

Real Estate

Disposal of Real Estate

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SUMMARY of CHANGE

AR 405-90

Disposal of Real Estate

This regulation prescribing real estate disposal policy has been revised. The revision updates policy on environmental review (para 1-6) and decontamination (para 2-2); reduces screening requirements (para 2-4); requires inter-governmental coordination (para 2-7); prescribes disposal of nonexcess property (chap 3); clarifies custody and accountability responsibilities (para 4-3); furnishes more complete guidance on return of lands to the public domain (chap 5); increases installation disposal authority for buildings and timber (paras 6-5 and 6-7); provides for conversion of building equipment to personal property (para 6-6); and gives more complete guidance on disposal of foreign excess real estate (chap 7).

Effective 10 May 1985

Real Estate

Disposal of Real Estate

By Order of the Secretary of the Army:

JOHN A. WICKHAM, JR.
General, United States Army
Chief of Staff

Official:

DONALD J. DELANDRO
Brigadier General, United States Army
The Adjutant General

History. This UPDATE printing publishes a revision, which is effective 10 May 1985. Because the structure of the entire revised text has been reorganized, no attempt has been

made to highlight changes from the earlier regulation dated 29 July 1974.

Summary. This revision updates the policy of disposing of Army controlled real estate.

Applicability. This regulation applies to the Active Army, the U.S. Army Reserve, and the Army National Guard. Chapter 6 does not apply to the Army National Guard. This regulation does not apply to Army civil works real estate.

Army management control process. Supplementation. Supplementation of this regulation is prohibited without prior approval from HQDA(DAEN–REM–C), WASH DC 20314–1000.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by The Adjutant General. Users

will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent agency of this regulation is the Office of the Chief of Engineers. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA(DAEN–REM–C), WASH DC 20314–1000.

Distribution. Active Army, ARNG, and USAR: D

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Chapter 1 General

1-1. Purpose

This regulation sets forth authorities, responsibilities, policies, and procedures for the disposal of military and industrial real estate under the custody and control of the Department of the Army (DA) worldwide. Chapters 1 through 6 apply to Army military and industrial real estate in the United States, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. Chapter 7 applies to real estate in foreign countries. Where procedures are not required by statute or regulation issued by higher authority, the Assistant Secretary of the Army (Installations and Logistics) (ASA(I&L)) may approve or ratify exceptions to this regulation.

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Responsibilities

a. The Assistant Secretary of the Army (Installations and Logistics) (ASA(I&L)) is responsible for general Secretariat oversight of the Army real property disposal program and approval of—

(1) Real property disposals that are subject to reporting requirements of the Congress contained in title 10, section 2662, United States Code (10 USC 2662) and 10 USC 2672a.

(2) Real property disposal with an estimated value in excess of \$50,000 or involving more than 500 acres of withdrawn public lands.

(3) Holds on real property disposal and withdrawals from excess of property reported to the General Services Administration (GSA) for disposal with a value in excess of \$50,000.

b. The Chief of Engineers (COE) is the Army staff element responsible for—

(1) Coordinating and approving reports of excess for real property subject to other approval requirements described in this regulation.

(2) Coordinating resolution of controversial cases.

(3) Subject to the approval of the ASA (I&L), agreeing to act as real estate agent for other Federal departments or agencies on request.

(4) Supervising and giving direction to field offices on disposal of Army-controlled real estate.

(5) Monitoring disposal for compliance with applicable laws, rules, and regulations.

c. Division or district commanders will—

(1) Plan and execute disposal of excess real estate in the United States, its territories, and possessions.

(2) Plan and execute disposal of surplus real estate in the United States, its territories and possessions, where GSA has delegated authority, and this authority has been redelegated.

(3) Obtain available real estate contamination and decontamination records and provide title information on request.

(4) Act as real estate agent in disposal actions for the Department of the Air Force and other Federal agencies.

d. Commanders of major Army commands (MACOMs) will—

(1) Dispose of excess real estate in foreign countries.

(2) Approve of disposal of certain improvements.

(3) Report on recommending nonforeign real estate to be made excess.

(4) Decontaminate excess real estate as prescribed in paragraph 2-2.

(5) Protect and maintain excess real estate, unless otherwise provided for. The expense of protection and maintenance will be the

responsibility of the MACOM for the period described in paragraph 4-3.

e. Commanders of installations will—

(1) Prepare reports recommending real property be excessed.

(2) Ensure proper decontamination of real property.

(3) Comply with environmental and historic preservation documentation requirements related to the disposal of real property.

(4) Approve and dispose of certain buildings without the underlying land. (See para 6-5.)

(5) Dispose of certain standing timber. (See para 6-7.)

1-5. Safeguarding information

There must be no premature disclosure of plans for the disposal of real estate regardless of the level or origin of these plans. Information concerning these plans will normally be designated "FOR OFFICIAL USE ONLY" in accordance with AR 340-17. This designation will be canceled after the COE has determined property is excess or after the Chief of Public Affairs or delegatee has publicly released this information. Compliance with environmental, historic preservation, and similar legal documentation requirements does not constitute premature disclosure of disposal plans.

1-6. Special considerations

a. All actions will comply with environmental, historical, and cultural protection requirements as stated in AR 200-1, AR 200-2, AR 385-64, AR 420-40, and related regulations.

b. Actions in coastal States will be consistent with State coastal zone management plans to the maximum extent practicable.

c. Actions in floodplains and wetlands will comply with Executive Order (EO) 11988 and EO 11990.

d. Disposals of real property that may affect community developmental plans will be coordinated with State and local elected officials in accordance with EO 12372, as amended by EO 12416.

e. Following industry's lead, DA will use the metric system in all activities insofar as the use is consistent with operational, economic, technical, and safety requirements (AR 700-1).

1-7. Disposal commitments

No person will commit DA to convey any interest in real estate to a non-Federal party, unless the disposal agency has delegated such authority or DA has such authority directly by legislation.

1-8. Form for transfer

The transfer of property between Department of Defense (DOD) agencies is accomplished by Secretarial Memorandum, while transfer to other Federal agencies is by Secretarial letter and to non-Federal entities is by quit-claim deed. In the case of reassignment or transfer of property within the Federal Government, DD Form 1354 (Transfer and Acceptance of Military Real Property) will be used for recording the transfer of accountability (AR 420-17). The DD Form 1354 will contain a statement regarding the presence or absence of contamination.

1-9. Report of disposals (RCS DD-MIL(A)-1275)

Disposals involving an estimated price, cost, or value of more than \$5,000 but not more than \$50,000 will be reported in accordance with AR 405-45 (RCS DD-MIL(A)-1275).

Chapter 2 Property To Be Excessed

2-1. Report recommending action to excess property

Recommendations to excess Army property are reported through command channels and forwarded to HQDA(DAEN-ZCI), WASH DC 20310-2600, for approval. DAEN-ZCI is the Army staff element responsible for development of installation structure required to support Army missions and activities, including mobilization and contingency missions.

a. Normal. The installation commander will identify excess real

estate in accordance with AR 405-70. When real estate is not needed to support current missions, authorized future missions, or mobilization, because land is not used, is underused, or is not put to optimum use, the installation commander will recommend excessing. This report of excess will be submitted in the format given at appendix B in quadruplicate through command channels to HQDA(DAEN-ZCI), WASH DC 20310-2600. One copy is for the MACOM. (The command channels for property retained by the National Guard include the State adjutant general, the United States Property and Fiscal Officer, and the National Guard Bureau (NGB).) A copy of the excess recommendation will be furnished to the appropriate division and district commander with the original cost for each building or other identifiable improvements in the area recommended for excessing. When COE determines the disposal action should proceed, it will advise the appropriate division commander and MACOM commander.

b. Base realignments. The announcement of certain base reductions and realignments frequently results in the excessing of Army real estate. Prior to such announcements, information may be requested for planning purposes. Any such information should be obtained and handled with discretion due to the possible impact on the public. (See AR 5-10.) In accordance with EO 12049, the economic adjustment assistance activities of the Secretary of Defense will be fully supported as authorized by law. Such support involves a coordinated Federal response to the needs of adversely affected individual communities, States, and regions. The support will afford priority consideration to community requests for Federal technical assistance, financial resources, excess or surplus property, or other requirements that are part of an Economic Adjustment Committee comprehensive plan. When excessing is authorized, the COE will advise the appropriate division commander and the MACOM commander to proceed with the disposal. The MACOM will have the report of excess prepared and promptly forwarded to HQDA(DAEN-ZCI), WASH DC 20310-2600. The division or district commander will assist by furnishing real estate information such as estimates of value, lists of outgrants in the disposal area, and similar matters. Close coordination between responsible elements is encouraged to expedite action and avoid duplicate effort.

c. EO 12348 disposal action. GSA, the Office of the Secretary of Defense, and Army commands may survey real estate holdings under EO 12348, to identify excess or underutilized real estate (AR 405-70). On approval by DAEN-ZCI or higher authority that disposal is authorized, the MACOM upon direction by DAEN-ZCI will forward a report of excess promptly to HQDA(DAEN-ZCI), WASH DC 20310-2600. GSA requires agencies to report excess lands to GSA within 90 days of the GSA or Property Review Board notice to the Secretary of the Army or designee that the property must be excessed (Federal Property Management Regulations (FPMR) 101-47.802(b)(5)). (See app C.) When this deadline cannot be met because of a pending reclama or other similar reason, the office with the action will document the reason.

d. Bureau of Land Management (BLM) withdrawal review program. BLM will schedule review of lands withdrawn from the public domain for an indefinite term in certain States (Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming) under the Federal Land Policy and Management Act (FLPMA) of 1976 (43 USC 1701 et seq.) to determine whether and for how long to continue the withdrawal. Installation commanders will prepare rejustification statements for MACOM approval. District commanders will assist installation commanders on request. MACOMs will return statements which are not approved to the installation. MACOMs will forward approved statements to the district commander for submission to BLM. BLM will review the statements for maximum multiple use, including the operation of mining and mineral leasing laws. When BLM and DA reach agreement, any disposal will proceed in accordance with this regulation.

e. U.S. Army reserve centers. When reserve centers are located

on other than a U.S. Army Forces Command installation, the report of excess must contain the concurrence of both MACOMs involved.

2-2. Contaminated real property

a. Explosive hazards. Every means possible must be used to protect the general public who may be exposed to explosive hazards from ammunition and explosives contaminated real property under DA control on which ammunition or explosives are found. Contamination of real property by final disposal of ammunition and explosives by surface dumping or discharge onto watersheds, into sewers, waterways, or other bodies of water is prohibited. This does not preclude burial to control fragments during authorized destruction by detonation. Real property that is known to be contaminated with ammunition and explosives, which could endanger the public, will not be released from DA custody until the most stringent efforts have been made to assure appropriate protection of the public. Some contamination, however, is so extensive that removal of the hazard is beyond the scope of existing technology and resources. Where ammunition or explosives are known or suspected to exist—

(1) Proposals to dispose of property will contain information required by AR 385-64, Appendix, paragraph 10-3.C.2, and will be forwarded through COE and OASA(I&L) to the Department of Defense Explosives Safety Board (DDESB) for prior approval.

(2) DA may transfer contaminated real property through GSA to another DOD component if the ASD (MI&L) approves and permanent records of contamination are furnished the recipient. The district commander will retain a copy of the records.

(3) DA may not transfer accountability and control of such property outside of DOD, until the property is rendered innocuous as that term is defined in AR 385-64, Appendix, paragraph 10-3.C. Additional decontamination may be conducted when justified in accordance with the economic analysis in *d* below.

(4) The using command will retain accountability for property that cannot be rendered innocuous or transferred to another DOD component in accordance with AR 385-64, Appendix, paragraph 10-3.C.

(5) The district commander will state in the report of excess to the disposal agency—

(a) The nature and extent of the original contamination and the decontamination methods used.

(b) The requirement to enter this information in the permanent land records of the civil jurisdiction in which the property is located.

b. Toxic-chemical and other hazardous substances. Toxic-chemical, biological, radioactive, or other hazardous substances in real property may be identified as, or present, a hazard to health or render a portion of the environment unsuitable for use. DAEN-ZCE or its designee will identify and evaluate suspected problems associated with past hazardous material disposal sites and control migration of hazardous contamination from such facilities and control hazards to health or welfare that resulted from those past operations. Here, decontamination is the process of reducing contamination to an acceptable level or completely eliminating its presence. Technical feasibility, economic acceptability, and environmental effect will be considered in selecting a course of action.

(1) DA may take steps to release property without decontamination;

(2) DA may decontaminate to a level of restricted use; or

(3) DA may decontaminate to unrestricted use when economically and technically feasible and when GSA or other recipient will only accept the property in an unrestricted use condition.

(4) As a minimum in all cases, DA will perform that amount of decontamination necessary to protect public health, welfare, and the environment. Additional decontamination may be conducted when justified in accordance with the economic analysis in *d* below.

c. Coordination. MACOMs will secure the necessary expertise, funding, coordination, and approvals for decontamination. MACOMs will fully coordinate such actions with—

(1) Environmental, health, safety, public affairs and legal offices at each level from the installation to the MACOM and at Headquarters, DA (HQDA).

(2) DDESB through COE and OASA(I&L) for property contaminated with ammunition and explosives.

(3) The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) through the U.S. Army Materiel Command (AMC) or other office designated by DAEN-ZCE, for property contaminated with toxic-chemical and other hazardous substances.

d. Economic analysis. MACOMs will perform an economic analysis to determine whether property should be decontaminated for disposal. (Decontamination will also be performed to protect public health, welfare, and the environment. (See *b* above and AR 200-1.) Estimated decontamination costs will be developed in consultation with DDESB or USATHAMA through the channels described in *c* above. The district commander will furnish estimated property values on request. Unless approved by OASA(I&L), decontamination for disposal should not proceed if—

(1) Fee-owned land is involved and the estimated cost of additional decontamination necessary for disposal exceeds the addition to fair market value of the property after restoration.

(2) Fee-owned land is involved and there is no market for the property and the cost of additional decontamination necessary for disposal exceeds the estimated maintenance cost for 30 years (including the cost of fencing, posting, and environmental monitoring).

(3) Leased land is involved and the cost of additional decontamination necessary for disposal exceeds each of the following figures:

(a) The sum of: either the cost of purchasing the property or continued rental for 30 years (whichever is less); plus the estimated maintenance cost for 30 years (including the costs of fencing, posting, and environmental monitoring).

(b) Costs for compensating the owner to restrict use of the property for 30 years, plus the costs of environmental monitoring for 30 years.

(4) Several of the above calculations involve adding costs that gradually accrue over a 30-year period. To account for the changing value of money over time, follow the discounting technique to obtain present value shown in AR 11-28, paragraph 2-3e(5). The discount rate prescribed in that regulation should be used in the analysis. (At the time of this writing, the rate is 10 percent.)

e. Disposal of contaminated property. It is possible that no additional decontamination will be necessary for disposal. For example, a transferee may accept contaminated property if the transferee is responsible, agrees to perform any appropriate steps to protect public health and the environment, and to indemnify the United States and hold it harmless against claims. The transferee should be advised that contamination is or may be present. Such cases will be coordinated with the Army Secretariat.

f. Formerly used property. If contamination is discovered on formerly used property, notify HQDA(DAEN-ZCE), WASH DC 20310-2600, and furnish a copy to HQDA(DAEN-REM-C), WASH DC 20314-1000, and DDESB(DDESB-KO), ALEX, VA 22331-0600. DAEN-ZCE will issue instructions to the appropriate offices for action.

g. Detailed instructions. More detailed instructions are located at appendix D.

2-3. Related personal property

Before and during the excessing of real property, the installation commander will closely monitor deactivation. Removal plans for installed building equipment or equipment in place must provide for preservation of the real estate, so that the structural integrity of the facility is not damaged. Explosive contaminated equipment will be decontaminated to the 5X state and be so marked before it is permitted to be severed from the real estate and disposed of to non-DOD parties. Related personal property is to be promptly redistributed, transferred, or disposed of under other authority in accordance with DA instructions. The installation commander will coordinate with the district commander to assure that the timing and method of disposal of related personal property will not delay disposal of the real property.

2-4. Screening

a. Accelerated screening. Accelerated screening may be directed in certain cases, such as base realignment or EO 12348 survey disposals.

b. Normal screening.

(1) Offices notified. On receipt of COE's written directive, the district commander will screen the real estate within the Army, including the NGB and the Office of the Chief, Army Reserve. Copies of screening letters should be sent to all Army installations within a 50-mile radius of the property. When the Army is authorized to dispose of property (see chap 6), also send a copy of the screening letter to the appropriate GSA regional office.

(2) Screening letters. Screening letters will—

(a) Identify the total acreage and all major improvements.

(b) State the distance from the nearest population center and furnish a vicinity map.

(c) If considered desirable, indicate former use, potential use, and highest and best use.

(d) Estimate the minimum annual protection and maintenance costs for the property.

(e) Name any significant encumbrances or restrictions affecting valuation or conveyance of title.

(f) List outstanding or expressed interests.

(g) Refer to this regulation for procedures on requesting the property.

(3) Army screening.

(a) Expressed requirements. Applicants with requirements for all or part of the property must submit written requests through command channels to the district commander with information copies to HQDA(DAEN-REM), WASH DC 20314-1000, within 20 days. (The district commander will proceed with the disposal if screening produces no applicants.) An applicant must conclusively show that the property is essential to accomplish an assigned mission, and that no other real property under the applicant's control can satisfy the requirement. The response will also state that existing funds are available for operation and maintenance of the property. District and division commanders will submit all requests for property, as soon as practicable, to HQDA(DAEN-REM), WASH DC 20314-1000, for a decision on whether to suspend disposal action.

(b) Justification and certification. DAEN-REM will not consider an Army command request unless detailed written justification is received within 40 days from the date of screening. When the proposed suspension will exceed 40 days and the requesting agency is funded from a different appropriation than the Army command declaring the property excess, the requesting agency will reimburse the accountable command. Before the 40-day period ends, the requesting agency will certify that funds are available for all costs of protection and maintenance of excess property and identify the finance and accounting officer providing reimbursement.

(c) Army Reserve and National Guard. Requests by Reserve Components identify which Reserve Component units will use the property as well as their strengths, missions, training schedules, and current training locations. Except for newly organized units, requests will include a map of other State or Federal training areas within a 50 mile radius, state why these areas are not suitable or available, and fully justify the requirement like a new land acquisition.

(4) GSA screening. If the property is screened by GSA and GSA does not advise of an interest within 30 days, the property is considered surplus.

(5) Delays. The division commander will advise COE of unusual delays in excessing actions. Also, if disposal is delayed or decontamination has not been certified for 1 year after screening, the district commander will rescreen the property.

c. Exceptions. The district commander may waive screening that in the district commander's opinion serves no useful purpose.

2-5. Prior approvals

a. Disposal over \$50,000. Any transaction involving the disposal of interest in real property located in the United States, its territories or possessions, with an estimated fair market value in excess of \$50,

000 or containing more than 500 acres of withdrawn public domain lands requires prior approval of OASA(I&L).

b. Industrial installations. After screening and when Secretariat approval is not otherwise required, a proposed action on an industrial installation requires prior approval of OASA(I&L) through the Deputy Chief of Staff for Research, Development, and Acquisition (DCSRDA).

c. Base realignments. Under 10 USC 2687, the Secretary of Defense or the Secretary of the Army must report to the Armed Services Committees (ASC) of the Congress 60 days before a proposed closure or realignment of an installation located in the United States, Puerto Rico, or Guam that has more than 300 authorized and assigned military and civilian personnel (AR 5-10).

d. Disposal over \$100,000. Under 10 USC 2667, the Army must report to the ASC proposed disposals of real property located in the United States, its territories and possessions, and valued over \$100,000, unless the disposal is specifically authorized by law. The district commander with the installation commander will provide justification through the division commander to COE. COE will prepare reports for the ASC, submit them to the ASC after obtaining OASA(I&L) approval, and represent the Secretary of the Army in ASC hearings on these reports.

e. District of Columbia, Alaska, Hawaii, territories, and possessions. Real estate disposal in these areas may require additional prior approvals, including special legislation.

2-6. Prompt disposal action

DA will promptly dispose of excess real estate in accordance with the following chapters. Property reported under 10 USC 2662 is excess when OASA(I&L) approves the report. Then, COE will direct the district commander to complete preliminary disposal action. Final action may not be taken before 10 USC 2662 is complied with. Delays of more than 180 days in disposals approved by the Army Staff must have the prior approval of HQDA(DAEN-REM) or OASA(I&L).

2-7. Intergovernmental coordination

a. If a disposal might affect community development plans, the division or district commander will coordinate the proposal with State and local government officials in accordance with established procedures. The purpose is to accommodate State and local concerns to the extent permitted by law.

b. Coordination will be done after screening or complying with any required Congressional clearances.

c. The authorized district official will notify the State single point of contact or directly affected entities and request that the views of all concerned be furnished in 60 days. Notification will not normally include classified information or project justification.

d. The district or division commander will notify the affected MACOM and installation of views received. The MACOM or installation will recommend that the Army accept State or local views, seek a mutually agreeable solution, or explain why the views cannot be accommodated. In the last case, no real estate action may be taken until 15 days after the division or district commander mails an explanation to the State contact or affected entities. If accepting State or local views will substantially change a disposal cleared by the ASC, the division or district commander will request COE to so notify the ASC and will await further instructions before proceeding with disposal.

Chapter 3 Properties That Are Not Excess

3-1. Type of property

Proposals to sell nonexcess real property and acquire replacement land, construction, and facilities under 10 USC 2667a and specific

legislation may be made only for acquired lands and after the Secretary of the Interior has found that the land proposed for sale is not suitable for a public park and recreation area.

3-2. Proposals

a. Congress must specifically authorize sale and replacement proposals. In support of proposals approved by HQDA for submission to Congress, the MACOM will upon request furnish the following to HQDA(DAEN-ZCI), WASH DC 20310-2600:

(1) A general description of the property to be sold and the specific relocation site in compliance with master planning procedures.

(2) The need for replacement property or facilities.

(3) A statement that activities at the replacement facilities will be substantially similar in character or nature to those performed at the property to be sold.

(4) A complete DD Form 1391 (Military Construction Project Data) including the cost of replacement land and facilities and relocation costs. (See AR 415-15.)

(5) An estimate of the sales proceeds.

b. MACOMs will obtain from the division or district commander—

(1) A gross estimate of the fair market value of the land and improvements to be sold.

(2) An estimate of GSA's expenses to dispose of the property.

(3) A report on any significant factors that may affect disposal and obtaining fair market value for the property.

(4) Identification of any public domain lands.

(5) If the proposal involves real estate acquisition data similar to that required in a Brief Real Estate Planning Report under AR 405-10.

3-3. Notification of the Secretary of the Interior

Before an action is proposed to Congress, DAEN-ZCI will forward through OASA(I&L) to the Deputy Assistant Secretary of Defense (Installations) for approval a notice of the proposal from the Deputy Assistant Secretary of the Army (Installations and Housing) to the Secretary of the Interior or designee. Under 10 USC 2667a, the Secretary of the Interior has 60 days to advise whether or not the property is suitable for a public park and recreation area.

Chapter 4 Disposal by the General Services Administration

4-1. Disposal agency

GSA is the disposal agency for surplus real property and related personal property unless a specific statute provides otherwise or GSA has delegated this disposal authority. GSA is also the disposal agency for nonexcess property under sale and replacement legislation. (See chap 3.)

4-2. Report of excess property to GSA

a. General. The district commander reports excess real and related personal property with an estimated value of \$1,000 or more to GSA (FPMR 101-47.202-2). This includes withdrawn or reserved public domain lands and improvements that the Department of the Interior (DOI) has determined are not suitable for return to the public domain and are excess. It also includes certain less than fee interests for screening by GSA with other Federal agencies while COE screens within DA.

b. Conditional reports. As a general rule GSA will not accept reports of excess with conditions on disposal. GSA has agreed to accept disposal reports subject to reversion in the event of a national emergency. GSA will also dispose of missile sites and similar facilities to specified local governments for civil defense purposes during 20 years after disposal and subject to reversion for breach of condition.

c. Notice of receipt. When GSA accepts the report of excess, the district commander will notify HQDA(DAEN-REM), WASH DC

20314-1000. Care and custody responsibilities will be determined from the date of GSA's acceptance of the report in accordance with paragraph 4-3a.

d. Withdrawals of reports from GSA. Requests to withdraw reports of excess must be routed through the same channels as the original recommendation to excess property. DAEN-REM must approve all withdrawals of property reported to GSA for disposal, but will obtain OASA(I&L) approval for withdrawal of properties valued at more than \$50,000. DAEN-REM will then ask the district commander to request GSA to remove the property from the GSA inventory and to advise DAEN-REM and the MACOM when GSA approves the withdrawal.

4-3. Custody and accountability, protection, and maintenance

a. General.

(1) Pending transfer or disposal, GSA requires the holding agency to—

(a) Retain custody and accountability for excess and surplus real and related property.

(b) Perform protection and maintenance to prevent vandalism and development of unsafe conditions, to maintain property values, and to promote good public relations.

(c) Initiate or cooperate in actions to prevent, contain, or remedy hazardous conditions as prescribed by the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300 and AR 200-1).

(d) Show the property to prospective transferees or purchasers.

(2) GSA states guidelines for maintenance and protection at FPMR 101-47.4913. COE, in coordination with GSA, will furnish guidance to installations on minimum maintenance necessary to effect maximum economies. These requirements do not apply to historic properties declared excess or surplus; instead, use special Army procedures outlined in TM 5-801-2. Maintenance and protection may be accomplished by the using command, a contracted party, or an interim user. The holding agency is responsible for expense of protection and maintenance for not more than 12 months plus the period to the first day of the succeeding fiscal quarter after the date of GSA's notice to the Army of receipt of the excess report. The responsibility for expenses will also be extended to cover any period of time that disposal is deferred by the holding agency. GSA will reimburse the holding agency for all expense that is not extraordinary in the judgment of GSA after the period described above. GSA will not be fiscally responsible for care and custody without a written agreement (FPMR 101-47.4). Such agreements will be between the MACOM or designee and GSA. The U.S. Property and Fiscal Officer will sign the agreement for National Guard properties.

b. Using command responsibility.

(1) The using command will retain custody and accountability of property and will continue programming funds and personnel for protection and maintenance; this responsibility ends on the date GSA disposes of the property or agrees to assume this responsibility in accordance with *a* above, whichever occurs first.

(2) DAEN-REM must approve in advance all requests for exceptions to this policy and for any Army element to use vacated excess property.

c. District and division commander responsibility. The district or division commander will maintain close liaison with GSA to ensure prompt transfer of custody and accountability to GSA or the recipient of the property.

4-4. Interim use of excess property

Interim use can minimize Federal expenses for ordinary protection and maintenance and preclude damage to property by theft, pilferage, and vandalism. Such use by State and local governments may assist the economic recovery of a community following an installation realignment and may be accomplished in accordance with the economic recovery plan of the Office of Economic Adjustment in the Office of the Assistant Secretary of Defense (Manpower, Installations, and Logistics) OASD(MI&L). Such interim use does not

entitle the user to credit in subsequent disposal for improvements the user places on the property; nor will such use imply a disposal commitment to the user. (See AR 405-80 for specific guidance.)

4-5. Report of nonexcess property to GSA

The district commander reports nonexcess property to GSA for sale in compliance with the requirements of chapter 3 and specific legislative authority providing for disposal by GSA.

4-6. GSA return of undisposable property

GSA will return property considered undisposable by letter or return of the Report of Excess to HQDA(DAEN-REM), WASH DC 20314-1000. COE will coordinate the proposed action with the former MACOM accepting accountability and then advise the district commander how to proceed.

Chapter 5 DA Return of Public Domain Lands

5-1. Alternatives

Normally, DA will return withdrawn public domain lands that have minor or no improvements to the public domain. When the Secretary of the Interior and the GSA Administrator agree that the land's character has substantially changed so that the land is not suitable for such disposition, GSA (chap 4) or DA (chap 6) will dispose of it.

5-2. Notice of Intention to Relinquish

The district commander files a Notice of Intention to Relinquish (NIR) with the DOI after the property is determined to be excess, has been screened with negative results, and any necessary clearances have been obtained. The district commander will prepare the NIR stating the Army's assent to the relinquishment and attaching the supplemental information prepared by the installation commander in accordance with appendix E.

5-3. Bureau of Land Management determination

BLM will review the notice to determine if the lands are suitable for return to the public domain for disposition under the public land laws and if DA has—

a. Decontaminated or restored the property; or if that is not economically feasible, posted notices, installed protective devices, and agreed to maintain them.

b. To the extent deemed necessary by BLM, taken measures to correct, arrest, or prevent deterioration of the land and resources resulting from use or possession.

c. Exhausted GSA disposal procedures (including procedures in para 6-5) for improvements certified to have no value.

d. Resolved commitments to third parties as to rights and privileges in the property.

e. Furnished copies or case files for all encumbrances.

5-4. Property suitable for return

BLM will notify the district commander if it will accept accountability and responsibility on approval by the Secretary of the Interior of a public land order revoking withdrawal.

5-5. Property not suitable for return

a. In some cases, BLM may determine that some or all excess property is not suitable for return to the public domain; for example, where improvements are situated on a relatively small portion of the excess property. BLM will obtain GSA concurrence in such cases. It will also notify GSA of any mineral interests in such property not suitable for disposition under the public land mining and mineral leasing laws.

b. BLM will then notify the district commander that the property may be reported to GSA. BLM will furnish information on any

other Federal agency jurisdiction claims and any encumbrances under public land laws for transmittal with the excess report.

Chapter 6

DA Disposal of Real Property

6-1. Authority

a. GSA has delegated authority to determine surplus and dispose of real and related personal property with an estimated value under \$1000. The GSA Administrator may also designate executive agencies to dispose of other surplus property.

b. GSA has designated agencies accountable for the following real property interests as disposal agencies in FPMR 101-47.302-2:

- (1) Improvements without the underlying land.
- (2) Standing timber without the underlying land.
- (3) Embedded gravel, sand, and stone without the underlying land.

(4) Ingrants unless GSA or the accountable agency determines that it is in the best interest of the Government to dispose of the ingrant with other property reported excess.

c. GSA has excepted growing crops from real estate disposal, when the disposal agency designates such crops for disposal by severance and removal from the land. (See also agricultural and grazing lease and license authority in AR 405-80.)

d. Also, DA has disposal authority under specific laws. (See app C for partial listing.)

e. Authority to sell Federal property is a governmental function which may not be delegated to non-Federal entities.

6-2. Competition

a. Bidding. DA policy requires competitive bidding before any sale. This gives all potentially qualified bidders an equal opportunity to compete for the property, secures the benefits of competition for the Government, and prevents charges that the Government employees have shown favoritism in selling Government property. Surplus property may be auctioned when considerable local interest is probable and when approved by the COE and GSA (FPMR 101-47.304-7). Normally, sale is to the highest responsive and responsible bidder after advertisement in conformance with GSA regulations (FPMR 101-47.304).

b. Negotiated sales. Sales may be negotiated with a particular party if DAEN-REM determines competition is impracticable or a negotiated sale is in the public interest or promotes the national defense. Such sales for property with a fair market value in excess of \$1000 must be reported through GSA to the congressional committees on Government Operations, unless excepted (FPMR 101-47.304-9 and 101-47.304-12).

6-3. Sales to civilian and military personnel

When duties of civilian and military personnel include any functional or supervisory responsibility for disposal of real property under Army control, the personnel, their agents, employees, and immediate family members may not bid for or purchase surplus property interests.

6-4. Predisposal clearances

In addition to screening and clearances required in chapter 2, the following clearances must also be obtained:

a. \$1,000,000 property. Real property and related personal property that cost \$1,000,000 or more will not be disposed of to any private interest until the U.S. Attorney General advises whether the proposed disposal would tend to create or maintain a situation inconsistent with antitrust laws (FPMR 101-47.301-2).

b. Improvements at industrial installations. The Office DSCRDA must concur with proposed disposal of improvements that will affect the productive capacity of an industrial installation.

c. Rail equipment. The Office of the Deputy Chief of Staff for

Logistics must approve proposals to dispose of DA rail equipment (AR 56-3 and AR 420-72).

d. Hospital and medical facilities. The U.S. Army Health Services Command must concur in the disposal of all hospitals and medical facilities under its control. (See AR 40-2.) Disposal of such facilities not under the U.S. Army Health Services Command must have prior approval of the appropriate MACOM.

e. Morale, welfare, and recreation facilities. HQDA(DAAG-ZX), WASH DC 20310-2101, must be notified of proposals to dispose of morale, welfare, and recreation facilities.

f. Chapel facilities. HQDA(DACH-AML) must concur in the disposal of chapel facilities. (See AR 165-20.)

6-5. Improvements

Improvements without underlying land involve special considerations. Priority attention will be given to disposal of structures used as justification to Congress for new construction to avoid prejudicing future construction programs. Active Army structures committed on DD Form 1391 will be promptly disposed of on acceptance of new construction for beneficial occupancy in accordance with AR 415-13.

a. Conditions necessary for excessing. Buildings and improvements (including barracks) on nonexcess land may be declared excess when—

(1) There is no current use and there is no mobilization requirement;

(2) They have deteriorated or been damaged to the point of being nuisances or hazards to life and property and cannot be repaired or maintained at justifiable cost (75 percent of replacement costs for barracks);

(3) They have served the purpose for which they were constructed and cannot be economically or practicably adapted to other beneficial use;

(4) They occupy or interfere with sites for new construction that have been approved for funding and execution (AR 415-13); or

(5) They are movable and will satisfy a current requirement of a military department.

b. Excess findings.

(1) The installation commander prepares DA Form 337 (Request for Approval of Disposal of Buildings and Improvements) (app B) and sends it through command channels to obtain approval to dispose of the excess property. The office approving the DA Form 337 will be approving the method of disposal. Upon completion of disposal the DA Form 337 will provide supporting documentation to remove the property from accountability records. The DA 337 should identify major items of installed building equipment that are to be disposed of with buildings and improvements. It should also show consideration given to using the equipment elsewhere. Such equipment will be physically marked to indicate its excess status.

(2) When new construction is involved, prior approval of the DA Form 337 may be obtained to prevent delays. However, all approvals for construction will be obtained before taking disposal action. Construction contracts will allow reasonable time for orderly disposal. The district commander will assure disposal is completed when improvements were scheduled to be disposed of as part of a new construction contract, except for relocatable structures or those to be disposed of by troop labor.

(3) As an exception, the district commander will prepare DA Form 337 for disposal of buildings and improvements acquired incidentally to land acquisition; the installation commander must first confirm there is no installation requirement for them, and then recommend disposal.

(4) In all cases, the commander having approval authority will sign the DA Form 337. Intermediate headquarters will make comments and recommendations only on forwarding correspondence. The original DA Form 337 will be returned through the same channels after approval to the accountability property officer.

(5) OASA(I&L) will approve the DA Form 337 for family housing with an estimated value of \$50,000 or more per project or \$5,000 or more per dwelling unit.

(6) HQDA(DAEN-REM) will approve the DA Form 337 for—

(a) Any property with a total estimated current fair market value over \$50,000 (before submission to the Army Secretariat), except for family housing.

(b) Chapels (before submission to the Chief of Chaplains).

(c) Troop housing when such housing proposed for disposal during a 1 year period exceeds 5 percent of the total installation housing.

(d) Permanent buildings with a current real property inventory cost over \$100,000 for any single item or improvements with a total current real property inventory cost over \$200,000.

(e) A historical site or property that would affect a historical site.

(f) Contaminated or hazardous excess property.

(g) Buildings and improvements acquired for Army use and transferred less than 2 years before to the using command.

(7) MACOMs are authorized to approve other DA Forms 337. Except for family housing, this authority may be delegated to installation commanders with accountability for the property if the current real property inventory cost of any item is less than \$25,000 or if c(4),(5), or (6) below apply. The installation commander may redelegate this authority, but not below the director of engineering and housing. MACOMs will approve disposal of family housing with an inventory cost of less than \$50,000 per project or \$5,000 per dwelling unit.

(8) Facilities committed for new construction on a DD Form 1391 must also be approved on a DA Form 337. Notify HQDA(DAEN-ZCP-MB), WASH DC 20314-1000, of completed disposal related to a Military Construction Authorization (MCA) Act. Notify the MACOM of such disposal approved by the installation commander.

c. Disposal. On receipt of the approved DA Form 337, the installation or the district commander will complete the disposal, note completion on the form, and forward it to the accountable property office. The district commander will complete disposal and site restoration, but may request the installation commander for assistance. GSA will dispose of machinery and equipment to be sold to a using contractor-operator.

(1) There are several methods of disposal:

(a) Demolition and use of salvage material in the Army construction and maintenance program.

(b) Transfer to another Federal agency as authorized by law and regulation.

(c) Negotiated sale to State or local government body or tax supported institution for fair market value under authorities named in FPMR 101-47.4905. Proposals for such disposals will be submitted to DAEN-REM for further guidance on the conditions of disposal.

(d) Donation to a public body under FPMR 101-47.501-2 when the property has no commercial value or the estimated sales proceeds are less than the estimated cost of continued care and handling. GSA must approve in advance a proposed donation of improvements which cost more than \$250,000. The donee must pay disposal costs incident to the donation.

(e) Sale as authorized by law and regulation.

(f) Abandonment as authorized by law and regulation.

(2) Frequent inspections of disposal contract activity are encouraged to ensure compliance with contract terms and early resolution of problems.

(3) Installation commanders will ensure that disposal plans conform with present and future building sites designated on the installation master plan (AR 210-20).

(4) If the improvements have no commercial or salvage value, the installation commander should promptly dispose of the property within available resources (AR 420-70), such as troop exercises, fire training, and similar activities. Material may also be recovered for training stocks. Do not spend funds to dispose of such improvements. If no resources are available to dispose of the improvements, maintain a record of the location, existence, and cost of the property and list its condition as nonusable (AR 405-45).

(5) If the improvements have no commercial value or the estimated costs of continued care and handling would exceed estimated

sale proceeds, the division or district commander may abandon or destroy improvements on private property or donate the improvements to a public body. The installation commander may destroy such improvements wherever they are located. Such improvements may not be abandoned on Federal land. (See (3) above and FPMR 101-47.5.)

(6) If the improvements have questionable value, the installation commander will consult the district commander. If the district commander determines that a successful sale or other disposal will not occur promptly, retain the DA Form 337, and promptly dispose of property by troop labor, demolition contract, or in-house demolition (AR 415-10, AR 420-17, AR 420-70).

(7) If improvements have sale or salvage value, the installation commander will transmit the approved DA Form 337 to the district commander for screening and disposition. The installation commander will assure that installed equipment is not removed and that facilities are not occupied or cannibalized. The district commander will advise the installation commander and return the DA Form 337 after completion of disposal by the district commander. The district commander will return the DA Form 337 for disposal by the installation commander if advertisement is unsuccessful and the district commander is not assured that successful sale or other disposition can be accomplished promptly. In such cases, installation commanders will consider the concerns of Federal and local governments and zoning authorities as to disposal. Purchasers of excess property will not use the installation as a headquarters for resale and will not erect signs of any kind on Federal property.

(8) If a relocatable building is excess, the installation commander will check whether the building is accounted for as Army personal property or Army real property before proceeding with disposal. When an Army building is accounted for as personal property, see AR 700-112. If a building is accounted for as real property, prepare a DA Form 337.

(9) Where facilities were constructed with other than appropriated funds, the sale proceeds are normally returned to the reimbursable fund in accordance with GSA regulations.

6-6. Installed building equipment

After meeting the requirements of paragraphs 2-2, 2-5, and 6-4 and after obtaining legal review if anyone has a security interest in the equipment, these fixtures may be converted into personal property using a certificate as shown at figure 6-1.

6-7. Timber

Unless otherwise agreed, the BLM disposes of timber on withdrawn public lands. Other standing timber without the underlying land is excess and approved for disposal in accordance with AR 420-74. Sales for export of unprocessed timber from installations west of the 100th meridian in the contiguous 48 states will not be made. In general, installations are responsible for forestry management and the district commander for selling timber. The district commander will prepare a memorandum of understanding with each installation that has a forestry program to provide for mutual and reciprocal support as to these responsibilities to increase effectiveness, eliminate duplicate effort, and reduce costs.

a. Advance planning and coordination. To facilitate work planning requirements, installations will furnish districts pertinent parts of forestry management plans and updates. Ninety days in advance of each fiscal year, installations will provide general declarations of availability to divisions through MACOMs. Declarations will state the volume and type of timber and provide a map of general harvest areas. Installations will coordinate specific reports of availability in advance with districts to maximize market potential for timber. Sales of metal-contaminated timber will be segregated from other sales.

b. Maximizing proceeds. Districts will aggressively market timber, including metal-contaminated timber. In all cases administrative costs will be minimized, including travel. Unit or lump sum sales will be used, as appropriate, to maximize proceeds.

c. Timely disposal. Districts will award contracts within 90 days after receipt of specific reports of availability unless otherwise

agreed by the installation and the district. COE will be advised of the reasons for delay in other cases.

d. Additional sites. Additional forestry program sites may be recommended in accordance with AR 420-74.

e. Delegation of sale authority. After informal coordination with the district commander and public notice of availability, installation commanders or their delegates (but not below the director of engineering and housing) are authorized to sell standing timber with an estimated value under \$1,000, in conformity with the forest management plan. This authority should be used whenever possible to improve the efficiency and economy of the timber sales program. Timber may not be given away. The total of such sales in any fiscal year will not exceed \$20,000 at each installation.

f. Monitoring. Performance of disposal contracts will be monitored frequently by authorized local personnel to maximize proceeds, ensure compliance with contract terms, and preclude the development of problems, such as unsatisfactory restoration. HQDA(DAEN) will also monitor the timber sales program annually to ensure efficiency and compliance with forestry management policies. HQDA(DAEN) will examine specific programs if the percentage return on gross proceeds declines or is not approaching 40 percent over a 5-year period. (See AR 420-74 for criteria on monitoring implementation of forest management plans.)

6-8. Gravel, sand, and stone

After disposal is approved in accordance with this regulation, the district commander is authorized to dispose of embedded sand, gravel, and stone (including clay and spoil) on acquired land. GSA screening and determination of surplus if the estimate value exceeds \$1,000 is required. The using command will define conditions of removal to prevent interference with the Army mission and degradation of the environment. Disposal will be by sale or other authorized method under COE procedures. The authorized officer of the BLM will dispose of such materials on withdrawn public lands under 30 USC 601. This includes grants of free use permits to the Army for use of the materials on the installation under 43 CFR Part 3620.

6-9. Ingrants

The using command will check the notice provision of any ingrant to be terminated. In the case of typical notice provisions, the command will advise the district commander at least 120 days in advance of the date of vacation. In other cases, it may be necessary to advise the district commander further in advance. This is essential to prevent payment of unnecessary rental and give the district commander maximum flexibility for screening, notifying the grantor and settling any restoration claims. The district commander may arrange for the using service to perform surveys of these properties when the grantor has a minor restoration claim as defined by COE regulations.

a. Industrial. The using command will recommend excessing of an ingrant for industrial purposes in the same manner as fee owned land.

b. Family housing. The using command will determine whether leased family housing is excess to the needs of the using command and advise the district commander, who will promptly terminate the grant without screening.

c. Command installations and recruiting offices. Normally, the using command will excess ingrants for command installations and recruiting offices, will approve disposal, and will report property to the district commander for disposal. When termination will adversely affect continuing operations of the installation or the annual rental is \$50,000 or more, the using command will report the property excess through command channels to COE.

(1) The using command is responsible for rental and care and custody until the lease is canceled or another party agrees to assume these responsibilities.

(2) The district commander will cancel ingrants in accordance with their terms after screening and when it is not necessary to report the property to a disposal agency.

(3) The COE will provide instructions for the disposal of Government owned improvements in accordance with FPMR 101-47.309.

(4) The COE or designee will return permitted property to the control of the loaning Federal agency.

d. GSA space. GSA administers disposal of GSA leases and reassignment of GSA assigned space. The district commander must notify GSA in writing at least 30 days in advance of the date GSA must issue a termination notice under the terms of a GSA lease. Therefore, the MACOM or designee must notify the district commander at least 30 additional days in advance of a requirement to terminate. In the case of release of GSA assigned space, it is recommended that the MACOM or designee advise the district commander 150 days before the date that the space will no longer be needed. Notification must include a description of the area involved, its location, and the estimated date of release. Space to be released must be consolidated and accessible for GSA reassignment to another party. MACOMs will fund any alterations required to consolidate space or to make it accessible.

Chapter 7 DA Disposal of Excess Foreign Real Estate

7-1. Real estate disposal program objectives

Real estate disposal program objectives are to—

a. Ensure compliance with international agreements affecting the real estate in question. Such agreements normally control the disposal of real estate in foreign countries.

b. Ensure compliance with DA real estate disposal policies contained in chapters 1, 2, 4, and 6 insofar as practicable.

c. Give full force and effect to the real estate laws, customs, and disposal policies and procedures of the host country, insofar as it is consistent with the U.S. mission, requirements, and operations.

d. Keep foreign real estate holdings to the minimum necessary.

e. Clearly define United States and host country obligations (e.g., restoration).

f. Protect the United States against unreasonable claims.

g. Use host government agencies as much as possible, particularly in handling real property matters with citizens of host country.

7-2. Program oversight

The COE—

a. Supervises disposals of real estate in foreign countries.

b. Issues instructions governing such disposals.

c. Approves proposed MACOM regulations on real estate disposal.

7-3. Major Army command program execution

The real estate element of the MACOM located in a foreign country—

a. Plans and executes disposal of real estate in foreign countries in accordance with real estate program objectives.

b. Furnishes real estate disposal advice.

c. Recommends real estate disposal policies.

d. Maintains a real estate office of record.

e. Issues regulations on disposal policies and procedures, which should include the following:

(1) Information about the requirements of international agreements and established implementing precedents.

(2) Information about applicable real property laws, customs, policies, and procedures of the host country.

(3) Summary of DA real estate disposal policies.

(4) Explanation of approved day-to-day disposal policies and procedures including—

(a) The authority for disposal actions and the extent of permissible delegation.

(b) The nature of permissible real estate contacts with agencies and individuals of the host country.

(c) Methods of disposal considering, among other things, the

nature of ownership and the type of funding of any improvement construction.

- (d) Policy on providing for recapture in disposals.
- (e) The nature of any necessary documentation.
- (5) Procedures for obtaining further policy decisions and resolving conflicts.

7-4. Coordination

a. If desired by the U.S. diplomatic mission for the country or countries concerned, the MACOM will seek coordination of proposed sales or abandonment of real estate with the affected diplomatic mission. Coordination should include a disposal plan and the name of the grantee.

b. MACOMs will obtain DDESB approval for disposal of real property when ammunition or explosives contamination exists or is suspected to exist.

7-5. Methods of disposal

Methods of disposal are as follows:

- a. Transfer to another military department. The MACOM may approve transfer of excess real estate to another military department under 10 USC 2571 (a).
- b. Transfer to other Federal agencies. The MACOM may approve

transfer of excess real estate that is not required by another military department to another U.S. Government agency if fair market value is obtained for any salvage value of the property, unless reimbursement is not required by an Act of the Congress of the United States.

c. Sale. The MACOM may sell excess real estate that is not required by another military department or any U.S. Government agency.

d. Abandonment or destruction. The MACOM may also abandon or destroy excess buildings or improvements with prior written findings by the office directly accountable for the property that—

- (1) The property has no commercial value.
- (2) The estimated cost of continued care and handling would exceed the estimated sales proceeds.
- (3) Abandonment or destruction is required by military necessity or by consideration of health or safety.

e. Donation. On making the findings in the preceding paragraph and before abandonment or destruction, the MACOM may donate the property to foreign nonprofit educational, health, and charitable organizations with preference to any such organizations organized under the laws of the United States, or its States, territories, and possessions.

Conversion of Real to Personal Property

I hereby certify that the items described below were installed building equipment and therefore, real property until they were severed from the real estate under authority of law for disposal. These items are now personal property and are to be turned in to the **(name of personal property management office)**:

(List of items identifying any outstanding security interests on particular items)

(Signature of Installation Commander)

(Date)

Figure 6-1. Format for a certificate converting installed building equipment to personal property

Appendix A References

Section I Required Publications

AR 5-10

Reduction and Realignment Actions. (Cited in paras 2-1, 2-5, and B-1.)

AR 11-28

Economic Analysis and Program Evaluation for Resource Management.(Cited in para 2-2.)

AR 200-1

Environmental Protection and Enhancement. (Cited in paras 1-6, 2-2, 4-3, and B-1.)

AR 200-2

Environmental Effects of Army Actions. (Cited in paras 1-6 and B-1.)

AR 210-20

Master Planning for Army Installations. (Cited in para 6-5.)

AR 210-50

Family Housing Management. (Cited in para B-7.)

AR 210-190

Post Cemeteries. (Cited in para B-9.)

AR 340-17

Release of Information and Records from Army Files. (Cited in para 1-5.)

AR 385-64

Ammunition and Explosives Safety Standards. (Cited in paras 1-6 and 2-2.)

AR 405-10

Acquisition of Real Property and Interests Therein. (Cited in para 3-2.)

AR 405-45

Inventory of Army Military Real Property. (Cited in paras 1-9 and 6-5.)

AR 405-70

Utilization of Real Estate. (Cited in para 2-1.)

AR 405-80

Granting Use of Real Estate. (Cited in paras 4-4 and 6-1.)

AR 415-13

MCA Program: Disposal of Structures. (Cited in paras 6-5 and B-7.)

AR 415-35

Minor Construction. (Cited in para 3-2.)

AR 420-17

Real Property and Resource Management. (Cited in paras 1-8 and 6-5.)

AR 420-40

Historic Preservation. (Cited in para 1-6.)

AR 420-70

Buildings and Structures. (Cited in para 6-5.)

AR 420-72

Surfaced Areas, Railroads, and Associated Structures. (Cited in para 6-4.)

AR 420-74

Natural Resources: Land, Forest and Wildlife Management. (Cited in para 6-7.)

TM 5-801-2

Historic Preservation: Maintenance Procedures. (Cited in para 4-3.)

FPMR

Federal Property Management Regulations. (Cited in paras 2-1, 4-2, 4-3, 6-1, 6-2, 6-4, and 6-5. This regulation is available in Volume 41, Code of Federal Regulations, Chapter 101.)

Section II Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

AR 40-2

Army Medical Treatment Facilities: General Administration

AR 56-3

Objectives and Policy for Army Rail Equipment; Management of Army Rail Equipment

AR 165-20

Duties of Chaplains and Commander's Responsibilities

AR 210-20

Master Planning for Army Installations

AR 415-10

Military Construction—General

AR 700-1

Army Conversion to the Metric System of Measurement

AR 700-112

Relocatable Buildings

Section III Prescribed Forms

DA Form 337

Request for Approval of Disposal of Buildings Improvements(Prescribed in para 6-5 and app B.)

Section IV Referenced Forms

DD Form 1354

Transfer and Acceptance of Military Real Property

DD Form 1391

Military Construction Project Data

Appendix B Report Recommending Property To Be Excessed

Reports of excess property are required in paragraph 2-1. When an estimated value is called for, qualified installation or district personnel may make the determination. No formal appraisals are required. Where improvements are to be disposed of without the underlying land, paragraphs 6-5 and B-7 require the appropriate information on a DA Form 337 (Request for Approval of Disposal of Buildings and Improvements). All other requests for approval of excessing and disposal actions will include the following:

B-1. General description, location, and size of property proposed

for disposal. Documentation on any reduction and realignment involved as required by AR 5–10. Description of any impact on installation resources and the local civilian community, including any environmental documentation required by AR 200–1, AR 200–2, and related regulations.

B–2. Information required by appendix E for public domain lands.

B–3. Three copies of installation map showing the property proposed for disposal, and if appropriate, three copies of site map showing the location of buildings and utilities. The MACOM may retain one of each of the maps.

B–4. Information on nature and extent of any congressional involvement.

B–5. Preliminary statement on kind and cost of decontamination to be performed (app D) or a statement that “This property contains no known hazardous substances as that term is defined in the Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601) as amended.” This statement will be signed by the installation commander or a MACOM designee and dated.

B–6. Care and custody plan, including the responsible agency for custody and accountability, the legislative jurisdiction status, security measures necessary to prevent degradation, the source of funds, the date that the using command will vacate the premises, plans for the disposition of removable equipment, the estimated cost to implement the plan which separately identifies costs for any family housing area, and the results of efforts to interest local agencies in using the facility.

B–7. Statements on proposed disposal of improvements to include the following as applicable:

a. The condition prompting disposal (para 6–5a).
b. Whether the improvements were constructed with other than appropriated funds.

c. Proposed method of disposal.

d. That disposal of any improvements in the way of new construction complies with AR 415–13, the construction directive, and the installation master plan.

e. That structures are not required for the mobilization mission or are required for mobilization but have so deteriorated that preservation is not economically feasible and have been approved for replacement in a construction program.

f. Whether any improvements have net salvage value in light of restoration and other requirements, and if such value exceeds \$50,000.

g. Whether any National Historic Place or other cultural or historic site is involved.

h. That environmental documentation has been completed and includes a determination as to whether friable asbestos, Polychlorinated Biphenyls (PCB), or other hazardous substances are present. If they are present, describe procedures for eliminating or controlling them during demolition and confirm compliance with applicable Federal Standards.

i. Whether any equipment in place (not installed building equipment) will be removed prior to disposal.

j. In the case of family housing information required by AR 210–50, paragraphs 4–6c(1)–(6) and 4–8b.

k. Full explanation of proposals to dispose of improvements transferred within 2 years to the using command.

B–8. Statement of any restoration to be performed.

B–9. Summary of post cemetery record of interments maintained under AR 210–190.

B–10. Name of private cemetery or burial plot, and whether it is owned by the United States or title is reserved to former owners. Give the acreage (shown on installation map) and the approximate number of occupied and unused grave sites. Give the name and address of next of kin of interred, if known. Also, provide the current arrangements and legal responsibilities between United States and the next of kin or cemetery association for maintenance of cemetery; whether cemetery is full and dormant or actively used for burials; contractual relationships as to use, visitation, and access; and other details affecting disposal.

B–11. Data on the physical composition of industrial properties to

show production potential and designed use; recommended terms, conditions, restrictions, and reservations on disposals with information pertinent to a determination by the Secretary of the Army that such disposal is in the interest of national defense; specific recommendation for or against inclusion in the Defense Industrial Reserve (50 USC 451–455) if disposal is to be subject to recapture or future production rights. (Full justification is required to recommend inclusion.)

B–12. Other factors affecting disposal (e.g., floodplains, wetlands, endangered species, restrictions on disposal, and known encumbrances).

B–13. Names of parties interested in acquiring the excess property; details on the extent of their interests and proposed use.

B–14. Name and phone number of point of contact on the action.

Appendix C Authorities for Disposal of Real Property

The authority to dispose of United States real property is vested in the Congress (United States Constitution, Article IV, Section 3, Para 2). The principal law authorizing the disposal of Federal real estate is the Federal Property and Administrative Services Act of 1949, as amended (40 USC 471 et seq.), hereinafter called the Federal Property Act. This act provides that each Federal agency report real estate that is excess to its requirements to the GSA. GSA then determines if the available property can meet an unfulfilled requirement of any other Federal agency. If not, GSA supervises and directs the disposal of the surplus property. All disposals of real estate will be made under the authority of the Federal Property Act and implementing regulations issued by GSA called Federal Property Management Regulations (FPMR) at 41 CFR 101, unless otherwise authorized by acts of Congress. Where other legislation authorizes disposal, the procedures of the GSA implementing regulations may nevertheless be helpful as nonbinding guidelines in processing the disposal. In addition to the Federal Property Act, the principal acts of Congress authorizing the Secretary of the Army to dispose of real estate are as follows:

C–1. Interchange between military department (10 USC 2571)

Authorizes interchange of real estate without compensation between the Army, Air Force, Navy, and Coast Guard. (At the direction of the Deputy Secretary of Defense, this authority is not used except for property actively used by another military department. The military departments must normally acquire such property through GSA and pay fair-market value, unless the department has been using the property under a permit.)

C–2. Exchange 10 USC 2672

Authorizes exchange of Government-owned land valued at less than \$100,000 for other lands for national defense purposes.

C–3. Exchange 10 USC 2672a

Authorizes exchange of Government-owned land for other land for national defense purposes, to maintain the operational integrity of a military installation and under conditions of urgency that do not permit the delay needed to include the exchange in an annual MCA act.

C–4. Federal highway transfers (23 USC 317)

Authorizes transfer without charge and under certain conditions of land or material resources for the construction or maintenance of Federal highways from adjacent lands to the Department of Transportation.

C–5. Interchange national forest (16 USC 505a)

Authorizes interchange without reimbursement or transfer of funds of DA-controlled real estate and adjacent national forest lands under certain conditions.

C-6. Airport and airway development (49 USC 1723)

Authorizes conveyance of lands to a public agency without any expense to the United States under certain conditions, including retention of reversionary rights in the United States, when the Secretary of Transportation determines the use of the land is reasonably necessary to carry out a project under this act. GSA has limited DA authority to operate under this act (FPMR 101-47.308.2) for transferring nonexcess land for airport development purposes, providing that such real property does not constitute an entire airport.

C-7. International aviation facilities (49 USC 1157)

Authorizes transfer, without charge, of airport and airway property outside the continental United States (OCONUS) (excluding meteorological facilities) to the Department of Transportation under certain conditions. Authorizes transfer without charge of OCONUS meteorological facilities to the Secretary of Commerce under certain conditions.

C-8. Exchanges for housing development (42 USC 1594a)

Authorizes exchange of land or (with approval of the Secretary of Housing and Urban Development) certain types of housing when the Secretary of Defense or designee deems it necessary for housing military personnel.

C-9. Transfers to District of Columbia (40 USC 122)

Authorizes transfer of jurisdiction over property interests to the District of Columbia for purposes of administration and maintenance under certain conditions.

C-10. Federal prison industry transfers (18 USC 4122d)

Authorizes transfer without exchange of funds of any property suitable for industrial employment and training of prisoners (convicted by general courts-martial and confined in DOD institutions) to the Federal Prison Industries.

Appendix D Decontamination of Real Property

D-1. General

See paragraph 2-2 for general instructions.

D-2. Preliminary determination

Before recommending that property be excessed, the installation commander will determine whether it may contain explosives or unexploded ordnance, or may contain toxic-chemical or other hazardous substances. Determination should be based on land use history, visual inspection, records surveys, and other available information.

D-3. Recommendation to excess

a. To the extent practicable, the installation commander should include the following information in the recommendation to excess:

- (1) Nature and extent of actual or suspected contamination.
- (2) Map showing location of contaminated lands (showing acreages) and of improvements (with contamination and decontamination records attached for each).
- (3) Copies of records on closed hazardous waste facilities and sites and structures that may be contaminated with radioactive waste.
- (4) Description of terrain, indicating wetlands, forest and other areas.
- (5) Proposed method of decontamination, if any, estimated time and cost, and extent property can be used without further decontamination. MACOMs will secure necessary expertise to make these determinations.

(6) Summary of economic analysis performed in accordance with paragraph 2-2d.

b. District commanders will furnish land value estimates on request.

D-4. Disposal guidance

Current Federal law does not permit DA to transfer to another party all liability for contamination caused by DA, but liability may be shared with another party if properly planned disposals for sharing of liability can properly protect DA. In developing plans for disposal of contaminated property, obtain legal advice on the current state of the law to structure the disposal properly.

a. No decontamination. GSA may arrange to sell contaminated industrial plants to a purchaser whose operations will be similar and will be conducted in accordance with applicable regulation or who agrees to perform the necessary decontamination. USATHAMA, through AMC, will also review disposal plans and the completed program for adequacy of decontamination. The district or division commander will advise COE of final disposal action for inclusion in the DAEN-ZCE inventory of previously owned contaminated properties.

b. For restricted use. The accountable MACOM will proceed with decontamination. The MACOM will request DDESB, through COE and OASA, to review Statements of Clearance for property contaminated with explosives and request USATHAMA, through AMC, to monitor or perform any decontamination work and inspect for adequacy on completion for toxic-chemical and other hazardous substances. Disposal may proceed under the same circumstances as under a above.

c. For unrestricted use. The MACOM will ensure the property is decontaminated when all necessary clearances have been obtained for excess property. For explosives contamination, the MACOM will ensure that the property is rendered innocuous (see para 2-2a) and request through channels DDESB to review Statements of Clearance. The MACOM will request USATHAMA, through AMC, to assure that other contaminants are controlled or eliminated. (See para 2-2b.)

D-5. After decontamination work

a. The using command will furnish the district commander—

(1) A Polychlorinated Biphenyls Certificate in compliance with 40 CFR 761, executed by the installation commander or a MACOM designee.

(2) Certification that any asbestos contamination has been cleaned up, removed, or covered.

(3) A Statement of Clearance, where explosives or unexploded ordnance have been cleared or cleared to a specified depth. (See fig D-1.)

b. In the case of nonexplosive contamination, USATHAMA will advise the district commander through AMC and the affected MACOM—

(1) Of studies or investigations (records, searches, surveys) conducted, including date completed.

(2) Of the nature and extent of decontamination performed or the conditions under which protection, dismantling, or disposal may occur for buildings to be occupied or disposed of by the transferees.

(3) Of the nature and extent of remaining contamination (referring to map) in accordance with current health, safety, and environmental standards. All inherent hazards must be identified.

(4) Of the affected locations, providing a real estate map depicting contaminated, cleared, and restricted areas, and identifying restricted property by tracts and building numbers.

STATEMENT OF CLEARANCE

(date)

All lands within the **(installation)**, located approximately **(miles)** **(direction)** of **(town)** have been given a careful search **(or other method)** and have been cleared of all dangerous and/or explosive material reasonably possible to detect. The following contamination is suspected to be present: It is recommended that tracts **(designated)** and, as shown on the enclosed real estate map, be restricted to **(surface use only or maximum safe depth of soil disturbance)**. All other tracts are recommended for any use for which the land is suited. This action has been conducted in accordance with AR

Approved: _____
**(Installation Commander or
MACOM designee)**

Signed _____
**(Commander of Performing
Unit)**

Figure D-1. Format for a Statement of Clearance

(5) Of its recommendation as to whether the property may be used for any purpose for which it is suited.

c. Other parties, through using command or USATHAMA through AMC, will also furnish the district commander any supplemental records of work performed, methods used, quantity and type of materials removed, names of technicians, and any other matter that may pertain to a defense of a suit or a claim that might arise during future use.

d. When the decontamination record is complete and properly coordinated, the district commander will proceed with disposal. When requested by the disposal agency, HQDA(DAEN-REM) will obtain an independent third party review of the Statement of Clearance or decontamination report. The report of excess to GSA must identify any and all inherent hazards and must require entry into land records of the nature and extent of original contamination as well as decontamination methods used.

e. Division or district commanders will ensure that the nature and extent of original contamination, decontamination methods used, and use restrictions are entered into the permanent land records of the civil jurisdictions in which the property is located.

D-6. Property retained by DA

When DA retains property pursuant to an economic analysis, USATHAMA or DDESB will determine unique requirements for upkeep and security to minimize public hazard. Contaminated locations will be posted with permanent signs prohibiting entrance of unauthorized personnel. Signs will be multilingual, where appropriate. The officer having jurisdiction over the property will periodically ensure adherence to retention requirements.

D-7. Contamination discovered after disposal

See paragraph 2-2f. The district commander will examine real estate records including historical records for information on decontamination and assist in determining whether contamination is the result of DA's former use.

Appendix E Attachment for Notice of Intention to Relinquish

E-1. Name and address of the holding agency.

E-2. Citation of the order which withdrew or reserved the lands for the holding agency.

E-3. Legal description and acreage of the lands, except where

reference to the order of withdrawal or reservation is sufficient to identify them.

E-4. Description of the improvements existing on the lands.

E-5. The extent to which the lands are contaminated and the nature of the contamination.

E-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.

E-7. The extent to which the lands have been changed in character other than by construction of improvements.

E-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.

E-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.

E-10. A description of the easements or other rights and privileges that the holding agency or its predecessors have granted covering the lands.

E-11. A list of the terms and conditions, if any, that the holding agency deems necessary to be incorporated in any further disposition of the lands in order to protect the public interest.

E-12. Army information relating to the interest of other agencies or individuals in acquiring use of or title to the property or any portion of it.

E-13. Recommendations as to the further disposition of the lands, including where appropriate, disposition by then General Services Administration.

Glossary

Section I Abbreviations

AMC

U.S. Army Materiel Command

ASA (I&L)

Assistant Secretary of the Army (Installations and Logistics)

ASC

Armed Services Committee

ASD (MI&L)

Assistant Secretary of Defense (Manpower, Installations, and Logistics)

BLM

Bureau of Land Management

COE

Chief of Engineers

DA

Department of the Army

DCSRDA

Deputy Chief of Staff for Research, Development, and Acquisition

DDESB

Department of Defense Explosives Safety Board

DOD

Department of Defense

DOI

Department of the Interior

EO

Executive Order

FLPMA

Federal Land Policy and Management Act

FPMR

Federal Property Management Regulations

GSA

General Services Administration

HQDA

Headquarters, Department of the Army

MACOM

major Army command

MCA

Military Construction Authorization

NGB

National Guard Bureau

NIR

Notice of Intention to Relinquish

OASA (I&L)

Office of the Assistant Secretary of the Army (Installations and Logistics)

OCONUS

outside continental United States

PCB

Polychlorinated Biphenyls

USATHAMA

U.S. Army Toxic and Hazardous Materials Agency

Section II Terms

Abandon

To surrender property rights permanently with no intention of reclaiming them. Mere nonuse is not necessarily abandonment.

Active installation

A facility in use by active organizations.

Contamination

Presence of conventional unexploded ordnance; presence of biological, radioactive, toxic-chemical, or hazardous substances (as defined in the Comprehensive Environmental Response Compensation and Liability Act of 1980) at levels that may present a public hazard or exceed applicable regulatory standards.

Disposal

Any authorized method of permanently divesting DA of control of and responsibility for real estate.

District and division commanders

Heads of local and intermediate Army Corps of Engineers offices, respectively.

Excess real estate

Any real property under the control of any Federal agency that is not needed for the discharge of agency responsibilities.

Excessing

(Noun) The process of determining that real estate is not needed by the Army. (Verb) Reporting excess property to the disposal agency for disposal.

Federal Property Act

Law that controls management and disposal of most federally controlled real estate.

Fee owned

Real property for which the United States has all right, title, and interest rather than a partial interest.

Fixture

Personal property that is so related to real property that a real property interest arises in it (e.g., installed furnace). Not building materials.

Foreign excess real estate

Any excess real property interest located outside the United States, Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. Real property overseas may not include timber, installed building equipment, and so forth. Check the applicable regulation for the definition of real estate under applicable law at each location (see USARJ 405-1 for Japan, USFK 405-7 for Korea, USAREUR 405-8 for Europe).

Hazardous materials

See contamination.

Holding agency

The Federal agency with accountability for the property.

Improvements

An addition to land amounting to more than repair or replacement and costing labor or capital (e.g., buildings, pavements, pipelines, and other structures more or less permanently attached to the land).

Industrial installation

Industrial facility held by DA in active or inactive status as a reasonable reserve of departmental controlled production capacity and potential. Installations retained and used in their entirety or in part or maintained in idle status for production of military weapons, systems, munitions, components, and supplies.

Ingrants

Property acquired for Army use by lease, license, or permit.

Installation commander

Senior officer responsible for an installation.

Installed building equipment

Equipment and furnishings required to make the facility usable and attached as a permanent part of the structure.

Nonexcess property

Property required for an Army mission but proposed for sale to obtain proceeds in an amount sufficient to fund acquisition of replacement land or facilities.

Nonusable condition

Used to describe a facility as unserviceable, because it has deteriorated to the extent that it needs extensive restoration or it is a danger to the health and safety of personnel or to equipment.

Personal property

Any property not considered real property.

Public domain

Land or interest in land owned by the United States and administered by the Secretary of the Interior, through the Bureau of Land Management, without regard to how the United States acquired ownership, except lands located in the Outer Continental Shelf

and lands held for the benefit of Indians, Aleuts, and Eskimos.

Real estate

Real property owned by the United States and under the control of the Army. It includes the land, right, title, and interest therein and improvements thereon. The land includes minerals in their natural state and standing timber; when severed from the land, these become personal property. GSA has excepted growing crops from the definition of real estate when the disposal agency designates such crops for disposal by severance and removal from the land. Rights and interest include leaseholds, easements, rights-of-way, water rights, air rights, and rights to lateral and subjacent support. Installed building equipment is considered real estate until severed. Equipment in place is considered personal property.

Real property

See real estate.

Reassignment

Change of jurisdiction over real estate from one command or agency to another within DA.

Related personal property

Any personal property that 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 which, if removed, would significantly diminish the economic value of the real property. Normally, common use items (including general purpose furniture, utensils, office machines, office supplies, or general purpose vehicles) are not considered to be related personal property that the GSA Administrator determines to be related to the real property.

Relocatable building

A building designed for the purpose of being readily moved, erected, disassembled, stored, and reused (e.g. trailer type building but not mobile trailer). Usually considered personal property but in certain instances is on the real property account.

Reserved public lands

See withdrawn public lands.

Screening

Circulating a notice of real property to determine whether it is required by another organization.

Security interest

An interest in personal property or fixtures which someone obtains to ensure payment owed or performance of an obligation.

Surplus real estate

Any excess real property not required for the needs and discharge of the responsibilities of all Federal agencies, as determined by the GSA Administrator.

Transfer

Change of jurisdiction over real property from one Federal agency or department to another, including military departments and defense agencies.

Vacated premises

Property from which all military personnel and missions have been vacated.

Withdrawn public lands

Public domain held back for the use or benefit of an agency by reservation, withdrawal, or other restriction for a special governmental purpose.

There are no special terms.

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