



OCT 16 1998

GSA Public Building Service

MEMORANDUM FOR REGIONAL DIRECTORS - 1PR, 4PR, 7PR, 9PR

FROM:

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DIRECTOR
REDEPLOYMENT SERVICES DIVISION

SUBJECT:

Restrictive Covenants on Non-excess Property

This memorandum clarifies the General Services Administration's (GSA) policy regarding restrictive covenants on real property by landholding agencies.

This issue has caused confusion and has created obstacles to the efficient and effective disposal of excess and surplus real property. Therefore it is essential that this issue be clarified and a consistent approach taken to these actions. This letter applies to GSA regional officials involved in the disposal of Federal real property and to all landholding executive agencies. This memorandum is effective immediately.

Recently, GSA has been approached by several military services requesting assistance with State environmental regulators. In the course of continuing military operations at specific installations, the Department of Defense (DOD) has been required to perform certain environmental remediation. These remediation actions require the final approval of the State regulators. In some states, the State regulators have demanded that DOD place use restrictions or other covenants on the property. These restrictions are intended to run with the land and restrict future owners of the property to specific uses. At this time, the installations in question are in continual use and are not being evaluated as potentially excess property.

At the same time, GSA is aware that other agencies have agreed to restrictive covenants on property in their inventory. These include historic preservation restrictions which have been agreed to by the landholding agency during negotiation of the National Environmental Policy Act (NEPA) or National Historic Preservation Act (NHPA) as these acts apply to the decision to excess the property.

GSA does not believe landholding agencies have the authority to place such restrictions on property in their inventory. GSA views such restrictive covenants as disposals of real property. Under the Federal Property and Administrative Services Act of 1949, as amended (Property Act) GSA was given the exclusive authority to manage the utilization and disposal of real property (40 U.S.C. §§ 471, et seq). The Property Act defines "property" to include "any interest in

property" (40 U.S.C. § 472(d)). GSA's regulations (41 C.F.R. §101-47.103-12(a)) define "real property" to include "any interest in land". Therefore, unless the landholding agency has specific authority to dispose of such property rights, the landholding agency must request GSA to dispose of these real property rights or request a delegation of disposal authority from GSA.

Generally, covenants restricting the future use of property are evaluated during the disposal process carried out by GSA. Therefore, where property is expected to be reported excess, GSA will usually deny the request from the landholding agency and evaluate any necessary restrictions during the disposal process. If there are special circumstances that demand agreement on use restrictions prior to being evaluated in the disposal process, GSA will review the request on a case-by-case basis. GSA's evaluation will consider the impact any restrictions may have on the future disposition of the property, the ability to use the property for its highest and best use (as determined by GSA), the economic impact of the requested restrictions, the legal requirement to place such a restriction on the property, and/or the enforceability of the requested restriction.

GSA is particularly concerned about requests to restrict the future use of property when the landholding agency does not contemplate declaring the property excess in the near future. GSA is doubtful as to the necessity, desirability or legal enforceability of placing restrictions on property that will remain in the Government's inventory. Questions as to how such restrictions will be enforced, and by whom, while the property is still an active Government facility are raised by these requests. Further, it would be difficult, if not impossible, for GSA to accurately determine the impact such restrictions may have on the future disposal of the property when immediate disposal of the property is not being contemplated. Therefore, GSA will deny all requests for land use restrictions on fully utilized property unless the requesting landholding agency can demonstrate the unique and extreme circumstances which would overcome GSA's objections to the placing of such restrictions on the property.