA 94 § 2902]	**Neither relocation of personal property nor reduction of maintenance levels necessary to support reuse is allowed before the earliest of:** (1) *one week after submittal of redevelopment plan;* (2) *notice of intent not to submit a redevelopment plan;* (3) *90 days before closure* (4) *24 months after the date of approval**
COMMUNITY ASSISTANCE	
Designate Transition Coordinator [NDAA 94 § 2915(b)]	*15 days after the date of approval**
Hold Community Seminars on Reuse and Redevelopment [NDAA 94 § 2916 (Sense of Congress)]	*6 months after the date of approval**
Consider Applications for OEA Assistance [10 U.S.C. § 2391(b), as amended by NDAA 94 § 2913]	*Planning Grants: 7 days after application submittal* *Community Adjustment and Diversification Grants: 30 days after application submittal*
Identify and Obtain Regulatory Concurrence on Uncontaminated Parcels [CERCLA § 120(h)(4) and NDAA 94 § 2910]	**Earlier of:** (1) *9 months after submittal of proposed reuse;* (2) *18 months after the date of approval**
Contract with Local Governments for Provision of Community Services [DBCRA 90 § 2905(b), as amended by NDAA 94 § 2907]	*No earlier than 180 days before date of closure*
PROPERTY INVENTORY, SCREENING, AND TRANSFER	
Inventory Personal Property [DBCRA 90 § 2905(b), as amended by NDAA 94 § 2902]	*6 months after the date of approval**
Screen Property for Federal Agency Transfers; Make Excess and Surplus Determinations; Submit Property Information to HUD and LRA and Publish in *Federal Register* [DBCRA 90 § 2905(b), as amended by NDAA 94 § 2904 and BCCRHAA § 2]	*6 months after the date of approval**
Receive Notices of Homeless Provider Interest in Property (LRA) [DBCRA 90 § 2905(b), as amended by BCCRHAA § 2]	*3 to 6 months after LRA's newspaper publication (LRA's discretion)*

Table A-3. Statutorily Imposed Deadlines for BRAC 95 Installations

REQUIREMENTS [SOURCE(S)]	DEADLINE
Complete Redevelopment Plan and Submit to HUD and DoD (LRA) (if homeless uses are included) [DBCRA 90 § 2905(b), as amended by BCCRHAA § 2]	*9 months after deadline for submission of notices of interest*
Review Redevelopment Plan and Make Determination (HUD) [DBCRA 90 § 2905(b), as amended by BCCRHAA § 2]	*60 days after receipt of redevelopment plan*
Revise Redevelopment Plan, if necessary (LRA) [DBCRA 90 § 2905(b), as amended by BCCRHAA § 2]	*90 days after HUD determination*
Review Revised Redevelopment Plan, if necessary (HUD) [DBCRA 90 § 2905(b), as amended by BCCRHAA § 2]	*30 days after receipt of revised redevelopment plan*
Report to DoD on Property Suitability and Acceptability of LRA's Plan, if necessary (HUD) [DBCRA 90 § 2905(b), as amended by BCCRHAA § 2]	*90 days after receipt of unsatisfactory revised redevelopment plan*
Consider Entering into Agreements to Transfer Property by Deed in Exchange for Environmental Restoration [DBCRA 90 § 2905(e), as added by NDAA 94 § 2908]	*Must be entered into by the date five years after enactment of NDAA 94* **30 November 1998**
ENVIRONMENTAL IMPACT ANALYSIS AND ENVIRONMENTAL CLEANUP	
Complete Environmental Impact Statement (EIS) [NDAA 94 § 2911]	*12 months after submittal of redevelopment plan*
Complete Remedial Investigations/Feasibility Studies (RI/FSs) [CERCLA § 120(e)]	• *Commence RI/FS **within 6 months of final NPL listing*** • *Enter into Federal Facility Agreement within 180 days after EPA review of RI/FS* • *Begin remedial action within 15 months of completion of NPL-required RI/FS*

* **Note:** The "date of approval" is the expiration date for the authority of Congress to disapprove the President's recommendations, as defined in NDAA 94 § 2918(a) and § 2918(c).

KEY:

BCCRHAA	Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (known as the "Redevelopment Act")
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act, as amended
CERFA	Community Environmental Response Facilitation Act of 1992
DBCRA 90	Defense Base Closure and Realignment Act of 1990
NDAA 94	National Defense Authorization Act for Fiscal Year 1994

Summary of Key Provisions in Base Closure Laws

Key provisions contained in BCRA 88, DBCRA 90, NDAA 92/93, NDAA 93, NDAA 94, NDAA 95, and the Redevelopment Act are summarized below.

COMMUNITY ASSISTANCE

BCRA 88 and DBCRA 90, as amended by NDAA 94, require and/or authorize the Secretary of Defense to:

- Provide economic adjustment assistance to any community located near a military installation being closed or realigned [Section 2905(a)(1)(B) of DBCRA 90].

- Inform a State or local government applying for assistance under 10 U.S.C. § 2391 (provisions for military base reuse studies and community planning assistance) of the approval or rejection of the application for such assistance within 7 days of receipt in the case of a planning grant, or 30 days of receipt in the case of a community adjustment and economic diversification grant [Section 2913 of NDAA 94].

- Conduct seminars for each community in which a military installation is being closed no later than 6 months after closure is approved (also see Table A-3) [Section 2916 of NDAA 94]. Community seminars are to address the various Federal programs for the reuse and redevelopment of the installation, and provide information about employment assistance to members of these communities.

These requirements, along with those under 10 U.S.C. § 2391, are carried out in large part by the following organizations:

- DoD Component disposal and conversion organizations

- The Office of Economic Adjustment (OEA) within the Office of the Secretary of Defense (OSD), which provides grants to communities for reuse planning (see Table A-3 for deadlines)

- The Base Closure Transition Office (BCTO), within OSD, which coordinates the activities of all Base Transition Coordinators and serves as a clearinghouse for facilitation, coordination, and resolution of Federal Agency issues and other base conversion-related issues

- The Economic Development Administration (EDA) within the Department of Commerce, which provides economic development grants to communities impacted by base closures in accordance with Section 4305 of NDAA 93

- Other Federal Departments and Agencies, which sponsor public benefit conveyances and other conveyances.

Contracting with Local and/or Small or Disadvantaged Businesses

Section 2912 of NDAA 94 requires the Secretary of Defense, when entering into contracts for base closure or realignment, to give preference to qualified businesses located in the vicinity of the installation and to small or disadvantaged business concerns. This preference is specifically extended to include contracts for environmental restoration and mitigation.

Base Transition Coordinators

Section 2915 of NDAA 94 requires the Secretary of Defense to designate a Base Transition Coordinator (BTC) for each closing installation. Transition Coordinator responsibilities are described in NDAA 94 in terms of overall base conversion process facilitation. The BTCs are centrally managed by the Base

Closure and Transition Office (BCTO). Together, the BCTO and BTCs assist base closure communities and the Military Departments in rapid disposal and quick reinvestment of property into productive reuse by acting as a point of contact and facilitator for closure and reuse issues. For example, the BCTO and BTCs assist with resolution of site specific problems and issues, provide monthly community feedback reports to the Deputy Under Secretary of Defense (Industrial Affairs and Installations), and disseminate information pertinent to the closure and reuse process.

Accelerating Real Property Screening

BCRA 88 and DBCRA 90, as amended by Section 2904 of NDAA 94, require the Secretary of Defense to complete formal screening of real property with other Federal Agencies by June 1, 1994 for BRAC 88, 91, and 93 closures and realignments, or within six months of the approval date for future base closures and realignments (see Table A-3). These dates may be postponed, however, if the Secretary of Defense determines that postponement is in the best interest of the community.

Homeless Assistance (McKinney Act)

The Stewart B. McKinney Homeless Assistance Act, and BCRA 88 and DBCRA 90, as amended by Section 2905 of NDAA 94, require the Secretary of Defense to compile a list of property available for use by "homeless providers" by June 1, 1994, for BRAC 88, 91, and 93 closures and realignments, or within six months of the approval date for future base closures and realignments (see Table A-3). The list of property must be submitted to the Department of Housing and Urban Development (HUD) by these dates, and HUD will then publish a notice of availability and suitability of the property. The homeless providers and HUD are then allotted a period of 60 to 175 days to complete the application and decision-making process in accordance with the McKinney Act. In the absence of an expression of interest to HUD in property suitable for the homeless, an LRA can incorporate the property into its redevelopment plan by submitting written expressions of interest to the DoD Component.

Homeless Assistance (Base Closure Community Redevelopment and Homeless Assistance Act)

The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421) amended DBCRA 90 to exempt BRAC 95 installations (and those BRAC 88, 91, and 93 installations whose LRAs submitted a request prior to December 24, 1994) from the McKinney Act and created a new, community-based process for addressing homeless needs in base closure communities. Under the new process, the LRA is responsible for identifying and accommodating community homeless needs in its redevelopment plan, which is submitted with supporting information to HUD. HUD reviews the LRA's submission and either approves the plan's homeless provisions or reports to the Military Department on the suitability of buildings and property at the installations for use to assist the homeless and the extent to which the LRA's application meets HUD's review criteria. The new process also established a new conveyance authority by which real or personal property to be used for homeless assistance purposes can be transferred at no cost to an LRA or directly to a representative of the homeless.

Personal Property

BCRA 88 and DBCRA 90, as amended by Sections 2902 and 2909 of NDAA 94, require the Secretary of Defense to inventory personal property (except for certain categories not available to the LRA for reuse) within six months of the approval date for 1995 base closures and realignments (see Table A-3). Section 2902 of NDAA 94 also stipulates that personal property shall not be removed from a closing or realigning base (unless exemptions are approved) until the expiration of one of four specific time periods. These four time periods are summarized in Table A-3. Limitations on the type of personal property eligible for transfer to communities are contained in Sections 2902 and 2909 of NDAA 94 as well.

Milestones for Environmental Analysis

Provisions in NDAA 92/93 and NDAA 94 specify dates for completion of several environmental analysis activities. These are shown in Table A-3 under the headings Environmental Impact Analysis and Environmental Cleanup.

Transfer of Real Property

BCRA 88 and DBCRA 90, as amended by Section 2903 of NDAA 94, authorize the Secretary of Defense to transfer real and personal property at closing bases to LRAs for less than fair market value under standards and constraints of the statute. Section 2906 of NDAA 94 amends 10 U.S.C. § 2667 and provides similar authority during the leasing of property.

Establishing Base Closure Accounts

Provisions of BCRA 88 and DBCRA 90, as amended or limited by Sections 2921 and 2922 of NDAA 94, require the establishment of separate transfer accounts to fund, and receive proceeds from, base closure and realignment activities. The first is known as the "Department of Defense Base Closure Account" (**BRAC I, or BRAC Part I,** Section 207 of BCRA 88) which is administered for installations designated under BCRA 88. The second account is known as the "Department of Defense Base Closure Account 1990" (**BRAC II, or BRAC Part II,** Section 2906 of DBCRA 90) and is administered for installations designated under DBCRA 90 (includes bases selected for closure and realignment in 1991, 1993 and 1995). The Part II account may be further subdivided into separate accounts for each round of closures and realignments.

Contracting with Communities for Police and Fire Services

BCRA 88 and DBCRA 90, as amended by Section 2907 of NDAA 94, Section 2839 of NDAA 96, and Section 2812 of NDAA 97, authorize the Secretary of Defense to enter into agreements (including contracts, cooperative agreements, and other arrangements for reimbursement) with local governments for police services, fire protection services, airfield operation services, or other community services at installations to be closed or at facilities not yet transferred or otherwise disposed of at closure sites. This authority cannot be exercised earlier than 180 days before the date on which the installation is to be closed (see Table A-3).

Summary of Key Statutes Referenced by Base Closure Laws

STEWART B. MCKINNEY HOMELESS ASSISTANCE ACT

Section 2905 of NDAA 94 amends Section 204(b) of BCRA 88 and Section 2905(b) of DBCRA 90, by prescribing revised processes for compliance with the Stewart B. McKinney Homeless Assistance Act (**McKinney Act,** 42 U.S.C. § 11301 *et seq.*) at closing bases.

FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT (FPASA)

Section 204(b) of BCRA 88 and Section 2905(b) of DBCRA 90 give the DoD Component (through delegation from GSA to the Secretary of Defense) authority to utilize and dispose of excess and surplus property under Sections 202 and 203 of the Federal Property and Administrative Services Act, as amended (40 U.S.C. §§ 483 and 484, respectively).

Section 202 of the FPASA authorizes the DoD Component to promote the utilization of excess property by executive agencies (i.e. executive Departments, Agencies, or wholly owned Government corporations), and/or transfer excess property to other Federal Agencies for use.

Section 203 of FPASA authorizes the DoD Component to dispose of surplus property

"by sale, exchange, lease, permit, or transfer, for cash, credit, or other property, with or without warranty, and upon such terms and conditions as the [DoD Component through its delegation of authority from the Secretary of Defense] **deems proper . . ."**

and provides for the disposal of surplus property via a number of different methods:

- Through public advertising for competitive bids [Section 203(e)(2)]
- Through contract realty brokers [Section 203(e)(4)]
- Through negotiated sale to State and local governments [Sections 203(e)(3), (5) and (6)]
- Through public benefit conveyances to State agencies and other eligible institutions within a State [Section 203(j)], including transfers of property for correctional facility use (subject to Department of Justice [DOJ] approval) [Section 203 (p)(1)], and transfers of property for use as a historic monument (subject to Department of the Interior [DOI] approval) [Sections 203(k)(3) and (4)]
- Through assignment of property to the Department of Education (DOEd) for disposal as educational facilities [Section 203(k)(1)]
- Through assignment of property to the Department of Health and Human Services (HHS) for disposal as public-health facilities [Sections 203(k)(1) and (4)]

- Through assignment of property to the Department of the Interior (DOI) for disposal as a public park or recreational area [Sections 203(k)(2) and (4)]

- Through donation to the American National Red Cross [Section 203(l)]

As amended by Section 2927 of NDAA 94, Section 203 of FPASA also authorizes the DoD Component (via delegation from the Secretary of Defense) to assign surplus property to the Secretary of Transportation needed for the development and operation of a port facility. Within specified time frames, and in consultation with the Secretary of Labor and Secretary of Commerce, the Secretary of Transportation is authorized under Section 2927 of NDAA 94 to transfer such assigned property to States or territories.

In exercising its delegated authorities under the provisions of FPASA, the DoD Component is required to comply with the Federal Property Management Regulations (FPMR), promulgated pursuant to the FPASA, that are currently in effect. These regulations, found at 41 CFR Part 101-47, prescribe the policies, guidelines, requirements, responsibilities and methods governing the utilization and disposal of excess and surplus real property and related personal property within the United States and its territories.

Surplus Property Act (SPA)

Section 204(b) of BCRA 88 and Section 2905(b) of DBCRA 90 give the DoD Component (through delegation from GSA to the Secretary of Defense) the authority to grant approvals and make determinations under Section 13(g) of the Surplus Property Act, as amended [49 U.S.C. §§ 47151–47153].

In exercising this authority, the DoD Component is required to comply with the FPMR and all other regulations promulgated pursuant to Section 13(g) of the SPA that are currently in effect.

Act of May 19, 1948

Section 2905(b)(D) of DBCRA 90 gives the DoD Component (through delegation from GSA to the Secretary of Defense) the authority to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with 16 U.S.C. § 667b. This otherwise unnamed statute authorizes the transfer and utilization of Federally owned real property for wildlife conservation purposes. It provides the basis by which surplus Federal real property may be transferred at no cost to a state or the Department of the Interior (DOI) for management and administration. Under terms of this Act, the DoD Component may transfer parcels of property suited for wildlife resources (e.g., migratory birds, upland game and animals) to other Federal and state agencies via Federal transfer or public benefit conveyance procedures. Sections 2 and 3 of this statute require publication of transfers for wildlife purposes in the *Federal Register*, including a description of the intended uses of the property.

National Environmental Policy Act (NEPA)

Compliance with NEPA is required by Section 204(c) of BCRA 88 and Section 2905(c) of DBCRA 90. In particular, Section 2905(c)(2)(A) states that the provisions of NEPA shall apply to **actions of the** [DoD Component] . . . **during**

the process of property disposal . . . . To comply with NEPA for disposal of installation property, the DoD Component must comply with the regulations in 40 CFR Parts 1500-1508, developed by the Council on Environmental Quality (CEQ), and any other Component-specific regulations pertaining to environmental impact analysis.

SECTION 120 OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)

Activities for complying with Section 120 of CERCLA are part of the Ongoing Environmental Cleanup Process, which is managed under the DoD Component's BRAC Cleanup Plan.

COMMUNITY ENVIRONMENTAL RESPONSE FACILITATION ACT (CERFA)

Enacted on 19 October 1992, CERFA (Pub. L. 102-426) amends Section 120(h) of CERCLA by adding the following:

- Minimum procedures for identifying uncontaminated property at closing military installations [new Section 120(h)(4)]. These procedures require the Environmental Protection Agency (for bases on the National Priorities List [NPL]), or the "appropriate State official" (for bases not on the NPL), to concur with uncontaminated property determinations by the DoD Component

- Language clarifying that the covenant required in Section 120(h)(3)(B)(i), that "all remedial action necessary to protect human health and the environment with respect to any [hazardous] substances remaining on the property has been taken," may be given when an approved remedial action is in place and operating properly and successfully [modified Section 120(h)(3)]. [Note: In some cases, property can now be transferred to private parties before remedial action has been taken and the covenant requirements have been fulfilled.]

- Requirements for Federal Agencies (e.g., the DoD Component) to notify States of leases that will be in effect after the scheduled closure date [new Section 120(h)(5)]

- Compliance with CERFA is critical for accomplishing the transfer of uncontaminated and remediated property. For BRAC 88 and BRAC 91 realignment and closure bases, identification of uncontaminated property and CERFA compliance has already occurred. For BRAC 93 and BRAC 95 bases, identification and concurrence must be completed no later than 18 months after the approval date [CERCLA § 120(h)(4)(C)(iii)]. Section 2910 of NDAA 94 has added the further requirement that CERFA identifications and concurrences be completed within 9 months of the submittal of the LRA's approved Redevelopment Plan.

Appendix B

Base Closure and Reuse Laws and Amendments

Appendices B and C provide the text of the major legal and regulatory authorities that provide the basis for this Manual and for base closure and reuse in general (see Figure B-1). The principal legal authorities for base closure and reuse are the Defense Authorization Amendments and Base Closure and Realignment Act of 1988 (Title II of Pub. L. 100-526), for 1988 base closures, and the Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of Pub. L. 101-510), for closures approved in 1991, 1993, and 1995. Both BRAC statutes have been amended several times, most significantly by the Base Closure Community Assistance Act of 1993 (Subtitle A of Title XXIX of Pub. L. 103-160) and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (the "Redevelopment Act," Pub. L. 103-421). As a result of these two sets of amendments, the Department of Defense promulgated regulations at 32 CFR Parts 174, 175, and 176 to provide more specific instructions for implementing their provisions. In addition, the Department of Defense published this Manual to provide even more detailed guidance for implementing 32 CFR Parts 174, 175, and 176. The relationship of these authorities and guidance is shown in Figure B-1 *[Note that Figure B-1 does not enumerate all the amendments to the base closure statutes].*

The texts of the Base Closure Community Assistance Act of 1993 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 are included in this Appendix. Both of these laws primarily amend the BRAC statutes, but also contain self-standing provisions and amendments to other legal authorities for base closure and reuse. The current, amended version of the Defense Base Closure and Realignment Act of 1990 is also included in this Appendix. The most recent version of 32 CFR Parts 174, 175, and 176, including all amendments published as final, interim final, or proposed rules in the *Federal Register*, are included as Appendix C.

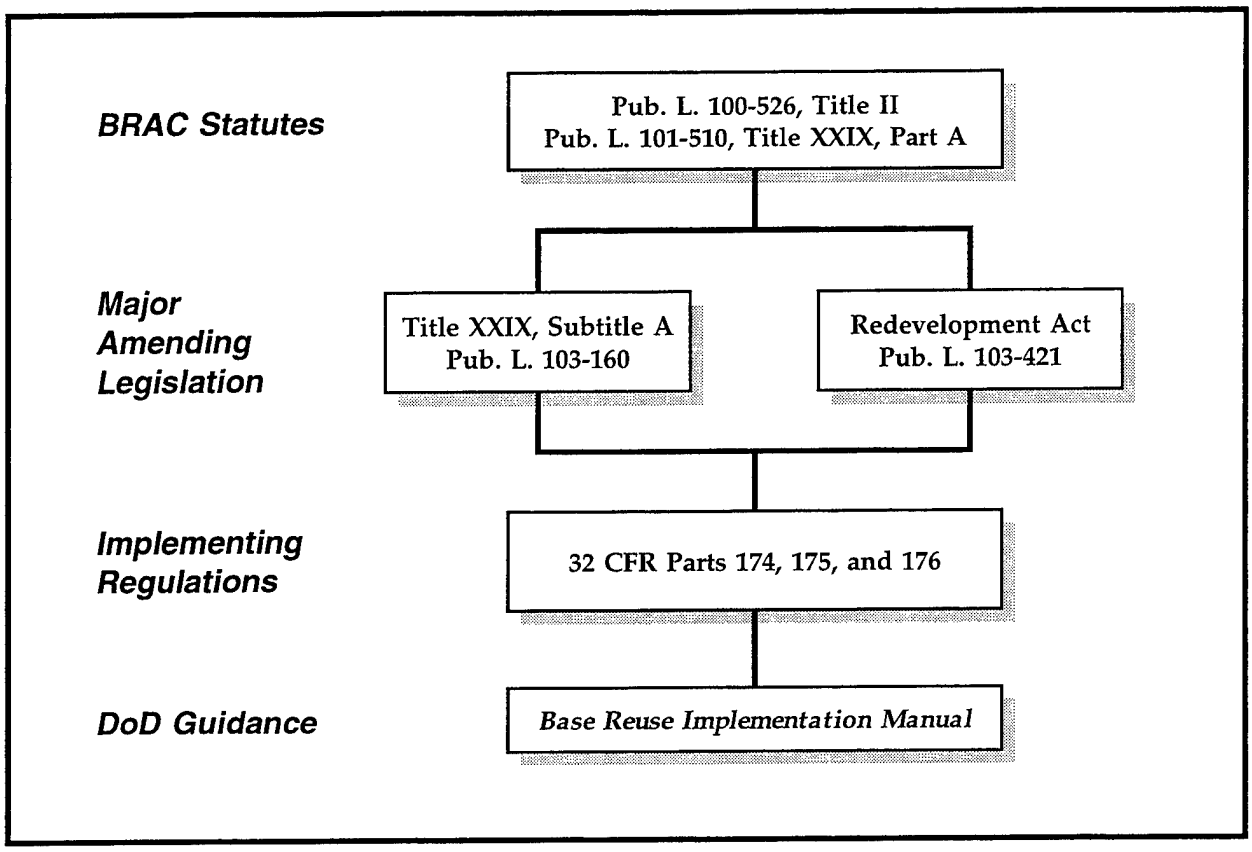


Figure B-1. Relationship of Laws, Regulations, and Guidance

Base Closure Community Assistance Act (Pub. L. 103-160, Title XXIX, Subtitle A)

National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160)

Enacted November 30, 1993

TITLE XXIX—DEFENSE BASE CLOSURE AND REALIGNMENT

SUBTITLE A—BASE CLOSURE COMMUNITY ASSISTANCE

SEC. 2901. FINDINGS.

Congress makes the following findings:

(1) The closure and realignment of military installations within the United States is a necessary consequence of the end of the Cold War and of changed United States national security requirements.

(2) A military installation is a significant source of employment for many communities, and the closure or realignment of an installation may cause economic hardship for such communities.

(3) It is in the interest of the United States that the Federal Government facilitate the economic recovery of communities that experience adverse economic circumstances as a result of the closure or realignment of a military installation.

(4) It is in the interest of the United States that the Federal Government assist communities that experience adverse economic circumstances as a result of the closure of military installations by working with such communities to identify and implement means of reutilizing or redeveloping such installations in a beneficial manner or of otherwise revitalizing such communities and the economies of such communities.

(5) The Federal Government may best identify and implement such means by requiring that the head of each department or agency of the Federal Government having jurisdiction over a matter arising out of the closure of a military installation under a base closure law, or the reutilization and redevelopment of such an installation, designate for each installation to be closed an individual in such department or agency who shall provide information and assistance to the transition coordinator for the installation designated under section 2915 on the assistance, programs, or other activities of such department or agency with respect to the closure or reutilization and redevelopment of the installation.

(6) The Federal Government may also provide such assistance by accelerating environmental restoration at military installations to be closed, and by closing such installations, in a manner that best ensures the beneficial reutilization and redevelopment of such installations by such communities.

(7) The Federal Government may best contribute to such reutilization and redevelopment by making available real and personal property at military installations to be closed to communities affected by such closures on a timely basis, and, if appropriate, at less than fair market value.

SEC. 2902. PROHIBITION ON TRANSFER OF CERTAIN PROPERTY LOCATED AT MILITARY INSTALLATIONS TO BE CLOSED.

(a) CLOSURES UNDER 1988 ACT.—(1) Section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100-526; 10 U.S.C. 2687 note) is amended—

(A) in paragraph (2)(E), by striking out "paragraphs (3) and (4)" and inserting in lieu thereof "paragraphs (3) through (6)";

(B) by redesignating paragraph (4) as paragraph (7); and

(C) by striking out paragraph (3) and inserting in lieu thereof the following new paragraph (3):

"(3)(A) Not later than 6 months after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994, the Secretary, in consultation with the redevelopment authority with respect to each military installation to be closed under this title after such date of enactment, shall—

"(i) inventory the personal property located at the installation; and

"(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

"(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

"(i) the local government in whose jurisdiction the installation is wholly located; or

"(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

"(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

"(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

"(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

"(III) twenty-four months after the date referred to in subparagraph (A); or

"(IV) ninety days before the date of the closure of the installation.

"(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this title as follows:

"(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

"(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

"(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this title to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation.

"(E) This paragraph shall not apply to any related personal property located at an installation to be closed under this title if the property—

"(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

"(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

"(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

"(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

"(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

"(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.".

(2) Section 204(b)(7)(A)(ii) of such Act, as redesignated by paragraph (1)(B), is amended by striking out "paragraph (3)" and inserting in lieu thereof "paragraphs (3) through (6)".

(b) CLOSURES UNDER 1990 ACT.—Section 2905(b) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) is amended—

(1) in paragraph (2)(A), by inserting "and paragraphs (3), (4), (5), and (6)" after "Subject to subparagraph (C)"; and

(2) by adding at the end the following:

"(3)(A) Not later than 6 months after the date of approval of the closure of a military installation under this part, the Secretary, in consultation with the redevelopment authority with respect to the installation, shall—

"(i) inventory the personal property located at the installation; and

"(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

"(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

"(i) the local government in whose jurisdiction the installation is wholly located; or

"(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

"(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

"(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

"(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

"(III) twenty-four months after the date of approval of the closure of the installation; or

"(IV) ninety days before the date of the closure of the installation.

"(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this part as follows:

"(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

"(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

"(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this part to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation.

"(E) This paragraph shall not apply to any personal property located at an installation to be closed under this part if the property—

"(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

"(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

"(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

"(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

"(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

"(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.".

(c) APPLICABILITY.—For the purposes of section 2905(b)(3) of the Defense Base Closure and Realignment Act of 1990, as added by subsection (b), the date of approval of closure of any installation approved for closure before the date of the enactment of this Act shall be deemed to be the date of the enactment of this Act.

SEC. 2903. AUTHORITY TO TRANSFER PROPERTY AT CLOSED INSTALLATIONS TO AFFECTED COMMUNITIES AND STATES.

(a) AUTHORITY UNDER 1988 ACT.—Section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100-526; 10 U.S.C. 2687 note), as amended by section 2902(a), is further amended by adding after paragraph (3), as so added, the following:

"(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed under this title to the redevelopment authority with respect to the installation.

"(B)(i)(I) Except as provided in clause (ii), the transfer of property under subparagraph (A) may be for consideration at or below the estimated fair market value of the property transferred or without consideration. Such consideration may include consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate. The Secretary shall determine the estimated fair market value of the property to be transferred under this subparagraph before carrying out such transfer.

"(II) The Secretary shall prescribe regulations that set forth guidelines for determining the amount, if any, of consideration required for a transfer under this paragraph. Such regulations shall include a requirement that, in the case of each transfer under this paragraph for consideration below the estimated fair market value of the property transferred, the Secretary provide an explanation why the transfer is not for the estimated fair market value of the property transferred (including an explanation why the transfer cannot be carried out in accordance with the authority provided to the Secretary pursuant to paragraph (1) or (2)).

"(ii) The transfer of property under subparagraph (A) shall be without consideration in the case of any installation located in a rural area whose closure under this title will have a substantial adverse impact (as determined by the Secretary) on the economy of the communities in the vicinity of the installation and on the prospect for the economic recovery of such communities from such closure. The Secretary shall prescribe in the regulations under clause (i)(II) the manner of determining whether communities are eligible for the transfer of property under this clause.

"(iii) In the case of a transfer under subparagraph (A) for consideration below the fair market value of the property transferred, the Secretary may recoup from the transferee of such property such portion as the Secretary determines appropriate of the amount, if

any, by which the sale or lease of such property by such transferee exceeds the amount of consideration paid to the Secretary for such property by such transferee. The Secretary shall prescribe regulations for determining the amount of recoupment under this clause.

"(C)(i) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484) if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

"(ii) The Secretary may, in lieu of the transfer of property referred to in subparagraph (A), transfer personal property similar to such property (including property not located at the installation) if the Secretary determines that the transfer of such similar property is in the interest of the United States.

"(D) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

"(E) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.".

(b) AUTHORITY UNDER 1990 ACT.—Section 2905(b) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as amended by section 2902(b), is further amended by adding at the end the following:

"(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed under this part to the redevelopment authority with respect to the installation.

"(B)(i)(I) Except as provided in clause (ii), the transfer of property under subparagraph (A) may be for consideration at or below the estimated fair market value of the property transferred or without consideration. Such consideration may include consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate. The Secretary shall determine the estimated fair market value of the property to be transferred under this subparagraph before carrying out such transfer.

"(II) The Secretary shall prescribe regulations that set forth guidelines for determining the amount, if any, of consideration required for a transfer under this paragraph. Such regulations shall include a requirement that, in the case of each transfer under this paragraph for consideration below the estimated fair market value of the property transferred, the Secretary provide an explanation why the transfer is not for the estimated fair market value of the property transferred (including an explanation why the transfer cannot be carried out in accordance with the authority provided to the Secretary pursuant to paragraph (1) or (2)).

"(ii) The transfer of property under subparagraph (A) shall be without consideration in the case of any installation located in a rural area whose closure under this part will have a substantial adverse impact (as determined by the Secretary) on the economy of the communities in the vicinity of the installation and on the prospect for the economic recovery of such communities from such closure. The Secretary shall prescribe in the regulations under clause (i)(II) the manner of determining whether communities are eligible for the transfer of property under this clause.

"(iii) In the case of a transfer under subparagraph (A) for consideration below the fair market value of the property transferred, the Secretary may recoup from the transferee of such property such portion as the Secretary determines appropriate of the amount, if any, by which the sale or lease of such property by such transferee exceeds the amount of consideration paid to the Secretary for such property by such transferee. The Secretary shall prescribe regulations for determining the amount of recoupment under this clause.

"(C)(i) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484) if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

"(ii) The Secretary may, in lieu of the transfer of property referred to in subparagraph (A), transfer property similar to such property (including property not located at the installation) if the Secretary determines that the transfer of such similar property is in the interest of the United States.

"(D) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

"(E) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.".

(c) CONSIDERATION OF ECONOMIC NEEDS.—In order to maximize the local and regional benefit from the reutilization and redevelopment of military installations that are closed, or approved for closure, pursuant to the operation of a base closure law, the Secretary of Defense shall consider locally and regionally delineated economic development needs and priorities into the process by which the Secretary disposes of real property and personal property as part of the closure of a military installation under a base closure law. In determining such needs and priorities, the Secretary shall take into account the redevelopment plan developed for the military installation involved. The Secretary shall ensure that the needs of the homeless in the communities affected by the closure of such installations are taken into consideration in the redevelopment plan with respect to such installations.

(d) COOPERATION.—The Secretary of Defense shall cooperate with the State in which a military installation referred to in subsection (c) is located, with the redevelopment authority with respect to the installation, and with local governments and other interested persons in communities located near the installation in implementing the entire process of disposal of the real property and personal property at the installation.

SEC. 2904. EXPEDITED DETERMINATION OF TRANSFERABILITY OF EXCESS PROPERTY OF INSTALLATIONS TO BE CLOSED.

(a) DETERMINATIONS UNDER 1988 ACT.—Section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100-526; 10 U.S.C. 2687 note), as amended by section 2903(a), is further amended by adding after paragraph (4), as so added, the following:

"(5)(A) Except as provided in subparagraph (B), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under subsection (b)(1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this title after the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994, or will accept transfer of any portion of such installation, are made not later than 6 months after such date of enactment.

"(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.".

(b) DETERMINATIONS UNDER 1990 ACT.—Section 2905(b) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as amended by section 2903(b), is further amended by adding at the end the following:

"(5)(A) Except as provided in subparagraph (B), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under subsection (b)(1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this part, or will accept transfer of any portion of such installation, are made not later than 6 months after the date of approval of closure of that installation.

"(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.".

(c) APPLICABILITY.—The Secretary of Defense shall make the determinations required under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990, as added by subsection (b), in the case of installations approved for closure under such Act before the date of the enactment of this Act, not later than 6 months after the date of the enactment of this Act.

SEC. 2905. AVAILABILITY OF PROPERTY FOR ASSISTING THE HOMELESS.

(a) AVAILABILITY OF PROPERTY UNDER 1988 ACT.—Section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100-526; 10 U.S.C. 2687 note), as amended by section 2904(a), is further amended by adding after paragraph (5), as so added, the following:

"(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this title.

"(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this title, the Secretary shall—

"(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

"(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

"(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

"(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

"(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

"(ii) notify the Secretary of Defense of the buildings and property that are so identified;

"(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act; and

"(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

"(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

"(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

"(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

"(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

"(iii) the Secretary of Health and Human Services—

"(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

"(II) approves the application under section 501(e) of such Act.

"(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to in subparagraph (D), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

"(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

"(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

"(III) In the case of building and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

"(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

"(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

"(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

"(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

"(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

"(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act while so available for a redevelopment authority.

"(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.".

(b) AVAILABILITY OF PROPERTY UNDER 1990 ACT.—Section 2905(b) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as amended by section 2904(b), is further amended by adding at the end the following:

"(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this part.

"(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this part, the Secretary shall—

"(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

"(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

"(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

"(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

"(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

"(ii) notify the Secretary of Defense of the buildings and property that are so identified;

"(iii) publish in the Federal Register a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act; and

"(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

"(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

"(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

"(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

"(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

"(iii) the Secretary of Health and Human Services—

"(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

"(II) approves the application under section 501(e) of such Act.

"(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to subparagraph (D), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

"(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance

with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

"(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

"(III) In the case of buildings and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

"(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

"(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

"(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

"(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

"(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

"(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act while so available for a redevelopment authority.

"(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.".

SEC. 2906. AUTHORITY TO LEASE CERTAIN PROPERTY AT INSTALLATIONS TO BE CLOSED.

(a) LEASE AUTHORITY.—Subsection (f) of section 2667 of title 10, United States Code, is amended to read as follows:

"(f)(1) Notwithstanding subsection (a)(3), pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary of the military department concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or local economic adjustment efforts.

"(2) Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease interest if the Secretary concerned determines that—

"(A) a public interest will be served as a result of the lease; and

"(B) the fair market value of the lease is (i) unobtainable, or (ii) not compatible with such public benefit.

"(3) Before entering into any lease under this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency in order to determine whether the environmental condition of the property proposed for leasing is such that the lease of the

property is advisable. The Secretary and the Administrator shall enter into a memorandum of understanding setting forth procedures for carrying out the determinations under this paragraph.".

(b) DEFINITION.—Such section is further amended by adding at the end the following new subsection:

"(g) In this section, the term 'base closure law' means each of the following:

"(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

"(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

"(3) Section 2687 of this title.".

SEC. 2907. AUTHORITY TO CONTRACT FOR CERTAIN SERVICES AT INSTALLATIONS BEING CLOSED.

(a) BASE CLOSURES UNDER 1988 ACT.—Section 204(b) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100-526; 10 U.S.C. 2687 note), as amended by section 2902(a)(1)(B), is further amended by adding at the end the following:

"(8)(A) Subject to subparagraph (C), the Secretary may contract with local governments for the provision of police services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this title if the Secretary determines that the provision of such services under such contracts is in the best interests of the Department of Defense.

"(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

"(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

"(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.".

(b) BASE CLOSURES UNDER 1990 ACT.—Section 2905(b) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as amended by section 2905(b) of this Act, is further amended by adding at the end the following:

"(7)(A) Subject to subparagraph (C), the Secretary may contract with local governments for the provision of police services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this part if the Secretary determines that the provision of such services under such contracts is in the best interests of the Department of Defense.

"(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

"(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

"(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.".

SEC. 2908. AUTHORITY TO TRANSFER PROPERTY AT MILITARY INSTALLATIONS TO BE CLOSED TO PERSONS PAYING THE COST OF ENVIRONMENTAL RESTORATION ACTIVITIES ON THE PROPERTY.

(a) BASE CLOSURES UNDER 1988 ACT.—Section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100-526; 10 U.S.C. 2687 note) is amended by adding at the end the following new subsection:

"**(d) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.**—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

"(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this title that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

"(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

"(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

"(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

"(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

"(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

"(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

"(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

"(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994.".

(b) BASE CLOSURES UNDER 1990 ACT.—Section 2905 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) is amended by adding at the end the following new subsection:

"**(e) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.**—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in

subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

"(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this part that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

"(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

"(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

"(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

"(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

"(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

"(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

"(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

"(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994.".

(c) REGULATIONS.—Not later than nine months after the date of the enactment of this Act, the Secretary of Defense, in consultation with the Administrator of the Environmental Protection Agency, shall prescribe any regulations necessary to carry out subsection (d) of section 204 of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100-526; 10 U.S.C. 2687 note), as added by subsection (a), and subsection (e) of section 2905 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as added by subsection (b).

SEC. 2909. SENSE OF CONGRESS ON AVAILABILITY OF SURPLUS MILITARY EQUIPMENT.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Defense take all actions that the Secretary determines practicable to make available the military equipment referred to in subsection (b) to communities suffering significant adverse economic circumstances as a result of the closure of military installations.

(b) COVERED EQUIPMENT.—The equipment referred to in subsection (a) is surplus military equipment that—

(1) is scheduled for retirement or disposal as a result of reductions in the size of the Armed Forces or the closure or realignment of a military installation under a base closure law;

(2) is important (as determined by the Secretary) to the economic development efforts of the communities referred to in subsection (a); and

(3) has no other military uses (as so determined).

SEC. 2910. IDENTIFICATION OF UNCONTAMINATED PROPERTY AT INSTALLATIONS TO BE CLOSED.

The identification by the Secretary of Defense required under section 120(h)(4)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)(4)(A)), and the concurrence required under section 120(h)(4)(B) of such Act, shall be made not later than the earlier of—

(1) the date that is 9 months after the date of the submittal, if any, to the transition coordinator for the installation concerned of a specific use proposed for all or a portion of the real property of the installation; or

(2) the date specified in section 120(h)(4)(C)(iii) of such Act.

SEC. 2911. COMPLIANCE WITH CERTAIN ENVIRONMENTAL REQUIREMENTS RELATING TO CLOSURE OF INSTALLATIONS.

Not later than 12 months after the date of the submittal to the Secretary of Defense of a redevelopment plan for an installation approved for closure under a base closure law, the Secretary of Defense shall, to the extent practicable, complete any environmental impact analyses required with respect to the installation, and with respect to the redevelopment plan, if any, for the installation, pursuant to the base closure law under which the installation is closed, and pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 2912. PREFERENCE FOR LOCAL AND SMALL BUSINESSES.

(a) PREFERENCE REQUIRED.—In entering into contracts with private entities as part of the closure or realignment of a military installation under a base closure law, the Secretary of Defense shall give preference, to the greatest extent practicable, to qualified businesses located in the vicinity of the installation and to small business concerns and small disadvantaged business concerns. Contracts for which this preference shall be given shall include contracts to carry out activities for the environmental restoration and mitigation at military installations to be closed or realigned.

(b) DEFINITIONS.—In this section:

(1) The term "small business concern" means a business concern meeting the requirements of section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term "small disadvantaged business concern" means the business concerns referred to in section 637(d)(1) of such Act (15 U.S.C. 637(d)(1)).

(3) The term "base closure law" includes section 2687 of title 10, United States Code.

SEC. 2913. CONSIDERATION OF APPLICATIONS OF AFFECTED STATES AND COMMUNITIES FOR ASSISTANCE.

Section 2391(b) of title 10, United States Code, is amended by adding at the end the following:

"(6) To the extent practicable, the Secretary of Defense shall inform a State or local government applying for assistance under this subsection of the approval or rejection by the Secretary of the application for such assistance as follows:

"(A) Before the end of the 7-day period beginning on the date on which the Secretary receives the application, in the case of an application for a planning grant.

"(B) Before the end of the 30-day period beginning on such date, in the case of an application for assistance to carry out a community adjustments and economic diversifications program.

"(7)(A) In attempting to complete consideration of applications within the time period specified in paragraph (6), the Secretary of Defense shall give priority to those applications requesting assistance for a community described in subsection (f)(1).

"(B) If an application under paragraph (6) is rejected by the Secretary, the Secretary shall promptly inform the State or local government of the reasons for the rejection of the application.".

SEC. 2914. CLARIFICATION OF UTILIZATION OF FUNDS FOR COMMUNITY ECONOMIC ADJUSTMENT ASSISTANCE.

(a) UTILIZATION OF FUNDS.—Subject to subsection (b), funds made available to the Economic Development Administration for economic adjustment assistance under section 4305 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 106 Stat. 2700) may by utilized by the administration for administrative activities in support of the provision of such assistance.

(b) LIMITATION.—Not more than three percent of the funds referred to in subsection (a) may be utilized by the administration for the administrative activities referred to in such subsection.

SEC. 2915. TRANSITION COORDINATORS FOR ASSISTANCE TO COMMUNITIES AFFECTED BY THE CLOSURE OF INSTALLATIONS.

(a) IN GENERAL.—The Secretary of Defense shall designate a transition coordinator for each military installation to be closed under a base closure law. The transition coordinator shall carry out the activities for such coordinator set forth in subsection (c).

(b) TIMING OF DESIGNATION.—A transition coordinator shall be designated for an installation under subsection (a) as follows:

(1) Not later than 15 days after the date of approval of closure of the installation.

(2) In the case of installations approved for closure under a base closure law before the date of the enactment of this Act, not later than 15 days after such date of enactment.

(c) RESPONSIBILITIES.—A transition coordinator designated with respect to an installation shall—

(1) encourage, after consultation with officials of Federal and State departments and agencies concerned, the development of strategies for the expeditious environmental cleanup and restoration of the installation by the Department of Defense;

(2) assist the Secretary of the military department concerned in designating real property at the installation that has the potential for rapid and beneficial reuse or redevelopment in accordance with the redevelopment plan for the installation;

(3) assist such Secretary in identifying strategies for accelerating completion of environmental cleanup and restoration of the real property designated under paragraph (2);

(4) assist such Secretary in developing plans for the closure of the installation that take into account the goals set forth in the redevelopment plan for the installation;

(5) assist such Secretary in developing plans for ensuring that, to the maximum extent practicable, the Department of Defense carries out any activities at the installation after the closure of the installation in a manner that takes into account, and supports, the redevelopment plan for the installation;

(6) assist the Secretary of Defense in making determinations with respect to the transferability of property at the installation under section 204(b)(5) of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100-526; 10 U.S.C. 2687 note), as added by section 2904(a) of this Act, and under section 2905(b)(5) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note), as added by section 2904(b) of this Act, as the case may be;

(7) assist the local redevelopment authority with respect to the installation in identifying real property or personal property at the installation that may have significant potential for reuse or redevelopment in accordance with the redevelopment plan for the installation;

(8) assist the Office of Economic Adjustment of the Department of Defense and other departments and agencies of the Federal Government in coordinating the provision of assistance under transition assistance and transition mitigation programs with community redevelopment activities with respect to the installation;

(9) assist the Secretary of the military department concerned in identifying property located at the installation that may be leased in a manner consistent with the redevelopment plan for the installation; and

(10) assist the Secretary of Defense in identifying real property or personal property at the installation that may be utilized to meet the needs of the homeless by consulting with the Secretary of Housing and Urban Development and the local lead agency of the homeless, if any, referred to in section 210(b) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11320(b)) for the State in which the installation is located.

SEC. 2916. SENSE OF CONGRESS ON SEMINARS ON REUSE OR REDEVELOPMENT OF PROPERTY AT INSTALLATIONS TO BE CLOSED.

It is the sense of Congress that the Secretary of Defense conduct seminars for each community in which is located a military installation to be closed under a base closure law. Any such seminar shall—

(1) be conducted within 6 months after the date of approval of closure of the installation concerned;

(2) address the various Federal programs for the reuse and redevelopment of the installation; and

(3) provide information about employment assistance (including employment assistance under Federal programs) available to members of such communities.

SEC. 2917. FEASIBILITY STUDY ON ASSISTING LOCAL COMMUNITIES AFFECTED BY THE CLOSURE OR REALIGNMENT OF MILITARY INSTALLATIONS.

(a) STUDY.—The Secretary of Defense shall conduct a study to determine the feasibility of assisting local communities recovering from the adverse economic impact of the closure or major realignment of a military installation under a base closure law by reserving for grants to the communities under section 2391(b) of title 10, United States Code, an amount equal to not less than 10 percent of the total projected savings to be realized by the Department of Defense in the first 10 years after the closure or major realignment of the installation as a result of the closure or realignment.

(b) REPORT.—Not later than March 1, 1994, the Secretary shall submit to Congress a report containing the results of the study required by this subsection. The report shall include—

(1) an estimate of the amount of the projected savings described in subsection (a) to be realized by the Department of Defense as a result of each base closure or major realignment approved before the date of the enactment of this Act; and

(2) a recommendation regarding the funding sources within the budget for the Department of Defense from which amounts for the grants described in subsection (a) could be derived.

SEC. 2918. DEFINITIONS.

(a) Subtitle A of Title XXIX.—In this subtitle:

(1) The term "base closure law" means the following:

(A) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(B) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(2) The term "date of approval", with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under the applicable base closure law expires.

(3) The term "redevelopment authority", in the case of an installation to be closed under a base closure law, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation and for directing the implementation of such plan.

(4) The term "redevelopment plan", in the case of an installation to be closed under a base closure law, means a plan that—

(A) is agreed to by the redevelopment authority with respect to the installation; and

(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.

(b) BASE CLOSURE ACT 1988.—Section 209 of the Defense Authorization Amendments and Base Closure and Realignment Act (title II of Public Law 100-526; 10 U.S.C. 2687 note) is amended by adding at the end the following:

"(10) The term 'redevelopment authority', in the case of an installation to be closed under this title, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation and for directing the implementation of such plan.

"(11) The term 'redevelopment plan' in the case of an installation to be closed under this title, means a plan that—

"(A) is agreed to by the redevelopment authority with respect to the installation; and

"(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse or redevelopment as a result of the closure of the installation.".

(c) BASE CLOSURE ACT 1990.—Section 2910 of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) is amended by adding at the end the following new paragraph:

"(8) The term 'date of approval', with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires.

"(9) The term 'redevelopment authority', in the case of an installation to be closed under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation and for directing the implementation of such plan.

"(10) The term 'redevelopment plan' in the case of an installation to be closed under this part, means a plan that—

"(A) is agreed to by the local redevelopment authority with respect to the installation; and

"(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.".

Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421)

Public Law 103-421

Enacted October 25, 1994

An Act

To revise and improve the process for disposing of buildings and property at military installations under the base closure laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may cited as the "Base Closure Community Redevelopment and Homeless Assistance Act of 1994".

SEC. 2. DISPOSAL OF BUILDINGS AND PROPERTY AT MILITARY INSTALLATIONS APPROVED FOR CLOSURE.

(a) IN GENERAL.—Section 2905(b) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph (7):

"(7)(A) Determinations of the use to assist the homeless of buildings and property located at installations approved for closure under this part after the date of the enactment of this paragraph shall be determined under this paragraph rather than paragraph (6).

"(B)(i) Not later than the date on which the Secretary of Defense completes the final determinations referred to in paragraph (5) relating to the use or transferability of any portion of an installation covered by this paragraph, the Secretary shall—

"(I) identify the buildings and property at the installation for which the Department of Defense has a use, for which another department or agency of the Federal Government has identified a use, or of which another department or agency will accept a transfer;

"(II) take such actions as are necessary to identify any building or property at the installation not identified under subclause (I) that is excess property or surplus property;

"(III) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation (or the chief executive officer of the State in which the installation is located if there is no redevelopment authority for the installation at the completion of the determination described in the stem of this sentence) information on any building or property that is identified under subclause (II); and

"(IV) publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the buildings and property identified under subclause (II).

"(ii) Upon the recognition of a redevelopment authority for an installation covered by this paragraph, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the redevelopment authority.

"(C)(i) State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of an installation covered by this paragraph shall submit to the redevelopment authority for the installation a notice of the interest, if any, of such governments, representatives, and parties in the buildings or property, or any portion thereof, at the installation that are identified under subparagraph (B)(i)(II). A notice of interest under this clause shall describe the need of the government, representative, or party concerned for the buildings or property covered by the notice.

"(ii) The redevelopment authority for an installation shall assist the governments, representatives, and parties referred to in clause (i) in evaluating buildings and property at the installation for purposes of this subparagraph.

"(iii) In providing assistance under clause (ii), a redevelopment authority shall—

"(I) consult with representatives of the homeless in the communities in the vicinity of the installation concerned; and

"(II) undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.

"(iv) It is the sense of Congress that redevelopment authorities should begin to conduct outreach efforts under clause (iii)(II) with respect to an installation as soon as is practicable after the date of approval of closure of the installation.

"(D)(i) State and local governments, representatives of the homeless, and other interested parties shall submit a notice of interest to a redevelopment authority under subparagraph (C) not later than the date specified for such notice by the redevelopment authority.

"(ii) The date specified under clause (i) shall be—

"(I) in the case of an installation for which a redevelopment authority has been recognized as of the date of the completion of the determinations referred to in paragraph (5), not earlier than 3 months and not later than 6 months after that date; and

"(II) in the case of an installation for which a redevelopment authority is not recognized as of such date, not earlier than 3 months and not later than 6 months after the date of the recognition of a redevelopment authority for the installation.

"(iii) Upon specifying a date for an installation under this subparagraph, the redevelopment authority for the installation shall—

"(I) publish the date specified in a newspaper of general circulation in the communities in the vicinity of the installation concerned; and

"(II) notify the Secretary of Defense of the date.

"(E)(i) In submitting to a redevelopment authority under subparagraph (C) a notice of interest in the use of buildings or property at an installation to assist the homeless, a representative of the homeless shall submit the following:

"(I) A description of the homeless assistance program that the representative proposes to carry out at the installation.

"(II) An assessment of the need for the program.

"(III) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation.

"(IV) A description of the buildings and property at the installation that are necessary in order to carry out the program.

"(V) A description of the financial plan, the organization, and the organizational capacity of the representative to carry out the program.

"(VI) An assessment of the time required in order to commence carrying out the program.

"(ii) A redevelopment authority may not release to the public any information submitted to the redevelopment authority under clause (i)(V) without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located.

"(F)(i) The redevelopment authority for each installation covered by this paragraph shall prepare a redevelopment plan for the installation. The redevelopment authority shall, in preparing the plan, consider the interests in the use to assist the homeless of the buildings and property at the installation that are expressed in the notices submitted to the redevelopment authority under subparagraph (C).

"(ii)(I) In connection with a redevelopment plan for an installation, a redevelopment authority and representatives of the homeless shall prepare legally binding agreements that provide for the use to assist the homeless of buildings and property, resources, and assistance on or off the installation. The implementation of such agreements shall be contingent upon the approval of the redevelopment plan by the Secretary of Housing and Urban Development under subparagraph (H) or (J).

"(II) Agreements under this clause shall provide for the reversion to the redevelopment authority concerned, or to such other entity or entities as the agreements shall provide, of buildings and property that are made available under this paragraph for use to assist the homeless in the event that such buildings and property cease being used for that purpose.

"(iii) A redevelopment authority shall provide opportunity for public comment on a redevelopment plan before submission of the plan to the Secretary of Defense and the Secretary of Housing and Urban Development under subparagraph (G).

"(iv) A redevelopment authority shall complete preparation of a redevelopment plan for an installation and submit the plan under subparagraph (G) not later than 9 months after the date specified by the redevelopment authority for the installation under subparagraph (D).

"(G)(i) Upon completion of a redevelopment plan under subparagraph (F), a redevelopment authority shall submit an application containing the plan to the Secretary of Defense and to the Secretary of Housing and Urban Development.

"(ii) A redevelopment authority shall include in an application under clause (i) the following:

"(I) A copy of the redevelopment plan, including a summary of any public comments on the plan received by the redevelopment authority under subparagraph (F)(iii).

"(II) A copy of each notice of interest of use of buildings and property to assist the homeless that was submitted to the redevelopment authority under subparagraph (C), together with a description of the manner, if any, in which the plan addresses the interest expressed in each such notice and, if the plan does not address such an interest, an explanation why the plan does not address the interest.

"(III) A summary of the outreach undertaken by the redevelopment authority under subparagraph (C)(iii)(II) in preparing the plan.

"(IV) A statement identifying the representatives of the homeless and the homeless assistance planning boards, if any, with which the redevelopment authority consulted in preparing the plan, and the results of such consultations.

"(V) An assessment of the manner in which the redevelopment plan balances the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.

"(VI) Copies of the agreements that the redevelopment authority proposes to enter into under subparagraph (F)(ii).

"(H)(i) Not later than 60 days after receiving a redevelopment plan under subparagraph (G), the Secretary of Housing and Urban Development shall complete a review of the plan. The purpose of the review is to determine whether the plan, with respect to the expressed interest and requests of representatives of the homeless—

"(I) takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the plan for the use and needs of the homeless in such communities;

"(II) takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation;

"(III) balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities;

"(IV) was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation; and

"(V) specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes.

"(ii) It is the sense of Congress that the Secretary of Housing and Urban Development shall, in completing the review of a plan under this subparagraph, take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan.

"(iii) The Secretary of Housing and Urban Development may engage in negotiations and consultations with a redevelopment authority before or during the course of a review under clause (i) with a view toward resolving any preliminary determination of the Secretary that a redevelopment plan does not meet a requirement set forth in that clause. The redevelopment authority may modify the redevelopment plan as a result of such negotiations and consultations.

"(iv) Upon completion of a review of a redevelopment plan under clause (i), the Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under that clause.

"(v) If the Secretary of Housing and Urban Development determines as a result of such a review that a redevelopment plan does not meet the requirements set forth in clause (i), a notice under clause (iv) shall include—

"(I) an explanation of that determination; and

"(II) a statement of the actions that the redevelopment authority must undertake in order to address that determination.

"(I)(i) Upon receipt of a notice under subparagraph (H)(iv) of a determination that a redevelopment plan does not meet a requirement set forth in subparagraph (H)(i), a redevelopment authority shall have the opportunity to—

"(I) revise the plan in order to address the determination; and

"(II) submit the revised plan to the Secretary of Housing and Urban Development.

"(ii) A redevelopment authority shall submit a revised plan under this subparagraph to the Secretary of Housing and Urban Development, if at all, not later than 90 days after

the date on which the redevelopment authority receives the notice referred to in clause (i).

"(J)(i) Not later than 30 days after receiving a revised redevelopment plan under subparagraph (I), the Secretary of Housing and Urban Development shall review the revised plan and determine if the plan meets the requirements set forth in subparagraph (H)(i).

"(ii) The Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under this subparagraph.

"(K) Upon receipt of a notice under subparagraph (H)(vi) or (J)(ii) of the determination of the Secretary of Housing and Urban Development that a redevelopment plan for an installation meets the requirements set forth in subparagraph (H)(i), the Secretary of Defense shall dispose of the buildings and property located at the installation that are identified in the plan as available for use to assist the homeless in accordance with the provisions of the plan. The Secretary of Defense may dispose of such buildings or property directly to the representatives of the homeless concerned or to the redevelopment authority concerned. The Secretary of Defense shall dispose of the buildings and property under this subparagraph without consideration.

"(L)(i) If the Secretary of Housing and Urban Development determines under subparagraph (J) that a revised redevelopment plan for an installation does not meet the requirements set forth in subparagraph (H)(i), or if no revised plan is so submitted, that Secretary shall—

"(I) review the original redevelopment plan submitted to that Secretary under subparagraph (G), including the notice or notices of representatives of the homeless referred to in clause (ii)(II) of that subparagraph;

"(II) consult with the representatives referred to in subclause (I), if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

"(III) request that each such representative submit to that Secretary the items described in clause (ii); and

"(IV) based on the actions of that Secretary under subclauses (I) and (II), and on any information obtained by that Secretary as a result of such actions, indicate to the Secretary of Defense the buildings and property at the installation that meet the requirements set forth in subparagraph (H)(i).

"(ii) The Secretary of Housing and Urban Development may request under clause (i)(III) that a representative of the homeless submit to that Secretary the following:

"(I) A description of the program of such representative to assist the homeless.

"(II) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless.

"(III) Such information as that Secretary requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination.

"(IV) A certification that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

"(iii) The Secretary of Housing and Urban Development shall indicate to the Secretary of Defense and to the redevelopment authority concerned the buildings and property at an installation under clause (i)(IV) to be disposed of not later than 90 days after the date of a receipt of a revised plan for the installation under subparagraph (J).

"(iv) The Secretary of Defense shall dispose of the buildings and property at an installation referred to in clause (iii) to entities indicated by the Secretary of Housing and Urban Development or by transfer to the redevelopment authority concerned for transfer

to such entities. Such disposal shall be in accordance with the indications of the Secretary of Housing and Urban Development under clause (i)(IV). Such disposal shall be without consideration.

"(M)(i) In the event of the disposal of buildings and property of an installation pursuant to subparagraph (K), the redevelopment authority for the installation shall be responsible for the implementation of and compliance with agreements under the redevelopment plan described in that subparagraph for the installation.

"(ii) If a building or property reverts to a redevelopment authority under such an agreement, the redevelopment authority shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. A redevelopment authority may not be required to utilize the building or property to assist the homeless.

"(N) The Secretary of Defense may postpone or extend any deadline provided for under this paragraph in the case of an installation covered by this paragraph for such period as the Secretary considers appropriate if the Secretary determines that such postponement is in the interests of the communities affected by the closure of the installation. The Secretary shall make such determinations in consultation with the redevelopment authority concerned and, in the case of deadlines provided for under this paragraph with respect to the Secretary of Housing and Urban Development, in consultation with the Secretary of Housing and Urban Development.

"(O) For purposes of this paragraph, the term 'communities in the vicinity of the installation', in the case of an installation, means the communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.".

(b) DEFINITION.—Section 2910 of such Act is amended by adding at the end the following:

"(10) The term 'representative of the homeless' has the meaning given such term in section 501(h)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(h)(4)).".

(c) CONFORMING AMENDMENT TO 1990 BASE CLOSURE ACT.—Section 2905(b)(6)(A) of such Act is amended by adding at the end the following: "For procedures relating to the use to assist the homeless of buildings and property at installations closed under this part after the date of the enactment of this sentence, see paragraph (7).".

(d) CONFORMING AMENDMENT TO MCKINNEY ACT.—Section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411) is amended—

(1) by redesignating subsection (h) as subsection (i); and

(2) by inserting after subsection (g) the following new subsection (h):

"**(h) APPLICABILITY TO PROPERTY UNDER BASE CLOSURE PROCESS.**—(1) The provisions of this section shall not apply to buildings and property at military installations that are approved for closure under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) after the date of the enactment of this subsection.

"(2) For provisions relating to the use to assist the homeless of buildings and property located at certain military installations approved for closure under such Act, or under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note), before such date, see section 2(e) of Base Closure Community Redevelopment and Homeless Assistance Act of 1994.".

(e) APPLICABILITY TO INSTALLATIONS APPROVED FOR CLOSURE BEFORE ENACTMENT OF ACT.—(1)(A) Notwithstanding any provision of the 1988 base closure Act or the 1990 base closure Act, as such provision was in effect on the day before the date of the enactment of this Act, and subject to subparagraphs (B) and (C), the use to assist the homeless of building and property at military installations approved for closure under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before such date shall be determined in accordance with the provisions of paragraph (7) of section 2905(b) of the 1990 base closure Act, as amended by subsection (a), in lieu of the

provisions of the 1988 base closure Act or the 1990 base closure Act that would otherwise apply to the installations.

(B)(i) The provisions of such paragraph (7) shall apply to an installation referred to in subparagraph (A) only if the redevelopment authority for the installation submits a request to the Secretary of Defense not later than 60 days after the date of the enactment of this Act.

(ii) In the case of an installation for which no redevelopment authority exists on the date of the enactment of this Act, the chief executive officer of the State in which the installation is located shall submit the request referred to in clause (i) and act as the redevelopment authority for the installation.

(C) The provisions of such paragraph (7) shall not apply to any buildings or property at an installation referred to in subparagraph (A) for which the redevelopment authority submits a request referred to in subparagraph (B) within the time specified in such subparagraph (B) if the buildings or property, as the case may be, have been transferred or leased for use to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case may be, before the date of the enactment of this Act.

(2) For purposes of the application of such paragraph (7) to the buildings and property at an installation, the date on which the Secretary receives a request with respect to the installation under paragraph (1) shall be treated as the date on which the Secretary of Defense completes the final determination referred to in subparagraph (B) of such paragraph (7).

(3) Upon receipt under paragraph (1)(B) of a timely request with respect to an installation, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information describing the redevelopment authority for the installation.

(4)(A) The Secretary of Housing and Urban Development and the Secretary of Health and Human Services shall not, during the 60-day period beginning on the date of the enactment of this Act, carry out with respect to any military installation approved for closure under the 1988 base closure Act or the 1990 base closure Act before such date any action required of such Secretaries under the 1988 base closure Act or the 1990 base closure Act, as the case may be, or under section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411).

(B)(i) Upon receipt under paragraph (1)(A) of a timely request with respect to an installation, the Secretary of Defense shall notify the Secretary of Housing and Urban Development and the Secretary of Health and Human Services that the disposal of buildings and property at the installation shall be determined under such paragraph (7) in accordance with this subsection.

(ii) Upon receipt of a notice with respect to an installation under this subparagraph, the requirements, if any, of the Secretary of Housing and Urban Development and the Secretary of Health and Human Services with respect to the installation under the provisions of law referred to in subparagraph (A) shall terminate.

(iii) Upon receipt of a notice with respect to an installation under this subparagraph, the Secretary of Health and Human Services shall notify each representative of the homeless that submitted to that Secretary an application to use buildings or property at the installation to assist the homeless under the 1988 base closure Act or the 1990 base closure Act, as the case may be, that the use of buildings and property at the installation to assist the homeless shall be determined under such paragraph (7) in accordance with this subsection.

(5)(A) In preparing a redevelopment plan for buildings and property at an installation covered by such paragraph (7) by reason of this subsection, the redevelopment authority concerned shall—

(A) consider and address specifically any applications for use of such buildings and property to assist the homeless that were received by the Secretary of Health and Human Services under the 1988 base closure Act or the 1990 base closure Act, as the case may be,

before the date of the enactment of this Act and are pending with that Secretary on that date; and

(B) in the case of any application by representatives of the homeless that was approved by the Secretary of Health and Human Services before the date of enactment of this Act, ensure that the plan adequately addresses the needs of the homeless identified in the application by providing such representatives of the homeless with—

(i) properties, on or off the installation, that are substantially equivalent to the properties covered by the application;

(ii) sufficient funding to secure such substantially equivalent properties;

(iii) services and activities that meet the needs identified in the application; or

(iv) a combination of the properties, funding, and services and activities described in clause (i), (ii), and (iii).

(6) In the case of an installation to which the provisions of such paragraph (7) apply by reason of this subsection, the date specified by the redevelopment authority for the installation under subparagraph (D) of such paragraph (7) shall be not less than 1 month and not more than 6 months after the date of the submittal of the request with respect to the installation under paragraph (1)(B).

(7) For purposes of this subsection:

(A) The term "1988 base closure Act" means title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(B) The term "1990 base closure Act" means the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(f) CLARIFYING AMENDMENTS TO BASE CLOSURE ACTS.—(1) Section 204(b)(6)(F)(i) of the Defense Authorization Amendments and Base Closure Act and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note) is amended by inserting "and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C)," after "subparagraph (D),".

(2) Section 2905(b)(6)(F)(i) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note) is amended by inserting "and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C)," after "subparagraph (D),".

Defense Base Closure and Realignment Act of 1990, as amended

Defense Base Closure and Realignment Act of 1990
(Pub. L. 101-510)

Enacted November 5, 1990

As amended by the National Defense Authorization Acts for Fiscal Years 1992/1993 (Pub. L. 102-190), 1993 (Pub. L. 102-484), 1994 (Pub. L. 103-160), 1995 (Pub. L. 103-337), 1996 (Pub. L. 104-106), and 1997 (Pub. L. 104-201), and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421)

TITLE XXIX—DEFENSE BASE CLOSURES AND REALIGNMENTS

PART A—DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

SEC. 2901. SHORT TITLE AND PURPOSE

(a) SHORT TITLE.—This part may be cited as the "Defense Base Closure and Realignment Act of 1990".

(b) PURPOSE.—The purpose of this part is to provide a fair process that will result in the timely closure and realignment of military installations inside the United States.

SEC. 2902. THE COMMISSION

(a) ESTABLISHMENT.—There is established an independent commission to be known as the "Defense Base Closure and Realignment Commission".

(b) DUTIES.—The Commission shall carry out the duties specified for it in this part.

(c) APPOINTMENT.—(1)(A) The Commission shall be composed of eight members appointed by the President, by and with the advise and consent of the Senate.

(B) The President shall transmit to the Senate the nominations for appointment to the Commission—

(i) by no later than January 3, 1991, in the case of members of the Commission whose terms will expire at the end of the first session of the 102nd Congress;

(ii) by no later than January 25, 1993, in the case of members of the Commission whose terms will expire at the end of the first session of the 103rd Congress; and

(iii) by no later than January 3, 1995, in the case of members of the Commission whose terms will expire at the end of the first session of the 104th Congress.

(C) If the President does not transmit to Congress the nominations for appointment to the Commission on or before the date specified for 1993 in clause (ii) of subparagraph (B) or for 1995 in clause (iii) of such subparagraph, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

(2) In selecting individuals for nominations for appointments to the Commission, the President should consult with—

(A) the Speaker of the House of Representatives concerning the appointment of two members;

(B) the majority leader of the Senate concerning the appointment of two members;

(C) the minority leader of the House of Representatives concerning the appointment of one member; and

(D) the minority leader of the Senate concerning the appointment of one member.

(3) At the time the President nominates individuals for appointment to the Commission for each session of Congress referred to in paragraph (1)(B), the President shall designate one such individual who shall serve as Chairman of the Commission.

(d) TERMS.—(1) Except as provided in paragraph (2), each member of the Commission shall serve until the adjournment of Congress sine die for the session during which the member was appointed to the Commission.

(2) The Chairman of the Commission shall serve until the confirmation of a successor.

(e) MEETINGS.—(1) The Commission shall meet only during calendar years 1991, 1993, and 1995.

(2)(A) Each meeting of the Commission, other than meetings in which classified information is to be discussed, shall be open to the public.

(B) All the proceedings, information, and deliberations of the Commission shall be open, upon request, to the following:

(i) The Chairman and the ranking minority party member of the Subcommittee on Readiness, Sustainability, and Support of the Committee on Armed Services of the Senate, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

(ii) The Chairman and the ranking minority party member of the Subcommittee on Military Installations and Facilities of the Committee on National Security of the House of Representatives, or such other members of the Subcommittee designated by such Chairman or ranking minority party member.

(iii) The Chairmen and ranking minority party members of the Subcommittees on Military Construction of the Committees on Appropriations of the Senate and of the House of Representatives, or such other members of the Subcommittees designated by such Chairmen or ranking minority party members.

(f) VACANCIES.—A vacancy in the Commission shall be filled in the same manner as the original appointment, but the individual appointed to fill the vacancy shall serve only for the unexpired portion of the term for which the individual's predecessor was appointed.

(g) PAY AND TRAVEL EXPENSES.—(1)(A) Each member, other than the Chairman, shall be paid at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the actual performance of duties vested in the Commission.

(B) The Chairman shall be paid for each day referred to in subparagraph (A) at a rate equal to the daily equivalent of the minimum annual rate of basic pay payable for level III of the Executive Schedule under section 5314, of title 5, United States Code.

(2) Members shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(h) DIRECTOR OF STAFF.—(1) The Commission shall, without regard to section 5311(b) of title 5, United States Code, appoint a Director who has not served on active duty in the Armed Forces or as a civilian employee of the Department of Defense during the one-year period preceding the date of such appointment.

(2) The Director shall be paid at the rate of basic pay payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(i) STAFF.—(1) Subject to paragraphs (2) and (3), the Director, with the approval of the Commission, may appoint and fix the pay of additional personnel.

(2) The Director may make such appointments without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and any personnel so appointed may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that an individual so appointed may not receive pay in excess of the annual rate of basic pay payable for GS-18 of the General Schedule.

(3)(A) Not more than one-third of the personnel employed by or detailed to the Commission may be on detail from the Department of Defense.

(B)(i) Not more than one-fifth of the professional analysts of the Commission staff may be persons detailed from the Department of Defense to the Commission.

(ii) No person detailed from the Department of Defense to the Commission may be assigned as the lead professional analyst with respect to a military department or defense agency.

(C) A person may not be detailed from the Department of Defense to the Commission if, within 12 months before the detail is to begin, that person participated personally and substantially in any matter within the Department of Defense concerning the preparation of recommendations for closures or realignments of military installations.

(D) No member of the Armed Forces, and no officer or employee of the Department of Defense, may—

(i) prepare any report concerning the effectiveness, fitness, or efficiency of the performance on the staff of the Commission of any person detailed from the Department of Defense to that staff;

(ii) review the preparation of such a report; or

(iii) approve or disapprove such a report.

(4) Upon request of the Director, the head of any Federal department or agency may detail any of the personnel of that department or agency to the Commission to assist the Commission in carrying out its duties under this part.

(5) The Comptroller General of the United States shall provide assistance, including the detailing of employees, to the Commission in accordance with an agreement entered into with the Commission.

(6) The following restrictions relating to the personnel of the Commission shall apply during 1992 and 1994:

(A) There may not be more than 15 persons on the staff at any one time.

(B) The staff may perform only such functions as are necessary to prepare for the transition to new membership on the Commission in the following year.

(C) No member of the Armed Forces and no employee of the Department of Defense may serve on the staff.

(j) OTHER AUTHORITY.—(1) The Commission may procure by contract, to the extent funds are available, the temporary or intermittent services of experts or consultants pursuant to section 3109 of title 5, United States Code.

(2) The Commission may lease space and acquire personal property to the extent funds are available.

(k) FUNDING.—(1) There are authorized to be appropriated to the Commission such funds as are necessary to carry out its duties under this part. Such funds shall remain available until expended.

(2) If no funds are appropriated to the Commission by the end of the second session of the 101st Congress, the Secretary of Defense may transfer, for fiscal year 1991, to the Commission funds from the Department of Defense Base Closure Account established by section 207 of Public Law 100-526. Such funds shall remain available until expended.

(3)(A) The Secretary may transfer not more than $300,000 from unobligated funds in the account referred to in subparagraph (B) for the purpose of assisting the Commission in carrying out its duties under this part during October, November, and December 1995. Funds transferred under the preceding sentence shall remain available until December 31, 1995.

(B) The account referred to in subparagraph (A) is the Department of Defense Base Closure Account established under section 207(a) of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(l) TERMINATION.—The Commission shall terminate on December 31, 1995.

(m) PROHIBITION AGAINST RESTRICTING COMMUNICATIONS.—Section 1034 of title 10, United States Code, shall apply with respect to communications with the Commission.

SEC. 2903. PROCEDURE FOR MAKING RECOMMENDATIONS FOR BASE CLOSURES AND REALIGNMENTS

(a) FORCE-STRUCTURE PLAN.—(1) As part of the budget justification documents submitted to Congress in support of the budget for the Department of Defense for each of the fiscal years 1992, 1994, and 1996, the Secretary shall include a force-structure plan for the Armed Forces based on an assessment by the Secretary of the probable threats to the national security during the six-year period beginning with the fiscal year for which the budget request is made and of the anticipated levels of funding that will be available for national defense purposes during such period.

(2) Such plan shall include, without any reference (directly or indirectly) to military installations inside the United States that may be closed or realigned under such plan—

(A) a description of the assessment referred to in paragraph (1);

(B) a description (i) of the anticipated force structure during and at the end of such period for each military department (with specifications of the number and type of units in the active and reserve forces of each such department), and (ii) of the units that will need to be forward based (with a justification thereof) during and at the end of each such period; and

(C) a description of the anticipated implementation of such force-structure plan.

(3) The Secretary shall also transmit a copy of each such force-structure plan to the Commission.

(b) SELECTION CRITERIA.—(1) The Secretary shall, by no later than December 31, 1990, publish in the *Federal Register* and transmit to the congressional defense committees the criteria proposed to be used by the Department of Defense in making recommendations for the closure or realignment of military installations inside the United States under this part. The Secretary shall provide an opportunity for public comment on the proposed criteria for a period of at least 30 days and shall include notice of that opportunity in the publication required under the preceding sentence.

(2)(A) The Secretary shall, by no later than February 15, 1991, publish in the *Federal Register* and transmit to the congressional defense committees the final criteria to be used in making recommendations for the closure or realignment of military installations inside the United States under this part. Except as provided in subparagraph (B), such criteria shall be the final criteria to be used, making such recommendations unless disapproved by a joint resolution of Congress enacted on or before March 1991.

(B) The Secretary may amend such criteria, but such amendments may not become effective until they have been published in the *Federal Register*, opened to public comment for at least 30 days, and then transmitted to the congressional defense committees in final form by no later than January 15 of the year concerned. Such amended criteria shall be the final criteria to be used, along with the force-structure plan referred to in subsection (a), in making such recommendations unless disapproved by a joint resolution of Congress enacted on or before February 15 of the year concerned.

(c) DOD RECOMMENDATIONS.—(1) The Secretary may, by no later than April 15, 1991, March 15, 1993 and March 1, 1995, publish in the *Federal Register* and transmit to the congressional defense committees and to the Commission a list of the military installations inside the United States that the Secretary recommends for closure or realignment on the basis of the force-structure plan and the final criteria referred to in subsection (b)(2) that are applicable to the year concerned.

(2) The Secretary shall include, with the list of recommendations published and transmitted pursuant to paragraph (1), a summary of the selection process that resulted in the recommendation for each installation, including a justification for each recommendation. The

Secretary shall transmit the matters referred to in the preceding sentence not later than 7 days after the date of the transmittal to the congressional defense committees and the Commission of the list referred to in paragraph (1).

(3)(A) In considering military installations for closure or realignment, the Secretary shall consider all military installations inside the United States equally without regard to whether the installation has been previously considered or proposed for closure or realignment by the Department.

(B) In considering military installations for closure or realignment, the Secretary may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of an installation.

(C) For purposes of subparagraph (B), in the case of a community anticipating the economic effects of a closure or realignment of a military installation, advance conversion planning—

(i) shall include community adjustment and economic diversification planning undertaken by the community before an anticipated selection of a military installation in or near the community for closure or realignment; and

(ii) may include the development of contingency redevelopment plans, plans for economic development and diversification, and plans for the joint use (including civilian and military use, public and private use, civilian dual use, and civilian shared use) of the property or facilities of the installation after the anticipated closure or realignment.

(4) In addition to making all information used by the Secretary to prepare the recommendations under this subsection available to Congress (including any committee or member of Congress), the Secretary shall also make such information available to the Commission and the Comptroller General of the United States.

(5)(A) Each person referred to in subparagraph (B), when submitting information to the Secretary of Defense or the Commission concerning the closure or realignment of a military installation, shall certify that such information is accurate and complete to the best of that person's knowledge and belief.

(B) Subparagraph (A) applies to the following persons:

(i) The Secretaries of the military departments.

(ii) The heads of the Defense Agencies.

(iii) Each person who is in a position the duties of which include personal and substantial involvement in the preparation and submission of information and recommendations concerning the closure or realignment of military installations, as designated in regulations which the Secretary of Defense shall prescribe, regulations which the Secretary of each military department shall prescribe for personnel within that military department, or regulations which the head of each Defense Agency shall prescribe for personnel within that Defense Agency.

(6) Any information provided to the Commission by a person described in paragraph (5)(B) shall also be submitted to the Senate and the House of Representatives to be made available to the Members of the House concerned in accordance with the rules of that House. The information shall be submitted to the Senate and House of Representatives within 24 hours after the submission of the information to the Commission.

(d) REVIEW AND RECOMMENDATIONS BY THE COMMISSION.—(1) After receiving the recommendations from the Secretary pursuant to subsection (c) for any year, the Commission shall conduct public hearings on the recommendations. All testimony before the Commission at a public hearing conducted under this paragraph shall be presented under oath. [*The preceding sentence shall apply with respect to all public hearings conducted by the Defense Base Closure and Realignment Commission after November 30, 1993.*]

(2)(A) The Commission shall, by no later than July 1 of each year in which the Secretary transmits recommendations to it pursuant to subsection (c), transmit to the President a report containing the Commission's findings and conclusions based on a review and analysis of the

recommendations made by the Secretary, together with the Commission's recommendations for closures and realignments of military installations inside the United States.

(B) Subject to subparagraph (C), in making its recommendations, the Commission may make changes in any of the recommendations made by the Secretary if the Commission determines that the Secretary deviated substantially from the force-structure plan and final criteria referred to in subsection (c)(1) in making recommendations.

(C) In the case of a change described in subparagraph (D) in the recommendations made by the Secretary, the Commission may make the change only if the Commission—

(i) makes the determination required by subparagraph (B);

(ii) determines that the change is consistent with the force-structure plan and final criteria referred to in subsection (c)(1);

(iii) publishes a notice of the proposed change in the *Federal Register* not less than 45 days before transmitting its recommendations to the President pursuant to paragraph (2); and

(iv) conducts public hearings on the proposed change.

(D) Subparagraph (C) shall apply to a change by the Commission in the Secretary's recommendations that would—

(i) add a military installation to the list of military installations recommended by the Secretary for closure;

(ii) add a military installation to the list of military installations recommended by the Secretary for realignment; or

(iii) increase the extent of a realignment of a particular military installation recommended by the Secretary.

(E) In making recommendations under this paragraph, the Commission may not take into account for any purpose any advance conversion planning undertaken by an affected community with respect to the anticipated closure or realignment of a military installation.

(3) The Commission shall explain and justify in its report submitted to the President pursuant to paragraph (2) any recommendation made by the Commission that is different from the recommendations made by the Secretary pursuant to subsection (c). The Commission shall transmit a copy of such report to the congressional defense committees on the same date on which it transmits its recommendations to the President under paragraph (2).

(4) After July 1 of each year in which the Commission transmits recommendations to the President under this subsection: the Commission shall promptly provide, upon request, to any Member of Congress information used by the Commission in making its recommendations.

(5) The Comptroller General of the United States shall—

(A) assist the Commission, to the extent requested, in the Commission's review and analysis of the recommendations made by the Secretary pursuant to subsection (C); and

(B) by no later than April 15 of each year in which the Secretary makes such recommendations, transmit to the Congress and to the Commission a report containing a detailed analysis of the Secretary's recommendations and selection process.

(e) REVIEW BY THE PRESIDENT.—(1) The President shall, by no later than July 15 of each year in which the Commission makes recommendations under subsection (d), transmit to the Commission and to the Congress a report containing the President's approval or disapproval of the Commission's recommendations.

(2) If the President approves all the recommendations of the Commission, the President shall transmit a copy of such recommendations to the Congress, together with a certification of such approval.

(3) If the President disapproves the recommendations of the Commission, in whole or in part, the President shall transmit to the Commission and the Congress the reasons for that disapproval. The Commission shall then transmit to the President, by no later than August 15 of the year concerned, a revised list of recommendations for the closure and realignment of military installations.

(4) If the President approves all of the revised recommendations of the Commission transmitted to the President under paragraph (3), the President shall transmit a copy of such revised recommendations to the Congress, together with a certification of such approval.

(5) If the President does not transmit to the Congress an approval and certification described in paragraph (2) or (4) by September 1 of any year in which the Commission has transmitted recommendations to the President under this part, the process by which military installations may be selected for closure or realignment under this part with respect to that year shall be terminated.

SEC. 2904. CLOSURE AND REALIGNMENT OF MILITARY INSTALLATIONS

(a) IN GENERAL.—Subject to subsection (b), the Secretary shall—

(1) close all military installations recommended for closure by the Commission in each report transmitted to the Congress by the President pursuant to section 2903(e);

(2) realign all military installations recommended for realignment by such Commission in each such report;

(3) initiate all such closures and realignments no later than two years after the date on which the President transmits a report to the Congress pursuant to section 2903(e) containing the recommendations for such closures or realignments; and

(4) complete all such closures and realignments no later than the end of the six-year period beginning on the date on which the President transmits the report pursuant to section 2903(e) containing the recommendations for such closures or realignments.

(b) CONGRESSIONAL DISAPPROVAL.—(1) The Secretary may not carry out any closure or realignment recommended by the Commission in a report transmitted from the President pursuant to section 2903(e) if a joint resolution is enacted, in accordance with the provisions of section 2908: disapproving such recommendations of the Commission before the earlier of—

(A) the end of the 45-day period beginning on the date on which the President transmits such report; or

(B) the adjournment of Congress sine die for the session during which such report is transmitted.

(2) For purposes of paragraph (1) of this subsection and subsections (a) and (c) of section 2908, the days on which either House of Congress is not in session because of adjournment of more than three days to a day certain shall be excluded in the computation of a period.

SEC. 2905. IMPLEMENTATION

(a) IN GENERAL.—(1) In closing or realigning any military installation under this part, the Secretary may—

(A) take such actions as may be necessary to close or realign any military installation, including the acquisition of such land, the construction of such replacement facilities, the performance of such activities, and the conduct of such advance planning and design as may be required to transfer functions from a military installation being closed or realigned to another military installation, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for use in planning and design, minor construction, or operation and maintenance;

(B) provide—

(i) economic adjustment assistance to any community located near a military installation being closed or realigned, and

(ii) community planning assistance to any community located near a military installation to which functions will be transferred as a result of the closure or realignment of a military installation, if the Secretary of Defense determines that the financial resources available to the community (by grant or otherwise) for such purposes are inadequate, and may use for such purposes funds in the Account or funds

appropriated to the Department of Defense for economic adjustment assistance or community planning assistance;

(C) carry out activities for the purposes of environmental restoration and mitigation at any such installation, and shall use for such purposes funds in the Account. [*Amendments to this subsection took effect on December 5, 1991.*]

(D) provide outplacement assistance to civilian employees employed by the Department of Defense at military installations being closed or realigned, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense for outplacement assistance to employees; and

(E) reimburse other Federal agencies for actions performed at the request of the Secretary with respect to any such closure or realignment, and may use for such purpose funds in the Account or funds appropriated to the Department of Defense and available for such purpose.

(2) In carrying out any closure or realignment under this part, the Secretary shall ensure that environmental restoration of any property made excess to the needs of the Department of Defense as a result of such closure or realignment be carried out as soon as possible with funds available for such purpose.

(b) MANAGEMENT AND DISPOSAL OF PROPERTY.—(1) The Administrator of General Services shall delegate to the Secretary of Defense, with respect to excess and surplus real property, facilities, and personal property located at a military installation closed or realigned under this part—

(A) the authority of the Administrator to utilize excess property under section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483);

(B) the authority of the Administrator to dispose of surplus property under section 203 of that Act (40 U.S.C. 484);

(C) the authority to dispose of surplus property for public airports under sections 47151 through 47153 of title 49, United States Code; and

(D) the authority of the Administrator to determine the availability of excess or surplus real property for wildlife conservation purposes in accordance with the Act of May 19, 1948 (16 U.S.C. 667b).

(2)(A) Subject to subparagraph (B) and paragraphs (3), (4), (5), and (6), the Secretary of Defense shall exercise the authority delegated to the Secretary pursuant to paragraph (1) in accordance with—

(i) all regulations governing the utilization of excess property and the disposal of surplus property under the Federal Property and Administrative Services Act of 1949; and

(ii) all regulations governing the conveyance and disposal of property under section 13(g) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(g)).

(B) The Secretary may, with the concurrence of the Administrator of General Services—

(i) prescribe general policies and methods for utilizing excess property and disposing of surplus property pursuant to the authority delegated under paragraph (1); and

(ii) issue regulations relating to such policies and methods, which shall supersede the regulations referred to in subparagraph (A) with respect to that authority.

(C) The Secretary of Defense may transfer real property or facilities located at a military installation to be closed or realigned under this part, with or without reimbursement, to a military department or other entity (including a nonappropriated fund instrumentality) within the Department of Defense or the Coast Guard.

(D) Before any action may be taken with respect to the disposal of any surplus real property or facility located at any military installation to be closed or realigned under this part, the Secretary of Defense shall consult with the Governor of the State and the heads of the local governments concerned for the purpose of considering any plan for the use of such property by the local community concerned.

(3)(A) Not later than 6 months after the date of approval of the closure of a military installation under this part, the Secretary, in consultation with the redevelopment authority with respect to the installation, shall—

(i) inventory the personal property located at the installation; and

(ii) identify the items (or categories of items) of such personal property that the Secretary determines to be related to real property and anticipates will support the implementation of the redevelopment plan with respect to the installation.

(B) If no redevelopment authority referred to in subparagraph (A) exists with respect to an installation, the Secretary shall consult with—

(i) the local government in whose jurisdiction the installation is wholly located; or

(ii) a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State in which the installation is located.

(C)(i) Except as provided in subparagraphs (E) and (F), the Secretary may not carry out any of the activities referred to in clause (ii) with respect to an installation referred to in that clause until the earlier of—

(I) one week after the date on which the redevelopment plan for the installation is submitted to the Secretary;

(II) the date on which the redevelopment authority notifies the Secretary that it will not submit such a plan;

(III) twenty-four months after the date of approval of the closure of the installation; or

(IV) ninety days before the date of the closure of the installation.

(ii) The activities referred to in clause (i) are activities relating to the closure of an installation to be closed under this part as follows:

(I) The transfer from the installation of items of personal property at the installation identified in accordance with subparagraph (A).

(II) The reduction in maintenance and repair of facilities or equipment located at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes.

(D) Except as provided in paragraph (4), the Secretary may not transfer items of personal property located at an installation to be closed under this part to another installation, or dispose of such items, if such items are identified in the redevelopment plan for the installation as items essential to the reuse or redevelopment of the installation. In connection with the development of the redevelopment plan for the installation, the Secretary shall consult with the entity responsible for developing the redevelopment plan to identify the items of personal property located at the installation, if any, that the entity desires to be retained at the installation for reuse or redevelopment of the installation.

(E) This paragraph shall not apply to any personal property located at an installation to be closed under this part if the property—

(i) is required for the operation of a unit, function, component, weapon, or weapons system at another installation;

(ii) is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components);

(iii) is not required for the reutilization or redevelopment of the installation (as jointly determined by the Secretary and the redevelopment authority);

(iv) is stored at the installation for purposes of distribution (including spare parts or stock items); or

(v)(I) meets known requirements of an authorized program of another Federal department or agency for which expenditures for similar property would be necessary, and (II) is the subject of a written request by the head of the department or agency.

(F) Notwithstanding subparagraphs (C)(i) and (D), the Secretary may carry out any activity referred to in subparagraph (C)(ii) or (D) if the Secretary determines that the carrying out of such activity is in the national security interest of the United States.

(4)(A) The Secretary may transfer real property and personal property located at a military installation to be closed under this part to the redevelopment authority with respect to the installation.

(B)(i)(I) Except as provided in clause (ii), the transfer of property under subparagraph (A) may be for consideration at or below the estimated fair market value of the property transferred or without consideration. Such consideration may include consideration in kind (including goods and services), real property and improvements, or such other consideration as the Secretary considers appropriate. The Secretary shall determine the estimated fair market value of the property to be transferred under this subparagraph before carrying out such transfer.

(II) The Secretary shall prescribe regulations that set forth guidelines for determining the amount, if any, of consideration required for a transfer under this paragraph. Such regulations shall include a requirement that, in the case of each transfer under this paragraph for consideration below the estimated fair market value of the property transferred, the Secretary provide an explanation why the transfer is not for the estimated fair market value of the property transferred (including an explanation why the transfer cannot be carried out in accordance with the authority provided to the Secretary pursuant to paragraph (1) or (2)).

(ii) The transfer of property under subparagraph (A) shall be without consideration in the case of any installation located in a rural area whose closure under this part will have a substantial adverse impact (as determined by the Secretary) on the economy of the communities in the vicinity of the installation and on the prospect for the economic recovery of such communities from such closure. The Secretary shall prescribe in the regulations under clause (i)(II) the manner of determining whether communities are eligible for the transfer of property under this clause.

(iii) In the case of a transfer under subparagraph (A) for consideration below the fair market value of the property transferred, the Secretary may recoup from the transferee of such property such portion as the Secretary determines appropriate of the amount, if any, by which the sale or lease of such property by such transferee exceeds the amount of consideration paid to the Secretary for such property by such transferee. The Secretary shall prescribe regulations for determining the amount of recoupment under this clause.

(C)(i) The Secretary may transfer real property at an installation approved for closure or realignment under this part (including property at an installation approved for realignment which will be retained by the Department of Defense or another Federal agency after realignment) to the redevelopment authority for the installation if the redevelopment authority agrees to lease, directly upon transfer, one or more portions of the property transferred under this subparagraph to the Secretary or to the head of another department or agency of the Federal Government. Subparagraph (B) shall apply to a transfer under this subparagraph.

(ii) A lease under clause (i) shall be for a term of not to exceed 50 years, but may provide for options for renewal or extension of the term by the department or agency concerned.

(iii) A lease under clause (i) may not require rental payments by the United States.

(iv) A lease under clause (i) shall include a provision specifying that if the department or agency concerned ceases requiring the use of the leased property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another department or agency of the Federal Government using the property for a use similar to the use under the lease. Exercise of the authority provided by this clause shall be made in consultation with the redevelopment authority concerned.

(D)(i) The transfer of personal property under subparagraph (A) shall not be subject to the provisions of sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484) if the Secretary determines that the transfer of such property is necessary for the effective implementation of a redevelopment plan with respect to the installation at which such property is located.

(ii) The Secretary may, in lieu of the transfer of property referred to in subparagraph (A), transfer property similar to such property (including property not located at the installation) if the Secretary determines that the transfer of such similar property is in the interest of the United States.

(E) The provisions of section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)) shall apply to any transfer of real property under this paragraph.

(F) The Secretary may require any additional terms and conditions in connection with a transfer under this paragraph as such Secretary considers appropriate to protect the interests of the United States.

(5)(A) Except as provided in subparagraph (B), the Secretary shall take such actions as the Secretary determines necessary to ensure that final determinations under paragraph (1) regarding whether another department or agency of the Federal Government has identified a use for any portion of a military installation to be closed under this part, or will accept transfer of any portion of such installation, are made not later than 6 months after the date of approval of closure of that installation.

(B) The Secretary may, in consultation with the redevelopment authority with respect to an installation, postpone making the final determinations referred to in subparagraph (A) with respect to the installation for such period as the Secretary determines appropriate if the Secretary determines that such postponement is in the best interests of the communities affected by the closure of the installation.

(6)(A) Except as provided in this paragraph, nothing in this section shall limit or otherwise affect the application of the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) to military installations closed under this part. For procedures relating to the use to assist the homeless of buildings and property at installations closed under this part after the date of the enactment of this sentence, see paragraph (7).

(B)(i) Not later than the date on which the Secretary of Defense completes the determination under paragraph (5) of the transferability of any portion of an installation to be closed under this part, the Secretary shall—

(I) complete any determinations or surveys necessary to determine whether any building or property referred to in clause (ii) is excess property, surplus property, or unutilized or underutilized property for the purpose of the information referred to in section 501(a) of such Act (42 U.S.C. 11411(a)); and

(II) submit to the Secretary of Housing and Urban Development information on any building or property that is so determined.

(ii) The buildings and property referred to in clause (i) are any buildings or property located at an installation referred to in that clause for which no use is identified, or of which no Federal department or agency will accept transfer, pursuant to the determination of transferability referred to in that clause.

(C) Not later than 60 days after the date on which the Secretary of Defense submits information to the Secretary of Housing and Urban Development under subparagraph (B)(ii), the Secretary of Housing and Urban Development shall—

(i) identify the buildings and property described in such information that are suitable for use to assist the homeless;

(ii) notify the Secretary of Defense of the buildings and property that are so identified;

(iii) publish in the *Federal Register* a list of the buildings and property that are so identified, including with respect to each building or property the information referred to in section 501(c)(1)(B) of such Act; and

(iv) make available with respect to each building and property the information referred to in section 501(c)(1)(C) of such Act in accordance with such section 501(c)(1)(C).

(D) Any buildings and property included in a list published under subparagraph (C)(iii) shall be treated as property available for application for use to assist the homeless under section 501(d) of such Act.

(E) The Secretary of Defense shall make available in accordance with section 501(f) of such Act any buildings or property referred to in subparagraph (D) for which—

(i) a written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act;

(ii) an application for use of such buildings or property for such purpose is submitted to the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act; and

(iii) the Secretary of Health and Human Services—

(I) completes all actions on the application in accordance with section 501(e)(3) of such Act; and

(II) approves the application under section 501(e) of such Act.

(F)(i) Subject to clause (ii), a redevelopment authority may express in writing an interest in using buildings and property referred to subparagraph (D), and buildings and property referred to in subparagraph (B)(ii) which have not been identified as suitable for use to assist the homeless under subparagraph (C), or use such buildings and property, in accordance with the redevelopment plan with respect to the installation at which such buildings and property are located as follows:

(I) If no written notice of an intent to use such buildings or property to assist the homeless is received by the Secretary of Health and Human Services in accordance with section 501(d)(2) of such Act during the 60-day period beginning on the date of the publication of the buildings and property under subparagraph (C)(iii).

(II) In the case of buildings and property for which such notice is so received, if no completed application for use of the buildings or property for such purpose is received by the Secretary of Health and Human Services in accordance with section 501(e)(2) of such Act during the 90-day period beginning on the date of the receipt of such notice.

(III) In the case of buildings and property for which such application is so received, if the Secretary of Health and Human Services rejects the application under section 501(e) of such Act.

(ii) Buildings and property shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and property, or to use such buildings and property, under clause (i) as follows:

(I) In the case of buildings and property referred to in clause (i)(I), during the one-year period beginning on the first day after the 60-day period referred to in that clause.

(II) In the case of buildings and property referred to in clause (i)(II), during the one-year period beginning on the first day after the 90-day period referred to in that clause.

(III) In the case of buildings and property referred to in clause (i)(III), during the one-year period beginning on the date of the rejection of the application referred to in that clause.

(iii) A redevelopment authority shall express an interest in the use of buildings and property under this subparagraph by notifying the Secretary of Defense, in writing, of such an interest.

(G)(i) Buildings and property available for a redevelopment authority under subparagraph (F) shall not be available for use to assist the homeless under section 501 of such Act while so available for a redevelopment authority.

(ii) If a redevelopment authority does not express an interest in the use of buildings or property, or commence the use of buildings or property, under subparagraph (F) within the applicable time periods specified in clause (ii) of such subparagraph, such buildings or property shall be treated as property available for use to assist the homeless under section 501(a) of such Act.

(7)(A) The disposal of buildings and property located at installations approved for closure or realignment under this part after October 25, 1994, shall be carried out in accordance with this paragraph rather than paragraph (6).

(B)(i) Not later than the date on which the Secretary of Defense completes the final determinations referred to in paragraph (5) relating to the use or transferability of any portion of an installation covered by this paragraph, the Secretary shall—

(I) identify the buildings and property at the installation for which the Department of Defense has a use, for which another department or agency of the Federal Government has identified a use, or of which another department or agency will accept a transfer;

(II) take such actions as are necessary to identify any building or property at the installation not identified under subclause (I) that is excess property or surplus property;

(III) submit to the Secretary of Housing and Urban Development and to the redevelopment authority for the installation (or the chief executive officer of the State in which the installation is located if there is no redevelopment authority for the installation at the completion of the determination described in the stem of this sentence) information on any building or property that is identified under subclause (II); and

(IV) publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the buildings and property identified under subclause (II).

(ii) Upon the recognition of a redevelopment authority for an installation covered by this paragraph, the Secretary of Defense shall publish in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation information on the redevelopment authority.

(C)(i) State and local governments, representatives of the homeless, and other interested parties located in the communities in the vicinity of an installation covered by this paragraph shall submit to the redevelopment authority for the installation a notice of the interest, if any, of such governments, representatives, and parties in the buildings or property, or any portion thereof, at the installation that are identified under subparagraph (B)(i)(II). A notice of interest under this clause shall describe the need of the government, representative, or party concerned for the buildings or property covered by the notice.

(ii) The redevelopment authority for an installation shall assist the governments, representatives, and parties referred to in clause (i) in evaluating buildings and property at the installation for purposes of this subparagraph.

(iii) In providing assistance under clause (ii), a redevelopment authority shall—

(I) consult with representatives of the homeless in the communities in the vicinity of the installation concerned; and

(II) undertake outreach efforts to provide information on the buildings and property to representatives of the homeless, and to other persons or entities interested in assisting the homeless, in such communities.

(iv) It is the sense of Congress that redevelopment authorities should begin to conduct outreach efforts under clause (iii)(II) with respect to an installation as soon as is practicable after the date of approval of closure of the installation.

(D)(i) State and local governments, representatives of the homeless, and other interested parties shall submit a notice of interest to a redevelopment authority under subparagraph (C) not later than the date specified for such notice by the redevelopment authority.

(ii) The date specified under clause (i) shall be—

(I) in the case of an installation for which a redevelopment authority has been recognized as of the date of the completion of the determinations referred to in paragraph (5), not earlier than 3 months and not later than 6 months after that date; and

(II) in the case of an installation for which a redevelopment authority is not recognized as of such date, not earlier than 3 months and not later than 6 months after the date of the recognition of a redevelopment authority for the installation.

(iii) Upon specifying a date for an installation under this subparagraph, the redevelopment authority for the installation shall—

(I) publish the date specified in a newspaper of general circulation in the communities in the vicinity of the installation concerned; and

(II) notify the Secretary of Defense of the date.

(E)(i) In submitting to a redevelopment authority under subparagraph (C) a notice of interest in the use of buildings or property at an installation to assist the homeless, a representative of the homeless shall submit the following:

(I) A description of the homeless assistance program that the representative proposes to carry out at the installation.

(II) An assessment of the need for the program.

(III) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation.

(IV) A description of the buildings and property at the installation that are necessary in order to carry out the program.

(V) A description of the financial plan, the organization, and the organizational capacity of the representative to carry out the program.

(VI) An assessment of the time required in order to commence carrying out the program.

(ii) A redevelopment authority may not release to the public any information submitted to the redevelopment authority under clause (i)(V) without the consent of the representative of the homeless concerned unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located.

(F)(i) The redevelopment authority for each installation covered by this paragraph shall prepare a redevelopment plan for the installation. The redevelopment authority shall, in preparing the plan, consider the interests in the use to assist the homeless of the buildings and property at the installation that are expressed in the notices submitted to the redevelopment authority under subparagraph (C).

(ii)(I) In connection with a redevelopment plan for an installation, a redevelopment authority and representatives of the homeless shall prepare legally binding agreements that provide for the use to assist the homeless of buildings and property, resources, and assistance on or off the installation. The implementation of such agreements shall be

contingent upon the decision regarding the disposal of the buildings and property covered by the agreements by the Secretary of Defense under subparagraph (K) or (L).

(II) Agreements under this clause shall provide for the reversion to the redevelopment authority concerned, or to such other entity or entities as the agreements shall provide, of buildings and property that are made available under this paragraph for use to assist the homeless in the event that such buildings and property cease being used for that purpose.

(iii) A redevelopment authority shall provide opportunity for public comment on a redevelopment plan before submission of the plan to the Secretary of Defense and the Secretary of Housing and Urban Development under subparagraph (G).

(iv) A redevelopment authority shall complete preparation of a redevelopment plan for an installation and submit the plan under subparagraph (G) not later than 9 months after the date specified by the redevelopment authority for the installation under subparagraph (D).

(G)(i) Upon completion of a redevelopment plan under subparagraph (F), a redevelopment authority shall submit an application containing the plan to the Secretary of Defense and to the Secretary of Housing and Urban Development.

(ii) A redevelopment authority shall include in an application under clause (i) the following:

(I) A copy of the redevelopment plan, including a summary of any public comments on the plan received by the redevelopment authority under subparagraph (F)(iii).

(II) A copy of each notice of interest of use of buildings and property to assist the homeless that was submitted to the redevelopment authority under subparagraph (C), together with a description of the manner, if any, in which the plan addresses the interest expressed in each such notice and, if the plan does not address such an interest, an explanation why the plan does not address the interest.

(III) A summary of the outreach undertaken by the redevelopment authority under subparagraph (C)(iii)(II) in preparing the plan.

(IV) A statement identifying the representatives of the homeless and the homeless assistance planning boards, if any, with which the redevelopment authority consulted in preparing the plan, and the results of such consultations.

(V) An assessment of the manner in which the redevelopment plan balances the expressed needs of the homeless and the need of the communities in the vicinity of the installation for economic redevelopment and other development.

(VI) Copies of the agreements that the redevelopment authority proposes to enter into under subparagraph (F)(ii).

(H)(i) Not later than 60 days after receiving a redevelopment plan under subparagraph (G), the Secretary of Housing and Urban Development shall complete a review of the plan. The purpose of the review is to determine whether the plan, with respect to the expressed interest and requests of representatives of the homeless—

(I) takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the plan for the use and needs of the homeless in such communities;

(II) takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation;

(III) balances in an appropriate manner the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities;

(IV) was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation; and

(V) specifies the manner in which buildings and property, resources, and assistance on or off the installation will be made available for homeless assistance purposes.

(ii) It is the sense of Congress that the Secretary of Housing and Urban Development shall, in completing the review of a plan under this subparagraph, take into consideration and be receptive to the predominant views on the plan of the communities in the vicinity of the installation covered by the plan.

(iii) The Secretary of Housing and Urban Development may engage in negotiations and consultations with a redevelopment authority before or during the course of a review under clause (i) with a view toward resolving any preliminary determination of the Secretary that a redevelopment plan does not meet a requirement set forth in that clause. The redevelopment authority may modify the redevelopment plan as a result of such negotiations and consultations.

(iv) Upon completion of a review of a redevelopment plan under clause (i), the Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under that clause.

(v) If the Secretary of Housing and Urban Development determines as a result of such a review that a redevelopment plan does not meet the requirements set forth in clause (i), a notice under clause (iv) shall include—

(I) an explanation of that determination; and

(II) a statement of the actions that the redevelopment authority must undertake in order to address that determination.

(I)(i) Upon receipt of a notice under subparagraph (H)(iv) of a determination that a redevelopment plan does not meet a requirement set forth in subparagraph (H)(i), a redevelopment authority shall have the opportunity to—

(I) revise the plan in order to address the determination; and

(II) submit the revised plan to the Secretary of Defense and the Secretary of Housing and Urban Development.

(ii) A redevelopment authority shall submit a revised plan under this subparagraph to such Secretaries, if at all, not later than 90 days after the date on which the redevelopment authority receives the notice referred to in clause (i).

(J)(i) Not later than 30 days after receiving a revised redevelopment plan under subparagraph (I), the Secretary of Housing and Urban Development shall review the revised plan and determine if the plan meets the requirements set forth in subparagraph (H)(i).

(ii) The Secretary of Housing and Urban Development shall notify the Secretary of Defense and the redevelopment authority concerned of the determination of the Secretary of Housing and Urban Development under this subparagraph.

(K)(i) Upon receipt of a notice under subparagraph (H)(iv) or (J)(ii) of the determination of the Secretary of Housing and Urban Development that a redevelopment plan for an installation meets the requirements set forth in subparagraph (H)(i), the Secretary of Defense shall dispose of the buildings and property at the installation.

(ii) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation.

(iii) The Secretary of Defense shall dispose of buildings and property under clause (i) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C.

4331 et seq.). In preparing the record of decision or other decision document, the Secretary shall give substantial deference to the redevelopment plan concerned.

(iv) The disposal under clause (i) of buildings and property to assist the homeless shall be without consideration.

(v) In the case of a request for a conveyance under clause (i) of buildings and property for public benefit under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

(L)(i) If the Secretary of Housing and Urban Development determines under subparagraph (J) that a revised redevelopment plan for an installation does not meet the requirements set forth in subparagraph (H)(i), or if no revised plan is so submitted, that Secretary shall—

(I) review the original redevelopment plan submitted to that Secretary under subparagraph (G), including the notice or notices of representatives of the homeless referred to in clause (ii)(II) of that subparagraph;

(II) consult with the representatives referred to in subclause (I), if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

(III) request that each such representative submit to that Secretary the items described in clause (ii); and

(IV) based on the actions of that Secretary under subclauses (I) and (II), and on any information obtained by that Secretary as a result of such actions, indicate to the Secretary of Defense the buildings and property at the installation that meet the requirements set forth in subparagraph (H)(i).

(ii) The Secretary of Housing and Urban Development may request under clause (i)(III) that a representative of the homeless submit to that Secretary the following:

(I) A description of the program of such representative to assist the homeless.

(II) A description of the manner in which the buildings and property that the representative proposes to use for such purpose will assist the homeless.

(III) Such information as that Secretary requires in order to determine the financial capacity of the representative to carry out the program and to ensure that the program will be carried out in compliance with Federal environmental law and Federal law against discrimination.

(IV) A certification that police services, fire protection services, and water and sewer services available in the communities in the vicinity of the installation concerned are adequate for the program.

(iii) Not later than 90 days after the date of the receipt of a revised plan for an installation under subparagraph (J), the Secretary of Housing and Urban Development shall—

(I) notify the Secretary of Defense and the redevelopment authority concerned of the buildings and property at an installation under clause (i)(IV) that the Secretary of Housing and Urban Development determines are suitable for use to assist the homeless; and

(II) notify the Secretary of Defense of the extent to which the revised plan meets the criteria set forth in subparagraph (H)(i).

(iv)(I) Upon notice from the Secretary of Housing and Urban Development with respect to an installation under clause (iii), the Secretary of Defense shall dispose of buildings and property at the installation in consultation with the Secretary of Housing and Urban Development and the redevelopment authority concerned.

(II) For purposes of carrying out an environmental assessment of the closure or realignment of an installation, the Secretary of Defense shall treat the redevelopment plan submitted by the redevelopment authority for the installation (including the aspects of the plan providing for disposal to State or local governments, representatives of the homeless, and other interested parties) as part of the proposed Federal action for the installation. The Secretary of Defense shall incorporate the notification of the Secretary of Housing and Urban Development under clause (iii)(I) as part of the proposed Federal action for the installation only to the extent, if any, that the Secretary of Defense considers such incorporation to be appropriate and consistent with the best and highest use of the installation as a whole, taking into consideration the redevelopment plan submitted by the redevelopment authority.

(III) The Secretary of Defense shall dispose of buildings and property under subclause (I) in accordance with the record of decision or other decision document prepared by the Secretary in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 et seq.). In preparing the record of decision or other decision document, the Secretary shall give deference to the redevelopment plan submitted by the redevelopment authority for the installation.

(IV) The disposal under subclause (I) of buildings and property to assist the homeless shall be without consideration.

(V) In the case of a request for a conveyance under subclause (I) of buildings and property for public benefit under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) or sections 47151 through 47153 of title 49, United States Code, the sponsoring Federal agency shall use the eligibility criteria set forth in such section or such subchapter (as the case may be) to determine the eligibility of the applicant and use proposed in the request for the public benefit conveyance. The determination of such eligibility should be made before submission of the redevelopment plan concerned under subparagraph (G).

(M)(i) In the event of the disposal of buildings and property of an installation pursuant to subparagraph (K) or (L), the redevelopment authority for the installation shall be responsible for the implementation of and compliance with agreements under the redevelopment plan described in that subparagraph for the installation.

(ii) If a building or property reverts to a redevelopment authority under such an agreement, the redevelopment authority shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. A redevelopment authority may not be required to utilize the building or property to assist the homeless.

(N) The Secretary of Defense may postpone or extend any deadline provided for under this paragraph in the case of an installation covered by this paragraph for such period as the Secretary considers appropriate if the Secretary determines that such postponement is in the interests of the communities affected by the closure of the installation. The Secretary shall make such determinations in consultation with the redevelopment authority concerned and, in the case of deadlines provided for under this paragraph with respect to the Secretary of Housing and Urban Development, in consultation with the Secretary of Housing and Urban Development.

(O) For purposes of this paragraph, the term "communities in the vicinity of the installation", in the case of an installation, means the communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.

(P) For purposes of this paragraph, the term "other interested parties", in the case of an installation, includes any parties eligible for the conveyance of property of the installation under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40

U.S.C. 484(k)) or sections 47151 through 47153 of title 49, United States Code, whether or not the parties assist the homeless.

(8)(A) Subject to subparagraph (C), the Secretary may enter into agreements (including contracts, cooperative agreements, or other arrangements for reimbursement) with local governments for the provision of police or security services, fire protection services, airfield operation services, or other community services by such governments at military installations to be closed under this part, or at facilities not yet transferred or otherwise disposed of in the case of installations closed under this part, if the Secretary determines that the provision of such services under such agreements is in the best interests of the Department of Defense.

(B) The Secretary may exercise the authority provided under this paragraph without regard to the provisions of chapter 146 of title 10, United States Code.

(C) The Secretary may not exercise the authority under subparagraph (A) with respect to an installation earlier than 180 days before the date on which the installation is to be closed.

(D) The Secretary shall include in a contract for services entered into with a local government under this paragraph a clause that requires the use of professionals to furnish the services to the extent that professionals are available in the area under the jurisdiction of such government.

(c) APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY ACT OF 1969.—(1) The provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply to the actions of the President, the Commission, and, except as provided in paragraph (2), the Department of Defense in carrying out this part.

(2)(A) The provisions of the National Environmental Policy Act of 1969 shall apply to actions of the Department of Defense under this part (i) during the process of property disposal, and (ii) during the process of relocating functions from a military installation being closed or realigned to another military installation after the receiving installation has been selected but before the functions are relocated.

(B) In applying the provisions of the National Environmental Policy Act of 1969 to the processes referred to in subparagraph (A), the Secretary of Defense and the Secretary of the military departments concerned shall not have to consider—

(i) the need for closing or realigning the military installation which has been recommended for closure or realignment by the Commission;

(ii) the need for transferring functions to any military installation which has been selected as the receiving installation; or

(iii) military installations alternative to those recommended or selected.

(3) A civil action for judicial review, with respect to any requirement of the National Environmental Policy Act of 1969 to the extent such Act is applicable under paragraph (2), of any act or failure to act by the Department of Defense during the closing, realigning, or relocating of functions referred to in clauses (i) and (ii) of paragraph (2)(A), may not be brought more than 60 days after the date of such act or failure to act.

(d) WAIVER.—The Secretary of Defense may close or realign military installations under this part without regard to—

(1) any provision of law restricting the use of funds for closing or realigning military installations included in any appropriations or authorization Act; and

(2) sections 2662 and 2687 of title 10, United States Code.

(e) TRANSFER AUTHORITY IN CONNECTION WITH PAYMENT OF ENVIRONMENTAL REMEDIATION COSTS.—(1)(A) Subject to paragraph (2) of this subsection and section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)), the Secretary may enter into an agreement to transfer by deed real property or facilities referred to in subparagraph (B) with any person who agrees to perform all environmental restoration, waste management, and environmental compliance activities that are required for the property or facilities under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and concurrences.

(B) The real property and facilities referred to in subparagraph (A) are the real property and facilities located at an installation closed or to be closed under this part that are available exclusively for the use, or expression of an interest in a use, of a redevelopment authority under subsection (b)(6)(F) during the period provided for that use, or expression of interest in use, under that subsection.

(C) The Secretary may require any additional terms and conditions in connection with an agreement authorized by subparagraph (A) as the Secretary considers appropriate to protect the interests of the United States.

(2) A transfer of real property or facilities may be made under paragraph (1) only if the Secretary certifies to Congress that—

(A) the costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities are equal to or greater than the fair market value of the property or facilities to be transferred, as determined by the Secretary; or

(B) if such costs are lower than the fair market value of the property or facilities, the recipient of the property or facilities agrees to pay the difference between the fair market value and such costs.

(3) As part of an agreement under paragraph (1), the Secretary shall disclose to the person to whom the property or facilities will be transferred any information of the Secretary regarding the environmental restoration, waste management, and environmental compliance activities described in paragraph (1) that relate to the property or facilities. The Secretary shall provide such information before entering into the agreement.

(4) Nothing in this subsection shall be construed to modify, alter, or amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) or the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(5) Section 330 of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 10 U.S.C. 2687 note) shall not apply to any transfer under this subsection to persons or entities described in subsection (a)(2) of such section 330.

(6) The Secretary may not enter into an agreement to transfer property or facilities under this subsection after the expiration of the five-year period beginning on the date of the enactment of the National Defense Authorization Act for Fiscal Year 1994 [*November 30, 1993*].

(f) TRANSFER AUTHORITY IN CONNECTION WITH CONSTRUCTION OR PROVISION OF MILITARY FAMILY HOUSING.—(1) Subject to paragraph (2), the Secretary may enter into an agreement to transfer by deed real property or facilities located at or near an installation closed or to be closed under this part with any person who agrees, in exchange for the real property or facilities, to transfer to the Secretary housing units that are constructed or provided by the person and located at or near a military installation at which there is a shortage of suitable housing to meet the requirements of members of the Armed Forces and their dependents. The Secretary may not select real property for transfer under this paragraph if the property is identified in the redevelopment plan for the installation as property essential to the reuse or redevelopment of the installation.

(2) A transfer of real property or facilities may be made under paragraph (1) only if—

(A) the fair market value of the housing units to be received by the Secretary in exchange for the property or facilities to be transferred is equal to or greater than the fair market value of such property or facilities, as determined by the Secretary; or

(B) in the event the fair market value of the housing units is less than the fair market value of property or facilities to be transferred, the recipient of the property or facilities agrees to pay to the Secretary the amount equal to the excess of the fair market value of the property or facilities over the fair market value of the housing units.

(3) Notwithstanding paragraph (2) of section 2906(a), the Secretary may deposit funds received under paragraph (2)(B) in the Department of Defense Family Housing Improvement Fund established under section 2873(a) of title 10, United States Code.

(4) The Secretary shall submit to the congressional defense committees a report describing each agreement proposed to be entered into under paragraph (1), including the consideration to be received by the United States under the agreement. The Secretary may not enter into the agreement until the end of the 30-day period beginning on the date the congressional defense committees receive the report regarding the agreement.

(5) The Secretary may require any additional terms and conditions in connection with an agreement authorized by this subsection as the Secretary considers appropriate to protect the interests of the United States.

(g) ACQUISITION OF MANUFACTURED HOUSING.—(1) In closing or realigning any military installation under this part, the Secretary may purchase any or all right, title, and interest of a member of the Armed Forces and any spouse of the member in manufactured housing located at a manufactured housing park established at an installation closed or realigned under this part, or make a payment to the member to relocate the manufactured housing to a suitable new site, if the Secretary determines that—

(A) it is in the best interests of the Federal Government to eliminate or relocate the manufactured housing park; and

(B) the elimination or relocation of the manufactured housing park would result in an unreasonable financial hardship to the owners of the manufactured housing.

(2) Any payment made under this subsection shall not exceed 90 percent of the purchase price of the manufactured housing, as paid by the member or any spouse of the member, plus the cost of any permanent improvements subsequently made to the manufactured housing by the member or spouse of the member.

(3) The Secretary shall dispose of manufactured housing acquired under this subsection through resale, donation, trade or otherwise within one year of acquisition.

SEC. 2906. ACCOUNT

(a) IN GENERAL.—(1) There is hereby established on the books of the Treasury an account to be known as the "Department of Defense Base Closure Account 1990" which shall be administered by the Secretary as a single account.

(2) There shall be deposited into the Account—

(A) funds authorized for and appropriated to the Account;

(B) any funds that the Secretary may, subject to approval in an appropriation Act, transfer to the Account from funds appropriated to the Department of Defense for any purpose, except that such funds may be transferred only after the date on which the Secretary transmits written notice of, and justification for, such transfer to the congressional defense committees;

(C) except as provided in subsection (d), proceeds received from the lease, transfer, or disposal of any property at a military installation closed or realigned under this part; and

(D) proceeds received after September 30, 1995, from the lease, transfer, or disposal of any property at a military installation closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(b) USE OF FUNDS.—(1) The Secretary may use the funds in the Account only for the purposes described in section 2905, or, after September 30, 1995, for environmental restoration and property management and disposal at installations closed or realigned under title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(2) When a decision is made to use funds in the Account to carry out a construction project under section 2905(a) and the cost of the project will exceed the maximum amount authorized by law for a minor military construction project, the Secretary shall notify in writing the congressional defense committees of the nature of, and justification for, the project and the amount of expenditures for such project. Any such construction project may be carried out without regard to section 2802(a) of title 10, United States Code.

(c) REPORTS.—(1)(A) No later than 60 days after the end of each fiscal year in which the Secretary carries out activities under this part, the Secretary shall transmit a report to the congressional defense committees of the amount and nature of the deposits into, and the expenditures from, the Account during such fiscal year and of the amount and nature of other expenditures made pursuant to section 2905(a) during such fiscal year.

(B) The report for a fiscal year shall include the following:

(i) The obligations and expenditures from the Account during the fiscal year, identified by subaccount, for each military department and Defense Agency.

(ii) The fiscal year in which appropriations for such expenditures were made and the fiscal year in which funds were obligated for such expenditures.

(iii) Each military construction project for which such obligations and expenditures were made, identified by installation and project title.

(iv) A description and explanation of the extent, if any, to which expenditures for military construction projects for the fiscal year differed from proposals for projects and funding levels that were included in the justification transmitted to Congress under section 2907(1), or otherwise, for the funding proposals for the Account for such fiscal year, including an explanation of—

(I) any failure to carry out military construction projects that were so proposed; and

(II) any expenditures for military construction projects that were not so proposed.

(2) Unobligated funds which remain in the Account after the termination of the authority of the Secretary to carry out a closure or realignment under this part shall be held in the Account until transferred by law after the congressional defense committees receive the report transmitted under paragraph (3).

(3) No later than 60 days after the termination of the authority of the Secretary to carry out a closure or realignment under this part, the Secretary shall transmit to the congressional defense committees a report containing an accounting of—

(A) all the funds deposited into and expended from the Account or otherwise expended under this part; and

(B) any amount remaining in the Account.

(d) DISPOSAL OR TRANSFER OF COMMISSARY STORES AND PROPERTY PURCHASED WITH NONAPPROPRIATED FUNDS.—(1) If any real property or facility acquired, constructed, or improved (in whole or in part) with commissary store funds or nonappropriated funds is transferred or disposed of in connection with the closure or realignment of a military installation under this part, a portion of the proceeds of the transfer or other disposal of property on that installation shall be deposited in the reserve account established under section 204(b)(7)(C) of the Defense Authorization Amendments and Base Closure and Realignment Act (10 U.S.C. 2687 note).

(2) The amount so deposited shall be equal to the depreciated value of the investment made with such funds in the acquisition, construction, or improvement of that particular real property or facility. The depreciated value of the investment shall be computed in accordance with regulations prescribed by the Secretary of Defense.

(3) The Secretary may use amounts in the account (in such an aggregate amount as is provided in advance in appropriation Acts) for the purpose of acquiring, constructing, and improving—

(A) commissary stores; and

(B) real property and facilities for nonappropriated fund instrumentalities.

(4) As used in this subsection:

(A) The term "commissary store funds" means funds received from the adjustment of, or surcharge on, selling prices at commissary stores fixed under section 2685 of title 10, United States Code.

(B) The term "nonappropriated funds" means funds received from a nonappropriated fund instrumentality.

(C) The term "nonappropriated fund instrumentality" means an instrumentality of the United States under the jurisdiction of the Armed Forces (including the Army and Air Force

Exchange Service, the Navy Resale and Services Support Office, and the Marine Corps exchanges) which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces.

(e) ACCOUNT EXCLUSIVE SOURCE OF FUNDS FOR ENVIRONMENTAL RESTORATION PROJECTS.—Except for funds deposited into the Account under subsection (a), funds appropriated to the Department of Defense may not be used for purposes described in section 2905 (a)(1)(C). The prohibition in this subsection shall expire upon the termination of the authority of the Secretary to carry out a closure or realignment under this part.

SEC. 2907. REPORTS

As part of the budget request for fiscal year 1993 and for each fiscal year thereafter for the Department of Defense, the Secretary shall transmit to the congressional defense committees of Congress—

(1) a schedule of the closure and realignment actions to be carried out under this part in the fiscal year for which the request is made and an estimate of the total expenditures required and cost savings to be achieved by each such closure and realignment and of the time period in which these savings are to be achieved in each case, together with the Secretary's assessment of the environmental effects of such actions; and

(2) a description of the military installations, including those under construction and those planned for construction, to which functions are to be transferred as a result of such closures and realignments, together with the Secretary's assessment of the environmental effects of such transfers.

SEC. 2908. CONGRESSIONAL CONSIDERATION OF COMMISSION REPORT

(a) TERMS OF THE RESOLUTION.—For purposes of section 2904(b), the term "joint resolution" means only a joint resolution which is introduced within the 10-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), and—

(1) which does not have a preamble;

(2) the matter after the resolving clause of which is as follows: "That Congress disapproves the recommendations of the Defense Base Closure and Realignment Commission as submitted by the President on _____", the blank space being filled in with the appropriate date; and

(3) the title of which is as follows: "Joint resolution disapproving the recommendations of the Defense Base Closure and Realignment Commission.".

(b) REFERRAL.—A resolution described in subsection (a) that is introduced in the House of Representatives shall be referred to the Committee on Armed Services of the House of Representatives. A resolution described in subsection (a) introduced in the Senate shall be referred to the Committee on Armed Services of the Senate.

(c) DISCHARGE.—If the committee to which a resolution described in subsection (a) is referred has not reported such a resolution (or an identical resolution) by the end of the 20-day period beginning on the date on which the President transmits the report to the Congress under section 2903(e), such committee shall be, at the end of such period, discharged from further consideration of such resolution, and such resolution shall be placed on the appropriate calendar of the House involved.

(d) CONSIDERATION.—(1) On or after the third day after the date on which the committee to which such a resolution is referred has reported, or has been discharged (under subsection (c)) from further consideration of, such a resolution, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. A member may make the motion only on the day after the calendar day on which the Member announces to the House concerned the Member's intention to make the motion, except that, in the case of the House of Representatives, the motion may be made without such prior announcement if the motion is made by direction of the committee to which the resolution was referred.

The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the resolution shall remain the unfinished business of the respective House until disposed of.

(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the resolution. An amendment to the resolution is not in order. A motion further to limit debate is in order and not debatable. A motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(3) Immediately following the conclusion of the debate on a resolution described in subsection (a) and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

(e) CONSIDERATION BY OTHER HOUSE.—(1) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House receiving it except in the case of final passage as provided in subparagraph (B)(ii).

(B) With respect to a resolution described in subsection (a) of the House receiving the resolution—

(i) the procedure in that House shall be the same as if no resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

(2) Upon disposition of the resolution received from the other House, it shall no longer be in order to consider the resolution that originated in the receiving House.

(f) RULES OF THE SENATE AND HOUSE.—This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

SEC. 2909. RESTRICTION ON OTHER BASE CLOSURE AUTHORITY

(a) IN GENERAL.—Except as provided in subsection (c), during the period beginning on the date of the enactment of this Act and ending on December 31, 1995, this part shall be the exclusive authority for selecting for closure or realignment, or for carrying out any closure or realignment of, a military installation inside the United States.

(b) RESTRICTION.—Except as provided in subsection (c), none of the funds available to the Department of Defense may be used, other than under this part, during the period specified in subsection (a)—

(1) to identify, through any transmittal to the Congress or through any other public announcement or notification, any military installation inside the United States as an

installation to be closed or realigned or as an installation under consideration for closure or realignment; or

(2) to carry out any closure or realignment of a military installation inside the United States.

(c) EXCEPTION.—Nothing in this part affects the authority of the Secretary to carry out—

(1) closures and realignments under title II of Public Law 100-526; and

(2) closures and realignments to which section 2687 of title 10, United States Code, is not applicable, including closures and realignments carried out for reasons of national security or a military emergency referred to in subsection (c) of such section.

SEC. 2910. DEFINITIONS

As used in this part:

(1) The term "Account" means the Department of Defense Base Closure Account 1990 established by section 2906(a)(1).

(2) The term "congressional defense committees" means the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committee on Appropriations of the House of Representatives.

(3) The term "Commission" means the Commission established by section 2902.

(4) The term "military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense. [*The preceding sentence shall take effect as of November 5, 1990, and shall apply as if it had been included in section 2910(4) of the Defense Base Closure and Realignment Act of 1990 on that date.*]

(5) The term "realignment" includes any action which both reduces and relocates functions and civilian personnel positions but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, or skill imbalances.

(6) The term "Secretary" means the Secretary of Defense.

(7) The term "United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.

(8) The term "date of approval", with respect to a closure or realignment of an installation, means the date on which the authority of Congress to disapprove a recommendation of closure or realignment, as the case may be, of such installation under this part expires. [*The date of approval of closure of any installation approved for closure before November 30, 1993 shall be deemed to be November 30, 1993.*]

(9) The term "redevelopment authority", in the case of an installation to be closed under this part, means any entity (including an entity established by a State or local government) recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation or for directing the implementation of such plan. [*The above revision shall take effect as if included in the amendments made by section 2918 of Pub. L. 103-160.*]

(10) The term "redevelopment plan" in the case of an installation to be closed under this part, means a plan that—

(A) is agreed to by the local redevelopment authority with respect to the installation; and

(B) provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.

(11) The term "representative of the homeless" has the meaning given such term in section 501(i)(4) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411(i)(4)).

SEC. 2911. CLARIFYING AMENDMENT

Section 2687(e)(1) of title 10, United States Code, is amended—

(1) by inserting "homeport facility for any ship," after "center,"; and

(2) by striking out "under the jurisdiction of the Secretary of a military department" and inserting in lieu thereof "under the jurisdiction of the Department of Defense, including any leased facility,".

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Appendix C
32 CFR Parts 174, 175, and 176

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32 CFR Part 174: Revitalizing Base Closure Communities

Part 174—REVITALIZING BASE CLOSURE COMMUNITIES

Sec.

174.1 Purpose.

174.2 Applicability.

174.3 Definitions.

174.4 Policy.

174.5 Responsibilities.

Authority: 102 Stat. 2623, 104 Stat. 1808, 108 Stat. 4326, and 107 Stat. 1909

Section 174.1 Purpose.

(a) This part:

(1) Establishes policy and assigns responsibilities under the President's Five-Part Plan, "A Program to Revitalize Base Closure Communities," July 2, 1993,[1] to speed the economic recovery of communities where military bases are slated to close.

(2) Implements 107 Stat. 1909, National Defense Authorization Act for Fiscal Year 1994, Title XXIX and The Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421).

(3) Authorizes the publication of DoD 4165.66-M, "Base Reuse Implementation Manual," in accordance with DoD 5025.1-M, "DoD Directive System Procedures," August 1994.

Section 174.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

Section 174.3 Definitions.

(a) *Closure.* All missions of the installation have ceased or have been relocated. All personnel positions (military, civilian and contractor) have either been eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves.

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[1] Available from the Office of the Assistant Secretary of Defense, The Pentagon, Room 1D760, Washington, DC 20301-3300; email: "base_reuse@acq.osd.mil"

(b) *Realignment.* Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as "closed" for purposes of this part.

Section 174.4 Policy.

It is DoD policy to:

(a) Help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases — more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly insuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation.

(b) This part does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Pub. L. 103-160, or Pub. L. 103-421.

Section 174.5 Responsibilities.

(a) The Under Secretary of Defense for Acquisition and Technology shall issue DoD Instructions as necessary, to further implement applicable public laws effecting base closure implementation, and shall monitor compliance with this part. All authorities of the Secretary of Defense in Pub. L. 103-421 (108 Stat. 4326 et seq.); Pub. L. 103-160, Title XXIX (107 Stat. 1909 et seq.); Pub. L. 101-510, Section 2905 (104 Stat. 1813 et seq.); and Pub. L. 100-526, Section 204 (102 Stat. 2627 et seq.), are hereby delegated to the Assistant Secretary of Defense for Economic Security and may be delegated further.

(b) The Heads of the DoD Components shall advise their personnel with responsibilities related to base closures of the policies set forth in this part.

32 CFR Part 175: Revitalizing Base Closure Communities—Base Closure Community Assistance

Note: The italicized text was promulgated as a Proposed Rule on February 21, 1997 (62 FR 79666).

PART 175—REVITALIZING BASE CLOSURE COMMUNITIES—BASE CLOSURE COMMUNITY ASSISTANCE

Sec.

175.1 Purpose.

175.2 Applicability.

175.3 Definitions.

175.4 Policy.

175.5 Responsibilities.

175.6 Delegations of authority.

175.7 Procedures.

Authority: 10 U.S.C. 2687 note.

Section 175.1 Purpose.

This part prescribes procedures to implement "Revitalizing Base Closure Communities" (32 CFR Part 174), the President's five-part community reinvestment program, and real and personal property disposal to assist the economic recovery of communities impacted by base closures and realignments. The expeditious disposal of real and personal property will help communities get started with reuse early and is therefore critical to timely economic recovery.

Section 175.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

Section 175.3 Definitions.

(a) *Base Closure Law.* The provisions of Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100-526, 102 Stat. 2623, 10 U.S.C. 2687 note), or the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510, Part A of Title XXIX of 104 Stat. 1808, 10 U.S.C 2687 note).

(b) *Closure.* All missions of the installation have ceased or have been relocated. All personnel positions (military, civilian, and contractor) have either been eliminated or relocated, except for personnel required for caretaking, conducting any ongoing environmental cleanup, and disposal of the base, or personnel remaining in authorized enclaves.

(c) *Consultation.* Explaining and discussing an issue, considering objections, modifications, and alternatives; but without a requirement to reach agreement.

(d) *Date of approval.* The date on which the authority of Congress to disapprove Defense Base Closure and Realignment Commission recommendations for closures or realignments of installations expires under Title XXIX of 104 Stat. 1808, as amended.

(e) *Excess property.* Any property under the control of a Military Department that the Secretary concerned determines is not required for the needs of the Department of Defense.

(f) *Realignment.* Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as "closed" for this document.

(g) *Local Redevelopment Authority (LRA).* Any authority or instrumentality established by state or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

(h) *Rural.* An area outside a Metropolitan Statistical Area.

(i) *Surplus property.* Any excess property not required for the needs and the discharge of the responsibilities of federal agencies. Authority to make this determination, after screening with all federal agencies, rests with the Military Departments.

(j) *Communities in the Vicinity of the Installation.* The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the redevelopment authority for the installation.

(k) *Installation.* A base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility. Such term does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the Department of Defense.

(l) Similar use. A use that is comparable to or essentially the same as the use under the original lease.

Section 175.4 Policy.

It is DoD policy to help communities impacted by base closures and realignments achieve rapid economic recovery through effective reuse of the assets of closing and realigning bases — more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by quickly ensuring that communities and the Military Departments communicate effectively and work together to accomplish mutual goals of quick property disposal and rapid job generation. This regulation does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Title XXIX of Pub. L. 103-160, or Pub. L. 103-421, *or Title XXVII of Pub. L. 104-106.*

Section 175.5 Responsibilities.

(a) The *Deputy Under Secretary of Defense (Industrial Affairs and Installations),* after coordination with the General Counsel of the Department of Defense and other officials as appropriate, may issue such guidance and instructions through the publication of a manual or other such *document* as may be necessary to implement Laws, Directives and Instructions on the retention or disposal of real and personal property at closing or realigning bases.

(b) The Heads of the DoD Components shall ensure compliance with this part and guidance issued by the Assistant Secretary of Defense for Economic Security on revitalizing base closure communities.

Section 175.6 Delegations of authority.

(a) The authority provided by Sections 202 and 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483 and 484) for the utilization and disposal of excess and surplus property at closing and realigning bases has been delegated by the Administrator, GSA, to the Secretary of Defense by delegations dated March 1, 1989; October 9, 1990; September 13, 1991*; and, September 1, 1995*[2]. Authority under these delegations has been previously delegated to the Secretaries of the Military Departments, who may delegate this authority further.

(b) Authorities delegated to the *Deputy Under Secretary of Defense (Industrial Affairs and Installations)*[3] by section 174.5 are hereby redelegated to the Secretaries of the Military Departments, unless otherwise provided within this Part or other DoD directive, instruction, manual or regulation. These authorities may be delegated further.

Section 175.7 Procedures.

(a) *Identification of interest in real property.*

(1) To speed the economic recovery of communities affected by closures and realignments, it is DoD policy to identify DoD and federal interests in real property at closing and realigning military bases as quickly as possible. The Military Department having responsibility for the closing or realigning base shall identify such interests. The Military Department will keep the Local Redevelopment Authority (LRA) informed of these interests. This section establishes a uniform process, with specified timelines, for identifying real property which is excess to the Military Departments for use by other Department of Defense (DoD) Components and other federal agencies, and for the disposal of surplus property for various purposes.

(2) Upon the President's submission of the recommendations for base closures and realignments to the Congress in accordance with the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), the Military Department shall send out a notice of potential availability to the other DoD Components, and other federal agencies. The notice of potential availability is a public document and should be made available in a timely basis, upon request. Federal agencies are encouraged to review this list, and to evaluate whether they may have a requirement for the listed properties. The notice of potential availability should describe the property and buildings that may be available for transfer. Installations which wholly or in part are comprised of withdrawn and reserved public domain lands should implement paragraph (a)(12) of this section at the same time.

(3) Military Departments should consider LRA input in making determinations on the retention of property (size of cantonment area), if provided. Generally, determinations on the retention of property (or size of the cantonment area) should be completed prior to the date of approval of the closure or realignment.

(4) Within one week of the date of approval of the closure or realignment, the Military Department shall issue a formal notice of availability to other DoD Components and federal agencies covering closing and realigning installation buildings and property available for transfer to other DoD Components and federal

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[2] Available from *the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, VA 22202*; e mail: base_reuse@acq.osd.mil

[3] *A Deputy Secretary of Defense memorandum of May 16, 1996, "OUSD (Acquisition and Technology Reorganization" disestablished the office of the Assistant Secretary of Defense for Economic Security and established the office of the Deputy Under Secretary of Defense (Industrial Affairs and Installations). Copies are available from the Base Closure and Community Reinvestment Office, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, e mail: base_reuse@acq.osd.mil*

agencies. Withdrawn public domain lands, which the Secretary of the Interior has determined are suitable for return to his jurisdiction, will not be included in the notice of availability.

(5) Within 30 days of date of the notice of availability, any DoD Component or federal agency is required to provide a written, firm expression of interest for buildings and property. An expression of interest must explain the intended use and the corresponding requirement for the buildings and property.

(6) Within 60 days of the date of the notice of availability, the DoD Component or federal agency expressing interest in buildings or property must submit an application for transfer of such property to the Military Department or federal agency.

(i) Within 90 days of the notice of availability, the FAA should survey the air traffic control and air navigation equipment at the installation to determine what is needed to support the air traffic control, surveillance, and communications functions supported by the Military Department, and to identify the facilities needed to support the National Airspace System. FAA requests for property to manage the National Airspace System will not be governed by paragraph (a)(9) of this section. Instead, such requests will be governed by the requirements of 41 CFR 101-47.308-2, to determine the transfer of property necessary for control of the airspace being relinquished by the Military Department.

(7) The Military Department will keep the LRA informed of the progress in identifying interests. At the same time, the LRA is encouraged to contact federal agencies which sponsor public benefit transfers for information and technical assistance. The Military Department will provide points of contact at the federal agencies to the LRA.

(8) Federal agencies and DoD Components are encouraged to discuss their plans and needs with the LRA, if an LRA exists. DoD Components and federal agencies are encouraged to notify the Military Department of the results of this non-binding consultation. The Military Departments, the Base Transition Coordinator, and the Office of Economic Adjustment Project Manager are available to help facilitate communication between the federal agencies, DoD Components, and the LRA.

(9) A request for property from a DoD Component or federal agency must contain the following information:

(i) A completed GSA Form 1334, Request for Transfer (for requests from other DoD Components a DD Form 1354 is required). This must be signed by the head of the Component of the Department or Agency requesting the property. If the authority to acquire property has been delegated, a copy of the delegation must accompany the form;

(ii) A statement from the head of the requesting Component or agency that the request does not establish a new program (i.e., one that has never been reflected in a previous budget submission or Congressional action);

(iii) A statement that the requesting Component or agency has reviewed its real property holdings and cannot satisfy this requirement with existing property. This review must include all property under the requester's accountability, including permits to other federal agencies and outleases to other organizations;

(iv) A statement that the requested property would provide greater long-term economic benefits than acquisition of a new facility or other property for the program;

(v) A statement that the program for which the property is requested has long-term viability;

(vi) A statement that considerations of design, layout, geographic location, age, state of repair, and expected maintenance costs of the requested property clearly demonstrate that the transfer will prove more economical over a sustained period of time than acquiring a new facility;

(vii) A statement that the size of the property requested is consistent with the actual requirement;

(viii) A statement that fair market value reimbursement to the Military Department will be made within two years of the initial request for the property, unless this obligation is waived by the Office of Management and Budget and the Secretary of the Military Department or a public law specifically

provides for a non-reimbursable transfer. However, requests from the Military Departments or DoD Components do not need an Office of Management and Budget waiver; and,

(ix) A statement that the requesting DoD Component or federal agency agrees to accept the care and custody costs for the property on the date the property is available for transfer, as determined by the Military Department.

(10) The Military Department will make its decision on a request from a federal agency, Military Department, or DoD Component based upon the following factors, from the Federal Property Management Regulations (41 CFR 101-47.201-2):

(i) The paramount consideration shall be the validity and appropriateness of the requirement upon which the proposal is based;

(ii) The proposed federal use is consistent with the highest and best use of the property;

(iii) The requested transfer will not have an adverse impact on the transfer of any remaining portion of the base;

(iv) The proposed transfer will not establish a new program or substantially increase the level of an agency's existing programs;

(v) The application offers fair market value for the property, unless waived;

(vi) The proposed transfer addresses applicable environmental responsibilities to the satisfaction of the Military Department; and,

(vii) The proposed transfer is in the best interest of the Government.

(11) When there are more than one acceptable applications for the same building or property, the Military Department responsible for the installation should first consider the needs of the military to carry out its mission. The Military Department should then consider the proposal's economic development and job creation potential and the LRA's comments, as well as the other factors in the determination of highest and best use.

(12) Closing or realigning installations may contain "public domain lands" which have been withdrawn by the Secretary of the Interior from operation of the public land laws and reserved for the Defense Department's use. Lands deemed suitable for return to the public domain are not real property governed by the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 472), and are not governed by the property management and disposal provisions of the Base Closure and Realignment Act of 1988 (Pub. L. 100-526) and Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510). Public domain lands are under the jurisdiction of the Secretary of the Interior and administered by the Bureau of Land Management (BLM) unless the Secretary of the Interior has withdrawn the lands and reserved them for another federal agency's use.

(i) The Military Department responsible for a closing or realigning installation will provide the BLM with the notice of potential availability, as well as information about which, if any, public domain lands will be affected by the installation's closing.

(ii) The BLM will review the notice of potential availability to determine if any installations contain withdrawn public domain lands. Before the date of approval of the closure or realignment, the BLM will review its land records to identify any withdrawn public domain lands at the closing installations. Any records discrepancies between the BLM and Military Departments should be resolved within this time period. The BLM will notify the Military Departments as to the final agreed upon withdrawn and reserved public domain lands at installations.

(iii) Upon agreement as to what withdrawn and reserved public domain lands are affected at closing installations, the BLM will initiate a screening of DOI agencies to determine if these lands are suitable for programs of the Secretary of the Interior.

(iv) Military Departments will transmit a Notice of Intent to Relinquish (See 43 CFR 2372) to the BLM as soon as it is known that there is no DoD Component interest in reusing the public domain lands. The BLM will complete the suitability determination screening process within 30 days of receipt of the Military Department's Notice of Intent to Relinquish. If a DoD Component is approved to reuse the public domain lands, the BLM will be notified and BLM will determine if the current authority for military use of these lands needs to be modified/amended.

(v) If BLM determines the land is suitable for return, they shall notify the Military Department that the intent of the Secretary of the Interior is to accept the relinquishment of the Military Department.

(vi) If BLM determines the land is not suitable, the lands should be disposed of pursuant to base closure law.

(13) The Military Department should make its surplus determination within 100 days of the issuance of the notice of availability, and shall inform the LRA of the determination. If requested by the LRA, the Military Department may postpone the surplus determination for a period of no more than six months after the date of approval of the closure or realignment.

(i) In unusual circumstances, extensions beyond six months can be granted by the *Deputy Under Secretary of Defense (Industrial Affairs and Installations).*

(ii) Extensions of the surplus determination should be limited to the portions of the installation where there is an outstanding interest, and every effort should be made to make decisions on as much of the installation as possible, within the specified timeframes.

(14) Once the surplus determination has been made, the Military Department shall:

(i) Follow the procedures outlined in paragraph (b) of this section, if applicable.

(ii) Or, for installations approved for closure or realignment after October 25, 1994, and installations approved for closure or realignment prior to October 25, 1994, that have elected, prior to December 24, 1994, to come under the process outlined in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, follow the procedures outlined in paragraph (c) of this section.

(15) Following the surplus determination, but prior to the disposal of property, the Military Department may, at its discretion, withdraw the surplus determination and evaluate a federal agency's late request for excess property.

(i) Transfers under this paragraph shall be limited to special cases, as determined by the Secretary of the Military Department.

(ii) Requests shall be made to the Military Department, as specified under paragraphs (a)(8) and (a)(9) of this section, and the Military Department shall notify the LRA of such late request.

(iii) Comments received from the LRA and the time and effort invested by the LRA in the planning process should be considered when the Military Department is reviewing a late request.

(b) *Homeless screening for properties not covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.*

(1) This section outlines the procedure created for the identification of real property to fulfill the needs of the homeless by Sec. 2905(b)(6) of Pub. L. 101-510, as amended by Pub. L. 103-160 (referred to as the Pryor Amendment). It applies to BRAC 88, 91, and 93 bases if the LRA did not elect to be subject to the alternate homeless assistance screening procedure contained in the Base Closure Community Redevelopment and Homeless Assistance Act of 1994.

(2) The Military Department shall sponsor a workshop or seminar in the communities which have closing or realigning bases, unless such a workshop or seminar has already been held. These workshops or seminars will be conducted prior to the Federal Register publication by HUD of available property to assist the homeless.

(i) Not later than the date upon which the determination of surplus is made, the Military Department shall complete any determinations or surveys necessary to determine whether any building is available to assist the homeless. The Military Department shall then submit the list of properties available to assist the homeless to HUD.

(ii) HUD shall make a determination of the suitability of each property to assist the homeless in accordance with the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11411, (the McKinney Act). Within 60 days from the date of receipt of the information from the Department of Defense, HUD shall publish a list of suitable properties that shall become available when the base closes or realigns.

(iii) The listing of properties in the Federal Register under this procedure shall contain the following statement. (The listing of 1988 base closure properties that will be reported to HUD shall refer to Sec. 204(b)(6) of Pub. L. 100-526 instead of Sec. 2905(b)(6) of Pub. L. 101-510):

> The properties contained in this listing are closing and realigning military installations. This report is being accomplished pursuant to Sec. 2905(b)(6) of Pub. L. 101-510, as amended by Pub. L. 103-160. In accordance with Sec. 2905(b)(6), this property is subject to a one-time publication under the McKinney Act after which property not provided to homeless assistance providers will not be published again unless there is no expression of interest submitted by the local redevelopment authority in the one-year period following the end of the McKinney screening process pursuant to this publication.

(3) Providers of assistance to the homeless shall then have 60 days in which to submit expressions of interest to HHS in any of the listed properties. If a provider indicates an interest in a listed property, it shall have an additional 90 days after submission of its written expression of interest to submit a formal application to HHS, a period which HHS can extend. HHS shall then have 25 days after receipt of a completed application to review and complete all actions on such applications.

(4) During this screening process (from 60 to 175 days following the Federal Register publication, as appropriate), disposal agencies shall take no final disposal action or allow reuse of property that HUD has determined suitable and that may become available for homeless assistance unless and until:

(i) No timely expressions of interest from providers are received by HHS;

(ii) No timely applications from providers expressing interest are received by HHS; or,

(iii) HHS rejects all applications received for a specific property.

(5) The Military Department should promptly inform the affected LRA, the Governor of the State, local governments, and agencies which support public benefit conveyances of the date the surplus property will be available for community reuse if:

(i) No provider expresses an interest to HHS in a property with the allotted 60 days;

(ii) There are expressions of interest by homeless assistance providers, but no application is received by HHS from such a provider within the subsequent 90-day application period (or within the longer application period if HHS has granted an extension); or

(iii) HHS rejects all applications for a specific property at any time during the 25 day HHS review period.

(6) The LRA shall have 1 year from the date of notification under paragraph (b)(5) to submit a written expression of interest to incorporate the remainder of the property into a redevelopment plan.

(7) During the allotted 1-year period for the LRA to submit a written expression of interest for the property, surplus properties not already approved for homeless reuse shall not be available for homeless assistance. The surplus properties will also not be advertised by HUD as suitable during these 1-year periods. The surplus property may be available for interim leases consistent with paragraph (g) of this section.

(8) If the LRA does not express in writing its interest in a specific property during the allotted 1-year period or it notifies the Military Department it is not interested in the property, the disposal agency shall again notify HUD of the date of availability of the property for homeless assistance. HUD may then list the property in the Federal Register as suitable and available after the base closes following the procedures of the McKinney Act.

(c) *Reserved.* Additional regulations will be promulgated in a publication of the Departments of Defense and Housing and Urban Development to address state and local screening and approval of redevelopment plans for installations covered by the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421).

(d) *Local Redevelopment Authority and the Redevelopment Plan.*

(1) The LRA should have broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over the property. Generally, there will be one recognized LRA per installation.

(2) The LRA should focus primarily on developing a comprehensive redevelopment plan based upon local needs. The plan should recommend land uses based upon an exploration of feasible reuse alternatives. If applicable, the plan should consider notices of interest received under the provisions of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (Pub. L. 103-421). This section shall not be construed to require a plan that is enforceable under state and local land use laws, nor is it intended to create any exemption from such laws.

(3) The Military Department will develop a disposal plan and complete the appropriate environmental documentation no later than 12 months from receipt of the redevelopment plan. The local redevelopment plan will generally be used as the basis for the proposed action in conducting environmental analyses required by under the National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4332 et.seq.). The disposal plan will specifically address the methods for disposal of property at the installation, including conveyances for homeless assistance, public benefit transfers, public sales, Economic Development Conveyances and other disposal methods.

(i) In the event there is no LRA recognized by DoD and/or if a redevelopment plan is not received from the LRA within 15 months from the determination of surplus under paragraph (a)(13) of this section, (unless an extension of time has been granted by the *Deputy Under Secretary of Defense (Industrial Affairs and Installations)*), the applicable Military Department shall proceed with the disposal of property under applicable property disposal and environmental laws and regulations.

(e) *Economic development conveyances.*

(1) Section 2903 of Pub. L. 103-160 gives the Secretary of Defense the authority to transfer property to local redevelopment authorities for consideration in cash or in kind, with or without initial payment, or with only partial payment at time of transfer, at or below the estimated present fair market value of the property. This authority creates an additional tool for local communities to help spur economic opportunity through a new real property conveyance method specifically designed for economic development, referred to as the "Economic Development Conveyance" (EDC).

(2) The EDC can only be used when other surplus federal property disposal authorities for the intended land use cannot be used to accomplish the necessary economic redevelopment.

(3) An LRA is the only entity able to receive property under an EDC.

(4) A properly completed application will be the basis for a decision on whether an LRA will be eligible for an EDC. An application should be submitted by the LRA after a Redevelopment Plan is adopted by the LRA. The Secretary of the Military Departments shall establish a reasonable time period for submission of the EDC application after consultation with the LRA. The Military Departments will review the applications and make a decision whether to make an EDC based on the criteria specified in paragraph (e)(7) of this section. The terms and conditions of the EDC will be negotiated between the Military

Departments and the LRA. Bases in rural areas shall be conveyed with no consideration if they meet the standards in paragraph (f)(5) of this section.

(5) The application should explain why an EDC is necessary for economic redevelopment and job creation. The application should also contain the following elements:

(i) A copy of the adopted redevelopment plan.

(ii) A project narrative including the following:

(A) A general description of property requested.

(B) A description of the intended uses.

(C) A description of the economic impact of closure or realignment on the local communities.

(D) A description of the financial condition of the community and the prospects for redevelopment of the property.

(E) A statement of how the EDC is consistent with the overall Redevelopment Plan.

(iii) A description of how the EDC will contribute to short- and long-term job creation and economic redevelopment of the base and community, including projected number, and type of new jobs it will assist in creating.

(iv) A business/operational plan for the EDC parcel, including such elements as:

(A) A development timetable, phasing schedule and cash flow analysis.

(B) A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over a fifteen-year period, the proposed consideration or payment to the Department of Defense, and the estimated present fair market value of the property.

(C) A cost estimate and justification for infrastructure and other investments needed for the development of the EDC parcel.

(D) Local investment and proposed financing strategies for the development.

(v) A statement describing why other authorities — such as public or negotiated sale and public benefit transfers for education, parks, public health, aviation, historic monuments, prisons, and wildlife conservation — cannot be used to accomplish the economic development and job creation goals.

(vi) If a transfer is requested for less than the estimated present fair market value ("FMV"), with or without initial payment at the time of transfer, then a statement should be provided justifying the discount. The statement should include the amount and form of the proposed consideration, a payment schedule, the general terms and conditions for the conveyance, and projected date of conveyance.

(vii) A statement of the LRA's legal authority to acquire and dispose of the property.

In addition to the elements previously mentioned, after Military Department review of the application, additional information may be requested to allow for a better evaluation of the application.

(6) Upon receipt of an application for an EDC, the Secretary of the Military Department will determine whether an EDC is needed to spur economic development and job creation and examine whether the terms and conditions proposed are fair and reasonable. The Military Department may also consider information independent of the application, such as views of other federal agencies, appraisals, caretaker costs and other relevant material. The Military Department may propose and negotiate any alternative terms or conditions that it considers necessary.

(7) The following factors will be considered, as appropriate, in evaluating the application and the terms and conditions of the proposed transfer, including price, time of payment and other relevant methods of compensation to the federal government.

(i) Adverse economic impact of closure or realignment on the region and potential for economic recovery after an EDC.

(ii) Extent of short- and long-term job generation.

(iii) Consistency with overall Redevelopment Plan.

(iv) Financial feasibility of the development, including market analysis and need and extent of proposed infrastructure and other investments.

(v) Extent of state and local investment, level of risk incurred, and the LRA's ability to implement the plan.

(vi) Current local and regional real estate market conditions.

(vii) Incorporation of other federal agency interests and concerns, and applicability of, and conflicts with, other federal surplus property disposal authorities.

(viii) Relationship to the overall Military Department disposal plan for the installation.

(ix) Economic benefit to the federal government, including protection and maintenance cost savings and anticipated consideration from the transfer.

(x) Compliance with applicable federal, state, and local laws and regulations.

(8) Before making an EDC, the Military Department must prepare an estimate of the present fair market value of the property, which may be expressed as a range of values. The Military Department shall consult with the LRA on valuation assumptions, guidelines and on instructions given to the person(s) making the estimation of value. The Military Department is fully responsible for completion of the valuation. The Military Department, in preparing the estimate of present fair market value shall include, to the extent practicable, the uses identified in the local redevelopment plan.

(f) *Consideration for economic development conveyances.*

(1) For conveyances made pursuant to section 175.7 (e), Economic development conveyances, the Secretary of the Military Department will review the application for an EDC and negotiate the terms and conditions of each transaction with the LRA. The Military Departments will have the discretion and flexibility to enter into agreements that specify the form, amount, and payment schedule. The consideration may be at or below the estimated present fair market value, with or without initial payment, in cash or in-kind and paid over time.

(2) An EDC must be one of the two following types of agreements:

(i) Consideration within the estimated range of present fair market value, as determined by the Secretary of the Military Department.

(ii) Consideration below the estimated range of present fair market value, when proper justification is provided and when the Secretary of the Military Department determines that a discount is necessary for economic redevelopment and job creation.

(3) If the consideration under an EDC is within the range of value listed in paragraph (f)(2)(i) of this section, the amount paid in the future should take into account the time value of money and include repayment of interest. Any transaction that waives or delays interest payments will be considered as a transaction below the present fair market value under paragraph (f)(2)(ii) of this section, and as such must be justified as necessary for economic development and job creation.

(4) Additional provisions may be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon compensation, including such items as pre-determined release prices, or other appropriate clauses designed to ensure payment and protect against fraudulent transactions.

(5) In a rural area, as defined by this rule, any EDC approved by the Secretary of the Military Department shall be made without consideration if the base closure will have a substantial adverse impact on the economy of the communities in the vicinity of the installation and on the prospect for their economic recovery.

(6) In those instances in which an EDC is made for consideration below the range of the estimated present fair market value of the property — or if the estimated present fair market value is expressed as a range of values, below the lowest value in that range — the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained. Additionally, the Military Departments must prepare a written statement explaining why other federal property transfer authorities could not be used to generate economic redevelopment and job creation.

(g) *Leasing of real property.*

(1) Leasing of real property prior to the final disposition of closing and realigning bases may facilitate state and local economic adjustment efforts and encourage economic redevelopment.

(2) In addition to leasing property at fair market value, to assist local redevelopment efforts the Secretaries of the Military Departments may also lease real and personal property located at a military installation to be closed or realigned under a base closure law, pending final disposition, for less than fair market value if the Secretary concerned determines that:

(i) A public interest will be served as a result of the lease; and

(ii) The fair market value of the lease is unobtainable, or not compatible with such public benefit.

(3) Pending final disposition of an installation, the Military Departments may grant interim leases which are short-term leases that make no commitment for future use or ultimate disposal. When granting an interim lease, the Military Department will generally lease to the LRA but can lease property directly to other entities. If the interim lease is entered into prior to completion of the final disposal decisions under the National Environmental Policy Act (NEPA) process, the term may be for up to five years, including options to renew, and may contain restrictions on use. Leasing should not delay the final disposal of the property. After completion of the final disposal decisions, the term of the lease may be longer than five years.

(4) If the property is leased for less than fair market value to the LRA and the interim lease permits the property to be subleased, the interim lease shall provide that rents from the subleases will be applied by the lessee to the protection, maintenance, repair, improvement and costs related to the property at the installation consistent with 10 U.S.C. 2667.

(h) *Personal property.*

(1) This section outlines procedures to allow transfer of personal property to the LRA for the effective implementation of a community reuse plan.

(2) Each Military Department and DoD Component, as appropriate, will take an inventory of the personal property, including its condition, within 6 months after the date of approval of closure or realignment. This inventory will be limited to the personal property located on the real property to be disposed of by the Military Department or DoD Component. The inventory will be taken in consultation with LRA officials. If there is no LRA, the Military Department will offer to provide a consultation for the local government in whose jurisdiction the installation is wholly located or for a local government agency or a state government agency designated for that purpose by the chief executive officer of the state. Based on these consultations, the base commander will determine the items or category of items that have the potential to enhance the reuse of the real property.

(3) Except for property subject to the exemptions in paragraph (h)(5) of this section, personal property with potential to enhance the reuse of the real estate shall remain at a base being closed or realigned until disposition is otherwise determined by the Military Department. This determination will be made no earlier than 90 days after the Military Department receives an adopted redevelopment plan or when notified by the LRA that there will be no redevelopment plan.

(4) National Guard property demonstrably identified as being purchased with state funds is not available for reuse planning or subject to transfer for redevelopment purposes, unless so identified by the state property officer. National Guard property purchased with federal funds is subject to inventory and may be made available for redevelopment planning purposes.

(5) Personal property may be removed upon approval of the base commander or higher authority, within and as prescribed by the Military Department, after the inventory required in paragraph (h)(2) of this section has been sent to the redevelopment authority, when:

(i) The property, other than ordinary fixtures, is required for the operation of a transferring unit, function, component, weapon, or weapons system;

(ii) The property is required for the operation of a unit, function, component, weapon, or weapon system at another installation within the Military Department, subject to the following conditions:

(A) Ordinary fixtures, including but not limited to such items as blackboards, sprinklers, lighting fixtures, and electrical and plumbing systems, shall not be removed under paragraph (h)(5)(ii) of this section; and,

(B) Other personal property may be removed under paragraph (h)(5)(ii) of this section only after the Military Department has consulted with the LRA and, with respect to disputed items, upon the approval of an Assistant Secretary of the Military Department.

(iii) The property is uniquely military in character and is likely to have no civilian use (other than use for its material content or as a source of commonly used components). This property consists of classified items; nuclear, biological, chemical items; weapons and munitions; museum property or items of significant historic value that are maintained or displayed on loan; and similar military items;

(iv) The property is not required for the reutilization or redevelopment of the installation (as jointly determined by the Military Department concerned and the redevelopment authority);

(v) The property is stored at the installation for distribution (including spare parts or stock items). This property includes materials or parts used in a manufacturing or repair function but does not include maintenance spares for equipment to be left in place;

(vi) The property meets known requirements of an authorized program of another federal department or agency that would have to purchase similar items, and the property is the subject of a written request received from the head of the other Department or Agency. If the authority to acquire personal property has been delegated, a copy of the delegation must accompany the request. In this context, "purchase" means the federal department or agency intends to obligate funds in the current quarter or next six fiscal quarters. The federal department or agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property;

(vii) The property belongs to nonappropriated fund instrumentalities (NAFI) and other non-Defense Department activities. Such property may be removed at the Military Departments' discretion because it does not belong to the Defense Department and, therefore, it may not be transferred to the redevelopment authority under this section. For NAFI property, separate arrangements for communities to purchase such property are possible and may be negotiated with the Military Department concerned; and,

(viii) The property is needed elsewhere in the national security interest of the United States as determined by the Secretary of the Military Department concerned. This authority may not be redelegated

below the level of an Assistant Secretary. In exercising this authority, the Secretary may transfer the property to any entity of the Department of Defense or other federal agency.

(6) In addition to the exemptions in paragraph (h)(5) of this section, the Military Department or DoD Component is authorized to substitute an item similar to one requested by the redevelopment authority.

(7) Personal property not subject to the exemptions in paragraph (h)(5) of this section may be conveyed to the redevelopment authority as part of an economic development conveyance for the real property if the Military Department makes a finding that the personal property is necessary for the effective implementation of the redevelopment plan.

(8) Personal property may also be conveyed separately to the LRA under an economic development conveyance for personal property. This type of economic development conveyance can be made if the Military Department determines that the transfer is necessary for the effective implementation of a redevelopment plan with respect to the installation. Such determination shall be based on the LRA's timely application for the property, which should be submitted to the Military Department upon completion of the redevelopment plan. The application must include the LRA's agreement to accept the personal property after a reasonable period. The transfer will be subject to reasonable limitations and conditions on use.

(i) The Military Department will restrict the LRA's ability to acquire personal property at less than fair market value solely for the purpose of releasing or reselling it, unless the LRA will lease or sell the personal property to entities which will place it into productive use in accordance with the redevelopment plan. The LRA must retain personal property conveyed under an EDC for less than fair market value for at least one year if it is valued at less than $5,000, or at least two years if valued at more than $5,000. Any proceeds from such leases or sales must be used to pay for protection, maintenance, repair or redevelopment of the installation. The LRA will be required to certify its compliance with the provisions of this section at the end of each fiscal year for no more than two years after transfer. The certification may be subject to random audits by the Government.

(9) Personal property that is not needed by the Military Department or a federal agency or conveyed to a redevelopment authority (or a state or local jurisdiction in lieu of a local redevelopment authority) will be transferred to the Defense Reutilization and Marketing Office for processing in accordance with 41 CFR 101-43 through 101-45, "Federal Property Management Regulations," and DoD 4160.21-M.[4]

(10) Useful personal property determined to be surplus to the needs of the federal government by the Defense Reutilization and Marketing Office and not qualifying for transfer to the redevelopment authority under an economic conveyance may be donated to the community or redevelopment authority through the appropriate State Agency for Surplus Property (SASP). Personal property donated under this procedure must meet the usage and control requirements of the applicable SASP. Property subsequently not needed by the community or redevelopment authority shall be disposed of as required by its SASP.

(i) *Maintenance, utilities, and services.*

(1) Facilities and equipment located on bases being closed are often important to the eventual reuse of the base. This section provides maintenance procedures to preserve and protect those facilities and items of equipment needed for reuse in an economical manner that facilitates base redevelopment.

(2) In order to ensure quick reuse, the Military Department, in consultation with the LRA, will establish initial levels of maintenance and repair needed to aid redevelopment and to protect the property for the time periods set forth below. Where agreement between the Military Department and the LRA cannot be reached, the Secretary of the Military Department will determine the required levels of maintenance and repair and its duration. In no case will these initial levels of maintenance:

[4] Copies may be obtained from the Defense Logistics Agency, Attn: DLA-XPD, Alexandria, VA 22304-6100

(i) Exceed the standard of maintenance and repair in effect on the date of closure or realignment approval;

(ii) Be less than maintenance and repair required to be consistent with federal government standards for excess and surplus properties (i.e., 41 CFR 101-47.402 and 41 CFR 101-47.4913); or,

(iii) Require any property improvements, including construction, alteration, or demolition, except when the demolition is required for health, safety, or environmental purposes, or is economically justified in lieu of continued maintenance expenditures.

(3) The initial levels of maintenance and repair shall be tailored to the redevelopment plan, and shall include the following provisions:

(i) The facilities and equipment that are likely to be utilized in the near term will be maintained at levels that shall prevent undue deterioration and allow transfer to the LRA.

(ii) The scheduled closure or realignment date of the installation will not be delayed.

(4) The Military Department will not reduce the agreed upon initial maintenance and repair levels unless it establishes a new arrangement (e.g., termination of caretaking upon leasing of property) in consultation with the LRA.

(5) The Military Department will determine the length of time it will maintain the initial levels of maintenance and repair for each closing or realigning base. This determination will be based on factors such as the closure/realignment date and the timing of the completion of the National Environmental Policy Act (NEPA) documentation on the proposed disposal (such as a finding of no significant impact and disposal decision following an environmental assessment or the record of decision following an environmental impact statement).

(i) For a base that has not closed prior to the publication of this rule, and where the Military Department has completed the NEPA analysis on the proposed disposal before the operational closure of that base, the time period for the initial levels of maintenance and repair normally will extend no longer than one year after operational closure of the base.

(ii) For a base that has not closed prior to the publication of this rule, and where the base's operational closure precedes the completion of the NEPA analysis on the proposed disposal, the time period for the initial levels of maintenance and repair will normally extend no longer than one year after operational closure or 180 days after the Secretary of the Military Department approves the NEPA analysis.

(iii) For a base that closed prior to the publication of this rule, the time period for the existing levels of maintenance will normally extend no longer than one year from the date of the publication of this rule.

(6) The Military Department may extend the time period for the initial levels of maintenance and repair for property still under its control for an additional period, if the Secretary of the Military Department determines that the Local Redevelopment Authority is actively implementing its redevelopment plan, and such levels of maintenance are justified.

(7) Once the time period for the initial or extended levels of maintenance and repair elapses, the Military Department will reduce the levels of maintenance and repair to levels consistent with federal government standards for excess and surplus properties (i.e., 41 CFR 101-47.402 and 41 CFR 101-47.4913).

(j) Note: This space has been reserved for regulations implementing Section 2908 of the National Defense Authorization Act for FY 1994 regarding the transfer of real property or facilities to persons paying the cost of environmental restoration activities on the property. A Proposed Rule was published on April 6, 1994 (59 FR 16157) but a Final Rule has not been promulgated.

(k) Leaseback of property at base closure and realignment sites.

(1) Section 2905(b)(4)(c) of Pub. L. 101-510, 10 U.S.C. 2687 note (BRAC 1990), as added by section 2837 of Pub. L. 104-106, gives the Secretary of Defense the authority to transfer property that is still needed by a Federal Department or Agency to an LRA provided the LRA agrees to lease the property back to the Federal Department or Agency in accordance with all statutory and regulatory guidance. The purpose of this authority, hereinafter referred to as a "leaseback," is to enable the LRA to obtain ownership of the property pursuant to the BRAC process while still ensuring that the Federal need for use of the property is accommodated.

(2) Subject to BRAC 1990 and this part, the decision whether to transfer property pursuant to a leaseback rests with the relevant military department. However, a military department may only transfer property via a leaseback if the Federal entity that needs the property agrees to the leaseback arrangement.

(3) If for any reason property cannot be transferred pursuant to a leaseback (e.g., the relevant Federal Agency prefers ownership, the LRA and the Federal entity cannot agree on terms of the lease, or the military department determines that a leaseback would not be in the Federal interest), such property shall remain in Federal ownership unless and until the relevant landholding entity determines that it is surplus pursuant to the Federal Property Management Regulations.

(4) If a building or structure is proposed for transfer under this authority, that which is leased back to the Federal Department or Agency may be all or a portion of that building or structure.

(5) The leaseback authority may be used at all installations approved for closure or realignment under BRAC 1990.

(6) Transfers under this authority must be to an LRA.

(7) Transfers under this authority may be by lease in furtherance of conveyance or deed. A lease in furtherance of conveyance is appropriate only in those circumstances where deed transfer cannot be accomplished because the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601, et seq.) for such transfer have not been met. The lease in furtherance of conveyance or accompanying contract shall include a provision stating that the LRA agrees to take title to the property when requirements for the transfer have been satisfied.

(8) The leaseback authority can be used to transfer property that is needed either by existing Federal tenants or by Federal Departments or Agencies desiring to locate onto the property after operational closure. The Military Department that is closing or realigning the installation may not transfer property to an LRA under this authority and lease it back unless:

(i) The Military Department is acting in an Executive Agent capacity on behalf of a Defense Agency that certifies that a leaseback is in the interest of that Defense Agency; or,

(ii) The Secretary of the Military Department certifies that a leaseback is in the best interest of the Military Department and that use of the property by the Military Department is consistent with the obligation to close or realign the installation in accordance with the recommendations of the Defense Base Closure and Realignment Commission.

(9) Property eligible for a leaseback is not surplus because it is still needed by a Federal entity. However, notwithstanding that the property is not surplus and that the LRA would not otherwise have to include such property in its redevelopment plan, the LRA should include the proposed leaseback of property in its redevelopment plan, taking into account the planned Federal use of such property.

(10) The terms of the LRA's lease to the Federal entity should afford the Federal Department or Agency rights as close to those associated with ownership of the property as is practicable. The requirements of the General Services Acquisition Regulation (GSAR) (48 CFR Part 570) are not applicable to the lease, but provisions in the GSAR may be used to the extent they are consistent with this Part. The terms of the lease are negotiable subject to the following:

(i) The lease shall be for a term of no more than 50 years, but may provide for options for renewal or extension of the term at the request of the Federal Department or Agency concerned. The lease term should be based on the needs of the Federal entity.

(ii) The lease, or any renewals or extensions thereof, shall not require rental payments.

(iii) The lease shall not require the Federal Government to pay the LRA or other local government entity for municipal services including fire and police protection.

(iv) The Federal Department or Agency concerned may be responsible for services such as janitorial, grounds keeping, utilities, capital maintenance, and other services normally provided by a landlord. Acquisition of such services by the Federal Department or Agency is to be accomplished through the use of Federal Acquisition Regulation procedures or otherwise in accordance with applicable statutory and regulatory requirements.

(v) The lease shall include a provision prohibiting the LRA from transferring ownership rights to another entity during the term of the lease, other than one of the political jurisdictions that comprise the LRA, without the written consent of the Federal Department or Agency occupying the leaseback property.

(vi) The lease shall include a provision specifying that if the Federal Department or Agency concerned no longer needs the property before the expiration of the term of the lease, the remainder of the lease term may be satisfied by the same or another Federal Department or Agency using the leased property for a use similar to the use under the lease.

(A) The General Services Administration shall assist with identifying other Federal interest in leasing the property.

(B) Prior to exercising such provision, the Federal Department or Agency shall consult with the LRA concerned, or the elected body with jurisdiction over the property if the LRA no longer exists.

(vii) The terms of the lease shall provide that the Federal Department or Agency may repair, improve, and maintain the property at its expense without the approval of the LRA.

(11) Conveyance to an LRA under this authority shall be in one of the following ways:

(i) Lease back property that is to be conveyed under an Economic Development Conveyance (EDC) shall be conveyed as part of the EDC in accordance with the existing EDC procedures and § 175.7(k)(11)(ii)(B)(4). The LRA shall submit the following in addition to the application requirements outlined in § 175.7(e)(5):

(A) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

(B) A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

(C) A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

(ii) Leaseback property not associated with property to be conveyed under an EDC shall be conveyed in accordance with the following procedures:

(A) As soon as possible after the LRA's submission of its redevelopment plan to the DoD and HUD, the LRA shall submit a request for a leaseback to the Military Department. The Military Department may impose additional requirements as necessary, but at a minimum, the request shall contain the following:

(1) A description of the parcel or parcels the LRA proposes to have transferred to it and then to lease back to a Federal Department or Agency;

(2) A written statement signed by an authorized representative of the Federal entity that it agrees to accept a leaseback of the property; and,

(3) A statement explaining why a leaseback is necessary for the long-term economic redevelopment of the installation property.

(B) The transfer may be for consideration at or below the estimated present fair market value. In those instances in which the property is conveyed for consideration below the estimated present fair market value, the Military Department shall prepare a written explanation of why the estimated present fair market value was not obtained.

(1) In a rural area, the transfer shall comply with §175.7(f)(5).

(2) Payment may be in cash or in-kind.

(3) The Military Department shall determine the estimated present fair market value of the property before transfer under this authority.

(4) The exact amount of consideration, or the formula to be used to determine that consideration, as well as the schedule for payment of consideration must be agreed upon in writing before transfer under this authority.

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32 CFR Part 176: Revitalizing Base Closure Communities and Community Assistance---Community Redevelopment and Homeless Assistance

PART 176 -- REVITALIZING BASE CLOSURE COMMUNITIES AND COMMUNITY ASSISTANCE -- COMMUNITY REDEVELOPMENT AND HOMELESS ASSISTANCE

Sec.

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Authority: 10 U.S.C. 2687 note.

Section 176.1 Purpose.

This part implements the Base Closure Community Redevelopment and Homeless Assistance Act, as amended (10 U.S.C. 2687 note), which instituted a new community-based process for addressing the needs of the homeless at base closure and realignment sites. In this process, Local Redevelopment Authorities (LRAs) identify interest from homeless providers in installation property and develop a redevelopment plan for the installation that balances the economic redevelopment and other development needs of the communities in the vicinity of the installation with the needs of the homeless in those communities. The Department of Housing and Urban Development (HUD) reviews the LRA's plan to see that an appropriate balance is achieved. This part also implements the process for identifying interest from State and local entities for property under a public benefit

transfer. The LRA is responsible for concurrently identifying interest from homeless providers and State and local entities interested in property under a public benefit transfer.

Section 176.5 Definitions.

(a) *CERCLA.* Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq).

(b) *Communities in the vicinity of the installation.* The communities that constitute the political jurisdictions (other than the State in which the installation is located) that comprise the LRA for the installation. If no LRA is formed at the local level, and the State is serving in that capacity, the communities in the vicinity of the installation are deemed to be those political jurisdiction(s) (other than the State) in which the installation is located.

(c) *Continuum of care system.*

(1) A comprehensive homeless assistance system that includes:

(i) A system of outreach and assessment for determining the needs and condition of an individual or family who is homeless, or whether assistance is necessary to prevent an individual or family from becoming homeless;

(ii) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary service providers or housing finders;

(iii) Transitional housing with appropriate supportive services to help those homeless individuals and families who are not prepared to make the transition to independent living;

(iv) Housing with or without supportive services that has no established limitation on the amount of time of residence to help meet long-term needs of homeless individuals and families; and,

(v) Any other activity that clearly meets an identified need of the homeless and fills a gap in the continuum of care.

(2) Supportive services are services that enable homeless persons and families to move through the continuum of care toward independent living. These services include, but are not limited to, case management, housing counseling, job training and placement, primary health care, mental health services, substance abuse treatment, child care, transportation, emergency food and clothing, family violence services, education services, moving services, assistance in obtaining entitlements, and referral to veterans services and legal services.

(d) *Consolidated Plan.* The plan prepared in accordance with the requirements of 24 CFR part 91.

(e) *Day.* One calendar day including weekends and holidays.

(f) *DoD.* Department of Defense.

(g) *HHS.* Department of Health and Human Services.

(h) *Homeless person.*

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence; and,

(2) An individual or family who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or,

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(3) This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

(i) *HUD.* Department of Housing and Urban Development.

(j) *Installation.* A base, camp, post, station, yard, center, homeport facility for any ship or other activity under the jurisdiction of DoD, including any leased facility, that is approved for closure or realignment under the Base Closure and Realignment Act of 1988 (Pub. L. 100-526), as amended, or the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101-510), as amended (both at 10 U.S.C. §2687, note).

(k) *Local redevelopment authority (LRA).* Any authority or instrumentality established by State or local government and recognized by the Secretary of Defense, through the Office of Economic Adjustment, as the entity responsible for developing the redevelopment plan with respect to the installation or for directing implementation of the plan.

(l) *NEPA.* National Environmental Policy Act of 1969 (42 U.S.C. 4320).

(m) *OEA.* Office of Economic Adjustment, Department of Defense.

(n) *Private nonprofit organization.* An organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

(o) *Public benefit transfer.* The transfer of surplus military property for a specified public purpose at up to a 100 percent discount in accordance with 40 U.S.C. 471 et. seq. or 49 U.S.C. 47151-47153.

(p) *Redevelopment plan.* A plan that is agreed to by the LRA with respect to the installation and provides for the reuse or redevelopment of the real property and personal property of the installation that is available for such reuse and redevelopment as a result of the closure of the installation.

(q) *Representative(s) of the homeless.* A State or local government agency or private nonprofit organization, including a homeless assistance planning board, that provides or proposes to provide services to the homeless.

(r) *Substantially equivalent.* Property that is functionally suitable to substitute for property referred to in an approved Title V application. For example, if the representative of the homeless had an approved Title V application for a building that would accommodate 100 homeless persons in an emergency shelter, the replacement facility would also have to accommodate 100 at a comparable cost for renovation.

(s) *Substantially equivalent funding.* Sufficient funding to acquire a substantially equivalent facility.

(t) *Surplus property.* Any excess property not required for the needs and the discharge of the responsibilities of all Federal Agencies. Authority to make this determination, after screening with all Federal Agencies, rests with the Military Departments.

(u) *Title V.* Title V of the Stewart B. McKinney Homeless Assistance Act of 1987 (42 U.S.C 11411) as amended by the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160).

(v) *Urban county.* A county within a metropolitan area as defined at 24 CFR part 570.3.

Section 176.10 Applicability.

(a) General. This part applies to all installations that are approved for closure/realignment by the President and Congress under Pub. L. 101-510 after October 25, 1994.

(b) Request for inclusion under this process. This part also applies to installations that were approved for closure/realignment under either Pub. L. 100-526 or Pub. L. 101-510 prior to October 25, 1994 and for which an LRA submitted a request for inclusion under this part to DoD by December 24, 1994. A list of such requests was published in the Federal Register on May 30, 1995 (60 FR 28089).

(1) For installations with Title V applications pending but not approved before October 25, 1994, the LRA shall consider and specifically address any application for use of buildings and property to assist the homeless that were received by HHS prior to October 25, 1994, and were pending with the Secretary of HHS on that date. These pending requests shall be addressed in the LRA's homeless assistance submission.

(2) For installations with Title V applications approved before October 25, 1994, where there is an approved Title V application, but property has not been assigned or otherwise disposed of by the Military Department, the LRA must ensure that its homeless assistance submission provides the Title V applicant with:

(i) The property requested;

(ii) Properties, on or off the installation, that are substantially equivalent to those requested;

(iii) Sufficient funding to acquire such substantially equivalent properties;

(iv) Services and activities that meet the needs identified in the application; or,

(v) A combination of the properties, funding, and services and activities described in §176.10(b)(2)(i)-(iv) of this part.

(c) Revised Title V process. All other installations approved for closure or realignment under either Pub. L. 100-526 or Pub. L. 101-510 prior to October 25, 1994, for which there was no request for consideration under this part, are covered by the process stipulated under Title V. Buildings or property that were transferred or leased for homeless use under Title V prior to October 25, 1994, may not be reconsidered under this part.

Section 176.15 Waivers and extensions of deadlines.

(a) After consultation with the LRA and HUD, and upon a finding that it is in the interest of the communities affected by the closure/realignment of the installation, DoD, through the Director of the Office of Economic Adjustment, may extend or postpone any deadline contained in this part.

(b) Upon completion of a determination and finding of good cause, and except for deadlines and actions required on the part of DoD, HUD may waive any provision of §§176.20 through 176.45 of this part in any particular case, subject only to statutory limitations.

Section 176.20 Overview of the process.

(a) Recognition of the LRA. As soon as practicable after the list of installations recommended for closure or realignment is approved, DoD, through OEA, will recognize an LRA for the installation. Upon recognition, OEA shall publish the name, address, and point of contact for the LRA in the Federal Register and in a newspaper of general circulation in the communities in the vicinity of the installation.

(b) Responsibilities of the Military Department. The Military Department shall make installation properties available to other DoD components and Federal agencies in accordance with the procedures set out at 32 CFR part 175. The Military Department will keep the LRA informed of other Federal interest in the property during this process. Upon completion of this process the Military Department will notify HUD and either the LRA, or the Chief Executive Officer of the State, as appropriate, and publish a list of surplus property on the installation that will be available for reuse in the Federal Register and a newspaper of general circulation in the communities in the vicinity of the installation.

(c) Responsibilities of the LRA. The LRA should begin to conduct outreach efforts with respect to the installation as soon as is practicable after the date of approval of closure/realignment of the installation. The local reuse planning process must begin no later than the date of the Military Department's Federal Register publication of available property described at §176.20(b). For those installations that began the process described in this part prior to August 17, 1995, HUD will, on a case by case basis, determine whether the statutory requirements have been fulfilled and whether any additional requirements listed in this part should be required. Upon the Federal Register publication described in §176.20(b), the LRA shall:

(1) Publish, within 30 days, in a newspaper of general circulation in the communities in the vicinity of the installation, the time period during which the LRA will receive notices of interest from State and local governments, representatives of the homeless, and other interested parties. This publication shall include the name, address, telephone number and the point of contact for the LRA who can provide information on the prescribed form and contents of the notices of interest. The LRA shall notify DoD of the deadline specified for receipt of notices of interest. LRAs are strongly encouraged to make this publication as soon as possible within the permissible 30 day period in order to expedite the closure process.

(i) In addition, the LRA has the option to conduct an informal solicitation of notices of interest from public and non-profit entities interested in obtaining property via a public benefit transfer other than a homeless assistance conveyance under either 40 U.S.C. 471 et. seq. or 49 U.S.C. 47151-47153. As part of such a solicitation, the LRA may wish to request that interested entities submit a description of the proposed use to the LRA and the sponsoring Federal agency.

(ii) For all installations selected for closure or realignment prior to 1995 that elected to proceed under Pub. L. 103-421, the LRA shall accept notices of interest for not less than 30 days.

(iii) For installations selected for closure or realignment in 1995 or thereafter, notices of interest shall be accepted for a minimum of 90 days and not more than 180 days after the LRA's publication under §176.20(c)(1).

(2) Prescribe the form and contents of notices of interest.

(i) The LRA may not release to the public any information regarding the capacity of the representative of the homeless to carry out its program, a description of the organization, or its financial plan for implementing the program, without the consent of the representative of the homeless concerned, unless such release is authorized under Federal law and under the law of the State and communities in which the installation concerned is located. The identity of the representative of the homeless may be disclosed.

(ii) The notices of interest from representatives of the homeless must include:

(A) A description of the homeless assistance program proposed, including the purposes to which the property or facility will be put, which may include uses such as supportive services, job and skills training, employment programs, shelters, transitional housing or housing with no established limitation on the amount of time of residence, food and clothing banks, treatment facilities, or any other activity which clearly meets an identified need of the homeless and fills a gap in the continuum of care;

(B) A description of the need for the program;

(C) A description of the extent to which the program is or will be coordinated with other homeless assistance programs in the communities in the vicinity of the installation;

(D) Information about the physical requirements necessary to carry out the program including a description of the buildings and property at the installation that are necessary to carry out the program;

(E) A description of the financial plan, the organization, and the organizational capacity of the representative of the homeless to carry out the program; and,

(F) An assessment of the time required to start carrying out the program.

(iii) The notices of interest from entities other than representatives of the homeless should specify the name of the entity and specific interest in property or facilities along with a description of the planned use.

(3) In addition to the notice required under §176.20(c)(1), undertake outreach efforts to representatives of the homeless by contacting local government officials and other persons or entities that may be interested in assisting the homeless within the vicinity of the installation.

(i) The LRA may invite persons and organizations identified on the HUD list of representatives of the homeless and any other representatives of the homeless with which the LRA is familiar, operating in the vicinity of the installation, to the workshop described in §176.20(c)(3)(ii).

(ii) The LRA, in coordination with the Military Department and HUD, shall conduct at least one workshop where representatives of the homeless have an opportunity to:

(A) Learn about the closure/realignment and disposal process;

(B) Tour the buildings and properties available either on or off the installation;

(C) Learn about the LRA's process and schedule for receiving notices of interest as guided by §176.20(c)(2); and,

(D) Learn about any known land use constraints affecting the available property and buildings.

(iii) The LRA should meet with representatives of the homeless that express interest in discussing possible uses for these properties to alleviate gaps in the continuum of care.

(4) Consider various properties in response to the notices of interest. The LRA may consider property that is located off the installation.

(5) Develop an application, including the redevelopment plan and homeless assistance submission, explaining how the LRA proposes to address the needs of the homeless. This application shall consider the notices of interest received from State and local governments, representatives of the homeless, and other interested parties. This shall include, but not be limited to, entities eligible for public benefit transfers under either 40 U.S.C. 471 et. seq., or 49 U.S.C. 47151-47153; representatives of the homeless; commercial, industrial, and residential development interests; and other interests. From the deadline date for receipt of notices of interest described at §176.20(c)(1), the LRA shall have 270 days to complete and submit the LRA application to the appropriate Military Department and HUD. The application requirements are described at §176.30.

(6) Make the draft application available to the public for review and comment periodically during the process of developing the application. The LRA must conduct at least one public hearing on the application prior to its submission to HUD and the appropriate Military Department. A summary of the public comments received during the process of developing the application shall be included in the application when it is submitted.

(d) Public benefit transfer screening.

The LRA should, while conducting its outreach efforts, work with the Federal agencies that sponsor public benefit transfers under either 40 U.S.C. 471 et. seq. or 49 U.S.C. 47151-47153. Those agencies can provide a list of parties in the vicinity of the installation that might be interested in and eligible for public benefit transfers. The LRA should make a reasonable effort to inform such parties of the availability of the property and incorporate their interests within the planning process. Actual recipients of property are to be determined by the sponsoring Federal agency. The Military Departments shall notify sponsoring Federal agencies about property that is available based on the community redevelopment plan and keep the LRA apprised of any expressions of interest. Such expressions of interest are not required to be incorporated into the redevelopment plan, but must be considered.

Section 176.25 HUD's negotiations and consultations with the LRA.

HUD may negotiate and consult with the LRA before and during the course of preparation of the LRA's application and during HUD's review thereof with a view toward avoiding any preliminary determination that the application does not meet any requirement of this part. LRAs are encouraged to contact HUD for a list of persons and organizations that are representatives of the homeless operating in the vicinity of the installation.

Section 176.30 LRA application.

(a) Redevelopment plan. A copy of the redevelopment plan shall be part of the application.

(b) Homeless assistance submission. This component of the application shall include the following:

(1) Information about homelessness in the communities in the vicinity of the installation.

(i) A list of all the political jurisdictions which comprise the LRA.

(ii) A description of the unmet need in the continuum of care system within each political jurisdiction, which should include information about any gaps that exist in the continuum of care for particular homeless subpopulations. The source for this information shall depend upon the size and nature of the political jurisdictions(s) that comprise the LRA. LRAs representing:

(A) Political jurisdictions that are required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table (Table 1), Priority Homeless Needs Assessment Table (Table 2), and narrative description thereof from that Consolidated Plan, including the inventory of facilities and services that assist the homeless in the jurisdiction.

(B) Political jurisdictions that are part of an urban county that is required to submit a Consolidated Plan shall include a copy of their Homeless and Special Needs Population Table (Table 1), Priority Homeless Needs Assessment Table (Table 2), and narrative description thereof from that Consolidated Plan, including the inventory of facilities and services that assist the homeless in the jurisdiction. In addition, the LRA shall explain what portion of the homeless population and subpopulations described in the Consolidated Plan are attributable to the political jurisdiction it represents.

(C) A political jurisdiction not described by §176.30(b)(1)(ii)(A) or §176.30(b)(1)(ii)(B) shall submit a narrative description of what it perceives to be the homeless population within the jurisdiction and a brief inventory of the facilities and services that assist homeless persons and families within the jurisdiction. LRAs that represent these jurisdictions are not required to conduct surveys of the homeless population.

(2) Notices of interest proposing assistance to homeless persons and/or families.

(i) A description of the proposed activities to be carried out on or off the installation and a discussion of how these activities meet a portion or all of the needs of the homeless by addressing the gaps in the continuum of care. The activities need not be limited to expressions of interest in property, but may also include discussions of how economic redevelopment may benefit the homeless;

(ii) A copy of each notice of interest from representatives of the homeless for use of buildings and property and a description of the manner in which the LRA's application addresses the need expressed in each notice of interest. If the LRA determines that a particular notice of interest should not be awarded property, an explanation of why the LRA determined not to support that notice of interest, the reasons for which may include the impact of the program contained in the notice of interest on the community as described in §176.30(b)(2)(iii); and,

(iii) A description of the impact that the implemented redevelopment plan will have on the community. This shall include information on how the LRA's redevelopment plan might impact the character of existing neighborhoods adjacent to the properties proposed to be used to assist the homeless and

should discuss alternative plans. Impact on schools, social services, transportation, infrastructure, and concentration of minorities and/or low income persons shall also be discussed.

(3) Legally binding agreements for buildings, property, funding, and/or services.

(i) A copy of the legally binding agreements that the LRA proposes to enter into with the representative(s) of the homeless selected by the LRA to implement homeless programs that fill gaps in the existing continuum of care. The legally binding agreements shall provide for a process for negotiating alternative arrangements in the event that an environmental analysis conducted under §176.45(b) indicates that any property identified for transfer in the agreement is not suitable for the intended purpose. Where the balance determined in accordance with §176.30(b)(4) provides for the use of installation property as a homeless assistance facility, legally binding agreements must provide for the reversion or transfer, either to the LRA or to another entity or entities, of the buildings and property in the event they cease to be used for the homeless. In cases where the balance proposed by the LRA does not include the use of buildings or property on the installation, the legally binding agreements need not be tied to the use of specific real property and need not include a reverter clause. Legally binding agreements shall be accompanied by a legal opinion of the chief legal advisor of the LRA or political jurisdiction or jurisdictions which will be executing the legally binding agreements that the legally binding agreements, when executed, will constitute legal, valid, binding, and enforceable obligations on the parties thereto;

(ii) A description of how buildings, property, funding, and/or services either on or off the installation will be used to fill some of the gaps in the current continuum of care system and an explanation of the suitability of the buildings and property for that use; and,

(iii) Information on the availability of general services such as transportation, police, and fire protection, and a discussion of infrastructure such as water, sewer, and electricity in the vicinity of the proposed homeless activity at the installation.

(4) An assessment of the balance with economic and other development needs.

(i) An assessment of the manner in which the application balances the expressed needs of the homeless and the needs of the communities comprising the LRA for economic redevelopment and other development; and,

(ii) An explanation of how the LRA's application is consistent with the appropriate Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the jurisdictions in the vicinity of the installation.

(5) A description of the outreach undertaken by the LRA. The LRA shall explain how the outreach requirements described at §176.20(c)(1) and §176.20(c)(3) have been fulfilled. This explanation shall include a list of the representatives of the homeless the LRA contacted during the outreach process.

(c) Public comments. The LRA application shall include the materials described at §176.20(c)(6). These materials shall be prefaced with an overview of the citizen participation process observed in preparing the application.

Section 176.35 HUD's review of the application.

(a) Timing. HUD shall complete a review of each application no later than 60 days after its receipt of a completed application.

(b) Standards of review. The purpose of the review is to determine whether the application is complete and, with respect to the expressed interest and requests of representatives of the homeless, whether the application:

(1) Need. Takes into consideration the size and nature of the homeless population in the communities in the vicinity of the installation, the availability of existing services in such communities to meet the needs of the homeless in such communities, and the suitability of the buildings and property covered by the application for use and needs of the homeless in such communities. HUD will take into consideration the

size and nature of the installation in reviewing the needs of the homeless population in the communities in the vicinity of the installation.

(2) Impact of notices of interest. Takes into consideration any economic impact of the homeless assistance under the plan on the communities in the vicinity of the installation, including:

(i) Whether the plan is feasible in light of demands that would be placed on available social services, police and fire protection, and infrastructure in the community; and,

(ii) Whether the selected notices of interest are consistent with the Consolidated Plan(s) or any other existing housing, social service, community, economic, or other development plans adopted by the political jurisdictions in the vicinity of the installation.

(3) Legally binding agreements. Specifies the manner in which the buildings, property, funding, and/or services on or off the installation will be made available for homeless assistance purposes. HUD will review each legally binding agreement to verify that:

(i) They include all the documents legally required to complete the transactions necessary to realize the homeless use(s) described in the application;

(ii) They include all appropriate terms and conditions;

(iii) They address the full range of contingencies including those described at §176.30(b)(3)(i);

(iv) They stipulate that the buildings, property, funding, and/or services will be made available to the representatives of the homeless in a timely fashion; and,

(v) They are accompanied by a legal opinion of the chief legal advisor of the LRA or political jurisdiction or jurisdictions which will be executing the legally binding agreements that the legally binding agreements will, when executed, constitute legal, valid, binding, and enforceable obligations on the parties thereto.

(4) Balance. Balances in an appropriate manner a portion or all of the needs of the communities in the vicinity of the installation for economic redevelopment and other development with the needs of the homeless in such communities.

(5) Outreach. Was developed in consultation with representatives of the homeless and the homeless assistance planning boards, if any, in the communities in the vicinity of the installation and whether the outreach requirements described at §176.20(c)(1) and §176.20(c)(3) have been fulfilled by the LRA.

(c) Notice of determination.

(1) HUD shall, no later than the 60th day after its receipt of the application, unless such deadline is extended pursuant to §176.15(a), send written notification both to DoD and the LRA of its preliminary determination that the application meets or fails to meet the requirements of §176.35(b). If the application fails to meet the requirements, HUD will send the LRA:

(i) A summary of the deficiencies in the application;

(ii) An explanation of the determination; and,

(iii) A statement of how the LRA must address the determinations.

(2) In the event that no application is submitted and no extension is requested as of the deadline specified in §176.20(c)(5), and the State does not accept within 30 days a DoD written request to become recognized as the LRA, the absence of such application will trigger an adverse determination by HUD effective on the date of the lapsed deadline. Under these conditions, HUD will follow the process described at §176.40.

(d) Opportunity to cure.

(1) The LRA shall have 90 days from its receipt of the notice of preliminary determination under §176.35(c)(1) within which to submit to HUD and DoD a revised application which addresses the determinations listed in the notice. Failure to submit a revised application shall result in a final determination, effective 90 days from the LRA's receipt of the preliminary determination, that the redevelopment plan fails to meet the requirements of §176.35(b).

(2) HUD shall, within 30 days of its receipt of the LRA's resubmission, send written notification of its final determination of whether the application meets the requirements of §176.35(b) to both DOD and the LRA.

Section 176.40 Adverse determinations.

(a) Review and consultation. If the resubmission fails to meet the requirements of §176.35(b) or if no resubmission is received, HUD will review the original application, including the notices of interest submitted by representatives of the homeless. In addition, in such instances or when no original application has been submitted, HUD:

(1) Shall consult with the representatives of the homeless, if any, for purposes of evaluating the continuing interest of such representatives in the use of buildings or property at the installation to assist the homeless;

(2) May consult with the applicable Military Department regarding the suitability of the buildings and property at the installation for use to assist the homeless; and,

(3) May consult with representatives of the homeless and other parties as necessary.

(b) Notice of decision.

(1) Within 90 days of receipt of an LRA's revised application which HUD determines does not meet the requirements of §176.35(b), HUD shall, based upon its reviews and consultations under §176.40(a):

(i) Notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless, and;

(ii) Notify DoD and the LRA of the extent to which the revised redevelopment plan meets the criteria set forth in §176.35(b).

(2) In the event that an LRA does not submit a revised redevelopment plan under §176.35(d), HUD shall, based upon its reviews and consultations under §176.40(a), notify DoD and the LRA of the buildings and property at the installation that HUD determines are suitable for use to assist the homeless, either

(i) within 190 days after HUD sends its notice of preliminary adverse determination under §176.35(c)(1), if an LRA has not submitted a revised redevelopment plan; or,

(ii) within 390 days after the Military Department's Federal Register publication of available property under §176.20(b), if no redevelopment plan has been received and no extension has been approved.

Section 176.45 Disposal of buildings and property.

(a) Public benefit transfer screening. Not later than the LRA's submission of its redevelopment plan to DoD and HUD, the Military Department will conduct an official public benefit transfer screening in accordance with the Federal Property Management Regulations (41 CFR part 101-47.303-2) based upon the uses identified in the redevelopment plan. Federal sponsoring agencies shall notify eligible applicants that any request for property must be consistent with the uses identified in the redevelopment plan. At the request of the LRA, the Military Department may conduct the official State and local public benefit screening at any time after the publication of available property described at §176.20(b).

(b) Environmental analysis. Prior to disposal of any real property, the Military Department shall, consistent with NEPA and section 2905 of the Defense Base Closure and Realignment Act of 1990, as amended (10 U.S.C. 2687 note), complete an environmental impact analysis of all reasonable disposal alternatives. The Military

Department shall consult with the LRA throughout the environmental impact analysis process to ensure both that the LRA is provided the most current environmental information available concerning the installation, and that the Military Department receives the most current information available concerning the LRA's redevelopment plans for the installation.

(c) Disposal. Upon receipt of a notice of approval of an application from HUD under §176.35(c)(1) or §176.35(d)(2), DoD shall dispose of buildings and property in accordance with the record of decision or other decision document prepared under §176.45(b). Disposal of buildings and property to be used as homeless assistance facilities shall be to either the LRA or directly to the representative(s) of the homeless and shall be without consideration. Upon receipt of a notice from HUD under §176.40(b), DoD will dispose of the buildings and property at the installation in consultation with HUD and the LRA.

(d) LRA's responsibility. The LRA shall be responsible for the implementation of and compliance with legally binding agreements under the application.

(e) Reversions to the LRA. If a building or property reverts to the LRA under a legally binding agreement under the application, the LRA shall take appropriate actions to secure, to the maximum extent practicable, the utilization of the building or property by other homeless representatives to assist the homeless. An LRA may not be required to utilize the building or property to assist the homeless.

Appendix D

Leasing Materials

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Model Lease Application Package

General Information for Lease Applicants

Once a decision has been made to close or realign an installation, property may be made available for interim use, if it can be done in compliance with environmental requirements and without adversely affecting the DoD Component mission, including conversion activities. An Interim Lease is a short-term lease that makes no commitment for future use or ultimate disposal and is usually entered into prior to final reuse and disposal decisions. The Applicant should provide the information requested in the Application Package as completely as possible. No specific form is required. Upon receipt of the application, the Military Department will perform an internal review of the proposed use. If the application did not contain sufficient information or if the review triggers a requirement for additional information, this information will be requested from the applicant as soon as possible. Site-specific environmental, natural, cultural, or operational reviews may require restrictions on the proposed use or consideration of alternative uses.

Reasons for Interim Leases

Interim leases are intended to be used in appropriate cases to permit public and private commercial activity to begin prior to completion of the final reuse and disposal environmental review under the National Environmental Policy Act (NEPA) of 1969, as amended (42 USC 4321 *et seq.*). In many cases this review requires an Environmental Impact Statement and issuance of a Record of Decision (ROD), which take considerable time to complete. The NEPA review will result in a final decision on disposal or reuse. Whether interim leasing is appropriate depends on a wide variety of site-specific conditions that include compatibility with ongoing military missions, disposal-related activities, environmental analysis and factors affecting the property requested, and the intended use of the property.

Lessee Under an Interim Lease

The Military Department usually leases property for interim use to the Local Redevelopment Authority (if so empowered to receive property) or, if there is none, to the local government in whose jurisdiction the property is wholly located or to another local government agency or a State government agency designated for redevelopment purposes by the chief executive officer in the State. Requests for leases directly to other eligible entities may be approved by the Military Department Representative in exceptional circumstances.

Exclusive Possession by Lease

Licenses, permits, or rights-of-entry will not be used as a substitute for a Lease, in circumstances where the proposed grantee is to be given exclusive possession of DoD property. However, non-exclusive use may be granted in accordance with standard Military Department procedures, for example, for conferring non-possessory access for single, specified purposes (e.g., conducting an open house or air show; doing non-intrusive surveys of the premises; or setting up potential Lessee equipment—but not commencing beneficial operations—pending finalization of a lease).

Internal Review

The application information and the proposed use will be reviewed by the Military Department. This review will, in some instances, trigger additional site-specific questions that will be provided to the Applicant.

Lease-Specific Environmental Review
The National Environmental Policy Act (NEPA) must also be complied with for all leasing actions. Environmental impact analysis, using the Military Department's environmental impact analysis process as implemented in current Military Department and Council on Environmental Quality regulations or directives, is required prior to making a decision to enter into an interim lease. Proposed interim uses, including any improvements to the leased property, may not foreclose later consideration of any reasonable disposal and reuse alternative by the Military Department. Absent compelling circumstances, the Military Department will not permit improvements that will significantly affect the quality of the human environment and therefore require preparation of a separate EIS. In addition, other site-specific environmental, cultural or historic reviews may require restrictions on use or special compliance requirements provisions in the lease. Secretarial findings regarding wetlands (E.O. 11990) and floodplains (E.O. 11988) will be made when required. All applicable natural and cultural resource protection requirements will be considered prior to making the decision to enter into an interim use lease and appropriate restrictions, to the extent required, will be included within the lease.

Environmental Baseline Survey and Finding of Suitability to Lease
CERCLA requires notice indicating if the property has been the site of a release, storage, or disposal of hazardous substances. The Environmental Baseline Survey (EBS) and Finding of Suitability to Lease (FOSL) will be performed prior to the interim lease. These documents will provide the applicable notices to the Lessee or its Sublessees at the inception of the lease. The EBS also documents the environmental condition of the premises at the start of the lease, including the status and plans for any required environmental remediation under the Installation Restoration Program (IRP). A close-out environmental condition survey and report will be the basis for restoration requirements at the termination of the interim lease. Environmental regulators will be notified and included in the process, including receiving copies of workable draft documents and participating in on-board reviews.

A. Applicant Information

1. General Information
Provide name, address, and telephone number of the Applicant and, if applicable, the name, address, and telephone number of a representative authorized to act on behalf of the Applicant during the course of the project.

2. Experience and Background
Provide copies of instruments establishing the Applicant as an entity with the legal capacity to enter into leases and other binding contractual obligations.

a. Governmental entities should provide enabling legislation or other charters.
b. Corporations should provide the name and address of an authorized representative and evidence of current corporate status.
c. Partnerships/Joint Ventures should provide the name and address of an authorized representative and evidence of current partnership/joint venture status.
d. A sole proprietor should provide current address and summary of business activity.

3. Financial Capability (Note: The Applicant may be requested by the Military Department to provide the following information. Private-sector financial data will be held in confidence, where necessary, upon request).

a. If the Applicant is a corporation or limited partnership it must provide a recent financial statement.
b. If the Applicant is an individual or partnership it must provide a recent personal financial statement.

c. A preliminary budget and estimated operating costs and sources of funds for the proposed activities on the leased property.

4. Signing of Application

The Application must be signed by an official authorized to act on behalf of the potential Lessee. If the Lessee is a corporate or governmental entity then the signature must show the official capacity of the signer.

5. Compatibility with Redevelopment Plan

a. If the Applicant is the LRA, it will provide a statement certifying that the proposed lease is compatible with its redevelopment plan.
b. If the Applicant is not the LRA, it must consult with the LRA and should provide a recommendation on the proposed lease from the LRA, including a statement of compatibility with the redevelopment plan.

B. Intended Use

1. Subleasing

State whether the Applicant intends to use the property or sublease the property to a third party, and if so, identify the prospective Sublessees, if known.

2. Begin Date

State when the Applicant wants the lease to begin.

3. Lease Term

State the requested duration of the lease.

4. Property Description

Identify the location of the property requested on a map of the facility and provide the following information:

a. The approximate acreage requested; and
b. Identification of any buildings or other improvements requested.

5. Description of Activities

Provide a detailed description of the activities proposed to be undertaken under an interim lease. Include an explanation of whether this would be a new business or the relocation or expansion of an existing business. If this is a relocation or expansion of an existing business, provide the name and address of the existing business.

6. Environmental Information

a. If such activity will result in the generation of hazardous waste as defined by the Resource Conservation and Recovery Act, provide the following:
   1. A description of the waste stream(s);
   2. An estimate of the quantity generated per month;
   3. A description of the program to manage hazardous waste; and
   4. Identification of the method(s) of treatment or disposal.

2. If such activity will require the Applicant to use hazardous substances, as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, or petroleum products or their derivatives, provide the following:

1. A description of the hazardous substances or petroleum products to be used in such activity;
2. An estimate of the quantity of such substances to be stored on-site at any one time;
3. A description of the program to manage hazardous substances and petroleum products or their derivatives; and
4. A description of the manner such substances will be stored, including whether Underground or Aboveground Storage Tanks (USTs/ASTs) will be used.

3. If such activity will result in the discharge of wastewater to an accumulation, collection or drainage system, provide the following:
   a. A description of the anticipated constituents of such wastewater;
   b. An estimate of the quantity of such wastewater generated per day;
   c. A description of the controls that will be used to limit the quantity or constituency of such wastewater;
   d. Identification of any applicable effluent limitations or standards applicable to the proposed activity; and
   e. Identification of the receiving wastewater treatment facility or receiving water of the United States.

4. If such activity will result in the emission of air pollutants, provide the following:
   a. Identification of all air emissions, including hazardous air pollutants, resulting from such activities and identification of their sources;
   b. An estimate of the quantity of emissions and hazardous air pollutants per year; and
   c. Identification of any emission sources presently owned by the Military Department that the Lessee will need for its activities.

5. If such activity will result in the application of pesticides, as defined by the Federal Insecticide, Fungicide, and Rodenticide Act, provide the following:
   a. Identification of all such pesticides that will be applied on the property;
   b. An estimate of the quantity of pesticides to be applied to the property per year;
   c. Identification of the applicator who will be applying such pesticides to the property.

6. If any of the property requested will be used for residential purposes or is of the type commonly used by children under the age of 7 years, identify the environmental consultant who will be responsible for identification and abatement of lead-based paint hazards, if any, on the property.

C. Operational Requirements

1. Identify the approximate amount of electricity required and the expected provider of such service;

2. Identify the type and approximate amount of fuels, e.g., natural gas, propane, heating oil, required and the expected provider(s) of such fuels;

3. Identify the amount of potable water required and the expected provider of such water;

4. Identify the approximate requirements for wastewater treatment and the expected provider of such service;

5. Identify any other requirements for utility services, e.g., telephone, cable TV, required and the expected provider of such service; and

6. Describe any construction, improvements or other alterations to the property required to enable any of the services described in response to the preceding requests to be delivered or provided to the property.

7. Describe any construction, improvements or other alterations to the property proposed to carry out Lessee activities on the property.

D. Public Benefit Rental Discount

If Applicant is requesting less than fair market rental, please provide the following additional information:

1. A description of the economic impact of closure.

2. A description of the financial condition of the community and the prospects for redevelopment.

3. A description of how the interim lease will contribute to the short-term job creation and economic development of the base and the community, including projected number and type of jobs created.

4. A statement as to why the interim lease should be granted at below the estimated fair market value, and what discount is proposed.

5. A description of why fair market value is unobtainable or not compatible with the public benefit.

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Guide for Military Department Internal Review of Interim Lease Requests

[Some of these considerations may not apply at all installations.]

A. Project Processing

1. Project name: (Identify the property requested and the Applicant's name);
2. Date expression of interest received: _____;
3. Date initial Application package mailed/delivered to Applicant: _____;
4. Date Application package received from Applicant: _____;
5. Date follow-up Application package mailed/delivered to Applicant: _____;
6. Date follow-up Application package received from Applicant: _____;
7. Date Finding of Suitability to Lease (FOSL) and Environmental Baseline Survey (EBS) or Supplemental EBS initiated: _____;
8. Date notification of initiation of FOSL and EBS or Supplemental EBS mailed to regulators: _____;
9. Date workable draft of FOSL provided to regulators: _____;
10. Date workable draft of EBS or Supplemental EBS mailed to regulators: _____;
11. Date regulator comments to the FOSL/EBS received: _____;
12. Date FOSL signed and notice provided to the public: _____.

B. Applicant Information

1. Interim lease requested by:
   - ☐ Local Redevelopment Authority
   - ☐ State or local government
   - ☐ Private party
   - ☐ Other (Describe in detail)
2. Legal status and capacity documented by:
   - ☐ Reference to State Law (provide citation);
   - ☐ Certificate of Incorporation, Articles of Incorporation and By-laws;
   - ☐ Partnership/Joint Venture Agreement;

☐ Other _____.

3. If Applicant is a corporation, did it provide:
   a. Evidence of current corporate status; and
   b. Name and address of an authorized representative?
   ☐ Yes.
   ☐ No.

4. If Applicant is a partnership/joint venture, did it provide:
   a. Evidence of partnership/joint venture status; and
   b. Name and address of an authorized representative?
   ☐ Yes.
   ☐ No.

5. If Applicant is a sole proprietor, did it provide:
   a. A current address; and
   b. Summary of business activity?
   ☐ Yes.
   ☐ No.

C. Lease Administration

1. Name, address and telephone number of the Applicant's representative(s) responsible for managing the leasing effort:

_____

_____

_____

2. Will the Lessee operate the property or sublease to a third party?
   ☐ Operate
   ☐ Sublease. If the Applicant will sublease, identify the prospective Sublessee:

   _____

   _____

   _____

3. Date the Applicant requested the lease to begin: _____

4. Requested duration of the lease:
   ☐ ___ years; or
   ☐ ___ months.

D. Property Information

1. Tract No.(s) and Name, if any: (Segment maps, Master Plan designations)

_____

_____

2. Acreage: _____

3. General character of the land requested:

_____

_____

_____

4. Are Government buildings and improvements included in the property?
   - ☐ No.
   - ☐ Yes. If yes, identify and describe all buildings, facilities and improvements, e.g., size and condition, and attach copy of floor plan, if applicable.

5. Existing or preceding land use: _____

6. Proposed use: (as described in the Application)

7. United States property interest:
   - ☐ Fee simple absolute
   - ☐ Easement
   - ☐ Leasehold
   - ☐ Other _____

8. Identify and describe in detail, e.g., owner, duration, property affected, termination provisions, etc., any encumbrances on the property:
   - ☐ Easements
   - ☐ Leaseholds
   - ☐ Licenses
   - ☐ Permits
   - ☐ Others _____

9. Jurisdiction:
   - ☐ Exclusive Federal Jurisdiction
   - ☐ Concurrent Federal Jurisdiction
   - ☐ Proprietary Status

10. Is jurisdiction to be retroceded?
    - ☐ Yes.
    - ☐ No.

    If there has already been a retrocession of Federal jurisdiction, indicate the date retrocession was final. If a retrocession action is pending, identify the status of that effort.

    _____

    _____

    _____

E. Operational Factors

1. Is the property currently available for leasing?
   - ☐ Yes.
   - ☐ No. If no, will it be available in time to meet the Applicant's needs?
     - ☐ Yes.
     - ☐ No.

2a. Does the Stewart B. McKinney Homeless Assistance Act apply to this action?
   - ☐ No.
   - ☐ Yes. If yes, has the necessary screening been completed and is the property available for leasing to the Applicant?
     - ☐ No.
     - ☐ Yes.

2b. Does the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 apply to this action?
   - ☐ No.
   - ☐ Yes. If yes, has the property been designated for homeless use in the local redevelopment plan?
     - ☐ No.
     - ☐ Yes. If yes, has HUD approved the homeless assistance provisions of the plan?
       - ☐ No.
       - ☐ Yes.

3. Were utilities; e.g., electricity, natural gas/propane/heating oil, potable water, wastewater treatment, telephone, cable TV, etc., requested by the Applicant and, if so, are they available?
   - ☐ No.
   - ☐ Yes. If yes, identify the type, quantity, and provider of such services.

4. Will the DoD Component be providing services on a reimbursable basis?
   - ☐ No.
   - ☐ Yes. If yes, identify the instrument used to establish the term under which such services will be provided.

5. Are there any security, access, parking or other operational issues?
   - ☐ No.
   - ☐ Yes, please state.

F. Environmental Factors

1. Has the activity proposed by the Applicant been analyzed for environmental impacts under the applicable environmental impact analysis process?
   - ☐ No. If no, estimate the time to complete such analysis:

     _____
   - ☐ Yes. If yes, what document was produced?
     - ☐ Environmental Impact Statement (EIS) (attach justification for allowing interim use and proceeding with action);
     - ☐ Environmental Assessment/Finding of No Significant Impact (EA/FONSI); or
     - ☐ Categorical Exclusion (CATEX): (cite the authority for the CATEX)

2. Is further environmental study required?
   - ☐ No.
   - ☐ Yes.

3. Has the Base-wide Environmental Baseline Survey (EBS) or a site-specific EBS been completed?
   - ☐ No. If no, estimate the time to complete such analysis:

     _____
   - ☐ Yes. The EBS identified the following environmental concerns:

     _____

     _____

     _____

4. Were hazardous substances stored, released or disposed of on the property in excess of the applicable amounts; i.e., 1,000 kgs or hazardous substance and 1 kg for acutely hazardous substances?
   - ☐ No.
   - ☐ Yes. If yes, provide the information required by 40 CFR Part 373:

     _____

     _____

     _____

5. Have remedial actions been taken so that the property is considered safe for the proposed use?
   - ☐ Yes.
   - ☐ No. If not, estimate the estimated time to complete such action _____ and if the proposed action could take place prior to such action, provide details and justification for leasing the property in its current condition, including any restrictions on access or use:

     _____

     _____

     _____

6. Are there any sites or areas of concerns subject to the Installation Restoration Program located on the property?
   - ☐ No.
   - ☐ Yes. Conditions may need to be included in the lease.

   _____
   _____
   _____

7. Was the property contaminated with ammunition, explosives or chemical weapons?
   - ☐ No.
   - ☐ Yes. If yes, has the property been decontaminated using the most appropriate technology consistent with the proposed use of the property? Will the action require approval by the Department of Defense Explosive Safety Board (DDESB)?
     - ☐ Yes.
     - ☐ No. However, transfer to another Federal Agency for compatible use of surface decontaminated real property would be appropriate, subject to limitations, restrictions and prohibitions to ensure personnel and environmental protection.

     _____
     _____
     _____

8. Will access rights to implement any monitoring plan be required?
   - ☐ No.
   - ☐ Yes.

9. Will the Applicant generate hazardous wastes, as defined the Resource Conservation and Recovery Act (RCRA), as a result of the proposed activity?
   - ☐ No.
   - ☐ Yes. If yes, identify all waste streams and quantities:

   _____
   _____
   _____

10. Does the Applicant possess a U.S. EPA hazardous waste generator identification number that would permit waste generation on the requested property?
    - ☐ No.
    - ☐ Yes. The U.S. EPA Generator ID No. is: _____

11. Does the proposed use include the storage or disposal of non-DoD hazardous or toxic materials? If so, determine whether Title 10, USC 2692 is applicable to this lease.
    - ☐ No.
    - ☐ Yes, explain.
    - ☐ Covered by exception: ☐ Industrial-type facility; ☐ Other _____
    - ☐ Waiver granted.

12. Does the Applicant propose to use any existing Underground Storage Tank (UST) or Aboveground Storage Tank (AST) on the property?
    - ☐ No. If no, does the Applicant intend to install its own USTs or ASTs?
        - ☐ No.
        - ☐ Yes.
    - ☐ Yes. If yes, are existing tanks in compliance with current laws and regulations and appropriate for such use?
        - ☐ No.
        - ☐ Yes.

13. Will the activity involve use of substances covered by the Toxic Substances Control Act?
    - ☐ Yes.
    - ☐ No.

14. Will the Lessee's activities on the leased property result in a discharge of wastewater to an accumulation, collection or drainage system?
    - ☐ No.
    - ☐ Yes. If yes, is the quantity greater than one million gallons per day?
        - ☐ No.
        - ☐ Yes.

15. Can the existing wastewater collection and treatment system accommodate such discharges without adverse operational or environmental impacts?
    - ☐ Yes.
    - ☐ No. If not, are there other options? Describe.

16. Has the Applicant applied for or obtained a National Pollutant Discharge Elimination System (NPDES) Permit or State equivalent from the EPA/appropriate State agency?
    - ☐ Yes.
    - ☐ No. If not, state whether the Applicant must have an NPDES Permit or State equivalent to operate.
        - ☐ Yes.
        - ☐ No.

17. Would the Applicant's operations result in a violation of a NPDES Permit or State equivalent held by the United States?
    - ☐ Yes.
    - ☐ No.

18. Will approval of the Application result in the use of pesticides on the property? (See the Federal Insecticide, Fungicide, and Rodenticide Act and State pesticide regulations.)
    - ☐ No.
    - ☐ Yes. Restrictions may need to be incorporated into the lease.

19. Will the proposal result in emissions of criteria air pollutants, their precursors or hazardous air pollutants?
    - ☐ No.
    - ☐ Yes. If yes, does the Applicant intend to install new equipment and independently obtain any permits necessary to operate?
        - ☐ Yes.
        - ☐ No. If no, does the Applicant seek to use equipment currently operated under permits held by the Military Department?
            - ☐ No.
            - ☐ Yes. If yes, describe the conditions that must be satisfied before the Applicant could operate such equipment: _____

20. Do the proposed activities require a conformity determination under the Clean Air Act?
    - ☐ This action does not require a written conformity determination in accordance with EPA's rule because:
        - ☐ The installation is in an attainment area.
        - ☐ The action falls within an exemption in the rule. Attach documentation of the applicability of the exemption.
    - ☐ This action is not exempt from the conformity regulation. Attach conformity determination. Describe the mitigation requirements or other restrictions, if any, that must be incorporated in the outgrant document.

21. Are there improvements with Asbestos-Containing Material (ACM)?
    - ☐ No.
    - ☐ Yes, attach condition and type.

22. Are there improvements constructed prior to 1978 that are considered to contain lead-based paint or that have been determined to contain lead-based paint?
    - ☐ No.
    - ☐ Yes, Attach survey results.
      Are these improvements the type that children under age seven frequently inhabit?
        - ☐ No.
        - ☐ Yes, notice and restriction required.

23. Is there radon or polychlorinated biphenyls (PCBs) present?
    - ☐ No.
    - ☐ Yes.

24. Do any Federal or State threatened or endangered species inhabit the requested property or does it include any critical or sensitive habitat as defined the Endangered Species Act?
    - ☐ No.
    - ☐ Yes. If yes, could the proposal jeopardize any such species or the habitat of any such species?
        - ☐ No.
        - ☐ Yes. This action jeopardizes threatened or endangered species or the habitat of such species. Accordingly, restrictions may need to be incorporated into the outgrant document to protect the species or habitat.

25. Will the activity jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans, or recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA that a Military Department has agreed to?
    - ☐ No.
    - ☐ Yes. Conditions may need to be included in the lease.

26. Is the property in a Coastal Zone Management Area?
    - ☐ No.
    - ☐ Yes. If yes, has a determination been made that the proposed action is consistent with the approved State Coastal Zone Management Plan?
        - ☐ No.
        - ☐ Yes.

27. Is the requested property within a 100-year floodplain? (See E.O. 11988.)
    - ☐ No.
    - ☐ Yes. Conditions may need to be included in the lease.

28. Are there any jurisdictional wetlands located on the property?
    - ☐ No.
    - ☐ Yes. This property includes a wetlands area and falls under the purview of Executive Order 11990; accordingly, conditions may need to be included in the lease.

29. Has the property been surveyed for historical and cultural resources?
    - ☐ No. The survey will be completed by _____
    - ☐ Yes. If yes, were there historical or cultural resources identified on the property?
        - ☐ No.
        - ☐ Yes. If yes, has consultation occurred under Section 106 of the National Historic Preservation Act?
            - ☐ No.
            - ☐ Yes. Conditions may need to be included in the lease.

_____

_____

_____

30. Have Native American graves or artifacts been identified on this property? (See the American Indian Religious Freedom Act and Native American Graves Protection and Repatriation Act.)
    - ☐ No.
    - ☐ Yes. Restrictions may need to be incorporated into the lease to protect these resources.

_____

_____

_____

31. Have archaeological sites or resources been identified on this property? (See the Antiquities Act; Archaeological and Historical Preservation Act; and Archaeological Resources Protection Act.)
    - ☐ No.
    - ☐ Yes. Conditions may need to be included in the lease.

_____

_____

_____

32. Will the proposed lease impact an area designated under the Wild and Scenic Rivers Act?
    - ☐ No.
    - ☐ Yes. Conditions may need to be included in the lease.

_____

_____

_____

33. Would any other special-purpose environmental laws be applicable to the proposed activity?
    - ☐ No.
    - ☐ Yes. If yes, identify such laws and describe their effect on the proposed activities:

_____

_____

_____

Model Lease Provisions

The Military Departments will execute interim leases that incorporate certain standard provisions tailored to the specific policies of the individual Departments. Each of the Military Departments have developed model lease documents. Copies can be obtained by contacting the applicable Military Department base closure office. See Appendix G for contact information. Site-specific environmental, cultural, historical, and operational requirements and restrictions will be added to the model interim lease provisions following review of the proposed use and further analysis of its impacts. It is the responsibility of the applicant to make sure that all lease provisions are understood and the condition of the premises proposed for lease are known prior to lease execution. Standard provisions include:

1. Use of the premises

The lease will state what purposes and uses are approved.

2. Term of lease

In the past, the term of an interim lease could only last for up to five years, including options to renew. Recently, Section 2833 of the NDAA 96 granted the Department the authority to enter into interim leases with terms that extend beyond the expected completion date for the disposal Environmental Impact Statement (EIS). This is true even if final property disposal is consequently delayed because the lessee's use of the property differs from that outlined in the Record of Decision (ROD). This authority, however, is only available if the proposed lease can be supported by a CATEX or an EA/FONSI. A policy memorandum implementing this new authority can be found on page D-28.

3. Termination

In addition to the right to terminate for non-compliance with the lease conditions, the Military Department reserves the right to terminate the lease and remove the tenant in the event of national emergency as declared by the President or the Congress of the United States. Unless special circumstances justify a shorter period, the Lessee will be provided with no less than 30 days' notice that termination is necessary and will be provided a reasonable time to vacate the premises.

4. Consideration

a. **Public Benefit Discounted Rental.** If the Lessee meets certain public benefits criteria, to the extent authorized by law, the Military Department may approve consideration less than the fair market rental of the leasehold interest. If the consideration is less than fair market value, then Lessee receipts from third parties; e.g., Sublessee rental, must be used for protection, maintenance, repair, improvement, and costs related to the installation to include LRA marketing and management activities.

b. **Fair Market Value Rental.** If the Lessee does not qualify for a public benefit rental reduction, then the total consideration, in cash or in kind, will not be less than the estimated fair market rental of the leased interest. The fair market value of the leased interest should take into account the property, the restrictions on use and access to the property, the terms and degree of Government control in the lease document, the termination rights, and any other specifics of the type of use.

In some circumstances, the Military Departments may authorize the fair market rental consideration to be offset for maintenance, protection, repair, improvement, or restoration. Lessees may maintain, protect, repair, improve and restore Government facilities on leased properties, exteriors as well as interiors, as well as the leased premises, as all or part of the rental. These obligations may extend to the entire installation. Offsets are applicable only to those activities that are in addition to the routine maintenance, protection and repair requirements of any Lessee. In any case, the value of the rental offset and/or any cash rent reserved to the Government must be equal to or exceed the fair market value of the leased interest granted. Environmental, cultural, and historical activities can be included in rental offsets, including restoration. Rent will not be offset for the value of structures unless title will be vested in the United States. Improvement should be viewed more broadly as improvement to the premises; e.g., upgrade of roads, landscaping, or capital improvements, beyond repair or maintenance. Environmental remediation must be accomplished in consonance with applicable environmental laws and regulations.

5. Notice

The lease will set out how official notice will be given and state the address for written notices. Under any lease, the Lessor and Lessee will have occasion to provide the other with formal correspondence and notices.

6. Authorized representatives

The lease may provide for delegation of day-to-day lease administration functions to authorized individuals.

7. Supervision of the premises

The leased premises are under the supervision of a Government official, who is responsible for the use and occupation of the premises.

8. Applicable rules and regulations

The Lessee and any Sublessees are required to comply with all Federal, State and local laws, regulations and standards that are applicable when the lease is executed or may become applicable to the Lessee's activities on the leased premises later. These include laws and regulations on the environment, construction of facilities, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee and any Sublessee are responsible for obtaining and paying for permits required for its operations under the Lease.

9. Condition of the premises

The lease states that the Lessee has inspected the premises, understands the condition, and understands that the United States is not providing any warranties or promises to make any alterations, repairs, or additions thereto. The Military Department and the Lessee will jointly conduct an inventory and condition survey, to include the environmental condition, prior to lease execution by either party. The inventory and condition surveys will be documented in a report prepared by the Military Department, signed by both parties, which will be attached to the lease. The report may note items identified in the EBS, as well as any other environmental conditions that may not be specifically identified in the EBS report. The report will acknowledge leasehold conditions. At the conclusion of the lease period, the Military Department and the Lessee will jointly conduct a close-out survey. The Military Department will prepare a close-out report. All significant variances from the original report should be clearly documented. This close-out report will constitute the basis for settlement by the Lessee for any leased property shown to be lost, damaged or destroyed.

10. Transfers, assignments, and subleasing

Provision 10a. should be used for leases that are not a master lease. Provision 10b. should be used for master leases.

a. The Lessee may not assign or transfer the lease to another party without the approval of the Military Department. Subleasing will be authorized subject to approval of the sublease by the Military Department. The Military Department will conduct its negotiations with the Lessee, not the Sublessee(s). Sublease rental will be negotiated between the Lessee and Sublessee and may be different in amount or expressed differently than that in the prime lease. The term of a sublease will be no longer than that in the prime lease, so that expectations of continued tenancy after disposal will not be created. The provisions of the sublease must not be inconsistent with the provisions of the prime lease and the sublease must state that it is subject to the prime lease. In case of any conflict between the instruments, the prime lease will control.

b. The Lessee may not assign or transfer the lease to another party without the approval of the Military Department. The Lessee is not required to obtain Military Department approval of subleases, unless the sublease involves the use of hazardous materials under 10 U.S.C. 2692, but must provide a copy of all subleases to the Military Department. The Military Department will conduct its negotiations with the Lessee, not the Sublessee(s). Sublease rental will be negotiated between the Lessee and Sublessee and may be different in amount or expressed differently than that in the prime lease. The term of a sublease will be no longer than that in the prime lease, so that expectations of continued tenancy after disposal will not be created. The provisions of the sublease must not be inconsistent with the provisions of the prime lease and the sublease must state that it is subject to the prime lease. In case of any conflict between the instruments, the prime lease will control.

11. Utilities

The Military Department must be reimbursed for the cost of any utilities provided. Utility issues vary widely with the specific situations of the installation. The Lessee should develop plans for assumption of the utilities by the local utility provider or other qualified entity.

12. Protection of the property

The Lessee is obligated to keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee is responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease.

13. Insurance

If a lease authorizes the Lessee to possess and use Government-owned improvements, the Lessee must insure such improvements for full insurable value, where practicable, to assure future Government use. State governmental entities are usually not required to provide liability insurance. Self-insurance may be satisfactory for qualified governmental entities. Other entities may be required to obtain liability insurance.

14. Right to enter

The Government has the right to enter the premises for any Government purpose, including the right to inspect the premises for compliance with the conditions of the lease and for compliance with environmental, safety and other laws, even if the Government is not the enforcement agency. Except in unusual situations, notice of these entries will be given.

15. Indemnity/hold harmless clause

The United States is not responsible for damages to property or injuries to persons caused by the Lessee's use of the premises or for damages to the property of the Lessee. The Lessee will be expected to indemnify the United States from such claims. This does not including damages due to the fault or negligence of the United States or its contractors.

16. Restoration

At the end of the lease, the Lessee will be expected to vacate the premises, remove the Lessee's property and restore the premises or pay the United States for the cost of restoration loss in lieu of restoration, at the option of the United States. Any property of the Lessee not removed may be removed by the United States or become property of the United States.

17. Non-discrimination

Leases require non-discrimination in all operations, programs or activities conducted on the leased premises. If the Lease will be for less than fair market value, then the Lessee is considered to be receiving Federal financial assistance and the lease will contain certain required assurances.

18. Subject to easements

The United States or its predecessor in title may have granted easements, road and utility rights-of-way, or other such rights. The Lease is granted subject to these outstanding rights. Any new easements will be coordinated with the Lessee.

19. Rental adjustment

If the United States must revoke the lease, except for the Lessee's non-compliance, decrease the size of the leased premises, or materially affect the use available, then rental, if applicable, may be adjusted.

20. Waste

The Lessee must not commit waste of any kind or in any manner substantially change the contour or condition of the premises except as authorized in writing by the Military Department.

21. Disputes clause

The provision establishes a procedure for resolving claims.

22. Environmental protection

The DoD Policy on the Environmental Review Process to Reach a Finding of Suitability to Lease (FOSL), *contained in the Deputy Secretary of Defense Memorandum "Fast Track Cleanup at Closing Installations," May 18, 1996, includes the following set of model lease provisions that specifically address environmental protection issues:*

1. The sole purpose(s) for which the Leased Premises and any involvements thereon may be used, in the absence of written approval of the Government for any other use, [insert intended use of the Leased Premises]. *[See **Use of the Premises.**]*

2. The Lessee shall neither transfer nor assign this Lease or any interest therein or any property on the Leased Premises, nor sublet the Leased Premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this Lease without the prior written consent of the Government. Such consent shall not be unreasonably withheld or delayed. Every sublease shall contain the Environmental Protection provisions herein. *[See **Transfers, assignments, and subleasing.**]*

3. The Lessee and any Sublessee shall comply with the applicable Federal, State, and local laws, regulations, and standards that are or may become applicable to Lessee's activities on the Leased Premises. *[See **Applicable rules and regulations.**]*

4. The Lessee and any Sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits.

5. The Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Government normally will give the Lessee or Sublessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determined the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof. *[See **Right to enter.**]*

NOTE: USE THE FOLLOWING PROVISION 6. IF THE LEASED PROPERTY IS PART OF A NATIONAL PRIORITIES LIST (NPL) SITE; ADAPT TO CLEANUP AGREEMENTS TO SUIT CLEANUPS UNDER STATE REGULATORY AUTHORITIES (E.G., A NON-NPL SITE).

6. The Government acknowledges that [insert name of military installation] has been identified as a National Priorities List Site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The Lessee acknowledges that the Government has provided it with a copy of the [insert name of military installation] Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region [insert number], the State of [insert name of State], and the Military Department and effective on [insert date], and will provide the Lessee with a copy of any amendments thereto. The Lessee agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended ("FFA," "Interagency Agreement," or "IAG") and the provisions of this Lease, the terms of the FFA or IAG will take precedence. The Lessee further agrees that notwithstanding any other provision of the Lease, the Government assumes no liability to the Lessee or its Sublessees or licensees should implementation of the FFA interfere with the Lessee's or any Sublessee's or licensee's use of the Leased Premises. The Lessee shall have no claim on account of any such interference against the United States or any officer, agent, employee or contractor thereof, other than for abatement of rent.

NOTE: USE THE FOLLOWING PROVISION 7. IF A FEDERAL FACILITIES AGREEMENT (FFA) OR INTERAGENCY AGREEMENT (IAG) APPLIES TO THE PROPERTY BEING LEASED (E.G., AN NPL SITE).

7. The Government, EPA, and the [insert name of State agency] and their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any Sublessee, to enter upon the Leased Premises for the purposes enumerated in this subparagraph and for such other purposes consistent with any provision of the FFA:

a. to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the [insert name of military installation] Installation Restoration Program, FFA or IAG;
b. to inspect field activities of the Government and its contractors and subcontractors in implementing that [insert name of military installation] IRP, FFA or IAG;
c. to conduct any test or survey required by the EPA or [insert name of State agency] relating to the implementation of the FFA or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or [insert name of State agency] by the Government relating to such conditions;
d. to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the [insert name of military installation] IRP or the FFA or IAG, including, but not limited to monitoring wells, pumping wells, and treatment facilities.

NOTE: USE THE FOLLOWING ALTERNATE PROVISION 7. IF THE INSTALLATION RESTORATION PROGRAM (IRP) OR OTHER ENVIRONMENTAL INVESTIGATION APPLIES TO THE PROPERTY BEING LEASED (E.G., A NON-NPL SITE).

7. The Government and its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any Sublessee, to enter upon the Leased Premises for the purposes enumerated in this subparagraph:

a. to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the [insert name of military installation] Installation Restoration Program (IRP);
b. to inspect field activities of the Government and its contractors and subcontractors in implementing the [insert name of military installation] IRP;
c. to conduct any test or survey related to the implementation of the IRP or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or [insert name of State agency] by the Government relating to such conditions;
d. to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the [insert name of military installation] IRP, including, but not limited to monitoring wells, pumping wells and treatment facilities.

8. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of the any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee and any Sublessee. The Lessee and Sublessees shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee shall comply with all applicable Federal, State, and local occupational safety and health regulations.

9. The Lessee further agrees that in the event of any assignment or sublease of the Leased Premises, it shall provide to the EPA and [insert name of State agency] by certified mail a copy of the agreement or sublease of the Leased Premises (as the case may be) within fourteen (14) days after the effective date of such transaction. The Lessee may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this condition.

10. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act, or its [insert name of State] equivalent. Except as specifically authorized by the Government in writing, the Lessee must provide at its own expense such hazardous waste management facilities, complying with all laws and regulations. Government hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

11. DoD Component accumulation points for hazardous and other wastes will not be used by the Lessee or any Sublessee. Neither will the Lessee or Sublessee permit its hazardous wastes to be commingled with hazardous waste of the DoD Component.

12. The Lessee shall have a Government-approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the Leased Premises. Such plan shall be independent of [insert name of military installation] and, except for initial fire response and/or spill containment, shall not rely on use of installation personnel or equipment. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on the request of the Lessee, or because the Lessee was not, in the opinion of the said officer, conducting timely cleanup actions, the Lessee agrees to reimburse the Government for its costs.

13. The Lessee shall not construct or make or permit its Sublessees or assigns to construct or make substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the Leased Premises in any way that may adversely affect the cleanup, human health, or the environment without the prior written consent of the Government. Such consent may include a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. For construction or alterations, additions, modifications, improvements or installations (collectively "work") in the proximity of operable units that are part of a National Priorities List (NPL) Site, such consent may include a requirement for written approval by the Government's Remedial Project Manager. Except as such written approval shall expressly provide otherwise, all such approved alterations, additions, modifications, improvements, and installations shall become Government property when annexed to the Leased Premises.

14. The Lessee shall not conduct or permit its Sublessees to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Government.

15. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its State equivalent and any other applicable laws, rules or regulations. The Lessee must provide at its own expense such hazardous waste storage facilities that comply with all laws and regulations as it may need for such storage. Any violation of the requirements of this provision shall be deemed a material breach of the Lease.

In addition, there may be site-specific restrictions or provisions, such as to protect endangered species, restrict use of wetlands, support coastal zone management plans, or limit floodplain activities.

23. Environmental baseline survey

See discussion above.

24. Taxes

As required by law, any and all taxes imposed by the State or its political subdivisions upon the property or interest of the Lessee in the premises shall be paid promptly by the Lessee. Although the property of the United States is not taxed, if and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease may be renegotiated.

25. Covenant against contingent fees

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business.

26. Officials not to benefit

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. This does not cover an incorporated company if the lease is for the general benefit of such corporation or company.

27. Accounts and records

The accounts and records of the Lessee will be subject to review and audit.

28. Modification/agreement

The written lease is the full agreement. Any modifications must be in writing.

29. No commitments for future use

Interim use leases will contain provisions disavowing any right or expectation for the interim user or its tenants or subtenants to acquire the leased property. Interim leases may be entered into prior to the completion of the final reuse or disposal decisions, including, if applicable, the issuance of the ROD or prior to implementation of the action identified in the ROD.

30. Lease signature authority

At the time of execution of the lease, the Lessee will furnish certification of authority to sign the lease.

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON DC 20301-3000

ACQUISITION AND TECHNOLOGY

12 JUN 1996

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS, LOGISTICS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER, RESERVE AFFAIRS, INSTALLATIONS AND ENVIRONMENT)

SUBJECT: Authority to Lease Property Requiring Environmental Remediation

The National Defense Authorization Act for FY 96 contains an amendment to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) concerning the Department's ability to enter into long-term leases at base closure and realignment sites while environmental restoration is ongoing.

Section 2834 of the Act clarifies that Section 120(h)(3)(B) of CERCLA does not apply to leases at Department of Defense installations regardless of whether the lessee has agreed to purchase the property or whether the duration of the lease is longer than 55 years. The amendment also requires that, in the case of leases at base closure and realignment sites entered into after September 30, 1995, the Department, in consultation with the Administrator of the Environmental Protection Agency, shall make a determination that the property is suitable for lease, that the uses contemplated for the lease are consistent with protection of human health and the environment, and that there are adequate assurances that the United States will take all remedial action referred to in Section 120(h)(3)(B) that has not been taken on the date of the lease. Please note that this language codifies the existing "Finding of Suitability to Lease" process. At active installations, the Services should continue to support leases with appropriate documentation of the environmental condition of the leased property with respect to CERCLA hazardous substances in accordance with DoDD 4165.6, "Real Property Acquisition, Management, and Disposal," and existing Service procedures.

Leasing is one of the most important community reinvestment tools available to the Department because it enables Local Redevelopment Authorities to achieve rapid economic recovery and helps the Military Departments to reduce their caretaker costs. It is my hope that this amendment, which clarifies the legislative intent on this issue, will erase any doubt about the Department's authority to lease property requiring environmental remediation pursuant to CERCLA. Please ensure that your base closure staffs are aware of this amendment.

Robert E. Bayer
Principal Assistant Deputy Under Secretary
(Industrial Affairs and Installations)

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION AND TECHNOLOGY

12 JUN 1996

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS, LOGISTICS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER, RESERVE AFFAIRS, INSTALLATIONS AND ENVIRONMENT)

SUBJECT: Interim Leases of Property At Bases Approved for Closure or Realignment

One obstacle to early reuse of closing bases was the presumption that interim lease terms could not extend much beyond the completion date for the National Environmental Policy Act (NEPA) analysis. The availability of only short-term interim leases (five years or less) often discouraged potential investors from leasing base closure property for fear they would be unable to recoup their investment. In response, Congress enacted Section 2833 of the National Defense Authorization Act for FY 1996 (P.L. 104-106, 110 Stat. 559), which authorizes longer term interim leases. This new authority is designed for use in those situations where a short-term interim lease is inadequate to capitalize on reuse opportunities.

Section 2833 authorizes interim lease terms that extend beyond the expected completion date for the disposal Environmental Impact Statement (EIS). This is true even if final property disposal is consequently delayed because the lessee's use of the property differs from that outlined in the Record of Decision (ROD). Accordingly, the lease provision concerning "Termination" (the Military Department's right to terminate the lease if the interim use is incompatible with the final reuse or disposal decisions) contained in Appendix D of the DoD Base Reuse Implementation Manual (DoD 4165.66-M) need no longer be included in interim leases (unless the Military Department concerned specifically wishes to do so). In addition, the five-year limitation on interim lease terms currently contained in 32 CFR Part 91.7(g)(3) is no longer relevant and will be eliminated when that regulation is revised. As of the date of this memorandum, decisions on the duration of an interim lease may be determined by the Military Departments on a case-by-case basis, taking into consideration site-specific factors and the following requirements of Section 2833:

Section 2833 authority is not to be used when the proposed lease provides for activities that will either significantly affect the quality of the human environment or make impossible the selection of any reasonable final disposal alternative. In other words, this

authority is available only if the proposed lease can be supported by a categorical exclusion (CATEX) or a finding of no significant impact (EA/FONSI).

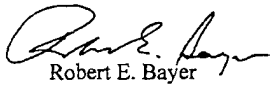
- Prior consultation with the Local Redevelopment Authority (LRA) concerned is a prerequisite for a lease approved under this authority.

In addition to providing for longer term leases, Section 2833 facilitates leasing in two other important respects:

- It limits the scope of any environmental analysis required to support a proposed interim lease to those activities authorized under the lease, and the cumulative impacts of other past, present, and reasonably foreseeable future actions during the period of the proposed lease. Put simply, this provision allows a more expeditious completion of NEPA requirements to support interim leasing by focusing any necessary environmental impact analysis on lease activities alone, and not disposal and reuse issues.

- It permits building modification, demolition, and new construction, if such activities can be supported by an environmental assessment and finding of no significant impact (EA/FONSI), and do not preclude the selection of any reasonable final disposal alternative. Decisions on whether to allow such activities may be made by the Military Department concerned on a case-by-case basis, but in general, lessees should not be permitted to: (a) irreversibly alter buildings integral to any reasonable final disposal alternative so as to make them unusable for any purpose under active consideration; or (b) construct new, permanent structures on areas of the installation presently set aside for recreational purposes or preserved as natural or open space. For example, under this provision, an interim lessee would be permitted to modify a building so long as the modifications are consistent with any final disposal alternative still under consideration, or capable of being removed, at the lessee's expense, without causing permanent damage.

Interim leasing can be an important tool to help communities attract new businesses to adaptable facilities on closing installations. This new provision will facilitate interim leasing in a variety of circumstances previously believed to be problematic due to NEPA requirements. I urge you to take full advantage of this new authority.



Robert E. Bayer
Principal Assistant Deputy Under Secretary
(Industrial Affairs and Installations)

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Appendix E

Regulations for Real Property Transfers and Public Benefit Conveyances

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60 *Federal Register* (FR) 35706—Final Rule for Public Benefit Conveyances of Port Facilities (General Services Administration) E-73

46 *Federal Register* (FR) 42466—Final Rule for Public Benefit Conveyances of Port Facilities (Department of Transportation) E-79

The Federal Property Management Regulations included in this Appendix reflect the regulations in effect on February 23, 1996, authority for which was specifically delegated to the Department of Defense by the Defense Base Closure and Realignment Act of 1990 (see Appendix B). Other regulations are current as of July 1997.

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41 CFR Part 101-47: Federal Property Management Regulations

41 CFR Part 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY
as of Feb. 23, 1996

Title 41--Public Contracts and Property Management
Subtitle C--Federal Property Management Regulations System
CHAPTER 101--FEDERAL PROPERTY MANAGEMENT REGULATIONS
SUBCHAPTER H--UTILIZATION AND DISPOSAL
PART 101-47--UTILIZATION AND DISPOSAL OF REAL PROPERTY

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Sec. 101-47.301-3 Disposals under other laws.
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Subpart 101-47.4--Management of Excess and Surplus Real Property

Sec. 101-47.400 Scope of subpart.
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Subpart 101-47.5--Abandonment, Destruction, or Donation to Public Bodies

Sec. 101-47.500 Scope of subpart.
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Sec. 101-47.501-1 Definitions.
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Sec. 101-47.502-1 Cost limitations.
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Sec. 101-47.601 Delegation to Department of Defense.
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Sec. 101-47.700 Scope of subpart.
Sec. 101-47.701 Offers and acceptance of conditional gifts.
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Subpart 101-47.8--Identification of Unneeded Federal Real Property

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Sec. 101-47.801 Standards.
Sec. 101-47.802 Procedures.

Subpart 101-47.9 Use of Federal Real Property to Assist the Homeless

Sec. 101-47.901 Definitions.
Sec. 101-47.902 Applicability.
Sec. 101-47.903 Collecting the information.
Sec. 101-47.904 Suitability determination.
Sec. 101-47.905 Real property reported excess to GSA.
Sec. 101-47.906 Suitability criteria.
Sec. 101-47.907 Determination of availability.
Sec. 101-47.908 Public notice of determination.
Sec. 101-47.909 Application process.
Sec. 101-47.910 Action on approved applications.
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Subparts 101-47.10--101-47.48 [Reserved]

Subpart 101-47.49--Illustrations

Sec. 101-47.4900 Scope of subpart.
Sec. 101-47.4901 [Reserved]
Sec. 101-47.4902 Standard Form 118, Report of Excess Real Property.
Sec. 101-47.4902-1 Standard Form 118a, Buildings, Structures, Utilities, and Miscellaneous Facilities.
Sec. 101-47.4902-2 Standard Form 118b, Land.
Sec. 101-47.4902-3 Standard Form 118c, Related Personal Property.
Sec. 101-47.4902-4 Instructions for the preparation of Standard Form 118, and Attachments, Standard Forms 118a, 118b, and 118c.
Sec. 101-47.4904 GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.
Sec. 101-47.4904-1 Instructions for preparation of GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.
Sec. 101-47.4905 Extract of statutes authorizing disposal of surplus real property to public agencies.
Sec. 101-47.4906 Sample notice to public agencies of surplus determination.
Sec. 101-47.4906a Attachment to notice sent to zoning authority.
Sec. 101-47.4906b Paragraph to be added to letter sent to zoning authority.
Sec. 101-47.4906-1 Sample letter for transmission of notice of surplus determination.
Sec. 101-47.4906-2 Sample letter to a state single point of contact.
Sec. 101-47.4907 List of Federal real property holding agencies.
Sec. 101-47.4908 Excess profits covenant.
Sec. 101-47.4909 Highest and best use.
Sec. 101-47.4910 Field offices of Department of Health, Education, and Welfare.
Sec. 101-47.4911 Outline for explanatory statements for negotiated sales.
Sec. 101-47.4912 Regional offices of the Bureau of Outdoor Recreation, Department of the Interior.
Sec. 101-47.4913 Outline for protection and maintenance of excess and surplus real property.
Sec. 101-47.4914 Executive Order 12512.

AUTHORITY: 40 U.S.C. 486(c). Subpart 101-47.9 also issued under 42 U.S.C. 11411.

SOURCE: 29 FR 16126, Dec. 3, 1964, unless otherwise noted.

Sec. 101-47.000 Scope of part.
This part prescribes the policies and methods governing the utilization and disposal of excess and surplus real property and related personal property within the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

[47 FR 4521, Feb. 1, 1982]

Subpart 101-47.1--General Provisions

Sec. 101-47.100 Scope of subpart.
This subpart sets forth the applicability of this Part 101-47, and other introductory information.

Sec. 101-47.101 Applicability.
The provisions of this Part 101-47 apply to all Federal agencies, except as may otherwise be specifically provided under each section or subpart.

Sec. 101-47.102 [Reserved]

Sec. 101-47.103 Definitions.
As used throughout this Part 101-47, the following terms shall have the meanings as set forth in this Subpart 101-47.1.

Sec. 101-47.103-1 Act.
The Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended.

Sec. 101-47.103-2 GSA.
The General Services Administration, acting by or through the Administrator of General Services, or a designated official to whom functions under this Part 101-47 have been delegated by the Administrator of General Services.

Sec. 101-47.103-3 Airport.
Any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Sec. 101-47.103-4 Chapel.
Any Government-owned building and improvements, including surplus fixtures or furnishings therein, related or essential to the religious activities and services for which the building is to be used and maintained, was designed for and used, or was intended to be used.

Sec. 101-47.103-5 Decontamination.
The complete removal or destruction by flashing of explosive powders; the neutralizing and cleaning-out of acid and corrosive materials; the removal, destruction, or neutralizing of toxic, hazardous or infectious substances; and the complete removal and destruction by burning or detonation of live ammunition from contaminated areas and buildings.

[53 FR 29893, Aug. 9, 1988]

Sec. 101-47.103-6 Disposal agency.
The executive agency designated by the Administrator of General Services to dispose of surplus real property.

Sec. 101-47.103-7 Holding agency.
The Federal agency which has accountability for the property involved.

Sec. 101-47.103-8 Industrial property.
Any real property and related personal property which has been used or which is suitable to be used for manufacturing, fabricating, or processing of products; mining operations; construction or repair of ships and other waterborne carriers; power transmission facilities; railroad facilities; and pipeline facilities for transporting petroleum or gas.

Sec. 101-47.103-9 Landing area.
Any land or combination of water and land, together with improvements thereon and necessary operational equipment used in connection therewith, which is used for landing, takeoff, and parking of aircraft. The term includes, but is not limited to, runways, strips, taxiways, and parking aprons.

Sec. 101-47.103-10 Management.
The safeguarding of the Government's interest in property, in an efficient and economical manner consistent with the best business practices.

Sec. 101-47.103-11 Protection.
The provisions of adequate measures for prevention and extinguishment of fires, special inspections to determine and eliminate fire and other hazards, and necessary guards to protect property against thievery, vandalism, and unauthorized entry.

Sec. 101-47.103-12 Real property.
(a) Any interest in land, together with the improvements, structures, and fixtures located thereon (including prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and housetrailers with or without undercarriages), and appurtenances thereto, under the control of any Federal agency, except:
(1) The public domain;
(2) Lands reserved or dedicated for national forest or national park purposes;
(3) Minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws;
(4) Lands withdrawn or reserved from the public domain but not including lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator of General Services, determines are not suitable for return to the public domain for disposition under the general public land laws because such lands are substantially changed in character by improvements or otherwise; and
(5) Crops when designated by such agency for disposition by severance and removal from the land.
(b) Improvements of any kind, structures, and fixtures under the control of any Federal agency when designated by such agency for disposition without the underlying land (including such as may be located on the public domain, or lands withdrawn or reserved from the public domain, or lands reserved or dedicated for national forest or national park purposes, or on lands that are not owned by the United States) excluding, however, prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and housetrailers (with or without undercarriages).

(c) Standing timber and embedded gravel, sand, or stone under the control of any Federal agency whether designated by such agency for disposition with the land or by severance and removal from the land, excluding timber felled, and gravel, sand, or stone excavated by or for the Government prior to disposition.

[29 FR 16126, Dec. 3, 1964, as amended at 30 FR 11281, Aug. 2, 1965; 33 FR 8737, June 14, 1968]

Sec. 101-47.103-13 Related personal property.

"Related personal property" means any personal property:

(a) Which is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property and removal of this personal property would significantly diminish the economic value of the real property. Normally, common use items, including but not limited to general-purpose furniture, utensils, office machines, office supplies, or general-purpose vehicles, are not considered to be related personal property; or

(b) Which is determined by the Administrator of General Services to be related to the real property.

[46 FR 45951, Sept. 16, 1981]

Sec. 101-47.103-14 Other terms defined in the Act.

Other terms which are defined in the Act shall have the meanings given them by such Act.

Sec. 101-47.103-15 Other terms.

Other terms not applicable throughout this part are defined in the sections or subparts to which they apply.

Subpart 101-47.2--Utilization of Excess Real Property

Sec. 101-47.200 Scope of subpart.

(a) This subpart prescribes the policies and methods governing the reporting by executive agencies and utilization by Federal agencies of excess real property, including related personal property within the State of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. This subpart does not apply to the abandonment, destruction, or donation to public bodies, under section 202(h) of the Act (covered by Subpart 101-47.5).

(b) The provisions of this Subpart 101-47.2 shall not apply to asbestos on Federal property which is subject to section 120(h) of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499.

[53 FR 29893, Aug. 9, 1988]

Sec. 101-47.201 General provisions of subpart.

Sec. 101-47.201-1 Policy.

It is the policy of the Administrator of General Services:

(a) To stimulate the identification and reporting by executive agencies of excess real property.

(b) To achieve the maximum utilization by executive agencies, in terms of economy and efficiency, of excess real property in order to minimize expenditures for the purchase of real property.

(c) To provide for the transfer of excess real property among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 40698, Aug. 11, 1977]

Sec. 101-47.201-2 Guidelines.

(a) Each executive agency shall:

(1) Survey real property under its control (including property assigned on a permit basis to other Federal agencies, or outleased to States, local governments, other public bodies, or private interests) at least annually to identify property which is not needed, underutilized, or not being put to optimum use. When other needs for the property are identified or recognized, the agency shall determine whether continuation of the current use or another Federal or other use would better serve the public interest, considering both the agency's needs and the property's location. In conducting each review, agencies shall be guided by Sec. 101-47.801(b), other applicable General Services Administration regulations, and such criteria as may be established by the Federal Property Council;

(2) Maintain its inventory of real property at the absolute minimum consistent with economical and efficient conduct of the affairs of the agency; and

(3) Promptly report to GSA real property which it has determined to be excess.

(b) Each executive agency shall, so far as practicable, pursuant to the provisions of this subpart, fulfill its needs for real property by utilization of excess real property.

(c) To preclude the acquisition by purchase of real property when excess or surplus property of another Federal agency may be available which would meet the need, each executive agency shall notify GSA of its needs and ascertain whether any such property is available. However, in specific instances where the agency's proposed acquisition of real property is dictated by such factors as exact geographical location, topography, engineering, or similar characteristics which limit the possible use of other available property, the notification shall not be required. For example, for a dam site or reservoir area or the construction of a generating plant or a substation specific lands are needed and, ordinarily, no purpose would be served by such notification.

(d) In every case of a proposed transfer of excess real property, the paramount consideration shall be the validity and appropriateness of the requirement upon which the proposal is based.

(1) A proposed transfer should not establish a new program of an executive agency which has never been reflected in any previous budget submission or congressional action; nor should it substantially increase the level of an agency's existing programs beyond that which has been contemplated in the President's budget or by the Congress.

(2) Before requesting a transfer of excess real property, an executive agency should:

(i) Screen the holdings of the bureaus or other organizations within the agency to determine whether the new requirement can be met through improved utilization. Any utilization, however, must be for purposes that are consistent with the highest and best use of the property under consideration; and

(ii) Review all real property under its accountability which it has assigned on a permit basis to other Federal agencies, or outleased to States, local governments, other public bodies, or private interests and terminate the permit or lease for any property, or portion thereof, that is suitable for the proposed need whenever such termination is not prohibited by the terms of the permit or lease.

(3) Property found to be available under Sec. 101-47.201-2(d)(2) (i) or (ii), should be utilized for the proposed need in lieu of requesting a transfer of excess real property. Reassignments of such property within the agency should be made in appropriate cases.

(4) The appraised fair market value of the excess real property proposed for transfer should not substantially exceed the probable purchase price of other real property which would be suitable for the intended purpose.

(5) The size and quantity of excess real property to be transferred should be limited to the actual requirements. Other portions of an excess installation which can be separated should be withheld from

transfer and made available for disposal to other agencies or to the public.

(6) Consideration should be given to the design, layout, geographic location, age, state of repair, and expected maintenance costs of excess real property proposed for transfer. It should be clearly demonstrated that the transfer will prove more economical over a sustained period of time than acquisition of a new facility specifically planned for the purpose.

(7) Excess real property should not be permanently transferred to agencies for programs which appear to be scheduled for substantial curtailment or termination. In such cases, the property may be temporarily transferred on a conditional basis, with an understanding that the property will be released for further Federal utilization or disposal as surplus property, at a time agreed upon when the transfer is arranged (see Sec. 101-47.203-8).

(e) Excess real property of a type which may be used for office, storage, and related purposes normally will be assigned by, or at the direction of, GSA for use to the requesting agency in lieu of being transferred to the agency.

(f) Federal agencies which normally do not require real property, other than for office, storage, and related purposes, or which may not have statutory authority to acquire such property, may obtain the use of excess real property for an approved program when authorized by GSA.

[29 FR 16126, Dec. 3, 1964, as amended at 39 FR 11281, Sept. 2, 1965; 37 FR 5029, Mar. 9, 1972; 40 FR 12078, Mar. 17, 1975]

Sec. 101-47.201-3 Lands withdrawn or reserved from the public domain.

(a) Agencies holding lands withdrawn or reserved from the public domain, which they no longer need, shall send to the GSA regional office for the region in which the lands are located an information copy of each notice of intention to relinquish filed with the Department of the Interior (43 CFR Part 2372, et seq.).

(b) Section 101-47.202-6 prescribes the procedure for reporting to GSA as excess property, certain lands or portions of lands withdrawn or reserved from the public domain for which such notices have been filed with the Department of the Interior.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 40698, Aug. 11, 1977]

Sec. 101-47.201-4 Transfers under other laws.

Pursuant to section 602(c) of the Act, transfers of real property shall not be made under other laws, but shall be made only in strict accordance with the provisions of this subpart unless the Administrator of General Services, upon written application by the disposal agency, shall determine in each case that the provisions of any such other law, pursuant to which a transfer is proposed to be made, are not inconsistent with the authority conferred by this Act. The provisions of this section shall not apply to transfers of real property authorized to be made by section 602(d) of the Act or by any special statute which directs or requires an executive agency named therein to transfer or convey specifically described real property in accordance with the provisions of such statute.

Sec. 101-47.202 Reporting of excess real property.

Sec. 101-47.202-1 Reporting requirements.

Each executive agency shall report to GSA, pursuant to the provisions of this section, all excess real property except as provided in Sec. 101-47.202- 4. Reports of excess real property shall be based on the agency's official real property records and accounts.

(a) All excess related personal property shall be reported as a part of the same report covering the excess real property.

(b) Upon request of the Administrator of General Services, executive agencies shall institute specific surveys to determine that portion of real property, including unimproved property, under their control which might be excess and suitable for office, storage, and related facilities, and shall report promptly to the Administrator of General Services as soon as each survey is completed.

Sec. 101-47.202-2 Report forms.

Reports of excess real property and related personal property shall be prepared on Standard Form 118, Report of Excess Real Property (see Sec. 101- 47.4902), and accompanying Standard Form 118a, Buildings Structures, Utilities, and Miscellaneous Facilities, Schedule A (Sec. 101-47.4902-1); Standard Form 118b, Land, Schedule B (see Sec. 101-47.402-2); and Standard Form 118c, Related Personal Property, Schedule C (see Sec. 101-47.4902-3). Instructions for the preparation of Standard Forms 118, 118a, 118b, and 118c are set forth in Sec. 101-47.4902-4.

(a) Property for which the holding agency is designated as the disposal agency under the provisions of Sec. 101-47.302-2 and which is required to be reported to GSA under the provisions of this section shall be reported on Standard Form 118, without the accompanying Schedules A, B, and C, unless the holding agency requests GSA to act as disposal agency and a statement to that effect is inserted in Block 18, Remarks, of Standard Form 118.

(b) In all cases where Government-owned land is reported, there shall be attached to and made a part of Standard Form 118 (original and copies thereof) a report prepared by a qualified employee of the holding agency on the Government's title to the property based upon his review of the records of the agency. The report shall recite:

(1) The description of the property.

(2) The date title vested in the United States.

(3) All exceptions, reservations, conditions, and restrictions, relating to the title acquired.

(4) Detailed information concerning any action, thing, or circumstance that occurred from the date of the acquisition of the property by the United States to the date of the report which in any way affected or may have affected the right, title, and interest of the United States in and to the real property (together with copies of such legal comments or opinions as may be contained in the file concerning the manner in which and the extent to which such right, title, or interest may have been affected). In the absence of any such action, thing, or circumstance, a statement to that effect shall be made a part of the report.

(5) The status of civil and criminal jurisdiction over the land that is peculiar to the property by reason of it being Government-owned land. In the absence of any special circumstances, a statement to that effect shall be made a part of the report.

(6) Detailed information regarding any known flood hazards or flooding of the property and, if located in a floodplain or wetlands, a listing of and citations to those uses that are restricted under identified Federal, State, or local regulations as required by Executive Orders 11988 and 11990 of May 24, 1977.

(7) The specific identification and description of fixtures and related personal property that have possible historic or artistic value.

(8) The historical significance of the property, if any, and whether the property is listed, is eligible for, or has been nominated for listing in the National Register of Historic Places or is in proximity to a property on the National Register. If the holding agency is aware of any effort by the public to have the property listed on the National Register, this information should be included.

(9) To the extent such information is reasonably available or ascertainable from agency files, personnel, and other inquiry, a description of the type, location and condition of asbestos incorporated in the construction, repair, or alteration of any building or improvement on the property (e.g., fireproofing, pipe insulation, etc.) and a description of any asbestos control measures taken for the

property. To assist GSA in considering the disposal options for the property, agencies shall also provide to GSA any available indication of costs and/or time necessary to remove all or any portion of the asbestos-containing materials. Agencies are not required to conduct any specific studies and/or tests to obtain this information. (See also Sec. 101-47.200(b).)

(10) With respect to hazardous substance activity on the property:

(i) A statement indicating whether or not, during the time the property was owned by the United States, any hazardous substance activity, as defined by regulations issued by the Environmental Protection Agency at 40 CFR part 373, took place on the property. Hazardous substance activity includes situations where any hazardous substance was stored for one year or more, known to have been released, or disposed of on the property. Agencies reporting such property shall review the regulations issued by the Environmental Protection Agency at 40 CFR part 373 for details on the information required.

(ii) If such activity took place, the reporting agency must include information on the type and quantity of such hazardous substance and the time at which such storage, release, or disposal took place. In addition to the specific information on the type and quantity of the hazardous substance, the reporting agency shall also advise the disposal agency if all remedial action necessary to protect human health and the environment with respect to any such substance remaining on the property has been taken before the date of the property was reported excess. If such action has not been taken, the reporting agency shall advise the disposal agency when such action will be completed.

(iii) If no such activity took place, the reporting agency must include a statement: "The (reporting agency) has determined, accordance with regulations issued by the Environmental Protection Agency at 40 CFR part 373, that there is no evidence to indicate that hazardous substance activity took place on the property during the time the property was owned by the United States."

(c) There shall be transmitted with Standard Form 118:

(1) A legible, reproducible copy of all instruments in possession of the agency which affect the right, title, or interest of the United States in the property reported or the use and operation of such property (including agreements covering and licenses to use, any patents, processes, techniques, or inventions). In cases where the agency considers it to be impracticable to transmit the abstracts of title and related title evidence, such documents need not be transmitted; however, the name and address of the custodian of such documents shall be stated in the title report referred to in Sec. 101- 47.202-2(b) and they shall be furnished if requested by GSA;

(2) Any appraisal reports in the possession of the holding agency of the fair market value or the fair annual rental of the property reported; and

(3) A certification by a responsible person that the property does or does not contain polychlorinated biphenyl (PCB) transformers or other equipment regulated by the Environmental Protection Agency under 40 CFR Part 761. If the property does contain any equipment subject to 40 CFR Part 761, the certification must include an assurance on behalf of the holding agency that each item of such equipment is now and will be maintained in a state of compliance with such regulations until disposal of the property.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 15541, Dec. 9, 1966; 34 FR 8166, May 24, 1969; 40 FR 22256, May 22, 1975; 44 FR 19406, Apr. 3, 1979; 52 FR 46467, Dec. 8, 1987; 53 FR 29893, Aug. 9, 1988; FTR Amdt. 16, 56 FR 15048, Apr. 15, 1991]

Sec. 101-47.202-3 Submission of reports.

Reports of excess shall be filed with the regional office of GSA for the region in which the excess property is located, as follows:

(a) Government-owned real property and related personal property shall be reported by the holding agencies 90-calendar days in advance of the date such excess property shall become available for transfer to another Federal agency or for disposal. Where the circumstances will not permit excess real property and related personal property to be reported a full 90-calendar days in advance of the date it will be available, the report shall be made as far in advance of such date as possible.

(b) Leasehold interests in real property determined to be excess shall be reported at least 60-calendar days prior to the date on which notice of termination or cancellation is required by the terms of the instrument under which the property is occupied.

(c) All reports submitted by the Department of Defense shall bear the certification "This property has been screened against the known needs of the Department of Defense." All reports submitted by civilian agencies shall bear the certification "This property has been screened against the known needs of the holding agency."

Sec. 101-47.202-4 Exceptions to reporting.

(a) A holding agency shall not report to GSA leased space assigned to the agency by GSA and determined by the agency to be excess.

(b) Also, except for those instances set forth in Sec. 101-47.202-4(c) a holding agency shall not report to GSA property used, occupied, or controlled by the Government under a lease, permit, license, easement, or similar instrument when:

(1) The lease or other instrument is subject to termination by the grantor or owner of the premises within nine months;

(2) The remaining term of the lease or other instrument, including renewal rights, will provide for less than nine months of use and occupancy;

(3) The term of the lease or other instrument would preclude transfer to, or use by, another Federal agency or disposal to a third party; or

(4) The lease or other instrument provides for use and occupancy of space for office, storage, and related facilities, which does not exceed a total of 2,500 sq. feet.

(c) Property, which otherwise would not be reported because it falls within the exceptions set forth in Sec. 101-47.202-4(b) shall be reported:

(1) If there are Government owned improvements located on the premises; or

(2) If the continued use, occupancy, or control of the property by the Government is needful for the operation, production, or maintenance of other property owned or controlled by the Government that has been reported excess or is required to be reported to GSA under the provisions of this section.

Sec. 101-47.202-5 Reporting after submissions to the Congress.

Reports of excess covering property of the military departments and of the Office of Emergency Planning prepared after the expiration of 30 days from the date upon which a report of the facts concerning the reporting of such property was submitted to the Committees on Armed Services of the Senate and House of Representatives, 10 U.S.C. 2662 and the Act of August 10, 1956, 70A Stat. 636, as amended (50 U.S.C. App. 2285), shall contain a statement that the requirements of the statute have been met.

Sec. 101-47.202-6 Reports involving the public domain.

(a) Agencies holding land withdrawn or reserved from the public domain which they no longer need, shall report on Standard Form 118, with appropriate Schedules A, B, and C, land or portions of land so withdrawn or reserved and the improvements thereon, if any, to the regional office of GSA for the region in which the lands are located when the agency has:

(1) Filed a notice of intention to relinquish with the Department of the Interior and sent a copy of the notice to the regional office of GSA (Sec. 101-47.201-3);

(2) Been notified by the Department of the Interior that the Secretary of the Interior, with the concurrence of the Administrator of General Services, has determined the lands are not suitable for return to the public domain for disposition under the general public land laws because the lands are substantially changed in character by improvements or otherwise; and

(3) Obtained from the Department of the Interior a report as to whether any agency (other than the holding agency) claims primary, joint, or secondary jurisdiction over the lands and whether the Department's records show the lands to be encumbered with any existing valid rights or privileges under the public land laws.

(b) Should the Department of the Interior determine that minerals in the lands are not suitable for disposition under the public land mining and mineral leasing laws, the Department will notify the appropriate regional office of GSA of such determination and will authorize the holding agency to include the minerals in its report to GSA.

(c) When reporting the property to GSA, a true copy of the notification (Sec. 101-47.202-6(a)(2)) and report (Sec. 101-47.202-6(a)(3)) shall be submitted as a part of the holding agency's report on the Government's legal title which shall accompany Standard Form 118.

Sec. 101-47.202-7 Reports involving contaminated property.

Any report of excess covering property which in its present condition is dangerous or hazardous to health and safety, shall state the extent of such contamination, the plans for decontamination, and the extent to which the property may be used without further decontamination. In the case of properties containing asbestos-containing materials and in lieu of the requirements of the foregoing provisions of Sec. 101-47.202-7, see subsection 101-47.202-2(b)(9).

[53 FR 28984, Aug. 9, 1988]

Sec. 101-47.202-8 Notice of receipt.

GSA shall promptly notify the holding agency of the date of receipt of each Report of Excess Real Property (Standard Form 118).

Sec. 101-47.202-9 Expense of protection and maintenance.

When there are expenses connected with the protection and maintenance of the property reported to GSA, the notice to the holding agency of the date of receipt (see Sec. 101-47.202-8) will indicate, if determinable, the date that the provisions of Sec.101-47.402-2 will become effective. Normally this will be the date of the receipt of the report. If because of actions of the holding agency the property is not available for immediate disposition at the time of receipt of the report, the holding agency will be reminded in the notice that the period of its responsibility for the expense of protection and maintenance will be extended by the period of the delay.

[49 FR 1348, Jan. 11, 1984]

Sec. 101-47.202-10 Examination for acceptability.

Each report of excess shall be reviewed by GSA to ascertain whether the report was prepared in accordance with the provisions of this section. Within fifteen calendar days after receipt of a report, the holding agency shall be informed by letter of the findings of GSA.

(a) Where it is found that a report is adequate to the extent that GSA can proceed with utilization and disposal actions for the property, the report shall be accepted and the holding agency shall be informed of the date of such acceptance. However, the holding agency shall, upon request, promptly furnish such additional information or documents relating to the property as may be required by GSA to accomplish a transfer or a disposal.

(b) Where it is found that a report is insufficient to the extent that GSA would be unable to proceed with any utilization or disposal actions for the property, the report shall be returned and the holding agency shall be informed of the facts and circumstances that required the return of the report. The holding agency promptly shall take such action as may be appropriate to submit an acceptable report to GSA. Should the holding agency be unable to submit an acceptable report, the property shall be removed from under the provisions of Sec. 101-47.402-2.

Sec. 101-47.203 Utilization.

Sec. 101-47.203-1 Reassignment of real property by the agencies.

Each executive agency shall, as far as practicable and within the policies expressed in this Subpart 101-47.2, make reassignments of real property and related personal property under its control and jurisdiction among activities within the agency in lieu of acquiring such property from other sources.

[42 FR 40698, Aug. 11, 1977]

Sec. 101-47.203-2 Transfer and utilization.

Each executive agency shall, as far as practicable and within the policies expressed in this Subpart 101-47.2, transfer excess real property under its control to other Federal agencies and to the organizations specified in Sec. 101-47.203-7, and shall fulfill its requirements for real property by obtaining excess real property from other Federal agencies. Transfers of property shall be made in accordance with the provisions of this subpart.

[42 FR 40698, Aug. 11, 1977]

Sec. 101-47.203-3 Notification of agency requirements.

Each executive agency shall notify the proper GSA regional office whenever real property is needed for an authorized program of the agency. The notice shall state the land area of the property needed, the preferred location or suitable alternate locations, and describe the type of property needed in sufficient detail to enable GSA to review its records of property that it knows will be reported excess by holding agencies, its inventory of excess property, and its inventory of surplus property, to ascertain whether any such property may be suitable for the needs of the agency. The agency shall be informed promptly by the GSA regional office as to whether or not any such property is available.

[33 FR 571, Jan. 17, 1968]

Sec. 101-47.203-4 Real property excepted from reporting.

Agencies having transferable excess real property and related personal property in the categories excepted from reporting by Sec. 101-47.202-4 shall, before disposal, satisfy themselves in a manner consistent with the provisions of this section that such property is not needed by other Government agencies.

Sec. 101-47.203-5 Screening of excess real property.

Excess real property and related personal property reported by executive agencies shall, unless such screening is waived, be screened by GSA for utilization by Federal real property holding agencies (listed in Sec. 101- 47.4907), which may reasonably be expected to have use for the property as follows:

(a) Notices of availability will be submitted to each such agency which shall, within 30 calendar days from the date of notice, advise GSA if there is a firm requirement or a tentative requirement for the property. Agencies having tentative or firm requirements for surplus Federal real property for replacement housing for displaced persons, as authorized by section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1902), shall review these notices for the additional purpose of identifying properties for which they may have such a requirement. When such a requirement exists, the agency shall so advise the appropriate GSA regional office.

(1) In the event a tentative requirement exists, the agency shall, within an additional 30 calendar days, advise GSA if there is a firm requirement.

(2) Within 60 calendar days after advice to GSA that a firm requirement exists, the agency shall furnish GSA a request for transfer of the property pursuant to Sec. 101-47.203-7.

(b) Notices of availability for information of the Secretary of Health and Human Services and the Secretary of Education in connection with the exercise of the authority vested under the provisions of section 203(k)(1) of the Act, and for information of the Secretary of the Interior in connection with the exercise of the authority vested under the provisions of section 203(k)(2) of the Act or a possible determination under the provisions of section 203(k)(3) of the Act, will be sent to the offices designated by the Secretaries to serve the areas in which the properties are located. Similar notices of availability for information of the Attorney General in connection with a possible determination under the provisions of section 203(p)(1) of the Act, and for information of the Secretary of Transportation in connection with the exercise of the authority vested under the provisions of section 203(q) of the Act, will be respectively sent to the Office of Justice Programs, Department of Justice, and the Maritime Administration, Department of Transportation.

(c) The Departments of Health and Human Services, Education, Interior, Justice, and Transportation shall not attempt to interest a local applicant in a property until it is determined surplus, except with the prior consent of GSA on a case-by-case basis or as otherwise agreed upon. When such consent is obtained, the local applicant shall be informed that consideration of the application is conditional upon the property being determined surplus to Federal requirements and made available for the purposes of the application. However, these Departments are encouraged to advise the appropriate GSA regional office of those excess properties which are suitable for their programs.

(d) Concurrently with the 30-day Federal agency use screening period, those Federal agencies that sponsor public benefit disposals at less than fair market value as permitted by the statutory authorities in Sec. 101-47.4905 may provide the disposal agency with a recommendation, together with a brief supporting rationale, as illustrated in Sec. 101-47.4909, that the highest and best use of the property is for a specific public benefit purpose. The recommendation may be made by the agency head, or designee, and will be considered by the disposal agency in its final highest and best use analysis and determination. After a determination of surplus has been made, if the disposal agency agrees with a sponsoring Federal agency that the highest and best use of a particular property is for a specific public benefit purpose, local public bodies will be notified that the property is available for that use.

[29 FR 16126, Dec. 3, 1964, as amended at 36 FR 11438, June 12, 1971; 47 FR 37175, Aug. 25, 1982; 49 FR 37091, Sept. 21, 1984; 52 FR 9832, Mar. 27, 1987; FMPR Amdt. H-192, 60 FR 35706, July 11, 1995]

Sec. 101-47.203-6 Designation as personal property.

(a) Prefabricated movable structures such as Butler-type storage warehouses, quonset huts, and housetrailers (with or without undercarriages) reported to GSA with the land on which they are located may, in the discretion of GSA, be designated for disposition as personal property for off-site use.

(b) Related personal property may, in the discretion of the disposal agency, be designated for disposition as personal property. Consideration of such designation shall be given particularly to items having possible historic or artistic value to ensure that Federal agencies, including the Smithsonian Institution (see Sec. 101-43.302), are afforded the opportunity of obtaining them through personal property channels for off-site use for preservation and display. Fixtures such as murals and fixed sculpture which have exceptional historical or artistic value may be designated for disposition by severance for off-site use. In making such designations, consideration shall be given to such factors as whether the severance can be accomplished without seriously affecting the value of the realty and whether a ready disposition can be made of the severed fixtures.

(c) When a structure is to be demolished, any fixtures or related personal property therein may, at the discretion of the disposal agency, be designated for disposition as personal property where a ready disposition can be made of these items through such action. As indicated in paragraph (b) of this section, particular consideration should be given to designating items of possible historical or artistic value as personal property in such instances.

[34 FR 8166, May 24, 1969]

Sec. 101-47.203-7 Transfers.

(a) The agency requesting transfer of excess real property and related personal property reported to GSA shall prepare and submit to the proper GSA regional office GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property (Sec. 101-47.4904). Instructions for the preparation of GSA Form 1334 are set forth in Sec. 101-47.4904-1.

(b) Upon determination by GSA that a transfer of the property requested is in the best interest of the Government and that the requesting agency is the appropriate agency to hold the property, the transfer may be made among Federal agencies, to mixed-ownership Government corporations, and to the municipal government of the District of Columbia.

(c) [Reserved]

(d) Transfers of property to executive agencies shall be made when the proposed land use is consistent with the policy of the Administrator of General Services as prescribed in Sec. 101-47.201-1 and the policy guidelines prescribed in Sec. 101-47.201-2. In determining whether a proposed transfer should be approved under the policy guidelines, GSA and OMB may consult informally to obtain all available data concerning actual program needs for the property.

(e) GSA will execute or authorize all approved transfers to the requesting agency of property reported to GSA. Agencies may transfer without reference to GSA excess real property which is not reported to GSA under the provisions of Sec. 101-47.202-4(b) (1), (2), and (4). However, such transfers shall be made in accordance with the principles set forth in this section.

(f) Pursuant to an agreement between the Director, Office of Management and Budget, and the Administrator of General Services, reimbursement for transfers of excess real property is prescribed as follows:

(1) Where the transferor agency has requested the net proceeds of the transfer pursuant to section 204 (c) of the Act, or where either the transferor or transferee agency (or organizational unit affected) is subject to the Government Corporation Control Act (31 U.S.C. 841) or is a mixed- ownership Government corporation, or the municipal government of the District of Columbia, reimbursement for the transfer shall be in an amount equal tothe estimated fair market value of the property requested as determined by the Administrator: Provided, That where the transferor agency is a wholly owned Government corporation, the reimbursement shall be either in an amount equal to the estimated fair market value of the property requested, or the corporation's book value thereof, as may be agreed upon by GSA and the corporation.

(2) Reimbursement for all other transfers of excess real property shall be:

(i) In an amount equal to 100 percent of the estimated fair market value of the property requested, as determined by the Administrator, or if the transfer is for the purpose of upgrading facilities (i.e., for the purpose of replacing other property of the transferee agency which because of the location, nature, or condition thereof, is less efficient for

use), the reimbursement shall be in an amount equal to the difference between the estimated fair market value of the property to be replaced and the estimated fair market value of the property requested, as determined by the Administrator.

(ii) Without reimbursement when the transfer is to be made under either of the following conditions:

(A) Congress has specifically authorized the transfer without reimbursement, or

(B) The Administrator with the approval of the Director, Office of Management and Budget, has approved a request for an exception from the 100 percent reimbursement requirement.

(1) A request for exception from the 100 percent reimbursement requirement shall be endorsed by the head of the executive department or agency requesting the exception.

(2) A request for exception from the 100 percent reimbursement requirement will be submitted to GSA for referral to the Director, Office of Management and Budget, and shall include an explanation of how granting the exception would further essential agency program objectives and at the same time be consistent with Executive Order 12348, dated February 25, 1982. The unavailability of funds alone is not sufficient to justify an exception. The above required data and documentation shall be attached to GSA Form 1334 by the transferee agency on submission of that form to GSA.

(3) If the Administrator with the approval of the Director, Office of Management and Budget, approves the request for an exception, the Administrator may then complete the transfer. A copy of the Office of Managment and Budget approval will be sent to the Property Review Board.

(4) The agency requesting the exception will assume responsibility for protection and maintenance costs where the disposal of the property is deferred for more than 30 days because of the consideration of the request for an exception to the 100 percent reimbursement requirement.

(g) Excess property may be transferred to the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction, pursuant to the provisions of section 602(e) of the Act. The amount of reimbursement for such transfer shall be the same as would be required for a transfer of excess property to an executive agency under similar circumstances.

(h) The transferor agency shall provide to the transferee agency all information held by the transferor concerning hazardous substance activity as outlined in Sec. 101-47.202-2.

[29 FR 16126, Dec. 3, 1964, as amended at 37 FR 5029, Mar. 9, 1972; 40 FR 12078, Mar. 17, 1975; 42 FR 40698, Aug. 11, 1977; 47 FR 56499, Dec. 17, 1982; 49 FR 29222, July 19, 1984; FTR Amdt. 16, 56 FR 15048, Apr. 15, 1991]

Sec. 101-47.203-8 Temporary utilization.

(a) Whenever GSA determines that the temporary assignment or reassignment to a Federal agency of any space in excess real property for office, storage, or related facilities would be more advantageous than the permanent transfer of the property to a Federal agency, it will execute or authorize such assignment or reassignment for such period of time as it shall determine. The agency to which the space is made available shall make appropriate reimbursement for the expense of maintaining such space in the absence of appropriation available to GSA therefor.

(b) GSA may approve the temporary assignment or reassignment to a Federal agency of excess real property other than space for office, storage, or related facilities whenever such action would be in the best interest of the Government. In such cases, the agency to which the property is made available may be required to pay a rental or users charge based upon the fair value of such property, as determined by GSA. Where such property will be required by the agency for a period of more than 1 year, it may be transferred on a conditional basis, with an understanding that the property will be reported excess at a time agreed upon when the transfer is arranged (see Sec. 101- 47.201-2(d)(7)).

Sec. 101-47.203-9 Non-Federal interim use of property.

The holding agency may, with the approval of GSA, grant rights for non- Federal interim use of excess property reported to GSA, or portions thereof, when it is determined that such interim use is not required for the needs of any Federal agency.

Sec. 101-47.203-10 Withdrawals.

Subject to the approval of GSA, and to such conditions as GSA considers appropriate, reports of excess real property may be withdrawn in whole or in part by the reporting agency at any time prior to transfer to another Federal agency or prior to the execution of a legally binding agreement for disposal as surplus property. Requests for withdrawals shall be addressed to the GSA regional office where the report of excess real property was filed.

[35 FR 17256, Nov. 6, 1970]

Sec. 101-47.204 Determination of surplus.

Sec. 101-47.204-1 Reported property.

Any real property and related personal property reported excess under this Subpart 101-47.2 which has been screened for needs of Federal agencies or waived from such screening by GSA, and not been designated by GSA for utilization by a Federal agency, shall be subject to determination as surplus property by GSA.

(a) The holding agency, the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, the Attorney General, and the Secretary of Transportation will be notified of the date upon which determination as surplus becomes effective. Any Federal agency that has identified a property as being required for replacement housing for displaced persons under section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will also be notified of the date upon which determination as surplus becomes effective. The Secretary of the Department of Energy will be notified when real property is determined surplus and advised of any known interest in the property for its use or development for energy facilities. Appropriate steps will be taken to ensure that energy site needs are considered along with other competing needs in the disposal of surplus real property, since such property may become available for use under sections 203(e)(3) (G) and (H) of the Act.

(b) The notices to the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, and the Secretary of Energy will be sent to the offices designated by them to serve the area in which the property is located. The notices to the Attorney General will be sent to the Office of Justice Programs, Department of Justice. The notices to the Secretary of Transportation will be sent to the Maritime Administration. The notices to the Federal agencies having a requirement pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be sent to the office making the request unless another office is designated.

(c) With regard to surplus property which GSA predetermines will not be available for disposal under the above-mentioned programs, or whenever the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act, the notice to the affected department(s) will contain advice of such determination or request for reimbursement. The affected department(s) shall not screen for potential applicants for such property.

[29 FR 16126, Dec. 3, 1964, as amended at 36 FR 8041, Apr. 29, 1971; 47 FR 37175, Aug. 25, 1982; 52 FR 9832, Mar. 27, 1987; FMPR Amdt. H-192, 60 FR 35706, July 11, 1995]

Sec. 101-47.204-2 Property excepted from reporting.

Any property not reported to GSA due to Sec. 101-47.202-4, and not designated by the holding agency for utilization by other agencies pursuant to the provisions of this Subpart 101-47.2, shall be subject to determination as surplus by the holding agency.

Subpart 101-47.3--Surplus Real Property Disposal

Sec. 101-47.300 Scope of subpart.

This subpart prescribes the policies and methods governing the disposal of surplus real property and related personal property within the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. This subpart does not apply to the abandonment, destruction, or donation to public bodies, under section 202(h) of the Act (covered by Subpart 101-47.5).

[47 FR 4522, Feb. 1, 1982]

Sec. 101-47.301 General provisions of subpart.

Sec. 101-47.301-1 Policy.

It is the policy of the Administrator of General Services:

(a) That surplus real property shall be disposed of in the most economical manner consistent with the best interests of the Government.

(b) That surplus real property shall ordinarily be disposed of for cash consistent with the best interests of the Government.

(c) That surplus real property shall be disposed of by exchange for privately owned property only for property management considerations such as boundary realignment or provision of access or in those situations in which the acquisition is authorized by law, the requesting Federal agency has received approval from the Office of Management and Budget and clearance from its congressional oversight committees to acquire by exchange, and the transaction offers substantial economic or unique program advantages not otherwise obtainable by any other method of acquisition.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 47205, Sept. 20, 1977; 42 FR 56123, Oct. 21, 1977]

Sec. 101-47.301-2 Applicability of antitrust laws.

(a) In any case in which there is contemplated a disposal to any private interest of real and related personal property which has an estimated fair market value of $3,000,000 or more, or of patents, processes, techniques, or inventions, irrespective of cost, the disposal agency shall transmit promptly to the Attorney General notice of any such proposed disposal and the probable terms or conditions thereof, as required by section 207 of the Act, for his advice as to whether the proposed disposal would tend to create or maintain a situation inconsistent with antitrust laws, and no such real property shall be disposed of until such advice has been received. If such notice is given by any executive agency other than GSA, a copy of the notice shall be transmitted simultaneously to the office of GSA for the region in which the property is located.

(b) Upon request of the Attorney General, GSA or any other executive agency shall furnish or cause to be furnished such information as it may possess which the Attorney General determines to be appropriate or necessary to enable him to give the requested advice or to determine whether any other disposition or proposed disposition of surplus real property violates or would violate any of the antitrust laws.

[29 FR 16126, Dec. 3, 1964, as amended at 54 FR 12198, Mar. 24, 1989]

Sec. 101-47.301-3 Disposals under other laws.

Pursuant to section 602(c) of the act, disposals of real property shall not be made under other laws but shall be made only in strict accordance with the provisions of this Subpart 101-47.3 unless the Administrator of General Services, upon written application by the disposal agency, shall determine in each case that the provisions of any such other law, pursuant to which disposal is proposed to be made, are not inconsistent with the authority conferred by this Act. The provisions of this section shall not apply to disposals of real property authorized to be made by section 602(d) of the act or by any special statute which directs or requires an executive agency named therein to transfer or convey specifically described real property in accordance with the provisions of such statute.

Sec. 101-47.301-4 Credit disposals and leases.

Where credit is extended in connection with any disposal of surplus property, the disposal agency shall offer credit pursuant to the provisions of Sec. 101-47.304-4. The disposal agency shall administer and manage the credit lease, or permit and any security therefor and may enforce, adjust, or settle any right of the Government with respect thereto in such manner and upon such terms as that agency considers to be in the best interests of the Government.

[42 FR 47205, Sept. 20, 1977]

Sec. 101-47.302 Designation of disposal agencies.

Sec. 101-47.302-1 General.

In accordance with applicable provisions of this Subpart 101-47.3, surplus real property shall be disposed of or assigned to the appropriate Federal department for disposal for public use purposes by the disposal agency.

[36 FR 8042, Apr. 29, 1971]

Sec. 101-47.302-2 Holding agency.

(a) The holding agency is hereby designated as disposal agency for:

(1) Leases, permits, licenses, easements, and similar real estate interests held by the Government in non-Government-owned property (including Government-owned improvements located on the premises), except when it is determined by either the holding agency or GSA that the Government's interest will be best served by the disposal of such real estate interests together with other property owned or controlled by the Government, that has been or is being reported to GSA as excess; and

(2) Fixtures, structures, and improvements of any kind to be disposed of without the underlying land with the exception of Government-owned machinery and equipment, which are fixtures being used by a contractor-operator, where such machinery and equipment will be sold to the contractor-operator.

(3) Standing timber and embedded gravel, sand, stone and underground water to be disposed of without the underlying land.

(b) GSA may act as the disposal agency for the type of property described in paragraphs (a)(1) and (2) of this section, whenever requested by the holding agency to perform the disposal functions. Where GSA acts as the disposal agency for the disposal of leases and similar real estate interests as described in paragraph (a)(1) of this section, the holding agency nevertheless shall continue to be responsible for the payment of the rental until the lease is terminated and for the payment of any restoration or other direct costs incurred by the Government as an incident to the termination. Likewise, where GSA acts as disposal agency for the disposal of fixtures, structures, and

improvements as described in paragraph (a)(2) of this section, the holding agency nevertheless shall continue to be responsible for payment of any demolition and removal costs not offset by the sale of the property.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 2658, Feb. 11, 1966; 31 FR 16780, Dec. 31, 1966; 33 FR 8737, June 14, 1968; 48 FR 12526, Mar. 25, 1983; 50 FR 28403, July 12, 1985]

Sec. 101-47.302-3 General Services Administration.

GSA is the disposal agency for all real property and related personal property not covered by the above designations or by disposal authority delegated by the Administrator of General Services in specific instances.

Sec. 101-47.303 Responsibility of disposal agency.

Sec. 101-47.303-1 Classification.

Each surplus property, or, if the property is subdivided, each unit of property shall be classified by the disposal agency to determine the methods and conditions applicable to the disposal of the property. Classification shall be according to the estimated highest and best use for the property. The property may be reclassified from time to time by the disposal agency or by GSA whenever such action is deemed appropriate.

Sec. 101-47.303-2 Disposals to public agencies.

The disposal agency shall comply with the provisions of Executive Order 12372 and 41 CFR Subpart 101-6.21, which enables a State to establish the single point of contact process or other appropriate procedures to review and comment on the compatibility of a proposed disposal with State, regional and local development plans and programs. When a single point of contact transmits a State review process recommendation, the Federal agency receiving the recommendation must either accept the recommendation; reach a mutually agreeable solution with the party(s) preparing the recommendation; or provide the single point of contact with a written explanation for not accepting the recommendation or reaching a mutually agreeable solution. If there is nonaccommodation, the agency is generally required to wait 10 calendar days after receipt, by the single point of contact, of an explanation before taking final action. The single point of contact is presumed to have received written notification 5 calendar days after the date of mailing of such notification. The 10-day waiting period may be waived if the agency determines that because of unusual circumstances this delay is not feasible.

(a) Whenever property is determined to be surplus, the disposal agency shall, on the basis of the information given in Sec. 101-47.4905, list the public agencies eligible under the provisions of the statutes referred to above to procure the property or portions thereof, except that such listing need not be made with respect to:

(1) Any such property when the determination of the property as surplus is conditioned upon disposal limitations which would be inconsistent with disposal under the statutes authorizing disposal to eligible public agencies; or

(2) Any such property having an estimated fair market value of less than $1,000 except where the disposal agency has any reason to believe that an eligible public agency may be interested in the property.

(b) Before public advertising, negotiation, or other disposal action, the disposal agency shall give notice to eligible public agencies that the property has been determined surplus. Surplus real property may be procured by public agencies under the statutes cited in Sec. 101-47.4905. A notice to public agencies of surplus determination shall be prepared following the sample shown in Sec. 101-47.4906. This notice shall be transmitted by a letter prepared following the sample shown in Sec. 101-47.4906-1. A copy of this notice shall also be sent simultaneously to the State single point of contact, under a covering letter prepared following the sample shown in Sec. 101-47.4906-2. The point of contact shall be advised that no final disposal action will be taken for 60 calendar days from the date of notification to allow time for the point of contact to provide any desired comments. The disposal agency will wait the full 60 calendar days, even if the comments are received early, to allow time for the point of contact to send additional or revised comments.

(1) Notice for property located in a State shall be given to the Governor of the State, to the county clerk or other appropriate officials of the county in which the property is located, to the mayor or other appropriate officials of the city or town in which the property is located, to the head of any other local governmental body known to be interested in and eligible to acquire the property, and to the point of contact established by the State or under other appropriate procedures established by the State.

(2) Notice for property located in the District of Columbia shall be given to the Mayor of the District of Columbia and to the point of contact established by the District of Columbia or under other appropriate procedures established by the District of Columbia.

(3) Notice for property located in the Virgin Islands shall be given to the Governor of the Virgin Islands and to the point of contact established by the Virgin Islands or under other appropriate procedures established by the Virgin Islands.

(4) Notice for property located in the Commonwealth of Puerto Rico shall be given to the Governor of the Commonwealth of Puerto Rico and to the point of contact established by the Commonwealth of Puerto Rico or under other appropriate procedures established by the Commonwealth of Puerto Rico.

(c) The notice prepared pursuant to Sec. 101-47.303-2(b) shall also be posted in the post office which serves the area in which the property is located and in other prominent places such as the State capitol building, county building, courthouse, town hall, or city hall. The notice to be posted in the post office shall be mailed to the postmaster with a request that it be posted. Arrangements for the posting of the notice in other prominent places shall be as provided for in the transmittal letters (see Sec. 101- 47.4906-1) to eligible public agencies.

(d) A copy of the notice described in paragraph (b) of this section shall be furnished to the appropriate regional or field offices of (1) the National Park Service (NPS) and the Fish and Wildlife Service of the Department of the Interior and (2) the Federal Aviation Administration, the Federal Highway Administration, and the Maritime Administration of the Department of Transportation concerned with the disposal of property to public agencies under the statutes named in the notice.

(e) In the case of property which may be made available for assignment to the Secretary of Health and Human Services (HHS), the Secretary of Education (ED) or the Secretary of the Interior for disposal under sections 203(k)(1) or (k)(2) of the Act:

(1) The disposal agency shall inform the appropriate offices of HHS, ED or the NPS 3 workdays in advance of the date the notice will be given to public agencies, to permit similar notice to be given simultaneously by HHS, ED or NPS to additional interested public bodies. HHS and ED shall furnish notice to eligible nonprofit institutions.

(2) The disposal agency shall furnish the Departments with a copy of the postdated transmittal letter addressed to each public agency, copies (not to exceed 25) of the postdated notice, and a copy of the holding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules).

(3) As of the date of the transmittal letter and notice to public agencies, the Departments may proceed with their screening functions for any potential applicants and thereafter may make their determinations of need and receive applications.

(f) If the disposal agency is not informed within the 29-calendar-day period provided in the notice of the desire of a public agency to acquire the property under the provisions of the statutes listed in Sec. 101-

47.4905, or is not notified by ED or HHS of a potential educational or public health requirement, or is not notified by the Department of the Interior of a potential park or recreation requirement, or is not notified by the Department of Justice (DOJ) of a potential correctional facilities use, or is not notified by the Department of Transportation (DOT) of a potential port facility use; it shall be assumed that no public agency or nonprofit institution desires to procure the property. (The requirements of this Sec. 101-47.303-2(f) shall not apply to the procedures for making Federal surplus real property available to assist the homeless in accordance with Section 501 of the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11411).)

(g) The disposal agency shall promptly review each response of a public agency to the notice given pursuant to paragraph (b) of this section. The disposal agency shall determine what constitutes a reasonable period of time to allow the public agency to develop and submit a formal application for the property or its comments as to the compatibility of the disposal with its development plans and programs. When making such determination, the disposal agency shall give consideration to the potential suitability of the property for the use proposed, the length of time the public agency has stated it will require for its action, the protection and maintenance costs to the Government during such length of time, and any other relevant facts and circumstances. The disposal agency shall coordinate such review and determination with the proper office of any interested Federal agencies listed below:

(1) National Park Service, Department of the Interior;
(2) Department of Health and Human Services;
(3) Department of Education;
(4) Federal Aviation Administration, Department of Transportation;
(5) Fish and Wildlife Service, Department of the Interior;
(6) Federal Highway Administration, Department of Transportation;
(7) Office of Justice Programs, Department of Justice; and
(8) Maritime Administration, Department of Transportation.

(h) When the disposal agency has made a determination as to what constitutes a reasonable period of time to develop and submit a formal application, the public agency shall be so notified. The public agency shall be advised of the information required in connection with an application to procure the property.

(i) Upon receipt of the formal application for the property, the disposal agency shall consider and act upon it in accordance with the provisions of the statute and applicable regulations. If comments are received indicating that the disposal is incompatible with State, regional, or local development plans and programs, the disposal agency shall attempt to resolve the differences consistent with its statutory responsibilities in the disposal of surplus property.

[29 FR 16126, Dec. 3, 1964, as amended at 34 FR 11209, July 3, 1969; 35 FR 8486, June 2, 1970; 36 FR 9776, May 28, 1971; 40 FR 22256, May 22, 1975; 52 FR 9829, Mar. 27, 1987; FMPR Amdt. H-192, 60 FR 35707, July 11, 1995]

Sec. 101-47.303-2a Notice for zoning purposes.

(a) Where the surplus land is located in an urban area as defined in section 806 of the Act, that copy of the notice to public agencies required under Sec. 101-47.303-2(b) which is sent to the head of the local governmental unit having jurisdiction over zoning and land use regulation in the area shall be accompanied by a copy of section 803 of the Act (see Sec. 101-47.4906a) and the transmittal letter in such instances shall include an additional paragraph requesting information concerning zoning as set forth in Sec. 101-47.4906b.

(b) Information which is furnished by the unit of general local government pursuant to the action taken in paragraph (a) of this section shall be included in Invitations for Bid in advertised sales. In negotiated sales, this information shall be presented to prospective purchasers during the course of the negotiations and shall be included in the sales agreements. In either instance, this information shall be followed by a written statement, substantially as follows:

The above information was obtained from ---------- and is furnished pursuant to section 803 of the Federal Property and Administrative Services Act of 1949, as amended. The Government does not guarantee that the information is necessarily accurate or will remain unchanged. Any inaccuracies or changes in the above information shall not be cause for adjustment or rescission of any contract resulting from this Invitation for Bid or Sales Agreement.

(c) If no response to a request for such zoning information is received, the property may be offered for sale without furnishing such information to prospective purchasers. If the unit of general local government notifies the disposal agency of its desire to zone the property, it shall be afforded a 30-calendar-day period (in addition to the 20-calendar days afforded in the notice of surplus determination) to issue such zoning regulations. If the zoning cannot be accomplished within this time frame, the sale may proceed but the prospective purchasers shall be advised of the pending zoning of the property.

[34 FR 11209, July 3, 1969]

Sec. 101-47.303-3 Studies.

The disposal agency shall compile from the title documents and related papers appropriate information, for use in disposal actions, regarding all real property and related personal property available for disposal.

Sec. 101-47.303-4 Appraisal.

(a) Except as otherwise provided in this subpart 101-47.3, the disposal agency shall in all cases obtain, as appropriate, an appraisal of either the fair market value or the fair annual rental value of property available for disposal.

(b) No appraisal need be obtained.

(1) When the property is to be disposed of without monetary consideration, or at a fixed price, or

(2) When the estimated fair market value of property to be offered on a competitive sale basis does not exceed $50,000; Provided, however, That the exception in paragraph (b)(1) of this section shall not apply to disposals that take any public benefit purpose into consideration in fixing the sale value of the property.

(3) The estimated fair market value of property to be offered on a competitive sale basis does not exceed $10,000.

(c) The disposal agency shall have the property appraised by experienced and qualified persons familiar with the types of property to be appraised by them. Any person engaged to collect or evaluate information pursuant to this subsection shall certify that he has no interest, direct or indirect, in the property which would conflict in any manner with the preparation and submission of an impartial appraisal report.

[29 FR 16126, Dec. 3, 1964, as amended at 34 FR 16545, Oct. 16, 1969; 55 FR 41189, Oct. 10, 1990]

Sec. 101-47.304 Advertised and negotiated disposals.

Sec. 101-47.304-1 Publicity.

(a) The disposal agency shall widely publicize all surplus real property and related personal property which becomes available for disposal hereunder, giving information adequate to inform interested persons of the general nature of the property and its possible uses, as well as any reservations, restrictions, and conditions imposed upon its disposal.

(b) A condensed statement of proposed sales of surplus real property by advertising for competitive bids, except where the estimated fair

market value of the property is less than $2,500, shall be prepared and submitted, for inclusion in the U.S. Department of Commerce publication "Commerce Business Daily," to: U.S. Department of Commerce (S-Synopsis), Room 1300, 433 West Van Buren Street, Chicago, Illinois 60604.

Sec. 101-47.304-2 Soliciting cooperation of local groups.

The disposal agency may consult with local groups and organizations and solicit their cooperation in giving wide publicity to the proposed disposal of the property.

Sec. 101-47.304-3 Information to interested persons.

The disposal agency shall, upon request, supply to bona fide potential purchasers and lessees adequate preliminary information, and, with the cooperation of the holding agency where necessary, shall render such assistance to such persons as may enable them, insofar as feasible, to obtain adequate information regarding the property. The disposal agency shall establish procedures so that all persons showing due diligence are given full and complete opportunity to make an offer.

Sec. 101-47.304-4 Invitation for offers.

In all advertised and negotiated disposals, the disposal agency shall prepare and furnish to all prospective purchasers or lessees written invitations to make an offer, which shall contain or incorporate by reference all the terms and conditions under which the property is offered for disposal, including all provisions required by statute to be made a part of the offer. The invitation shall further specify the form of the disposal instrument, which specifications shall be in accordance with the appropriate provisions of Secs. 101-47.307-1 and 101-47.307-2.

(a) When the disposal agency has determined that the sale of specific property on credit terms is necessary to avoid retarding the salability of the property and the price obtainable, the invitation shall provide for submission of offers on the following terms:

(1) Offers to purchase of less than $2,500 shall be for cash.

(2) When the purchase price is $2,500 or more but less than $10,000, a cash downpayment of not less than 25 percent shall be required with the balance due in 8 years or less.

(3) When the purchase price is $10,000 or more, a cash downpayment of not less than 20 percent shall be required with the balance due in 10 years or less.

(4) The purchaser shall furnish a promissory note secured by the purchase money mortgage or deed of trust on the property, whichever the Government determines to be appropriate.

(5) Payment will be in equal quarter-annual installments of the principal together with interest on the unpaid balance.

(6) Interest on the unpaid balance will be at the General Services Administration's established interest rate.

(b) Where the disposal agency has determined that an offering of the property on credit terms that do not meet the standards set forth in Sec. 101-47.304-4(a) is essential to permit disposal of the property in the best interests of the Government, the invitation may provide for submission of offers on such alternate terms of payment as may be recommended by the disposal agency and approved by the Administrator of General Services on the basis of a detailed written statement justifying the need to deviate from the standard terms. The justification shall be based on the needs of the Federal Government as distinguished from the interests of the purchaser. The sale in those cases where the downpayment is less than 20 percent shall, unless otherwise authorized by the Administrator of General Services, be under a land contract which shall provide, in effect, for conveyance of title to the purchaser by quitclaim deed or other form of conveyance in accordance with the appropriate provisions of Secs. 101-47.307-1 and 101-47.307-2 upon payment of one-third of the total purchase price and accrued interest, or earlier if the Government so elects, and execution and delivery of purchaser's note and purchase money mortgage (or bond and deed of trust) satisfactory to the Government, to secure payment of the unpaid balance of the purchase price.

(c) The disposal agency may increase the cash downpayment requirement or shorten the period of amortization whenever circumstances warrant and in the case of sales of farms, may provide for payment of the unpaid balance on equal semiannual or annual installment basis.

(d) Where a sale is to be made on credit, the invitation shall provide that the purchaser agrees by appropriate provisions to be incorporated in the disposal instruments that he will not lease (unless the property was offered without leasing restrictions by the Government) or sell the property, or any part thereof or interest therein, without prior written authorization of the Government.

(1) In appropriate cases, except as provided in Sec. 101-47.304-4(d)(2), the invitation shall state that the disposal instrument may include provisions specifically authorizing leasing and/or resale and release of portions of the property as desired by the purchaser, provided that such provisions shall, in the judgment of the Government, be adequate to protect its security for the credit extended to the purchaser.

(2) In the case of timber or mineral lands, or lands containing other saleable products, the invitation shall state that the disposal instrument may specifically provide for granting future partial releases to permit the resale of timber, minerals, and other saleable products, or authorize the leasing of mineral rights, upon payment to the Government of such amounts as may be required by the Government but not less than the proceeds of any sale or lease less such amounts as may be determined by the Government to represent the cost of the sale or lease.

(3) All payments for such authorizations and/or releases shall, at the option of the Government, be applied against the unpaid balance of the indebtedness in inverse order of its maturity, or upon any delinquent installments of principal and interest, or used for payments of any delinquent taxes or insurance premiums.

(e) Where property is offered for disposal under a land contract or lease, the terms and conditions contained in the invitation shall provide that the purchaser or lessee will be required to pay to the proper taxing authorities or to the disposal agency, as may be directed, all taxes, payments in lieu of taxes (in the event of the existence or subsequent enactment of legislation authorizing such payments), assessments or similar charges which may be assessed or imposed on the property, or upon the occupier thereof, or upon the use or operation of the property and to assume all costs of operating obligations.

(f) Whenever property is offered for sale on credit terms or for lease, the terms and conditions contained in the invitation shall provide that the purchaser or lessee shall procure and maintain at his expense during the term credit is extended, or the period of the lease, such insurance in such amounts as may be required by the Government; required insurance shall be in companies acceptable to the Government and shall include such terms and provisions as may be required to provide coverage satisfactory to the Government.

[29 FR 16126, Dec. 3, 1964, as amended at 33 FR 12003, Aug. 23, 1968; 42 FR 47205, Sept. 20, 1977]

Sec. 101-47.304-5 Inspection.

All persons interested in the acquisition of surplus property available for disposal under this Subpart 101-47.3 shall, with the cooperation of the holding agency, where necessary, and with due regard to its program activities, be permitted to make a complete inspection of such property, including any available inventory records, plans, specifications, and engineering reports made in connection therewith, subject to any necessary restrictions in the interest of national security and subject to such rules as may be prescribed by the disposal agency.

(See Sec. 101-47.304-13 and Sec. 101-47.403.)

[53 FR 29894, Aug. 9, 1988]

Sec. 101-47.304-6 Submission of offers.

All offers to purchase or lease shall be in writing, accompanied by any required earnest money deposit, using the form prescribed by the disposal agency and, in addition to the financial terms upon which the offer is predicated, shall set forth the willingness of the offeror to abide by the terms, conditions, reservations, and restrictions upon which the property is offered, and shall contain such other information as the disposal agency may request.

Sec. 101-47.304-7 Advertised disposals.

(a) All disposals or contracts for disposal of surplus property, except as provided in Secs. 101-47.304-9 and 101-47.304-10, shall be made after publicly advertising for bids.

(1) The advertising for bids shall be made at such time previous to the disposal or contract, through such methods and on such terms and conditions as shall permit that full and free competition which is consistent with the value and nature of the property involved. The advertisement shall designate the place to which the bids are to be delivered or mailed, and shall state the place, date, and time of public opening.

(2) All bids shall be publicly disclosed at the time and place stated in the advertisement.

(3) Award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered: Provided, That all bids may be rejected when it is in the public interest to do so.

(b) Disposal and contracts for disposal of surplus property may be made through contract auctioneers when authorized by GSA. The auctioneer retained under contract shall be required to publicly advertise for bids in accordance with the applicable provisions of this Sec. 101-47.304-7.

Sec. 101-47.304-8 [Reserved]

Sec. 101-47.304-9 Negotiated disposals.

(a) Disposal agencies shall obtain such competition as is feasible under the circumstances in all negotiations of disposals and contracts for disposal of surplus property. They may dispose of surplus property by negotiation only in the following situations:

(1) When the estimated fair market value of the property involved does not exceed $15,000;

(2) When bid prices after advertising therefor are not reasonable (either as to all or some part of the property) or have not been independently arrived at in open competition;

(3) When the character or conditions of the property or unusual circumstances make it impractical to advertise publicly for competitive bids and the fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation;

(4) When the disposals will be to States, Commonwealth of Puerto Rico, possessions, political subdivisions thereof, or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or

(5) When negotiation is otherwise authorized by the Act or other law, such as:

(i) Disposals of power transmission lines for public or cooperative power projects (see Sec. 101-47.308-1).

(ii) Disposals for public airport utilization (see Sec. 101-47.308-2).

(b) Appraisal data required pursuant to the provisions of Sec. 101-47.303- 4, when needed for the purpose of conducting negotiations under Sec. 101- 47.304-9(a) (3), (4), or (5)(i) shall be obtained under contractual arrangements with experienced and qualified real estate appraisers familiar with the types of property to be appraised by them: Provided, however, That in any case where the cost of obtaining such data from a contract appraiser would be out of proportion to the expected recoverable value of the property, or if for any other reason employing a contract appraiser would not be in the best interest of the Government, the head of the disposal agency or his designee should authorize any other method of obtaining an estimate of the fair market value of the property or the fair annual rental he may deem to be proper.

(c) Negotiated sales to public bodies under 40 U.S.C. 484(e)(3)(H) will be considered only when the disposal agency has made a determination that a public benefit will result from the negotiated sale which would not be realized from a competitive sale disposal. The offer to purchase and the conveyance document concerning such negotiated sales shall contain an excess profits covenant. A standard Excess Profits Covenant for Negotiated Sales to Public Bodies is illustrated in Sec. 101-47.4908. The standard covenant is provided as a guide, and appropriate modifications may be made provided that its basic purpose is retained. The disposal agency shall monitor the property involved and inspect records related thereto as necessary to ensure compliance with the terms and conditions of the sale and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

(d) The annual report of the Administrator under section 212 of the Act shall contain or be accompanied by a listing and description of any negotiated disposals of surplus real property having an estimated fair market value of over $15,000, other than disposals for which an explanatory statement has been transmitted under Sec. 101-47.304-12.

[29 FR 16126, Dec. 3, 1964, as amended at 40 FR 22256, May 22, 1975; 51 FR 23760, July 1, 1986; 54 FR 12198, Mar. 24, 1989]

Sec. 101-47.304-10 Disposals by brokers.

Disposals and contracts for disposal of surplus property through contract realty brokers, where authorized by GSA, shall be made in the manner followed in similar commercial transactions. Realty brokers retained under contracts shall be required to give wide public notice of availability of the property for disposal.

Sec. 101-47.304-11 Documenting determinations to negotiate.

The disposal agency shall document the factors leading to and the determination justifying disposal by negotiation of any surplus property under Secs. 101-47.304-9 and 101-47.304-10, and shall retain such documentation in the files of the agency.

Sec. 101-47.304-12 Explanatory statements.

(a) Subject to the exception stated in Sec. 101-47.304-12(b), the disposal agency shall prepare an explanatory statement, as required by section 203(e)(6) of the Act, of the circumstances of each of the following proposed disposals by negotiation:

(1) Any real property that has an estimated fair market value in excess of $100,000, except that any real property disposed of by lease or exchange shall only be subject to paragraphs (a) (2) through (4) of this section;

(2) Any real property disposed of by lease for a term of 5 years or less; if the estimated fair annual rent is in excess of $100,000 for any of such years;

(3) Any real property disposed of by lease for a term of more than 5 years, if the total estimated rent over the term of the lease is in excess of $100,000; or

(4) Any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

(b) No explanatory statement need be prepared for a disposal of property authorized to be disposed of without advertising by any provision of law other than section 203(e) of the Act.

(c) An outline for the preparation of the explanatory statement is shown in Sec. 101-47.4911. A copy of the statement shall be preserved in the files of the disposal agency.

(d) Each explanatory statement when prepared shall be submitted to the Administrator of General Services for review and transmittal by the Administrator of General Services by letters to the Committees on Government Operations and any other appropriate committees of the Senate and House of Representatives. The submission to the Administrator of General Services shall include such supporting data as may be relevant and necessary for evaluating the proposed action.

(e) Copies of the Administrator of General Services' transmittal letters to the committees of the Congress, Sec. 101-47.304-12(d), will be furnished to the disposal agency.

(f) In the absence of adverse comment by an appropriate committee or subcommittee of the Congress on the proposed negotiated disposal, the disposal agency may consummate the sale on or after 35 days from the date of the Administrator of General Services letters transmitting the explanatory statement to the committees.

[29 FR 16126, Dec. 3, 1964, as amended at 41 FR 22354, June 3, 1976; 54 FR 12198, Mar. 24, 1989]

Sec. 101-47.304-13 Provisions relating to asbestos.

Where the existence of asbestos on the property has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with Sec. 101-47.202-2)(b)(9), the disposal agency shall incorporate such information (less any cost or time estimates to remove the asbestos-containing materials) in any Invitation for Bids/Offers to Purchase and include the following:

Notice of the Presence of Asbestos--Warning!

(a) The Purchaser is warned that the property offered for sale contains asbestos-containing materials. Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(b) Bidders (Offerors) are invited, urged and cautioned to inspect the property to be sold prior to submitting a bid (offer). More particularly, bidders (offerors) are invited, urged and cautioned to inspect the property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto. The disposal agency will assist bidders (offerors) in obtaining any authorization(s) which may be required in order to carry out any such inspection(s). Bidders (Offerors) shall be deemed to have relied solely on their own judgment in assessing the overall condition of all or any portion of the property including, without limitation, any asbestos hazards or concerns.

(c) No warranties either express or implied are given with regard to the condition of the property including, without limitation, whether the property does or does not contain asbestos or is or is not safe for a particular purpose. The failure of any bidder (offeror) to inspect, or to be fully informed as to the condition of all or any portion of the property offered, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid or offer after its opening or tender.

(d) The description of the property set forth in the Invitation for Bids (Offer to Purchase) and any other information provided therein with respect to said property is based on the best information available to the disposal agency and is believed to be correct, but an error or omission, including but not limited to the omission of any information available to the agency having custody over the property and/or any other Federal agency, shall not constitute grounds or reason for nonperformance of the contract of sale, or any claim by the Purchaser against the Government including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

(e) The Government assumes no liability for damages for personal injury, illness, disability or death, to the Purchaser, or to the Purchaser's successors, assigns, employees, invitees, or any other person subject to Purchaser's control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the property which is the subject of this sale, whether the Purchaser, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

(f) The Purchaser further agrees that in its use and occupancy of the property it will comply with all Federal, state, and local laws relating to asbestos.

[53 FR 29894, Aug. 9, 1988]

Sec. 101-47.304-14 Provisions relating to hazardous substance activity.

(a) Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with Sec. 101-47.202-2(b)(10), the disposal agency shall incorporate such information into any Invitation for Bids/Offers to Purchase and include the following statements:

"Notice regarding hazardous substance activity:

The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or "Superfund"), 42 U.S.C. section 9620(h). The (holding agency) advises that (provide information on the type and quantity of hazardous substances; the time at which storage, release, or disposal took place; and a description of the remedial action taken). All remedial action necessary to protect human health and the environment with respect to the hazardous substance activity during the time the property was owned by the United States has been taken. Any additional remedial action found to be necessary shall be conducted by the United States."

(b) In the case where the purchaser is a potentially responsible party (PRP) with respect to the hazardous substance activity, the above statements must be modified as appropriate to properly represent the liability of the PRP for any remedial action.

[FTR Amdt. 16, 56 FR 15048, Apr. 15, 1991]

Sec. 101-47.305 Acceptance of offers.

Sec. 101-47.305-1 General.

(a) When the head of the disposal agency or his designee determines that bid prices (either as to all or some part of the property) received after advertising therefor or received in response to the action authorized in paragraph (b) of this Sec. 101-47.305-1, are reasonable, i.e., commensurate with the fair market value of the property, and were independently arrived at in open competition, award shall be made with reasonable promptness by notice to the bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. Any or all offers may be rejected when the head of the disposal agency or his designee determines it is in the public interest to do so.

(b) Where the advertising does not result in the receipt of a bid at a price commensurate with the fair market value of the property, the highest bidder may, at the discretion of the head of the disposal agency or his designee and upon determination of responsiveness and bidder

responsibility, be afforded an opportunity to increase his offered price. The bidder shall be given a reasonable period of time, not to exceed fifteen working days, to respond. At the time the bidder is afforded an opportunity to increase his bid, all other bids shall be rejected and bid deposits returned. Any sale at a price so increased may be concluded without regard to the provisions of Sec. 101-47.304-9 and Sec. 101-47.304-12.

(c) The disposal agency shall allow a reasonable period of time within which the successful bidder shall consummate the transaction and shall notify the successful bidder of the period allowed.

(d) It is within the discretion of the head of the disposal agency or his designee to determine whether the procedure authorized by paragraph (b) of this Sec. 101-47.305-1 is followed or whether the bids shall be rejected and the property reoffered for sale on a publicly advertised competitive bid basis in accordance with the provisions of Sec. 101-47.304-7, or disposed of by negotiation pursuant to Sec. 101-47.306-1, or offered for disposal under other applicable provisions of this Subpart 101-47.3.

[29 FR 16126, Dec. 3, 1964, as amended at 50 FR 25223, June 18, 1985]

Sec. 101-47.305-2 Equal offers.

"Equal offers" means two or more offers that are equal in all respects, taking into consideration the best interests of the Government. If equal acceptable offers are received for the same property, award shall be made by a drawing by lot limited to the equal acceptable offers received.

Sec. 101-47.305-3 Notice to unsuccessful bidders.

When an offer for surplus real property has been accepted, the disposal agency shall notify all other bidders of such acceptance and return their earnest money deposits, if any.

Sec. 101-47.306 Absence of acceptable offers.

Sec. 101-47.306-1 Negotiations.

(a) When the head of the disposal agency or his designee determines that bid prices after advertising therefor (including the action authorized by the provisions of Sec. 101-47.305-1(b)) are not reasonable either as to all or some part of the property or were not independently arrived at in open competition and that a negotiated sale rather than a disposal by readvertising or under other applicable provisions of this subpart would better protect the public interest, the property or such part thereof may be disposed of by negotiated sale after rejection of all bids received: Provided, That no negotiated disposal may be made under this Sec. 101-47.306- 1 unless:

(1) Notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head or his designee to each responsible bidder who submitted a bid pursuant to the advertising;

(2) The negotiated price is higher than the highest rejected bid price offered by any responsible bidder, as determined by the head of the agency or his designee; and

(3) The negotiated price is the highest negotiated price offered by any responsible prospective purchaser.

(b) Any such negotiated disposal shall be subject to the applicable provisions of Secs. 101-47.304-9 and 101-47.304-12.

Sec. 101-47.306-2 Defense Industrial Reserve properties.

In the event that any disposal agency is unable to dispose of any surplus industrial plant because of the application of the conditions and restrictions of the National Security Clause imposed under the Defense Industrial Reserve Act (50 U.S.C. 453), after making every practicable effort to do so, it shall notify the Secretary of Defense, indicating such modifications in the National Security Clause, if any, which in its judgment will make possible the disposal of the plant. Upon agreement by the Secretary of Defense to any or all of such modifications, the plant shall be reoffered for disposal subject to such modifications as may have been so agreed upon; or if such modifications are not agreed to, and upon request of the Secretary of Defense, the plant shall be transferred to the custody of GSA.

[40 FR 12078, Mar. 17, 1975]

Sec. 101-47.307 Conveyances.

Sec. 101-47.307-1 Form of deed or instrument of conveyance.

Disposals of real property shall be by quitclaim deed or deed without warranty in conformity with local law and practice, unless the disposal agency finds that another form of conveyance is necessary to obtain a reasonable price for the property or to render the title marketable, and unless the use of such other form of conveyance is approved by GSA.

Sec. 101-47.307-2 Conditions in disposal instruments.

(a) Where a sale is made upon credit, the purchaser shall agree by appropriate provisions to be incorporated in the disposal instruments, that he will not resell or lease (unless due to its character or type the property was offered without leasing restrictions by the disposal agency) the property, or any part thereof or interest therein, without the prior written authorization of the disposal agency and such disposal instruments in appropriate cases may specifically provide for such authorization and/or future partial releases to be granted on terms which will adequately protect the Government's security for the credit extended to the purchaser.

(b) Except for exchange transactions initiated by the Federal Government for its own benefit, any disposition of land, or land and improvements located thereon, to public bodies by negotiation pursuant to Sec. 101-47.304- 9(4) shall include in the deed or other disposal instrument a covenant substantially as follows:

The Grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that the said Grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

(c) Any deed, lease, or other instrument executed to dispose of property under this subpart, subject to reservations, restrictions, or conditions as to the future use, maintenance, or transfer of the property shall recite all covenants, representations, and agreements pertaining thereto.

(d) Where the existence of hazardous substance activity has been brought to the attention of the disposal agency by the Standard Form 118 information provided in accordance with Sec. 101-47.202-2(b)(10), the disposal agency shall incorporate such information into any deed, lease, or other instrument executed pursuant to part 101-47. See the language contained in Sec. 101- 47.304-14. In the case where the purchaser is a potentially responsible party (PRP) with respect to the hazardous substance activity, the language must be modified as appropriate to properly represent the liability of the PRP for any remedial action.

[29 FR 16126, Dec. 3, 1964, as amended at 33 FR 4408, Mar. 12, 1968; FR Amdt. 16, 56 FR 15049, Apr. 15, 1991]

Sec. 101-47.307-3 Distribution of conformed copies of conveyance instruments.

(a) Two conformed copies of any deed, lease, or other instrument containing reservations, restrictions, or conditions regulating the future use, maintenance, or transfer of the property shall be provided the agency charged with enforcement of such reservations, restrictions, or conditions.

(b) A conformed copy of the deed, lease, or other conveyance instrument shall be provided to the holding agency by the disposal agency.

Sec. 101-47.307-4 Disposition of title papers.

The holding agency shall, upon request, deliver to the disposal agency all title papers in its possession relating to the property reported excess. The disposal agency may transfer to the purchaser of the property, as a part of the disposal transaction, the pertinent records authorized by Sec. 101- 11.404-2, to be so transferred. If the purchaser of the property wishes to obtain additional records, copies thereof may be furnished to the purchaser at an appropriate charge, as determined by the agency having custody of the records.

[33 FR 572, Jan. 17, 1968]

Sec. 101-47.307-5 Title transfers from Government corporations.

In order to facilitate the administration and disposition of real property when record title to such property is not in the name of the United States of America, the holding agency, upon request of the Administrator of General Services, shall deliver to the disposal agency a quitclaim deed, or other instrument of conveyance without warranty, expressed or implied, transferring all of the right, title, and interest of the holding agency in such property to the United States of America.

Sec. 101-47.307-6 Proceeds from disposals.

All proceeds (except so much thereof as may be otherwise obligated, credited, or paid under authority of those provisions of law set forth in section 204(b)-(e) of the Act (40 U.S.C. 485(b)-(e)), or the Independent Offices Appropriation Act, 1963 (76 Stat. 725) or in any later appropriation act) hereafter received from any sale, lease, or other disposition of surplus real property and related personal property shall be covered into the land and water conservation fund in the Treasury of the United States.

[30 FR 754, Jan. 23, 1965]

Sec. 101-47.308 Special disposal provisions.

Sec. 101-47.308-1 Power transmission lines.

(a) Pursuant and subject to the provisions of section 13(d) of the Surplus Property Act of 1944 (50 U.S.C. App. 1622(d)), which is continued in effect by section 602(a) of the Federal Property and Administrative Services Act of 1949, any State or political subdivision thereof, or any State or Government agency or instrumentality may certify to the disposal agency that a surplus power transmission line and the right-of-way acquired for its construction is needful for or adaptable to the requirements of a public or cooperative power project. Disposal agencies shall notify such State entities and Government agencies of the availability of such property in accordance with Sec. 101- 47.303-2.

(b) Notwithstanding any other provisions of this subpart, whenever a State or political subdivision thereof, or a State or Government agency or instrumentality certifies that such property is needful for or adaptable to the requirements of a public or cooperative power project, the property may be sold for such utilization at the fair market value thereof.

(c) In the event a sale cannot be accomplished by reason of the price to be charged or otherwise and the certification is not withdrawn, the disposal agency shall report the facts involved to the Administrator of General Services, for a determination by him as to the further action to be taken to dispose of the property.

(d) Any power transmission line and right-of-way not disposed of pursuant to the provisions of this section shall be disposed of in accordance with other applicable provisions of this subpart, including, if appropriate, reclassification by the disposal agency.

Sec. 101-47.308-2 Property for public airports.

(a) Pursuant and subject to the provisions of section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. 47151), airport property may be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport. Airport property is any surplus real property including improvements and personal property located thereon as a part of the operating unit (exclusive of property the highest and best use of which is determined by the Administrator of General Services to be industrial and which shall be so classified for disposal without regard to the provisions of this section) which, in the determination of the Administrator of the Federal Aviation Administration (FAA) is essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in the Federal Airport Act, as amended (49 U.S.C. 1101), or reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development, improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue from nonaviation businesses at a public airport.

(b) The disposal agency shall notify eligible public agencies, in accordance with the provisions of Sec. 101-47.303-2, that property which may be disposed of for use as a public airport under the Act of 1944, as amended, has been determined to be surplus. There shall be transmitted with the copy of each such notice when sent to the proper regional office of the Federal Aviation Administration, Sec. 101-47.303-2(d), a copy of the holding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules).

(c) As promptly as possible after receipt of the copy of the notice given to eligible public agencies and the copy of Standard Form 118, the Federal Aviation Administration shall inform the disposal agency of the determination of the Administrator of the Federal Aviation Administration required by the provisions of the Act of 1944, as amended. The Federal Aviation Administration, thereafter, shall render such assistance to any eligible public agency known to have a need for the property for a public airport as may be necessary for such need to be considered in the development of a comprehensive and coordinated plan of use and procurement for the property. An application form and instructions for the preparation of an application shall be furnished to the eligible public agency by the disposal agency upon request.

(d) Whenever an eligible public agency has submitted a plan of use and application to acquire property for a public airport, in accordance with the provisions of Sec. 101-47.303-2, the disposal agency shall transmit two copies of the plan and two copies of the application to the proper regional office of the Federal Aviation Administration. The Federal Aviation Administration shall promptly submit to the disposal agency a recommendation for disposal of the property for a public airport or shall inform the disposal agency that no such recommendation will be submitted.

(e) Upon receipt of such recommendation, the disposal agency may, with the approval of the head of the disposal agency or his designee, convey property recommended by the Federal Aviation Administration for disposal for a public airport to the eligible public agency, subject to the provisions of the Surplus Property Act of 1944, as amended. Approval for aviation areas shall be based on established FAA

guidelines, criteria, and requirements for such areas. Approval for nonaviation revenue-producing areas shall be given only for such areas as are anticipated to generate net proceeds which do not exceed expected deficits for operation of the aviation area applied for at the airport.

(f) Any airport property not recommended by the Federal Aviation Administration for disposal pursuant to the provisions of this subsection for use as a public airport shall be disposed of in accordance with other applicable provisions of this subpart. However, the holding agency shall first be notified of the inability of the disposal agency to dispose of the property for use as a public airport and shall be allowed 30 days to withdraw the property from surplus or to waive any future interest in the property for public airport use.

(g) The Administrator of the Federal Aviation Administration has the sole responsibility for enforcing compliance with the terms and conditions of disposal, and for the reformation, correction, or amendment of any disposal instrument and the granting of releases and for taking any necessary action for recapturing such property in accordance with the provisions of the Act of October 1, 1949, 63 Stat. 700, and section 1402(c) of the Federal Aviation Act of 1958, 72 Stat. 807 (50 U.S.C. App. 1622a-1622c).

(h) In the event title to any such property is revested in the United States by reason of noncompliance with the terms and conditions of disposal, or other cause, the Administrator of the Federal Aviation Administration shall have accountability for the property and shall report the property to GSA as excess property in accordance with the provisions of Sec. 101-47.202.

(i) Section 23 of the Airport and Airway Development Act of 1970 (Airport Act of 1970) is not applicable to the transfer of airports to State and local agencies. The transfer of airports to State and local agencies may be made only under section 13(g) of the Surplus Property Act of 1944 which is continued in effect by the Act. Only property which the holding agency determines cannot be reported excess to GSA for disposition under the Act, but which, nevertheless, may be made available for use by a State or local public body for public airport purposes without being inconsistent with the Federal program of the holding agency, may be conveyed under section 23 of the Airport Act of 1970. In the latter instance, section 23 may be used for the transfer of nonexcess land for airport development purposes providing that such real property does not constitute an entire airport. An entire, existing and established airport can only be disposed of to a State or eligible local government under section 13(g) of the Surplus Property Act of 1944.

[29 FR 16126, Dec. 3, 1964, as amended at 42 FR 46305, Sept. 15, 1977; 48 FR 1301, Jan. 12, 1983; FMPR Amdt. H-192, 60 FR 35707, July 11, 1995]

Sec. 101-47.308-3 Property for use as historic monuments.

(a) Under section 203(k)(3) of the act, the disposal agency may, in its discretion, convey, without monetary consideration, to any State, political subdivision, instrumentalities thereof, or municipality, surplus real and related personal property for use as a historic monument for the benefit of the public provided the Secretary of the Interior has determined that the property is suitable and desirable for such use. No property shall be determined to be suitable or desirable for use as a historic monument except in conformity with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments. In addition, the disposal agency may authorize the use of property conveyed under subsection 203(k)(3) of the act or the Surplus Property Act of 1944, as amended, for revenue- producing activities if the Secretary of the Interior:

(1) Determines that such activities, as described in the applicant's proposed program of utilization, are compatible with the use of the property for historic monument purposes;

(2) Approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property;

(3) Approves the grantee's plan for financing the repair, rehabilitation, restoration, and maintenance of the property. The plan shall not be approved unless it provides that all incomes in excess of costs of repair, rehabilitation, restoration, maintenance and a specified reasonable profit or payment that may accrue to a lessor, sublessor, or developer in connection with the management, operation, or development of the property for revenue producing activities shall be used by the grantee, lessor, sublessor, or developer, only for public historic preservation, park, or recreational purposes; and

(4) Examines and approves the grantee's accounting and financial procedures for recording and reporting on revenue-producing activities.

(b) The disposal agency shall notify State and areawide clearinghouses and eligible public agencies, in accordance with the provisions of Sec. 101- 47.303-2, that property which may be disposed of for use as a historic monument has been determined to be surplus. A copy of the holding agency's Standard Form 118, Report of Excess Real Property, with accompanying schedules shall be transmitted with the copy of each such notice when it is sent to the proper regional office of the Bureau of Outdoor Recreation as provided in Sec. 101-47.303-2(d).

(c) Upon request, the disposal agency shall furnish eligible public agencies with an application form to acquire real property for permanent use as a historic monument and advise the potential applicant that it should consult with the appropriate Bureau of Outdoor Recreation Regional Office early in the process of developing the application.

(d) Eligible public agencies shall submit the original and two copies of the completed application to acquire real property for use as a historic monument in accordance with the provisions of Sec. 101-47.303-2 to the appropriate Bureau of Outdoor Recreation Regional Office which will forward one copy of the application to the appropriate regional office of the disposal agency. After consultation with the National Park Service, the Bureau of Outdoor Recreation shall promptly submit to the disposal agency the determination required of the Secretary of the Interior under section 203(k)(3) of the act for disposal of the property for a historic monument and compatible revenue-producing activities or shall inform the disposal agency that no such recommendation will be submitted.

(e) Upon receipt of the determination, the disposal agency may with the approval of the head of the disposal agency or his designee convey to an eligible public agency property determined by the Secretary of the Interior to be suitable and desirable for use as a historic monument for the benefit of the public and for compatible revenue-producing activities subject to the provisions of section 203(k)(3) of the Act.

(f) The Secretary of the Interior has the responsibility for enforcing compliance with the terms and conditions of disposals; the reformation, correction, or amendment of any disposal instrument; the granting of releases; and any action necessary for recapturing such property in accordance with the provisions of section 203(k)(4) of the act. Any such action shall be subject to the disapproval of the head of the disposal agency.

(g) The Department of the Interior shall notify the appropriate GSA regional Real Property Division, Public Buildings Service, immediately by letter when title to such historic property is to be revested in the United States for noncompliance with the terms and conditions of disposal or for other cause. The notification shall cite the legal and administrative actions that the Department must take to obtain full title and possession of the property. In addition, it shall include an adequate description of the property, including any improvements constructed thereon since the original conveyance to the grantee. Upon receipt of a statement from the Department that title to the property has revested, GSA will assume custody and accountability of the property. However, the grantee shall be required to provide protection and maintenance of the property until such time as the title reverts to the Federal

Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to to the standards prescribed in Sec. 101-47.4913.

[40 FR 22257, May 22, 1975, as amended at 49 FR 44472, Nov. 7, 1984]

Sec. 101-47.308-4 Property for educational and public health purposes.

(a) The head of the disposal agency or his designee is authorized, at his discretion: (1) To assign to the Secretary of the Department of Education (ED) for disposal under section 203(k)(1) of the Act such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for school, classroom, or other educational use, or (2) to assign to the Secretary of Health and Human Services (HHS) for disposal under section 203(k)(1) of the Act such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for use in the protection of public health, including research.

(b) With respect to real property and related personal property which may be made available for assignment to ED or HHS for disposal under section 203(k)(1) of the Act for educational or public health purposes, the disposal agency shall notify eligible public agencies, in accordance with the provisions of Sec. 101-47.303-2, that such property has been determined to be surplus. Such notice to eligible public agencies shall state that any planning for an educational or public health use, involved in the development of the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with ED or HHS, as appropriate, and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from ED or HHS. The requirement for educational or public health use of the property by an eligible public agency will be contingent upon the disposal agency's approval under (i), below, of a recommendation for assignment of Federal surplus real property received from ED or HHS and any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(k)(1) (A) or (B) of the Act and referenced in paragraph (j) of this section.

(c) With respect to surplus real property and related personal property which may be made available for assignment to either Secretary for disposal under section 203(k)(1) of the Act for educational or public health purposes to nonprofit institutions which have been held exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)), ED or HHS may notify eligible nonprofit institutions, in accordance with the provisions of Sec. 101-47.303-2(e), that such property has been determined to be surplus. Any such notice to eligible nonprofit institutions shall state that any requirement for educational or public health use of the property should be coordinated with the public agency declaring to the disposal agency an intent to develop and submit a comprehensive and coordinated plan of use and procurement for the property. The requirement for educational or public health use of the property by an eligible nonprofit institution will be contingent upon the disposal agency's approval, under paragraph (i) of this section, of an assignment recommendation received from ED or HHS and any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(k)(1) (A) or (B) of the Act and referenced in (j) below.

(d) ED and HHS shall notify the disposal agency within 20-calendar days after the date of the notice of determination of surplus if it has an eligible applicant interested in acquiring the property. Whenever ED or HHS has notified the disposal agency within the said 20-calendar day period of a potential educational or public health requirement for the property, ED or HHS shall submit to the disposal agency within 25-calendar days after the expiration of the 20-calendar day period, a recommendation for assignment of the property, or shall inform the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property.

(e) Whenever an eligible public agency has submitted a plan of use for property for an educational or public health requirement, in accordance with the provisions of Sec. 101-47.303-2, the disposal agency shall transmit two copies of the plan to the regional office of ED or HHS as appropriate. ED or HHS shall submit to the disposal agency, within 25-calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of ED or HHS, or shall inform the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property to ED or HHS as appropriate.

(f) Any assignment recommendation submitted to the disposal agency by ED or HHS shall set forth complete information concerning the educational or public health use, including: (1) Identification of the property, (2) the name of the applicant and the size and nature of its program, (3) the specific use planned, (4) the intended public benefit allowance, (5) the estimate of the value upon which such proposed allowance is based, and, (6) if the acreage or value of the property exceeds the standards established by the Secretary, an explanation therefor. ED or HHS shall furnish to the holding agency a copy of the recommendation, unless the holding agency is also the disposal agency.

(g) Holding agencies shall cooperate to the fullest extent possible with representatives of ED or HHS in their inspection of such property and in furnishing information relating thereto.

(h) In the absence of an assignment recommendation from ED or HHS submitted pursuant to Sec. 101-47.308-4 (d) or (e), and received within the 25-calendar day time limit specified therein, the disposal agency shall proceed with other disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from ED or HHS, it shall assign the property by letter or other document to the Secretary of ED or HHS as appropriate. If the recommendation is disapproved, the disposal agency shall likewise notify the appropriate Department. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the disposal agency's letter of assignment, ED or HHS shall furnish to the disposal agency a Notice of Proposed Transfer in accordance with section 203(k)(1) (A) or (B) of the Act. If the disposal agency has not disapproved the proposed transfer within 30- calendar days of the receipt of the Notice of Proposed Transfer, ED or HHS may proceed with the transfer.

(k) ED or HHS shall furnish the Notice of Proposed Transfer within 35- calendar days after the disposal agency's letter of assignment and shall prepare the transfer documents and take all necessary actions to accomplish the transfer within 15-calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice. ED or HHS shall furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under section 203(k)(1) (A) or (B) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

(l) ED or HHS, as appropriate, has the responsibility for enforcing compliance with the terms and conditions of transfer; for the reformation, correction, or amendment of any transfer instrument; for the granting of releases; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of section 203(k)(4) of the Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency by ED or HHS of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(m) In each case of repossession under a terminated lease or reversion of title by reason of noncompliance with the terms or

conditions of sale or other cause, ED or HHS shall, at or prior to such repossession or reversion of title, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from ED or HHS that such property has been repossessed or title has reverted, GSA will assume custody of and accountability for the property. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in Sec. 101-47.4913.

[49 FR 3465, Jan. 27, 1984]

Sec. 101-47.308-5 Property for use as shrines, memorials, or for religious purposes.

(a) Surplus military chapels shall be segregated from other buildings, and shall be disposed of intact, separate and apart from the land, for use off- site as shrines, memorials, or for religious purposes, except in cases in which the chapel is located on surplus Government-owned land and the disposal agency determines that it may properly be used in place, in which cases a suitable area of land may be set aside for such purposes, and sold with the chapel.

(1) Application. Applications for the purchase of surplus chapels for use off-site or for use in-place shall be solicited by public advertising. All applications received in response to advertising shall be submitted to the Chief of Chaplains of the service which had jurisdiction over the property during the period of Government use thereof for military purposes and shall be disposed of in accordance with his recommendation. If no recommendation is received from the Chief of Chaplains within 30 days from the date of such submission, the disposal agency may select the purchaser on the basis of the needs of the applicants and the best interests of the community to be served. If no application is received for transfer of the property for shrine, memorial, or religious uses, the Chief of Chaplains shall be notified accordingly, and disposal of the property shall be held in abeyance for a period not to exceed 60 days thereafter to afford additional time for the filing of applications. If no such application is received during the extended period, the property may be disposed of for uses other than shrine, memorial, or religious purposes pursuant to other applicable provisions of this subpart.

(2) Sale price. The sale price of the chapel shall be a price equal to its appraised fair market value in the light of conditions imposed relating to its future use and the estimated cost of removal, where required. The sale price of the land shall be a price equal to the appraised fair market value of the land based upon the highest and best use of the land at the time of the disposal.

(3) Conditions of transfer. All chapels disposed of pursuant to the authority of this section shall be transferred subject to the condition that during the useful life thereof they be maintained and used as shrines, memorials, or for religious purposes and not for any commercial, industrial, or other secular use; and that in the event a transferee fails to maintain and use the chapel for such purposes there shall become due and payable to the Government the difference between the appraised fair market value of the chapel, as of the date of the transfer, without restrictions on its use, and the price actually paid. Where the land on which the chapel is located is sold with the chapel, no conditions or restrictions on the use of the land shall be included in the deed.

(4) Release of restrictions. The disposal agency may release the conditions of transfer without payment of a monetary consideration upon a determination that the property no longer serves the purpose for which it was transferred or that such release will not prevent accomplishment of the purpose for which the property was transferred. Such determination shall be in writing, shall state the facts and circumstances involved, and shall be preserved in the files of the disposal agency.

(b) Notwithstanding the provisions of this Sec. 101-47.308-5, a chapel and underlying land that is a component unit of a larger parcel of surplus real property recommended by the Secretary of Health, Education, and Welfare as being needed for educational or public health purposes, may be included in an assignment of such property, when so recommended by the Secretary, for disposal subject to the condition that the instrument of conveyance shall require that during the useful life of the chapel it shall be maintained and used by the grantee as a shrine, memorial, or for religious purposes.

Sec. 101-47.308-6 Property for housing and related facilities.

(a) Under section 414(a) of the Housing and Urban Development Act of 1969, as amended (40 U.S.C. 484b), the disposal agency may, in its discretion, transfer (assign) surplus real property to the Secretary of Housing and Urban Development or to the Secretary of Agriculture acting through the Farmers Home Administration (FmHA) at the request of either, for sale or lease by the appropriate Secretary at its fair value for use in the provision of housing to be occupied predominantly by families or individuals of low or moderate income and for related public commercial or industrial facilities approved by the appropriate Secretary.

(b) Upon receipt of the notice of determination of surplus (Sec. 101-47.204-1(a)), HUD or FmHA may solicit applications from eligible applicants.

(c) HUD or FmHA shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if it is able to interest an eligible applicant in acquiring the property under section 414(a) of the 1969 HUD Act, as amended.

(d) Both holding and disposal agencies shall cooperate, to the fullest extent possible, with representatives of HUD or FmHA in their inspection of such property and in furnishing information relating thereto.

(e) HUD or FmHA shall advise the disposal agency and request transfer of the property for disposition under section 414(a) of the 1969 HUD Act, as amended, within 25 calendar days after the expiration of the 20-calendar-day period specified in Sec. 101-47.308-6(c).

(f) Any request submitted by HUD or FmHA pursuant to Sec. 101-47.308-6(e) shall set forth complete information concerning the intended use, including:

(1) Identification of the property; (2) a summary of the background of the proposed project, including a map or plat of the property; (3) whether the property is to be sold or leased to a public body or to an entity other than a public body which will use the land in connection with the development of housing to be occupied predominantly by families or individuals of low and moderate income, assisted under a Federal housing assistance program administered by the appropriate Secretary or under a State or local program found by the appropriate Secretary to have the same general purpose, and related public commercial or industrial facilities approved by the appropriate Secretary; (4) HUD's or FmHA's best estimate of the fair value of the property and the price at which it will be sold by HUD or FmHA; (5) how the property is to be used (i.e., single or multifamily housing units, the number of housing units proposed, types of facilities, and the estimated cost of construction); (6) an estimate as to the dates construction will be started and completed; and (7) what reversionary provisions will be included in the deed or the termination provisions that will be included in the lease. It is suggested that this information, except for the map or plat of the property, be furnished in the body of the letter transfer request signed by the Secretary of Housing and Urban Development or the Secretary of Agriculture or his designee.

The above data will be used by GSA in preparing and submitting a statement relative to the proposed transaction to the Senate Committee

on Governmental Affairs and the House Committee on Government Operations prior to the transfer of the property to HUD or FmHA.

(g) In the absence of a notice under paragraph (c) of this section or a request under paragraph (e) of this section, the disposal agency shall proceed with the appropriate disposal action.

(h) If, after considering other uses for the property, the disposal agency determines that the property should be made available to HUD or FmHA under section 414(a) of the 1969 HUD Act, as amended, it shall transfer the property to the appropriate agency upon its request.

(i) The transferee agency shall bear the costs of any out-of-pocket expenses necessary to accomplish the transfer of the property, such as surveys, fencing, security, etc., of the remaining property or otherwise. In addition, the transferee agency shall be responsible for any protection and maintenance expenses after the property is transferred to the agency.

(j) The disposal agency, if it approves the request, shall transfer the property by letter or other document to HUD or FmHA for disposal under section 414(a) of the 1969 HUD Act, as amended. If the request is disapproved, the disposal agency shall so notify the appropriate Secretary. The disposal agency shall furnish the holding agency a copy of the transfer or notice of disapproval.

(k) The transferee agency shall prepare the disposal document and take all other actions necessary to accomplish the disposition of the property under section 414(a) of the 1969 HUD Act, as amended, within 120 calendar days after the date of the transfer of the property to the agency.

(l) If any property conveyed under section 414(a) of the 1969 HUD Act, as amended, to an entity other than a public body is used for any purpose other than the purpose for which it was sold or leased within a period of 30 years of the conveyance, it shall revert to the United States (or, in the case of leased property, the lease shall terminate) unless the appropriate Secretary and the Administrator of General Services, after the expiration of the first 20 years of such period, approve the use of the property for such other purpose.

(m) The transferee agency shall furnish the disposal agency two conformed copies of deeds, leases, or other instruments conveying property under section 414(a) of the 1969 HUD Act, as amended, and related documents containing reservations, restrictions, or conditions regulating the future use, maintenance, or transfer of the property.

(n) In each case of reversion of title by reason of noncompliance with the terms and conditions of sale or other cause, HUD or FmHA shall, prior to or at the time of such reversion, provide GSA with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from HUD or FmHA that title has reverted, GSA will assume accountability therefor.

[47 FR 37176, Aug. 25, 1982]

Sec. 101-47.308-7 Property for use as public park or recreation areas.

(a) The head of the disposal agency or his designee is authorized, in his discretion, to assign to the Secretary of the Interior for disposal under section 203(k)(2) of the Act for public park or recreation purposes, such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for use as a public park or recreation area for disposal by the Secretary to a State, political subdivision, instrumentalities thereof, or municipality.

(b) The disposal agency shall notify established State and regional or metropolitan clearinghouses and eligible public agencies, in accordance with the provisions of Sec. 101-47.303-2, that property which may be disposed of for use as a public park or recreation area has been determined to be surplus. There shall be transmitted with the copy of each such notice, when sent to the proper field office of the Bureau of Outdoor Recreation, a copy of the holding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules).

(c) An application form to acquire property for permanent use as a public park or recreation area and instructions for the preparation of the application shall be furnished by the Department of the Interior upon request.

(d) The Department of the Interior shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if it has an eligible applicant interested in acquiring the property under section 203(k)(2) of the Act.

(e) Holding agencies shall cooperate to the fullest extent possible with representatives of the Department of the Interior in their inspection of such property and in furnishing information relating thereto.

(f) The Department of the Interior shall advise the disposal agency and request assignment of the property for disposition under section 203(k)(2) of the Act, as amended, within 25 calendar days after the expiration of the 20- calendar-day period specified in paragraph (d) of this section.

(g) Any recommendation submitted by the Department of the Interior pursuant to paragraph (f) of this section shall set forth complete information concerning the plans for use of the property as a public park or recreation area, including (1) identification of the property, (2) the name of the applicant, (3) the specific use planned, and (4) the intended public benefit allowance. A copy of the application together with any other pertinent documentation shall be submitted with the recommendation.

(h) In the absence of a notice under paragraph (d) of this section or a request under paragraph (f) of this section, the disposal agency shall proceed with the appropriate disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from the Department of the Interior, it shall assign the property by letter or other document to the Secretary of the Interior. If the recommendation is disapproved, the disposal agency shall likewise notify the Secretary. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the disposal agency's letter of assignment, the Secretary of the Interior shall furnish to the disposal agency a Notice of Proposed Transfer, in accordance with section 203(k)(2)(A) of the Act. If the disposal agency has not disapproved the proposed transfer within 30-calendar days of the receipt of the Notice of Proposed Transfer, the Secretary may proceed with the transfer.

(k) The disposal agency may, where appropriate, make the assignment subject to the Department of the Interior requiring the applicant to bear the cost of any out-of-pocket expenses necessary to accomplish the transfer of the property, such as surveys, fencing, security of the remaining property or otherwise.

(l) In the absence of the notice of disapproval by the disposal agency upon expiration of the 30-day period, or upon earlier advice from the disposal agency of no objection to the proposed transfer, the Department of the Interior may place the applicant in possession of the property as soon as practicable in order to minimize the Government's expense of protection and maintenance of the property. As of the date of assumption of possession of the property, or the date of conveyance, whichever occurs first, the applicant shall assume responsibility for care and handling and all risks of loss or damage to the property, and shall have all obligations and liabilities of ownership.

(m) The Department of the Interior shall furnish the Notice of Proposed Transfer within 35-calendar days after the disposal agency's letter of assignment and shall take all necessary actions to accomplish the transfer within 15-calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice.

(n) The deed of conveyance of any surplus real property transferred under the provision of section 202(k)(2) of the Act shall provide that all such property be used and maintained for the purpose for which it was conveyed in perpetuity, and that in the event that such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the United States, revert to the United States and may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Secretary of the Interior to be necessary to safeguard the interest of the United States.

(o) The Department of the Interior shall furnish the disposal agency two conformed copies of deeds, leases, or other instruments conveying property under section 203(k)(2) of the Act and related documents containing reservations, restrictions, or conditions regulating the future use, maintenance or transfer of the property.

(p) The Secretary of the Interior has the responsibility for enforcing compliance with the terms and conditions of transfer; the reformation, correction, or amendment of any transfer instrument; the granting of releases; and any necessary actions for recapturing such property in accordance with the provisions of section 202(k)(4) of the Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency by the Secretary of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(q) The Department of the Interior shall notify the appropriate GSA regional office immediately by letter when title to property transferred for use as a public park or recreation area is to be revested in the United States for noncompliance with the terms or conditions of disposal or for other cause. The notification shall cite the legal and administrative actions that the Department must take to obtain full title and possession of the property. In addition, it shall include an adequate description of the property, including any improvements constructed thereon since the original conveyance to the grantee. Upon receipt of a statement from the Department that title to the property has revested, GSA will assume custody of and accountability for the property. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in Sec. 101-47.4913.

[36 FR 9776, May 28, 1971, as amended at 49 FR 3467, Jan. 27, 1984]

Sec. 101-47.308-8 Property for displaced persons.

(a) Pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the disposal agency is authorized to transfer surplus real property to a State agency, as hereinafter provided, for the purpose of providing replacement housing under title II of this Act for persons who are to be displaced by Federal or federally assisted projects.

(b) Upon receipt of the notice of surplus determination (Sec. 101-47.204- 1(a)), any Federal agency having a requirement for such property for housing for displaced persons may solicit applications from eligible State agencies.

(c) Federal agencies shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if it is able to interest an eligible State agency in acquiring the property under section 218.

(d) Both holding and disposal agencies shall cooperate, to the fullest extent possible, with Federal and State agency representatives in their inspection of such property and in furnishing information relating thereto.

(e) The interested Federal agency shall advise the disposal agency and request transfer of the property to the selected State agency under section 218 within 25 calendar days after the expiration of the 20-calendar-day period specified in Sec. 101-47.308-8(c).

(f) Any request submitted by a Federal agency pursuant to Sec. 101-47.308- 8(e) shall be in the form of a letter addressed to the appropriate GSA regional office and shall set forth the following information:

(1) Identification of the property by name, location, and control number; (2) a request that the property be transferred to a specific State agency including the name and address and a copy of the State agency's application or proposal; (3) a certification by the appropriate Federal agency official that the property is required for housing for displaced persons pursuant to section 218, that all other options authorized under title II of the Act have been explored and replacement housing cannot be found or made available through those channels, and that the Federal or federally assisted project cannot be accomplished unless the property is made available for replacement housing; (4) any special terms and conditions that the Federal agency desires to include in conveyance instruments to insure that the property is used for the intended purpose; (5) identification by name and proposed location of the Federal or federally assisted project which is creating the requirement; (6) purpose of the project; (7) citation of enabling legislation or authorization for the project when appropriate; (8) a detailed outline of steps taken to obtain replacement housing for displaced persons as authorized under title II of the Act; and (9) arrangements that have been made to construct replacement housing on the surplus property and to insure that displaced persons will be provided housing in the development.

(g) In the absence of a notice under Sec. 101-47.308-8(c) or a request under Sec. 101-47.308-8(e), the disposal agency shall proceed with the appropriate disposal action.

(h) If, after considering other uses for the property, the disposal agency determines that the property should be made available for replacement housing under section 218, it shall transfer the property to the designated State agency on such terms and conditions as will protect the interest of the United States, including the payment or the agreement to pay to the United States all amounts received by the State agency from any sale, lease, or other disposition of the property for such housing. The sale, lease, or other disposition of the property by the State agency shall be at the fair market value as approved by the disposal agency, unless a compelling justification is offered for disposal of the property at less than fair market value, in which event the disposal may be made at such other value as is approved by the disposal agency.

(i) The State agency shall bear the costs of any out-of-pocket expenses necessary to accomplish the transfer of the property, such as costs of surveys, fencing, or security of the remaining property.

(j) The disposal agency, if it approves the request, shall transfer the property to the designated State agency. If the request is disapproved, the disposal agency shall notify the Federal agency requesting the transfer. The disposal agency shall furnish the holding agency a copy of the transfer or notice of disapproval, and the Federal agency requesting the transfer a copy of the transfer when appropriate.

[36 FR 11439, June 12, 1971]

Sec. 101-47.308-9 Property for correctional facility use.

(a) Under section 203(p)(1) of the Act, the head of the disposal agency or designee may, in his/her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named therein, or to any political subdivision or instrumentality thereof, surplus real and related personal property for correctional facility use, provided the Attorney General has determined that the property is required for correctional facility use and has approved an appropriate program or project for the care or rehabilitation of criminal offenders.

(b) The disposal agency shall provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ) of the

availability of surplus properties. Included in the notification to OJP will be a copy of the holding agency's Standard Form 118, Report of Excess Real Property, with accompanying schedules.

(c) With respect to real property and related personal property which may be made available for disposal under section 203(p)(1) of the Act for correctional facility purposes, OJP shall convey notices of availability of properties to the appropriate State and local public agencies. Such notice shall state that any planning for correctional facility use involved in the development of a comprehensive and coordinated plan of use and procurement for the property must be coordinated and approved by the OJP and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from OJP. The requirement for correctional facility use of the property by an eligible public agency will be contingent upon the disposal agency's approval under paragraph (g) of this section of a determination by DOJ that identifies surplus property required for correctional facility use under an appropriate program or project for the care of rehabilitation of criminal offenders.

(d) OJP shall notify the disposal agency within 20 calendar days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever OJP has notified the disposal agency within the said 20 calendar-day period of a potential correctional facility requirement for the property, OJP shall submit to the disposal agency within 25 calendar days after the expiration of the 20 calendar-day period, a determination indicating a requirement for the property and approving an appropriate program or project for the care or rehabilitation of criminal offenders, or shall inform the disposal agency, within the 25 calendar-day period, that the property will not be required for correctional facility use.

(e) Any determination submitted to the disposal agency by DOJ shall set forth complete information concerning the correctional facility use, including:

(1) Identification of the property,

(2) Certification that the property is required for correctional facility use,

(3) A copy of the approved application which defines the proposed plan of use, and

(4) The environmental impact of the proposed correctional facility.

(f) Both holding and disposal agencies shall cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating thereto.

(g) If, after considering other uses for the property, the disposal agency approves the determination by DOJ, it shall convey the property to the appropriate grantee. If the determination is disapproved, or in the absence of a determination from DOJ submitted pursuant to Sec. 101-47.308-9(d), and received within the 25 calendar-day time limit specified therein, the disposal agency shall proceed with other disposal action. The disposal agency shall notify OJP 10 days prior to any announcement of a determination to either approve or disapprove an application for correctional purposes and shall furnish to OJP a copy of the conveyance documents.

(h) The deed of conveyance of any surplus real property transferred under the provisions of section 203(p)(1) of the Act shall provide that all such property be used and maintained for the purpose for which it was conveyed in perpetuity and that in the event such property ceases to be used or maintained for such purpose during such period, all or any portion of such property shall in its then existing condition, at the option of the United States, revert to the United States and may contain such additional terms, reservations, restrictions, and conditions as may be determined by the Administrator of General Services to be necessary to safeguard the interest of the United States.

(i) The Administrator of General Services has the responsibility for enforcing compliance with the terms and conditions of disposals; the reformation, correction, or amendment of any disposal instrument; the granting of releases; and any action necessary for recapturing such property in accordance with the provisions of section 203(p)(3) of the Act.

(j) The OJP will notify GSA upon discovery of any information indicating a change in use and, upon request, make a redetermination of continued appropriateness of the use of a transferred property.

(k) In each case of repossession under a reversion of title by reason of noncompliance with the terms of the conveyance documents, GSA will assume custody of and accountability for the property. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in Sec. 101-47.4913.

[52 FR 9832, Mar. 27, 1987]

Sec. 101-47.308-10 Property for port facility use.

(a) Under section 203(q)(1) of the Act, in his/her discretion, the Administrator, the Secretary of the Department of Defense (DOD) in the case of property located at a military installation closed or realigned pursuant to a base closure law, or the designee of either of them, may, as the disposal agency, assign to the Secretary of the Department of Transportation (DOT) for conveyance, without monetary consideration, to any State, or to those governmental bodies named therein, or to any political subdivision, municipality, or instrumentality thereof, such surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, as is recommended by DOT as being needed for the development or operation of a port facility.

(b) The disposal agency shall notify established State and regional or metropolitan clearinghouses and eligible public agencies, in accordance with the provisions of Sec. 101-47.303-2, that property which may be disposed of for use in the development or operation of a port facility has been determined to be surplus. A copy of such notice shall be transmitted to DOT accompanied by a copy of the holding agency's Report of Excess Real Property (Standard Form 118 and supporting schedules).

(c) The notice to eligible public agencies shall state:

(1) that any planning for the development or operation of a port facility, involved in the development of the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with DOT;

(2) that any party interested in acquiring the property for use as a port facility must contact the Department of Transportation, Maritime Administration, for instructions concerning submission of an application; and

(3) that the requirement for use of the property in the development or operation of a port facility will be contingent upon approval by the disposal agency, under paragraph (i) of this section, of a recommendation from DOT for assignment of the property to DOT and that any subsequent conveyance shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(q)(2) of the Act and referenced in paragraph (j) of this subsection.

(d) DOT shall notify the disposal agency within 20 calendar-days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever the disposal agency, has been so notified of a potential port facility requirement for the property, DOT shall submit to the disposal agency, within 25 calendar-days after the expiration of the 20-calendar-day notification period, either a recommendation for assignment of the property or a statement that a recommendation will not be submitted.

(e) Whenever an eligible public agency has submitted a plan of use for property for a port facility requirement, in accordance with the provisions of Sec. 101-47.303-2, the disposal agency shall transmit two copies of the plan to DOT. DOT shall either submit to the disposal agency, within 25 calendar-days after the date the plan is transmitted, a

recommendation for assignment of the property to DOT, or inform the disposal agency, within the 25-calendar-day period, that a recommendation will not be made for assignment of the property to DOT.

(f) Any assignment recommendation submitted to the disposal agency by DOT shall be accompanied by a copy of the explanatory statement required under section 203(q)(3)(C) of the Act and shall set forth complete information concerning the contemplated port facility use, including:

(1) an identification of the property;

(2) an identification of the applicant;

(3) a copy of the approved application, which defines the proposed plan of use of the property;

(4) a statement that DOT's determination that the property is located in an area of serious economic disruption was made in consultation with the Secretary of Labor; and

(5) a statement that DOT's approval of the economic development plan associated with the plan of use of the property was made in consultation with the Secretary of Commerce.

(g) Holding agencies shall cooperate to the fullest extent possible with representatives of DOT and the Secretary of Commerce in their inspection of such property, and of the Secretary of Labor in affirming that the property is in an area of serious economic disruption, and in furnishing any information relating thereto.

(h) In the absence of an assignment recommendation from DOT submitted pursuant to paragraph (d) or (e) of this section, and received within the 25- calendar-day time limit specified therein, the disposal agency shall proceed with other disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOT, it shall assign the property by letter or other document to DOT. If the recommendation is disapproved, the disposal agency shall likewise notify DOT. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the letter of assignment from the disposal agency, DOT shall furnish to the disposal agency, a Notice of Proposed Conveyance in accordance with section 203(q)(2) of the Act. If the disposal agency has not disapproved the proposed transfer within 35 calendar-days of the receipt of the Notice of Proposed Conveyance, DOT may proceed with the conveyance.

(k) DOT shall furnish the Notice of Proposed Conveyance within 35 calendar- days after the date of the letter of assignment from the disposal agency, prepare the conveyance documents, and take all necessary actions to accomplish the conveyance within 15 calendar-days after the expiration of the 30-calendar-day period provided for the disposal agency to consider the notice. DOT shall furnish the disposal agency two conformed copies of the instruments conveying property under subsection 203(q) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance, or transfer of the property.

(l) DOT has the responsibility for enforcing compliance with the terms and conditions of conveyance; for reformation, correction, or amendment of any instrument of conveyance; for the granting of release; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of subsection 203(q)(4) of the Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency, by DOT, of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(m) In each case of repossession under a reversion of title by reason of noncompliance with the terms or conditions of conveyance or other cause, DOT shall, at or prior to such reversion of title, provide the appropriate GSA regional office, with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and appropriate accompanying schedules shall be used for this purpose. Upon receipt of advice from DOT that such property has been repossessed, GSA will review and act upon the Standard Form 118. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in Sec. 101-47.4913.

[FMPR Amdt. H-192, 60 FR 35707, July 11, 1995]

Sec. 101-47.309 Disposal of leases, permits, licenses, and similar instruments.

The disposal agency may, subject to such reservations, restrictions, and conditions, if any, as the disposal agency deems necessary properly to protect the interests of the United States against liability under a lease, permit, license, or similar instrument:

(a) Dispose of the lease or other instrument subject to assumption by the transferee of the obligations in the lease or other instrument unless a transfer is prohibited by the terms of the lease or other instrument; or

(b) Terminate the lease or other instrument by notice or negotiated agreement; and

(c) Dispose of any surplus Government-owned improvements located on the premises in the following order by any one or more of the following methods:

(1) By disposition of all or a portion thereof to the transferee of the lease or other instrument (not applicable when the lease or other instrument is terminated);

(2) By disposition to the owner of the premises or grantor of a sublease, as the case may be, (i) in full satisfaction of a contractual obligation of the Government to restore the premises, or (ii) in satisfaction of a contractual obligation of the Government to restore the premises plus the payment of a money consideration to the Government by the owner or grantor, as the case may be, that is fair and reasonable under the circumstances, or (iii) in satisfaction of a contractual obligation of the Government to restore the premises plus the payment by the Government to the owner or grantor, as the case may be, of a money consideration that is fair and reasonable under the circumstances; or

(3) By disposition for removal from the premises. Provided, That any negotiated disposals shall be subject to the applicable provisions of Secs. 101-47.304-9 and 101-47.30-12. The cancellation of the Government's restoration obligations in return for the conveyance of the Government-owned improvements to the lessor is considered a settlement of a contractual obligation rather than a disposal of surplus real property and, therefore, is not subject to the provisions of Secs. 101-47.304-9 and 101- 47.304-12.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 16780, Dec. 31, 1966]

Sec. 101-47.310 Disposal of structures and improvements on Government-owned land.

In the case of Government-owned land, the disposal agency may dispose of structures and improvements with the land or separately from the land: Provided, That prefabricated movable structures such as Butler-type storage warehouses, and quonset huts, and housetrailers (with or without under carriages) reported to GSA with the land on which they are located, may, in the discretion of GSA, be designated for disposal as personal property for off-site use.

Sec. 101-47.311 Disposal of residual personal property.

(a) Any related personal property reported to GSA on Standard Form 118 which is not disposed of by GSA as related to the real property, shall be designated by GSA for disposal as personal property.

(b) Any related personal property which is not disposed of by the holding agency, pursuant to the authority contained in Sec. 101-47.302, or authority otherwise delegated by the Administrator of General Services as related to the real property, shall be disposed of under the applicable provisions of Part 101-45.

Sec. 101-47.312 Non-Federal interim use of property.

(a) A lease or permit may be granted by the holding agency with the approval of the disposal agency, for non-Federal interim use of surplus property; Provided, That such lease or permit shall be for a period not exceeding 1 year and shall be made revocable on not to exceed 30 days' notice by the disposal agency: And provided further, That the use and occupancy will not interfere with, delay, or retard the disposal of the property. In such cases, an immediate right of entry to such property may be granted pending execution of the formal lease or permit. The lease or permit shall be for a money consideration and shall be on such other terms and conditions as are deemed appropriate to properly protect the interest of the United States. Any negotiated lease or permit under this section shall be subject to the applicable provisions of Secs. 101-47.304-9 and 101-47.304-12, except that no explanatory statement to the appropriate committees of the Congress need to be prepared with respect to a negotiated lease or permit providing for an annual net rental of $100,000 or less, and termination by either part on 30 days' notice.

(b) [Reserved. 54 FR 41245, Oct. 6, 1989]

[54 FR 41245, Oct. 6, 1989]

Sec. 101-47.313 Easements.

Sec. 101-47.313-1 Disposal of easements to owner of servient estate.

The disposal agency may dispose of an easement to the owner of the land which is subject to the easement when the continued use, occupancy, or control of the easement is not needed for the operation, production, use, or maintenance of property owned or controlled by the Government. A determination shall be made by the disposal agency as to whether the disposal shall be with or without consideration to the Government on the basis of all the circumstances and factors involved and with due regard to the acquisition cost of the easement to the Government. The extent of such consideration shall be regarded as the appraised fair market value of the easement. The disposal agency shall document the circumstances and factors leading to such determination and retain such documentation in its files.

Sec. 101-47.313-2 Grants of easements in or over Government property.

The disposal agency may grant easements in or over real property on appropriate terms and conditions: Provided, That where the disposal agency determines that the granting of such easement decreases the value of the property, the granting of the easement shall be for a consideration not less than the amount by which the fair market value of the property is decreased.

Sec. 101-47.314 Compliance.

Sec. 101-47.314-1 General.

Subject to the provisions of Sec. 101-47.314-2(a), requiring referral of criminal matters to the Department of Justice, each disposal agency shall perform such investigatory functions as are necessary to insure compliance with the provisions of the Act and with the regulations, orders, directives, and policy statements of the Administrator of General Services.

Sec. 101-47.314-2 Extent of investigations.

(a) Referral to other Government agencies. All information indicating violations by any person of Federal criminal statutes, or violations of section 209 of the Act, including but not limited to fraud against the Government, mail fraud, bribery, attempted bribery, or criminal collusion, shall be referred immediately to the Department of Justice for further investigation and disposition. Each disposal agency shall make available to the Department of Justice, or to such other governmental investigating agency to which the matter may be referred by the Department of Justice, all pertinent information and evidence concerning the indicated violations; shall desist from further investigation of the criminal aspects of such matters except upon the request of the Department of Justice; and shall cooperate fully with the agency assuming final jurisdiction in establishing proof of criminal violations. After making the necessary referral to the Department of Justice, inquiries conducted by disposal agency compliance organizations shall be limited to obtaining information for administrative purposes. Where irregularities reported or discovered involve wrongdoing on the part of individuals holding positions in Government agencies other than the agency initiating the investigation, the case shall be reported immediately to the Administrator of General Services for an examination in the premises.

(b) Compliance reports. A written report shall be made of all compliance investigations conducted by each agency compliance organization. Each disposal agency shall maintain centralized files of all such reports at its respective departmental offices. Until otherwise directed by the Administrator of General Services, there shall be transmitted promptly to the Administrator of General Services one copy of any such report which contains information indicating criminality on the part of any person or indicating noncompliance with the Act or with the regulations, orders, directives and policy statements of the Administrator of General Services. In transmitting such reports to the Administrator of General Services, the agency shall set forth the action taken or contemplated by the agency to correct the improper conditions established by the investigation. Where any matter is referred to the Department of Justice, a copy of the letter of referral shall be transmitted to the Administrator of General Services.

Subpart 101-47.4--Management of Excess and Surplus Real Property

Sec. 101-47.400 Scope of subpart.

This subpart prescribes the policies and methods governing the physical care, handling, protection, and maintenance of excess real property and surplus real property, including related personal property, within the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

[47 FR 4522, Feb. 1, 1982]

Sec. 101-47.401 General provisions of subpart.

Sec. 101-47.401-1 Policy.

It is the policy of the Administrator of General Services:

(a) That the management of excess real property and surplus real property, including related personal property, shall provide only those minimum services necessary to preserve the Government's interest therein, realizable value of the property considered.

(b) To place excess real property and surplus real property in productive use through interim utilization: Provided, That such temporary use and occupancy will not interfere with, delay, or retard its transfer to a Federal agency or disposal.

(c) That excess and surplus real property which is dangerous to the public health or safety shall be destroyed or rendered innocuous.

Sec. 101-47.401-2 Definitions.

As used in this subpart, the following terms shall have the meanings set forth below:

(a) Maintenance. The upkeep of property only to the extent necessary to offset serious deterioration; also such operation of utilities, including

water supply and sewerage systems, heating, plumbing, and air-conditioning equipment, as may be necessary for fire protection, the needs of interim tenants, and personnel employed at the site, and the requirements for preserving certain types of equipment.

(b) Repairs. Those additions or changes that are necessary for the protection and maintenance of property to deter or prevent excessive or rapid deterioration or obsolescence, and to restore property damaged by storm, flood, fire, accident, or earthquake.

Sec. 101-47.401-3 Taxes and other obligations.

Payments of taxes or payments in lieu of taxes (in the event of the enactment hereafter of legislation by Congress authorizing such payments upon Government-owned property which is not legally assessable), rents, and insurance premiums and other obligations pending transfer or disposal shall be the responsibility of the holding agency.

Sec. 101-47.401-4 Decontamination.

The holding agency shall be responsible for all expense to the Government and for the supervision of decontamination of excess and surplus real property that has been subjected to contamination with hazardous materials of any sort. Extreme care must be exercised in the decontamination, and in the management and disposal of contaminated property in order to prevent such properties becoming a hazard to the general public. The disposal agency shall be made cognizant of any and all inherent hazards involved relative to such property in order to protect the general public from hazards and to preclude the Government from any and all liability resulting from indiscriminate disposal or mishandling of contaminated property.

Sec. 101-47.401-5 Improvements or alterations.

Improvements or alterations which involve rehabilitation, reconditioning, conversion, completion, additions, and replacements in structures, utilities, installations, and land betterments, may be considered in those cases where disposal cannot otherwise be made, but no commitment therefor shall be entered into without prior approval of GSA.

Sec. 101-47.401-6 Interim use and occupancy.

When a revocable agreement to place excess real property or surplus real property in productive use has been made, the agency executing the agreement shall be responsible for the servicing thereof.

Sec. 101-47.402 Protection and maintenance.

[49 FR 1348, Jan. 11, 1984]

Sec. 101-47.402-1 Responsibility.

The holding agency shall retain custody and accountability for excess and surplus real property including related personal property and shall perform the protection and maintenance of such property pending its transfer to another Federal agency or its disposal. Guidelines for protection and maintenance of excess and surplus real property are in Sec. 101-47.4913. The holding agency shall be responsible for complying with the requirements of the National Oil and Hazardous Substances Pollution Contingency Plan and initiating or cooperating with others in the actions prescribed for the prevention, containment, or remedy of hazardous conditions.

[49 FR 1348, Jan. 11, 1984]

Sec. 101-47.402-2 Expense of protection and maintenance.

(a) The holding agency shall be responsible for the expense of protection and maintenance of such property pending transfer or disposal for not more than 12 months, plus the period to the first day of the succeeding quarter of the fiscal year after the date that the property is available for immediate disposition. If the holding agency requests deferral of the disposal, continues to occupy the property beyond the excess date to the detriment of orderly disposal, or otherwise takes actions which result in a delay in the disposition, the period for which that agency is responsible for such expenses shall be extended by the period of delay. (See Sec. 101-47.202-9.)

(b) In the event the property is not transferred to a Federal agency or disposed of during the period mentioned in paragraph (a) of this section, the expense of protection and maintenance of such property from and after the expiration date of said period shall be either paid or reimbursed to the holding agency, subject to the limitations herein, which payment or reimbursement shall be in the discretion of the disposal agency. The maximum amount of protection and maintenance to be paid or reimbursed by the disposal agency will be specified in a written agreement between the holding agency and the disposal agency, but such payment or reimbursement is subject to the appropriations by Congress to the disposal agency of funds sufficient to make such payment or reimbursement. In accordance with the written agreement, the disposal agency and the holding agency will sign an obligational document only if and when Congress actually appropriates to the disposal agency, pursuant to its request, funds sufficient to pay or reimburse the holding agency for protection and maintenance expenses, as agreed. In the absence of a written agreement, the holding agency shall be responsible for all expenses of protection and maintenance, without any right of contribution or reimbursement from the disposal agency.

[49 FR 1348, Jan. 11, 1984]

Sec. 101-47.403 Assistance in disposition.

The holding agency is expected to cooperate with the disposal agency in showing the property to prospective transferees or purchasers. Unless extraordinary expenses are incurred in showing the property, the holding agency shall absorb the entire cost of such actions. (See Sec. 101-47.304-5.)

[36 FR 3894, Mar. 2, 1971]

Subpart 101-47.5--Abandonment, Destruction, or Donation to Public Bodies

Sec. 101-47.500 Scope of subpart.

(a) This subpart prescribes the policies and methods governing the abandonment, destruction, or donation to the public bodies by Federal agencies of real property located within the States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(b) The subpart does not apply to surplus property assigned for disposal to educational or public health institutions pursuant to section 203(k) of the Act.

[29 FR 16126, Dec. 3, 1964, as amended at 47 FR 4522, Feb. 1, 1982]

Sec. 101-47.501 General provisions of subpart.

Sec. 101-47.501-1 Definitions.

(a) "No commercial value" means real property, including related personal property, which has no reasonable prospect of being disposed of at a consideration.

(b) "Public body" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any political subdivision, agency, or instrumentality of the foregoing.

Sec. 101-47.501-2 Authority for disposal.

Subject to the restrictions in Sec. 101-47.502 and Sec. 101-47.503, any Federal agency having control of real property which has no commercial value or of which the estimated cost of continued care and handling would exceed the estimated proceeds from its sale, is authorized:

(a) To abandon or destroy Government-owned improvements and related personal property located on privately owned land.

(b) To destroy Government-owned improvements and related personal property located on Government-owned land. Abandonment of such property is not authorized.

(c) To donate to public bodies any real property (land and/or improvements and related personal property), or interests therein, owned by the Government.

Sec. 101-47.501-3 Dangerous property.

No property which is dangerous to public health or safety shall be abandoned, destroyed, or donated to public bodies pursuant to this subpart without first rendering such property innocuous or providing adequate safeguards therefor.

Sec. 101-47.501-4 Findings.

(a) No property shall be abandoned, destroyed, or donated by a Federal agency under Sec. 101-47.501-2, unless a duly authorized official of that agency finds, in writing, either that (1) such property has no commercial value, or (2) the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. Such finding shall not be made by any official directly accountable for the property covered thereby.

(b) Whenever all the property proposed to be disposed of hereunder by a Federal agency at any one location at any one time had an original cost (estimated if not known) of more than $1,000, findings made under Sec. 101- 47.501-4(a), shall be approved by a reviewing authority before any such disposal.

Sec. 101-47.502 Donations to public bodies.

Sec. 101-47.502-1 Cost limitations.

No improvements on land or related personal property having an original cost (estimated if not known) in excess of $250,000 and no land, regardless of cost, shall be donated to public bodies without the prior concurrence of GSA. The request for such concurrence shall be made to the regional office of GSA for the region in which the property is located.

Sec. 101-47.502-2 Disposal costs.

Any public body receiving improvements on land or related personal property pursuant to this subpart shall pay the disposal costs incident to the donation, such as dismantling, removal, and the cleaning up of the premises.

Sec. 101-47.503 Abandonment and destruction.

Sec. 101-47.503-1 General.

(a) No improvements on land or related personal property shall be abandoned or destroyed by a Federal agency unless a duly authorized official of that agency finds, in writing, that donation of such property in accordance with the provisions of this subpart is not feasible. This finding shall be in addition to the finding prescribed in Sec. 101-47.501-4. If at any time prior to actual abandonment or destruction the donation of the property pursuant to this subpart becomes feasible, such donation will be accomplished.

(b) No abandonment or destruction shall be made in a manner which is detrimental or dangerous to public health or safety or which will cause infringement of the rights of other persons.

(c) The concurrence of GSA shall be obtained prior to the abandonment or destruction of improvements on land or related personal property (1) which had an original cost (estimated if not known) of more than $50,000, or (2) which are of permanent type construction, or (3) where their retention would enhance the value of the underlying land, if it were to be made available for sale or lease.

Sec. 101-47.503-2 Notice of proposed abandonment or destruction.

Except as provided in Sec. 101-47.503-3, improvements on land or related personal property shall not be abandoned or destroyed by a Federal agency until after public notice of such proposed abandonment or destruction. Such notice shall be given in the area in which the property is located, shall contain a general description of the property to be abandoned or destroyed, and shall include an offering of the property for sale. A copy of such notice shall be given to the regional office of GSA for the region in which the property is located.

Sec. 101-47.503-3 Abandonment or destruction without notice.

If (a) the property had an original cost (estimated if not known) of not more than $1,000; or (b) its value is so low or the cost of its care and handling so great that its retention in order to post public notice is clearly not economical; or (c) immediate abandonment or destruction is required by considerations of health, safety, or security; or (d) the assigned mission of the agency might be jeopardized by the delay, and a finding with respect to paragraph (a), (b), (c), or (d) of this section, is made in writing by a duly authorized official of the Federal agency and approved by a reviewing authority, abandonment or destruction may be made without public notice. Such a finding shall be in addition to the findings prescribed in Secs. 101-47.501-4 and 101-47.503-1(a).

Subpart 101-47.6--Delegations

Sec. 101-47.600 Scope of subpart.

This subpart sets forth the special delegations of authority granted by the Administrator of General Services to other agencies for the utilization and disposal of certain real property pursuant to the Act.

Sec. 101-47.601 Delegation to Department of Defense.

(a) Authority is delegated to the Secretary of Defense to determine that excess real property and related personal property under the control of the Department of Defense having a total estimated fair market value, including all the component units of the property, of less than $15,000 as determined by the Department of Defense, is not required for the needs and responsibilities of Federal agencies; and thereafter to dispose of said property by means deemed advantageous to the United States.

(b) Prior to such determination and disposal, the Secretary of Defense shall take steps as may be appropriate to determine that the property is not required for the needs of any Federal agency.

(c) The authority conferred in this Sec. 101-47.601 shall be exercised in accordance with the Act and regulations issued pursuant thereto, except that the reporting of such property to GSA under Subpart 101-47.2 shall not be required.

(d) The authority delegated in this Sec. 101-47.601 may be redelegated to any officer or employee of the Department of Defense.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 16780, Dec. 31, 1966; 56 FR 56935, Nov. 7, 1991]

Sec. 101-47.602 Delegation to the Department of Agriculture.

(a) Authority is delegated to the Secretary of Agriculture to determine that excess real property and related personal property under the control of the Department of Agriculture having a total estimated fair market value, including all the component units of the property, of less than $15,000 as determined by the Department of Agriculture, is not required for the needs and responsibilities of Federal agencies; and thereafter to dispose of said property by means deemed advantageous to the United States.

(b) Prior to such determination and disposal, the Secretary of Agriculture shall take steps as may be appropriate to determine that the property is not required for the needs of any Federal agency.

(c) The authority conferred in this Sec. 101-47.602 shall be exercised in accordance with the Act and regulations issued pursuant thereto, except that the reporting of such property to GSA under Subpart 101-47.2 shall not be required.

(d) The authority delegated in this Sec. 101-47.602 may be redelegated to any officer or employee of the Department of Agriculture.

[29 FR 16126, Dec. 3, 1964, as amended at 31 FR 16780, Dec. 31, 1966; 56 FR 56936, Nov. 7, 1991]

Sec. 101-47.603 Delegations to the Secretary of the Interior.

(a) Authority is delegated to the Secretary of the Interior to maintain custody and control of an accountability for those mineral resources which may be designated from time to time by the Administrator or his designee and which underlie Federal property currently utilized or excess or surplus to the Government's needs. Authority is also delegated to the Secretary to dispose of such mineral resources by lease and to administer any leases which are made.

(1) The Secretary may redelegate this authority to any officer, official, or employee of the Department of the Interior.

(2) Under this authority, the Secretary of the Interior, as head of the holding agency is responsible for the following: (i) Maintaining proper inventory records, and (ii) monitoring the minerals as necessary to ensure that no unauthorized mining or removal of the minerals occurs.

(3) Under this authority, the Secretary of the Interior, as head of the disposal agency, is responsible for the following: (i) Securing, in accordance with Sec. 101-47.303-4, any appraisals deemed necessary by the Secretary; (ii) coordinating with all surface landowners, Federal or otherwise, so as not to unduly interfere with the surface use; (iii) ensuring that the lands which may be disturbed or damaged are restored after removal of the mineral deposits is completed; and (iv) notifying the Administrator when the disposal of all marketable mineral deposits has been completed.

(4) The Secretary of the Interior, as head of the disposal agency, is responsible for complying with the applicable environmental laws and regulations, including (i) the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321, et seq.) and the implementing regulations issued by the Council on Environmental Quality (40 CFR Part 1500); (ii) Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f); and (iii) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.) and the Department of Commerce implementing regulations (15 CFR Parts 923 and 930).

(5) The Secretary of the Interior will forward promptly to the Administrator copies of any agreements executed under this authority.

(6) The Secretary of the Interior will provide to the Administrator an annual accounting of the proceeds received from leases executed under this authority.

(b) Authority is delegated to the Secretary of the Interior to determine that excess real property and related personal property under his control having a total estimated fair market value, including all components of the property, of less than $15,000 as determined by the Secretary, is not required for the needs and responsibilities of Federal agencies; and thereafter to dispose of the property by means most advantageous to the United States.

(1) Prior to such determination and disposal, the Secretary of the Interior shall determine that the property is not required for the needs of any Federal agency.

(2) The authority conferred in this Sec. 101-47.603 (b) shall be exercised in accordance with the Act and regulations issued pursuant thereto, except that the reporting of such property to GSA under Subpart 101-47.2 shall not be required.

(3) The authority delegated in this Sec. 101-47.603(b) may be redelegated to any officer or employee of the Department of the Interior.

[48 FR 50893, Nov. 4, 1983, as amended at 56 FR 56936, Nov. 7, 1991]

Sec. 101-47.604 Delegation to the Department of the Interior, the Department of Health and Human Services, and the Department of Education.

(a) The Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education, are delegated authority to transfer and to retransfer to each other, upon request, any of the property of either agency which is being used and will continue to be used in the administration of any functions relating to the Indians. The term "property," as used in this Sec. 101-47.604, includes real property and such personal property as the Secretary making the transfer or retransfer determines to be related personal property.

(b) This authority shall be exercised only in connection with property which the Secretary transferring or retransferring such property determines:

(1) Comprises a functional unit;

(2) Is located within the United States; and

(3) Has an acquisition cost of $100,000 or less: Provided, however, That the transfer or retransfer shall not include property situated in any area which is recognized as an urban area or place for the purpose of the most recent decennial census.

(c) No screening of the property as required by the regulations in this Part 101-47 need be conducted, it having been determined that such screening among Federal agencies would accomplish no useful purpose since the property which is subject to transfer or retransfer hereunder will continue to be used in the administration of any functions relating to the Indians.

(d) Any such transfer or retransfer of a specific property shall be without reimbursement except:

(1) Where funds programmed and appropriated for acquisition of the property are available to the Secretary requesting the transfer or retransfer; or

(2) Whenever reimbursement at fair value is required by Subpart 101-47.2.

(e) Where funds were not programed and appropriated for acquisition of the property, the Secretary requesting the transfer or retransfer shall so certify. Any determination necessary to carry out the authority contained in this Sec. 101-47.604 which otherwise would be required under this part to be made by GSA shall be made by the Secretary transferring or retransferring the property.

(f) The authority conferred in this Sec. 101-47.604 shall be exercised in accordance with such other provisions of the regulations of GSA issued pursuant to the Act as may be applicable.

(g) The Secretary of the Interior, the Secretary of Health and Human Services, and the Secretary of Education, are authorized to redelegate any of the authority contained in this Sec. 101-47.604 to any officers or employees of their respective departments.

[29 FR 16126, Dec. 3, 1964, as amended at 56 FR 56936, Nov. 7, 1991]

Subpart 101-47.7--Conditional Gifts of Real Property To Further the Defense Effort

Sec. 101-47.700 Scope of subpart.

This subpart provides for acceptance or rejection on behalf of the United States of any gift of real property offered on condition that it be used for a particular defense purpose and for subsequent disposition of such property (Act of July 27, 1954, (50 U.S.C. 1151-1156)).

[40 FR 12079, Mar. 17, 1975]

Sec. 101-47.701 Offers and acceptance of conditional gifts.

(a) Any agency receiving an offer of a conditional gift of real property for a particular defense purpose within the purview of the Act of July 27, 1954, shall notify the appropriate regional office of GSA and shall submit a recommendation as to acceptance or rejection of the gift.

(b) Prior to such notification, the receiving agency shall acknowledge receipt of the offer and advise the donor of its referral to the GSA regional office, but should not indicate acceptance or rejection of the gift on behalf of the United States. A copy of the acknowledgment shall accompany the notification and recommendation to the regional office.

(c) When the gift is determined to be acceptable and it can be accepted and used in the form in which offered, it will be transferred without reimbursement to an agency designated by GSA for use for the particular purpose for which it was donated.

(d) If the gift is one which GSA determines may and should be converted to money, the funds, after conversion, will be deposited with the Treasury Department for transfer to an appropriate account which will best effectuate the intent of the donor, in accordance with Treasury Department procedures.

Sec. 101-47.702 Consultation with agencies.

Such conditional gifts of real property will be accepted or rejected on behalf of the United States or transferred to an agency by GSA, only after consultation with the interested agencies.

Sec. 101-47.703 Advice of disposition.

GSA will advise the donor and the agencies concerned of the action taken with respect to acceptance or rejection of the conditional gift and of its final disposition.

Sec. 101-47.704 Acceptance of gifts under other laws.

Nothing in this Subpart 101-47.7 shall be construed as applicable to the acceptance of gifts under the provisions of other laws.

Subpart 101-47.8--Identification of Unneeded Federal Real Property

Sec. 101-47.800 Scope of subpart.

This subpart is designed to implement, in part, section 2 of Executive Order 12512, which provides, in part, that the Administrator of General Services shall provide Governmentwide policy, oversight and guidance for Federal real property management. The Administrator of General Services shall issue standards, procedures, and guidelines for the conduct of surveys of real property holdings of Executive agencies on a continuing basis to identify properties which are not utilized, are underutilized, or are not being put to their optimum use; and make reports describing any property or portion thereof which has not been reported excess to the requirements of the holding agency and which, in the judgment of the Administrator, is not utilized, is underutilized, or is not being put to optimum use, and which he recommends should be reported as excess property. The provisions of this subpart are presently limited to fee-owned properties and supporting leaseholds and lesser interests located within the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. The scope of this subpart may be enlarged at a later date to include real property in additional geographical areas and other interests in real property.

[51 FR 193, Jan. 3, 1986]

Sec. 101-47.801 Standards.

Each executive agency shall use the following standards in identifying unneeded Federal property.

(a) Definitions--(1) Not utilized. "Not utilized" means an entire property or portion thereof, with or without improvements, not occupied for current program purposes of the accountable executive agency, or occupied in caretaker status only.

(2) Underutilized. "Underutilized" means an entire property or portion thereof, with or without improvements:

(i) Which is used only at irregular periods or intermittently by the accountable executive agency for current program purposes of that agency; or

(ii) Which is used for current program purposes that can be satisfied with only a portion of the property.

(3) Not being put to optimum use. "Not being put to optimum use" means an entire property or portion thereof, with or without improvements, which:

(i) Even though utilized for current program purposes of the accountable executive agency is of such nature or value, or is in such a location that it could be utilized for a different significantly higher and better purpose; or

(ii) The costs of occupying are substantially higher than would be applicable for other suitable properties that could be made available to the accountable executive agency through transfer, purchase, or lease with total net savings to the Government after consideration of property values as well as costs of moving, occupancy, efficiency of operations, environmental effects, regional planning, and employee morale.

(b) Guidelines. The following general guidelines shall be considered by each executive agency in its annual review (see Sec. 101-47.802):

(1) Is the property being put to its highest and best use?

(i) Consider such aspects as surrounding neighborhood, zoning, and other environmental factors;

(ii) Is present use compatible with State, regional, or local development plans and programs?

(iii) Consider whether Federal use of the property would be justified if rental charge equivalent to commercial rates were added to the program costs for the function it is serving.

(2) Are operating and maintenance costs excessive compared with those of other similar facilities?

(3) Will contemplated program changes alter property requirements?

(4) Is all of the property essential for program requirements?

(5) Will local zoning provide sufficient protection for necessary buffer zones if a portion of the property is released?

(6) Are buffer zones kept to a minimum?

(7) Is the present property inadequate for approved future programs?

(8) Can net savings to the Nation be realized through relocation considering property prices or rentals, costs of moving, occupancy, and increase in efficiency of operations?

(9) Have developments on adjoining nonfederally owned land or public access or road rights-of-way granted across the Government-owned land rendered the property or any portion thereof unsuitable or unnecessary for program requirements?

(10) If Federal employees are housed in Government-owned residential property, is the local market willing to acquire Government-owned housing or can it provide the necessary housing and other related services that will permit the Government-owned housing area to

be released? (Provide statistical data on cost and availability of housing on the local market.)

(11) Can the land be disposed of and program requirements satisfied through reserving rights and interests to the Government in the property if it is released?

(12) Is a portion of any property being retained primarily because the present boundaries are marked by the existence of fences, hedges, roads, and utility systems?

(13) Is any land being retained merely because it is considered undesirable property due to topographical features or to encumbrances for rights-of-way or because it is believed to be not disposable?

(14) Is land being retained merely because it is landlocked?

(15) Is there land or space in Government-owned buildings that can be made available for utilization by others within or outside Government on a temporary basis?

[35 FR 5261, Mar. 28, 1970, as amended at 37 FR 5030, Mar. 9, 1972; 40 FR 12079, Mar. 17, 1975]

Sec. 101-47.802 Procedures.

(a) Executive agency annual review. Each executive agency shall make an annual review of its property holdings.

(1) In making such annual reviews, each executive agency shall use the standards set forth in Sec. 101-47.801 in identifying property that is not utilized, is underutilized, or is not being put to its optimum use.

(2) A written record of the review of each individual facility shall be prepared. The written review record shall contain comments relative to each of the above guidelines and an overall map of the facility showing property boundaries, major land uses, improvements, safety zones, proposed uses, and regulations or other authorizations that sanction the requirement for and usage made of or proposed for individual parcels of the property. A copy of the review record shall be made available to GSA upon request or to the GSA survey representative at the time of the survey of each individual facility.

(3) Each executive agency shall, as a result of its annual review, determine, in its opinion, whether any portion of its property is not utilized, is underutilized, or is not being put to optimum use. With regard to each property, the following actions shall be taken:

(i) When the property or a portion thereof is determined to be not utilized, the executive agency shall:

(A) Initiate action to release the property; or

(B) Hold for a foreseeable future program use upon determination by the head of the executive agency. Such determination shall be fully and completely documented and the determination and documentation kept available for GSA review (see Sec. 101-47.802(b)(3)(ii)(B)). If property of this type which is being held for future use can be made available for temporary use by others, the executive agency shall notify the appropriate regional office of GSA before any permit or license for use is issued to another Federal agency or before any out-lease is granted by the executive agency. GSA will advise the executive agency whether the property should be permitted to another Federal agency for temporary use and will advise the executive agency the name of the Federal agency to whom the permit shall be granted.

(ii) When the property is determined to be underutilized, the executive agency shall:

(A) Limit the existing program to a reduced area and initiate action to release the remainder; or

(B) Shift present use imposed on the property to another property so that release action may be initiated for the property under review.

(iii) When, based on an indepth study and evaluation, it is determined that the property is not being put to its optimum use, the executive agency shall relocate the current program whenever a suitable alternate site, necessary funding, and legislative authority are available to accomplish that purpose. When the site, funding, or legislative authority are not available, a special report shall be made to the appropriate regional office of GSA for its consideration in obtaining possible assistance in accomplishing relocation.

(b) GSA Survey. Pursuant to section 2 of Executive Order 12512, GSA will conduct, on a continuing basis, surveys of real property holdings of all Executive agencies to identify properties which, in the judgment of the Administrator of General Services, are not utilized, are underutilized, or are not being put to their optimum use.

(1) GSA surveys of the real property holdings of executive agencies will be conducted by officials of the GSA Central Office and/or regional offices of GSA for the property within the geographical area of each region.

(i) The head of the field office of the agency having accountability for the facility will be notified in advance of a scheduled GSA survey and furnished at that time with copies of these regulations.

(ii) The head of that field office shall arrange for an appropriate official of the executive agency having necessary authority, and who is sufficiently knowledgeable concerning the property and current and future program uses of the property, to be available to assist the GSA representative in his survey.

(2) [Reserved]

(3) To facilitate the GSA survey, executive agencies shall:

(i) Cooperate fully with GSA in its conduct of the surveys; and

(ii) Make available to the GSA survey representative records and information pertinent to the description and to the current and proposed use of the property such as:

(A) Brief description of facilities (number of acres, buildings, and supporting facilities);

(B) The most recent utilization report or analysis made of the property including the written record of the annual review made by the agency, pursuant to Sec. 101-47.802(a), together with any supporting documents;

(C) Detail maps which show property boundaries, major land uses, improvements, safety zones, proposed uses, and regulations or other authorizations that sanction the usage made or proposed for individual parcels or the entire property; drawings; and layout plans.

(4) Upon receipt of notification of the pending GSA survey, the executive agency shall initiate action immediately to provide the GSA representative with an escort into classified or sensitive areas or to inform that representative of steps that must be taken to obtain necessary special security clearances or both.

(5) Upon completion of the field work for the survey:

(i) The GSA representative will so inform the executive agency designated pursuant to 101-47.802(b)(1). To avoid any possibility of misunderstanding or premature publicity, conclusions and recommendations will not be discussed with this official. However, survey teams should discuss the facts they have obtained with local officials at the end of the survey to ensure that all information necessary to conduct a complete survey is obtained. The GSA representative will evaluate and incorporate the results of the field work into a survey report and forward the survey report to the GSA Central Office.

(ii) The GSA Central Office will notify the head of the Executive agency or his designee, in writing, of the survey findings and/or recommendations. A copy of the survey report will be enclosed when a recommendation is made that some or all of the real property should be reported excess, and the comments of the Executive agency will be requested thereon. The Executive agency will be afforded 45 calendar days from the date of the notice in which to submit such comments. If the case is resolved, GSA Central Office will notify the head of the Executive agency or his designee, in writing, of the resolution, and the case will be completed at such time as the agency completes all resolved excess and/or disposal actions. The agency will be afforded a period of 90 calendar days from the date of the notice to complete such actions.

(iii)-(iv) [Reserved]

(v) If the case is not resolved, the GSA Central Office will request assistance of the Executive Office of the President to obtain resolution.

[35 FR 5261, Mar. 28, 1970, as amended at 36 FR 7215, Apr. 16, 1971; 37 FR 5030, Mar. 9, 1972; 42 FR 40698, Aug. 11, 1977; 48 FR 25200, June 6, 1983; 51 FR 194, Jan. 3, 1986]

Subpart 101-47.9 Use of Federal Real Property to Assist the Homeless

SOURCE: 56 FR 23794, May 24, 1991, unless otherwise noted.

Sec. 101-47.901 Definitions.

Applicant means any representative of the homeless which has submitted an application to the Department of Health and Human Services to obtain use of a particular suitable property to assist the homeless.

Checklist or property checklist means the form developed by HUD for use by landholding agencies to report the information to be used by HUD in making determinations of suitability.

Classification means a property's designation as unutilized, underutilized, excess, or surplus.

Day means one calendar day including weekends and holidays.

Eligible organization means a State, unit of local government or a private non-profit organization which provides assistance to the homeless, and which is authorized by its charter or by State law to enter into an agreement with the Federal government for use of real property for the purposes of this subpart. Representatives of the homeless interested in receiving a deed for a particular piece of surplus Federal property must be section 501(c)(3) tax exempt.

Excess property means any property under the control of any Federal executive agency that is not required for the agency's needs or the discharge of its responsibilities, as determined by the head of the agency pursuant to 40 U.S.C. 483.

GSA means the General Services Administration.

HHS means the Department of Health and Human Services.

Homeless means:

(1) An individual or family that lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual or family that has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. This term does not include any individual imprisoned or otherwise detained under an Act of the Congress or a State law.

HUD means the Department of Housing and Urban Development.

ICH means the Interagency Council on the Homeless.

Landholding agency means a Federal department or agency with statutory authority to control real property.

Lease means an agreement between either the Department of Health and Human Services for surplus property, or landholding agencies in the case of non- excess properties or properties subject to the Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687), and the applicant, giving rise to the relationship of lessor and lessee for the use of Federal real property for a term of at least one year under the conditions set forth in the lease document.

Non-profit organization means an organization no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual; that has a voluntary board; that has an accounting system or has designated an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting procedures; and that practices nondiscrimination in the provision of assistance.

Permit means a license granted by a landholding agency to use unutilized or underutilized property for a specific amount of time under terms and conditions determined by the landholding agency.

Property means real property consisting of vacant land or buildings, or a portion thereof, that is excess, surplus, or designated as unutilized or underutilized in surveys by the heads of landholding agencies conducted pursuant to section 202(b)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2).)

Regional Homeless Coordinator means a regional coordinator of the Interagency Council on the Homeless.

Representative of the Homeless means a State or local government agency, or private nonprofit organization which provides, or proposes to provide, services to the homeless.

Screen means the process by which GSA surveys Federal agencies, or State, local and non-profit entities, to determine if any such entity has an interest in using excess Federal property to carry out a particular agency mission or a specific public use.

State Homeless Coordinator means a state contact person designated by a state to receive and disseminate information and communications received from the Interagency Council on the Homeless in accordance with section 210(a) of the Stewart B. McKinney Act of 1987, as amended.

Suitable property means that HUD has determined that a particular property satisfies the criteria listed in Sec. 101-47.906.

Surplus property means any excess real property not required by any Federal landholding agency for its needs or the discharge of its responsibilities, as determined by the Administrator of GSA.

Underutilized means an entire property or portion thereof, with or without improvements which is used only at irregular periods or intermittently by the accountable landholding agency for current program purposes of that agency, or which is used for current program purposes that can be satisfied with only a portion of the property.

Unsuitable property means that HUD has determined that a particular property does not satisfy the criteria in Sec. 101-47.906.

Unutilized property means an entire property or portion thereof, with or without improvements, not occupied for current program purposes for the accountable executive agency or occupied in caretaker status only.

Sec. 101-47.902 Applicability.

(a) This part applies to Federal real property which has been designated by Federal landholding agencies as unutilized, underutilized, excess or surplus and is therefore subject to the provisions of title V of the McKinney Act (42 U.S.C. 11411).

(b) The following categories of properties are not subject to this subpart (regardless of whether they may be unutilized or underutilized).

(1) Machinery and equipment.

(2) Government-owned, contractor-operated machinery, equipment, land, and other facilities reported excess for sale only to the using contractor and subject to a continuing military requirement.

(3) Properties subject to special legislation directing a particular action.

(4) Properties subject to a Court Order.

(5) Property not subject to survey requirements of Executive Order 12512 (April 29, 1985).

(6) Mineral rights interests.

(7) Air Space interests.

(8) Indian Reservation land subject to section 202(a)(2) of the Federal Property and Administrative Service Act of 1949, as amended.

(9) Property interests subject to reversion.

(10) Easements.

(11) Property purchased in whole or in part with Federal funds if title to the property is not held by a Federal landholding agency as defined in this Part.

Sec. 101-47.903 Collecting the information.

(a) Canvass of landholding agencies. On a quarterly basis, HUD will canvass landholding agencies to collect information about property described as unutilized, underutilized, excess, or surplus, in surveys conducted by the agencies under section 202 of the Federal Property and Administrative Services Act (40 U.S.C. 483), Executive Order 12512, and 41 CFR part 101- 47.800. Each canvass will collect information on properties not previously reported and about property reported previously the status or classification of which has changed or for which any of the information reported on the property checklist has changed.

(1) HUD will request descriptive information on properties sufficient to make a reasonable determination, under the criteria described below, of the suitability of a property for use as a facility to assist the homeless.

(2) HUD will direct landholding agencies to respond to requests for information within 25 days of receipt of such requests.

(b) Agency Annual Report. By December 31 of each year, each landholding agency must notify HUD regarding the current availability status and classification of each property controlled by the agency that:

(1) Was included in a list of suitable properties published that year by HUD, and

(2) Remains available for application for use to assist the homeless, or has become available for application during that year.

(c) GSA Inventory. HUD will collect information, in the same manner as described in paragraph (a) of this section, from GSA regarding property that is in GSA's current inventory of excess or surplus property.

(d) Change in Status. If the information provided on the property checklist changes subsequent to HUD's determination of suitability, and the property remains unutilized, underutilized, excess or surplus, the landholding agency shall submit a revised property checklist in response to the next quarterly canvass. HUD will make a new determination of suitability and, if it differs from the previous determination, republish the property information in the Federal Register. For example, property determined unsuitable for national security concerns may no longer be subject to security restrictions, or property determined suitable may subsequently be found to be contaminated.

Sec. 101-47.904 Suitability determination.

(a) Suitability determination. Within 30 days after the receipt of information from landholding agencies regarding properties which were reported pursuant to the canvass described in Sec. 101-47.903(a), HUD will determine, under criteria set forth in Sec. 101-47.906, which properties are suitable for use as facilities to assist the homeless and report its determination to the landholding agency. Properties that are under lease, contract, license, or agreement by which a Federal agency retains a real property interest or which are scheduled to become unutilized or underutilized will be reviewed for suitability no earlier than six months prior to the expected date when the property will become unutilized or underutilized, except that properties subject to the Base Closure and Realignment Act may be reviewed up to eighteen months prior to the expected date when the property will become unutilized or underutilized.

(b) Scope of suitability. HUD will determine the suitability of a property for use as a facility to assist the homeless without regard to any particular use.

(c) Environmental information. HUD will evaluate the environmental information contained in property checklists forwarded to HUD by the landholding agencies solely for the purpose of determining suitability of properties under the criteria in Sec. 101-47.906.

(d) Written record of suitability determination. HUD will assign an identification number to each property reviewed for suitability. HUD will maintain a written public record of the following:

(1) The suitability determination for a particular piece of property, and the reasons for that determination; and

(2) The landholding agency's response to the determination pursuant to the requirements of Sec. 101-47.907(a).

(e) Property determined unsuitable. Property that is reviewed by HUD under this section and that is determined unsuitable for use to assist the homeless may not be made available for any other purpose for 20 days after publication in the Federal Register of a Notice of unsuitability to allow for review of the determination at the request of a representative of the homeless.

(f) Procedures for appealing unsuitability determinations.

(1) To request review of a determination of unsuitability, a representative of the homeless must contact HUD within 20 days of publication of notice in the Federal Register that a property is unsuitable. Requests may be submitted to HUD in writing or by calling 1-800-927-7588 (Toll Free). Written requests must be received no later than 20 days after notice of unsuitability is published in the Federal Register.

(2) Requests for review of a determination of unsuitability may be made only by representatives of the homeless, as defined in section 101-47.901.

(3) The request for review must specify the grounds on which it is based, i.e., that HUD has improperly applied the criteria or that HUD has relied on incorrect or incomplete information in making the determination (e.g., that property is in a floodplain but not in a floodway).

(4) Upon receipt of a request to review a determination of unsuitability, HUD will notify the landholding agency that such a request has been made, request that the agency respond with any information pertinent to the review, and advise the agency that it should refrain from initiating disposal procedures until HUD has completed its reconsideration regarding unsuitability.

(i) HUD will act on all requests for review within 30 days of receipt of the landholding agency's response and will notify the representative of the homeless and the landholding agency in writing of its decision.

(ii) If a property is determined suitable as a result of the review, HUD will request the landholding agency's determination of availability pursuant to Sec. 101-47.907(a), upon receipt of which HUD will promptly publish the determination in the Federal Register. If the determination of unsuitability stands, HUD will inform the representative of the homeless of its decision.

Sec. 101-47.905 Real property reported excess to GSA.

(a) Each landholding agency must submit a report to GSA of properties it determines excess. Each landholding agency must also provide a copy of HUD's suitability determination, if any, including HUD's identification number for the property.

(b) If a landholding agency reports a property to GSA which has been reviewed by HUD for homeless assistance suitability and HUD determined the property suitable, GSA will screen the property pursuant to Sec. 101-47.905(g) and will advise HUD of the availability of the property for use by the homeless as provided in Sec. 101-47.905(e). In lieu of the above, GSA may submit a new checklist to HUD and follow the procedures in Sec. 101-47.905(c) through Sec. 101-47.905(g).

(c) If a landholding agency reports a property to GSA which has not been reviewed by HUD for homeless assistance suitability, GSA will complete a property checklist, based on information provided by the landholding agency, and will forward this checklist to HUD for a suitability determination. This checklist will reflect any change in classification, i.e., from unutilized or underutilized to excess.

(d) Within 30 days after GSA's submission, HUD will advise GSA of the suitability determination.

(e) When GSA receives a letter from HUD listing suitable excess properties in GSA's inventory, GSA will transmit to HUD within 45

days a response which includes the following for each identified property:

(1) A statement that there is no other compelling Federal need for the property, and therefore, the property will be determined surplus; or

(2) A statement that there is further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

(f) When an excess property is determined suitable and available and notice is published in the Federal Register, GSA will concurrently notify HHS, HUD, State and local government units, known homeless assistance providers that have expressed interest in the particular property, and other organizations, as appropriate, concerning suitable properties.

(g) Upon submission of a Report of Excess to GSA, GSA may screen the property for Federal use. In addition, GSA may screen State and local governmental units and eligible nonprofit organizations to determine interest in the property in accordance with current regulations. (See 41 CFR 101- 47.203-5, 101-47.204-1 and 101-47.303-2.)

(h) The landholding agency will retain custody and accountability and will protect and maintain any property which is reported excess to GSA as provided in 41 CFR 101-47.402.

Sec. 101-47.906 Suitability criteria.

(a) All properties, buildings and land will be determined suitable unless a property's characteristics include one or more of the following conditions:

(1) National security concerns. A property located in an area to which the general public is denied access in the interest of national security (e.g., where a special pass or security clearance is a condition of entry to the property) will be determined unsuitable. Where alternative access can be provided for the public without compromising national security, the property will not be determined unsuitable on this basis.

(2) Property containing flammable or explosive materials. A property located within 2000 feet of an industrial, commercial or Federal facility handling flammable or explosive material (excluding underground storage) will be determined unsuitable. Above ground containers with a capacity of 100 gallons or less, or larger containers which provide the heating or power source for the property, and which meet local safety, operation, and permitting standards, will not affect whether a particular property is determined suitable or unsuitable. Underground storage, gasoline stations and tank trucks are not included in this category and their presence will not be the basis of an unsuitability determination unless there is evidence of a threat to personal safety as provided in paragraph (a)(5) of this section.

(3) Runway clear zone and military airfield clear zone. A property located within an airport runway clear zone or military airfield clear zone will be determined unsuitable.

(4) Floodway. A property located in the floodway of a 100 year floodplain will be determined unsuitable. If the floodway has been contained or corrected, or if only an incidental portion of the property not affecting the use of the remainder of the property is in the floodway, the property will not be determined unsuitable.

(5) Documented deficiencies. A property with a documented and extensive condition(s) that represents a clear threat to personal physical safety will be determined unsuitable. Such conditions may include, but are not limited to, contamination, structural damage or extensive deterioration, friable asbestos, PCB's, or natural hazardous substances such as radon, periodic flooding, sinkholes or earth slides.

(6) Inaccessible. A property that is inaccessible will be determined unsuitable. An inaccessible property is one that is not accessible by road (including property on small off-shore islands) or is land locked (e.g., can be reached only by crossing private property and there is no established right or means of entry).

Sec. 101-47.907 Determination of availability.

(a) Within 45 days after receipt of a letter from HUD pursuant to 101-47.904(a), each landholding agency must transmit to HUD a statement of one of the following:

(1) In the case of unutilized or underutilized property:

(i) An intention to declare the property excess,

(ii) An intention to make the property available for use to assist the homeless, or

(iii) the reasons why the property cannot be declared excess or made available for use to assist the homeless. The reasons given must be different than those listed as suitability criteria in section 101-47.906.

(2) In the case of excess property which had previously been reported to GSA:

(i) A statement that there is no compelling Federal need for the property, and that, therefore, the property will be determined surplus; or

(ii) A statement that there is a further and compelling Federal need for the property (including a full explanation of such need) and that, therefore, the property is not presently available for use to assist the homeless.

Sec. 101-47.908 Public notice of determination.

(a) No later than 15 days after the last 45 day period has elapsed for receiving responses from the landholding agencies regarding availability, HUD will publish in the Federal Register a list of all properties reviewed, including a description of the property, its address, and classification. The following designations will be made:

(1) Properties that are suitable and available.

(2) Properties that are suitable and unavailable.

(3) Properties that are suitable and to be declared excess.

(4) Properties that are unsuitable.

(b) Information about specific properties can be obtained by contacting HUD at the following toll free number, 1-800-927-7588.

(c) HUD will transmit to the ICH a copy of the list of all properties published in the Federal Register. The ICH will immediately distribute to all state and regional homeless coordinators area-relevant portions of the list. The ICH will encourage the state and regional homeless coordinators to disseminate this information widely.

(d) No later than February 15 of each year, HUD shall publish in the Federal Register a list of all properties reported pursuant to Sec. 101-47.903(b).

(e) HUD shall publish an annual list of properties determined suitable but which agencies reported unavailable including the reasons such properties are not available.

(f) Copies of the lists published in the Federal Register will be available for review by the public in the HUD headquarters building library (room 8141); area-relevant portions of the lists will be available in the HUD regional offices and in major field offices.

Sec. 101-47.909 Application process.

(OMB approval number 09370191)

(a) Holding period.

(1) Properties published as available for application for use to assist the homeless shall not be available for any other purpose for a period of 60 days beginning on the date of publication. Any representative of the homeless interested in any underutilized, unutilized, excess or surplus Federal property for use as a facility to assist the homeless must send to HHS a written expression of interest in that property within 60 days after the property has been published in the Federal Register.

(2) If a written expression of interest to apply for suitable property for use to assist the homeless is received by HHS within the 60 day holding period, such property may not be made available for any other purpose until the date HHS or the appropriate landholding agency has completed action on the application submitted pursuant to that expression of interest.

(3) The expression of interest should identify the specific property, briefly describe the proposed use, include the name of the organization, and indicate whether it is a public body or a private non-profit organization. The expression of interest must be sent to the Division of Health Facilities Planning (DHFP) of the Department of Health and Human Services at the following address:

Director, Division of Health Facilities Planning, Public Health Service, Room 17A-10, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

HHS will notify the landholding agency (for unutilized and underutilized properties) or GSA (for excess and surplus properties) when an expression of interest has been received for a particular property.

(4) An expression of interest may be sent to HHS any time after the 60 day holding period has expired. In such a case, an application submitted pursuant to this expression of interest may be approved for use by the homeless if:

(i) No application or written expression of interest has been made under any law for use of the property for any purpose; and

(ii) In the case of excess or surplus property, GSA has not received a bona fide offer to purchase that property or advertised for the sale of the property by public auction.

(b) Application Requirements. Upon receipt of an expression of interest, DHFP will send an application packet to the interested entity. The application packet requires the applicant to provide certain information, including the following----

(1) Description of the applicant organization. The applicant must document that it satisfies the definition of a "representative of the homeless," as specified in section 101-47.901 of this subpart. The applicant must document its authority to hold real property. Private non-profit organizations applying for deeds must document that they are section 501(c)(3) tax-exempt.

(2) Description of the property desired. The applicant must describe the property desired and indicate that any modifications made to the property will conform to local use restrictions except for local zoning regulations.

(3) Description of the proposed program. The applicant must fully describe the proposed program and demonstrate how the program will address the needs of the homeless population to be assisted. The applicant must fully describe what modifications will be made to the property before the program becomes operational.

(4) Ability to finance and operate the proposed program. The applicant must specifically describe all anticipated costs and sources of funding for the proposed program. The applicant must indicate that it can assume care, custody, and maintenance of the property and that it has the necessary funds or the ability to obtain such funds to carry out the approved program of use for the property.

(5) Compliance with non-discrimination requirements. Each applicant and lessee under this part must certify in writing that it will comply with the requirements of the Fair Housing Act (42 U.S.C. 3601-19) and implementing regulations; and as applicable, Executive Order 11063 (Equal Opportunity in Housing) and implementing regulations; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d to d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations; the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations; and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations. The applicant must state that it will not discriminate on the basis of race, color, national origin, religion, sex, age, familial status, or handicap in the use of the property, and will maintain the required records to demonstrate compliance with Federal laws.

(6) Insurance. The applicant must certify that it will insure the property against loss, damage, or destruction in accordance with the requirements of 45 CFR 12.9.

(7) Historic preservation. Where applicable, the applicant must provide information that will enable HHS to comply with Federal historic preservation requirements.

(8) Environmental information. The applicant must provide sufficient information to allow HHS to analyze the potential impact of the applicant's proposal on the environment, in accordance with the instructions provided with the application packet. HHS will assist applicants in obtaining any pertinent environmental information in the possession of HUD, GSA, or the landholding agency.

(9) Local government notification. The applicant must indicate that it has informed the applicable unit of general local government responsible for providing sewer, water, police, and fire services, in writing of its proposed program.

(10) Zoning and Local Use Restrictions. The applicant must indicate that it will comply with all local use restrictions, including local building code requirements. Any applicant which applies for a lease or permit for a particular property is not required to comply with local zoning requirements. Any applicant applying for a deed of a particular property, pursuant to section 101-47.909(b)(3), must comply with local zoning requirements, as specified in 45 CFR part 12.

(c) Scope of evaluations. Due to the short time frame imposed for evaluating applications, HHS' evaluation will, generally, be limited to the information contained in the application.

(d) Deadline. Completed applications must be received by DHFP, at the above address, within 90 days after an expression of interest is received from a particular applicant for that property. Upon written request from the applicant, HHS may grant extensions, provided that the appropriate landholding agency concurs with the extension. Because each applicant will have a different deadline based on the date the applicant submitted an expression of interest, applicants should contact the individual landholding agency to confirm that a particular property remains available prior to submitting an application.

(e) Evaluations.

(1) Upon receipt of an application, HHS will review it for completeness, and, if incomplete, may return it or ask the applicant to furnish any missing or additional required information prior to final evaluation of the application.

(2) HHS will evaluate each completed application within 25 days of receipt and will promptly advise the applicant of its decision. Applications are evaluated on a first-come, first-serve basis. HHS will notify all organizations which have submitted expressions of interest for a particular property regarding whether the first application received for that property has been approved or disapproved. All applications will be reviewed on the basis of the following elements, which are listed in descending order of priority, except that paragraph (e)(2)(iv) and (e)(2)(v) of this section are of equal importance.

(i) Services offered. The extent and range of proposed services, such as meals, shelter, job training, and counseling.

(ii) Need. The demand for the program and the degree to which the available property will be fully utilized.

(iii) Implementation Time. The amount of time necessary for the proposed program to become operational.

(iv) Experience. Demonstrated prior success in operating similar programs and recommendations attesting to that fact by Federal, State, and local authorities.

(v) Financial Ability. The adequacy of funding that will likely be available to run the program fully and properly and to operate the facility.

(3) Additional evaluation factors may be added as deemed necessary by HHS. If additional factors are added, the application packet will be revised to include a description of these additional factors.

(4) If HHS receives one or more competing applications for a property within 5 days of the first application HHS will evaluate all

completed applications simultaneously. HHS will rank approved applications based on the elements listed in section 101-47.908(e)(2), and notify the landholding agency, or GSA, as appropriate, of the relative ranks.

Sec. 101-47.910 Action on approved applications.

(a) Unutilized and underutilized properties.

(1) When HHS approves an application, it will so notify the applicant and forward a copy of the application to the landholding agency. The landholding agency will execute the lease, or permit document, as appropriate, in consultation with the applicant.

(2) The landholding agency maintains the discretion to decide the following:

(i) The length of time the property will be available. (Leases and permits will be for a period of at least one year unless the applicant requests a shorter term.)

(ii) Whether to grant use of the property via a lease or permit;

(iii) The terms and conditions of the lease or permit document.

(b) Excess and surplus properties.

(1) When HHS approves an application, it will so notify the applicant and request that GSA assign the property to HHS for leasing. Upon receipt of the assignment, HHS will execute a lease in accordance with the procedures and requirements set out in 45 CFR part 12. In accordance with 41 CFR 101-47.402, custody and accountability of the property will remain throughout the lease term with the agency which initially reported the property as excess.

(2) Prior to assignment to HHS, GSA may consider other Federal uses and other important national needs; however, in deciding the disposition of surplus real property, GSA will generally give priority of consideration to uses to assist the homeless. GSA may consider any competing request for the property made under section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)) that is so meritorious and compelling that it outweighs the needs of the homeless, and HHS may likewise consider any competing request made under subsection 203(k)(1) of that law.

(3) Whenever GSA or HHS decides in favor of a competing request over a request for property for homeless assistance use as provided in paragraph (b)(2) of this section, the agency making the decision will transmit to the appropriate committees of the Congress an explanatory statement which details the need satisfied by conveyance of the surplus property, and the reasons for determining that such need was so meritorious and compelling as to outweigh the needs of the homeless.

(4) Deeds. Surplus property may be conveyed to representatives of the homeless pursuant to section 203(k) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484(k)(1), and section 501(f) of the McKinney Act as amended, 42 U.S.C. 11411. Representatives of the homeless must complete the application packet pursuant to the requirements of section 101-47.909 of this part and in accordance with the requirements of 45 CFR part 12.

(c) Completion of Lease Term and Reversion of Title. Lessees and grantees will be responsible for the protection and maintenance of the property during the time that they possess the property. Upon termination of the lease term or reversion of title to the Federal government, the lessee or grantee will be responsible for removing any improvements made to the property and will be responsible for restoration of the property. If such improvements are not removed, they will become the property of the Federal government. GSA or the landholding agency, as appropriate, will assume responsibility for protection and maintenance of a property when the lease terminates or title reverts.

Sec. 101-47.912 No applications approved.

(a) At the end of the 60 day holding period described in Sec. 101-47.909(a), HHS will notify GSA, or the landholding agency, as appropriate, if an expression of interest has been received for a particular property. Where there is no expression of interest, GSA or the landholding agency, as appropriate, will proceed with disposal in accordance with applicable law.

(b) Upon advice from HHS that all applications have been disapproved, or if no completed applications or requests for extensions have been received by HHS within 90 days from the date of the last expression of interest, disposal may proceed in accordance with applicable law.

Subparts 101-47.10--101-47.48 [Reserved]

Subpart 101-47.49--Illustrations

Sec. 101-47.4900 Scope of subpart.

This subpart sets forth certain forms and illustrations referred to previously in this part. Agency field offices should obtain the GSA forms prescribed in this subpart by submitting their future requirements to their Washington headquarters office which will forward consolidated annual requirements to the General Services Administration (BRAF), Washington, DC 20405. Standard forms should be obtained from the nearest GSA supply distribution facility.

[40 FR 12080, Mar. 17, 1975]

Sec. 101-47.4901 [Reserved]

Sec. 101-47.4902 Standard Form 118, Report of Excess Real Property.

Sec. 101-47.4902-1 Standard Form 118a, Buildings, Structures, Utilities, and Miscellaneous Facilities.

Sec. 101-47.4902-2 Standard Form 118b, Land.

Sec. 101-47.4902-3 Standard Form 118c, Related Personal Property.

Sec. 101-47.4902-4 Instructions for the preparation of Standard Form 118, and Attachments, Standard Forms 118a, 118b, and 118c.

[33 FR 12003, Aug. 23, 1968, as amended at 36 FR 9022, May 18, 1971]

Sec. 101-47.4904 GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.

Note: The illustrations in Sec. 101-47.4904 are filed as part of the original document and do not appear in the Federal Register or the Code of Federal Regulations.

[42 FR 40698, Aug. 11, 1977]

Sec. 101-47.4904-1 Instructions for preparation of GSA Form 1334, Request for Transfer of Excess Real and Related Personal Property.

Note: The illustrations in Sec. 101-47.4904-1 are filed as part of the original document and do not appear in the Federal Register or the Code of Federal Regulations.

[42 FR 40698, Aug. 11, 1977]

Sec. 101-47.4905 Extract of statutes authorizing disposal of surplus real property to public agencies.

Statute: 16 U.S.C. 667b-d. Disposals for wildlife conservation purposes.

Type of property*: Any surplus real property (with or without improvements) that can be utilized for wildlife conservation purposes other than migratory birds, exclusive of (1) oil, gas, and mineral rights, and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: The agency of the State exercising the administration of the wildlife resources of the State.

Statute: 23 U.S.C. 107 and 317. Disposals for Federal aid and other highways.

Type of property *: Any real property or interests therein determined by the Secretary of Transportation to be reasonably necessary for the right-of- way of a Federal aid or other highway (including control of access thereto from adjoining lands) or as a source of material for the construction or maintenance of any such highway adjacent to such real property or interest therein, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: State wherein the property is situated (or such political subdivision of the State as its law may provide), including the District of Columbia and Commonwealth of Puerto Rico.

Statute: 40 U.S.C. 122. Transfer to the District of Columbia of jurisdiction over properties within the District for administration and maintenance under conditions to be agreed upon.

Type of property: Any surplus real property, except property for which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: District of Columbia.

Statute: 40 U.S.C. 345c. Disposals for authorized widening of public highways, streets, or alleys.

Type of property *: Such interest in surplus real property as the head of the disposal agency determines will not be adverse to the interests of the United States, exclusive of (1) oil, gas and mineral rights; (2) property subject to disposal for Federal aid and other highways under the provisions of 3 U.S.C. 107 and 317; and (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: State or political subdivision of a State.

Statute: 40 U.S.C. 484(e)(3)(H). Disposals by negotiations.

Type of property: Any surplus real property including related personal property.

Eligible public agency: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported agency in any of them.

Statute: 40 U.S.C. 484(k)(1)(A). Disposals for school, classroom, or other educational purposes.

Type of property *: Any surplus real property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported educational institution in any of them.

Statute: 40 U.S.C. 484(k)(1)(B). Disposals for public health purposes including research.

Type of property *: Any surplus real property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported medical institution in any of them.

Statute: 40 U.S.C. 484(k)(2). Disposals for public park or recreation areas.

Type of property*: Any surplus real property recommended by the Secretary of the Interior as being needed for use as a public park or recreation area, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(k)(3). Disposals for historic monuments.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of the Interior must determine that the property is suitable and desirable for use as a historic monument for the benefit of the public. No property shall be determined to be suitable or desirable for use as a historic monument except in conformity with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments established by section 3 of the act entitled "An Act for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes," approved Aug. 21, 1935 (49 Stat. 666), and only so much of any such property shall be so determined to be suitable or desirable for such use as is necessary for the preservation and property observation of its historic features. The Administrator of General Services may authorize the use of the property conveyed under this subsection for revenue-producing activities if the Secretary of the Interior (1) determines that such activities are compatible with use of the property for historic monument purposes, (2) approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property, (3) approves grantee's plan for financing repairs, rehabilitation, restoration, and maintenance of the property which must provide that incomes in excess of the costs of such items shall be used by the grantee only for public historic preservation, park, or recreational purposes, and (4) approves the grantee's accounting and financial procedures for recording and reporting on revenue- producing activities.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(p). Disposals for correctional facilities.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or

for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Attorney General must determine that the property is required for correctional facility use and approve an appropriate program or project for the care or rehabilitation of criminal offenders.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(q). Disposals for port facility purposes.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of Transportation must determine, after consultation with the Secretary of Labor, that the property is located in an area of serious economic disruption; and approve, after consultation with the Secretary of Commerce, an economic development plan associated with the plan of use of the property.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 49 U.S.C. 47151. Disposals for public airport purposes.

Type of property*: Any surplus real or personal property, exclusive of (1) oil, gas and mineral rights; (2) military chapels subject to disposal as a shrine, memorial or for religious purposes under the provisions of Sec. 101- 47.308-5; (3) property subject to disposal as a historic monument site under the provisions of Sec. 101-47.308-3; (4) property the highest and the best use of which is determined by the disposal agency to be industrial and which shall be so classified for disposal, and (5) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State, the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 50 U.S.C. App. 1622(d). Disposals of power transmission lines needful for or adaptable to the requirements of a public power project.

Type of property*: Any surplus power transmission line and the right-of-way acquired for its construction.

Eligible public agency: Any State or political subdivision thereof or any State agency or instrumentality.

*The Commissioner, Public Buildings Service, General Services Administration, Washington, DC 20405, in appropriate instances, may waive any exclusions listed in this description, except for those required by law.

[FMPR Amdt. H-192, 60 FR 35708, July 11, 1995]

Sec. 101-47.4906 Sample notice to public agencies of surplus determination.

Notice of Surplus Determination--Government Property

(Date)

(Name of property)

(Location)

Notice is hereby given that the above described property has been determined to be surplus Government property. The property consists of ____ acres of fee land, more or less, together with easements and improvements as follows:

This property is surplus property available for disposal under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), as amended, certain related laws, and applicable regulations. The applicable regulations provide that non-Federal public agencies shall be allowed a reasonable period of time to submit a formal application for surplus real property in which they may be interested. Disposal of this property, or portions thereof, may be made to public agencies for the public uses listed below whenever the Government determines that the property is available for such uses and that disposal thereof is authorized by the statutes cited and applicable regulations. (Note: List only those statutes and types of disposal appropriate to the particular surplus property described in the notice.)

16 U.S.C. 667b-d	Wildlife conservation.
23 U.S.C. 107 and 317	Federal aid and certain other highways.
40 U.S.C. 122	Transfer to the District of Columbia.
40 U.S.C. 345c	Widening of highways, streets, or alleys.
40 U.S.C. 484(e)(3)(H)	Negotiated sales for general public purpose uses. (Note: This statute should not be listed if the affected surplus property has an estimated value of less than $10,000.)
40 U.S.C. 484(k)(1)(A)	School, classroom, or other educational purposes.
40 U.S.C. 484(k)(1)(B)	Protection of public health, including research.
40 U.S.C. 484(k)(2)	Public park or recreation area.
40 U.S.C. 484(k)(3)	Historic monument.
40 U.S.C. 484(p)	Correctional facility.
40 U.S.C. 484(q)	Port facility.
49 U.S.C. 47151	Public airport.
50 U.S.C. App. 1622(d)	Power transmission lines.

If any public agency desires to acquire the property under any of the cited statutes, notice thereof must be filed in writing with (Insert name and address of disposal agency):

Such notice must be filed not later than----------
(Insert date of the 21st day following the date of the notice.)

Each notice so filed shall:

(a) Disclose the contemplated use of the property;

(b) Contain a citation of the applicable statute or statutes under which the public agency desires to procure the property;

(c) Disclose the nature of the interest if an interest less than fee title to the property is contemplated;

(d) State the length of time required to develop and submit a formal application for the property. (Where a payment to the Government is required under the statute, include a statement as to whether funds are available and, if not, the period required to obtain funds.); and

(e) Give the reason for the time required to develop and submit a formal application.

Upon receipt of such written notices, the public agency shall be promptly informed concerning the period of time that will be allowed

for submission of a formal application. In the absence of such written notice, or in the event a public use proposal is not approved, the regulations issued pursuant to authority contained in the Federal Property and Administrative Services Act of 1949 provide for offering the property for sale.

Application forms or instructions to acquire property for the public uses listed in this notice may be obtained by contacting the following Federal agencies for each of the indicated purposes:

(Note: For each public purpose statute listed in this notice, show the name, address, and telephone number of the Federal agency to be contacted by interested public body applicants.)

[FMPR Amdt. H-192, 60 FR 35710, July 11, 1995]

Sec. 101-47.4906a Attachment to notice sent to zoning authority.

Federal Property and Administrative Services Act of 1949, As Amended
Title VIII--Urban Land Utilization

DISPOSAL OF URBAN LANDS

Sec. 803

(a) Whenever the Administrator contemplates the disposal for or on behalf of any Federal agency of any real property situated within an urban area, he shall, prior to offering such land for sale, give reasonable notice to the head of the governing body of the unit of general local government having jurisdiction over zoning and land-use regulation in the geographical area within which the land or lands are located in order to afford the government the opportunity of zoning for the use of such land in accordance with local comprehensive planning.

(b) The Administrator, to the greatest practicable extent, shall furnish to all prospective purchasers of such real property, full and complete information concerning:

(1) Current zoning regulations and prospective zoning requirements and objectives for such property when it is unzoned: and

(2) Current availability to such property of streets, sidewalks, sewers, water, street lights, and other service facilities and prospective availability of such services if such property is included in comprehensive planning.

[34 FR 11210, July 3, 1969]

Sec. 101-47.4906b Paragraph to be added to letter sent to zoning authority.

As the head of the governing body of the unit of general local government having jurisdiction over zoning and land-use regulations in the geographical area within which this surplus property is located, you also may be interested in section 803 of the Federal Property and Administrative Services Act of 1949, as amended, 82 Stat. 1105, a copy of which is attached for ready reference. It is requested that the information contemplated by section 803(b) be forwarded this office within the same 20-calendar-day period prescribed in the attached notice of surplus determination for the advising of a desire to acquire the property. If the property is unzoned and you desire the opportunity to accomplish such zoning in accordance with local comprehensive planning pursuant to section 803(a), please so advise us in writing within the same time frame and let us know the time you will require for the promulgation of such zoning regulations. We will not delay sale of the property pending such zoning for more than 50 days from the date of this notice. However, if you will not be able to accomplish the desired zoning before the property is placed on sale, we will advise prospective purchasers of the pending zoning in process.

[34 FR 11210, July 3, 1969]

Sec. 101-47.4906-1 Sample letter for transmission of notice of surplus determination.

---------- (Date)
Certified Mail--Return Receipt Requested

(Addressee)
Dear ----------:
The former ----------(Name of property),
----------(Location) has been determined to be surplus Government property and available for disposal.

Included in the attached notice are a description of the property and procedural instructions to be followed if any public agency desires to submit an application for the property. Please note particularly the name and address given for filing written notice if any public agency desires to submit such an application, the time limitation within which written notice must be filed, and the required content of such notice. Additional instructions are provided for the submission of comments regarding any incompatibility of the disposal with any public agency's development plans and programs.

In order to ensure that all interested parties are informed of the availability of this property, please post the additional copies of the attached notice in appropriate conspicuous places./1/

NOTE /1/ Attach as many copies of the notice as may be anticipated will be required for adequate posting.

A notice of surplus determination also is being mailed to ---------- ---------- (Other addressees).

Sincerely,

Attachment

[34 FR 11211, July 3, 1969, as amended at 35 FR 8487, June 2, 1970]

Sec. 101-47.4906-2 Sample letter to a state single point of contact.

(Date)

(Addressee)

Dear:----------

On July 14, 1982, the President issued Executive Order 12372, "Intergovernmental Review of Federal Programs." This Executive order provides for State and local government coordination and review of certain proposed Federal programs and activities, including real property disposal actions of the General Services Administration.

Enclosed is a notice of surplus determination that has been sent to appropriate public bodies advising them of the availability of the described real property for public purposes. Surplus Federal real property which is not acquired for State or local governmental public purposes is generally offered for sale to the general public by competitive bidding procedures.

No final disposal action will be taken for 60 calendar days from the date of this letter to allow for the receipt of any comments from your office.

[52 FR 9831, Mar. 27, 1987]

Sec. 101-47.4907 List of Federal real property holding agencies.

Note: The illustrations in Sec. 101-47.4907 are filed as part of the original document and do not appear in the Federal Register or the Code of Federal Regulations.

[40 FR 12080, Mar. 17, 1975]

Sec. 101-47.4908 Excess profits covenant.

Excess Profits Covenant for Negotiated Sales to Public Bodies

(a) This covenant shall run with the land for a period of 3 years from the date of conveyance. With respect to the property described in this deed, if at any time within a 3-year period from the date of transfer of title by the Grantor, the Grantee, or its successors or assigns, shall sell or enter into agreements to sell the property, either in a single transaction or in a series of transactions, it is covenanted and agreed that all proceeds received or to be received in excess of the Grantee's or a subsequent seller's actual allowable costs will be remitted to the Grantor. In the event of a sale of less than the entire property, actual allowable costs will be apportioned to the property based on a fair and reasonable determination by the Grantor.

(b) For purposes of this covenant, the Grantee's or a subsequent seller's allowable costs shall include the following:

(1) The purchase price of the real property;

(2) The direct costs actually incurred and paid for improvements which serve only the property, including road construction, storm and sanitary sewer construction, other public facilities or utility construction, building rehabilitation and demolition, landscaping, grading, and other site or public improvements;

(3) The direct costs actually incurred and paid for design and engineering services with respect to the improvements described in (b)(2) of this section; and

(4) The finance charges actually incurred and paid in conjunction with loans obtained to meet any of the allowable costs enumerated above.

(c) None of the allowable costs described in paragraph (b) of this section will be deductible if defrayed by Federal grants or if used as matching funds to secure Federal grants.

(d) In order to verify compliance with the terms and conditions of this covenant, the Grantee, or its successors or assigns, shall submit an annual report for each of the subsequent 3 years to the Grantor on the anniversary date of this deed. Each report will identify the property involved in this transaction and will contain such of the following items of information as are applicable at the time of submission:

(1) A description of each portion of the property that has been resold;

(2) The sale price of each such resold portion;

(3) The identity of each purchaser;

(4) The proposed land use; and

(5) An enumeration of any allowable costs incurred and paid that would offset any realized profit.

If no resale has been made, the report shall so state.

(e) The Grantor may monitor the property and inspect records related thereto to ensure compliance with the terms and conditions of this covenant and may take any actions which it deems reasonable and prudent to recover any excess profits realized through the resale of the property.

[51 FR 23760, July 1, 1986]

Sec. 101-47.4909 Highest and best use.

(a) Highest and best use is the most likely use to which a property can be put, so as to produce the highest monetary return from the property, promote its maximum value, or serve a public or institutional purpose. The highest and best use determination must be based on the property's economic potential, qualitative values (social and environmental) inherent in the property itself, and other utilization factors controlling or directly affecting land use (e.g. zoning, physical characteristics, private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations). Projected highest and best use should not be remote, speculative, or conjectural.

(b) An analysis and determination of highest and best use is based on information compiled from the property inspection and environmental assessment. Major considerations include:

(1) Present zoning category (check one or more as appropriate).

Industrial ----
Single family residential ----
Multiple family residential ----
Commercial/retail ----
Warehouse ----
Agriculture ----
Institutional or public use ----
Other (specify)----------

Not zoned ----
Zoning proceeding pending Federal disposal ----

Category proposed----------

(2) Physical characteristics. (Describe land and improvements and comment on property's physical characteristics including utility services, access, environmental and historical aspects, and other significant factors) ----------
---

(3) Area/neighborhood uses (check one or more as appropriate).

Single family residential ----
Multiple family residential ----
Industrial ----
Office ----
Retail or commercial ----
Farmland ----
Recreational/park area ----
Other (specify)----------

---

(4) Existing neighboring improvements (check one or more as appropriate).

Deteriorating ----
Stable ----
Some recent development ----
Significant recent development ----
Vicinity improvements:
----Dense ----Moderate ----Sparse ----None

(5) Environmental factors/constraints adversely affecting the marketability of the property (check one or more as appropriate).

Severe slope or soil instability ----
Road access ----
Access to sanitary sewers or storm sewers ----
Access to water supply ----
Location within or near floodplain ----
Wetlands ----
Tidelands ----
Irregular shape ----
Present lease agreement or other possessory non-Federal interest ----

Historic, archeological or cultural ----
Contamination or other hazards ----
Other (specify)----------

Comments on adverse conditions----------

---

(6) Former Government uses (check one or more as appropriate).

Office ----
Industrial ----
Warehouse or storage ----
Residential ----
Retail/commercial ----
Agricultural ----

Specify other uses below, such as airport, health, education, recreation and special military facilities--
---

(c) Determination of highest and best use (check one or more as appropriate).

Single family residential ----
Multiple family residential ----
Industrial ----
Office ----
Retail or commercial ----
Agricultural ----
Warehouse/storage ----
Transportation ----
Historic monument ----
Recreation/park ----
Health ----
Education or related institutional use ----
Airport ----
Wildlife Conservation ----
Public utility ----

Other (include general public or governmental).

Remarks:---

(d) Are significant costs required to make property conform to highest and best use (i.e. demolition of existing improvements, relocation of existing improvements, etc.)?

Remarks:---

(e) Can a knowledgeable cost estimate be given in reference to paragraph d above? (Enter figure).

Yes ($)----
No ----

(f) Is the property located adjacent to or inside the boundaries of a State park, forest or recreational area?

Yes ----
No ----

Remarks---

[49 FR 37091, Sept. 21, 1984]

Sec. 101-47.4910 Field offices of Department of Health, Education, and Welfare.

Note: The illustrations in Sec. 101-47.4910 are filed as part of the original document and do not appear in the Federal Register or the Code of Federal Regulations.

[40 FR 12080, Mar. 17, 1975]

Sec. 101-47.4911 Outline for explanatory statements for negotiated sales.

Note: The illustration listed in Sec. 101-47.4911 is filed as part of the original document and does not appear in the Federal Register or the Code of Federal Regulations.

[42 FR 31455, June 21, 1977, as amended at 54 FR 32445, Aug. 8, 1989]

Sec. 101-47.4912 Regional offices of the Bureau of Outdoor Recreation, Department of the Interior.

Address communications to: Regional Director, Bureau of Outdoor Recreation, Department of the Interior.

Region and jurisdiction	Address and telephone
Northeast region:	
Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and District of Columbia	Federal Bldg., 600 Arch St., Philadelphia, Pa. 19106. Code 215, , 597-7989
Southeast region:	
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands	148 Cain St., Atlanta, Ga 30303. Code 404, 526-4405.
Lake Central region:	
Illinois, Indiana, Michigan, Minnesota, Ohio, and, Wisconsin	3853 Research Park Dr, Ann Arbor Mich. 48104. Code 313, 769- 3211
Midcontinent region:	
Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming	Building 41, Denver Federal Center, P.O. Box 25387, Denver, Colo. 80225. Code 303, 234-2634
South Central region:	
Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	Patio Plaza Bldg., 5000 Marble Ave., NE., Albuquerque, N. Mex. 87110. Code 505, 843-3514
Northwest region:	
Alaska, Idaho, Oregon, and Washington	United Pacific Bldg., 1000 SecondAve., Seattle, Wash. 98104. Code 206, 442-4706
Pacific Southwest region:	
American Samoa, Arizona, California, Guam, Hawaii, and Nevada	Box 36062, 450 Golden Gate Ave., San, Francisco, Calif. 94102. Code 415, 556-0182

[40 FR 22260, May 22, 1975]

Sec. 101-47.4913 Outline for protection and maintenance of excess and surplus real property.

A. General. In protecting and maintaining excess and surplus properties, the adoption of the principle of "calculated risk" is considered to be essential. In taking what is termed a "calculated risk," the expected losses and deteriorations in terms of realizable values are anticipated to be less in the overall than expenditures to minimize the risks. In determining the amount of protection to be supplied under this procedure, a number of factors should be considered; such as, the availability of, and the distance to, local, public, or private protection facilities; the size and value of the facility; general characteristics of structures; physical protection involving fencing, number of gates, etc.; the location and availability of communication facilities; and the amount and type of activity at the facility. Conditions at the various excess and surplus properties are so diverse that it is impracticable to establish a definite or fixed formula for determining the extent of protection and maintenance that should be applied. The standards or criteria set forth in B and C, below, are furnished as a guide in making such determinations.

B. Protection Standards. The following standards are furnished as a guide in determining the amount and limits of protection.

1. Properties not Requiring Protection Personnel. Fire protection or security personnel are not needed at:

(a) Facilities where there are no structures or related personal property;

(b) Facilities where the realizable or recoverable value of the improvements and related personal property subject to loss is less than the estimated cost of protection for a one-year period;

(c) Facilities of little value located within public fire and police department limits, which can be locked or boarded up;

(d) Facilities where the major buildings are equipped with automatic sprinklers, supervised by American District Telegraph Company or other central station service, which do not contain large quantities of readily removable personal property, and which are in an area patrolled regularly by local police; and

(e) Facilities where agreements can be made with a lessee of a portion of the property to protect the remaining portions at nominal, or without additional cost.

2. Properties Requiring a Resident Custodian. A resident custodian or guard only is required at facilities of the following classes:

(a) Facilities containing little removable personal property but having a considerable number of buildings to be sold for off-site use when (a) the buildings are of low realizable value and so spaced that loss of more than a few buildings in a single fire is improbable, or (b) the buildings are so located that water for firefighting purposes is available and municipal or other fire department services will respond promptly;

(b) Small, inactive industrial and commercial facilities which must be kept open for inspection and which are so located that public fire and police protection can be secured by telephone;

(c) Facilities where the highest and best use has been determined to be salvage; and

(d) Facilities of little, or salvage, value but potentially dangerous and attractive to children and curiosity seekers where the posting of signs is not sufficient to protect the public.

3. Properties Requiring Continuous Guard Service. One guard on duty at all times (a total of 5 guards required) is required at facilities of high market value which are fenced; require only one open gate which can be locked during patrols; all buildings of which can be locked; and where local police and fire protection can be secured by telephone.

4. Properties Requiring High Degree of Protection. More than one firefighter-guard will be required to be on duty at all times at facilities of the classes listed below. The number, and the assignment, of firefighter- guards in such cases should be determined by taking into consideration all pertinent factors.

(a) Facilities of high market value which are distant from public assistance and require an on-the-site firefighting force adequate to hold fires in check until outside assistance can be obtained.

(b) Facilities of high market value which can obtain no outside assistance and require an on-the-site firefighting force adequate to extinguish fires.

(c) Facilities of high market value at which the patrolling of large areas is necessary.

(d) Facilities of high market value not fenced and containing large quantities of personal property of a nature inviting pilferage.

(e) Facilities of high market value at which several gates must be kept open for operating purposes.

5. Standards for All Protected Properties.

(a) All facilities within the range of municipal or other public protection, but outside the geographic limits of such public body, should be covered by advance arrangements with appropriate authorities for police and fire protection service, at a monthly or other service fee if necessary.

(b) Patrolling of all facilities with large areas to be protected should be accomplished by use of automotive vehicles.

(c) At fenced facilities, a minimum number of gates should be kept open.

6. Firefighter-Guards. Firefighters and guards are the normal means for carrying out the fire protection and security programs at excess and surplus real properties where both such programs are required. The duties of firefighters and guards should be combined to the maximum extent possible in the interest of both economy and efficiency. Such personnel would also be available in many cases for other miscellaneous services, such as, removing grass and weeds or other fire hazards, servicing fire extinguishers, and other activities related to general protection of property.

7. Operating Requirements of Protection Units. Firefighter-guards or guards, should be required to make periodic rounds of facilities requiring protection. The frequency of these rounds would be based upon a number of factors; such as, location and size of the facility, type of structures and physical barriers, and the amount and type of activity at the facility. There may be instances where some form of central station supervision, such as American District Telegraph Company, will effect reduction in costs by reducing the number of firefighter-guards, or guards, required to adequately protect the premises.

8. Watchman's Clock. To insure adequate coverage of the entire property by the guards, or firefighter-guards, an approved watchman's clock should be provided, with key stations strategically located so that, in passing from one to the other, the guards will cover all portions of the property.

9. Protection Alarm Equipment. Automatic fire detection devices and allied equipment and services may materially assist in minimizing protection costs. However, use of devices of this type, like guards, are purely secondary fire protection and are primarily a means of obtaining fire and police protection facilities at the property in an emergency. There are various types of devices, each of which can be considered separately or in combination as supplementing guard patrols, which may assist in reduction of costs and, in some instances, it may be possible to eliminate all guards.

10. Sentry Dogs. Frequently there are facilities of high market value, or which cover large areas, or are so isolated that they invite intrusion by curiosity seekers, hunters, vagrants, etc., which require extra or special protection measures. This has usually been taken care of by staffing with additional guards so that the "buddy system" of patrolling may be used. In such cases, the use of sentry dogs should be considered in arriving at the appropriate method of offsetting the need for additional guards, as well as possible reductions in personnel. If it is determined to be in the Government's interest to use this type of protection, advice should be obtained as to acquisition (lease, purchase, or donation), training, use, and care, from the nearest police department using sentry dogs. When sentry dogs are used, the property

should be clearly posted "Warning--This Government Property Patrolled by Sentry Dogs."

C. Maintenance Standards. The following standards or criteria are furnished as a guide in connection with the upkeep of excess and surplus real properties:

1. Temporary Type Buildings and Structures. Temporary buildings housing personal property which cannot be readily removed to permanent type storage should be maintained only to the extent necessary to protect the personal property. Vacant temporary structures should not be maintained except in unusual circumstances.

2. Permanent Type Buildings and Structures. (a) No interior painting should be done. Where exterior wood or metal surfaces require treatment to prevent serious deterioration, spot painting only should be done when practicable.

(b) Carpentry and glazing should be limited to: work necessary to close openings against weather and pilferage; making necessary repairs to floors, roofs, and sidewalls as a protection against further damage; shoring and bracing of structures to preclude structural failures; and similar operations.

(c) Any necessary roofing and sheet metal repairs should, as a rule, be on a patch basis.

(d) Masonry repairs, including brick, tile, and concrete construction, should be undertaken only to prevent leakage or disintegration, or to protect against imminent structural failure.

(e) No buildings should be heated for maintenance purposes except in unusual circumstances.

3. Mechanical and Electrical Installations. These include plumbing, heating, ventilating, air conditioning, sprinkler systems, fire alarm systems, electrical equipment, elevators, and similar items.

(a) At facilities in inactive status, maintenance of mechanical and electrical installations should be limited to that which is necessary to prevent or arrest serious deterioration. In most cases, personnel should not be employed for this work except on a temporary basis at periodic intervals when it is determined by inspections that the work is necessary. Wherever possible electrical systems should be deenergized, water drained from all fixtures, heat turned off, and buildings secured against unauthorized entry. Sprinkler systems should be drained during freezing weather and reactivated when danger of freezing has passed.

(b) At facilities in active status, such as multiple-tenancy operations, equipment should be kept in reasonable operating condition. Operation of equipment to furnish services to private tenants, as well as the procurement of utility services for distribution to tenants, should be carried on only to the extent necessary to comply with lease or permit conditions, or in cases where it is impracticable for tenants to obtain such services directly from utility companies or other sources.

(c) At facilities where elevators and/or high-pressure boilers and related equipment are in operation, arrangements should be made for periodic inspections by qualified and licensed inspectors to insure that injury to personnel, loss of life, or damage to property does not occur.

(d) Individual heaters should be used, when practicable, in lieu of operating heating plants.

4. Grounds, Roads, Railroads, and Fencing. (a) Maintenance of grounds should be confined largely to removal of vegetation where necessary to avoid fire hazards and to control poisonous and noxious plant growth in accordance with local and State laws and regulations; plowing of fire lanes where needed; and removal of snow from roads and other areas only to the extent necessary to provide access for maintenance, fire protection, and similar activities. Wherever practicable, hay crops should be sold to the highest bidders with the purchaser performing all labor in connection with cutting and removal. Also, agricultural and/or grazing leases may be resorted to, if practicable, as other means of reducing the cost of grounds maintenance. Any such leases shall be subject to the provisions of Sec. 101-47.203-9 or Sec. 101-47.312.

(b) Only that portion of the road network necessary for firetruck and other minimum traffic should be maintained. The degree to which such roads are to be maintained should be only that necessary to permit safe passage at a reasonable speed.

(c) Railroads should not be maintained except as might be required for protection and maintenance operations, or as required under the provisions of a lease or permit.

(d) Ditches and other drainage facilities should be kept sufficiently clear to permit surface water to run off.

(e) Fencing, or other physical barrier, should be kept in repair sufficiently to afford protection against unauthorized entry.

5. Utilities. (a) At inactive properties, water systems, sewage disposal systems, electrical distribution systems, etc., should be maintained only to the extent necessary to provide the minimum services required. Buildings or areas not requiring electrical service or water should be deenergized electrically and the water valved off. Utilities not in use, or which are serving dismantled or abandoned structures, should not be maintained.

(b) At active properties, water supply, electrical power, and sewage disposal facilities frequently must be operated at rates much below designed capacities. Engineering studies should determine the structural and operating changes necessary for maximum economy. Where leakage is found in water distribution lines, such lines may be valved off rather than repaired, unless necessary for fire protection or other purposes.

(c) Where utilities are purchased by contract, such contracts should be reviewed to determine if costs can be reduced by revision of the contracts.

6. Properties to be Disposed of as Salvage. No funds should be expended for maintenance on properties where the highest and best use has been determined to be salvage.

D. Repairs. Repairs should be limited to those additions or changes that are necessary for the preservation and maintenance of the property to deter or prevent excessive, rapid, or dangerous deterioration or obsolescence and to restore property damaged by storm, flood, fire, accident, or earthquake only where it has been determined that restoration is required.

E. Improvements. No costs should be incurred to increase the sales value of a property, and no costs should be incurred to make a property disposable without the prior approval of GSA. (See Sec. 101-47.401-5.)

[29 FR 16126, Dec. 3, 1964, as amended at 30 FR 11281, Aug. 2, 1965]

Sec. 101-47.4914 Executive Order 12512.

Note: The illustrations in Sec. 101-47.4914 are filed as part of the original document and do not appear in this volume

[50 FR 194, Jan. 3, 1986]

45 CFR Part 12: Department of Health and Human Services

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS REAL PROPERTY FOR PUBLIC HEALTH PURPOSES

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Exhibit A—Public Benefit Allowance for Transfer of Real Property for Health Purposes

AUTHORITY: Sec. 203, 63 Stat. 385, as amended; 40 U.S.C. 484; sec. 501 of Pub. L. 100-77, 101 Stat. 509-10, 42 U.S.C. 11411.

SOURCE: 45 FR 72173, Oct. 31, 1980, unless otherwise noted.

Sec. 12.1 Definitions.

(a) "Act" means the Federal Property and Administrative Services Act of 1949, 63 Stat. 377 (40 U.S.C. 471 et seq.). Terms defined in the Act and not defined in this section have the meanings given to them in the Act.

(b) "Accredited" means having the approval of a recognized accreditation board or association on a regional, State, or national level, such as a State Board of Health. "Approval" as used above describes the formal process carried out by State Agencies and institutions in determining that health organizations or programs meet minimum acceptance standards.

(c) "Administrator" means the Administrator of General Services.

(d) "Assigned property" means real and related personal property which, in the discretion of the Administrator or his designee, has been made available to the Department for transfer for public health purposes.

(e) "Department" means the U.S. Department of Health and Human Services.

(f) "Disposal agency" means the executive agency of the Government which has authority to assign property to the Department for transfer for public health purposes.

(g) "Excess" means any property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

(h) "Fair market value" means the highest price which the property will bring by sale in the open market by a willing seller to a willing buyer.

(i) "Holding agency" means the Federal agency which has control over and accountability for the property involved.

(j) "Nonprofit institution" means any institution, organization, or association, whether incorporated or unincorporated, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100-77) which has been held to be tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(k) "Off-site property" means surplus buildings, utilities and all other removable improvements, including related personal property, to be transferred by the Department for removal and use away from the site for public health purposes.

(l) "On-site" means surplus real property, including related personal property, to be transferred by the Department for use in place for public health purposes.

(m) "Public benefit allowance" means a discount on the sale or lease price of real property transferred for public health purposes, representing any benefit determined by the Secretary which has accrued or may accrue to the United States thereby.

(n) "Related personal property" means any personal property: (1) Which is located on and is (i) an integral part of, or (ii) useful in the operation of real property; or (2) which is determined by the Administrator to be otherwise related to the real property.

(o) "Secretary" means the Secretary of Health and Human Services.

(p) "State" means a State of the United States, and includes the District of Columbia, the Commonwealth of Puerto Rico, and the Territories and possessions of the United States.

(q) "Surplus" when used with respect to real property means any excess real property not required for the needs and the discharge of the responsibilities of all Federal agencies as determined by the Administrator.

[45 FR 72173, Oct. 31, 1980, as amended at 53 FR 7745, Mar. 10, 1988]

Sec. 12.2 Scope.

This part is applicable to surplus real property located within any State which is appropriate for assignment to, or which has been assigned to, the Department for transfer for public health purposes, as provided for in section 203(k) of the Act.

Sec. 12.3 General Policies.

(a) It is the policy of the Department to foster and assure maximum utilization of surplus real property for public health purposes, including research.

(b) Transfers may be made only to States, their political subdivisions and instrumentalities, tax-supported public health institutions, and

nonprofit public health institutions which (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100-77) have been held tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

(c) Real property will be requested for assignment only when the Department has determined that the property is suitable and needed for public health purposes. The amount of real and related personal property to be transferred shall not exceed normal operating requirements of the applicant. Such property will not be requested for assignment unless it is needed at the time of application for public health purposes or will be so needed within the immediate or foreseeable future. Where construction or major renovation is not required or proposed, the property must be placed into use within twelve (12) months from the date of transfer. When construction or major renovation is contemplated at the time of transfer, the property must be placed in use within 36 months from the date of transfer. If the applicable time limitation is not met, the transferee shall either commence payments in cash to the Department for each month thereafter during which the proposed use has not been implemented or take such other action as set forth in Sec. 12.12 as is deemed appropriate by the Department. Such monthly payments shall be computed on the basis of the current fair market value of the property at the time of the first payment by subtracting therefrom any portion of the purchase price paid in cash at the time of transfer, and by dividing the balance by the total number of months in the period of restriction. If the facility has not been placed into use within eight (8) years of the date of the deed, title to the property will be revested in the United States, or, at the discretion of the Department, the restrictions and conditions may be abrogated in accordance with Sec. 12.9.

(d) Transfers will be made only after the applicant has certified that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations.

(e) Organizations which may be eligible include those which provide care and training for the physically and mentally ill, including medical care of the aged and infirm; clinical services; services (including shelter) to homeless individuals; other public health services (including water and sewer); or similar services devoted primarily to the promotion and protection of public health. In addition, organizations which provide assistance to homeless individuals may be eligible for leases under title V of Public Law 100-77. Except for the provision of services (including shelter) to homeless individuals, organizations which have as their principal purpose the providing of custodial or domiciliary care are not eligible. The eligible organization must be authorized to carry out the activity for which it requests the property.

(f) An applicant's plan of operation will not be approved unless it provides that the applicant will not discriminate because of race, color, sex, handicap, or national origin in the use of the property.

[45 FR 72173, Oct. 31, 1980, as amended at 53 FR 7745, Mar. 10, 1988; 55 FR 32252, Aug. 8, 1990]

Sec. 12.4 Limitations.

(a) Surplus property transferred pursuant to this part will be disposed of on an "as is, where is," basis without warranty of any kind.

(b) Unless excepted by the General Services Administrator in his assignment, mineral rights will be conveyed together with the surface rights.

Sec. 12.5 Awards.

Where there is more than one applicant for the same property, it will be awarded to the applicant having a program of utilization which provides, in the opinion of the Department, the greatest public benefit. Where the property will serve more than one program, it will be apportioned to fit the needs of as many programs as is practicable.

Sec. 12.6 Notice of available property.

Reasonable publicity will be given to the availability of surplus real property which is suitable for assignment to the Department for transfer for public health uses. The Department will establish procedures reasonably calculated to afford all eligible users having a legitimate interest in acquiring the property for such uses an opportunity to make an application therefor. However, publicity need not be given to the availability of surplus real property which is occupied and being used for eligible public health purposes at the time the property is declared surplus, the occupant expresses interest in the property, and the Department determines that it has a continuing need therefor.

Sec. 12.7 Applications for surplus real property.

Applications for surplus real property for public health purposes shall be made to the Department through the office specified in the notice of availability.

[55 FR 32252, Aug. 8, 1990]

Sec. 12.8 Assignment of surplus real property.

(a) Notice of interest in a specific property for public health purposes will be furnished the General Services Administrator by the Department at the earliest possible date.

(b) Requests to the Administrator for assignment of surplus real property to the Department for transfer for public health purposes will be based on the following conditions:

(1) The Department has an acceptable application for the property.

(2) The applicant is willing, authorized, and in a position to assume immediate care, custody, and maintenance of the property.

(3) The applicant is able, willing and authorized to pay the administrative expenses incident to the transfer.

(4) The applicant has the necessary funds, or the ability to obtain such funds, to carry out the approved program of use of the property.

Sec. 12.9 General disposal terms and conditions.

(a) Surplus real property transfers under this part will be limited to public health purposes. Transferees shall be entitled to a public benefit allowance in terms of a percentage which will be applied against the value of the property to be conveyed. Such an allowance will be computed on the basis of benefits to the United States from the use of such property for public health purposes. The computation of such public benefit allowances will be in accordance with Exhibit A attached hereto and made a part hereof.

(b) A transfer of surplus real property for public health purposes is subject to the disapproval of the Administrator within 30 days after notice is given to him of the proposed transfer.

(c) Transfers will be on the following terms and conditions:

(1) The transferee will be obligated to utilize the property continuously in accordance with an approved plan of operation.

(2) The transferee will not be permitted to sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of the property, or any part thereof, without the prior written authorization of the Department.

(3) The transferee will file with the Department such reports covering the utilization of the property as may be required.

(4) In the event the property is sold, leased or subleased, encumbered, disposed of, or is used for purposes other than those set forth in the approved plan without the consent of the Department, all revenues or the reasonable value of other benefits received by the transferee directly or indirectly from such use, as determined by the Department, will be considered to have been received and held in trust by the transferee for the account of the United States and will be subject to the direction and control of the Department. The provisions of this paragraph shall not impair or affect the rights reserved to the United States in paragraph (c)(6) of this section, or the right of the Department to impose conditions to its consent.

(5) Lessees will be required to carry all perils and liability insurance to protect the Government and the Government's residual interest in the property. Transferees will be required to carry such flood insurance as may be required by the Department pursuant to Pub. L. 93-234. Where the transferee elects to carry insurance against damages to or loss of on-site property due to fire or other hazards, and where loss or damage to transferred Federal surplus real property occurs, all proceeds from insurance shall be promptly used by the transferee for the purpose of repairing and restoring the property to its former condition, or replacing it with equivalent or more suitable facilities. If not so used, there shall be paid to the United States that part of the insurance proceeds that is attributable to the Government's residual interest in the property lost, damaged, or destroyed in the case of leases, attributable to the fair market value of the leased facilities.

(6) With respect to on-site property, in the event of noncompliance with any of the conditions of the transfer as determined by the Department, title to the property transferred and the right to immediate possession shall, at the option of the Department, revert to the Government. In the event title is reverted to the United States for noncompliance or voluntarily reconveyed, the transferee shall, at the option of the Department, be required to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the transferee to adapt the property to the public health use for which the property was transferred. With respect to leased property, in the event of noncompliance with any of the conditions of the lease, as determined by the Department, the right of occupancy and possession shall, at the option of the Department, be terminated. In the event a leasehold is terminated by the United States for noncompliance or is voluntarily surrendered, the lessee shall be required at the option of the Department to reimburse the Government for the decrease in value of the property not due to reasonable wear and tear or acts of God or attributable to alterations completed by the lessee to adapt the property to the public health use for which the property was leased.

With respect to any reverter of title or termination of leasehold resulting from noncompliance, the Government shall, in addition thereto, be reimbursed for such costs as may be incurred in recovering title to or possession of the property.

Any payments of cash made by the transferee against the purchase price of property transferred shall, upon a forfeiture of title to the property for breach of condition, be forfeited.

(7) With respect to off-site property, in the event of noncompliance with any of the terms and conditions of the transfer, the unearned public benefit allowance shall, at the option of the Department, become immediately due and payable or, if the property or any portion thereof is sold, leased, or otherwise disposed of without authorization from the Department, such sale, lease or sublease, or other disposal shall be for the benefit and account of the United States and the United States shall be entitled to the proceeds. In the event the transferee fails to remove the property or any portion thereof within the time specified, then in addition to the rights reserved above, at the option of the Department, all right, title, and interest in and to such unremoved property shall be retransferred to other eligible applicants or shall be forfeited to the United States.

(8) With respect only to on-site property which has been declared excess by the Department of Defense, such declaration having included a statement indicating the property has a known potential for use during a national emergency, the Department shall reserve the right during any period of emergency declared by the President of the United States or by the Congress of the United States to the full and unrestricted use by the Government of the surplus real property, or of any portion thereof, disposed of in accordance with the provisions of this part. Such use may be either exclusive or nonexclusive. Prior to the expiration or termination of the period of restricted use by the transferee, the Government will not be obligated to pay rent or any other fees or charges during the period of emergency, except that the Government will:

(i) Bear the entire cost of maintenance of such portion of the property used by it exclusively or over which it may have exclusive possession or control;

(ii) Pay the fair share, commensurate with the use of the cost of maintenance of such surplus real property as it may use nonexclusively or over which it may have nonexclusive possession or control;

(iii) Pay a fair rental for the use of improvements or additions to the surplus real property made by the purchaser or lessee without Government aid; and

(iv) Be responsible for any damage to the surplus real property caused by its use, reasonable wear and tear, the common enemy and acts of God excepted. Subsequent to the expiration or termination of the period of restricted use, the obligations of the Government will be as set forth in the preceding sentence and, in addition, the Government shall be obligated to pay a fair rental for all or any portion of the conveyed premises which it uses.

(9) The restrictions set forth in paragraphs (c) (1) through (7) of this section will extend for thirty (30) years for land with or without improvements; and for facilities being acquired separately from land whether they are for use on-site or off-site, the period of limitations on the use of the structures will be equal to their estimated economic life. The restrictions set forth in paragraphs (c) (1) through (7) of this section will extend for the entire initial lease period and for any renewal periods for property leased from the Department.

(d) Transferees, by obtaining the consent of the Department, may abrogate the restrictions set forth in paragraph (c) of this section for all or any portion of the property upon payment in cash to the Department of an amount equal to the then current fair market value of the property to be released, multiplied by the public benefit allowance granted at the time of conveyance, divided by the total number of months of the period of restriction set forth in the conveyance document and multiplied by the number of months that remain in the period of restriction as determined by the Department. For purposes of abrogation payment computation, the current fair market value shall not include the value of any improvements placed on the property by the transferee.

(e) Related personal property will be transferred or leased as a part of the realty and in accordance with real property procedures. It will be subject to the same public benefit allowance granted for the real property. Where related personal property is involved in an on-site transfer, the related personal property may be transferred by a bill of sale imposing restrictions for a period not to exceed five years from the date of transfer, other terms and conditions to be the same as, and made a part of, the real property transaction.

Sec. 12.10 Compliance with the National Environmental Policy Act of 1969 and other related acts (environmental impact).

(a) The Department will, prior to making a final decision to convey or lease, or to amend, reform, or grant an approval or release with respect to a previous conveyance or lease of, surplus real property for public health purposes, complete an environmental assessment of the proposed transaction in keeping with applicable provisions of the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, the National Archeological Data Preservation Act, and other related acts. No permit to use surplus real property shall allow the permittee to make, or cause to be made, any irreversible change in the condition of said property, and no use permit shall be employed for the purpose of delaying or avoiding compliance with the requirements of these Acts.

(b) Applicants shall be required to provide such information as the Department deems necessary to make an assessment of the impact of the proposed Federal action on the human environment. Materials contained in the applicant's official request, responses to a standard

questionnaire prescribed by the Public Health Service, as well as other relevant information, will be used by the Department in making said assessment.

(c) If the assessment reveals (1) That the proposed Federal action involves properties of historical significance which are listed, or eligible for listing, in the National Register of Historic Places, or (2) that a more than insignificant impact on the human environment is reasonably foreseeable as a result of the proposed action, or (3) that the proposed Federal action could result in irreparable loss or destruction of archeologically significant items or data, the Department will, except as provided for in paragraph (d) below, prepare and distribute, or cause to be prepared or distributed, such notices and statements and obtain such approvals as are required by the above cited Acts.

(d) If a proposed action involves other Federal agencies in a sequence of actions, or a group of actions, directly related to each other because of their functional interdependence, the Department may enter into and support a lead agency agreement to designate a single lead agency which will assume primary responsibility for coordinating the assessment of environmental effects of proposed Federal actions, preparing and distributing such notices and statements, or obtaining such approvals, as are required by the above cited Acts. The procedures of the designated lead agency will be utilized in conducting the environmental assessment. In the event of disagreement between the Department and another Federal agency, the Department will reserve the right to abrogate its lead agency agreement with the other Federal Agency.

[45 FR 72173, Oct. 31, 1980, as amended at 55 FR 32252, Aug. 8, 1990]

Sec. 12.11 Special terms and conditions.

(a) Applicants will be required to pay all external administrative costs which will include, but not be limited to, taxes, surveys, appraisals, inventory costs, legal fees, title search, certificate or abstract expenses, decontamination costs, moving costs, closing fees in connection with the transaction and service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(b) In the case of off-site property, applicants will be required to post performance bonds, make performance guarantee deposits, or give such other assurances as may be required by the Department or the holding agency to insure adequate site clearance and to pay service charges, if any, made by State Agencies for Federal Property Assistance under the terms of a cooperative agreement with the Department.

(c) Whenever negotiations are undertaken for disposal to private nonprofit public health organizations of any surplus real property which cost the Government $1 million or more, the Department will give notice to the Attorney General of the United States of the proposed disposal and the terms and conditions thereof. The applicant shall furnish to the Department such information and documents as the Attorney General may determine to be appropriate or necessary to enable him to give the advice as provided for by section 207 of the Act.

(d) Where an applicant proposes to acquire or lease and use in place improvements located on land which the Government does not own, he shall be required, before the transfer is consummated, to obtain a right to use the land commensurate with the duration of the restrictions applicable to the improvements, or the term of the lease. The applicant will be required to assume, or obtain release of, the Government's obligations respecting the land including but not limited to obligations relating to restoration, waste, and rent. At the option of the Department, the applicant may be required to post a bond to indemnify the Government against such obligations.

(e) The Department may require the inclusion in the transfer or lease document of any other provision deemed desirable or necessary.

(f) Where an eligible applicant for an on-site transfer proposes to construct new, or rehabilitate old, facilities, the financing of which must be accomplished through issuance of revenue bonds having terms inconsistent with the terms and conditions of transfer prescribed in Sec. 12.9 (c), (d), and (e) of this chapter, the Department may, in its discretion, impose such alternate terms and conditions of transfer in lieu thereof as may be appropriate to assure utilization of the property for public health purposes.

Sec. 12.12 Utilization.

(a) Where property or any portion thereof is not being used for the purposes for which transferred, the transferee will be required at the direction of the Department:

(1) To place the property into immediate use for an approved purpose;

(2) To retransfer such property to such other public health user as the Department may direct;

(3) To sell such property for the benefit and account of the United States;

(4) To return title to such property to the United States or to relinquish any leasehold interest therein;

(5) To abrogate the conditions and restrictions of the transfer, as set forth in Sec. 12.9(d) of this chapter, except that, where property has never been placed in use for the purposes for which transferred, abrogation will not be permitted except under extenuating circumstances; or

(6) To make payments as provided for in Sec. 12.3(c) of this chapter.

(b) Where the transferee or lessee desires to place the property in temporary use for a purpose other than that for which the property was transferred or leased, approval from the Department must be obtained, and will be conditioned upon such terms as the Department may impose.

Sec. 12.13 Form of conveyance.

(a) Transfers or leases of surplus real property will be on forms approved by the Office of General Counsel of the Department and will include such of the disposal or lease terms and conditions set forth in this part and such other terms and conditions as the Office of General Counsel may deem appropriate or necessary.

(b) Transfers of on-site property will normally be by quitclaim deed without warranty of title.

Sec. 12.14 Compliance inspections and reports.

The Department will make or have made such compliance inspections as are necessary and will require of the transferee or lessee such compliance reports and actions as are deemed necessary.

Sec. 12.15 Reports to Congress.

The Secretary will make such reports of real property disposal activities as are required by section 203 of the Act and such other reports as may be required by law.

34 CFR Part 12: Department of Education

PART 12—DISPOSAL AND UTILIZATION OF SURPLUS FEDERAL REAL PROPERTY FOR EDUCATIONAL PURPOSES

Subpart A—General

Sec.
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12.2 What definitions apply?
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12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

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12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

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12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

Appendix A to Part 12—Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes

Authority : 40 U.S.C. 471-488; 20 U.S.C. 3401 et seq.; 42 U.S.C. 2000d (1) et seq.; 20 U.S.C. 1681 et seq.; 29 U.S.C. 794 et seq.; 42 U.S.C. 4332.

SOURCE: 57 FR 60394, Dec. 18, 1992, unless otherwise noted.

Sec. 12.1 What is the scope of this part?

This part is applicable to surplus Federal real property located within any State that is appropriate for assignment to, or that has been assigned to, the Secretary by the Administrator for transfer for educational purposes, as provided for in section 203(k) of the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 et seq.).

(Authority: 40 U.S.C. 484(k))

Sec. 12.2 What definitions apply?

(a) Definitions in the Act. The following terms used in this part are defined in section 472 of the Act:

Administrator
Surplus property

(b) Definitions in the Education Department General Administrative Regulations (EDGAR). The following terms used in this part are defined in 34 CFR 77.1:

Department
Secretary
State

(c) Other Definitions: The following definitions also apply to this part:

Abrogation means the procedure the Secretary may use to release the transferee of surplus Federal real property from the covenants, conditions, reservations, and restrictions contained in the conveyance instrument before the term of the instrument expires.

Act means the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377 (40 U.S.C. 471 et seq.).

Applicant means an eligible entity as described in Sec.12.5 that formally applies to be a transferee or lessee of surplus Federal real property, using a public benefit allowance (PBA) under the Act.

Lessee, except as used in Sec.12.14(a)(5), means an entity that is given temporary possession, but not title, to surplus Federal real property by the Secretary for educational purposes.

Nonprofit institution means any institution, organization, or association, whether incorporated or unincorporated—

(1) The net earnings of which do not inure or may not lawfully inure to the benefit of any private shareholder or individual; and

(2) That has been determined by the Internal Revenue Service to be tax-exempt under section 501(c)(3) of title 26.

Off-site property means surplus buildings and improvements—including any related personal property—that are capable of being removed from the underlying land and that are transferred by the Secretary without transferring the underlying real property.

On-site property means surplus Federal real property, including any related personal property—other than off-site property.

Period of restriction means that period during which the surplus Federal real property transferred for educational purposes must be used by the transferee or lessee in accordance with covenants, conditions, and any other restrictions contained in the conveyance instrument.

Program and plan of use means the educational activities to be conducted by the transferee or lessee using the surplus Federal real property, as described in the application for that property.

Public benefit allowance ("PBA") means the credit, calculated in

accordance with Appendix A to this part, given to a transferee or lessee which is applied against the fair market value of the surplus Federal real property at the time of the transfer or lease of such property in exchange for the proposed educational use of the property by the transferee or lessee.

Related personal property means any personal property—

(1) That is located on and is an integral part of, or incidental to the operation of, the surplus Federal real property; or

(2) That is determined by the Administrator to be otherwise related to the surplus Federal real property.

Surplus Federal real property means the property assigned or suitable for assignment to the Secretary by the Administrator for disposal under the Act.

Transfer means to sell and convey title to surplus Federal real property for educational purposes as described in this part.

Transferee means that entity which has purchased and acquired title to the surplus Federal real property for educational purposes pursuant to section 203(k) of the Act.

(Authority: 40 U.S.C. 472 and 20 U.S.C. 3401 et seq.)

Sec. 12.3 What other regulations apply to this program?

The following regulations apply to this program:

(a) 34 CFR Parts 100, 104, and 106.

(b) 41 CFR Part 101-47.

(c) 34 CFR Part 85.

(Authority: 40 U.S.C. 484(k); 42 U.S.C. 2000d-1 et seq.; 29 U.S.C. 794 et seq.; 20 U.S.C. 1681 et seq.; Executive Order 12549; and 20 U.S.C. 3474)

Subpart B—Distribution of Surplus Federal Real Property

Sec. 12.4 How does the Secretary provide notice of availability of surplus Federal real property?

The Secretary notifies potential applicants of the availability of surplus Federal real property for transfer for educational uses in accordance with 41 CFR 101-47.308-4.

(Authority: 40 U.S.C. 484(k)(1))

Sec. 12.5 Who may apply for surplus Federal real property?

The following entities may apply for surplus Federal real property:

(a) A State.

(b) A political subdivision or instrumentality of a State.

(c) A tax-supported institution.

(d) A nonprofit institution.

(e) Any combination of these entities.

(Authority: 40 U.S.C. 484(k)(1)(A))

Sec. 12.6 What must an application for surplus Federal real property contain?

An application for surplus Federal real property must—

(a) Contain a program and plan of use;

(b) Contain a certification from the applicant that the proposed program is not in conflict with State or local zoning restrictions, building codes, or similar limitations;

(c) Demonstrate that the proposed program and plan of use of the surplus Federal real property is for a purpose that the applicant is authorized to carry out;

(d) Demonstrate that the applicant is able, willing, and authorized to assume immediate custody, use, care, and maintenance of the surplus Federal real property;

(e) Demonstrate that the applicant is able, willing, and authorized to pay the administrative expenses incident to the transfer or lease;

(f) Demonstrate that the applicant has the necessary funds, or the ability to obtain those funds immediately upon transfer or lease, to carry out the proposed program and plan of use for the surplus Federal real property;

(g) Demonstrate that the applicant has an immediate need and ability to use all of the surplus Federal real property for which it is applying;

(h) Demonstrate that the surplus Federal real property is needed for educational purposes at the time of application and that it is so needed for the duration of the period of restriction;

(i) Demonstrate that the surplus Federal real property is suitable or adaptable to the proposed program and plan of use; and

(j) Provide information requested by the Secretary in the notice of availability, including information of the effect of the proposed program and plan of use on the environment.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880-0524)

Sec. 12.7 How is surplus Federal real property disposed of when there is more than one applicant?

(a) If there is more than one applicant for the same surplus Federal real property, the Secretary transfers or leases the property to the applicant whose proposed program and plan of use the Secretary determines provides the greatest public benefit, using the criteria contained in appendix A to this part that broadly address the weight given to each type of entity applying and its proposed program and plan of use. (See example in Sec. 12.10(d)).

(b) If, after applying the criteria described in paragraph (a) of this section, two or more applicants are rated equally, the Secretary transfers or leases the property to one of the applicants after—

(1) Determining the need for each applicant's proposed educational use at the site of the surplus Federal real property;

(2) Considering the quality of each applicant's proposed program and plan of use; and

(3) Considering each applicant's ability to carry out its proposed program and plan of use.

(c) If the Secretary determines that the surplus Federal real property is capable of serving more than one applicant, the Secretary may apportion it to fit the needs of as many applicants as is practicable.

(d)(1) The Secretary generally transfers surplus Federal real property to a selected applicant that meets the requirements of this part.

(2) Alternatively, the Secretary may lease surplus Federal real property to a selected applicant that meets the requirements of this part if the Secretary determines that a lease will promote the most effective use of the property consistent with the purposes of this part or if having a lease is otherwise in the best interest of the United States, as determined by the Secretary.

(Authority: 40 U.S.C. 484(k))

Sec. 12.8 What transfer or lease instruments does the Secretary use?

(a) The Secretary transfers or leases surplus Federal real property using transfer or lease instruments that the Secretary prescribes.

(b) The transfer or lease instrument contains the applicable terms and conditions described in this part and any other terms and conditions the Secretary or Administrator determines are appropriate or necessary.

(Authority: 40 U.S.C. 484(c))

Sec. 12.9 What warranties does the Secretary give?

The Secretary transfers or leases surplus Federal real property on an "as is, where is," basis without warranty of any kind.

(Authority: 40 U.S.C. 484(k)(1))

Sec. 12.10 How is a Public Benefit Allowance (PBA) calculated?

(a) The Secretary calculates a PBA in accordance with the provisions of appendix A to this part taking into account the nature of the applicant, and the need for, impact of, and type of program and plan of use for the property, as described in that appendix.

(b) The following are illustrative examples of how a PBA would be calculated and applied under Appendix A:

(1) Entity A is a specialized school that has had a building destroyed by fire, and that has existing facilities determined by the Secretary to be between 26 and 50% inadequate. It is proposing to use the surplus Federal real property to add a new physical education program. Entity A would receive a basic PBA of 70%, a 10% hardship organization allowance, a 20% allowance for inadequacy of existing school plant facilities, and a 10% utilization allowance for introduction of new instructional programs. Entity A would have a total PBA of 110%. If Entity A is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA exceeds 100%.

(2) Entity B proposes to use the surplus Federal real property for nature walks. Because this qualifies as an outdoor educational program, Entity B would receive a basic PBA of 40%. If Entity B is awarded the surplus Federal real property, it would be required to pay 60% of the fair market value of the surplus Federal real property in cash at the time of the transfer.

(3) Entity C is an accredited university, has an ROTC unit, and proposes to use the surplus Federal real property for a school health clinic and for special education of the physically handicapped. Entity C would receive a basic PBA of 50% (as a college or university), a 20% accreditation organization allowance (accredited college or university), a 10% public service training organization allowance (ROTC), a 10% student health and welfare utilization allowance (school health clinic), and a 10% service to the handicapped utilization allowance (education of the physically handicapped). Entity C would have a total PBA of 100%. If Entity C is awarded the surplus Federal real property, it would not be required to pay any cash for the surplus Federal real property, since the total PBA is 100%.

(4) Entities A, B, and C all submit applications for the same surplus Federal real property. Unless the Secretary decides to apportion it, the Secretary transfers or leases the surplus Federal real property to Entity A, since its proposed program and plan of use has the highest total PBA.

(Authority: 40 U.S.C. 484(k)(1)(c))

Subpart C—Conditions Applicable to Transfers or Leases

Sec. 12.11 What statutory provisions and Executive Orders apply to transfers of surplus Federal real property?

The Secretary directs the transferee or lessee to comply with applicable provisions of the following statutes and Executive Orders prior to, or immediately upon, transfer or lease, as applicable:

(a) National Environmental Policy Act of 1969, 42 U.S.C. 4332.

(b) National Historic Preservation Act of 1966, 16 U.S.C. 470.

(c) National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq.

(d) Floodplain Management, Exec. Order No. 11988, 42 FR 26951 (May 25, 1977).

(e) Protection of Wetlands, Exec. Order No. 11990, 42 FR 26961 (May 25, 1977).

(f) Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d)(1) et seq.

(g) Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq.

(h) Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 et seq.

(i) Age Discrimination Act of 1975, 42 U.S.C. 1601 et seq.

(j) Any other applicable Federal or State laws and Executive Orders.

(Authority: 40 U.S.C. 484(k))

(Approved by the Office of Management and Budget under control number 1880-0524)

Sec. 12.12 What are the terms and conditions of transfers or leases of surplus Federal real property?

(a) General terms and conditions for transfers and leases. The following general terms and conditions apply to transfers and leases of surplus Federal real property under this part:

(1) For the period provided in the transfer or lease instrument, the transferee or lessee shall use all of the surplus Federal real property it receives solely and continuously for its approved program and plan of use, in accordance with the Act and these regulations, except that—

(i) The transferee or lessee has twelve (12) months from the date of transfer to place this surplus Federal real property into use, if the Secretary did not, at the time of transfer, approve in writing construction of major new facilities or major renovation of the property;

(ii) The transferee or lessee has thirty-six (36) months from the date of transfer to place the surplus Federal real property into use, if the transferee or lessee proposes construction of major new facilities or major renovation of the property and the Secretary approves it in writing at the time of transfer; and

(iii) The Secretary may permit use of the surplus Federal real property at any time during the period of restriction by an entity other than the transferee or lessee in accordance with Sec. 12.13.

(2) The transferee or lessee may not modify its approved program and plan of use without the prior written consent of the Secretary.

(3) The transferee or lessee may not sell, lease or sublease, rent, mortgage, encumber, or otherwise dispose of all or a portion of the surplus Federal real property or any interest therein without the prior written consent of the Secretary.

(4) A transferee or lessee shall pay all administrative costs incidental to the transfer or lease including, but not limited to—

(i) Transfer taxes;
(ii) Surveys;
(iii) Appraisals;
(iv) Inventory costs;
(v) Legal fees;
(vi) Title search;
(vii) Certificate or abstract expenses;
(viii) Decontamination costs;
(ix) Moving costs;
(x) Recordation expenses;
(xi) Other closing costs; and
(xii) Service charges, if any, provided for by an agreement between the Secretary and the applicable State agency for Federal Property Assistance.

(5) The transferee or lessee shall protect the residual financial interest of the United States in the surplus Federal real property by insurance or such other means as the Secretary directs.

(6) The transferee or lessee shall file with the Secretary reports on its maintenance and use of the surplus Federal real property and any other reports required by the Secretary in accordance with the transfer or lease instrument.

(7) Any other term or condition that the Secretary determines appropriate or necessary.

(b) Additional terms and conditions for on-site transfers. The terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period not to exceed thirty (30) years.

(c) Additional terms and conditions for off-site transfers. (1) The

terms and conditions in the transfer, including those in paragraph (a) of this section, apply for a period equivalent to the estimated economic life of the property conveyed for a transfer of off-site surplus Federal real property.

(2) In addition to the terms and conditions contained in paragraph (c) of this section, the Secretary may also require the transferee of off-site surplus Federal real property—

(i) To post performance bonds;

(ii) To post performance guarantee deposits; or

(iii) To give such other assurances as may be required by the Secretary or the holding agency to ensure adequate site clearance.

(d) Additional terms and conditions for leases. In addition to the terms and conditions contained in paragraph (a) of this section, the Secretary requires, for leases of surplus Federal real property, that all terms and conditions apply to the initial lease agreement, and any renewal periods, unless specifically excluded in writing by the Secretary.

(Authority: 40 U.S.C. 484(k)(1))

(Approved by the Office of Management and Budget under control number 1880-0524)

Sec. 12.13 When is use of the transferred surplus Federal real property by entities other than the transferee or lessee permissible?

(a) By eligible entities. A transferee or lessee may permit the use of all or a portion of the surplus Federal real property by another eligible entity as described in Sec. 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) The Secretary determines that the proposed use would not substantially limit the program and plan of use by the transferee or lessee and that the use will not unduly burden the Department;

(2) The Secretary's written consent is obtained by the transferee or lessee in advance; and

(3) The Secretary approves the use instrument in advance and in writing.

(b) By ineligible entities. A transferee or lessee may permit the use of a portion of the surplus Federal real property by an ineligible entity, one not described in Sec. 12.5, only upon those terms and conditions the Secretary determines appropriate if—

(1) In accordance with paragraph (a) of this section, the Secretary makes the required determination and approves both the use and the use instrument;

(2) The use is confined to a portion of the surplus Federal real property;

(3) The use does not interfere with the approved program and plan of use for which the surplus Federal real property was conveyed; and

(4) Any rental fees or other compensation for use are either remitted directly to the Secretary or are applied to purposes expressly approved in writing in advance by the Secretary.

(Authority: 40 U.S.C. 484(k)(4))

Subpart D—Enforcement

Sec. 12.14 What are the sanctions for noncompliance with a term or condition of a transfer or lease of surplus Federal real property?

(a) General sanctions for noncompliance. The Secretary imposes any or all of the following sanctions, as applicable, to all transfers or leases of surplus Federal real property:

(1) If all or a portion of, or any interest in, the transferred or leased surplus Federal real property is not used or is sold, leased or subleased, encumbered, disposed of, or used for purposes other than those in the approved program and plan of use, without the prior written consent of the Secretary, the Secretary may require that—

(i) All revenues and the reasonable value of other benefits received by the transferee or lessee directly or indirectly from that use, as determined by the Secretary, be held in trust by the transferee or lessee for the United States subject to the direction and control of the Secretary;

(ii) Title or possession to the transferred or leased surplus Federal real property and the right to immediate possession revert to the United States;

(iii) The surplus Federal real property be transferred or leased to another eligible entity as the Secretary directs;

(iv) The transferee or lessee abrogate the conditions and restrictions in the transfer or lease instrument in accordance with the provisions of Sec. 12.15;

(v) The transferee or lessee place the surplus Federal real property into immediate use for an approved purpose and extend the period of restriction in the transfer or lease instrument for a term equivalent to the period during which the property was not fully and solely used for an approved use; or

(vi) The transferee or lessee comply with any combination of the sanctions described in paragraph (a)(1) or (a)(3) of this section.

(2) If title or possession reverts to the United States for noncompliance or is voluntarily reconveyed, the Secretary may require the transferee or lessee—

(i) To reimburse the United States for the decrease in value of the transferred or leased surplus Federal real property not due to—

(A) Reasonable wear and tear;

(B) Acts of God; or

(C) Reasonable alterations made by the transferee or lessee to adapt the surplus Federal real property to the approved program and plan of use for which it was transferred or leased;

(ii) To reimburse the United States for any costs incurred in reverting title or possession;

(iii) To forfeit any cash payments made by the transferee or lessee against the purchase or lease price of surplus Federal real property transferred;

(iv) To take any other action directed by the Secretary; or

(v) To comply with any combination of the provisions of paragraph (a)(3) of this section.

(3) If the transferee or lessee does not put the surplus Federal real property into use within the applicable time limitation in Sec. 12.12(a), the Secretary may require the transferee or lessee to make cash payments to the Secretary equivalent to the current fair market rental value of the surplus Federal real property for each month during which the program and plan of use has not been implemented.

(Authority: 40 U.S.C. 484(k)(4))

(4) If the Secretary determines that a lessee of a transferee or a sublessee of a lessee is not complying with a term or condition of the lease, or if the lessee voluntarily surrenders the premises, the Secretary may require termination of the lease.

(Authority: 40 U.S.C. 484(k)(4)(A))

(b) Additional sanction for noncompliance with off-site transfer. In addition to the sanctions in paragraph (a) of this section, if the Secretary determines that a transferee is not complying with a term or condition of a transfer of off-site surplus Federal real property, the Secretary may require that the unearned PBA become immediately due and payable in cash to the United States.

(Authority: 40 U.S.C. 484(k)(4)(A))

Subpart E—Abrogation

Sec. 12.15 What are the procedures for securing an abrogation of the conditions and restrictions contained in the conveyance instrument?

(a) The Secretary may, in the Secretary's sole discretion, abrogate the conditions and restrictions in the transfer or lease instrument if—

(1) The transferee or lessee submits to the Secretary a written request that the Secretary abrogate the conditions and restrictions in the conveyance instrument as to all or any portion of the surplus Federal real property;

(2) The Secretary determines that the proposed abrogation is in the best interests of the United States;

(3) The Secretary determines the terms and conditions under which the Secretary will consent to the proposed abrogation; and

(4) The Secretary transmits the abrogation to the Administrator and there is no disapproval by the Administrator within thirty (30) days after notice to the Administrator.

(b) The Secretary abrogates the conditions and restrictions in the transfer or lease instrument upon a cash payment to the Secretary based on the formula contained in the transfer or lease instrument and any other terms and conditions the Secretary deems appropriate to protect the interest of the United States.

(Authority: 40 U.S.C. 484(k)(4)(A)(iii))

Appendix A to Part 12.—Public Benefit Allowance for Transfer of Surplus Federal Real Property for Educational Purposes /1/

Line No.	Line No.	Classification	Percent allowed Basic public benefit allowance
1.	1.	Elementary or high schools	70
2.	2.	Colleges or Universities	50
3.	3.	Specialized schools	70
4.	4.	Public libraries or educational museums	/2/ 100
5.	5.	School outdoor education	40
6.	6.	Central administrative and/or service centers	80
7.	7.	Non-profit educational research organizations	50

[...Table continues...]

Organization allowances

Line No.	Accreditation	Federal impact	Public service training	Hardship	Inadequacy of existing school plant facilities 10-25%	26-50%	51-100%
1.		10	10	10	10	20	30
2.		20	10	10	10	20	30
3.			10	10	10	20	30
4.							
5.							
6.							
7.		20		10			

[...Table continues...]

Utilization allowances

Line No.	Introduction of new instructional programs	Student health and welfare	Research	Service to handicapped	Maximum public benefit allowance /4/
1.	10	10	10	10	100
2.	10	10	10	10	100
3.	10	10	10	10	100
4.					/2/ 100
5.	10	/3/ 10	10		70
6.					80
7.	10	10		10	100

[** This header applies to all remaining columns in this segment and extends to the next segment.]

/1/ This Appendix applies to transfers of both on-site and off-site surplus property.

/2/ Applicable when this is the primary use to be made of the property. The public benefit allowance for the overall program is applicable when such facilities are conveyed as a minor component of other facilities.

/3/ This 10% may include an approvable recreation program which will be accessible to the public and entirely compatible with, but subordinate to, the educational program.

/4/ This column establishes the maximum discount from the fair market value for payment due from the transferee at the time of the transfer. This column does not apply for purposes of ranking applicants to determine to which applicant the property will be transferred. Competitive rankings are based on the absolute total of public benefit allowance points and are not limited to the 100% ceiling.

Description of Terms Used in This Appendix

"Elementary or High School" means an elementary school (including a kindergarten), high school, junior high school, junior-senior high school or elementary or secondary school system, that provides elementary or secondary education as determined under State law. However, it does not include a nursery school even though it may operate as part of a school system.

"College or University" means a non-profit or public university or college, including a junior college, that provides postsecondary education.

"Specialized School" means a vocational school, area trade school, school for the blind, or similar school.

"Public Library" means a public library or public library service system, not a school library or library operated by non-profit, private organizations or institutions that may be open to the general public. School libraries receive the public benefit allowance in the appropriate school classification.

"Educational Museum" means a museum that conducts courses on a continuing, not ad hoc, basis for students who receive credits from accredited postsecondary education institutions or school systems.

"School Outdoor Education" means a separate facility for outdoor education as distinguished from components of a basic school. Components of a school such as playgrounds and athletic fields receive the basic allowance applicable for that type of school. The outdoor education must be located reasonably near the school system and may be open to and used by the general public, but only if the educational program for which the property is conveyed is given priority of use. This category does not include components of the school such as playgrounds and athletic fields, that are utilized during the normal school year, and are available to all students.

"Central Administrative and/or Service Center" means administrative office space, equipment storage areas, and similar facilities.

Description of Allowances

"Basic Public Benefit Allowance" means an allowance that is earned by an applicant that satisfies the requirements of Sec. 12.10 of this part.

Organization Allowance

"Accreditation" means an allowance that is earned by any postsecondary educational institution, including a vocational or trade school, that is accredited by an accrediting agency recognized by the Secretary under 34 CFR part 602.

"Federal Impact" means an allowance that is earned by any local educational agency (LEA) qualifying for Federal financial assistance as the result of the impact of certain Federal activities upon a community, such as the following under Public Law 81-874 and Public Law 81-815: to any LEA charged by law with responsibility for education of

children who reside on, or whose parents are employed on, Federal property, or both; to any LEA to which the Federal Government has caused a substantial and continuing financial burden as the result of the acquisition of a certain amount of Federal property since 1938; or to any LEA that urgently needs minimum school facilities due to a substantial increase in school membership as the result of new or increased Federal activities.

"Public Services Training" means an allowance that is earned if the applicant has cadet or ROTC units or other personnel training contracts for the Federal or State governments. This is given to a school system only if the particular school receiving the property furnishes that training.

"Hardship" means an allowance earned by an applicant that has suffered a significant facility loss because of fire, storm, flood, other disaster, or condemnation. This allowance is also earned if unusual conditions exist such as isolation or economic factors that require special consideration.

"Inadequacies of Existing Facilities" means an allowance that is earned on a percentage basis depending on the degree of inadequacy considering both public and nonpublic facilities. Overall plant requirements are determined based on the relationship between the maximum enrollment accommodated in the present facilities, excluding double and night sessions and the anticipated enrollment if the facilities are transferred. Inadequacies may be computed for a component school unit such as a school farm, athletic field, facility for home economics, round-out school site, cafeteria, auditorium, teacherages, faculty housing, etc., only if the component is required to meet State standards. In that event, the State Department of Education will be required to provide a certification of the need. Component school unit inadequacies may only be related to a particular school and not to the entire school system.

Utilization Allowances

"Introduction of New Instructional Programs" means an allowance that is earned if the proposed use of the property indicates that new programs will be added at a particular school. Examples of these new programs include those for vocational education, physical education, libraries, and similar programs.

"Student Health and Welfare" means an allowance that is earned if the proposed program and plan of use of the property provides for cafeteria, clinic, infirmary, bus loading shelters, or other uses providing for the well-being and health of students and eliminating safety and health hazards.

"Research" means an allowance that is earned if the proposed use of the property will be predominantly for research by faculty or graduate students under school auspices, or other primary educational research.

"Service to Handicapped" means an allowance that is earned if the proposed program and plan of use for the property will be for special education for the physically or mentally handicapped.

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PART 114-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

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Sec. 114-47.000 Scope of part.

The provisions of this part are applicable to all available, excess, and surplus real property and related personal property under the jurisdiction of Bureaus and Offices of the Department of the Interior in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

[40 FR 33217, Aug. 8, 1975]

Sec. 114-47.103 Definitions.

Sec. 114-47.103-50 Available real property.

Available real property is property which is no longer needed for the program activities of the Interior Bureau or Office having control thereof and which properly may be determined to be excess if no further need exists for such property within the Department of the Interior.

Sec. 114-47.103-51 Excess real property.

Excess real property is real property not required for the program activities of the Federal agency (see FPMR 101-43.104-7) having jurisdiction over the property. With respect to real property under the control of an Interior Bureau or Office, excess real property is that which is not required for the program activities of any Bureau or Office of the Department of the Interior, as determined by circularization (see IPMR 114-47.203).

Sec. 114-47.103-52 Surplus real property.

Surplus real property is any excess real property not required for the needs and responsibilities of any agency of the Federal Government.

Sec. 114-47.201 General provisions of subpart.

Sec. 114-47.201-1 Policy.

It is the policy of the Department of the Interior to:

(a) Survey all of its real property holdings at least once each year to determine that which is available for reassignment within the Department and that which is excess to its program needs.

(b) Achieve the maximum utilization by Interior Bureaus and Offices, in terms of economy and efficiency, of available real property in order to minimize expenditures for the purchase of real property.

(c) Provide for the reassignment of available real property among Interior Bureaus and Offices and facilitate the transfer of excess real property to other Federal agencies.

Sec. 114-47.201-2 Guidelines.

(a) Each Interior Bureau and Office having jurisdiction over real property shall:

(1) Survey all of its real property holdings at least once each year to determine which holdings, or portions thereof, are no longer needed in Interior programs or are uneconomically utilized. (See IPMR 114-47.8.)

(2) Promptly facilitate the transfer of real property which becomes available as a result of program completions, changes, curtailments, etc.

(3) Except as provided in IPMR 114-47.202-4 and 114-47.202-6, promptly report to the General Services Administration real property which has been determined to be excess to the Department's needs. (See IPMR 114-47.203-1.)

(4) Maintain its inventory of real property at the absolute minimum consistent with the economical and efficient conduct of assigned programs.

(b) Each Interior Bureau and Office shall, so far as is practicable and to the extent compatible with its program requirements, fulfill its needs for real property by utilization of available property offered by other Interior Bureaus and Offices and excess property held by other Federal agencies.

(c) Guidelines for notifying the General Services Administration of requirements for real property are set forth in IPMR 114-47.203-3.

[35 FR 295, Jan. 8, 1970, as amended at 36 FR 24004, Dec. 17, 1971]

Sec. 114-47.201-3 Lands withdrawn or reserved from the public domain.

(a) Withdrawn or reserved public domain lands, improved or unimproved, no longer needed by the holding Bureau or Office should be reported to the appropriate office of the Bureau of Land Management as provided in 43 CFR 2370.0-1 through 2374.2. If the Bureau of Land Management with the concurrence of the General Services Administration, determines that the property is not suitable for return to the public domain or disposable under the public land laws, then the circularization requirements of IPMR 114- 47.203-1 and the reporting requirements of FPMR 101-47.202 will thereafter apply to such property.

(b) Improvements located on public domain land but being disposed of apart from such land are not reportable to the Bureau of Land Management.

[35 FR 295, Jan. 8, 1970, as amended at 38 FR 9081, Apr. 10, 1973]

Sec. 114-47.202 Reporting of excess real property.

Sec. 114-47.202-1 Reporting requirements.

(a) The authority to report such property as is no longer needed within the Department as excess to the General Services Administration has been delegated to the heads of Bureaus and Offices in 205 DM 10.

(b) Any request made by the Administrator of General Services for an office of this Department to institute specific surveys in accordance with this subsection must have the advance approval of the Assistant Secretary—Policy, Budget and Administration.

[35 FR 295, Jan. 8, 1970, as amended at 36 FR 17038, Aug. 27, 1971; 38 FR 9081, Apr. 10, 1973]

Sec. 114-47.202-4 Exceptions to reporting.

FPMR 101-47.603 delegates authority to the Secretary of the Interior to determine real property having an estimated fair market value of less than $1,000 to be surplus to the needs of all Federal agencies and thereafter to dispose of such property. This authority has been redelegated to the heads of Bureaus and Offices in 205 DM 10. The delegation includes a provision excepting such property from the reporting requirements of FPMR 101-47.202-1. Therefore, excess real property (including land, with or without improvements) having an estimated fair market value of less than $1,000 is also excepted from reporting to the General Services Administration.

Sec. 114-47.202-6 Reports involving the public domain.

(a) The procedures set forth in this section (see also IPMR 114-47.201-3) shall be complied with before any withdrawn public domain land is declared to the General Services Administration as excess to Interior needs.

(b) Excess withdrawn public domain land, with or without improvements, having an estimated fair market value of less than $1,000 is excepted from reporting to the General Services Administration as provided in IPMR 114- 47.202-4. The provisions of this section must be complied with before any such land is determined by the holding Bureau or Office to be excess or surplus.

Sec. 114-47.202-10 Examination for acceptability.

Care must be taken to insure that complete and accurate excess reports, S.F. 118, are furnished the General Services Administration as the holding bureau must bear the expense of care and maintenance of the property for a period of 12 months plus the period to the first day of the succeeding quarter of the fiscal year after the date of receipt by GSA of an acceptable excess report.

Sec. 114-47.203 Utilization.

Sec. 114-47.203-1 Reassignment of real property by the agencies.

Available real property shall be screened against Department of the Interior needs in accordance with this Sec. 114-47.203 before it is determined to be excess. The authority to reassign or to transfer available real property and related personal property has been delegated to heads of Bureaus and Offices in 205 DM 10.

(a) Holding bureau utilization. Each Bureau and Office holding available real property (see definition in IPMR 114-47.103-50) shall insure that its own offices are afforded an opportunity to utilize such property either prior to or simultaneously with circularization of other Bureaus and Offices of the Department.

(b) Circularization of real property under $1,000 in value. Routine written circularization of available real property having an estimated fair market value of less than $1,000 should be avoided. Real property in this category shall be offered to those Interior and other Federal agency offices which the holding office believes might be interested in its acquisition, considering the nature and location of the property.

(c) Circularization of real property $1,000 and over. Available real property having an estimated fair market value of $1,000 or over shall be offered to bureaus and offices of the Department of the Interior as provided in IPMR Temporary Regulation No. 6 before it is determined to be excess: Provided, That where the head of the regional, area or State office responsible for the property determines that its nature or location virtually precludes further Departmental utilization, and such determination is made a part of the disposal record, then the property shall be subject to such circularization as he may direct. (See also IPMR 114-47.203-1(f).)

(d) Circularization of power transmission facilities. The approval of the appropriate program Assistant Secretary shall be obtained prior to circularization of any available power transmission line or related facility having an estimated fair market value of $1,000 or more.

(1) In the case of planned disposal of facilities held by the Bonneville Power Administration, Alaska Power Administration, and the Southwestern Power Administration such approval shall be obtained from the Assistant Secretary—Energy and Minerals.

(2) In the case of planned disposal of facilities held by the Bureau of Reclamation, approval of the Assistant Secretary—Land and Water Resources shall be obtained.

(3) Requests for approval to initiate action to dispose of power transmission facilities shall be accompanied by a complete description

of the circumstances which the holding Bureau believes makes such disposal feasible. A copy of each request shall be furnished the Chief, Division of Property Management, Office of Administrative Management Policy.

(e) Reimbursement. Transfers of available real property within the Department of the Interior shall be made without exchange of funds, except:

(1) The disposing bureau may elect to receive reimbursement, to the extent that it would receive reimbursement under FPMR 101-47.203-7 if the property were excess, where the property being transferred is reimbursable by law, unless such requirement for reimbursement can be satisfied or equitably avoided through appropriate accounting procedures.

(2) The receiving bureau shall make reimbursement, determined as though the property were excess in accordance with FPMR 101-47.203-7, in all instances where the property being acquired will be carried in accounts disposals from which are reimbursable.

(f) Determination of real property as excess. Real property not transferred as a result of the circularization prescribed in this Sec. 114-47.203-1 shall be determined to be excess to the needs of the Department of the Interior. The excess determination shall be evidenced in writing and made a part of the disposal file. If reportable in accordance with FPMR 101-47.202, it shall be promptly declared to the General Services Administration. If not reportable under such regulations or IPMR 114-47.202-4, it shall be determined to be surplus promptly in accordance with the provisions of FPMR 101-47.2.

[35 FR 295, Jan. 8, 1970, as amended at 38 FR 9081, Apr. 10, 1973; 40 FR 12080, Mar. 17, 1975; 40 FR 21954, May 20, 1975]

Sec. 114-47.203-2 Transfer and utilization.

The authority to transfer excess real property to other Federal agencies and to obtain excess real property from other agencies has been delegated to the heads of Bureaus and Offices in 205 DM 10. Transfers to and from other agencies shall be made in accordance with the provisions of FPMR 101-47.2.

Sec. 114-47.203-3 Notification of agency requirements.

Because of the nature of the conservation programs carried on by this Department most of its requirements for real property, particularly land, are dictated by such factors as geographical location, topography, engineering and similar characteristics which limit the extent to which excess real property can be utilized. For example, requirements for land for use as a refuge, park, or a dam site are generally for specific land, and land already in Government ownership or control can be utilized for these purposes only when its location and other characteristics coincide with the program need. Therefore, the appropriate GSA regional office shall be notified of requirements for real property only when:

(a) Specific property is not required, or

(b) Specific property is required and such property is held in the GSA excess inventory or is held by another Federal agency outside the Department of the Interior.

Note: The provisions of this Sec. 114-47.203-3 do not apply to acquisition by lease of interests in real property as covered in FPMR 101-18.1.

Sec. 114-47.203-7 Transfers.

(a) One copy of GSA Form 1334, Request for Transfer of Excess Real Property and Related Personal Property, shall be furnished the Director, Office of Administration and Management Policy (PM), Office of the Assistant Secretary—Policy, Budget and Administration, when:

(1) The request seeks to acquire excess real property without reimbursement regardless of the appraised fair market value of the property, or

(2) The request for transfer involves excess real property having a total appraised fair market value of $100,000 or more.

(b) Except as provided in IPMR 114-47.203-7(e), transfers of excess real property to Federal agencies outside of the Department of the Interior must have the prior approval of the General Services Administration. Bureaus and offices holding excess real property which is subject to this prior approval shall refrain from making commitments to other Federal agencies regarding transfer of such property. Any inquiries received from potential transferees shall be referred to the appropriate GSA regional office for determination.

(c)-(d) [Reserved]

(e) FPMR 101-47.203-7(e) provides that certain categories of excess real property may be transferred by the holding agency without reference to GSA. In addition to the categories listed, Bureaus and offices of this Department may transfer, without reference to GSA, any excess real property having an estimated fair market value of less than $1,000 in accordance with the authority delegated in 205 DM 10.3A(6).

(f) Whenever a Bureau or office seeks to acquire excess real property without reimbursement, the certification required by FPMR 101-47.203- 7(f)(2)(iii) shall be signed by an official not below the Chief Administrative Officer of the Bureau. Similarly, whenever Block 9 of GSA Form 1334 is checked to indicate that funds are not available for reimbursement for the transfer of the property, the certification in Block 10 of such form shall be signed by an official not below the Chief Administrative Officer of the Bureau.

[36 FR 24004, Dec. 17, 1971, as amended at 39 FR 12989, Apr. 10, 1974; 40 FR 5527, Feb. 6, 1975]

Sec. 114-47.203-8 Temporary utilization.

Interior regulations governing the temporary use, by another Federal agency, of real property determined to be excess to Department of the Interior needs are contained in IPMR 114-47.51.

Sec. 114-47.204 Determination of surplus.

Sec. 114-47.204-2 Property excepted from reporting.

Excess property having an estimated fair market value of less than $1,000, and not designated for utilization by another Federal agency, is subject to determination as surplus by the holding Bureau or Office in addition to the nonreportable properties listed in FPMR 101-47.202-4.

Sec. 114-47.301 General provisions of subpart.

Sec. 114-47.301-3 Disposals under other laws.

Numerous special statutes are on the books which authorize the Secretary to dispose of real property no longer needed for program purposes by the holding Bureau or Office. Many of these laws predate the Federal Property and Administrative Services Act of 1949, as amended. Where such special law provides that disposal will be made to the general public, as opposed to a specific named individual, firm, or organization, disposal shall be subject to the utilization and disposal provisions of IPMR 114-47.

Sec. 114-47.301-5 Records and reports.

A Report of Surplus Real Property Disposals and Inventory, GSA Form 1100, shall be prepared annually on a fiscal year basis by each Bureau and Office holding real property. The report shall be prepared and submitted in accordance with FPMR 101-47.4903 and the following supplemental instructions:

(a) Preparation. (1) The report should include only surplus real property inventory and disposals which are being transacted by Interior Bureaus and Offices pursuant to disposal authorities delegated to the Department in FPMR 101-47.302-2, 101-47.603, and any special one-

time disposal authority which may be delegated by the General Services Administration.

(2) Transfers of available real property between Interior Bureaus and transfers of excess real property to other Federal agencies outside Interior should not be reported on GSA Form 1100. However, in the event real property is withdrawn from the surplus inventory for further Federal agency utilization, the transaction should be reported on Line 13 of the form.

(3) Note that disposal transactions, as well as inventory data, are to be reported on the basis of "locations"—not number of transactions, parcels of land, buildings, etc.

(b) Submission and due date. GSA Form 1100 shall be submitted in original only, to the Director, Office of Acquisition and Property Management by not later than the 25th of July of each year. Negative reports are required and may be submitted in the form of a memorandum in lieu of GSA Form 1100.

[37 FR 5250, Mar. 11, 1972, as amended at 40 FR 5527, Feb. 6, 1975]

Sec. 114-47.302 Designation of disposal agencies.

Sec. 114-47.302-2 Holding agency.

The disposal authority conferred in the Secretary by this subsection has been delegated to heads of Bureaus and Offices in 205 DM 10.

Sec. 114-47.304 Advertised and negotiated disposals.

Sec. 114-47.304-8 Report of identical bids.

(a) The reporting requirements specified in FPMR 114-47.304-8 are applicable to all sales of Government-owned property made on a competitive basis whether competition is obtained through sealed bid, negotiation, auction, or spot bid procedures. They apply to:

(1) Program sales made pursuant to special statutes authorizing the Secretary of the Interior to sell specific real properties, and

(2) Sales of surplus real property made pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended.

(b) Reports on identical bids required by this subsection shall be submitted by the heads of Bureaus and Offices directly to the Attorney General in accord with FPMR 101-47.304-8. A copy of the transmittal letter and a copy of the abstract of bids shall be furnished to the Chief, Division of Property Management, Office of Acquisition and Property Management.

[40 FR 21954, May 20, 1975]

Sec. 114-47.304-12 Explanatory statements.

(a) Explanatory statements required to be submitted to the General Services Administration for transmittal to the committees of the Senate and House of Representatives pursuant to FPMR 101-47.304-12 shall be prepared following the outline shown in FPMR 101-47.4911. Such statements shall be submitted as attachments to a transmittal letter addressed to the Administrator, General Services Administration, Washington, D.C. 20405, prepared for the signature of the Assistant Secretary—Policy, Budget and Administration.

(b) The background and justification portion of this submission shall be a narrative statement fully showing that the property is in fact surplus (e.g., the goods and services produced by the property are no longer needed), and a complete justification both for the decision to sell at all, and to sell by negotiation rather than advertising.

(c) Twenty-two (22) mimeographed copies of such notices shall be submitted to the Assistant Secretary—Policy, Budget and Administration, twenty (20) of which are for submission to the General Services Administration and transmittal to the appropriate committees of the Congress. The letter transmitting each such notice to the Assistant Secretary—Policy, Budget and Administration, shall include any additional supporting data as may not be incorporated in the "background and justification" portion of the explanatory statement.

[35 FR 298, Jan. 8, 1970, as amended at 36 FR 17038, Aug. 27, 1971; 38 FR 8159, Mar. 29, 1973]

Sec. 114-47.304-50 Sales to Government employees.

In instances where this Department acts as disposal agency, surplus real property may be disposed of by sale, lease, or otherwise to Federal employees or their spouses only where all of the following conditions are met:

(a) The invitation for bids states the extent to which Federal employees are eligible to bid and requires Federal employees to identify themselves, their organization, and position, with similar information from spouses.

(b) Notice is given that no awards will be made to Federal employees or their spouses who might reasonably be expected to have information with regard to the property or its uses which is not readily available to members of the public, or who participated in the decision to dispose of the property, or in the sale itself.

(c) The sale is conducted under publically advertised, sealed bid procedures.

Note: Disposals under this paragraph apply only to actions taken pursuant to the Federal Property and Administrative Services Act of 1949, as amended. For disposals of public lands to employees of the Department, see 43 CFR Part 7.

Sec. 114-47.304-51 Noncollusive bids and proposals.

(a) Certificate of independent price determination: A certificate of independent price determination shall be required with each bid or offer for the purchase of real property, except where the price is fixed in advance of sale pursuant to law or regulation.

(1) The certificate of independent price determination clause contained in Condition No. 20 of the General Sale Terms and Conditions, Standard Form 114C, shall be included in all invitations for bids and requests for quotations on Government sales of real property and shall be submitted with sealed bids and written quotations submitted in response thereto.

(2) Auction and spot bid sales: Bureaus and Offices conducting sales of Government property by the auction or spot bid methods shall include an appropriate provision in the sales notice which will put the successful bidder on notice that he will be required, as a condition of award, to sign a certificate to the effect that "the bid was arrived at by the bidder or offeror independently, and was tendered without collusion with any other bidder or offeror."

(3) The requirement for a certificate of independent price determination applies to sales of surplus real property and to program sales made pursuant to special statutes as referred to in IPMR 114-47.304-8(a).

(b) The authority to make the determination described in paragraph (d) of Condition No. 20 of the General Sale Terms and Conditions, Standard Form 114C, is vested in the head of Bureaus and Offices and may not be redelegated.

(c) Reporting suspected antitrust violations: Whenever any Bureau or Office has factual information leading it to believe or suspect that bids received in response to a sales offering evidence of collusion on the part of two or more bidders designed to eliminate competition, full particulars shall be submitted to the Solicitor for consideration and possible referral to the Attorney General. This submission should include a summary of the pertinent facts concerning the reported case and, in the case of a formally advertised sale, a copy of the Invitation for Bids, the Abstract of Bids, and the bid of bidder(s) suspected of irregular practices; the name of the successful bidder and reason why the award was made to him; and any other information available which

might tend to establish possible violation of the antitrust laws. Reports required by this paragraph are in addition to and not in lieu of the identical bid reports required by IPMR 114-47.304-8.

(1) Reporting procedure: Reports of suspected antitrust violations should be transmitted to the Solicitor in the following format:

Assistant Attorney General,
Antitrust Division,
Department of Justice,
Washington, D.C. 20530.

Dear Sir: We transmit to you a case where bids received in response to Invitation No. ——— for (item(s) description), to be sold (sale date), were opened by (selling bureau or office and location) on ——— ——, 19—. Evidence of collusion or other conduct in violation of antitrust laws is herewith reported as follows:

Award was made to———————————. (In the next sentence explain the method by which the successful bidder was selected, i.e., high bidder, etc., unless all bids were rejected and the sale effected by readvertisement or negotiation, in which case, furnish details.)

Sincerely yours,

Solicitor.

Enclosure:

(2) The following copies are required:
(i) Original on "Office of the Solicitor" stationery
(ii) Shadow copy to accompany the original on letterhead tissue
(iii) White surname box copy on letterhead tissue
(iv) White letterhead tissue copy to be marked "Docket Copy"
(v) White letterhead tissue copy to be marked "Director, Office of Acquisition and Property Management."
(vi) Other information copies as may be required by the Bureau or Office.

[35 FR 298, Jan. 8, 1970, as amended at 36 FR 221, Jan. 7, 1971; 40 FR 5527, Feb. 6, 1975]

Sec. 114-47.304-52 Compliance review.

The head of each Bureau and Office engaged in programs which involve the conduct of sales of Government property in the categories referred to in IPMR 114-47.304-8(a) shall install an appropriate monitoring system at the headquarters office level to ensure compliance with the provisions of IPMR 114-47.304-8 and 114-47.304-51. The monitoring system installed by each Bureau and Office will be subject to review by the Department's internal audit staff to determine its adequacy and effectiveness.

[36 FR 221, Jan. 7, 1971]

Sec. 114-47.308 Special disposal provisions.

[35 FR 10434, June 26, 1970]

Sec. 114-47.308-3 Property for historic monument sites.

The Director, Bureau of Outdoor Recreation, shall make all determinations and perform all other functions assigned to the Secretary in FPMR 101-47.308- 3. The authority to exercise the authority conferred in the Secretary by FPMR 101-47.308-3 has been delegated to the Director, Bureau of Outdoor Recreation in 248 DM 1.

[36 FR 14741, Aug. 11, 1971]

Sec. 114-47.308-7 Property for use as public park or recreation areas.

The Director, Bureau of Outdoor Recreation, shall make all determinations and perform all other functions assigned to the Secretary in FPMR 101-308-7. The authority to exercise the authority conferred in the Secretary by FPMR 101-47.308-7 has been delegated to the Director, Bureau of Outdoor Recreation in 248 DM 1.

[36 FR 14741, Aug. 11, 1971]

Sec. 114-47.401 General provisions of subpart.

[35 FR 299, Jan. 8, 1970]

Sec. 114-47.401-6 Interim use and occupancy.

Interior regulations governing the temporary use, by another Federal agency, of surplus real property are contained in IPMR 114-47.51.

[35 FR 299, Jan. 8, 1970]

Sec. 114-47.501 General provisions of subpart.

Sec. 114-47.501-4 Findings.

(a) The findings specified in this subsection shall be documented in the form of an approved Report of Survey.

(b) For purposes of FPMR 101-47.501-4(b), a reviewing authority shall be the same as specified in IPMR 114-44.501-2.

Sec. 114-47.503 Abandonment and destruction.

Sec. 114-47.503-1 General.

The findings specified in FPMR 101-47.503-1 shall be made by an official not below a regional, area, or State Director.

Sec. 114-47.503-3 Abandonment or destruction without notice.

Findings justifying abandonment or destruction of real property without public notice shall be documented in the form of a Report of Survey approved by an appropriate reviewing authority. (See IPMR 114-44.501-2.)

Sec. 114-47.603 Delegation to the Department of the Interior.

(a) The authority conferred in the Secretary by FPMR 101-47.603 has been delegated to the heads of Bureaus and Offices in 205 DM 10.

(b) Available real property having an estimated fair market value of less than $1,000 shall be screened in accordance with the provisions of IPMR 114- 47.203-1(b) before a determination of excess or surplus is made.

[37 FR 20543, Sept. 30, 1972]

Sec. 114-47.800 Scope of subpart.

This subpart prescribes basic policies and procedures for periodic review of real property in the custody of Bureaus and Offices of the Department to identify that which is unneeded, is underutilized, or is not being put to its optimum use. It implements Bureau of the Budget Circular No. A-2, revised, dated August 30, 1971, and FPMR 101-47.8.

(a) The provisions of this subpart are applicable to the following Federal real property holdings in custody of this Department, wherever located:

(1) Land acquired by purchase, condemnation, donation, lease, or other methods, except lands exempted as provided in IPMR 114-47.800(b);

(2) Withdrawn public domain land, except that used for National Park, National Forest, or wildlife refuge purposes. Refer also to 603 DM 1 which establishes Departmental policy relating to the review and restoration, in whole or in part, of withdrawn land no longer used or required for the programs for which withdrawn; and

(3) Buildings, and other structures and facilities acquired by

purchase condemnation, construction, donation, lease, or other methods, including Government-owned buildings, structures, and facilities located on:

(i) Withdrawn public domain land;

(ii) Lands exempted from the provisions of this subpart by IPMR 114- 47.800(b); or

(iii) Other than Government-owned land.

(b) This subpart does not apply to the following properties:

(1) Unreserved public domain land administered by the Bureau of Land Management;

(2) Rights-of-way or easements granted to the Government;

(3) Indian tribal and trust properties;

(4) Oregon and California revested lands (43 U.S.C. 1181a);

(5) Reconveyed Coos Bay Wagon Road Land Grant lands (43 U.S.C. 1181a);

(6) Land administered by the National Park Service, other than administrative sites outside of the established boundaries of a national park;

(7) Land on Indian reservations within consolidation areas approved by the Secretary of the Interior;

(8) Land within the National Wildlife Refuge System;

(9) Bankhead-Jones lands administered under a land conservation and utilization program in accordance with the Taylor Grazing Act of 1934 (48 Stat. 1269);

(10) Land reserved or dedicated for national forest purposes; and

(11) Real property which is to be sold or otherwise disposed of and which was acquired through foreclosure, confiscation, or seizure in settlement of a claim of the Federal Government, or through conveyance to the Federal Government in connection with an indemnity or loan insurance or guarantee program.

Sec. 114-47.802 Procedures.

(a) Annual review by Bureaus and Offices. Each Bureau and Office having jurisdiction over real property in the categories referred to in IPMR 114- 47.800(a) shall conduct a systematic annual review of all such property to identify that which is unneeded, is underutilized, or is not being put to its optimum use. Every effort shall be made to effect partial disposals of real property whenever circumstances will permit economic separate disposal of the unneeded portion.

(1) In conducting the annual review, Bureaus and Offices shall be guided by the standards and guidelines set forth in FPMR 101-47.801, in addition to the disposal criteria prescribed in IPMR 114-47.802-50.

(2) In addition to the written record of the review of each individual installation required by FPMR 101-47.802(a)(2), a written descriptive listing of all properties identified as unneeded, underutilized, or not being put to optimum use shall be maintained as provided in IPMR 114-47.802-53(b).

(3) The head of each Bureau or Office or his designee is authorized to make the determination contemplated by FPMR 101-47.802(a)(3)(i)(B).

(i) The requirement found in FPMR 101-47.802(a)(3)(i)(B) for obtaining the approval of the appropriate GSA regional office before issuing permits or out-leases authorizing others to use temporarily unutilized property does not apply to:

(a) Permits or leases involving real property which is not subject to the provisions of Office of Management and Budget Circular No. A-2 or this Subpart 114-47.8. (See IPMR 114-47.800(b)), or

(b) Permits authorizing other Interior Bureaus or Offices to use property temporarily not being used by the holding Bureau.

(ii) Where a Bureau or Office administers large numbers of program leases such as agricultural leases, or grazing leases or permits on withdrawn public domain land, the appropriate regional office of GSA should be requested to approve the overall leasing program, thus obviating the need to request approval of each individual lease or permit as issued.

(b) GSA survey. (1) Bureaus and Offices shall cooperate fully with GSA officials conducting surveys of real property holdings under their jurisdiction in order to facilitate the overall objectives of the real property review program.

(2) Notifications of GSA survey findings received in the Office of the Secretary from the GSA Central Office in accordance with FPMR 101- 47.802(b)(5), will be forwarded to the Bureau or Office having custody of the property involved. Referrals to Bureaus and Offices will include a request for their comments and recommendations in any cases where GSA recommends that specific properties should be reported excess.

Sec. 114-47.802-50 Disposal criteria.

The disposal criteria set forth in this subsection are provided for the use and guidance of Bureaus and Offices in conducting the review of real property holdings and achieving effective and economical use of such property. These criteria are in addition to the standards and guidelines prescribed in FPMR 101-47.801.

(a) Property not utilized—no future use. Property not presently used in the Bureau's program for which acquired and for which there is no foreseeable future need should be disposed of promptly by:

(1) Intrabureau transfer, transfer to other Interior Bureaus, declaration to GSA as excess, or disposal as surplus pursuant to authority delegated in 205 DM 10, or

(2) Reporting to the Bureau of Land Management in the case of unneeded withdrawn public domain land. (See IPMR 114-47.201-3.)

(b) Property not presently utilized—known future need. Property not presently being used, but for which a definite future program need exists should be retained: Provided, That the property will be put to its optimum use when the future program is undertaken. Reasonable efforts should be made to put property in this category into productive use during the period it would otherwise remain vacant or idle (see IPMR 114-47.802(a)(3)), either by:

(1) Permitting another Interior Bureau of Federal agency to use the property on an interim basis, or

(2) Interim leasing to non-Federal entities: Provided, That the holding Bureau or Office has specific statutory authority to lease temporarily unused property. (See 15 CG 96.)

(c) Property not presently utilized—possible future need. This pertains to property not presently used in the Bureau's program, but for which a possible future need exists. The less certain or farther away this possible future need is, the greater consideration must be given to disposal, particularly if the property is not unique and replacement property could be acquired later if the need materializes.

(d) High value locations. An essential Bureau activity being carried on at a valuable real estate site might not be using such site to its full economic advantage. For example, at the time of acquisition the site may have been in an outlying area, but may now be within the growing community. Such land is not unneeded or excess, since there is a continuing program need for the installation, but the present land could be sold for substantially more than the cost of suitable replacement facilities and the difference deposited in the Treasury.

(1) In these instances funds for replacement facilities must first be obtained through the normal budgetary processes, justified by the net gain to be realized.

(2) Once the replacement facilities are available, the old facilities should be disposed of as unneeded in the usual manner.

(e) High cost facilities. An essential Bureau activity may be performed in facilities which have such an unusually high annual operation and maintenance cost that replacement is justified. Some examples of this might be:

(1) The work is being performed at several separate locations, with a consequent loss of efficiency and higher costs.

(2) The work is being performed in several small buildings at the one site, and would significantly benefit from operations being consolidated in one building.

(3) The facility is unusually expensive to maintain, due to age or

poor condition.

(4) The facility is so poorly planned or laid out, or so unsuitable for the particular type of activity being carried on, that excess costs are incurred.

(5) The facility is permanently underutilized, and is not susceptible to partial disposal through sharing, rental, sale, etc.

In all of paragraphs (e)(1) through (5) of this section and in similar instances, if the anticipated savings would so warrant, funds for replacement should be sought through the normal budgetary processes, justified by the net savings. Once the replacement facilities are available, the old facilities should be disposed of as unneeded in the usual manner.

(f) Property used by another Federal agency under permit. Property for which a future need was anticipated may be utilized by another Federal agency by permit from the holding Bureau. If reexamination of the anticipated need discloses that such need will not materialize, the Bureau having basic custody of the property should convey the property to the permittee Bureau or agency by formal transfer of accountability.

(g) Property leased to non-Federal entities. Property for which a future need was anticipated may have been leased on an interim basis to a non-Federal entity. If reexamination of the anticipated need discloses that such need will not materialize, the property should be disposed of, subject to the provisions of the lease.

Sec. 114-47.802-51 Funds and statutory authority.

There may be cases where it will be necessary to secure additional funds or specific legislative authority before disposal of high-value locations or high-cost facilities can be made and the necessary replacement facilities acquired. However, this circumstance must not delay the making of necessary surveys in order to identify properties in these categories or the initiation of specific proposals looking toward replacement. Proposals should be supported by estimates of replacement costs and ultimate net savings. In seeking replacement facilities:

(a) Such action as can be taken without additional funds or statutory authority should be initiated at the earliest practicable time;

(b) Consideration should be given to obtaining available and excess property presently held by other Interior Bureaus and other Federal agencies; and

(c) The appropriate regional office of the General Services Administration should be contacted to determine whether suitable excess replacement facilities are available for transfer or expected to become available within a reasonable time.

Sec. 114-47.802-52 Bureau implementation.

In those Bureaus having large and varied real property holdings, the general instructions in this chapter require further development for effective application within the Bureau, particularly with respect to the following:

(a) Retention criteria. Bureau implementation should include, to the extent possible, uniform retention criteria for specific properties for the guidance of field personnel conducting the annual review required by IPMR 114-47.802. The following is an example of retention criteria which might be developed.

It may be determined that a certain amount of land is needed to accommodate a particular type or size of facility, such as an administrative site, boarding school, day school, etc. Where this determination can be made the needed acreage should be specified and any held for this purpose in excess of that amount should be considered for disposal.

(b) Partial disposals. Bureau instructions should make clear that it is not enough for a field office official to determine, for example, that a program using 1,000 acres of land will continue to be carried on, but a further determination should be made as to the need to retain the entire 1,000 acres and whether or not a part of the acreage can be made available for other utilization or disposal. It might still be necessary to provide employee housing, but 50 units might now be adequate and 10 units released. The units of property to be released must, of course, be of a nature or so located that they are susceptible of economic separate disposal.

(c) Underutilization and uneconomical utilization. These situations may be common or typical of certain phases of the Bureau's program at some locations, and further criteria are needed to show either how they may be overcome or else why they must be accepted as a temporary condition due to the program requirements.

(d) Program utilization. There is a definite need for Bureau particularization on what constitutes program utilization, as distinguished from non-program but authorized utilization. There are many legitimate and necessary instances of utilization of real property for nonprogram purposes, usually of a temporary nature, but such use does not give it a program status. One rule of thumb might be whether program funds would be expended to purchase land or construct buildings for present uses of existing real property.

(e) Inspection and field review. The Bureau headquarters and regional staff members responsible for this aspect of real property management shall include checking the effectiveness of compliance and understanding at the regional and installation level, of this program, particularly on the completeness of both regional and installation reports, and the development of adequate techniques for the survey at the installation level.

Sec. 114-47.802-53 Intrabureau records.

The head of each Bureau having jurisdiction over real property shall issue instructions to provide that each office responsible for conducting the prescribed annual review of real property holdings shall:

(a) Maintain a written record of the review of each individual installation, which record will contain comments relative to each of the guidelines set forth in FPMR 101-47.801(b).

(b) Maintain a written descriptive listing of all properties or portions of properties identified during each annual review as unneeded, underutilized, or not being put to optimum use, whether or not disposal action is going to be taken on the properties.

Sec. 114-47.802-54 Annual report to the Department.

The head of each Bureau or Office having jurisdiction over real property shall prepare an annual report, as of the end of each fiscal year, summarizing the actions taken by the Bureau or Office to implement the provisions of this Subpart 114-47.8. The report will:

(a) Include consolidated reports for the Bureau in the form of Appendices I, II, III of this subpart. /1/ These Appendices illustrate the format and the order in which the requested data are to be reported and should be followed to facilitate processing by the Department and transmittal to the Office of Management and Budget.

NOTE 1 Filed as part of the original document.

(b) Include in the memorandum transmitting Appendices I, II, and III, the following:

(1) A narrative statement describing, in general the actions taken during the fiscal year to comply with the provisions of this Subpart 114-47.8. The narrative shall include, but not necessarily be limited to:

(i) A description of the analytical methods used to determine that properties not listed in Appendices I and II are being put to optimum use.

(ii) Actions taken to strengthen procedures for meeting the objectives of the annual review program.

(iii) Actions taken by the head of the bureau and headquarters office staff to insure full compliance with Office of Management and Budget,

General Services Administration, and Departmental regulations at all levels within the bureau.

(2) A description of any particular problems encountered by the Bureau in the management of real property.

(3) Recommendations as to actions which might be taken by the Property Review Board, the Office of Management and Budget, the General Services Administration, or the Department to improve the management of real property.

(c) Include, as attachments to the transmittal memorandum, two copies of new or revised manual or other instructions issued by the Bureau during the fiscal year. If none were issued, the report should so indicate.

(d) Be prepared, in duplicate, and transmitted to reach the Director, Office of Acquisition and Property Management by August 21 of each year.

[36 FR 22294, Nov. 24, 1971, as amended at 40 FR 5527, Feb. 6, 1975]

Sec. 114-47.5101 Scope of subpart.

This subpart prescribes basic policy and criteria for the granting of permits authorizing other Interior Bureaus or other Federal agencies to use real property in custody of Bureaus and Offices of the Department of the Interior.

Sec. 114-47.5102 Applicability.

The provisions of this subpart are applicable to all Federal real property in custody of this Department of the types referred to in paragraph (a) of this section, wherever located.

(a) Specifically, this subpart applies to utilization by permit of:

(1) Lands; buildings, structures and facilities (including those located on other than Government-owned land) acquired by purchase, condemnation, donation, construction, lease, or other methods; and

(2) Withdrawn public domain land;

(b) This subpart does not apply to use permits involving the following land and properties, but it does apply to Government-owned buildings, structures, and facilities located on such lands:

(1) Unreserved public domain;

(2) Rights of way or easements granted to the Government;

(3) Indian tribal and trust properties;

(4) Oregon and California revested lands (43 U.S.C. 1181a);

(5) Land administered by the National Park Service, other than administrative sites outside of the established boundaries of a national park;

(6) Land on Indian reservations within consolidation areas approved by the Secretary of the Interior;

(7) Land within the National Wildlife Refuge System; and

(8) Real property which is to be sold or otherwise disposed of and which was acquired through foreclosure, confiscation, or seizure in settlement, of a claim of the Federal Government, or through conveyance to the Federal Government in connection with an indemnity or loan insurance or guarantee program.

Sec. 114-47.5103 Definition of permit.

For purposes of this subpart, a permit is defined to mean the temporary authority conferred on one Government agency to use property under the jurisdiction of another Government agency.

Sec. 114-47.5104 Authority.

While no statutory authority is required to execute a permit authorizing the use of property by another Federal agency, such use may be granted only in the following instances:

(a) Nonexcess property. When it has been determined by the head of the Bureau or Office, or his designee(s), that there is a present or future program requirement for the property, and the proposed use by the requesting agency conforms to the acquisition and use provisions of Bureau of the Budget Circular No. A-2, Revised, dated April 5, 1967.

(b) Excess or surplus property in process of disposal. Excess or surplus real property may be made available for short term use by permit during the period it is being processed for further Federal use or disposal as provided in paragraphs (b)(1) and (2), of this section; Provided, That the requesting agency conforms to the provisions of Bureau of the Budget Circular No. A-2, Revised, dated April 5, 1967; And provided further, That such temporary use or occupancy will not interfere with, delay, or retard its transfer to another Federal agency, or disposal.

(1) Permits granting interim use of the following properties may be executed without the approval of the General Services Administration:

(i) Excess or surplus real property, including land with or without improvements, having an estimated fair market value of less than $1,000, and

(ii) Surplus improvements of any kind having an estimated fair market value of $1,000 or more to be disposed of without the underlying land. A permit may not be issued, however, until the surplus determination has been made by theGeneral Services Administration.

(2) Permits granting interim use of the following properties may be executed only with the approval of the General Services Administration in each instance:

(i) Excess improvements of any kind, having an estimated fair market value of $1,000 or more, to be disposed of without the underlying land. In the event such improvements are subsequently determined by the General Services Administration to be surplus permits may be granted pursuant to IPMR 114- 47.5104(b)(1)(ii).

(ii) Excess or surplus land, with or without improvements, having an estimated fair market value of $1,000 or more.

Sec. 114-47.5105 Limitations.

The head of each Bureau or Office should impose such additional limitations on the granting of use permits as he deems necessary for effective utilization and disposition of real property in the custody of his Bureau.

43 CFR Part 2370: Bureau of Land Management

43 CFR PART 2370—RESTORATIONS AND REVOCATIONS

Subpart 2370—Restorations and Revocations; General

Sec.
2370.0-1 Purpose.
2370.0-3 Authority.

Subpart 2372—Procedures

2372.1 Notice of intention to relinquish action by holding agency.
2372.2 Report to General Services Administration.
2372.3 Return of lands to the public domain; conditions.

Subpart 2374—Acceptance of Jurisdiction by BLM

2374.1 Property determinations.
2374.2 Conditions of acceptance by BLM.

AUTHORITY: 63 Stat. 377 as amended, R.S. 2478; 40 U.S.C. 472, 43 U.S.C. 1201.

Subpart 2370—Restorations and Revocations; General

Sec. 2370.0-1 Purpose.

The regulations of this Part 2370 apply to lands and interests in lands withdrawn or reserved from the public domain, except lands reserved or dedicated for national forest or national park purposes, which are no longer needed by the agency for which the lands are withdrawn or reserved.

[35 FR 9558, June 13, 1970]

Sec. 2370.0-3 Authority.

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, governs the disposal of surplus Federal lands or interests in lands. Section 3 of that Act (40 U.S.C. 472), as amended, February 28, 1958 (72 Stat. 29), excepts from its provisions the following:

(a) The public domain.

(b) Lands reserved or dedicated for national forest or national park purposes.

(c) Minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws.

(d) Lands withdrawn or reserved from the public domain, but not including lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator of the General Services Administration, determines are not suitable for return to the public domain for disposition under the general public-land laws, because such lands are substantially changed in character by improvements or otherwise.

[35 FR 9558, June 13, 1970]

Subpart 2372—Procedures

Source: 35 FR 9558, June 13, 1970, unless otherwise noted.

Sec. 2372.1 Notice of intention to relinquish action by holding agency.

(a) Agencies holding withdrawn or reserved lands which they no longer need will file, in duplicate, a notice of intention to relinquish such lands in the proper office (see Sec. 1821.2-1 of this chapter).

(b) No specific form of notice is required, but all notices must contain the following information:

(1) Name and address of the holding agency.

(2) Citation of the order which withdrew or reserved the lands for the holding agency.

(3) Legal description and acreage of the lands, except where reference to the order of withdrawal or reservation is sufficient to identify them.

(4) Description of the improvements existing on the lands.

(5) The extent to which the lands are contaminated and the nature of the contamination.

(6) The extent to which the lands have been decontaminated or the measures taken to protect the public from the contamination and the proposals of the holding agency to maintain protective measures.

(7) The extent to which the lands have been changed in character other than by construction of improvements.

(8) The extent to which the lands or resources thereon have been disturbed and the measures taken or proposed to be taken to recondition the property.

(9) If improvements on the lands have been abandoned, a certification that the holding agency has exhausted General Services Administration procedures for their disposal and that the improvements are without value.

(10) A description of the easements or other rights and privileges which the holding agency or its predecessors have granted covering the lands.

(11) A list of the terms and conditions, if any, which the holding agency deems necessary to be incorporated in any further disposition of the lands in order to protect the public interest.

(12) Any information relating to the interest of other agencies or individuals in acquiring use of or title to the property or any portion of it.

(13) Recommendations as to the further disposition of the lands, including where appropriate, disposition by the General Services Administration.

Sec. 2372.2 Report to General Services Administration.

The holding agency will send one copy of its report on unneeded lands to the appropriate regional office of the General Services Administration for its information.

Sec. 2372.3 Return of lands to the public domain; conditions.

(a) When the authorized officer of the Bureau of Land Management determines the holding agency has complied with the regulations of this part, including the conditions specified in Sec. 2374.2 of this subpart, and that the lands or interests in lands are suitable for return to

the public domain for disposition under the general public land laws, he will notify the holding agency that the Department of the Interior accepts accountability and responsibility for the property, sending a copy of this notice to the appropriate regional office of the General Services Administration.

Subpart 2374—Acceptance of Jurisdiction by BLM

Sec. 2374.1 Property determinations.

(a) When the authorized officer of the Bureau of Land Management determines that the holding agency has complied with the regulations of this part and that the lands or interests in lands other than minerals are not suitable for return to the public domain for disposition under the general public land laws, because the lands are substantially changed in character by improvements or otherwise, he will request the appropriate officer of the General Services Administration, or its delegate, to concur in his determination.

(b) When the authorized officer of the Bureau of Land Management determines that minerals in lands subject to the provisions of paragraph (a) of this section are not suitable for disposition under the public land mining or mineral leasing laws, he will notify the appropriate officer of the General Services Administration or its delegate of this determination.

(c) Upon receipt of the concurrence specified in paragraph (a) of this section, the authorized officer of the Bureau of Land Management will notify the holding agency to report as excess property the lands and improvements therein, or interests in lands to the General Services Administration pursuant to the regulations of that Administration. The authorized officer of the Bureau of Land Management will request the holding agency to include minerals in its report to the General Services Administration only when the provisions of paragraph (b) of this section apply. He will also submit to the holding agency, for transmittal with its report to the General Services Administration, information of record in the Bureau of Land Management on the claims, if any, by agencies other than the holding agency of primary, joint, or secondary jurisdiction over the lands and on any encumbrances under the public land laws.

[35 FR 9559, June 13, 1970]

Sec. 2374.2 Conditions of acceptance by BLM.

Agencies will not be discharged of their accountability and responsibility under this section unless and until:

(a) The lands have been decontaminated of all dangerous materials and have been restored to suitable condition or, if it is uneconomical to decontaminate or restore them, the holding agency posts them and installs protective devices and agrees to maintain the notices and devices.

(b) To the extent deemed necessary by the authorized officer of the Bureau of Land Management, the holding agency has undertaken or agrees to undertake or to have undertaken appropriate land treatment measures correcting, arresting, or preventing deterioration of the land and resources thereof which has resulted or may result from the agency's use or possession of the lands.

(c) The holding agency, in respect to improvements which are of no value, has exhausted General Services Administration's procedures for their disposal and certifies that they are of no value.

(d) The holding agency has resolved, through a final grant or denial, all commitments to third parties relative to rights and privileges in and to the lands or interests therein.

(e) The holding agency has submitted to the appropriate office mentioned in paragraph (a) of Sec. 2372.1 a copy of, or the case file on, easements, leases, or other encumbrances with which the holding agency or its predecessors have burdened the lands or interests therein.

[35 FR 9559, June 13, 1970]

36 CFR Part 800: Protection of Historic and Cultural Properties

36 CFR PART 800—PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Subpart A—Background and Policy

Sec.
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800.4 Identifying historic properties.
800.5 Assessing effects.
800.6 Affording the Council an opportunity to comment.
800.7 Agreements with States for section 106 reviews.
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Subpart C—Special Provisions

800.10 Protecting National Historic Landmarks.
800.11 Properties discovered during implementation of an undertaking.
800.12 Emergency undertakings.
800.13 Programmatic Agreements.
800.14 Coordination with other authorities.
800.15 Counterpart regulations.

AUTHORITY: Pub. L. 89-665, 80 Stat. 915 (16 U.S.C. 470), as amended, 84 Stat. 204 (1970), 87 Stat. 139 (1973), 90 Stat. 1320 (1976), 92 Stat. 3467 (1978): E.O. 11593, 3 CFR 1971 Comp., p. 154.

SOURCE: 51 FR 31118, Sept. 2, 1986, unless otherwise noted.

Subpart A—Background and Policy

Sec. 800.1 Authorities, purposes, and participants.

(a) Authorities. Section 106 of the National Historic Preservation Act requires a Federal agency head with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to take into account the effects of the agency's undertaking on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act requires that Federal agency heads, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking and, prior to approval of such undertaking, afford the Council a reasonable opportunity to comment. These regulations define the process used by a Federal agency to meet these responsibilities, commonly called the section 106 process.

(b) Purposes of the section 106 process. The Council seeks through the section 106 process to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to help resolve such conflicts in the public interest. The Council encourages this accommodation through consultation among the Agency Official, the State Historic Preservation Officer, and other interested persons during the early stages of planning. The Council regards the consultation process as an effective means for reconciling the interests of the consulting parties. Integration of the section 106 process into the normal administrative process used by agencies for project planning ensures early, systematic consideration of historic preservation issues. To this end, the Council encourages agencies to examine their administrative processes to see that they provide adequately for the efficient identification and consideration of historic properties, that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation, that they provide for timely requests for Council comment, and that they promote cost-effective implementation of the section 106 process. When impediments are found to exist in the agency's administrative process, the agency is encouraged to consult with the Council to develop special section 106 procedures suited to the agency's needs.

(c) Participants in the section 106 process—(1) Consulting parties. Consulting parties are the primary participants in the section 106 process whose responsibilities are defined by these regulations. Consulting parties may include:

(i) Agency Official. The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with section 106. It is the responsibility of the Agency Official to identify and evaluate affected historic properties, assess an undertaking's effect upon them, and afford the Council its comment opportunity. The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains responsible for section 106 compliance. The Agency Official should involve applicants for Federal assistance or approval in the section 106 process as appropriate in the manner set forth below.

(ii) State Historic Preservation Officer. The State Historic Preservation Officer coordinates State participation in the implementation of the National Historic Preservation Act and is a key participant in the section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify those persons interested in an undertaking and

its effects upon historic properties. When the State Historic Preservation Officer declines to participate or does not respond within 30 days to a written request for participation, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the section 106 process. The State Historic Preservation Officer may assume primary responsibility for reviewing Federal undertakings in the State by agreement with the Council as prescribed in Sec. 800.7 of these regulations.

(iii) Council. The Council is responsible for commenting to the Agency Official on an undertaking that affects historic properties. The official authorized to carry out the Council's responsibilities under each provision of the regulations is set forth in a separate, internal delegation of authority.

(2) Interested persons. Interested persons are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. Certain provisions in these regulations require that particular interested persons be invited to become consulting parties under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested person will advance the objectives of section 106, they may invite that person to become a consulting party. Interested persons may include:

(i) Local governments. Local governments are encouraged to take an active role in the section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for section 106 compliance under programs such as the Community Development Block Grant Program, participation as a consulting party is required. When no such legal responsibility exists, the extent of local government participation is at the discretion of local government officials. If the State Historic Preservation Officer, the appropriate local government, and the Council agree, a local government whose historic preservation program has been certified pursuant to section 101(c)(1) of the Act may assume any of the duties that are given to the State Historic Preservation Officer by these regulations or that originate from agreements concluded under these regulations.

(ii) Applicants for Federal assistance, permits, and licenses. When the undertaking subject to review under section 106 is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may choose to participate in the section 106 process in the manner prescribed in these regulations.

(iii) Indian tribes. The Agency Official, the State Historic Preservation Officer, and the Council should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties. When an undertaking will affect Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. When an Indian tribe has established formal procedures relating to historic preservation, the Agency Official, State Historic Preservation Officer, and Council shall, to the extent feasible, carry out responsibilities under these regulations consistent with such procedures. An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting its lands, provided the Indian tribe so requests, the State Historic Preservation Officer concurs, and the Council finds that the Indian tribe's procedures meet the purposes of these regulations. When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as interested persons. Traditional cultural leaders and other Native Americans are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons.

(iv) The public. The Council values the views of the public on historic preservation questions and encourages maximum public participation in the section 106 process. The Agency Official, in the manner described below, and the State Historic Preservation Officer should seek and consider the views of the public when taking steps to identify historic properties, evaluate effects, and develop alternatives. Public participation in the section 106 process may be fully coordinated with, and satisfied by, public participation programs carried out by Agency Officials under the authority of the National Environmental Policy Act and other pertinent statutes. Notice to the public under these statutes should adquately inform the public of preservation issues in order to elicit public views on such issues that can then be considered and resolved, when possible, in decisionmaking. Members of the public with interests in an undertaking and its effects on historic properties should be given reasonable opportunity to have an active role in the section 106 process.

Sec. 800.2 Definitions.

(a) "Act" means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470-470w-6.

(b) "Agency Official" means the Federal agency head or a designee with authority over a specific undertaking, including any State or local government official who has been delegated legal responsibility for compliance with section 106 and section 110(f) in accordance with law.

(c) "Area of potential effects" means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

(d) "Council" means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(e) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

(f) "Indian lands" means all lands under the jurisdiction or control of an Indian tribe.

(g) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1701, et seq.

(h) "Interested person" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

(i) "Local government" means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(j) "National Historic Landmark" means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(k) "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.

(l) "National Register Criteria" means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

(m) "Secretary" means the Secretary of the Interior.

(n) "State Historic Preservation Officer" means the official appointed or designated pursuant to section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

(o) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The

project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under section 106.

Subpart B—The Section 106 Process

Sec. 800.3 General.

(a) Scope. The procedure in this subpart guides Agency Officials, State Historic Preservation Officers, and the Council in the conduct of the section 106 process. Alternative methods of meeting section 106 obligations are found in Sec. 800.7, governing review of undertakings in States that have entered into agreements with the Council for section 106 purposes, and Sec. 800.13, governing Programmatic Agreements with Federal agencies that pertain to specific programs or activities. Under each of these methods, the Council encourages Federal agencies to reach agreement on developing alternatives or measures to avoid or reduce effects on historic properties that meet both the needs of the undertaking and preservation concerns.

(b) Flexible application. The Council recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner relfecting differing program requirements, as long as the purposes of section 106 of the Act and these regulations are met.

(c) Timing. Section 106 requires the Agency Official to complete the section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license or permit. The Council does not interpret this language to bar an Agency Official from expending funds on or authorizing nondestructive planning activities preparatory to an undertaking before complying with section 106, or to prohibit phased compliance at different stages in planning. The Agency Official should ensure that the section 106 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official should establish a schedule for completing the section 106 process that is consistent with the planning and approval schedule for the undertaking.

Sec. 800.4 Identifying historic properties.

(a) Assessing information needs. (1) Following a determination by the Agency Official that a proposed project, activity, or program constitutes an undertaking and after establishing the undertaking's area of potential effects, the Agency Official shall:

(i) Review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that undentified historic properties exist in the area of potential effects;

(ii) Request the views of the State Historic Preservation Officer on further actions to identify historic properties that may be affected; and (iii) Seek information in acordance with agency planning processes from local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area.

(2) Based on this assessment, the Agency Official should determine any need for further actions, such as field surveys and predictive modeling, to identify historic properties.

(b) Locating historic properties. In consultation with the State Historic Preservation Officer, the Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register. Efforts to identify historic properties should follow the Secretary's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716) and agency programs to meet the requirements of section 110(a)(2) of the Act.

(c) Evaluating historical significance. (1) In consultation with the State Historic Preservation Officer and following the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible.

(2) If the Agency Official and the State Historic Preservation Officer agree that a property is eligible under the criteria, the property shall be considered eligible for the National Register for section 106 purposes.

(3) If the Agency Official and the State Historic Preservation Officer agree that the criteria are not met, the property shall be considered not eligible for the National Register for section 106 purposes.

(4) If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination from the Secretary of the Interior pursuant to the applicable National Park Service regulations.

(5) If the State Historic Preservation Officer does not provide views, then the State Historic Preservation Officer is presumed to agree with the Agency Official's determination for the purpose of this subsection.

(d) When no historic properties are found. If the Agency Official determines in accordance with Sec. 800.4 paragraphs (a) through (c) that there are no historic properties that may be affected by the undertaking, the Agency Official shall provide documentation of this finding to the State Historic Preservation Officer. The Agency Official should notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and make the documentation available to the public. In these circumstances, the Agency Official is not required to take further steps in the section 106 process.

(e) When historic properties are found. If there are historic properties that the undertaking may affect, the Agency official shall assess the effects in accordance with Sec. 800.5.

Sec. 800.5 Assessing effects.

(a) Applying the Criteria of Effect. In consultation with the State Historic Preservation Officer, the Agency Official shall apply the Criteria of Effect (Sec. 800.9(a)) to historic properties that may be affected, giving consideration to the views, if any, of interested persons.

(b) When no effect is found. If the Agency Official finds the undertaking will have no effect on historic properties, the Agency Official shall notify the State Historic Preservation Officer and interested persons who have made their concerns known to the Agency Official and document the findings, which shall be available for public inspection. Unless the State Historic Preservation Officer objects within 15 days of receiving such notice, the Agency Official is not required to take any further steps in the section 106 process. If the State Historic Preservation Officer files a timely objection, then the procedures described in Sec. 800.5(c) are followed.

(c) When an effect is found. If an effect on historic properties is found, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect (Sec. 800.9(b)) to determine whether the effect of the undertaking should be considered adverse.

(d) When the effect is not considered adverse. (1) If the Agency Official finds the effect is not adverse, the Agency Official shall:

(i) Obtain the State Historic Preservation Officer's concurrence with the finding and notify and submit to the Council summary documentation, which shall be available for public inspection; or

(ii) Submit the finding with necessary documentation (Sec. 800.8(a)) to the Council for a 30-day review period and notify the State Historic Preservation Officer.

(2) If the Council does not object to the finding of the Agency Official within 30 days of receipt of notice, or if the Council objects

but proposes changes that the Agency Official accepts, the Agency Official is not required to take any further steps in the section 106 process other than to comply with any agreement with the State Historic Preservation Officer or Council concerning the undertaking. If the Council objects and the Agency Official does not agree with changes proposed by the Council, then the effect shall be considered as adverse.

(e) When the effect is adverse. If an adverse effect on historic properties is found, the Agency Official shall notify the Council and shall consult with the State Historic Preservation Officer to seek ways to avoid or reduce the effects on historic properties. Either the Agency Official or the State Historic Preservation Officer may request the Council to participate. The Council may participate in the consultation without such a request.

(1) Involving interested persons. Interested persons shall be invited to participate as consulting parties as follows when they so request:

(i) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

(ii) The representative of an Indian tribe in accordance with Sec. 800.1(c)(2)(iii);

(iii) Applicants for or holders of grants, permits, or licenses, and owners of affected lands; and

(iv) Other interested persons when jointly determined appropriate by the Agency Official, the State Historic Preservation Officer, and the Council, if participating.

(2) Documentation. The Agency Official shall provide each of the consulting parties with the documentation set forth in Sec. 800.8(b) and such other documentation as may be developed in the course of consultation.

(3) Informing the public. The Agency Official shall provide an adequate opportunity for members of the public to receive information and express their views. The Agency Official is encouraged to use existing agency public involvement procedures to provide this opportunity. The Agency Official, State Historic Preservation Officer, or the Council may meet with interested members of the public or conduct a public information meeting for this purpose.

(4) Agreement. If the Agency Official and the State Historic Preservation Officer agree upon how the effects will be taken into account, they shall execute a Memorandum of Agreement. When the Council participates in the consultation, it shall execute the Memorandum of Agreement along with the Agency Official and the State Historic Preservation Officer. When the Council has not participated in consultation, the Memorandum of Agreement shall be submitted to the Council for comment in accordance with Sec. 800.6(a). As appropriate, the Agency Official, the State Historic Preservation Officer, and the Council, if participating, may agree to invite other consulting parties to concur in the agreement.

(5) Amendments. The Agency Official, the State Historic preservation Officer, and the Council, if it was a signatory to the original agreement, may subsequently agree to an amendment to the Memorandum of Agreement. When the Council is not a party to the Memorandum of Agreement, or the Agency Official and the State Historic Preservation Officer cannot agree on changes to the Memorandum of Agreement, the proposed changes shall be submitted to the Council for comment in accordance with Sec. 800.6.

(6) Ending consultation. The Council encourages Agency Officials and State Historic Preservation Officers to utilize the consultation process to the fullest extent practicable. After initiating consultation to seek ways to reduce or avoid effects on historic properties, State Historic Preservation Officer, the Agency Official, or the Council, at its discretion, may state that further consultation will not be productive and thereby terminate the consultation process. The Agency Official shall then request the Council's comments in accordance with Sec. 800.6(b) and notify all other consulting parties of its requests.

Sec. 800.6 Affording the Council an opportunity to comment.

(a) Review of a Memorandum of Agreement. (1) When an Agency Official submits a Memorandum of Agreement accompanied by the documentation specified in Sec. 800.8 (b) and (c), the Council shall have 30 days from receipt to review it. Before this review period ends, the Council shall:

(i) Accept the Memorandum of Agreement, which concludes the section 106 process, and informs all consulting parties; or

(ii) Advise the Agency Official of changes to the Memorandum of Agreement that would make it acceptable; subsequent agreement by the Agency Official, the State Historic Preservation Officer, and the Council concludes the section 106 process; or

(iii) Decide to comment on the undertaking, in which case the Council shall provide its comments within 60 days of receiving the Agency Official's submission, unless the Agency Official agrees otherwise.

(2) If the Agency Official, the State Historic Preservation Officer, and the Council do not reach agreement in accordance with Sec. 800.6(a)(1)(ii), the Agency Official shall notify the Council, which shall provide its comments within 30 days of receipt of notice.

(b) Comment when there is no agreement. (1) When no Memorandum of Agreement is submitted, the Agency Official shall request Council comment and provide the documentation specified in Sec. 800.8(d). When requested by the Agency Official, the Council shall provide its comments within 60 days of receipt of the Agency Official's request and the specified documentation.

(2) The Agency Official shall make a good faith effort to provide reasonably available additional information concerning the undertaking and shall assist the Council in arranging an onsite inspection and public meeting when requested by the Council.

(3) The Council shall provide its comments to the head of the agency requesting comment. Copies shall be provided to the State Historic Preservation Officer, interested persons, and others as appropriate.

(c) Response to Council comment. (1) When a Memorandum of Agreement becomes final in accordance with Sec. 800.6(a)(1) (i) or (ii), the Agency Official shall carry out the undertaking in accordance with the terms of the agreement. This evidences fulfillment of the agency's section 106 responsibilities. Failure to carry out the terms of a Memorandum of Agreement requires the Agency Official to resubmit the undertaking to the Council for comment in accordance with Sec. 800.6.

(2) When the Council had commented pursuant to Sec. 800.6(b), the Agency Official shall consider the Council's comments in reaching a final decision on the proposed undertaking. The Agency Official shall report the decision to the Council, and if possible, should do so prior to initiating the undertaking.

(d) Foreclosure of the Council's opportunity to comment. (1) The Council may advise an Agency Official that it considers the agency has not provided the Council a reasonable opportunity to comment. The decision to so advise the Agency Official will be reached by a majority vote of the Council or by a majority vote of a panel consisting of three or more Council members with the concurrence of the Chairman.

(2) The Agency Official will be given notice and a reasonable opportunity to respond prior to a proposed Council determination that the agency has foreclosed the Council's opportunity to comment.

(e) Public requests to the Council. (1) When requested by any person, the Council shall consider an Agency Official's finding under Secs. 800.4(b), 800.4(c), 800.4(d), or 800.5(b), and, within 30 days of receipt of the request, advise the Agency Official, the State Historic Preservation Officer, and the person making the request of its views of the Agency Official's finding.

(2) In light of the Council views, the Agency Official should reconsider the finding. However, an inquiry to the Council will not suspend action on an undertaking.

(3) When the finding concerns the eligibility of a property for the

National Register, the Council shall refer the matter to the Secretary.
[51 FR 31118, Sept. 2, 1986; 52 FR 25376, July 7, 1987]

Sec. 800.7 Agreements with States for section 106 reviews.

(a) Establishment of State agreements. (1) Any State Historic Preservation Officer may enter into an agreement with the Council to substitute a State review process for the procedures set forth in these regulations, provided that:

(i) The State historic preservation program has been approved by the Secretary pursuant to section 101(b)(1) of the Act; and

(ii) The Council, after analysis of the State's review process and consideration of the views of Federal and State agencies, local governments, Indian tribes, and the public, determines that the State review process is at least as effective as, and no more burdensome than, the procedures set forth in these regulations in meeting the requirements of section 106.

(2) The Council, in analyzing a State's review process pursuant to Sec. 800.7(a)(1)(ii), shall:

(i) Review relevant State laws, Executive orders, internal directives, standards, and guidelines;

(ii) Review the organization of the State's review process;

(iii) Solicit and consider the comments of Federal and State agencies, local governments, Indian tribes, and the public;

(iv) Review the results of program reviews carried out by the Secretary; and

(v) Review the record of State participation in the section 106 process.

(3) The Council will enter into an agreement with a State under this section only upon determining, at minimum, that the State has a demonstrated record of performance in the section 106 process and the capability to administer a comparable process at the State level.

(4) A State agreement shall be developed through consultation between the State Historic Preservation Officer and the Council and concurred in by the Secretary before submission to the Council for approval. The Council may invite affected Federal and State agencies, local governments, Indian tribes, and other interested persons to participate in this consultation. The agreement shall:

(i) Specify the historic preservation review process employed in the State, showing that this process is at least as effective as, and no more burdensome than, that set forth in these regulations;

(ii) Establish special provisions for participation of local governments or Indian tribes in the review of undertakings falling within their jurisdiction, when appropriate;

(iii) Establish procedures for public participation in the State review process;

(iv) Provide for Council review of actions taken under its terms, and for appeal of such actions to the Council; and

(v) Be certified by the Secretary as consistent with the Secretary's Standards and Guidelines for Archaeology and Historic Preservation.

(5) Upon concluding a State agreement, the Council shall publish notice of its execution in the Federal Register and make copies of the State agreement available to all Federal agencies.

(b) Review of undertakings when a State agreement is in effect. (1) When a State agreement under Sec. 800.7(a) is in effect, an Agency Official may elect to comply with the State review process in lieu of compliance with these regulations.

(2) At any time during review of an undertaking under a State agreement, an Agency Official may terminate such review and comply instead with Secs. 800.4 through 800.6 of these regulations.

(3) At any time during review of an undertaking under a State agreement, the Council may participate. Participants are encouraged to draw upon the Council's expertise as appropriate.

(c) Monitoring and termination of State agreements. (1) The Council shall monitor activities carried out under State agreements, in coordination with the Secretary of the Interior's approval of State programs under section 101(b)(1) of the Act. The Council may request that the Secretary monitor such activities on its behalf.

(2) The Council may terminate a State agreement after consultation with the State Historic Preservation Officer and the Secretary.

(3) A State agreement may be terminated by the State Historic Preservation Officer.

(4) When a State agreement is terminated pursuant to Sec. 800.7(c) (2) and (3), such termination shall have no effect on undertakings for which review under the agreement was complete or in progress at the time the termination occurred.

Sec. 800.8 Documentation requirements.

(a) Finding of no adverse effect. The purpose of this documentation is to provide sufficient information to explain how the Agency Official reached the finding of no adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking;

(3) A description of the efforts used to identify historic properties;

(4) A statement of how and why the criteria of adverse effect were found inapplicable; and

(5) The views of the State Historic Preservation Officer, affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.

(b) Finding of adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate; and

(4) A description of the undertaking's effects on historic properties.

(c) Memorandum of Agreement. When a memorandum is submitted for review in accordance with Sec. 800.6(a)(1), the documentation, in addition to that specified in Sec. 800.8(b), shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to deal with the undertaking's effects and a summary of the views of the State Historic Preservation Officer and any interested persons.

(d) Requests for comment when there is no agreement. The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is as follows:

(1) A description of the undertaking, with photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, with information on the significant characteristics of each property;

(4) A description of the effects of the undertaking on historic properties and the basis for the determinations;

(5) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes for dealing with the undertaking's effects;

(6) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;

(7) Documentation of consultation with the State Historic Preservation Officer regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(8) A description of the Agency Official's efforts to obtain and consider the views of affected local governments, Indian tribes, and

other interested persons;

(9) The planning and approval schedule for the undertaking; and

(10) Copies or summaries of any written views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

Sec. 800.9 Criteria of effect and adverse effect.

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of these regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings", or

(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

Subpart C—Special Provisions

Sec. 800.10 Protecting National Historic Landmarks.

Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in Secs. 800.4 through 800.6 and give special consideration to protecting National Historic Landmarks as follows:

(a) Any consultation conducted under Sec. 800.5(e) shall include the Council;

(b) The Council may request the Secretary under section 213 of the Act to provide a report to the Council detailing the significance of the property, describing the effects of the undertaking on the property, and recommending measures to avoid, minimize, or mitigate adverse effects; and

(c) The Council shall report its comments, including Memoranda of Agreement, to the President, the Congress, the Secretary, and the head of the agency responsible for the undertaking.

[51 FR 31118, Sept. 2, 1986; 52 FR 25376, July 7, 1987]

Sec. 800.11 Properties discovered during implementation of an undertaking.

(a) Planning for discoveries. When the Agency Official's identification efforts in accordance with Sec. 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official is encouraged to develop a plan for the treatment of such properties if discovered and include this plan in any documentation prepared to comply with Sec. 800.5.

(b) Federal agency responsibilities. (1) When an Agency Official has completed the section 106 process and prepared a plan in accordance with Sec. 800.11(a), the Agency Official shall satisfy the requirements of section 106 concerning properties discovered during implementation of an undertaking by following the plan.

(2) When an Agency Official has completed the section 106 process without preparing a plan in accordance with Sec. 800.11(a) and finds after beginning to carry out the undertaking that the undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register, or affect a known historic property in an unanticipated manner, the Agency Official shall afford the Council an opportunity to comment by choosing one of the following courses of action:

(i) Comply with Sec. 800.6;

(ii) Develop and implement actions that take into account the effects of the undertaking on the property to the extent feasible and the comments from the State Historic Preservation Officer and the Council pursuant to Sec. 800.11(c); or

(iii) If the property is principally of archeological value and subject to the requirements of the Archeological and Historic Preservation Act, 16 U.S.C. 469(a)-(c), comply with that Act and implementing regulations instead of these regulations.

(3) Section 106 and these regulations do not require the Agency Official to stop work on the undertaking. However, depending on the nature of the property and the undertaking's apparent effects on it, the Agency Official should make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met.

(c) Council comments. (1) When comments are requested pursuant to Sec. 800.11(b)(2)(i), the Council will provide its comments in a time consistent with the Agency Official's schedule, regardless of longer time periods allowed by these regulations for Council review.

(2) When an Agency Official elects to comply with Sec. 800.11(b)(2)(ii), the Agency Official shall notify the State Historic Preservation Officer and the Council at the earliest possible time, describe the actions proposed to take effects into account, and request the Council's comments. The Council shall provide interim comments to the Agency Official within 48 hours of the request and final comments to the Agency Official within 30 days of the request.

(3) When an Agency Official complies with Sec. 800.11(b)(2)(iii), the Agency Official shall provide the State Historic Preservation Officer an opportunity to comment on the work undertaken and provide the Council with a report on the work after it is undertaken.

(d) Other considerations. (1) When a newly discovered property has not previously been included in or determined eligible for the National Register, the Agency Official may assume the property to be eligible for purposes of section 106.

(2) When a discovery occurs and compliance with this section is necessary on lands under the jurisdiction of an Indian tribe, the Agency Official shall consult with the Indian tribe during implementation of this section's requirements.

Sec. 800.12 Emergency undertakings.

(a) When a Federal agency head proposes an emergency action and elects to waive historic preservation responsibilities in accordance with 36 CFR 78.3, the Agency Official may comply with the requirements of 36 CFR Part 78 in lieu of these regulations. An Agency Official

should develop plans for taking historic properties into account during emergency operations. At the request of the Agency Official, the Council will assist in the development of such plans.

(b) When an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster declared by the President or the appropriate Governor, and Sec. 800.12(a) does not apply, the Agency Official may satisfy section 106 by notifying the Council and the appropriate State Historic Preservation Officer of the emergency undertaking and affording them an opportunity to comment within seven days if the Agency Official considers that circumstances permit.

(c) For the purposes of activities assisted under Title I of the Housing and Community Development Act of 1974, as amended, Sec. 800.12(b) also applies to an imminent threat to public health or safety as a result of natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or the State Historic Preservation Officer objects, the Agency Official shall comply with Secs. 800.4 through 800.6.

(d) This section does not apply to undertakings that will not be implemented within 30 days after the disaster or emergency. Such undertakings shall be reviewed in accordance with Secs. 800.4 through 800.6.

[51 FR 31118, Sept. 2, 1986; 52 FR 25376, July 7, 1987]

Sec. 800.13 Programmatic Agreements.

(a) Application. An Agency Official may elect to fulfill an agency's section 106 responsibilities for a particular program, a large or complex project, or a class of undertakings that would otherwise require numerous individual requests for comments through a Programmatic Agreement. Programmatic Agreements are appropriate for programs or projects:

(1) When effects on historic properties are similar and repetitive or are multi-State or national in scope;

(2) When effects on historic properties cannot be fully determined prior to approval;

(3) When non-Federal parties are delegated major decisionmaking responsibilities;

(4) That involve development of regional or land-management plans; or

(5) That involve routine management activities at Federal installations.

(b) Consultation process. The Council and the Agency Official shall consult to develop a Programmatic Agreement. When a particular State is affected, the appropriate State Historic Preservation Officer shall be a consulting party. When the agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative shall be invited to be a consulting party by the Council. The Council and the Agency Official may agree to invite other Federal agencies or others to be consulting parties or to participate, as appropriate.

(c) Public involvement. The Council, with the assistance of the Agency Official, shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from affected units of State and local government, Indian tribes, industries, and organizations will be invited.

(d) Execution of the Programmatic Agreement. After consideration of any comments received and reaching final agreement, the Council and the Agency Official shall execute the agreement. Other consulting parties may sign the Programmatic Agreement as appropriate.

(e) Effect of the Programmatic Agreement. An approved Programmatic Agreement satisfies the Agency's section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until it expires or is terminated.

(f) Notice. The Council shall publish notice of an approved Programmatic Agreement in the Federal Register and make copies readily available to the public.

(g) Failure to carry out a Programmatic Agreement. If the terms of a Programmatic Agreement are not carried out or if such an agreement is terminated, the Agency Official shall comply with Secs. 800.4 through 800.6 with regard to individual undertakings covered by the agreement.

Sec. 800.14 Coordination with other authorities.

To the extent feasible, Agency Officials, State Historic Preservation Officers, and the Council should encourage coordination of implementation of these regulations with the steps taken to satisfy other historic preservation and environmental authorities by:

(a) Integrating compliance with these regulations with the processes of environmental review carried out pursuant to the National Environmental Policy Act, and coordinating any studies needed to comply with these regulations with studies of related natural and social aspects;

(b) Designing determinations and agreements to satisfy the terms not only of section 106 and these regulations, but also of the requirements of such other historic preservation authorities as the Archeological and Historic Preservation Act, the Archeological Resources Protection Act, section 110 of the National Historic Preservation Act, and section 4(f) of the Department of Transportation Act, as applicable, so that a single document can be used for the purposes of all such authorities;

(c) Designing and executing studies, surveys, and other information-gathering activities for planning and undertaking so that the resulting information and data is adequate to meet the requirements of all applicable Federal historic preservation authorities; and

(d) Using established agency public involvement processes to elicit the views of the concerned public with regard to an undertaking and its effects on historic properties.

Sec. 800.15 Counterpart regulations.

In consultation with the Council, agencies may develop counterpart regulations to carry out the section 106 process. When concurred in by the Council, such counterpart regulations shall stand in place of these regulations for the purposes of the agency's compliance with section 106.

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60 FR 35706: Final Rule for Public Benefit Conveyances of Port Facilities

60 *Federal Register* 35706, 11 July 1995

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-47

[FPMR Amendment H-192]

RIN 3090-AF34

Utilization and Disposal of Real Property; Port Facilities

AGENCY: Public Buildings Service, GSA.

ACTION: Final rule.

SUMMARY: Section 2927 of Pub. L. 103-160 (November 30, 1993) amended section 203 of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. 484) by adding a subsection (q) to provide for cost-free conveyances of Federal surplus real property suitable for use as port facilities. This regulation is required to implement the new subsection. It prescribes the method whereby affected property may be assigned to the Secretary of Transportation for subsequent conveyance for approved port facility and related economic development programs.

EFFECTIVE DATE: July 11, 1995.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, Director, Real Property Policy Division, Office of Governmentwide Real Property Policy, Public Buildings Service, General Services Administration (202) 501-1256.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) is amending its regulations to include procedures for making conveyances of Federal surplus real property to nonfederal political bodies for port facility and related economic development purposes.

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866. The rule is written to ensure maximum benefits to Federal agencies. This Governmentwide management regulation will have little or no cost effect on society. Therefore, the rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

List of subjects in 41 CFR Part 101-47

Government property management, Surplus Government property.

For the reasons set out in the preamble, 41 CFR part 101-47 is amended as follows:

PART 101-47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for part 101-47 is revised to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

SUBPART 101-47.2—UTILIZATION OF EXCESS REAL PROPERTY

2.-3. Section 101-47.203-5 is amended by revising paragraphs (b) and (c) to read as follows:

Sec. 101-47.203-5 Screening of excess real property.

* * * * *

(b) Notices of availability for information of the Secretary of Health and Human Services and the Secretary of Education in connection with the exercise of the authority vested under the provisions of section 203(k)(1) of the Act, and for information of the Secretary of the Interior in connection with the exercise of the authority vested under the provisions of section 203(k)(2) of the Act or a possible determination under the provisions of section 203(k)(3) of the Act, will be sent to the offices designated by the Secretaries to serve the areas in which the properties are located. Similar notices of availability for information of the Attorney General in connection with a possible determination under the provisions of section 203(p)(1) of the Act, and for information of the Secretary of Transportation in connection with the exercise of the authority vested under the provisions of section 203(q) of the Act, will be respectively sent to the Office of Justice Programs, Department of Justice, and the Maritime Administration, Department of Transportation.

(c) The Departments of Health and Human Services, Education, Interior, Justice, and Transportation shall not attempt to interest a local applicant in a property until it is determined surplus, except with the prior consent of GSA on a case-by-case basis or as otherwise agreed upon. When such consent is obtained, the local applicant shall be informed that consideration of the application is conditional upon the property being determined surplus to Federal requirements and made available for the purposes of the application.

However, these Departments are encouraged to advise the appropriate GSA regional office of those excess properties which are suitable for their programs.

* * * * *

3. Section 101-47.204-1 is amended by revising paragraphs (a) and (b) to read as follows:

Sec. 101-47.204-1 Reported property.

* * * * *

(a) The holding agency, the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, the Attorney General, and the Secretary of Transportation will be notified of the date upon which determination as surplus becomes effective. Any Federal agency that has identified a property as being required for replacement housing for displaced persons under section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will also be notified of the date upon which determination as surplus becomes effective. The Secretary of the Department of Energy will be notified when real property is determined surplus and advised of any known interest in the property for its use or development for energy facilities. Appropriate steps will be taken to ensure that energy site needs are considered along with other competing needs in the disposal of surplus real property, since such property may become available for use under sections 203(e)(3) (G) and (H) of the Act.

(b) The notices to the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, and the Secretary of Energy will be sent to the offices designated by them to serve the area in which the property is located. The notices to the Attorney General will be sent to the Office of Justice Programs, Department of Justice. The notices to the Secretary of Transportation will be sent to the Maritime Administration. The notices to the Federal agencies having a requirement pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be sent to the office making the request unless another office is designated.

* * * * *

SUBPART 101-47.3—SURPLUS REAL PROPERTY DISPOSAL

4. Section 101-47.303-2 is amended by revising paragraphs (d), (f), and (g) to read as follows:

Sec. 101-47.303-2 Disposals to public agencies.

* * * * *

(d) A copy of the notice described in paragraph (b) of this section shall be furnished to the appropriate regional or field offices of (1) the National Park Service (NPS) and the Fish and Wildlife Service of the Department of the Interior and (2) the Federal Aviation Administration, the Federal Highway Administration, and the Maritime Administration of the Department of Transportation concerned with the disposal of property to public agencies under the statutes named in the notice.

* * * * *

(f) If the disposal agency is not informed within the 29-calendar-day period provided in the notice of the desire of a public agency to acquire the property under the provisions of the statutes listed in Sec. 101-47.4905, or is not notified by ED or HHS of a potential educational or public health requirement, or is not notified by the Department of the Interior of a potential park or recreation requirement, or is not notified by the Department of Justice (DOJ) of a potential correctional facilities use, or is not notified by the Department of Transportation (DOT) of a potential port facility use; it shall be assumed that no public agency or nonprofit institution desires to procure the property. (The requirements of this Sec. 101-47.303-2(f) shall not apply to the procedures for making Federal surplus real property available to assist the homeless in accordance with Section 501 of the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11411).)

(g) The disposal agency shall promptly review each response of a public agency to the notice given pursuant to paragraph (b) of this section. The disposal agency shall determine what constitutes a reasonable period of time to allow the public agency to develop and submit a formal application for the property or its comments as to the compatibility of the disposal with its development plans and programs. When making such determination, the disposal agency shall give consideration to the potential suitability of the property for the use proposed, the length of time the public agency has stated it will require for its action, the protection and maintenance costs to the Government during such length of time, and any other relevant facts and circumstances. The disposal agency shall coordinate such review and determination with the proper office of any interested Federal agencies listed below:

(1) National Park Service, Department of the Interior;
(2) Department of Health and Human Services;
(3) Department of Education;
(4) Federal Aviation Administration, Department of Transportation;
(5) Fish and Wildlife Service, Department of the Interior;
(6) Federal Highway Administration, Department of Transportation;
(7) Office of Justice Programs, Department of Justice; and
(8) Maritime Administration, Department of Transportation.

* * * * *

5. Section 101-47.308-2 is amended by revising paragraph (a) to read as follows:

Sec. 101-47.308-2 Property to public airports.

* * * * *

(a) Pursuant and subject to the provisions of section 13(g) of the Surplus Property Act of 1944 (49 U.S.C. 47151), airport property may be conveyed or disposed of to a State, political subdivision, municipality, or tax-supported institution for a public airport. Airport property is any surplus real property including improvements and personal property located thereon as a part of the operating unit (exclusive of property the highest and best use of which is determined by the Administrator of General Services to be industrial and which shall be so classified for disposal without regard to the provisions of this section) which, in the determination of the Administrator of the Federal Aviation Administration (FAA) is essential, suitable, or desirable for the development, improvement, operation, or maintenance of a public airport, as defined in the Federal Airport Act, as amended (49 U.S.C. 1101), or reasonably necessary to fulfill the immediate and foreseeable future requirements of the grantee for the development, improvement, operation, or maintenance of a public airport, including property needed to develop sources of revenue from nonaviation businesses at a public airport.

* * * * *

6. Section 101-47.308-10 is added to read as follows:

Sec. 101-47.308-10 Property for port facility use.

(a) Under section 203(q)(1) of the Act, in his/her discretion, the Administrator, the Secretary of the Department of Defense (DOD) in the case of property located at a military installation closed or realigned pursuant to a base closure law, or the designee of either of them, may, as the disposal agency, assign to the Secretary of the Department of Transportation (DOT) for conveyance, without monetary consideration, to any State, or to those governmental bodies named therein, or to any political subdivision, municipality, or instrumentality thereof, such surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, as is recommended by DOT as being needed for the development or operation of a port facility.

(b) The disposal agency shall notify established State and regional or metropolitan clearinghouses and eligible public agencies, in accordance with the provisions of Sec. 101-47.303-2, that property which may be disposed of for use in the development or operation of a port facility has been determined to be surplus. A copy of such notice shall be transmitted to DOT accompanied by a copy of the holding agency's Report of Excess Real Property (Standard Form 118 and supporting schedules).

(c) The notice to eligible public agencies shall state:

(1) that any planning for the development or operation of a port facility, involved in the development of the comprehensive and coordinated plan of use and procurement for the property, must be coordinated with DOT;

(2) that any party interested in acquiring the property for use as a port facility must contact the Department of Transportation, Maritime Administration, for instructions concerning submission of an application; and

(3) that the requirement for use of the property in the development or operation of a port facility will be contingent upon approval by the disposal agency, under paragraph (i) of this section, of a recommendation from DOT for assignment of the property to DOT and that any subsequent conveyance shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(q)(2) of the Act and referenced in paragraph (j) of this subsection.

(d) DOT shall notify the disposal agency within 20 calendar-days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever the disposal agency, has been so notified of a potential port facility requirement for the property, DOT shall submit to the disposal agency, within 25 calendar-days after the expiration of the 20-calendar-day notification period, either a recommendation for assignment of the property or a statement that a recommendation will not be submitted.

(e) Whenever an eligible public agency has submitted a plan of use for property for a port facility requirement, in accordance with the provisions of Sec. 101-47.303-2, the disposal agency shall transmit two copies of the plan to DOT. DOT shall either submit to the disposal agency, within 25 calendar-days after the date the plan is transmitted, a recommendation for assignment of the property to DOT, or inform the disposal agency, within the 25-calendar-day period, that a recommendation will not be made for assignment of the property to DOT.

(f) Any assignment recommendation submitted to the disposal agency by DOT shall be accompanied by a copy of the explanatory statement required under section 203(q)(3)(C) of the Act and shall set forth complete information concerning the contemplated port facility use, including:

(1) an identification of the property;

(2) an identification of the applicant;

(3) a copy of the approved application, which defines the proposed plan of use of the property;

(4) a statement that DOT's determination that the property is located in an area of serious economic disruption was made in consultation with the Secretary of Labor; and

(5) a statement that DOT's approval of the economic development plan associated with the plan of use of the property was made in consultation with the Secretary of Commerce.

(g) Holding agencies shall cooperate to the fullest extent possible with representatives of DOT and the Secretary of Commerce in their inspection of such property, and of the Secretary of Labor in affirming that the property is in an area of serious economic disruption, and in furnishing any information relating thereto.

(h) In the absence of an assignment recommendation from DOT submitted pursuant to paragraph (d) or (e) of this section, and received within the 25- calendar-day time limit specified therein, the disposal agency shall proceed with other disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from DOT, it shall assign the property by letter or other document to DOT. If the recommendation is disapproved, the disposal agency shall likewise notify DOT. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the letter of assignment from the disposal agency, DOT shall furnish to the disposal agency, a Notice of Proposed Conveyance in accordance with section 203(q)(2) of the Act. If the disposal agency has not disapproved the proposed transfer within 35 calendar-days of the receipt of the Notice of Proposed Conveyance, DOT may proceed with the conveyance.

(k) DOT shall furnish the Notice of Proposed Conveyance within 35 calendar- days after the date of the letter of assignment from the disposal agency, prepare the conveyance documents, and take all necessary actions to accomplish the conveyance within 15 calendar-days after the expiration of the 30-calendar-day period provided for the disposal agency to consider the notice. DOT shall furnish the disposal agency two conformed copies of the instruments conveying property under subsection 203(q) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance, or transfer of the property.

(l) DOT has the responsibility for enforcing compliance with the terms and conditions of conveyance; for reformation, correction, or amendment of any instrument of conveyance; for the granting of release; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of subsection 203(q)(4) of the Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency, by DOT, of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(m) In each case of repossession under a reversion of title by reason of noncompliance with the terms or conditions of conveyance or other cause, DOT shall, at or prior to such reversion of title, provide the appropriate GSA regional office, with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and appropriate accompanying schedules shall be used for this purpose. Upon receipt of advice from DOT that such property has been repossessed, GSA will review and act upon the Standard Form 118. However, the grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in Sec. 101-47.4913.

SUBPART 101-47.49—ILLUSTRATIONS

7. Section 101-47.4905 is revised to read as follows:

Sec. 101-47.4905 Extract of statutes authorizing disposal of surplus real property to public agencies.

Statute: 16 U.S.C. 667b-d. Disposals for wildlife conservation purposes.

Type of property*: Any surplus real property (with or without improvements) that can be utilized for wildlife conservation purposes other than migratory birds, exclusive of (1) oil, gas, and mineral rights, and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: The agency of the State exercising the administration of the wildlife resources of the State.

Statute: 23 U.S.C. 107 and 317. Disposals for Federal aid and other highways.

Type of property *: Any real property or interests therein determined by the Secretary of Transportation to be reasonably necessary for the right-of- way of a Federal aid or other highway (including control of access thereto from adjoining lands) or as a source of material for the construction or maintenance of any such highway adjacent to such real property or interest therein, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: State wherein the property is situated (or such political subdivision of the State as its law may provide), including the District of Columbia and Commonwealth of Puerto Rico.

Statute: 40 U.S.C. 122. Transfer to the District of Columbia of jurisdiction over properties within the District for administration and maintenance under conditions to be agreed upon.

Type of property: Any surplus real property, except property for which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: District of Columbia.

Statute: 40 U.S.C. 345c. Disposals for authorized widening of public highways, streets, or alleys.

Type of property *: Such interest in surplus real property as the head of the disposal agency determines will not be adverse to the interests of the United States, exclusive of (1) oil, gas and mineral rights; (2) property subject to disposal for Federal aid and other highways under the provisions of 3 U.S.C. 107 and 317; and (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agency: State or political subdivision of a State.

Statute: 40 U.S.C. 484(e)(3)(H). Disposals by negotiations.

Type of property: Any surplus real property including related personal property.

Eligible public agency: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported agency in any of them.

Statute: 40 U.S.C. 484(k)(1)(A). Disposals for school, classroom, or other educational purposes.

Type of property *: Any surplus real property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported educational institution in any of them.

Statute: 40 U.S.C. 484(k)(1)(B). Disposals for public health purposes including research.

Type of property *: Any surplus real property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; and (2) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality, political subdivision, or tax-supported medical institution in any of them.

Statute: 40 U.S.C. 484(k)(2). Disposals for public park or recreation areas.

Type of property*: Any surplus real property recommended by the Secretary of the Interior as being needed for use as a public park or recreation area, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(k)(3). Disposals for historic monuments.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of the Interior must determine that the property is suitable and desirable for use as a historic monument for the benefit of the public. No property shall be determined to be suitable or desirable for use as a historic monument except in conformity with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments established by section 3 of the act entitled "An Act for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes," approved Aug. 21, 1935 (49 Stat. 666), and only so much of any such property shall be so determined to be suitable or desirable for such use as is necessary for the preservation and property observation of its historic features. The Administrator of General Services may authorize the use of the property conveyed under this subsection for revenue-producing activities if the Secretary of the Interior (1) determines that such activities are compatible with use of the property for historic monument purposes, (2) approves the grantee's plan for repair, rehabilitation, restoration, and maintenance of the property, (3) approves grantee's plan for financing repairs, rehabilitation, restoration, and maintenance of the property which must provide that incomes in excess of the costs of such items shall be used by the grantee only for public historic preservation, park, or recreational purposes, and (4) approves the

grantee's accounting and financial procedures for recording and reporting on revenue- producing activities.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(p). Disposals for correctional facilities.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Attorney General must determine that the property is required for correctional facility use and approve an appropriate program or project for the care or rehabilitation of criminal offenders.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 40 U.S.C. 484(q). Disposals for port facility purposes.

Type of property: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; (3) military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101-47.308-5; and (4) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of Transportation must determine, after consultation with the Secretary of Labor, that the property is located in an area of serious economic disruption; and approve, after consultation with the Secretary of Commerce, an economic development plan associated with the plan of use of the property.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 49 U.S.C. 47151. Disposals for public airport purposes.

Type of property*: Any surplus real or personal property, exclusive of (1) oil, gas and mineral rights; (2) military chapels subject to disposal as a shrine, memorial or for religious purposes under the provisions of Sec. 101- 47.308-5; (3) property subject to disposal as a historic monument site under the provisions of Sec. 101-47.308-3; (4) property the highest and the best use of which is determined by the disposal agency to be industrial and which shall be so classified for disposal, and (5) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act.

Eligible public agencies: Any State, the District of Columbia; any territory or possession of the United States; and any instrumentality or political subdivision in any of them.

Statute: 50 U.S.C. App. 1622(d). Disposals of power transmission lines needful for or adaptable to the requirements of a public power project.

Type of property*: Any surplus power transmission line and the right-of-way acquired for its construction.

Eligible public agency: Any State or political subdivision thereof or any State agency or instrumentality.

*The Commissioner, Public Buildings Service, General Services Administration, Washington, DC 20405, in appropriate instances, may waive any exclusions listed in this description, except for those required by law.

8. Section 101-47.4906 is revised to read as follows:

Sec. 101-47.4906 Sample notice to public agencies of surplus determination.

Notice of Surplus Determination—Government Property

_____

(Date)

_____

(Name of property)

_____

(Location)

Notice is hereby given that the above described property has been determined to be surplus Government property. The property consists of ____ acres of fee land, more or less, together with easements and improvements as follows:

This property is surplus property available for disposal under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), as amended, certain related laws, and applicable regulations. The applicable regulations provide that non-Federal public agencies shall be allowed a reasonable period of time to submit a formal application for surplus real property in which they may be interested. Disposal of this property, or portions thereof, may be made to public agencies for the public uses listed below whenever the Government determines that the property is available for such uses and that disposal thereof is authorized by the statutes cited and applicable regulations. (Note: List only those statutes and types of disposal appropriate to the particular surplus property described in the notice.)

16 U.S.C. 667b-d	Wildlife conservation.
23 U.S.C. 107 and 317	Federal aid and certain other highways.
40 U.S.C. 122	Transfer to the District of Columbia.
40 U.S.C. 345c	Widening of highways, streets, or alleys.
40 U.S.C. 484(e)(3)(H)	Negotiated sales for general public purpose uses. (Note: This statute should not be listed if the affected surplus property has an estimated value of less than $10,000.)
40 U.S.C. 484(k)(1)(A)	School, classroom, or other educational purposes.
40 U.S.C. 484(k)(1)(B)	Protection of public health, including research.
40 U.S.C. 484(k)(2)	Public park or recreation area.
40 U.S.C. 484(k)(3)	Historic monument.
40 U.S.C. 484(p)	Correctional facility.
40 U.S.C. 484(q)	Port facility.
49 U.S.C. 47151	Public airport.
50 U.S.C. App. 1622(d)	Power transmission lines.

If any public agency desires to acquire the property under any of the cited statutes, notice thereof must be filed in writing with (Insert name and address of disposal agency):

_____

Such notice must be filed not later than———————————
(Insert date of the 21st day following the date of the notice.)

Each notice so filed shall:

(a) Disclose the contemplated use of the property;

(b) Contain a citation of the applicable statute or statutes under which the public agency desires to procure the property;

(c) Disclose the nature of the interest if an interest less than fee title to the property is contemplated;

(d) State the length of time required to develop and submit a formal application for the property. (Where a payment to the Government is required under the statute, include a statement as to whether funds are available and, if not, the period required to obtain funds.); and

(e) Give the reason for the time required to develop and submit a formal application.

Upon receipt of such written notices, the public agency shall be promptly informed concerning the period of time that will be allowed for submission of a formal application. In the absence of such written notice, or in the event a public use proposal is not approved, the regulations issued pursuant to authority contained in the Federal Property and Administrative Services Act of 1949 provide for offering the property for sale.

Application forms or instructions to acquire property for the public uses listed in this notice may be obtained by contacting the following Federal agencies for each of the indicated purposes:

(Note: For each public purpose statute listed in this notice, show the name, address, and telephone number of the Federal agency to be contacted by interested public body applicants.)

Dated: June 27, 1995.

Julia M. Stasch,
Acting Administrator of General Services.

[FR Doc. 95-16454 Filed 7-10-95; 8:45 am]

BILLING CODE 6820-96-M

46 FR 42466: Final Rule for Public Benefit Conveyances of Port Facilities

46 *Federal Register* 42466, 16 August 1995

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46CFR Part 387

[FPMR Amendment H-192]

RIN 2133-AB13

Utilization and Disposal of Surplus Federal Real Property for Development or Operation of a Port Facility

AGENCY:. Maritime Administration, Department of Transportation

ACTION: Final rule.

SUMMARY: This rule provides guidance for implementation by the Secretary of Transportation, acting by and through the Maritime Administrator, Maritime Administration (Secretary), of controlling regulations issued by the Administrator of General Services (Administrator), as authorized by Public Law 103-160. This rule prescribes the terms, reservations, restrictions, and conditions under which the Secretary will convey surplus Federal real property and related personal property to public entities for use in the development or operation of a port facility.

EFFECTIVE DATE: This rule is effective August 16, 1995.

FOR FURTHER INFORMATION CONTACT: James R. Carman, Acting Chief, Division of Ports, Maritime Administration, MAR-830, Room 7201, 400 Seventh Street, SW., Washington, DC, 20590, (202) 366-4357.

SUPPLEMENTARY INFORMATION: Due to the downsizing of the United States Government, surplus Federal real property and related personal property is becoming available which may be suitable for the development or operation of a port facility. Section 2927 of the National Defense Authorization Act for Fiscal Year 1994, enacted November 30, 1993, Public Law 103-160, amended Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484) to provide that under such regulations as the Administrator, after consultation with the Secretary of Defense, may prescribe, the Administrator or the Secretary of Defense, in the case of property located at a military installation closed or realigned pursuant to a base closure law, may, in his or her discretion, assign to the Secretary for disposal such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for the development or operation of a port facility. The Secretary of Transportation delegated the authority to convey such real and personal surplus Federal property to the Maritime Administrator (59 FR 36987, July 20, 1994). The Administrator has issued a final rule (60 FR 35706, July 11, 1995). This rule establishes the terms, reservations, restrictions, and conditions of the conveyance, as required by Public Law 103-160, which are consistent with the controlling regulations at 41 CFR 101-47.308-10. Most of the terms, reservations, restrictions, and conditions used in this rule are found in other surplus Federal property conveyance program regulations of Federal agencies. The port facility definition is new and was developed by the Secretary to implement the conveyance program.

Rulemaking Analyses and Notices

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is not considered to be an economically significant regulatory action under Section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule would not significantly affect other Federal agencies; would not materially alter budgetary impacts; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in E.O. 12866, and has been determined to be a nonsignificant rule under the Department Regulatory Policies and Procedures. Accordingly, it is not considered to be a significant regulatory action under E.O. 12866. Since this is a matter relating to public property it is exempt from the notice requirements of the Administrative Procedure Act (5 U.S.C. 553 (a)(2)). Furthermore, it is necessary to finalize guidelines to facilitate and expedite the selection of the recipients of properties and the actual conveyance.

This rule has not been reviewed by the Office of Management and Budget.

Federalism

The Secretary has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.
Regulatory Flexibility Act

The Secretary certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Secretary has considered the environmental impact of this rulemaking and has concluded that the Secretary, as a sponsoring agency under the port facility conveyance, is not required to prepare an environmental assessment under the National Environmental Policy Act of 1969 (NEPA). The Secretary will insure that the reuse plan submitted by an applicant complies with the provisions of NEPA as prepared by the disposal agency.

Paperwork Reduction Act

This rulemaking contains a reporting requirement that is subject to the Office of Management and Budget (OMB) approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), as amended, and is being (or has been) submitted.

List of Subjects in 46 CFR Part 387

Government property management, Surplus Government property.

Accordingly, new 46 CFR Part 387 is added to read as follows:

PART 387--UTILIZATION AND DISPOSAL OF SURPLUS FEDERAL REAL PROPERTY FOR DEVELOPMENT OR OPERATION OF A PORT FACILITY

Sec.
12.1 Scope.
12.2 Definitions.
12.3 Notice of availability of surplus property.
12.4 Applications.
12.5 Surplus property assignment recommendation.
12.6 Terms, reservations, restrictions, and conditions of conveyance.

Authority: Pub. L. 103-160, 107 stat. 1933 (40 U.S.C. 484 (q))

Sec. 12.1 Scope.

This part is applicable to Surplus Property that is recommended by the Secretary as being needed for the development or operation of a Port Facility and is appropriate for being assigned to, or that has been assigned to the Secretary for conveyance as provided for in Public Law 103-160 and 40 U.S.C. 471 et seq.

Sec. 12.2 Definitions.

(a) Act means the Federal Property and Administrative Services Act of 1949 as amended, 40 U.S.C. 471 et seq., and 41 CFR 101-47. Terms defined in the Act and not defined in this section have the meanings given to them in the Act.
(b) Applicant means any State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision, municipality, or instrumentality thereof, that has submitted an application to the Secretary to obtain surplus Federal property.
(c) Disposal Agency means the executive agency of the Government which has authority to assign property to the Secretary for conveyance for development or operation of a port facility.
(d) Grantee means the Applicant to which surplus Federal property is conveyed.
(e) Grantor means the Secretary.
(f) Port Facility means any structure and improved property, including services connected therewith, whether located on the waterfront or inland, which is used or intended for use in developing, transferring, or assisting maritime commerce and water dependent industries, including, but not limited to, piers, wharves, yards, docks, berths, aprons, equipment used to load and discharge cargo and passengers from vessels, dry and cold storage spaces, terminal and warehouse buildings, bulk and liquid storage terminals, tank farms, multimodal transfer terminals, transshipment and receiving stations, marinas, foreign trade zones, shipyards, industrial property, fishing and aquaculture structures, mixed use waterfront complexes, connecting channels and port landside transportation access routes.
(g) Secretary means the Secretary of Transportation acting by and through the Maritime Administrator, Maritime Administration by delegation of authority.
(h) Surplus Property means Federal real and related personal property duly determined to be unneeded by a Federal agency which may be conveyed to an Applicant for use in the development or operation of a port facility.

Sec. 12.3 Notice of availability of surplus property.

he Disposal Agency shall publish notices of availability of excess and surplus Federal real and personal property. The Secretary will advise eligible public port agencies, in an appropriate manner, of the availability of Surplus Property that is deemed to have port facility potential. Potential Applicants shall notify the Secretary, in writing, of a desire to acquire surplus Federal property before the expiration of the notice period specified in the Notice of Surplus Property--Government Property.

Sec. 12.4 Applications.

Application forms for conveyance of Surplus Property can be obtained from the Maritime Administration, Division of Ports, 400 Seventh Street, SW, Washington, DC 20590. The applicant shall identify on the application form the requested property, agree to the terms/conditions of the conveyance and shall also submit a Port Facility Redevelopment Plan (PFRP) which details the plan of use for the property and the associated economic development plan.

Sec. 12.5 Surplus property assignment recommendation.

Before any assignment recommendation is submitted to the Disposal Agency by the Secretary the following conditions shall be met:

(a) The Secretary has received and approved an application for the property.

(b) The Applicant is able, willing, and authorized to assume immediate possession of the property and pay administrative expenses incidental to the conveyance (application preparation, documentation, legal and land transfer costs).

(c) The Secretary, after consultation with the Secretary of Labor, has determined that the property to be conveyed is located in an area of serious economic disruption.

(d) The Secretary, after consultation with the Secretary of Commerce, approves the PFRP as part of a necessary economic development program.

(e) The Secretary determines that the application complies with the provisions of the National Environmental Policy Act of 1969 as prepared by the Disposal Agency.

Sec. 12.6 Terms, reservations, restrictions, and conditions of conveyance.

(a) Conveyances of property shall be on forms approved by, and available from the Secretary, and shall include such terms, reservations, restrictions and conditions set forth in this part and such other terms, reservations, restrictions and conditions as the Secretary may deem appropriate or necessary.

(b) Property shall be conveyed by a quitclaim deed or deeds on an ``as is, where is" basis without any warranty, expressed or implied.

(c) Property shall be used and maintained in perpetuity for the purpose for which it was conveyed, and that if the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the Government, revert to the Government.

(d) The entire Port Facility, including all structures, improvements, facilities and equipment in which the deed conveys any interest shall be maintained at all times in safe and serviceable condition, to assure its efficient operation and use, provided, however, that such maintenance shall be required as to structures, improvements, facilities and equipment only during the useful life thereof, as determined by the Grantor.

(e) No property conveyed shall be mortgaged or otherwise disposed of, or rights or interest granted by the Grantee without the prior written consent of the Grantor. However, the Grantor will only review leases of five years or more to determine the interest granted therein.

(f) Property conveyed for a Port Facility shall be used and maintained for the use and benefit of the public on fair and reasonable terms, without discrimination.

(g) The Grantee shall, insofar as it is within its powers and to the extent reasonable, adequately protect the water and land access to the Port Facility.

(h) The Grantee shall operate and maintain in a safe and serviceable condition, as deemed reasonably necessary by Grantor, the port and all facilities thereon and connected therewith which are necessary to service the maritime users of the Port Facility and will not permit any activity thereon which would interfere with its use as a Port Facility.

(i) The Port Facility is subject to the provisions of Title 46 Code of Federal Regulations (CFR) Part 340.

(j) The Grantee shall furnish the Grantor such financial, operational and annual utilization reports as may be required.

(k) Where construction or major renovation is not required or proposed, the Port Facility shall be placed into use within twelve (12) months from the date of this conveyance. Where construction or major renovation is contemplated at the time of conveyance, the property shall be placed in service according to the redevelopment time table approved by the Grantor in the PFRP.

(l) The Grantee shall not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform or comply with any or all of the terms, reservations, restrictions and conditions set forth in the application and the deed.

(m) The Grantee shall keep up to date at all times a Port Facility layout map of the property described herein showing:

(1) the boundaries of the Port Facility and all proposed additions thereto, and

(2) the location of all existing and proposed port facilities and structures, including all proposed extensions and reductions of existing port facilities.

(n) In the event that any of the terms, reservations, restrictions and conditions are not met, observed, or complied with by the Grantee, the title, right of possession and all other rights conveyed by the deed to the Grantee, or any portion thereof, shall, at the option of the Grantor revert to the Government, in its then existing condition sixty (60) days following the date upon which demand to this effect is made in writing by Grantor or its successor in function, unless within said sixty (60) days such default or violation shall have been cured and all such terms, reservations, restrictions and conditions shall have been met, observed, or complied with, in which event said reversion shall not occur.

(o) The deed will contain a severability clause dealing with the terms, reservations, restrictions and conditions of conveyance.

(p) The Grantee shall remain at all times a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or any political subdivision, municipality, or instrumentality thereof.

(q) The Grantee shall comply at all times with all applicable provisions of law, including, the Water Resources Development Act of 1990.

(r) The Grantee shall not modify, amend or otherwise change its approved PFRP without the prior written consent of Grantor and shall implement the PFRP as approved by the Grantor.

(s) The Government under Section 120 (h)(3) of the Comprehensive, Environmental Response, Compensation and Liability Act of 1980, as amended, warrants that:

(1) all remedial action necessary to protect human health and the environment with respect to any hazardous substance on the property has been taken before the date of the conveyance, and

(2) any additional remedial action found to be necessary after the date of the conveyance shall be conducted by the Government.

(t) The Government reserves the right of access to any and all portions of the property for purposes of environmental investigation, remediation or other corrective action and compliance inspection purposes.

(u) The Grantee shall agree that in the event, the Grantor exercises its option to revert all right, title, and interest in and to any portion of the property to the Government, or Grantee voluntarily returns title to the property in lieu of a reverter, the Grantee shall provide protection to, and maintenance of the property at all times until such time as the title is actually reverted or returned to and accepted by the Government. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in regulations implementing the Act.

(v) The Grantor expressly reserves from the conveyance:

(1) oil, gas and mineral rights,

(2) improvements without land,

(3) military chapels, and

(4) property disposed of pursuant to 204 (c) of the Act.

(w) The Government reserves all right, title, and interest in and to all property of whatsoever nature not specifically conveyed, together with right of removal thereof from the Port Facility within one (1) year from the date of the deed.

(x) The Grantee shall agree to maintain any portion of the property identified as ``historical'' in accordance with recommended approaches in the Secretary of Interior Standards for Historic Property at 16 U.S.C. 461-470w-6.

(y) Prior to the use of any property by children under seven (7) years of age, the Grantee shall remove all lead-based paint hazards and all potential lead-based paint hazards in accordance with applicable lead-based paint laws and regulations.

(z) The Grantee agrees that any construction or alteration is prohibited unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration.

(aa) The Grantee shall agree that in its use and occupancy of the Port Facility it shall comply with all laws relating to asbestos.

(bb) All construction on any portion of the property identified as ``wetlands'' as determined by the appropriate District of the Army Corps of Engineers shall comply with Department of the Army Wetland Construction Restrictions contained in Title 33 CFR, Parts 320 through 330.

(cc) The Grantee shall agree to maintain, indemnify and hold harmless the Grantor and the Government from any and all claims, demands, costs or judgments for damages to persons or property that may arise from the use of the property by the Grantee, guests, employees and lessees.

(dd) The Grantor, on written request from the Grantee, may grant release from any of the terms, reservations, restrictions and conditions contained in the deed, or the Grantor may release the Grantee from any terms, restrictions, reservations or conditions if the Grantor determines that the property so conveyed no longer serves the purpose for which it was conveyed.

(ee) The Grantor shall make reforms, corrections or amendments to the deed if necessary to correct such deed or to conform such deed to the requirements of applicable law.

Dated: August 10, 1995.

By order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administrator.
[FR Doc. 95-20180 Filed 8-15-95; 8:45 am]
BILLING CODE 4910-81-P

Appendix F

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For additional useful information, visit the DoD Environmental Security website at:

http://www.dtic.mil/envirodod/envbrac.html

DoD Guidance and Policies on Fast Track Cleanup at Closing Installations (18 May 1996)

THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-1000

MEMORANDUM FOR THE SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Fast Track Cleanup at Closing Installations

The President announced on July 2, 1993, a base closure community reinvestment program directed at the revitalization of local communities affected by base realignment and closure (BRAC) actions through economic and fast track cleanup initiatives. The Fast Track Cleanup policy memorandum was issued on September 9, 1993. It included procedures for establishing cleanup teams and conducting comprehensive "bottom up" reviews of cleanup plans and schedules at closing installations; accelerating the National Environmental Policy Act process; involving the public; determining environmental suitability to lease; and implementing the Community Environmental Response Facilitation Act for identification of uncontaminated properties.

Based on the success the Department has had with the Fast Tract Cleanup program at installations in previous base closure rounds, the program is being extended to bases selected for closure or realignment in 1995. To implement Fast Track Cleanup at these locations and continue the program at bases in the previous closure rounds, the following Fast Track Cleanup policies are being reissued with modifications:

- DoD Guidance on Establishing Base Realignment and Closure Cleanup Teams
- DoD Guidance on Accelerating the NEPA Analysis Process for Base Disposal Decisions
- DoD Guidance on Improving Public Involvement in Environmental Cleanup at Closing Bases
- DoD Policy on the Environmental Review Process to Reach a Finding of Suitability to Lease
- DoD Policy on the Implementation of the Community Environmental Response Facilitation Act

Components should refer to the joint DoD/Environmental Protection Agency (EPA) Restoration Advisory Board (RAB) Implementation Guidelines, issued September 27, 1994, for additional assistance in establishing RABs at BRAC Installations.

The bottom up reviews and cleanup plans discussed in the attached DoD Guidance on Establishing Base Realignment and Closure Cleanup Teams, and described in the DoD BRAC Cleanup Plan (BCP) Guidebook (Fall 1995 edition), must be completed by November 1, 1996, for each closing or realigning installation identified through BRAC actions in 1995, where a BRAC Cleanup Team (BCT) has been established. A BCP Abstract shall be submitted to the Under Secretary of Defense (Acquisition & Technology) no later than November 29, 1996, and annually thereafter, for all installations in each of the four BRAC rounds (1988, 1991, 1993, and 1995), where a BCT has been established.

The Department's best efforts are critical to communities successfully transitioning from base closure to economic recovery through economic redevelopment. I ask for your personal support and urge you to give this initiative continual, high level management attention and to allocate the resources necessary to help insure success.

Attachments

DOD GUIDANCE ON ESTABLISHING BASE REALIGNMENT AND CLOSURE CLEANUP TEAMS

I. PURPOSE

This guidance implements the President's plan to expedite the disposal and reuse of closing military bases by creating partnerships and accelerating environmental cleanup activities. It establishes a Base Realignment and Closure (BRAC) Cleanup Team (BCT) for each Department of Defense (DoD) closing or realigning base where property is available for transfer to the community and empowers the team with the authority, responsibility, and accountability for environmental cleanup programs at these installations, emphasizing those actions which are necessary to facilitate reuse and redevelopment.

II. APPLICABILITY AND SCOPE

This policy applies to all DoD installations slated for closure or realignment where property is available for transfer to the community pursuant to the Base Closure and Realignment Act of 1988 (P.L. 100-526) (BRAC 88) or the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510) (BRAC 91, 93, and 95). The policy's scope includes environmental cleanup programs and activities that support the lease or transfer of real property at affected installations under applicable statutes, regulations, and authorities, including but not limited to the following:

- Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)
- Resource Conservation and Recovery Act (RCRA)
- National Environmental Policy Act (NEPA)
- Executive Order 12580, Superfund Implementation
- Community Environmental Response Facilitation Act (CERFA)
- National Contingency Plan (NCP)
- Defense Environmental Restoration Program (DERP)

The requirements of this policy shall in no way impede, or otherwise affect the continuing responsibility to achieve and maintain environmental compliance in the ongoing operation of installation facilities.

III. POLICY

Department of Defense policy is to conduct environmental cleanup actions and programs to protect human health and the environment and to facilitate the reuse and redevelopment of closure bases as expeditiously as possible. This policy will be carried out to promote economic reuse of affected installations in support of their surrounding communities, while satisfying applicable environmental protection laws and regulations.

IV. PROCEDURES AND RESPONSIBILITIES

A. PROCEDURES

1. In conjunction with the appropriate Environmental Protection Agency (EPA) Regional Office and state environmental regulatory entity, every DoD installation slated for closure or realignment at which property will be available for transfer to the community shall form a BCT comprised of one representative from DoD, one representative from the state and, where appropriate, one representative from the U.S. EPA. The BCT will act as the primary forum in which issues affecting the execution of cleanup to facilitate reuse will be addressed. One BCT may be formed to oversee activities at more than one installation in the same geographic area.

2. The BCT will coordinate closely with the Base Transition Coordinator (BTC) and Local Redevelopment Authority (LRA) in developing and implementing a cleanup program which facilitates redevelopment of excess property.

3. The DoD representative on the BCT (to be known as the BRAC Environmental Coordinator (BEC)) will be appointed by the appropriate DoD Component responsible for the installation. The BEC appointed for each base will work for and within the DoD Component organization and will have the responsibilities and implementation authorities for environmental cleanup programs related to the transfer of the installation's real property. The BEC shall have experience commensurate with the responsibilities of the position. The regulatory entities have been requested to provide members to the BCT of comparable experience who will possess the requisite authority from their respective organizations to take the actions stipulated in this policy.

4. The BEC, in conjunction with other members of the BCT, will conduct a "Bottom Up" review of the environmental program. The "Bottom Up" review will include an evaluation of the existing environmental programs such as the Installation Restoration Program, Closure Related Compliance Program, and the Asbestos Program to identify opportunities for acceleration to expedite conveyance of property. Potential areas for acceleration include, but are not limited to:

   a. Review of selected technology for application of expedited solutions.

   b. Embracing a bias for cleanup instead of studies, such as the implementation of immediate removal actions to eliminate "hot spots" while investigation continues.

   c. Identification of clean properties.

   d. Identification of overlapping phases of the cleanup process.

   e. Use of improved contracting procedures.

   f. Interfacing with the community reuse plan and schedule.

   g. Validation of technology of the proposed remedy selection to ensure conformance with Fast Track Cleanup objectives.

   h. Identification of opportunities for application of presumptive remedies.

   i. Using innovative management, coordination and communication techniques (e.g., partnering).

   The product of this review will be a BRAC Cleanup Plan (BCP) which will be the road map for expeditious cleanup necessary to facilitate conveyance of property to communities for redevelopment. The BCP will be a phased plan which encapsulates and prioritizes requirements, schedules and cost of the environmental programs to be implemented by the BCT for completing environmental action in support of the cleanup, reuse and redevelopment of the base. For sites with existing Federal Facility Agreements (FFA), Interagency Agreements (IAG), or similar cleanup agreements, orders or decrees, the BEC will propose and negotiate changes needed to expedite cleanup.

B. RESPONSIBILITIES

1. For the purposes of carrying out this policy, the Secretaries of the Military Departments and the Director of the Defense Logistics Agency, through their organizations, shall be responsible for:

   a. Delegating to the BEC, to the extent permitted by applicable law, authority and responsibility for the execution of all environmental cleanup programs related to the transfer of the base or parcels within a BCP.

   b. Ensuring that all BECs are adequately trained to execute their responsibilities.

   c. Making the resources (e.g., technical expertise, contracting, legal, financial) available to the BEC for executing the cleanup programs.

   d. Forwarding the BCP Abstracts to USD(A&T) on November 29, 1996 and annually, thereafter.

   e. Programming and budgeting for the resources required to execute the BCP.

   f. Providing implementing instructions for this guidance.

   g. Providing oversight of the BEC's actions.

2. The responsibilities of the BEC shall include:

   a. Contacting the appropriate U.S. EPA Regional Office and state environmental regulatory agency and forming the BCT.

   b. In conjunction with the other members of the BCT,conducting a "Bottom-Up" review of the environmental cleanup programs.

   c. Implementing all environmental cleanup programs related to closure in an expeditious and cost effective manner in accordance with the BCP.

   d. Negotiating appropriate cleanup and abatement actions with EPA and state BCT members.

   e. Identifying resource requirements for cleanup and abatement actions.

   f. Acting as the liaison/coordinator with appropriate installation and headquarters commanders with regard to closure-related environmental compliance matters.

   g. Participating, in conjunction with other BCT members, as a member of the community's Restoration Advisory Board (RAB) and coordinating with the Base Transition Coordinator and Local Redevelopment Authority on environmental matters affecting the leasing or conveyance of property (e.g., integrating cleanup schedules and reuse priorities, cleanup actions and levels, reports to community leaders on cleanup progress and/or possible impediments to a lease or conveyance).

   h. Providing direction on the use of BRAC environmental funds to accomplish cleanup and abatement actions within resources available.

i. Proposing and executing changes to existing cleanup agreements, orders and decrees, and other environmental procedures to achieve timely and cost effective cleanup.

j. Serving as the Program Manager or the Remedial Program Manager where the installation has an FFA, IAG, or other regulatory cleanup agreement, order or decree.

k. Signing or obtaining signature of the Record of Decision for cleanup actions under CERCLA.

l. Signing or obtaining signature on decision documents for corrective actions related to cleanup under RCRA once the operational mission has departed, and removal actions under CERCLA.

m. Signing or obtaining signature on decision documents for corrective actions related to cleanup under applicable state laws, regulations and programs.

n. Signing the installation's Environmental Baseline Survey.

o. Signing uncontaminated parcel determinations under CERFA.

p. Providing input to the Finding of Suitability to Lease (FOSL) and Finding Of Suitability to Transfer (FOST).

q. Establishing and maintaining the Administrative Record and Participation Procedures required under CERCLA and administrative records of all actions taken with regard to the cleanup of the installation.

r. Maintaining an awareness of the status of site activities and intervening as warranted to ensure expeditious project completions.

s. Maintain involvement in the National Environmental Policy Act (NEPA) process for the installation to ensure coordination with the cleanup process.

t. Certifying construction requested by lessee will not interfere with the environmental cleanup program.

V. ISSUES RESOLUTION

Issues affecting the execution of environmental cleanup programs should be resolved at the BCT level. For sites with existing FFAs, IAGs, or other agreements, orders, or decrees, issues which cannot be resolved by the BCT will be handled in accordance with existing dispute resolution procedures. For sites covered under the Defense - State Memorandum of Agreement (DSMOA) program without other agreements, orders, or decrees in place, disagreements will be resolved through the Dispute Resolution provision in the DSMOA. Where disputes arise at sites without any dispute resolution procedures in place, resolution will be made at the Component Deputy Assistant Secretary level.

DoD GUIDANCE ON ACCELERATING THE NEPA ANALYSIS PROCESS FOR BASE DISPOSAL DECISIONS

I. PURPOSE

This guidance implements the President's plan to expedite the disposal of closing military bases by directing that all documents required by the National Environmental Policy Act (NEPA) of 1969 be completed, to the extent practicable, within 12 months of receipt of a Local Redevelopment Authority's (LRA) final reuse plan. It requires expedited production of an early, high-quality environmental analysis which will be useful in the LRA's ongoing planning efforts as well as in the Department of Defense (DoD) Component's property disposal decision making, thus expediting Component disposal decisions, the productive reuse of the property, and the economic redevelopment of the community. This analysis may also be used to support DoD Component decisions on interim outleasing of parcels for early reuse and other actions supporting conversion of the installation to civilian reuse.

II. APPLICABILITY AND SCOPE

This policy applies to all DoD installations being closed or realigned pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (BRAC 88), P.L. 100-526, or the Defense Base Closure and Realignment Act of 1990 (DBCRA), P.L. 101-510, as amended. The policy's scope includes all environmental analyses required under NEPA to support DoD Component decisions on disposition of BRAC property.

III. POLICY

It is DoD policy that DoD Components responsible for making decisions on disposal and reuse of installations pursuant to the Base Closure statutes will implement measures to assure that all environmental analyses required by NEPA be completed, to the extent practicable, within 12 months of the date the LRA involved submits its final reuse plan. Except in exceptional circumstances, a single NEPA analysis will be prepared to support decisions regarding disposal alternatives and probable reuse of the installation.

IV. PROCEDURES AND RESPONSIBILITIES

A. Procedures

1. Every effort should be made by the DoD Office of Economic Adjustment (OEA) and the DoD Components to aid and encourage the LRA to arrive at a "final" suitable reuse plan at an early stage. An LRA's reuse plan is considered "final" when officially adopted by the LRA.

2. The LRA's reuse plan, if available and to the extent legally permissible, will be a primary factor in the development of the proposed action, reasonable alternatives, and effects analysis in the DoD Component's NEPA process for the disposal action. Using the reuse plan in this manner will meet the requirement of law that the reuse plan be treated as part of the proposed federal action. The DoD Component will alert the LRA to potential environmental problems and cooperatively seek any necessary modification to the reuse plan. The DoD Component's obligation under NEPA is to evaluate the proposed action and reasonable alternatives for the disposal and reuse of BRAC property.

3. Where an EIS is required, DoD Components will assure that the formal EIS process is initiated so that it can be completed consistent with the timetable developed for property disposal. Gathering data and conducting background analysis for the likely disposal scenarios for the property should begin as early as possible.

This early data development should be combined with other ongoing processes supporting property disposal actions, such as the preparation of Environmental Baseline Surveys. Likewise, other environmental studies undertaken to support the EIS process, such as those regarding wetlands determinations, threatened and endangered species, and cultural or historic resources, should be commenced at this early stage to assure timely compliance with the applicable regulatory requirements.

4. Advance data development could begin even before the publication in the Federal Register of the Notice of Intent (NOI) to produce the EIS. This advance data development will require allocation of sufficient staff, contracting support, and other necessary resources.

5. Data development will continue after publication of the NOI in the Federal Register and will be conducted with the participation of the LRA and other appropriate agencies. Data developed in the early stages of the NEPA process will be provided to the LRA to aid in finalization of its reuse plan.

6. In the event that the LRA does not submit a reuse plan by the time the DoD Component needs to initiate the NEPA analysis necessary to support a disposition decision for the property, the DoD Component will begin preparation of its NEPA analysis using reasonable assumptions as to the likely reuse scenario and its reasonable alternatives.

   Reuse assumptions may be based upon such factors as the DoD component's evaluation of the highest and best use of the property; existing use of the facilities; local zoning; specific proposals or plans for the reuse of all or parts of the installation; limitations based on environmental factors such as contamination, cultural and historic resources, wetlands, endangered species; results of the Federal agencies' screening process; proposals from public benefit transfer applicants or sponsoring agencies; and prior experience in disposal and reuse actions at similar installations.

7. If no final reuse plan is submitted by the LRA before the final NEPA document is completed, the DoD Component will complete its NEPA process and issue a Finding of No Significant Impact (FONSI) or Record of Decision (ROD)in the absence of a final reuse plan. In the event that a final reuse plan is submitted after the FONSI or ROD but prior to transfer of title to the property, the DoD Component will determine whether the environmental impacts of the land uses identified in the reuse plan are adequately addressed in the completed NEPA document.

   Where those impacts are adequately addressed, the DoD component need take no further action under NEPA. Where those impacts are not adequately addressed, the DoD component will prepare any additional analysis required to comply with law or regulation.

8. To the greatest extent practicable, DoD Components shall ensure that all NEPA documentation prepared in support of disposal decisions includes an analysis of whether the disposal and reuse result in any disproportionately high and adverse human health and environmental effects on minority and low income populations. This requirement is in accordance with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations."

B. Responsibilities

The Secretaries of the Military Departments and Director of the Defense Logistics Agency, through their organizations, shall be responsible for:

1. Delegating authority and responsibility to the lowest level(s) to achieve timely, effective NEPA analyses.

2. Ensuring sufficient resources are available to initiate and complete the NEPA analysis.

3. Ensuring DoD Base Transition Coordinators (BTC) and BRAC Environmental Coordinators (BEC) are involved in the NEPA analysis process for their installations.

4. Establishing adequate procedures to provide information on the NEPA analysis process and actions so as to permit meaningful community and public participation in the process.

DOD GUIDANCE ON IMPROVING PUBLIC INVOLVEMENT IN ENVIRONMENTAL CLEANUP AT CLOSING BASES

I. PURPOSE

This guidance implements the President's plan to expedite the closure and reuse of closing military bases. This guidance directs the Components to involve the community near a closing base in the cleanup program by making information available, providing opportunities for comment, and establishing and seeking public participation on a Restoration Advisory Board (RAB).

II. APPLICABILITY AND SCOPE

This guidance applies to all Department of Defense (DoD) bases being closed or realigned pursuant to the Base Closure and Realignment Act of 1988 (P.L. 100-526) (BRAC 88) or the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510) (BRAC 91, 93 and 95) and where property will be available for transfer to the community. The policy explains DoD intent in establishment of RABs, fundamental responsibilities of the RAB, and procedures for the RAB.

III. POLICY

It is DoD policy to:

A. Be open, cooperative and forthright with the public concerning environmental cleanup activities and to make information on program activities available in a timely manner.

B. Provide opportunities for and encourage public comment on documents and proposed activities and to be responsive to comments.

C. Establish a RAB at closing and realigning bases where property will be available for transfer to the community. The RAB will work in partnership with the Base Realignment and Closure (BRAC) Cleanup Team (BCT) on cleanup issues and related matters. Through the RAB, stakeholders may review progress and provide input to the decision making process. BRAC installations not transferring property to the community should follow the same guidelines for establishing RABs as operational bases.

IV. PROCEDURES AND RESPONSIBILITIES

A. PROCEDURES

1. A RAB will be established at each closing and realigning base where property will be available for transfer to the community. The RAB will:

   a. be comprised of DoD Component, United States Environmental Protection Agency (EPA) and state representatives and members of the local community;

   b. be jointly chaired by a DoD Component representative (the BRAC Environmental Coordinator [BEC]) and a member of the local community;

   c. meet the requirements of 10 USC Section 2705 (c), Department of Defense Environmental Restoration Program, which directs DoD to establish Technical Review Committees (TRC). Where TRCs or other similar groups already exist, they shall be expanded or modified to become RABs, rather than creating a separate committee.

2. The DoD Components will seek to include on the RAB members who eflect diverse interests within the community (e.g. the Local Redevelopment Authority, representatives of citizen, environmental and public interest groups; local government and individual community members). The membership selection process will be conducted in a fair and open manner, ideally by a community selection panel. The DoD Components should accept the panels nominations unless it determines that the nominees would not reflect the full range of views within the community.

3. A point-of-contact for cleanup information shall be identified at the installation level (normally the BEC). A second point-of-contact (e.g., at higher headquarters) to resolve problems in obtaining information shall also be identified.

4. Information on cleanup activities, such as draft and final technical documents, proposed and final plans, status reports, etc., will be provided to the RAB and made available to the public in a timely manner. Public comments will be actively solicited and considered before documents are finalized.

5. Vehicles for disseminating information such as public meetings, bulletins, and central repositories shall be identified and used consistently.

B. RESPONSIBILITIES

1. The DoD Components shall:

   a. Ensure that the policies stated in this memorandum are implemented by their respective organizations;

   b. Ensure that administrative support is available to establish RABs and conduct public outreach;

   c. Conduct oversight of public outreach activities.

   d. Ensure that:

      i. community relations plans are developed or revised to reflect these policies;

      ii. RABs are established expeditiously and that their inputs are fully considered in decision making in the cleanup program; and

      iii. installation public affairs staff are involved in public outreach activities of the cleanup program.

2. The RAB will:

   a. act as a forum for discussion and exchange of cleanup information between Government agencies and the public;

   b. conduct regular meetings, open to the public, at convenient times;

   c. keep meeting minutes and make them available to the public;

   d. develop and maintain a mailing list of names and addresses of stakeholders who wish to receive information on the cleanup program;

   e. review and evaluate documents;

f. identify project requirements;

g. recommend priorities among sites or projects;

h. identify applicable standards and, consistent with Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), propose remedies consistent with planned land use.

DOD POLICY ON THE ENVIRONMENTAL REVIEW PROCESS TO REACH A FINDING OF SUITABILITY TO LEASE (FOSL)

I. PURPOSE

This policy provides guidance to Department of Defense (DoD) Components on the process to identify and document parcels of real property made available through the Base Realignment and Closure (BRAC) process and which are environmentally suitable for outlease. The DoD Components may develop implementing procedures containing additional requirements based on their own specific organizational needs and unique requirements but which will, at a minimum, include, but not conflict with, the following documentation and procedures.

II. APPLICABILITY AND SCOPE

This policy applies to all DoD installations slated for closure or realignment pursuant to the Base Closure and Realignment Act Of 1988 (P.L. 100-526) (BRAC 88) or the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510) (BRAC 91, 93, and 95) and on which property is being considered for outlease. This policy is effective immediately. The procedures contained in this policy are not required for easements licenses and permits for use of real property, unless deemed necessary by the DoD Component. Nothing in this policy affects any requirement to comply with the National Environmental Policy Act (NEPA). The policy meets the following objectives:

A. Ensure protection of human health and the environment.

B. Develop a DoD-wide process to assess, determine and document the environmental suitability of properties (parcels) for outlease.

C. Ensure outleases of properties do not interfere with environmental restoration schedules and activities being conducted under the provisions of law or regulatory agreements.

D. Ensure compliance with all applicable environmental requirements and establish the basis for the DoD Components to make notifications to lessees regarding hazardous substances (including asbestos and any substance regulated under CERCLA, RCRA or state law) and petroleum products (including their derivatives, such as aviation fuel and motor oil) potentially on the property.

E. Provide adequate public and regulatory participation.

III. POLICY

A. Requirement for Assessment, Determination and Documentation of Properties Suitable for Outlease

In the case of real property to which this policy applies, the head of the DoD Component with accountability over the property, or his/her designated representative, shall assess, determine and document when properties are suitable for outleasing. This assessment and determination will be based on an Environmental Baseline Survey (EBS) and will be documented in a Finding of Suitability to Lease (FOSL) as described below.

B. Investigation

1. Environmental Baseline Survey (EBS). An EBS will be prepared encompassing any parcel to be outleased. The EBS will be based on all existing environmental information related to storage, release, treatment or disposal of hazardous substances or petroleum products on the property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any

hazardous substance or petroleum product. In certain cases, additional data, including sampling and analysis, may be needed in the EBS to support the FOSL determination.

A previously conducted EBS may be updated as necessary and used for making a FOSL determination, where appropriate. An EBS also may satisfy other environmental requirements (e.g., to reach a Finding of Suitability to Transfer [FOST] or meet the uncontaminated parcel identification requirements of the Community Environmental Response Facilitation Act [CERFA]).

2. Procedures for Conducting an EBS. The EBS will consider all sources of available information concerning environmentally significant current and past uses of the real property and shall, at a minimum, consist of the following:

   a. Detailed search and review of available information and records in the possession of the DoD Components and records made available by the regulatory agencies or other involved Federal agencies. DoD Components are responsible for requesting and making reasonable inquiry into the existence and availability of relevant information and records to include any additional study information (e.g., surveys for asbestos, radon, lead-based paint, transformers containing PCB, Resource Conservation and Recovery Act Facility Assessments and Investigations [RFA and RFI]) to determine what, if any, hazardous substances or petroleum products may be present on the property.

   b. Review of all reasonably obtainable Federal, state, and local government records for each adjacent facility where there has been a release of any hazardous substance or any petroleum product, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product on the real property.

   c. Analysis of aerial photographs that may reflect prior uses of the property which are in the possession of the Federal Government or are reasonably obtainable through state or local government agencies.

   d. Interviews with current and/or former employees involved in operations on the real property.

   e. Visual inspections of the real property; any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property; and of properties immediately adjacent to the real property, noting sewer lines, runoff patterns, evidence of environmental impacts (e.g., stained soil, stressed vegetation, dead or ill wildlife) and other observations which indicate actual or potential release of hazardous substances or petroleum products.

   f. Identification of sources of contamination on the installation and on adjacent properties which could migrate to the parcel during the lease term.

   g. Ongoing response actions or actions that have been taken at or adjacent to the parcel.

   h. A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.

   i. Sampling, if the circumstances deem appropriate.

Note: For the purposes of paragraphs b, e, f, g, & h above, "adjacent properties" should be defined as either those properties contiguous to the boundaries of the property being surveyed or other nearby properties. In either case, the survey should be addressed to those portions of the properties relatively near the installation that would pose significant environmental concern and/or have a significant impact on the results of the EBS.

3. Documentation of an EBS. At the completion of the EBS, a report will be prepared which will include the following:

   a. An Executive Summary briefly stating the areas of real property (or parcels) evaluated and the conclusions of the survey.

   b. The property identification (e.g., address, assessor parcel number, legal description).

   c. Any relevant information obtained from a detailed search of Federal Government records pertaining to the property, including available maps.

   d. Any relevant information obtained from a review of the recorded chain of title documents regarding the real property. The review should address those prior ownerships/uses that could reasonably have contributed to an environmental concern, and, at a minimum, cover the preceding 60 years.

   e. A description of past and current activities, including all past and current DoD and non-DoD uses to the extent such information is reasonably available, on the property and on adjacent properties.

   f. A description of hazardous substances or petroleum products management practices (to include storage, release, treatment or disposal) at the property and at adjacent properties.

   g. Any relevant information obtained from records reviews and visual and physical inspections of adjacent properties.

   h. Description of ongoing response actions or actions that have been taken at or adjacent to the property.

   i. An evaluation of the environmental suitability of the property for lease for the intended purpose, if known, including the basis for the determination of such suitability.

   j. Reference to key documents examined (e.g., aerial photographs, spill incident reports, investigation results). (The documents will be made available by DoD upon request to DoD.)

C. Finding of Suitability to Lease (FOSL)

After completion and review of the EBS and any appropriate local community reuse plans, the DoD Component Official will sign a FOSL once a determination that the property is suitable to lease for the intended purpose has been made based on one of the following:

1. Hazardous substance notice need not be given because no hazardous substances or petroleum products were stored for one year or more, known to have been released, treated or disposed of on the parcel;

2. Hazardous substance notice will be given of the type and quantity of hazardous substances or petroleum products, and the time at which storage for one year or more, release, treatment or disposal took place, but the property is not now contaminated with hazardous substances or petroleum products (e.g., storage for one year or more but no release, a release has occurred but no response action is required, or a response action has been completed); or

3. The property contains some level of contamination by hazardous substances or petroleum products, and hazardous substance notice, will be given the type and quantity of such hazardous substances or petroleum products, and the time at which storage for one year or more, release, treatment or disposal took place. However, this property can be used pursuant to the proposed lease, with the specified use restrictions in the lease, with acceptable risk to human health or the environment and without interference with the environmental restoration process. (The specific lease restrictions on the use of

the parcel to protect human health and the environment and the environmental restoration process will be listed in the FOSL.)

IV. PROCEDURES AND RESPONSIBILITIES

A. Regulatory agencies will be notified at the initiation of the EBS and the FOSL. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available.

Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the FOSL.

B. As required by CERCLA Section 120(h)(5), DoD shall notify the state prior to entering into any lease that will encumber the property beyond the date of termination of DoD's operations. These notifications shall include the length of lease, the name of lessee, and a description of the uses that will be allowed under the lease of the property. At National Priorities List (NPL) sites, DoD shall provide this notification to the United States Environmental Protection Agency (EPA) as well.

C. The DoD Components will provide public notice of signing the FOSL; will retain the signed FOSL, including all regulatory comments and responses on the EBS and/or FOSL, in the transaction file (and the Administrative Record, where applicable); and will make the FOSL available to the public upon request.

D. The EBS and the FOSL will be provided to each lessee prior to execution of the lease.

E. Conditions will be included in the lease to ensure:

1. Notification of the existence of a Federal Facility Agreement (FFA), Interagency Agreement (IAG), or other regulatory agreements, orders or decrees for environmental restoration (e.g., RCRA/HSWA permit), if any. Terms of the lease shall not affect the rights and obligations of parties under the FFA, IAG, or other regulatory agreements, orders, or decrees.

2. Environmental investigations and response oversight and activities will not be disrupted. Such conditions will include, but are not limited to:

   a. providing for continued access for DoD and regulatory agencies to perform investigations as required on, or adjacent to, the real property, to monitor the effectiveness of the cleanup as required, to perform five-year reviews as required, and/or to take additional remedial or removal actions as required. At a minimum, such rights shall include all rights existing under the FFA.

   b. ensuring that the proposed use will not disrupt remediation activities.

3. Human health and the environment are protected by preventing the inappropriate use of the property.

4. Compliance with health and safety plans.

5. Subsequent transactions involving the property shall include such provisions.

F. The attached model lease provisions will be included in all outleases and subleases, unless determined not to be appropriate by the DoD Component in consultation with the appropriate EPA or state representative. This determination will be documented by the DoD Component.

G. Leases will provide that both the EBS and restrictive conditions in the lease, dealing with environmental requirements limiting use, will also be included in subleases as they occur. Copies of all subleases will be provided to the DoD Components with jurisdiction over the parcel, retained in the transaction file and made available to the public upon request.

H. When the protection of human health and the environment requires substantial limitations on the use of a parcel proposed for lease; those limitations shall be described in the FOSL and, when requested in reference to a particular property or lease, the military service shall provide the regulators with a copy of the signed lease which implements such parcel specific restrictions.

I. Amendments, renewals or extensions of leases shall not require a new EBS or FOSL, or an updating of them, unless the leased premises change substantially or the permitted uses of them are to change in environmentally-significant ways.

ATTACHMENT

MODEL LEASE PROVISIONS

NOTE: [ ] Indicates the need for lease specific information (e.g., installation name)

ENVIRONMENTAL PROTECTION

1. The sole purpose(s) for which the leased premises and any improvements thereon may be used, in the absence of prior written approval of the Government for any other use, [insert intended use of the leased premises].

2. The Lessee shall neither transfer nor assign this Lease or any interest therein or any property on the leased premises, nor sublet the leased premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this Lease without the priori written consent of the Government. Such consent shall not be unreasonably withheld or delayed. Every sublease shall contain the Environmental Protection provisions herein.

3. The Lessee and any sublessee shall comply with the applicable Federal, state, and local laws, regulations, and standards that are or may become applicable to Lessee's activities on the Leased Premises.

4. The Lessee and any sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits.

5. The Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Government normally will give the Lessee or sublessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof.

NOTE: USE THE FOLLOWING PROVISION 6. IF THE LEASED PROPERTY IS PART OF A NATIONAL PRIORITIES LIST (NPL) SITE; ADAPT TO CLEANUP AGREEMENTS TO SUIT CLEANUPS UNDER STATE AUTHORITIES (E.G., A NON-NPL SITE).

6. The Government acknowledges that [insert name of military installation] has been identified as a National Priority List (NPL) Site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. The Lessee acknowledges that the Government has provided it with a copy of the [insert name of military installation] Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region [insert number], the state of [insert name of state], and the Military Department and effective on [insert date], and will provide the Lessee with a copy of nay amendments thereto. The Lessee agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended ("FFA," "Interagency Agreement" or "IAG") and the provisions of this Lease, the terms of the FFA or IAG will take precedence. The Lessee further agrees that notwithstanding any other provision of the Lease, the Government assumes no liability to the Lessee or its sublessees or licensees should implementation of the FFA interfere with the Lessee's or any sublessee's or licensee's use of the Leased Premises. The Lessee shall have no claim on account of any such interference against the United States or any officer, agent, employee or contractor thereof, other than for abatement of rent.

NOTE: USE THE FOLLOWING PROVISION 7. IF A FEDERAL FACILITIES AGREEMENT (FFA) OR INTERAGENCY AGREEMENT (IAG) APPLIES TO THE PROPERTY BEING LEASED (E.G., AN NPL SITE)

7. The Government, EPA, and the [insert name of state agency] and their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any sublessee, to enter upon the Leased Premises for the purposes enumerated in this subparagraph and for such other purposes consistent with any provision of the FFA:

   (a) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the [insert name of military installation] Installation Restoration Program (IRP), FFA or IAG;

   (b) to inspect field activities of the Government and its contractors and subcontractors in implementing the [insert name of military installation] IRP, FFA, or IAG;

   (c) to conduct any test or survey required by the EPA or [insert name of state agency] relating to the implementation of the FFA or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or [insert name of state agency] by the Government relating to such conditions;

   (d) to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the [insert name of military installation] IRP or the FFA or IAG, including, but not limited to monitoring wells, pumping wells and treatment facilities.

NOTE: USE THE FOLLOWING ALTERNATE PROVISION 7. IF THE INSTALLATION RESTORATION PROGRAM (IRP) OR OTHER ENVIRONMENTAL INVESTIGATION APPLIES TO THE PROPERTY BEING LEASED (E.G., A NON-NPL SITE)

7. The Government and its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee and any sublessee, to enter upon the Leased Premises for the purposes enumerated in this subparagraph:

   (a) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test-pitting, testing soil borings and other activities related to the [insert name of military installation] Installation Restoration Program (IRP);

   (b) to inspect field activities of the Government and its contractors and subcontractors in implementing the [insert name of military installation] IRP;

   (c) to conduct any test or survey relating to the implementation of the IRP or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or [insert name of state agency] by the Government relating to such conditions;

   (d) to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the [insert name of military installation] IRP, including, but not limited to monitoring wells, pumping wells and treatment facilities.

8. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee and any sublessee. The Lessee and sublessees shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the lessee shall comply with all applicable Federal, state and local occupational safety and health regulations.

9. The Lessee further agrees that in the event of any assignment or sublease of the Leased Premises, it shall provide to the EPA and [insert name of state agency] by certified mail a copy of the agreement or sublease of the Leased Premises (as the case may be) within fourteen (14) days after the effective date of such transaction. The Lessee

may delete the financial terms and any other proprietary information from the copy of any agreement of assignment or sublease furnished pursuant to this provision.

10. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act, or its [insert state name] equivalent. Except as specifically authorized by the Government in writing, the Lessee must provide at its own expense such hazardous waste management facilities, complying with all laws and regulations. Government hazardous waste management facilities will not be available to the Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

11. DoD Component accumulation points for hazardous and other wastes will not be used by the Lessee or any sublessee. Neither will the Lessee or sublessee permit its hazardous wastes to be commingled with hazardous waste of the DoD Component.

12. The Lessee shall have a Government approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the leased premises. Such plan shall be independent of [insert name of installation] and, except for initial fire response and/or spill containment, shall not rely on use of installation personnel or equipment. Should the Government provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of the said officer conducting timely cleanup actions, the Lessee agrees to reimburse the Government for its costs.

13. The Lessee shall not construct or make or permit its sublessees or assigns to construct or make any substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the leased premises in any way which may adversely affect the cleanup, human health, or the environmental without the prior written consent of the Government. Such consent may include a requirement to provide the Government with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the Government. For construction or alterations, additions, modifications, improvements or installations (collectively "work") in the proximity of operable unit that are part of a National Priority List (NPL) Site, such consent may include a requirement for written approval by the Government's Remedial Project Manager. Except as such written approval shall expressly provide otherwise, all such approved alterations, additions, modifications, improvements and installations shall become Government property when annexed to the leased premises.

14. The Lessee shall not conduct or permit its sublessees to conduct and subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Government.

15. The Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation Act (RCRA), or its state equivalent and any other applicable laws, rules or regulations. The Lessee must provide at its own expense such hazardous waste storage facilities which comply with all laws and regulations as it may need for such storage. Any violation of the requirements of this provision shall be deemed a material breach of this Lease.

DOD POLICY ON THE IMPLEMENTATION OF THE COMMUNITY ENVIRONMENTAL RESPONSE FACILITATION ACT (CERFA)

I. PURPOSE

This policy provides guidance to the Department of Defense (DoD) Components on implementing the Community Environmental Response Facilitation Act (CERFA), Public Law 102-425, October 19, 1992, as it amends Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. Section 9620(h)) for identifying and documenting all uncontaminated real property, or parcels thereof, at installations undergoing closure or realignment. The DoD Components may develop implementing procedures containing additional requirements based on their own specific organizational needs and unique requirements but which will, at a minimum, include, but not conflict with, the following documentation and procedures. Nothing in this policy shall affect, preclude, or otherwise impair the termination of DoD operations on real property owned by the United States.

II. APPLICABILITY AND SCOPE

A. Applicability

This policy applies to the identification and documentation of uncontaminated real property controlled by the DoD Components where DoD plans to make excess property available for reuse pursuant to a base closure law. Uncontaminated property is defined as any real property on which no hazardous substances and no petroleum products or their derivatives, including aviation fuel and motor oil, were stored for one year or more, known to have been released, or disposed of. For purposes of this policy, the term "base closure law" includes the following:

1. Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. Section 2687 note).

2. The Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of Public Law 101-510; 10 U.S.C. Section 2687 note)

3. Section 2687 of Title 10, United States Code.

4. Any provision of law authorizing the closure or realignment of a military installation enacted on or after the date of enactment of CERFA.

B. Scope

The policy's scope intends to meet the following objectives:

1. Ensure protection of human health and the environment.

2. Develop a DoD-wide process to assess, determine and document properties (parcels) which can be considered "uncontaminated" as defined above and in CERFA.

3. Ensure appropriate consultation with the public and coordination with and concurrence of regulatory agencies without unduly encumbering DoD's authority and mandate to make property available for reuse in a timely manner.

III. POLICY

A. Requirement for Assessment, Determination and Documentation of Uncontaminated Property

In the case of real property to which this policy applies, the head of the DoD Component with accountability over the property, or his/her designated representative, shall assess, determine and document the real property, or parcels thereof, that can be considered as "uncontaminated" as defined above and in CERFA. This assessment and determination will be based on an Environmental Baseline Survey (EBS) as described below.

B. Investigation

1. Environmental Baseline Survey (EBS). An EBS will be prepared for each installation being closed or realigned. The EBS will be based on all existing environmental information related to storage, release, treatment or disposal of hazardous substances or petroleum products on the property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or petroleum product. In certain cases, additional data, including sampling and analysis, may be needed in the EBS to support the determination.

   A previously conducted EBS may be updated as necessary and used for making a CERFA determination, where appropriate. An EBS also can satisfy other environmental requirements (e.g., to reach a Finding of Suitability to Lease [FOSL] or Finding of Suitability to Transfer [FOST]).

2. Procedures for Conducting an EBS. The EBS will consider all sources of available information concerning environmentally significant current and past uses of the real property and shall, as a minimum, consist of the following:

   a. Detailed search and review of available information and records in the possession of the DoD Components and records made available by the regulatory agencies or other involved Federal agencies. DoD Components are responsible for requesting and making reasonable inquiry into the existence and availability of relevant information and records to include any additional study information (e.g., surveys for asbestos, radon, lead-based paint, transformers containing PCB, Resource Conservation and Recovery Act Facility Assessments and Investigations [RFA & RFI]) to determine what, if any, hazardous substances or petroleum products may be present on the property.

NOTE: The presence of some of the above noted conditions (e.g., non-friable asbestos) should not preclude a CERFA determination of "uncontaminated." However, their presence and any required protective actions should be identified and addressed.

   b. Review of all reasonably obtainable Federal, state, and local government records for each adjacent facility where there has been a release of any hazardous substance or any petroleum product, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product on the real property.

   c. Analysis of aerial photographs that may reflect prior uses of the property which are in the possession of the Federal Government or are reasonably obtainable through state or local government agencies.

   d. Interviews with current and/or former employees involved in operations on the real property.

   e. Visual inspections of the real property; any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property; and of properties immediately adjacent to the real property, noting sewer lines, runoff patterns, evidence of environmental impacts (e.g., stained soil, stressed vegetation, dead or ill wildlife) and other observations which indicate actual or potential release of hazardous substances or petroleum products.

f. Identification of sources of contamination on the installation and on adjacent properties which could migrate to the parcel.

g. Ongoing response actions or actions that have been taken at or adjacent to the property.

h. A physical inspection of property adjacent to the real property, to the extent permitted by owners or operators of such property.

i. Sampling, if the circumstances deem appropriate.

NOTE: For the purposes of paragraphs b, e, f, g & h above, "adjacent properties" should be defined as either those properties contiguous to the boundaries of the property being surveyed or other nearby properties. In either case, the survey should be addressed to those portions of the properties relatively near the installation that could pose significant environmental concern and/or have a significant impact on the results of the EBS.

3. Documentation of an EBS. At the completion of the EBS, a report will be prepared which will include the following:

a. An Executive Summary briefly stating the areas of real property evaluated and the conclusions of the survey.

b. The property identification (e.g., address, assessor parcel number, legal description).

c. Any relevant information obtained from a detailed search of Federal Government records pertaining to the property, including available maps.

d. Any relevant information obtained from a review of the recorded chain of title documents regarding the real property. The review should address those prior ownerships/uses that could reasonably have contributed to an environmental concern, and, at a minimum, cover the preceding 60 years.

e. A description of past and current activities, including all past and current DoD and non-DoD uses to the extent such information is reasonably available, on the property and on adjacent properties.

f. A description of hazardous substances or petroleum products management practices (to include storage, release, treatment or disposal) at the property and at adjacent properties.

g. Any relevant information obtained from records reviews and visual and physical inspections of adjacent properties.

h. Description of ongoing response actions or actions that have been taken at or adjacent to the property.

i. References to key documents examined (e.g., aerial photographs, spill incident reports, investigation results). (The documents will be made available by DoD upon request.)

IV. PROCEDURES AND RESPONSIBILITIES

A. Regulatory agencies will be notified at the initiation of the EBS. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available. Regulatory

comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS.

B. Once completed, the appropriate DoD Component official will review the EBS report and will, in the appropriate instance, determine that the property, or some portion of it, is uncontaminated as defined above and in CERFA.

C. Once the above required determination has been made, the EBS report and determination will be provided immediately to the United States Environmental Protection Agency (EPA) Administrator and state and local government officials and made available to the public. In addition, a request for concurrence in such determination will be included in the submittal to the appropriate regulatory official. This request for concurrence will take place at the earliest possible time, but no later than 120 days prior to the deadlines discussed below. Additional supporting documentation will be made available upon request. In the case of real property that is part of a facility on the NPL, the appropriate concurring regulatory official will be the EPA Administrator or designated representative. In the case of real property that is not part of a facility on the NPL, the appropriate regulatory official will be the designated state official. In the case of a concurrence which is required from a state official, the concurrence is deemed to be obtained if, within 90 days after receiving a request for the concurrence, the State official has not acted (by either concurring or declining to concur) on the request for concurrence. The DoD Components will address relevant comments from regulatory officials that are received within the first 90 days of the 120-days period. Every effort will be taken to resolve any conflicts at the installation - regulatory agency level. Unresolved comments will be forwarded to the DoD Component's Deputy Assistant Secretary level. The EBS report along with regulatory comments, DoD responses to those comments, and signed regulatory concurrence will be included in the installation records and, where appropriate, in the Administrative Record.

D. The identification required under paragraph III is not complete until the above concurrence in the results of the identification is obtained.

E. For installations described in paragraph II.A. on which operations have been closed or realigned or scheduled for closure or realignment pursuant to a base closure law described in paragraphs II.A.1. or II.A.2., by the date of enactment of CERFA, the identification and concurrence required above shall be made not later than 18 months after such date of enactment. (For installations designated in BRAC 88 or BRAC 91, the identification and concurrence process was completed by April 19, 1994 [18 months after the CERFA enactment date of October 19, 1992].)

F. For installations described in paragraph II.A. on which operations are closed or realigned or become scheduled for closure or realignment pursuant to the base closure law described in paragraph II.A.2. after the date of the enactment of CERFA (October 19, 1992), the identification and concurrence required above shall be made no later than 18 months after the date by which a joint resolution disapproving the closure or realignment of the real property under Section 2904(b) of such base closure law must be enacted, and such a joint resolution has not been enacted.

G. For installations described in paragraph II.A. on which operations are closed or realigned pursuant to a base closure law described in paragraphs II.A.3. & 4., the identification and concurrence required above shall be made not later than 18 months after the date on which the real property is selected for the closure or realignment pursuant to such base closure law.

H. The deadline for uncontaminated parcel determinations does not preclude further investigation, after the CERFA deadline, to obtain concurrence that a parcel is CERFA uncontaminated. Such identification and concurrence shall only be sought if the Component deems it beneficial to property transfer and reuse.

DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (1 June 1994)

THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-1000

1 JUN 1994

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
UNDER SECRETARIES OF DEFENSE
COMPTROLLER
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL
INSPECTOR GENERAL
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Finding of Suitability to Transfer for BRAC Property

On September 9, 1993, we issued DoD policy on Fast Track Cleanup at Closing Installations as part of the Department's implementation of the President's program to Revitalize Base Closure Communities.

The two documents attached to this memorandum provide guidance on the environmental review process for transferring property. The guidance was prepared by a joint OSD, Military Department, EPA workgroup and is a fundamental element in our guidance for the lease or transfer by deed of BRAC properties. The other elements are: (1) our 4 May 1994 memorandum of understanding with EPA on the suitability of leasing, required by the FY 94 Defense Authorization Act; and (2) the proposed procedures for DoD implementation of Section 2908 of this Act for "Transfer Authority in Connection with Payment of Environmental Remediation Costs."

I would like to call your attention to Section 330 of the National Defense Authorization Act for Fiscal Year 1993, as amended, that requires the Secretary of Defense to indemnify transferees of closing Defense property from claims that result from the release or threatened release by DoD activities of hazardous substances or petroleum products. The attached procedures provide the framework for ensuring that we do not assume unwarranted risks as we transfer property.

Our best efforts in this area are crucial to the successful transition from base closure to economic redevelopment. I ask for your continued personal support.

Attachments

11103

DoD GUIDANCE ON THE ENVIRONMENTAL REVIEW PROCESS TO REACH A FINDING OF SUITABILITY TO TRANSFER (FOST) FOR PROPERTY WHERE RELEASE OR DISPOSAL HAS OCCURRED

I. PURPOSE.

This policy provides guidance to the Department of Defense (DoD) Components on the necessary process to document parcels of real property made available through the Base Realignment and Closure (BRAC) process and which are environmentally suitable for transfer by deed under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. Section 9620(h)). This policy does not apply to transfers of property to persons paying the cost of environmental restoration activities under the provisions of Section 2908 of the National Defense Authorization Act for FY 94. The DoD Components may develop implementation procedures which may contain additional requirements based on their own specific needs and unique requirements but will, at a minimum, include the following documentation and procedures. This guidance applies to property where release or disposal of hazardous substances or petroleum products has occurred and which is being considered for transfer by deed. Nothing in this policy negates the requirement to comply with the National Environmental Policy Act (NEPA).

II. APPLICABILITY AND SCOPE.

This policy applies to all DoD installations selected for closure or realignment pursuant to the Base Closure and Realignment Act of 1988 (P.L. 100-526) (BRAC 88) or the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510) (BRAC 91, 93, and 95). The policy's scope intends to meet the following objectives:

A. Ensure protection of human health and the environment.

B. Develop a DoD-wide process to assess, determine and document the environmental suitability of properties for transfer by deed.

C. Ensure transfer of properties by deed does not interfere with response actions being conducted at National Priorities List (NPL) sites under the provisions of a Federal Facilities Agreement or at non-NPL sites under the provisions of other types of agreements or any corrective action orders.

D. Ensure compliance with all applicable environmental cleanup requirements and allow the DoD Component to demonstrate compliance with Section 120(h) of CERCLA before properties are transferred by deed.

E. Provide for adequate public and regulatory participation without unduly encumbering the Defense Department Components' authority and mandate to make property available for reuse in a timely manner.

F. Ensure a sufficient environmental review of the real property being considered for transfer is conducted to avoid unwarranted risks of future liability.

III. POLICY.

A. Requirement for Assessment, Determination and Documentation of Properties Suitable for Transfer by Deed.

In the case of real property to which this policy applies, the head of the DoD Component with accountability over the property, or his/her designated representative, shall assess, determine and document when properties where release or disposal of hazardous substances or petroleum products has occurred are suitable for transfer by deed. This assessment and determination will be based on an Environmental Baseline Survey (EBS) and will be documented in a Finding of Suitability to Transfer (FOST) as described below.

B. Investigation.

1. Environmental Baseline Survey (EBS). An EBS will be prepared encompassing any property to be transferred. The EBS will be based on all existing environmental information related to storage, release, treatment or disposal of hazardous substances or petroleum products on the property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or petroleum product. In certain cases additional data, including sampling, if appropriate under the circumstances, may be needed in the EBS to support the FOST determination.

   A previously conducted EBS may be updated as necessary and used for making a FOST determination, where appropriate. An EBS also may satisfy other environmental requirements (e.g., to reach a Finding of Suitability to Lease [FOSL] or satisfy the requirements of the Community Environmental Response Facilitation Act [CERFA]).

2. Procedures for Conducting an EBS. The EBS will consider all sources of available information concerning all environmentally significant current and past uses of the real property and shall, at a minimum, consist of the following:

   a. Detailed search and review of available information and records in the possession of the DoD Components or records made available by the regulatory agencies or other involved Federal agencies. DoD Components are responsible for requesting and making reasonable inquiry into the existence and availability of relevant information and records to include any additional study information (e.g., surveys for radioactive materials, asbestos, radon, lead-based paint, transformers containing PCB, Resource Conservation and Recovery Act Facility Assessments and Investigations [RFA and RFI], Underground Storage Tank Cleanup Program) to determine the environmental condition of the property.

   b. Review of all reasonably obtainable Federal, State, and local government records for each adjacent facility where there has been a release of any hazardous substance or any petroleum product, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product on the real property.

   c. Analysis of aerial photographs which are in the possession of the Federal Government or are reasonably obtainable through state or local government agencies that may reflect prior uses of the real property.

   d. Interviews with current and/or former employees involved in operations on the real property.

   e. Visual inspections of the real property; any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property; and of properties immediately adjacent to the real property, noting sewer lines, runoff patterns, evidence of environmental impacts (e.g., stained soil, stressed vegetation, dead or ill wildlife) and other observations which indicate actual or potential release of hazardous substances or petroleum products.

   f. Identification of sources of contamination on the installation and on adjacent properties which could migrate to the real property.

   g. Ongoing response actions and actions that have been taken at, or adjacent to, the real property.

   h. A physical inspection of property adjacent to the real property, as appropriate, and to the extent permitted by owners or operators of such property.

NOTE: For the purposes of paragraphs b, e, f, g, & h above, "adjacent properties" are defined as either those properties contiguous to the boundaries of the property being surveyed or other nearby properties. In either case, the survey should be addressed to those portions of the properties relatively near the installation that could pose significant environmental concern and/or have a significant impact on the results of the EBS.

3. Documentation of an EBS. At the completion of the EBS, a report will be prepared which will include the following:

   a. An Executive Summary briefly stating the areas of real property (or parcels) evaluated and the conclusions of the survey.

   b. The property identification (e.g., address, assessor parcel number, legal description).

   c. Any relevant information obtained from a detailed search of Federal Government records pertaining to the property, including available maps.

   d. Any relevant information obtained from a review of the recorded chain of title documents regarding the real property. The review should address those prior ownerships/uses that could reasonably have contributed to an environmental concern, and, at a minimum, cover the preceding 60 years.

   e. A description of past and current activities, including all past and current DoD and non-DoD uses to the extent such information is reasonably available, on the property and on adjacent properties.

   f. A description of hazardous substances and petroleum products management practices (to include storage, release, treatment or disposal) at the property and at adjacent properties, to the extent such information is reasonably available.

   g. Any relevant information obtained from records reviews and visual and physical inspections of adjacent properties.

   h. Description of ongoing response actions or actions that have been taken at or adjacent to the property.

   j. Reference to key documents examined (e.g., aerial photographs, spill incident reports, investigation results). (The documents will be made available by DoD upon request.)

4. Analysis of Intended Use. Before the signing of a FOST, an analysis of the intended use of the property, if known, will be conducted and will include:

   a. An evaluation of the environmental suitability of the property for transfer by deed for the intended purpose, if known, including the rationale for the determination of such suitability.

   b. A listing of specific recommended restrictions on use of the property, if any, to protect human health and the environment or the environmental restoration process. For remediated parcels such restrictions would include those documented in the Record of Decision (ROD) under the National Oil and Hazardous Substances Contingency Plan (NCP) or equivalent decision documents.

NOTE: The covenant required by CERCLA Section 120(h)(3) regarding hazardous substances must be based on either (1) a determination that no remedial action is required or (2) a determination that all remedial action necessary to protect human health and the environment has been taken. The determination that

no remedial action is required or that all remedial action has been taken shall be supported by the appropriate documentation required by the program (e.g., CERCLA, RCRA, UST, DERP, state law) under which the property was evaluated and addressed. Such decision document may include a CERCLA Record of Decision (ROD), No Further Action ROD, No Further Response Action Planned (NFRAP), or other such similar RCRA, UST, DERP, or state law documentation, or other documentation that describes a consensus between the lead regulatory agency and the DoD Component. The intent is to use the processes under existing cleanup authorities and programs, and not create an additional separate process, to determine whether property requires remedial action or can be transferred as is. For property that requires remedial action, whether or not an NPL site and regardless of which cleanup authority is used, the covenant that all remedial action has been taken may only be made after a demonstration to EPA that an approved remedy is installed and operating properly and successfully.

C. Finding of Suitability to Transfer (FOST).

After completion and review of the EBS, the intended use analysis, and any available local community reuse plan, the DoD Component will sign a FOST once a determination has been made that the property is suitable for transfer by deed for the intended purpose, if known, because the requirements of CERCLA Section 120(h)(3) have been met for the property, taking into account the potential risk of future liability. The DoD component will provide a copy of the signed FOST to the regulator.

IV. PROCEDURES AND RESPONSIBILITIES.

A. Regulatory agencies will be notified at the initiation of the EBS and the FOST. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available, including the EBS and the proposed FOST. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the POST.

B. The regulatory agencies and public will be notified of the intent to sign a FOST. This will take place at the earliest possible time, but no later than 30 days prior to a transfer by deed. The notification will be mailed to the regulatory agencies and will include the draft FOST. Either the EBS report or a summary of the findings of the EBS process that pertain to the parcel to be transferred will be made available to the public. Additional supporting documentation will be made available upon request. The DoD Components will address relevant comments from regulatory officials and other appropriate entities that have been received within this 30-day period. After consideration of all relevant comments (unresolved comments will be included as an appendix to the FOST) and signing of the FOST, the DoD Component may proceed to convey the property by deed.

C. The DoD Components will provide public notice of the signing of the FOST and will retain the signed FOST, including all regulatory comments and responses on the EBS and/or FOST, in the transaction file (and the Administrative Record, where applicable) and will make the FOST available to the public upon request.

D. Conditions will be included in the transfer deed to:

1. Ensure environmental investigations and remedial and oversight activities will not be disrupted at any time. Such conditions will include, but are not limited to:

a. Providing for continued access for DoD (or its designated contractor) and regulatory agencies to monitor the effectiveness of cleanup, perform five-year reviews, and/or take additional remedial or removal actions.

b. Prohibiting activities that could disrupt any remediation activities or jeopardize the protectiveness of those remedies such as the following:

(1) Surface application of water that could impact the migration of contaminated ground water;

(2) Subsurface drilling or use of ground water unless DoD determines that there will be no adverse impacts on the cleanup process; or,

(3) Construction that would interfere with, negatively impact, or restrict access for cleanup work.

2. Limit use as required by the FOST.

DoD GUIDANCE ON THE ENVIRONMENTAL REVIEW PROCESS TO REACH A FINDING OF SUITABILITY TO TRANSFER (FOST) FOR PROPERTY WHERE NO RELEASE OR DISPOSAL HAS OCCURRED

I. PURPOSE.

This policy provides guidance to the Department of Defense (DoD) Components on the process to document parcels of real property made available through the Base Realignment and Closure (BRAC) process and which are environmentally suitable for transfer by deed under Section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9620 (h)). The DoD Components may develop implementation procedures which may contain additional requirements based on their own specific needs and unique requirements but will, at a minimum, include the following documentation and procedures. This guidance applies to property where no release or disposal of hazardous substances or petroleum products has occurred and which is being considered for transfer by deed, whether or not storage of hazardous substances or petroleum products has occurred. Nothing in this policy negates the requirement to comply with the National Environmental Policy Act (NEPA).

II. APPLICABILITY AND SCOPE.

This policy applies to all DoD installations selected for closure or realignment pursuant to the Base Closure and Realignment Act of 1988 (P.L. 100-526) (BRAC 88) or the Defense Base Closure and Realignment Act of 1990 (P.L. 101-510) (BRAC 91, 93, and 95). The policy's scope intends to meet the following objectives:

A. Ensure protection of human health and the environment.

B. Develop a DoD-wide process to assess, determine, and document the environmental suitability of properties for transfer by deed.

C. Ensure transfer of properties by deed does not interfere with response actions being conducted at National Priorities List (NPL) sites under the provisions of a Federal Facilities Agreement or at non-NPL sites under the provisions of other types of agreements or any corrective action orders.

D. Ensure compliance with all applicable environmental cleanup requirements and allow the DoD Component to demonstrate compliance with Section 120(h) of CERCLA before properties are transferred by deed.

E. Provide for adequate public and regulatory participation without unduly encumbering the DoD Components' authority and mandate to make property available for reuse in a timely manner.

F. Ensure a sufficient environmental review of the real property being considered for transfer is conducted to avoid unwarranted risks of future liability.

III. POLICY.

A. Requirement for Assessment, Determination and Documentation of Properties Suitable for Transfer by Deed.

In the case of real property to which this policy applies, the head of the DoD Component with accountability over the property, or his/her designated representative, shall assess, determine and document when properties where no release or disposal of hazardous substances or petroleum products has occurred are suitable for transfer by deed. This assessment and determination will be based on an Environmental

Baseline Survey (EBS) and will be documented in a Finding of Suitability to Transfer (FOST) as described below.

B. Investigation.

1. Environmental Baseline Survey (EBS). An EBS will be prepared encompassing any property to be transferred. The EBS will be based on all existing environmental information related to storage, release, treatment or disposal of hazardous substances or petroleum products on the property to determine or discover the obviousness of the presence or likely presence of a release or threatened release of any hazardous substance or petroleum product. In certain cases additional data, including sampling, if appropriate under the circumstances, may be needed in the EBS to support the FOST determination.

   A previously conducted EBS may be updated as necessary and used for making a FOST determination, where appropriate. An EBS also may satisfy other environmental requirements (e.g., to reach a Finding of Suitability to Lease [FOSL] or satisfy the requirements of the Community Environmental Response Facilitation Act [CERFA]).

2. Procedures for Conducting an EBS. The EBS will consider all sources of available information concerning all environmentally significant current and past uses of the real property and shall, at a minimum, consist of the following:

   a. Detailed search and review of available information and records in the possession of the DoD Components or records made available by the regulatory agencies or other involved Federal agencies. DoD Components are responsible for requesting and making reasonable inquiry into the existence and availability of relevant information and records to include any additional study information (e.g., surveys for radioactive materials, asbestos, radon, lead-based paint, transformers containing PCB, Resource Conservation and Recovery Act Facility Assessments and Investigations [RFA and RFI], Underground Storage Tank Cleanup Program) to determine the environmental condition of the property.

   b. Review of all reasonably obtainable Federal, State, and local government records for each adjacent facility where there has been a release of any hazardous substance or any petroleum product, and which is likely to cause or contribute to a release or threatened release of any hazardous substance or any petroleum product on the real property.

   c. Analysis of aerial photographs which are in the possession of the Federal Government or are reasonably obtainable through state or local government agencies that may reflect prior uses of the real property.

   d. Interviews with current and/or former employees involved in operations on the real property.

   e. Visual inspections of the real property; any buildings, structures, equipment, pipe, pipeline, or other improvements on the real property; and of properties immediately adjacent to the real property, noting sewer lines, runoff patterns, evidence of environmental impacts (e.g., stained soil, stressed vegetation, dead or ill wildlife) and other observations which indicate actual or potential release of hazardous substances or petroleum products.

   f. Identification of sources of contamination on the installation and on adjacent properties which could migrate to the real property.

   g. Ongoing response actions and actions that have been taken at adjacent real property.

h. A physical inspection of property adjacent to the real property, as appropriate, and to the extent permitted by owners or operators of such property.

NOTE: For the purposes of paragraphs b, e, f, g, & h above, "adjacent properties" are defined as either those properties contiguous to the boundaries of the property being surveyed or other nearby properties. In either case, the survey should be addressed to those portions of the properties relatively near the installation that could pose significant environmental concern and/or have a significant impact on the results of the EBS.

3. Documentation of an EBS. At the completion of the EBS, a report will be prepared which will include the following:

a. An Executive Summary briefly stating the areas of real property (or parcels) evaluated and the conclusions of the survey.

b. The property identification (e.g., address, assessor parcel number, legal description).

c. Any relevant information obtained from a detailed search of Federal Government records pertaining to the property, including available maps.

d. Any relevant information obtained from a review of the recorded chain of title documents regarding the real property. The review should address those prior ownerships/uses that could reasonably have contributed to an environmental concern, and, at a minimum, cover the preceding 60 years.

e. A description of past and current activities, including all past and current DoD and non-DoD uses to the extent such information is reasonably available, on the property and on adjacent properties.

f. A description of hazardous substances and petroleum products management practices (to include storage, release or treatment) at the property and at adjacent properties, to the extent such information is reasonably available.

g. Any relevant information obtained from records reviews and visual and physical inspections of adjacent properties.

h. Description of ongoing response actions or actions that have been taken at adjacent real property.

i. Reference to key documents examined (e.g., aerial photographs, spill incident reports, investigation results). (The documents will be made available by DoD upon request.)

4. Analysis of the EBS. Before the signing of a FOST, a listing will be made of specific recommended restrictions on use of the property, if any, to protect human health and the environment.

C. Finding of Suitability to Transfer (FOST).

After completion and review of the EBS, the DoD Component will sign a FOST once a determination is made that the property is suitable for transfer by deed because no hazardous substances or petroleum products were known to have been released or disposed of on the property, taking into account the potential risk of future liability. The DoD Component will provide a copy of the signed FOST to the regulator.

IV. PROCEDURES AND RESPONSIBILITIES.

A. Regulatory agencies will be notified at the initiation of the EBS and the FOST. The process of development of these documents will be designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available, including the EBS and the proposed FOST. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the FOST.

B. The regulatory agencies and public will be notified of the intent to sign a FOST. This will take place at the earliest possible time, but no later than 30 days prior to a transfer by deed. The notification will be mailed to the regulatory agencies and will include the draft FOST. Either the EBS report or a summary of the findings of the EBS process that pertain to the parcel to be transferred will be made available to the public. Additional supporting documentation will be made available upon request. The DoD Components will address relevant comments from regulatory officials or other appropriate entities that have been received within this 30-day period. After consideration of all relevant comments (unresolved comments will be included as an appendix to the FOST) and signing of the FOST, the DoD Components may proceed to convey the property by deed.

C. The DoD Components will provide public notice of the signing of the FOST and will retain the signed FOST, including all regulatory comments and responses on the EBS and/or FOST, in the transaction file (and the Administrative Record, where applicable) and will make the FOST available to the public upon request.

D. Conditions will be included in the transfer deed to:

1. Ensure that a response action or corrective action found to be necessary after the date of transfer by deed will be conducted by the United States.

2. Grant the United States access to the property in any case in which a response action or corrective action is found to be necessary at the property after the date of transfer by deed, or such access is necessary to carry out a response action or corrective action on adjoining property.

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DoD Restoration Advisory Board (RAB) Implementation Guidelines (27 September 1994)

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THE DEPARTMENT OF DEFENSE
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, DC

SEP 27 1994

SUBJECT: Restoration Advisory Board (RAB) Implementation Guidelines

The Department of Defense (DoD) is taking steps to increase public participation in its cleanup program. New DoD policy, which resulted from DoD's participation in the Federal Facilities Environmental Restoration Dialogue Committee, calls for Restoration Advisory Boards (RABs) to be formed at all closing installations and at non-closing installations where the local community expresses interest.

RABs are an expansion of DoD's Technical Review Committee (TRC) concept. The boards are a forum for exchange of information and partnership among citizens, the installation, EPA, and State. Most importantly, they offer an opportunity for communities to provide input to the cleanup process. It is our view that RABs will improve DoD's cleanup program by increasing community understanding and support for cleanup efforts, improving the soundness of government decisions, and ensuring cleanups are responsive to community needs.

The attached document entitled "Restoration Advisory Board Implementation Guidelines" provides recommended procedures for establishing and operating RABs. It is intended to be a resource for installation, EPA, and State personnel and citizens who participate in RABs. The guidelines were developed by a joint DoD/EPA working group which is a model for interagency cooperation.

The agency points of contact on RABs are, for DoD, Ms. Marcia Read, 703-697-9793; for EPA, Ms. Marilyn Null 202-260-5686.

Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)
Department of Defense

Elliott P. Laws
Assistant Administrator
Office of Solid Waste and Emergency Response
U.S. Environmental Protection Agency

Attachment

ACQUISITION AND TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

13 OCT 1994

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS, LOGISTICS & ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS & ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS & ENVIRONMENT)
DIRECTOR, DEFENSE LOGISTICS AGENCY (D)
DIRECTOR, DEFENSE NUCLEAR AGENCY

SUBJECT: Restoration Advisory Board (RAB) Implementation Guidelines

RAB Implementation Guidelines are forwarded to assist in carrying out DoD's new policy to increase community involvement in the cleanup program. The guidelines were developed by a joint DoD/EPA Working Group and reflect feedback received from participants at the seven RAB training workshops held across the country last summer.

Installations which have cleanup programs should, at a minimum, be conducting outreach to nearby communities to determine whether there is interest in forming a RAB. If sufficient interest is demonstrated, the installation should initiate RAB formation in coordination with EPA, the State and the community. Where appropriate, existing Technical Review Committees should be converted to RABs. I intend to measure progress made in establishing RABs through the quarterly In-Progress Review process. This process is in place for measuring progress of cleanup activities at active and closing installations.

I ask your support in ensuring that RABs are established consistent with policy. I understand that RABs will require considerable effort to set up and maintain. However, it is my belief that RABs will improve the cleanup program by increasing community understanding and support for our efforts, improving the soundness of government decisions, and ensuring cleanups are responsive to community needs.

Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)

Attachment

Environmental Security *Defending Our Future*



DEPARTMENT OF DEFENSE
AND
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY



Restoration Advisory Board Implementation Guidelines

September 1994

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These guidelines are based on the "Interim Guidance for Implementing Restoration Advisory Boards," November 1993, drafted by California Environmental Protection Agency, Department of Toxic Substances Control.

U.S. ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF DEFENSE RESTORATION ADVISORY BOARD IMPLEMENTATION GUIDELINES

I. BACKGROUND

The United States Environmental Protection Agency (EPA) and the Department of Defense (DoD) recognize the importance of public involvement at military installations that require environmental restoration. Therefore, EPA and DoD have developed joint Restoration Advisory Board (RAB) guidelines. DoD policies on community involvement can be found in the "*Management Guidance for Execution of the FY94/95 and Development of the FY96 Defense Environmental Restoration Program*," April 14, 1994.

RABs bring together people who reflect the diverse interests within the local community, enabling the early and continued flow of information between the affected community, DoD and environmental oversight agencies. DOD is creating RABs to ensure that all stakeholders have a voice and can actively participate in a timely and thorough manner in the review of restoration documents. RAB community members will provide advice as individuals to the decision-makers on restoration issues. It is a forum to be used for the expression and careful consideration of diverse points of view. The RAB complements other community involvement efforts, but does not replace them. The DoD installation will continue to be responsible for fulfilling all statutorily mandated public involvement requirements.

This document provides guidelines to assist DoD installations on how to develop and implement a RAB and the role of environmental oversight agencies in this process. It is intended to be flexible so the DoD installation can adapt the RAB to meet the individual needs of the community.

The guidelines are based on recommendations contained in the February 1993, "Interim Report of the Federal Facilities Environmental Restoration Dialogue Committee." While not identical, they are generally consistent with the Committee's recommendations.

Although these guidelines are intended to apply at all military installations, EPA's involvement on a RAB will vary based on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) National Priorities List (NPL) status of the installation. EPA is committed to full involvement on RABs as the Federal regulatory agency for all DoD installations on the NPL or at base closure sites where EPA has received resources from DoD. EPA's involvement will be at the discretion of EPA's regional office for non-NPL, non-base closure or base closure installations where EPA has not been given resources from DoD.

For this document, the term "stakeholder" is defined as parties that are actually or potentially affected by restoration activities at an installation.

II. RAB DEVELOPMENT

Most DoD installations have already established Technical Review Committees (TRCs) to provide interested parties with a forum to discuss and provide input into site restoration activities as required by 10 USC 2705(c) and Executive Order 12580, "Superfund Implementation." The DoD RAB policy calls for existing TRCs or similar groups to be expanded or modified to become RABs rather than create a separate committee, as long as the RABs meet the statutory requirements for TRCs. RABs provide an expanded opportunity for ongoing community input and participation in all phases of installation restoration activities and decision-making.

The RAB is not a replacement for other types of community outreach and participation activities required by law, regulation, or policy. Therefore, all existing public involvement requirements must still be completed, including the community relations requirements of CERCLA as amended by the Superfund Amendments and Reauthorization

Act (SARA); and public involvement requirements of the Resource Conservation and Recovery Act (RCRA); National Environmental Policy Act (NEPA), and any state environmental regulations.

Although the DoD installation has the lead responsibility for the formulation and implementation of the RABs, the state and EPA, as appropriate, should be involved in all phases of RAB planning and operation.

Preparing for the Initial RAB Information Meeting

Before the initial RAB information meeting, the DoD installation should begin the process of informing and educating the community about the purpose of the RAB and opportunities for membership and participation. This is especially important at installations where a TRC has not been formed or where the community has had limited participation in the TRC. This can be accomplished by completing the following suggested activities.

Fact Sheet

The DoD installation should prepare and distribute a brief, one-page fact sheet describing the RAB prior to the initial RAB information meeting. This should be done in consultation with the existing TRC, the state, and EPA, as appropriate. It may be advisable to distribute the fact sheet using any existing public participation mailing lists unless a wider distribution is deemed desirable. The fact sheet should describe the purpose of the RAB, membership opportunities, the membership selection process, and state the responsibilities of RAB members. Copies of the fact sheet should be made available to the public in information repositories established by the installation and widely accessible to the community. If a significant segment of the community is non-English speaking or visually impaired, the fact sheet should be translated. A sample RAB fact sheet is included as Enclosure 1.

Public Notice

A paid public notice should be issued to advertise the initial RAB information meeting in at least one newspaper of general circulation serving the affected communities around the installation, as well as in the installation newspaper. The public notice should be published in advance of the meeting and include the following information:

- time and location of the meeting
- notice of the intent to establish a RAB or transition the TRC to become a RAB, if applicable
- RAB purpose
- membership opportunities
- meeting is open for public attendance and participation
- name and phone number of contact person(s) for more information
- topics for consideration at the initial RAB information meeting

The public notice should be placed in a prominent section of the newspaper likely to be read by the majority of community members. A sample public notice is included as Enclosure 2.

Agenda

An agenda for the meeting should be developed by the DoD installation in consultation with the state and EPA, as appropriate. The agenda should reflect community restoration concerns as identified by existing community involvement activities (i.e., interview with key community leaders, review of correspondence, review of media coverage, etc.).

Press Release

The DoD installation's public affairs office should prepare and distribute a press release to explain the purpose of the RAB and the time and location of the meeting. Depending on local media coverage of installation

environmental issues, it may be appropriate to prepare a more extensive media packet of information to update the local media regarding installation restoration issues and activities.

Initial RAB Information Meeting

The initial RAB information meeting should be sponsored by the DoD installation as soon as possible to ensure the expeditious execution of the RAB. This can be accomplished at the next regularly scheduled TRC meeting, as long as sufficient public notice is given, or at a community meeting held specifically for this purpose. Where a TRC currently exists, the TRC must evaluate its member composition and operation using the RAB criteria and modify, as appropriate. The DoD installation should consult with the state and the EPA, as appropriate, well in advance of the initial RAB information meeting on all matters related to the meeting.

The initial RAB information meeting may be facilitated by the DoD installation. If appropriate, the meeting could be facilitated by a professional facilitator with meeting facilitation skills and experience. A professional facilitator should be considered where a controversial situation is anticipated and a sense of independence will avoid, minimize, or even diffuse acrimonious deliberations.

The focus of the meeting should be to introduce the RAB concept to the community and begin the membership solicitation process. Some of the suggested topics to address include:

- overview and purpose of the RAB
- goal of representing diverse community interests
- difference between the RAB and the TRC
- membership opportunities
- member selection process and time table
- member responsibilities and what is expected of members
- overview of installation restoration and/or conversion activities and plans (as appropriate)
- open discussion/question and answer period
- co-chair opportunities
- potential conflict of interest concerns

The date and location of the meeting should be chosen with the goal of making it convenient for a majority of community members to attend and participate. The meeting, as with all RAB meetings, should be held in a central location. Input from the community should be strongly considered regarding convenient meeting locations and times. The DoD, the state, and EPA should ensure that a representative and/or designee is in attendance at all RAB meetings.

The DoD installation should prepare meeting minutes summarizing the topics discussed at the meeting. The minutes should be a concise summary of the meeting rather than verbatim transcripts. Translation of meeting minutes should be provided if a large segment of the local community speaks a language other than English or members of the community are visually impaired. The minutes should be made available to the public at the information repositories and/or other places within two weeks of the meeting. The DoD installation may want to consider mailing copies of the minutes to all community members who attended the meeting, existing TRC members and/or to people identified on the installation's community relations mailing list.

Converting a TRC to a RAB

If an installation already has a functioning TRC, it should be converted into a RAB instead of establishing a separate committee. Some of the tasks that need to be done to accomplish the conversion are: adding a community co-chair; increasing community representation; and making all meetings open to the public. The ultimate goal of the RAB is to improve communications among stakeholders and solicit input to be used in the decision process.

As a part of the initial member selection process, the DoD installation, with input from the EPA, as appropriate, and the state, should evaluate diversity of the current membership of the TRC. DoD membership should consist of 1 to 2 members. As a general rule, TRC members should be given preference for a seat on the RAB to preserve continuity and the "institutional history" of the restoration process. This should be balanced against the preeminent need to form a RAB truly representative of the community's diverse interests.

Formulating the RAB

Ensuring Membership Diversity and Balance

RAB members should be identified by a selection panel, see "Selecting Community Members." The RAB should be comprised of members from the local community and representatives from DoD, the state, and EPA, as appropriate. Community members selected for RAB membership should reflect the diverse interests within the local community. RAB members should live/work in the affected community or be impacted by the restoration program. The following list of potential interests should be considered for representation on the RAB. This list is illustrative and not all inclusive. Each RAB should be developed to reflect the unique mix of interests and concerns within the local community.

- local residents/community members (including minorities and low income)
- local reuse committees
- Technical Assistance Grant (TAG) recipient
- current TRC members
- local government officials/agencies
- business community
- school districts
- installation employees/residents
- local environmental groups/activists
- civic/public interest organizations
- religious community
- other regulatory agencies
- local homeowners organizations
- medical community
- Native American tribes

DoD, the state, and EPA, as appropriate, will generally have one member each on the RAB. While it is anticipated that other members of the installation and regulatory agencies will regularly attend and participate in RAB meetings as resources, the majority of RAB members should be from the local community.

Soliciting Community Members

For an effective RAB to be established quickly, the DoD installation, in coordination with the EPA, as appropriate, and the state, needs to inform and educate the local community about the formulation of the RAB, its purpose, and the opportunities for membership. The public outreach effort should be tailored to the individual community at each installation and may include letters to local government officials and community members. This is especially important at installations where there has been limited community involvement opportunities or where there has been minimal community and media interest in the installation.

Every effort should be made to ensure that all individuals or groups representing the community's interests are informed about the RAB and given the opportunity for RAB participation. Based on the results of member recruitment efforts, it may be necessary to directly solicit some groups or organizations. A sample RAB member recruiting letter is included as Enclosure 3 and may be useful in such efforts. For ease in tracking community interest, a community interest form, Enclosure 4, can be developed and distributed at the initial meeting, made available at local information repositories or other suitable locations, and mailed to persons who write or call.

Determining the Size of RAB

The initial size of the RAB will be determined by the RAB selection panel. Once the RAB is operational, procedures should be developed to address the addition and removal of RAB members. The RAB may want to re-evaluate the current RAB size, diversity and balance, and add members. To facilitate constructive dialogue, the RAB should generally be no larger than 20 individuals but no smaller than is necessary to adequately reflect the diversity of community interests regarding installation restoration. If RAB membership significantly exceeds 20, efforts should be made to consolidate and eliminate any duplicate representation of similar view points. If the RAB is larger than 20, the use of sub-committees should be considered.

Selecting RAB Members

The transition period between the meeting to initiate RAB formulation and the implementation of a fully functioning RAB will likely be a busy, challenging period. Although the length of time required to complete the transition to a RAB will vary from installation to installation, most RABs should set a goal to be in full operation within six months from the meeting to initiate RAB formulation. During this period of time the following key activities should be completed to ensure successful development and implementation of the RAB.

Selecting Community Members:

Selection Panel. The installation Commanding Officer (CO) in consultation with the state and EPA, as appropriate, should identify community interests and solicit names of individuals who can represent these interests on the selection panel. Once the selection panel nominees have been provided, the CO in consultation with the state and EPA, as appropriate, should review the selection panel nominations to ensure balance and diversity. If nominations represent the diversity of the community, they will become the selection panel. The panel should establish and announce the following items:

- procedures for nominating community RAB members
- process for reviewing community interest forms
- criteria for selecting community RAB members
- list of RAB nominees

Final Selection: RAB membership selection should be in an open and fair manner using the panel. The panel will evaluate interest forms and develop a nomination list for the CO. The CO, in consultation with the state and EPA, as appropriate, should review the list to ensure that nominees represent the diversity of the community. If the list lacks diversity, the CO will ask the selection panel to provide a revised list. A lack of diversity or balance is the only reason a list can be rejected.

The selection panel may want to contact those who expressed interest but not selected for RAB membership to thank them for their interest and willingness to participate in the RAB. A letter to them should explain selection criteria, why they were not chosen and should encourage them to attend and participate at the RAB meetings as members of the general public. Their interest forms should be kept on file for consideration when future membership openings occur.

Additions to and removals from the RAB can be made at any time the RAB deems necessary. Procedures for additions and resignations should be outlined in the operating procedures.

NOTE: DOD contractor personnel should not be RAB members. However, for community RAB members who have business interests, membership on the RAB should not limit ability to compete for contracts. All information provided the RAB members should also be made available to the general public. Appropriate assurances should be made to avoid conflicts of interest.

Selecting Government Members:

The DoD installation, state and local governments, and EPA, as appropriate, should be represented on the RAB. Members may include the Remedial Project Manager (RPM) from the service, state, and EPA, as appropriate, and representatives from local agencies. Representatives should dedicate the time necessary and have sufficient authority to fulfill RAB responsibilities. Whenever, possible, each entity should be represented by one individual. Other government officials such as public health officials from the Agency for Toxic Substances and Disease Registry (ATSDR) may attend RAB meetings as their expertise may be needed.

In the case of closing military installations, the Base Realignment and Closure (BRAC) Cleanup Team (BCT) will be a member of the RAB. The BCT consists of representatives from the DoD service, EPA, and the state.

III. RAB OPERATIONS

This section presents some important issues related to RAB operations. Once the RAB is officially formed, the RAB should develop and implement its operating procedures.

Selecting Co-Chairs

Co-chairs' responsibilities should be jointly held between the installation and community and they will serve as equal partners. Selection of the DoD installation co-chair is by the installation's CO. The community co-chair should be selected by the community members of the RAB. The co-chairs should have sufficient authority and ability to fully undertake RAB chairperson responsibilities.

The length of the term to be served by the co-chairs should be decided upon by the RAB and outlined in the RAB's operating procedures, one- or two-year terms should be considered. This will allow for continuity, but also timely change if necessary. Co-chair termination procedures should be articulated in the RAB's operating procedures.

Distributing a Fact Sheet

After the RAB is established, the RAB should consider preparing and distributing another brief fact sheet to announce that the RAB has been formed and publish the names of RAB members. The fact sheet could also announce the RAB meeting schedule, publicly thank all community members who expressed interest in RAB participation, and encourage ongoing community attendance and participation at future RAB meetings.

Developing a RAB Mission Statement

Each RAB should develop a mission statement that articulates the overall purpose of the RAB. The statement can be brief. For example, "The RAB mission should be to establish and maintain a forum with all stakeholders for the exchange of information in an open and interactive dialogue concerning the installation's restoration program."

Developing RAB Operating Procedures

The RAB should develop a set of operating procedures. The operating procedures should include policies on attendance, meeting frequency, procedures for removing, replacing co-chairs and replacing/adding other members, membership and co-chair length of service, methods for resolving member disputes, process for reviewing and responding to public comments, and procedures for public participation.

Training for RAB Community Members

Once selected, RAB members may need some initial orientation to enable them to perform their duties. The DoD installation should work with the state, EPA and environmental groups to develop methods to quickly inform and educate the RAB members to promote the rapid formation of a fully functioning RAB. This may be accomplished at initial RAB meetings or at special orientation sessions and may include the following:

- formal training sessions
- workshops
- informal briefings
- briefing booklets, past fact sheets, maps
- site tours

Technical support staff from state, federal, and local agencies that have involvement with restoration and reuse issues may be asked to attend RAB meetings to provide information in their areas of expertise and will be available to provide information and explanation to RAB members.

Providing Administrative Support to the RAB

The DoD installation needs to ensure that adequate administrative support is made available to establish and operate the RAB. It is especially important to provide for ongoing administrative support for closing or closed installations. Administrative support will usually include the following:

- meeting facilities
- preparation of meeting minutes and other routine word processing tasks
- copying/printing of RAB documents, notices, fact sheets
- conduct mailings
- distribution of public notices in local newspapers
- management of RAB mailing lists
- translation and distribution of outreach and other RAB materials
- meeting facilitation

Funding for RABs

Administrative and logistical support to meet the RAB's mission should be provided by the DOD installation, using the Defense Environmental Restoration Account at non-BRAC installations, and BRAC funds at closing installations.

Technical Assistance

Community members of the RAB at NPL installations may establish an organization and apply for a Technical Assistance Grant from EPA, provided that a TAG has not already been awarded to another community group at the installation.

Scheduling Meetings

RAB meetings should be scheduled on a regular basis. The individual RAB members should decide the scheduling and frequency of RAB meetings. The frequency of RAB meetings should be to ensure timely and effective communication. Closing installations may require more frequent meetings.

Location

The RAB meetings should be held in a location agreed upon by the RAB members and in a location that is accessible to the physically impaired. The development of the RAB concept was meant to ensure and enhance

community involvement in the process; providing the community with the opportunity to suggest meeting locations should assure this.

Special Focus Meetings

When necessary, the RAB may meet for special focus meetings. These are meetings where a single topic or specific document may be reviewed, discussed, and commented on. This may occur when the RAB determines the need for input on specific issues in order to move ahead or the co-chairs agree that a special meeting is necessary.

Attending Meetings

Ongoing and consistent involvement of all board members is essential to the success of the RAB. Regular attendance by all members or designated alternates is expected. Early in the process, the group should jointly establish groundrules for participation, including meeting attendance. Representatives from the DoD, environmental regulatory agencies, and the community should attend all RAB meetings. This will aid in the operation of the RAB as a team.

If after selection, a RAB member is unable to fully participate, the RAB, using pre-established rules, should ask the member to submit his/her resignation in writing to either of the RAB co-chairpersons. Procedures for replacing/adding members should be decided by the RAB.

Conducting the Meeting

Each meeting should have a purpose and an agenda. Because these meetings are open to the public, a translator should be provided where a large portion of the community is non-English speaking or hearing impaired. If the RAB deems that an outside facilitator is necessary, arrangements should be made accordingly.

Nature of Discussions

DOD will consider all advice provided by the RAB whether consensus in nature or provided on an individual basis, including advice given that represents the minority view of members. However, because DOD does not intend for Federal Advisory Committee Act (FACA) requirements to apply to RABs, consensus is not a prerequisite for RAB recommendations. Each individual should provide advice as an individual, not as a group. At the same time, while consensus is not required or asked of the board members, in the natural course of discussions consensus may evolve.

Format

The meeting format of the RAB will vary. The format will be dictated by the needs of the RAB. Generally, a basic format should include:

- review of "old" business
- presentation or update by project technical staff and RAB member discussions
- question/answer/input/discussion period for non-RAB community participants
- list of action items for the RAB members
- discussion of the next meeting's agenda

Meeting Minutes

The RAB should prepare meeting minutes summarizing the topics discussed at RAB meetings. The minutes should be concise summaries of RAB meetings rather than verbatim transcripts to facilitate effective communication with the local communities. Before copies of the meeting minutes are distributed to existing members of the RAB and made available for public review, the co-chairs should review and approve them. These minutes should be made

available to the public within two weeks of the meeting. A public notice should be prepared to announce the availability of the meeting minutes and the next meeting. The DoD installation may want to consider mailing copies of the minutes to all community members who attend the RAB meetings and to those on the community relations mailing list.

The meeting minutes should be translated if a large segment of the local community speaks a language other than English or members of the community are visually impaired. The DoD installation is responsible for distributing copies of the meeting minutes and all documents to the RAB for review and comment and that this same information is consistently available for public review in the information repositories.

Responding to Comments

The RAB should regularly review, discuss, and provide comments on a wide variety of technical documents and plans. This information should simultaneously be made available for public review and comments at the local information repositories. Public comments should be seriously considered before these documents or plans are finalized.

Public Comment Periods Required by Regulation

The DoD installation should solicit and respond to comments from the public as specified in applicable regulations. In some cases, e.g. RCRA, the regulatory agency is required to obtain public input on corrective actions. Accordingly, it may not be necessary for the DOD installation to seek public comment.

The public is the community at large, not only the RAB.

Other Comments

As a general rule, all draft and final documents deliverable to regulators should be distributed to the RAB and the public for review and comment when they are given to the regulators and should be made available for at least 30 days for review. For documents where a review period shorter than 30 days applies to regulatory staff, this same shorter review period would also apply to the review by the RAB and community members. Every effort should be made to provide the RAB and community members with an adequate review period based on the length and complexity of the document. Where necessary, special focus meetings of the RAB may be called to review and comment on key documents.

To demonstrate commitment to meaningful consideration of comments, the DoD installation should prepare formal written responses to all substantive comments received from the RAB and the general public. In some cases, RAB meeting minutes may suffice to document responses to specific comments.

Addressing Non-restoration Issues

Because RABs provides a direct channel for communication to the installation, community members may raise some non-restoration issues during RAB discussions. Although these issues may not be appropriate for discussion within the context of the RAB, DOD should be responsive to these concerns by referring them to the appropriate offices at the installation or to alternative forums more appropriate for the issue (i.e., at closing installations, non-restoration issues should be referred to the local Reuse Committee, the Base Transition Coordinator, or the BRAC Cleanup Team).

IV. ROLES AND RESPONSIBILITIES

Department of Defense Installation Co-Chair

1. The DoD installation co-chair should coordinate with the community co-chair to prepare and distribute an agenda prior to each RAB meeting. If the RAB will address restoration related to base closure activities, the DoD and community co-chair should coordinate with the BRAC Cleanup Team, the Base Transition Coordinator, and the reuse committee.

2. The DoD installation co-chair should ensure that DoD participates in an open and constructive manner.

3. The DoD installation co-chair should attend all meetings and ensure that the RAB has the opportunity to participate in the restoration decision process.

4. The DoD installation co-chair should ensure that community issues and concerns related to restoration are addressed when raised.

5. The DoD installation co-chair should ensure documents distributed to the RAB are also made available to the general public.

6. The DoD installation co-chair with assistance from the RAB should ensure that an accurate list of interested/affected parties is developed and maintained.

7. The DoD installation co-chair should provide relevant policies and guidance documents to the RAB in order to enhance the RAB's operation.

8. The DoD installation co-chair should ensure that adequate administrative support to the RAB is provided.

9. The DoD installation co-chair should refer issues not related to restoration to appropriate installation official for them to address.

10. The DoD installation co-chair should report back to the installation.

Community Co-Chair

1. The community co-chair should coordinate with the DoD installation co-chair and RAB community members to prepare an agenda prior to each RAB meeting.

2. The community co-chair should ensure that community members participate in an open and constructive manner.

3. The community co-chair should ensure that community issues and concerns related to restoration are raised.

4. The community co-chair should assist with the dissemination of information to the general public.

5. The community co-chair should report back to the community.

6. The community co-chair is expected to serve without compensation.

RAB Community Members

1. The RAB community members are expected to attend meetings.

2. The RAB community members are expected to provide advice and comment on restoration issues to the decision makers.

3. The RAB community members should represent and communicate community interests and concerns to the RAB.

4. The RAB community members should act as a conduit for the exchange of information between the community, DoD installation, and environmental oversight agencies regarding the installation's restoration and reuse programs.

5. The RAB community members should review, evaluate, and comment on documents and other such materials related to installation restoration and closure, where applicable.

6. The RAB community members are expected to serve without compensation on the RAB.

State Regulatory Agency Member

1. The state member should attend RAB meetings.

2. The state member should serve as an information, referral and resource bank for communities, installations and agencies regarding installation restoration.

3. The state member should review documents and other materials related to restoration.

4. The state member should ensure that state environmental standards and regulations are identified and addressed by the DoD installation.

5. The state member should facilitate flexible and innovative resolutions of environmental issues and concerns.

6. The state member should assist in education and training for the RAB members.

U.S. Environmental Protection Agency (EPA) Member

1. The EPA member should attend RAB meetings.

2. The EPA member should serve as an information, referral and resource bank for communities, installations and agencies regarding installation restoration.

3. The EPA member should facilitate flexible and innovative resolutions of environmental issues and concerns.

4. The EPA member should ensure that federal environmental standards and regulations are identified and addressed by the DoD installation.

5. The EPA member should assist in education and training for the RAB members.

BRAC Cleanup Team (BCT) at Closing Installations

1. The BCT should maintain a close working relationship with other members of the RAB.

2. The BCT should provide timely and accurate information to the RAB.

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ENCLOSURES

Enclosure (1) Sample RAB Fact Sheet

RESTORATION ADVISORY BOARD (RAB)
(name and location of installation)
(add site-specific logo if available)

Background

At *(name of installation)* the *(name of service)* will be pursuing installation restoration activities as part of the Department of Defense's Installation Restoration Program (IRP). *(Provide a brief description of the restoration activities projected at the installation.)*

What is a RAB?

The RAB is an advisory body designed to act as a focal point for the exchange of information between *(name of installation)* and the local community regarding restoration activities. The RAB is intended to bring together community members who reflect the diverse interests within the local community, enabling the early and continued two-way flow of information, concerns, values, and needs between the affected community and the installation.

RAB members will be asked to meet regularly and review and comment on technical documents and plans relating to the ongoing environmental studies and restoration activities at *(name of installation)*. Members will be expected to serve as a liaison with the community and be available to meet with community members and groups. Membership terms will be decided by the RAB. All RAB meetings will be open to the public. Technical support staff will be available to provide informational support and explanation to RAB members.

How to Become a RAB Member

Community members interested in finding out more about the RAB are invited and encouraged to attend a community meeting that *(name of installation)* will conduct on *(date and time)*. At the meeting, you will learn about the purpose of the RAB, membership opportunities and responsibilities, and hear an update on the status of installation restoration activities and future plans. RAB membership applications will be available at the community meeting. The community meeting will be held at the following address:

(List location, address, date, and time of meeting)

If you have questions about the RAB or are interested in applying for RAB membership, community interest forms may also be obtained by contacting:

(List name, title, address, and telephone number of contact)

All Community Interest Forms must be received by *(deadline for forms)*. Forms will be reviewed and approved by the selection panel. The selection panel is organized by the Commanding Officer of *(name of installation)*. The selection panel members are representatives from the DoD installation, state, community and EPA, as appropriate.

Enclosure (1) Sample RAB Fact Sheet (continued)

Community Expectations

Community members are expected to serve as volunteers on RABs to provide advice to the decision makers about restoration plans for the *(name of installation)*.

Enclosure (2) Sample RAB Public Notice

PUBLIC NOTICE
(name of installation)
Formation of Restoration Advisory Board
Membership Solicitation

The Department of Defense recognizes the importance of stakeholder participation for Installation Restoration Programs (IRP). Therefore, *(name of installation)* is announcing the establishment of a Restoration Advisory Board (RAB). The RAB is intended to improve public participation by involving the community in the restoration decision-making process.

The existing Technical Review Committee (TRC) will be modified to become a RAB. The RAB will include community members who reflect the diverse interests of the local community. RAB members will be asked to review and comment on plans and activities relating to the ongoing environmental studies and restoration activities at *(name of installation)*. RAB members will have the opportunity to provide input on activities that will accelerate the restoration. Members will also be expected to serve as a voluntary liaison between the community and the RAB and be available to meet with community members and/or groups. RAB meetings will be open to the public.

Community interest forms can be obtained by contacting:

(List name, title, address, and telephone number of contact[s])

Members will be expected to serve a one- to two-year term and attend RAB meetings regularly. Forms will be reviewed and approved by the selection panel. The selection panel members will be representatives from the *(name of installation)*, *(name of state environmental agency)*, the community, and the U.S. Environmental Protection Agency, as appropriate. To qualify, interested parties must be local residents of *(name of cities or counties)* that are impacted/affected by *(name of installation)*.

The initial RAB information meeting will be held:

(list location, date, and time of meeting)

For additional information, please contact *(name, address, and telephone number of contact)*.

Enclosure (3) Sample RAB Recruiting Letter
(Issued by Selection Panel)

RESTORATION ADVISORY BOARD FORMATION

Dear *(name of community member)*:

The Department of Defense recognizes the importance of stakeholder participation in our Installation Restoration Programs (IRP). Therefore, *(name of installation)* is announcing the establishment of a Restoration Advisory Board (RAB). The RAB is intended to improve public participation by involving the community in the restoration decision-making process.

The RAB will include community volunteer members who reflect the diverse interests of the local community. RAB members will have an opportunity to provide input on installation restoration activities. RAB community members can expect to spend *(number of hours/days)* per year supporting the RAB.

RAB members will be asked to meet regularly and review and comment on plans and activities relating to the ongoing environmental studies and restoration activities at *(name of installation)*. RAB members will be expected to serve as a liaison with the community and be available to meet with community members and groups. Members will be expected to serve a term. All RAB meetings will be open to the public.

If you are interested in participating on the RAB for *(name of installation)*, please complete the enclosed Community Interest Form and return it to the following address not later than *(deadline for applications)*:

(List name, address, and telephone number of contact)

Forms will be reviewed by a panel comprised of representatives from the community. The panel will nominate a list of community members for the RAB to the *(name of installation) and appropriate* regulatory agencies.

Sincerely,

(name of selection panel member)

Enclosure

Enclosure (4) Sample RAB Community Interest Form

COMMUNITY INTEREST FORM FOR
(NAME OF INSTALLATION) RESTORATION ADVISORY BOARD

Conditions for Membership:

Restoration Advisory Board (RAB) members are volunteering to serve a term and attend all RAB meetings. Duties and responsibilities will include reviewing and commenting on plans and activities associated with the Installation Restoration Program at *(name of installation)*. Technical experts will be made available to the RAB. Members will be expected to be available to community members and groups to facilitate the exchange of information and/or concerns between the community and the RAB. RAB community members can expect to devote approximately *(number of hours/days)* per year to support the RAB.

Priority for RAB membership will be given to local residents that are impacted/affected by the *(name of installation)*.

Name: _____

Address: _____
Street Apt.# City State Zip

Phone: (___)_____ (___)_____ (___)_____
Daytime Home Fax

1. (OPTIONAL) Are you affiliated with any group related to restoration or base closure activities? If yes, list the group and your position, if applicable.

2. Briefly state why you would like to participate on the RAB.

3. What has been your experience working as a member of a diverse group with common goals?

Enclosure 4: Sample RAB Community Interest Form (continued)

4. The community co-chairperson will be selected by community members of the RAB. Please indicate if you are interested in being considered for the community co-chairperson position on the RAB.

   _ Yes, I would like to be considered.

5. Are you willing to voluntarily serve on the RAB?

   _ Yes, I am willing to serve.

6. By submitting this form, you are aware of the time commitment which this appointment will require of you.

PRIVACY ACT STATEMENT: The personal information requested on this form is being collected in order to determine interest in and qualification for membership on the Restoration Advisory Board. The information will be reviewed by a selection panel and will be retained in a file at *(name of installation)*. The information will not be disseminated. Providing information on this form is voluntary.

DoD Policies on Asbestos, Lead-Based Paint, and Radon at Base Realignment and Closure Properties (31 October 1994)

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OFFICE OF THE UNDER SECRETARY OF DEFENSE
ACQUISITION AND TECHNOLOGY
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

31 OCT 1994

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS, LOGISTICS & ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS & ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS & ENVIRONMENT)
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Asbestos, Lead Paint and Radon Policies at BRAC Properties

The purpose of this memorandum is to request that you implement the attached Department of Defense (DoD) policies on asbestos, lead paint and radon at base realignment and closure (BRAC) properties.

As you may recall, these policies were drafted and accepted within the Defense Environmental Security Council (DESC) structure. During its May 6, 1994, meeting the DESC accepted the draft DoD policy on radon at BRAC properties. At that meeting, the draft policies on asbestos and lead paint were referred to the Environment, Safety and Occupational Health Policy Board (ESOHPB) for revision and acceptance. During its May 10, 1994, meeting the ESOHPB accepted the revised draft DoD policies on asbestos and lead paint at BRAC properties.

Subsequent to DESC and ESOHPB action, these polices were coordinated formally with the Assistant Secretary of Defense (Economic Security) and the Office of the Deputy General Counsel (Acquisition & Logistics). If there are any questions concerning this request, please contact Ed Dyckman, DESC Executive Secretary at 703-697-9107.

Gary D. Vest
Principal Assistant Deputy Under Secretary
of Defense (Environmental Security)

Attachments

Environmental Security *Defending Our Future*

DOD POLICY ON ASBESTOS AT BASE REALIGNMENT AND CLOSURE PROPERTIES

Department of Defense (DoD) policy with regard to asbestos-containing material (ACM) is to manage ACM in a manner protective of human health and the environment, and to comply with all applicable Federal, State, and local laws and regulations governing ACM hazards. Therefore, unless it is determined by competent authority that the ACM in the property does pose a threat to human health at the time of transfer, all property containing ACM will be conveyed, leased, or otherwise disposed of as is through the Base Realignment and Closure (BRAC) process.

Prior to property disposal, all available information on the existence, extent, and condition of ACM shall be incorporated into the Environmental Baseline Survey (EBS) report or other appropriate document to be provided to the transferee. The survey report or document shall include:

- reasonably available information on the type, location, and condition of asbestos in any building or improvement on the property;
- any results of testing for asbestos;
- a description of any asbestos control measures taken for the property;
- any available information on costs or time necessary to remove all or any portion of the remaining ACM; however, special studies or tests to obtain this material are not required; and
- results of a site-specific update of the asbestos inventory performed to revalidate the condition of ACM.

Asbestos-containing material shall be remedied prior to property disposal only if it is of a type and condition that is not in compliance with applicable laws, regulations, and standards, or if it poses a threat to human health at the time of transfer of the property. This remediation should be accomplished by the active Service organization, by the Service disposal agent, or by the transferee under a negotiated requirement of the contract for sale or lease. The remediation discussed above will not be required when the buildings are scheduled for demolition by the transferee; the transfer document prohibits occupation of the buildings prior to the demolition; and the transferee assumes responsibility for the management of any ACM in accordance with applicable laws.

DOD POLICY ON LEAD-BASED PAINT AT BASE REALIGNMENT AND CLOSURE PROPERTIES

Department of Defense (DoD) policy with regard to lead-based paint (LBP) is to manage LBP in a manner protective of human health and the environment, and to comply with all applicable Federal, State, and local laws and regulations governing LBP hazards. The Federal requirements for residential structures/dwellings with LBP on Base Realignment and Closure (BRAC) properties differ, depending on: (1) the date of property transfer; and (2) the date of construction of the residential housing being transferred.

DoD policy is to manage LBP at BRAC installations in accordance with either 24 CFR 35 or P.L. 102-550, at the Service's discretion, until January 1, 1995; and, thereafter, solely in accordance with P.L. 102-550. Residential structures/dwellings are as defined in the applicable regulation and any regulation issued pursuant thereto. The Military Components may apply this policy to any other structures they deem appropriate.

On January 1, 1995, and thereafter, the provisions of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X of P.L. 102-550) concerning the transfer of Federal property for residential use take effect. These provisions, codified at (in pertinent part) 42 U.S.C. 4822, 4851-4856, and 15 U.S.C. 2688, are applicable to target housing, which is housing constructed prior to 1978, with limited exceptions for housing for the elderly or persons with disabilities or any 0-bedroom dwelling.

> Target housing constructed after 1960 and before 1978 must be inspected for LBP and LBP hazards. The results of the inspection must be provided to prospective purchasers or transferees of BRAC property, identifying the presence of LBP and LBP hazards on a surface-by-surface basis. There is no Federal LBP hazard abatement requirement for such property. In addition, prospective transferees must be provided a lead hazard information pamphlet and the contract for sale or lease must include a lead warning statement.
>
> Target housing constructed before 1960 must be inspected for LBP and LBP hazards, and such hazards must be abated. The results of the LBP inspection will be provided to prospective purchasers or transferees of BRAC property identifying the presence of LBP and LBP hazards on a surface-by-surface basis and a description of the abatement measures taken. In addition, prospective transferees must be provided with a lead hazard information pamphlet and the contract for transfer must include a lead warning statement.

The inspection and abatement discussed above will not be required when the building is scheduled for demolition by the transferee and the transfer document prohibits occupation of the building prior to the demolition; the building is scheduled for non-residential use; or, if the building is scheduled for residential use, the transferee conducts renovation consistent with the regulatory requirements for the abatement of LPB hazards.

Effective January 1, 1995, DoD BRAC properties shall be transferred in accordance with any regulations implementing the Residential Lead-Based Paint Hazard Reduction Act of 1992. The Act also made Federal agencies subject to all Federal, State, interstate, and local substantive and procedural requirements respecting LBP and LBP hazards (see 15 U.S.C. 2688). Therefore, there may be more stringent local requirements applicable to Federal property transfers.

DOD POLICY ON RADON AT BASE REALIGNMENT AND CLOSURE PROPERTIES

In response to concerns with the potential health effects associated with radon exposure, and in accordance with the Indoor Radon Abatement provisions of Subchapter III of the Toxic Substances Control Act, 26 U.S.C. 2661 to 2671, the Department of Defense (DoD) conducted a study to determine radon levels in a representative sample of its buildings. In addition, as part of DoD's voluntary approach to reducing radon exposure, DoD has applied the Environmental Protection Agency (EPA) guidelines for residential structures with regard to remedial actions.

DoD policy is to ensure that any available and relevant radon assessment data pertaining to Base Realignment and Closure (BRAC) property being transferred shall be included in property transfer documents.

DoD policy is not to perform radon assessment and mitigation prior to transfer of BRAC property unless otherwise required by applicable law.

DoD Guidance on Implementation of Authority to Transfer Property Before Completing Remediation (24 September 1996)

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OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

24 SEPTEMBER 1996

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS, LOGISTICS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER, RESERVE AFFAIRS, INSTALLATIONS AND ENVIRONMENT)
DIRECTOR, DEFENSE LOGISTICS AGENCY

SUBJECT: Implementation of Authority to Transfer Property before Completing Remediation

The Fiscal Year 1997 Defense Authorization Act contains a provision (section 334) that modifies section 120(h)(3) of the Comprehensive Environmental Response, Cleanup, and Liability Act to allow contaminated federal real estate to be transferred to private parties before remedial action has been taken. Although this authority provides an opportunity for the Department to assist communities in expediting reuse of closing military installations, it also presents certain challenges in properly structuring the arrangement.

We will be working closely with you and the U.S. Environmental Protection Agency to revise our Fast-Track Cleanup guidances to ensure effective implementation of this provision consistent with the protection of human health and the environment. We anticipate focusing on existing procedures, particularly the steps outlined in the Finding of Suitability for Transfer guidance.

We encourage you to explore the use of this new authority with Restoration Advisory Boards, Local Reuse Authorities, and others with whom you are working. Until we have implementing guidance, however use of this provision will be addressed on a case-by-case basis and only after consultation with this office. Please notify this office at your earliest convenience when you and another party begin negotiations that may involve the use of this authority.

We look forward to working closely with you to ensure that we use this new authority effectively and with appropriate safeguards regarding our long term liability. For further information, please contact Mr. John Stowers at (703) 697-9746.

{Original Signed}
Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)

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DoD Guidance on Clarification of "Uncontaminated" Environmental Condition of Property at Base Realignment and Closure (BRAC) Installations (21 October 1996)

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OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

21 OCTOBER 1996

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (INSTALLATIONS, LOGISTICS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY (INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER, RESERVE AFFAIRS, INSTALLATIONS AND ENVIRONMENT)
DIRECTOR, DEFENSE LOGISTICS AGENCY (D)

SUBJECT: Clarification of "Uncontaminated" Environmental Condition of Property at Base Realignment and Closure (BRAC) Installations

Section 331 of the Fiscal Year 1997 National Defense Authorization Act clarified the meaning of "uncontaminated" by deleting the phrase "stored for one year or more" from Section 120(h)(4)(A) of the Comprehensive Environmental Response, Cleanup and Liability Act (CERCLA). Parcels of property on which hazardous substances or petroleum products may only have been stored for more than a year - but not released or disposed of - are now deemed to be "uncontaminated." This change places greater emphasis on whether there has been a release or disposal of a hazardous substance in real property transfers under CERCLA. Definitions for the seven categories of environmental condition of property used in the BRAC cleanup process have been revised to conform with the new meaning of "uncontaminated" and are attached. The BRAC Cleanup Plan (BCP) Guidebook has been revised to conform to the new meaning and is being distributed separately. The revised definitions apply to all BRAC rounds and should be particularly helpful for completing the Community Environmental Response Facilitation Act (CERFA) evaluations for the BRAC 1995 installations.

The CERCLA 120 (h)(4) covenant can be given only if regulatory agencies concur with the "uncontaminated" determination; otherwise the CERCLA 120(h)(3) covenant must be used. Under the revised CERFA guidance contained in the May 18, 1996 DoD policy for "Fast-Track Cleanup at Closing Installations," regulatory concurrence on "uncontaminated" determinations for parcels of property may be obtained after the statutory CERFA deadline if the Component believes such concurrence would facilitate the transfer and reuse of the property. With the new meaning of "uncontaminated," Components may, during he Finding of Suitability to Transfer (FOST) process, look at whether property from BRAC rounds prior to BRAC 95 meets the new definition and seek regulatory concurrence.

I appreciate the assistance of your staffs in revising the definitions for the environmental condition of property. My staff point of contact is Mr. Shah A. Choudhury, at (703) 697-7475

{Original Signed}
Sherri W. Goodman
Deputy Under Secretary of Defense
(Environmental Security)

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DoD Policy on Responsibility for Additional Environmental Cleanup After Transfer of Real Property (25 July 1997)

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THE UNDER SECRETARY OF DEFENSE
3010 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-3010

ACQUISITION AND
TECHNOLOGY

JUL 25 1997

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(INSTALLATIONS, LOGISTICS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE NAVY
(INSTALLATIONS AND ENVIRONMENT)
ASSISTANT SECRETARY OF THE AIR FORCE
(MANPOWER, RESERVE AFFAIRS, INSTALLATIONS AND
ENVIRONMENT)
DEPUTY UNDER SECRETARY OF DEFENSE
(ENVIRONMENTAL SECURITY)
DEPUTY UNDER SECRETARY OF DEFENSE
(INDUSTRIAL AFFAIRS AND INSTALLATIONS)
DIRECTOR, DEFENSE LOGISTICS AGENCY (D)

SUBJECT: Responsibility for Additional Environmental Cleanup after Transfer of Real Property

The purpose of the attached policy is to describe the circumstances under which DoD would perform additional cleanup on DoD property that is transferred by deed to any person or entity outside the federal government. This policy is applicable to real property under DoD control that is to be transferred outside the federal government, and is effective immediately. For property that is transferred pursuant to section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 USC 9620(h)(3)(C)), this policy applies after the termination of the deferral period.

DoD continues to be committed to a remedy selection process that provides for full protection of human health and the environment, even after property has been transferred by DoD. The Deputy Under Secretary of Defense (Environmental Security) will issue separately any specific guidance needed to implement this policy. This policy should be read to be compatible with and does not supersede other related DoD polices, and is to be incorporated in the next revision of the appropriate DoD Instruction. I ask for your support in implementing this policy and working with communities so that they can make informed decisions in developing their redevelopment plans.

R. Noel Longuemare
Acting Under Secretary of Defense
(Acquisition and Technology)

Attachment

DoD Policy on Responsibility for Additional Environmental Cleanup After Transfer of Real Property

Background. This policy is instituted within the framework established by land use planning practices and land use planning authorities possessed by communities, and the environmental restoration process established by statute and regulation. The land use planning and environmental restoration processes – two separate processes – are interdependent. Land use planners need to know the environmental condition of property in order to make plans for the future use of the land. Similarly, knowledge of land use plans is needed in order to ensure that environmental restoration efforts are focused on making the property available when needed by the community and that remedy selection is compatible with land use. This policy does not supplant either process, but seeks to integrate the two by emphasizing the need to integrate land use planning assumptions into the cleanup, and to notify the community of the finality of the cleanup decisions and limited circumstances under which DoD would be responsible for additional cleanup after transfer.

Cleanup Process. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 USC 9601 et seq.) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 40 CFR 300) establish the requirements and procedures for the cleanup of sites that have been contaminated by releases of hazardous substances. CERCLA, furthermore, requires that a deed for federally owned property being transferred outside the government contain a covenant that all remedial action necessary to protect human health and the environment has been taken, and that the United States shall conduct any additional remedial action "found to be necessary" after transfer. Within the established restoration process, it is DoD's responsibility, in conjunction with regulatory agencies, to select cleanup levels and remedies that are protective of human health and the environment. The environmental restoration process also calls for public participation, so that the decisions made by DoD and the regulatory agencies have the benefit of community input.

Land Use Assumptions in Cleanup Process. Under the NCP, future land use assumptions are developed and considered when performing the baseline risk assessment, developing remedial action alternatives, and selecting a remedy. The NCP permits other-than-residential land use assumptions to be considered when selecting cleanup levels and remedies, so long as selected remedies are protective of human health and the environment. The U.S. Environmental Protection Agency (EPA) further amplified the role of future land use assumptions in the remedy selection process in its May 25, 1995, "Land Use in the CERCLA Remedy Selection Process" directive (OSWER Directive No. 9355.7-04).

Development of Land Use Plans. By law, the local community has been given principal responsibility for reuse planning for surplus DoD property being made available at Base Realignment and Closure (BRAC) installations. That reuse planning and implementation authority is vested in the Local Redevelopment Authority (LRA) described in the DoD Base Reuse Implementation Manual (DoD 4165.66-M). The DoD Base Reuse Implementation Manual calls for the LRA to develop the community redevelopment plan to reflect the long term needs of the community. A part of the redevelopment plan is a "land use plan" that identifies the proposed land use for given portions of the surplus DoD property. The DoD is committed to working with local land use planning authorities, local government officials, and the public to develop realistic assumptions concerning the future use of property that will be transferred by DoD. The DoD will act on the expectation that the community land use plan developed by the LRA reflects the long-range regional needs of the community.

Use of Land Use Assumptions in the Cleanup Process. DoD environmental restoration efforts for properties that are to be transferred out of federal control will attempt, to the extent reasonably practicable, to facilitate the land use and redevelopment needs stated by the community in plans approved prior to the remedy selection decision. For BRAC properties, the LRA's redevelopment plan, specifically the land use plan, typically will be the basis for the land use assumptions DoD will consider during the remedy selection process. For non-BRAC property transfers, DoD environmental restoration efforts will be similarly guided by community input on land use, as provided by the local government land use planning agency. In the unlikely event that no community land use plan is available at the time a remedy selection decision requiring a land use assumption must be made, DoD will consider a range of reasonably likely future land uses in the remedy selection process. The existing land use, the current zoning classification (if zoned by a local government), unique property attributes, and the current land use of the surrounding area all may serve as useful indicators in determining likely future land uses. These likely future land uses then may be used for remedy selection decisions which will be made by DoD (in conjunction with regulatory agencies) in accordance with CERCLA and the NCP.

DoD's expectation is that the community at-large, and in particular the land use planning agency, will take the environmental condition of the property, planned remedial activities, and technology and resource constraints into consideration in developing their reuse plan. The February 1996 "Guide to Assessing Reuse and Remedy Alternatives at Closing Military Installations" provides a useful tool for considering various possible land uses and remedy alternatives, so that cost and time implications for both processes can be examined and integrated. Obviously, early development of community consensus and publication of the land use plan by the LRA or the land planning agency will provide the stability and focus for DoD cleanup efforts.

Applicable guidelines in EPA's May 25, 1995, "Land Use in the CERCLA Remedy Selection Process" Directive should be used in developing cleanup decisions using land use assumptions. For a remedy that will require restrictions on future use of the land, the proposed plan and record of decision (ROD) or other decision documents must identify the future land use assumption that was used to develop the remedy, specific land use restrictions necessitated by the selected remedy, and possible mechanisms for implementing and enforcing those use restrictions. Examples of implementation and enforcement mechanisms include deed restrictions, easements, inspection or monitoring, and zoning. The community and local government should be involved throughout the development of those implementation and enforcement mechanisms. Those mechanisms must also be valid within the jurisdiction where the property is located.

Enforcement of Land Use Restrictions. The DoD Component disposal agent will ensure that transfer documents for real property being transferred out of federal control reflect the use restrictions and enforcement mechanisms specified in the remedy decision document. The transfer document should also include a description of the assumed land use used in developing the remedy and the remedy decision. This information required in the transfer documents should be provided in the environmental Finding Of Suitability to Transfer (FOST) prepared for the transfer. The DoD Component disposal agent will also ensure that appropriate institutional controls and other implementation and enforcement mechanisms, appropriate to the jurisdiction where the property is located, are either in-place prior to the transfer or will be put in place by the transferee as a condition of the transfer. If it becomes evident to the DoD Component that a deed restriction or other institutional control is not being followed, the DoD Component will attempt to ensure that appropriate actions are taken to enforce the deed restriction.

The DoD expects the transferee and subsequent owners to abide by restrictions stated in the transfer documents. The DoD will reserve the right to enforce deed restrictions and other institutional controls, and the disposal agent will ensure that such language is also included in the transfer documents. If DoD becomes aware of action or inaction by any future owner that will cause or threaten to cause a

release or cause the remedy not to perform effectively, DoD also reserves the right to perform such additional cleanup necessary to protect human health and the environment and then to recover costs of such cleanup from that owner under the terms of the transfer document or other authority.

Circumstances Under Which DoD Would Return to do Additional Cleanup. A determination may be made in the future that the selected remedy is no longer protective of human health and the environment because the remedy failed to perform as expected, or because an institutional control has proven to be ineffective, or because there has been a subsequent discovery of additional contamination attributable to DoD activities. This determination may be made by DoD as a part of the remedy review process, or could be a regulatory determination that the remedy has failed to meet remediation objectives. In these situations, the responsible DoD Component disposing of the surplus property will, consistent with CERCLA Section 120(h), perform such additional cleanup as is both necessary to remedy the problem and consistent with the future land use assumptions used to determine the original remedy. Additionally, after the transfer of property from DoD, applicable regulatory requirements may be revised to reflect new scientific or health data and the remedy put in place by DoD may be determined to be no longer protective of human health and the environment. In that circumstance, DoD will likewise, consistent with CERCLA Section 120(h), return to perform such additional cleanup as would be generally required by regulatory agencies of any responsible party in a similar situation. Also note that DoD has the right to seek cost recovery or contribution from other parties for additional cleanup required for contamination determined not to have resulted from DoD operations.

Circumstance Under Which DoD Would Not Return to do Additional Cleanup. Where additional remedial action is required only to facilitate a use prohibited by deed restriction or other appropriate institutional control, DoD will neither perform nor pay for such additional remedial action. It is DoD's position that such additional remedial action is not "necessary" within the meaning of CERCLA Section120(h)(3). Moreover, DoD's obligation to indemnify transferees of closing base property under Section 330 (of the Fiscal Year 1993 Defense Authorization Act) would not be applicable to any claim arising from any use of the property prohibited by an enforceable deed restriction or other appropriate institutional control.

Changes to Land Use Restrictions after Transfer. Deed restrictions or other institutional controls put in place to ensure the protectiveness of the remedy may need to be revised if a remedy has performed as expected and cleanup objectives have been meet. For example, the specified groundwater cleanup levels have been reached after a period of time. In such a case, the DoD Component disposing of the surplus property will initiate action to revise the deed restrictions or other institutional controls, as appropriate.

DoD will also work cooperatively with any transferee of property that is interested in revising or removing deed restrictions in order to facilitate a broader range of land uses. Before DoD could support revision or removal, however, the transferee would need to demonstrate to DoD and the regulators, through additional study and/or remedial action undertaken and paid for by the transferee, that a broader range of land uses may be undertaken consistent with the continued protection of human health and the environment. The DoD Component, if appropriate, may require the transferee to provide a performance bond or other type of financial surety for ensuring the performance of the additional remedial action. The transferee will need to apply to the DoD Component disposal agent for revision or removal of deed restrictions or other institutional controls. Effective immediately, the process for requesting the removal of such restrictions by a transferee should be specified by the disposal agent in the documents transferring property from DoD.

Making those revisions or changes will be considered by DoD to be an amendment of the remedy decision document. Such an amendment will follow the NCP process and require the participation by DoD and regulatory agencies, as well as appropriate public input.

Disclosure by DoD on Using Future Land Use in Remedy Selection. A very important part of this policy is that the community be informed of DoD's intent to consider land use expectations in the remedy selection process. At a minimum, disclosure shall be made to the Restoration Advisory Board (or other similar community group), the LRA (if BRAC) or other local land use planning authority, and regulatory agencies. The disclosure to the community for a specific site shall clearly communicate the basis for the decision to consider land use, any institutional controls to be relied upon, and the finality of the remedy selection decision, including this policy. In addition, any public notification ordinarily made as part of the environmental restoration process shall include a full disclosure of the assumed land use used in developing the remedy selected.

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Appendix G

Federal Points of Contact for Base Reuse

I. DEPARTMENT OF DEFENSE

AIR FORCE
Albert (Al) F. Lowas, Jr., Acting Director
Air Force Base Conversion Agency
1700 N. Moore Street
Suite 2300
Arlington, VA 22209-2802
(703) 696-5501; fax 8844

ARMY
COL R. Gary Dinsick
Chief, Army Base Realignment and Closure Office
HQDA, ACSIM, DAIM-BO
600 Army Pentagon
Washington, DC 20310-0600
(703) 693-3500; fax 697-7440

NAVY
Harry H. Zimmerman
Executive Director
Base Closure Office
Naval Facilities Engineering Command
200 Stovall Street
Alexandria, VA 22332-2300
(703) 325-0480; fax 0136

BASE CLOSURE & COMMUNITY REINVESTMENT
Paul J. Dempsey, Director
Base Closure & Community Reinvestment
Department of Defense
400 Army Navy Drive, Suite 200
Arlington, VA 22202-2884
(703) 604-6020; fax 602-0319

OFFICE OF ECONOMIC ADJUSTMENT
Helene M. O'Connor, Acting Director
Office of Economic Adjustment
Department of Defense
400 Army Navy Drive, Suite 200
Arlington, VA 22202-2884
(703) 604-5948; fax 5843

BASE CLOSURE & TRANSITION OFFICE
John Desiderio, Acting Director
Base Closure & Transition Office
Department of Defense
400 Army Navy Drive, Suite 110
Arlington, VA 22202-2884
(703) 604-2386; fax 2468

II. TRANSITION ASSISTANCE

Department of Defense

CIVILIAN PERSONNEL
Charlie Rogers
DoD Civilian Personnel and Management Service
Chief, Civilian Assistance and Re-Employment (CARE)
1400 Key Boulevard, 6th Floor
Rosslyn, VA 22209-5144
(703) 696-1797; fax 5416

HOMEOWNERS' ASSISTANCE PROGRAM
John Downey
Headquarters
U.S. Army Corps of Engineers
ATTN: CERE-RP (Downey)
20 Massachusetts Avenue, NW
Washington, DC 20314
(202) 761-8987; fax 1035

Department of Education

Catherine Shagh
Impact Aid Program
U.S. Department of Education
600 Independence Avenue, SW
Mail Stop 6244
Washington, DC 20202
(202) 260-3907; fax 205-0088

Department of Labor

Retraining and Readjustment Services for Dislocated Workers

Region I—Boston
Robert J. Semler
Regional Administrator
U.S. Department of Labor/ETA
JFK Federal Bldg., Room E350
Boston, MA 02203
(617) 565-3630; fax 2229

Region II—New York
Albert L. Garizio
Deputy Regional Administrator
U.S. Department of Labor/ETA
201 Varick Street, Room 755
New York, NY 10014
(212) 337-2149; fax 2144

Region III—Philadelphia
Edwin George Strong, Jr.
Regional Administrator
U.S. Department of Labor/ETA
P.O. Box 8796
3535 Market Street, Room 13300
Philadelphia, PA 19104
(215) 596-6336; fax 0329

Region IV—Atlanta
Toussaint L. Hayes
Regional Administrator
U.S. Department of Labor/ETA
61 Forsyth Street, SW, Room 6M12
Atlanta, GA 30303
(404) 562-2092, fax 2149

Region V—Chicago
Melvin Howard
Acting Regional Administrator
U.S. Department of Labor/ETA
230 S. Dearborn Street, Room 638
Chicago, IL 60604
(312) 353-0313; fax 4474

Region VI—Dallas
Joseph Juarez
Regional Administrator
U.S. Department of Labor/ETA
Federal Building, Room 317
525 Griffin Street
Dallas, TX 75202
(214) 767-8263; fax 5113

Region VII—Kansas City
William M. Hood
Regional Administrator
U.S. Department of Labor/ETA
City Center Square
1100 Main Street, Suite 1050
Kansas City, MO 64105
(816) 426-3796; fax 2729

Region VIII—Denver
Peter E. Rell
Regional Administrator
U.S. Department of Labor/ETA
1999 Broadway Street, Suite 1780
Denver, CO 80202-5716
(303) 844-1650; fax 1685

Region IX—San Francisco
Armando Quiroz
Regional Administrator
U.S. Department of Labor/ETA
71 Stevenson Street, Room 830
San Francisco, CA 94119
(415) 975-4610; fax 4612

Region X—Seattle
Michael Brauser
Regional Administrator
U.S. Department of Labor/ETA
1111 Third Avenue, Suite 900
Seattle, WA 98101-3212
(206) 553-7700; fax 0098

III. PUBLIC-PURPOSE CONVEYANCES

Airport Conveyances

FAA Regional Offices

New England
William Cronan
12 New England Executive Park
Burlington, MA 01803
(617) 238-7624; fax 7608

Eastern Region
William Degraaff
JFK International Airport
Fitzgerald Federal Building
Jamaica, NY 11430
(718) 553-3335; fax 995-2052

Southern Region
Jim Castleberry
P.O. Box 20636
Atlanta, GA 30320
(404) 305-6727; fax 6730

Great Lakes Region
Scott Snyder
2300 E. Devon Avenue
Des Plaines, IL 60018
(847) 294-7538; fax 7046

Bob Benko
2300 E. Devon Avenue
Des Plaines, IL 60018
(847) 294-7674; fax 7046

Central Region
Jan Monroe
601 E. 12th Street
Kansas City, MO 64106
(816) 426-4738; fax 3265

Southwest Region
Dean McMath
2601 Meacham Blvd.
Fort Worth, TX 76137
(817) 222-5617; fax 5984

Northwest Mountain
Sarah Dalton
1601 Lind Avenue, SW
Renton, WA 98055
(206) 227-2615; fax 1600

Western Pacific Region
Richard Dykas
FAA-AWP 613
P.O. Box 92007
Los Angeles, CA 90009
(310) 725-3613; fax 536-8602

Educational Conveyances

Headquarters and Western Area
(All states west of the Mississippi River (except MN). AK, HI, American Samoa, Guam and the Trust Territory of the Pacific Islands)
David B. Hakola
Director, Real Property Group
Office of Management
U.S. Department of Education
Room 2339—FOB#10B
600 Independence Avenue, SW
Washington, DC 20202-4553
(202) 401-0506; fax 0828

Eastern Area
(MN, all states east of the Mississippi River, Puerto Rico, and the U.S. Virgin Islands)
Peter A. Wieczorek
Director, Eastern Operations
Federal Real Property Assistance Program
U.S. Department of Education
J.W. McCormack PO & Courthouse
Room 536
Boston, MA 02109
(617) 223-9321; fax 4924

Health Conveyances
Brian Rooney, Chief
Real Property Branch
Division of Property Management
Room 5B17, Parklawn Building
5600 Fishers Lane
Rockville, MD 20857
(301) 443-2265; fax 0084

Homeless Review and Certification

Bill Poythress
Coordinator
Base Redevelopment Team
U.S. Department of Housing and Urban Development
75 Spring Street, SW
Atlanta, GA 30303
(404) 331-5001 x2546; fax 6997

It is recommended that communities consult with the local HUD field office in developing an outreach program. This office will direct you to the appropriate HUD staff.

Highway Conveyances

William Todd
Federal Highway Administration
Realty Specialist
Office of Rights of Way
U.S. Department of Transportation
Room 3221
400 Seventh Street, SW
Washington, DC 20590
(202) 366-2024; fax 3780

Historic Monument Transfers

National Office

Thomas C. Jester, Manager
Historic Surplus Property Program
Heritage Preservation Services (2255)
National Park Service
1849 C Street, NW
Washington, DC 20240
(202) 343-9578; fax 3803

Alaska Region

(AK)
Linda Cook
National Park Service
Alaska Regional Office
2525 Gambell Street, Room 107
Anchorage, AK 99503
(907) 257-2668

Columbia Cascades Support Office

(ID, WA, OR)
Hank Florence
National Park Service
909 First Avenue
Seattle, WA 98104
(206) 220-4138

Great Lakes Support Office

(IL, IN, MI, MN, OH, WI)
Diane Miller
National Park Service
1079 Jackson Street
Omaha, NE 68102
(402) 221-3426

Great Plains Support Office

(AR, IA, KS, MO, NE, SD, ND)
Craig Kenkel
National Park Service
1079 Jackson Street
Omaha, NE 68102
(402) 221-3428

Pacific Great Basin and Pacific Island Support Office

(AS, CA, CM, FM, GU, HI, NV, Marshall Islands, Palau)
Michael Crowe
National Park Service
P.O. Box 36063
San Francisco, CA 94107
(415) 427-1398

Philadelphia Support Office

(CT, DE, DC, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV)
Lisa McCann
National Park Service
Second and Chestnut Streets, 3rd Floor
Philadelphia, PA 19106
(215) 597-0651; fax 0932

Rocky Mountain Support Office

(MT, WY, CO, UT)
Greg Kendrick
National Park Service
12795 West Alameda Parkway
P.O. Box 25287
Denver, CO 80225
(303) 969-2894

Southeast Regional Office

(AL, FL, GA, KY, LA, MS, NC, PR, SC, TN, VI)
Frank Miele
National Park Service
Atlanta Federal Center
1924 Building
100 Alabama Street, SW
Atlanta, GA 30303
(404) 562-3171

Southwest Support Office

(AZ, NM, TX, OK)
Catherine Colby
National Park Service
P.O. Box 728
Santa Fe, NM 87504
(505) 988-6788

Park Land and Recreation Conveyances

National Office

Wendy E. Ormont
Manager, Federal Lands-to-Parks Program
National Park Service
1849 C Street NW
Room 3625 (MS-2230)
Washington, DC 20240-0001
(202) 565-1200; fax 1204

North Atlantic Region

(CT, IL, IN, IO, KS, ME, MA, MI, MN, MO, NE, NH, NY, NJ, ND, OH, RI, SD, VT, WI)
John T. Kelly
Northeast Regional Office
National Park Service
15 State Street
Boston, MA 02109
(617) 223-5190; fax 5164

Appalachian System Support Center

(AL, AR, DE, FL, GA, LA, MD, KY, MS, NC, OK, PA, SC, TN, TX, VA, WV, Puerto Rico, Virgin Islands, and DC)
Bill Huie
Southeast Regional Office
National Park Service
100 Alabama Street, SW
Atlanta, GA 30303
(404) 562-3175; fax 3246

Western Region

(AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY, and American Samoa, Guam and the Northern Mariana Islands)
Gary Munsterman
Western Regional Office
National Park Service
600 Harrison Street, Suite 600
San Francisco, CA 94107-1372
(415) 427-1444; fax 4043

Port Conveyances

Bill Aird
Office of Ports and Domestic Shipping
Maritime Administration
U.S. Department of Transportation
Room 7201
400 Seventh Street, SW
Washington, DC 20590
(202) 366-1901; fax 6988

Conservation Conveyances

Jeffery M. Donahoe, Chief
Division of Realty
U.S. Fish and Wildlife Service
4401 North Fairfax Drive, Room 672
Arlington, VA 22203
(703) 358-1713; fax 2223

Mike Spear
Regional Director, Region 1
U.S. Fish and Wildlife Service
911 N.E. 11th Avenue
Portland, OR 97232-4181
(503) 231-6118; fax 872-2716

Nancy Kaufman
Regional Director, Region 2
U.S. Fish and Wildlife Service
P.O. Box 1306
Albuquerque, NM 87103
(505) 248-6282; fax 6910

William F. Hartwig
Regional Director, Region 3
U.S. Fish and Wildlife Service
One Federal Drive
Fort Snelling, MN 55111- 4056
(612) 725-3563; fax 3501

Marvin E. Moriarty
Acting Regional Director, Region 4
U.S. Fish and Wildlife Service
1875 Century Boulevard
Atlanta, GA 30345
(404) 679-4000; fax 4006

Ron Lamertson
Regional Director, Region 5
U.S. Fish and Wildlife Service
300 Westgate Center Drive
Hadley, MA 01035-9589
(413) 253-8200; fax 8308

Ralph O. Morgenweck
Regional Director, Region 6
U.S. Fish and Wildlife Service
P.O. Box 25486
Denver, CO 80225
(303) 236-7920; fax 8295

David B. Allen
Regional Director, Region 7
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503
(907) 786-3542; fax 3306

Prison Conveyances

David Dorworth
Chief, Site Selection and Environmental Review
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U.S. Department of Commerce

OFFICE OF ECONOMIC CONVERSION INFORMATION (OECI)

A joint venture of the Department of Defense (OEA) and the Department of Commerce (EDA). OECI is a clearinghouse of information needed to anticipate, plan for, and respond to defense downsizing. Access:
Phone: (800) 345-1222 or (202) 482-3901
TDD: (202) 501-0868

Modem: (800) 352-2949 or (202) 377-2848
Internet: http://netsite.esa.doc.gov/oeci/

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(Planning and implementation assistance, infrastructure, revolving loan funds, incubators, etc.)

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TECHNOLOGY TRANSFER PROGRAM

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(202) 205-6773

ON-LINE NATIONAL BULLETIN BOARD

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