

## DEPARTMENT OF THE ARMY

EASEMENT FOR ELECTRICAL DISTRIBUTION RIGHT-OF-WAY  
AND TRANSFER OF OWNERSHIP OF ELECTRICAL DISTRIBUTION SYSTEM

LOCATED ON

Ft. McClellan and Pelham RangeCalhoun County, Alabama

September 20, 1999

**THE SECRETARY OF THE ARMY**, hereinafter referred to as the "Secretary" under and by virtue of the authority vested in the Secretary by 10 United States Code, Section 2668, having found that the granting of this easement will be in the public interest and will not substantially injure the interests of the United States, hereby grants to, Alabama Power Company, a corporation, hereinafter referred to as the "grantee", an easement for constructing, operating, maintaining, repairing and replacing an electrical distribution system, over, across, in and upon lands of the United States at Ft. McClellan and Pelham Range in Calhoun County, Alabama as shown on line drawings on Exhibits 1 through 14, which are attached hereto and made a part hereof, and which lands are hereinafter referred to as the "Premises", and further remises, releases, and forever quitclaims to the grantee all rights, title and interests of the United States in the Electrical Distribution System, hereinafter referred to as the "System", including overhead and underground electrical lines, transformers, poles, and substation facilities, as better set out on Exhibit 15, attached hereto and made a part hereof. The easements, rights and privileges include the following:

a. Overhead and/or Underground Distribution Facilities. The right from time to time to construct, install, operate and maintain, upon, over, under and across the Premises described in Exhibits 1 through 14, in an area five feet on either side of a center line, said center line being the lines shown on Exhibits 1 through 14, all poles, towers, wires, conduits, fiber optics, cables, trans closures, transformers, anchors of concrete, metal or other material, guy wires and other materials, appliances, facilities and other apparatuses of whatever type, whether now or in the future existing or known which are useful or necessary in connection therewith, and which are hereinafter referred to as the "Facilities" for the overhead and/or underground transmission and distribution of electric power and for the overhead and/or underground communication service, and also the right to clear a strip extending fifteen feet (15') to either side of the center line of the lines of poles and keep it cleared of all trees, undergrowth, or other obstructions; further, the right to trim and cut and keep trimmed and cut all dead, weak, leaning or dangerous trees or limbs outside of the thirty foot (30') strip which, in the sole opinion of the grantee, might endanger, interfere with or fall upon the poles, lines, or other appliances of the grantee.

b. Substation. The right to install, operate and maintain an electric distribution substation, described in Exhibit 2A, attached hereto and made a part hereof, and all related facilities thereto, including the right to fence said substation and control access to said facilities.

THIS EASEMENT is granted subject to the following conditions:

**1. TERM**

This easement hereby granted is perpetual and begins on September 21, 1999, at 8:00 a.m. CDT, which is the effective date of this agreement.

**2. CONSIDERATION**

As consideration for the System and easement conveyed herein, the grantee shall pay the United States the amount of \$383,852.50, less all amounts previously paid to or deposited with the grantor in connection with the System, install 139 meters, and operate and maintain these Facilities for the benefit of the United States in accordance with the terms herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to Alabama Power Company, 600 North 18<sup>th</sup> Street, Birmingham, Alabama 35203, Attention: Vice President Corporate Real Estate, and a copy addressed to Alabama Power Company, 925 Quintard Avenue, Anniston, Alabama 36201, Attention: Vice President, Eastern Division and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, U.S. Army Engineer District, Mobile, P.O. Box 2288, Mobile, Alabama 36628-0001, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

**4. AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to grantee shall include successors, assignees and other transferees.

**5. SUPERVISION BY THE INSTALLATION COMMANDER**

The construction, operation, maintenance, repair or replacement of said Facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the Installation Commander, Ft. McClellan, or the officer of the U.S. Government having jurisdiction over any portion of the installation, hereinafter referred to as "said officer". Upon the completion of any of the above activities, the grantee shall immediately restore the Premises to the satisfaction of said officer. The use and occupation of the Premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

**6. APPLICABLE LAWS AND REGULATIONS**

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the Premises are located, including the Alabama Public Service Commission.

**7. CONDITION OF PREMISES**

The grantee acknowledges that it has inspected the Premises and the System, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

**8. INSPECTION AND REPAIR**

The grantee shall inspect the Facilities at reasonable intervals and timely repair any defects found by such inspection or when required by said officer to repair any such defects.

## **9. PROTECTION OF GOVERNMENT PROPERTY**

The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this easement and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

## **10. RIGHT TO ENTER**

The right is reserved to the United States, its officers, agents, and employees to enter upon the Premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to conduct environmental and ordnance and explosives (OE) response actions, and to remove timber or other material, except property of the grantee, and which does not unreasonably interfere with grantee's exercise of its rights with respect to the Premises and/or make any other use of the lands as may be necessary in connection with government purposes, and which does not unreasonably interfere with grantee's exercise of its rights with respect to the Premises, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

## **11. TRANSFERS AND ASSIGNMENTS**

Without prior written approval by said District Engineer, the grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement except for any such interest, privilege or license to any party providing communications or television service to the property served by the Facilities. The foregoing prohibition shall not apply to any transfer, assignment or grant to any entity acquiring the Facilities in connection with the acquisition of other electric power distribution systems from the grantee. Subject to Section 24 below, the provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of the grantor and grantee.

## **12. INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the grantee's officers, agents, or employees or others who may be on the Premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages or injuries due to the fault or negligence of the United States or its contractors.

## **13. SUBJECT TO EASEMENTS**

This easement is subject to all other existing easements described on Exhibit 16, attached hereto and made a part hereof, or those subsequently granted for established lines and access routes for roadways and utilities now located on the Premises. Any new easement or route will be coordinated with the grantee, and easements will not be granted which will interfere with the use of the Premises by the grantee.

## **14. REQUIRED SERVICES**

The grantee shall furnish through said Facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the grantee for similar service.

## 15. RELOCATION OF FACILITIES

In the event all or any portion of the Premises occupied by the said Facilities shall be needed by the United States, or in the event the existence of said Facilities is determined to be detrimental to U.S. Governmental activities, the grantee shall from time to time, upon notice from the United States to do so, and as often as so notified, remove said Facilities at the U.S. Government's expense (with the cost to be agreed upon) to such other location on Ft. McClellan or Pelham Range property, as applicable, as owned by the U.S. Government and as may be designated by said officer. In the event said Facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at its sole expense.

## 16. TERMINATION

This easement may be terminated by the Secretary upon the failure of the grantee to comply with any or all of the conditions of this easement, in any material respect within two (2) years after receipt of written notice from the United States describing in reasonable detail such failure or failures or for abandonment by the grantee.

## 17. SOIL AND WATER CONSERVATION

The grantee shall not interfere with any soil and water conservation structures that may be in existence upon said Premises at the beginning of the term of this easement and shall maintain in accordance with sound engineering standards any of the same that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted in a manner satisfactory to said officer. Any soil erosion occurring outside the Premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

## 18. ENVIRONMENTAL PROTECTION

a. The grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The storage, treatment, or disposal of any toxic or hazardous materials on Department of Defense properties, hereinafter referred to as "DoD properties", is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the Premises shall be in conformance with all applicable Federal, state and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to DoD properties.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee's activities, the grantee shall be liable to restore the damaged resources.

d. The grantee agrees to comply with the provisions of any health or safety plan in effect under the Installation Restoration Program (IRP) during the course of any of the above described response or remedial actions. The Army will use its best efforts to minimize operational disruptions to grantee.

e. The grantee shall provide to the Army an approved plan for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the Easement.

f. The grantee shall not conduct any subsurface excavation, digging, drilling, or other disturbance of the surface of DoD properties within environmental remediation sites (Installation Restoration Sites) as identified in the Environmental Baseline Survey without the prior written approval of the Army. As the Army's environmental response actions continue and sites are completed, this Easement restriction may be removed by the Army or other appropriate authority.

## **19. ENVIRONMENTAL BASELINE DOCUMENTATION**

a. Substation. A Substation Environmental Baseline Study (EBL) documenting present environmental condition of the portion of the Premises upon which the electric power substation is located is attached hereto, and made a part hereof, as Exhibit 17. Upon termination of the easement granted hereby, a subsequent Environmental Baseline Survey shall be prepared at the option and expense of the grantor, which subsequent Environmental Baseline Survey shall be prepared utilizing substantially the same assessment activities as were performed on the substation property in connection with the preparation of the EBL attached hereto as Exhibit 17. In the event the subsequent Environmental Baseline Survey shall reveal any environmental condition requiring remediation or restoration pursuant to any applicable federal, state or local law which was caused by the activities of the grantee (or its transferee or assignee), then the grantee (or its transferee or assignee) shall be responsible for promptly performing the required remediation or restoration. With respect to the remainder of the Premises, the grantee (or its transferee or assignee) shall be responsible for promptly performing any remediation or restoration required pursuant to any federal, state or local law required as a result of the activities of the grantee (or its transferee or assignee).

b. A description of current and past uses for the installation and facilities is contained in the Environmental Baseline Survey and subsequent Base Closure and Realignment Environmental Studies. The environmental impacts associated with the disposal and reuse of the Property have been analyzed in accordance with the National Environmental Policy Act. The Record of Decision (ROD) was signed June 25, 1999. The Environmental Baseline Survey and other environmental documents, including the Final Environmental Impact Statement (FEIS) and ROD, can be examined at the Anniston Calhoun County Library in the Alabama Room, 108 E. 10<sup>th</sup> Street, Anniston, Alabama 36201 and the Houston Cole Library on the 9<sup>th</sup> Floor, Jacksonville State University, 700 Pelham Road, Jacksonville, Alabama 36265.

## **20. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or, to the extent of its legal authority, permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Premises, the grantee shall immediately notify the State Historic Preservation Officer (SHPO) and, to the extent of its authority, protect the site and material from further disturbance until the SHPO gives clearance to proceed. Significant changes to the electric system that affect the integrity of the historic districts requires consultation with the SHPO. Historic districts are shown on the map at Exhibit 18, attached hereto and made a part hereof.

## **21. NON-DISCRIMINATION**

The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the Premises.

## **22. RESTORATION**

On or before the expiration or termination of this easement, the grantee shall, without expense to the United States, and within such reasonable time as said officer may indicate, in writing, remove said Facilities and restore the Premises to its condition prior to such removal and backfill any holes or ruts resulting from such removal. In the event the grantee shall fail to remove said Facilities and restore the Premises, the United States shall have the option to take over said Facilities without compensation, or to remove said Facilities and perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

## **23. DISCLAIMER**

This instrument is effective only insofar as the rights of the United States in the Premises are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30

Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the Premises.

#### **24. NON-TRANSFERRABLE RIGHTS**

Conditions 3, 4, 5, 8, 9, 10, 11, 12, 14, 15, 16, 17, 22, and 27 are non-transferable rights of the Grantor. In the event of disposal of the United States' underlying fee, these rights and conditions will not transfer with the land and will thereupon terminate.

#### **25. NOTICE OF THE POTENTIAL FOR THE PRESENCE OF ORDNANCE AND EXPLOSIVES**

a. Historical information indicates the presence of Ordnance and Explosives (OE) at Fort McClellan. There is a potential for OE to be present within or in the vicinity of the areas of the granted easements as shown on maps at Exhibit 18, attached hereto and made a part hereof, which may pose an explosives safety hazard. Before entering potential Unexploded Ordnance and Explosives (UXO) areas, the grantee will coordinate access with Fort McClellan Environmental Office. Access requests are to be submitted a minimum of 10 working days prior to the proposed date of entry. The request will include dates of proposed entry and location and scope of any planned work to include depths of any excavation. Access approval will set forth the conditions and requirements that must be met before work may commence within the requested location and may require a UXO Specialist be present so ordnance avoidance procedures can be conducted. When extensive intrusive activities are planned, an OE clearance to support construction activities may be required. In these instances or when hazardous activities are being conducted in the vicinity of the requested access location, access may be delayed until these activities are completed. The grantor, the Army, will provide a UXO Specialist to support the grantee, Alabama Power Co., during intrusive activities at no cost prior to transfer of underlying fee. The Fort McClellan Environmental Office at (256) 848-7455/6853 will make arrangements for UXO Specialist support as required.

b. In the event an emergency repair is required within a UXO area, contact the Fort McClellan Environmental Office (256) 848-7455/6853 or the U.S. Army Engineering and Support Center Huntsville (USAESCH) Safety Office, (256) 895-1589, immediately.

c. In the event that a UXO Specialist is not present when a suspected OE item is found, grantee shall notify Fort McClellan Range Control, (256) 848-4623/6799, who will notify the nearest military Explosives Ordnance Disposal (EOD) unit. After Sep 99, notification shall be made to the Calhoun County Sheriff's Department or other local law enforcement personnel who will notify the nearest EOD unit. The USAESCH Safety Office, (256) 895-1589, shall also be notified when any suspected OE item is found.

d. All supervisors and field personnel who will be entering sites with potential UXO areas (Exhibit 18) will be required to receive an OE recognition and safety briefing. These briefings will be conducted by a qualified OE personnel provided by the Army. Briefing will be held in Anniston.

e. As the Army's OE removal actions continue and sites are completed, this easement restriction may be removed by the Army or other appropriate authority.

#### **26. NOTICE OF EXISTENCE OF GRAY BAT HABITAT**

Gray bats (*Myotis grisescens*) are known to forage near Cane Creek, South Branch, Remount Creek, Ingram Creek and Twin Mountains Creek with high or moderate quality foraging habitat on this parcel, as shown at Exhibit 18, attached hereto and made a part hereof, and are known to roost in caves and under bridges in the vicinity. This parcel has been identified as suitable gray bat foraging habitat. Gray bats are listed as endangered by the U.S. Fish and Wildlife Service (FWS) and are afforded federal protection under the Endangered Species Act (ESA) of 1973, as amended. Section 9 of the ESA prohibits private landowners from "taking" (harm, harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) endangered species.

The following measures will limit potential take of gray bats on this parcel. Failure to follow these measures could subject the violator to criminal sanctions of the ESA.

a. Gray bats are known to use man-made structures in the vicinity of this parcel. Prior to removing or altering the structure of a bridge, abandoned building, or cistern, the structure should be checked for the presence of gray bats. The FWS will be contacted if bats are found to be present.

b. Trees along these streams provide protective cover and prey for foraging gray bats. Forest within 50 feet of these streams should not be removed. If removal of dead or live trees within 50 feet of these streams is necessary, the FWS should be consulted prior to cutting.

c. Gray bats primarily feed on insects with an aquatic life state; therefore, water quality and the physical characteristics of streams affect the amount and types of insects available for these bats. State and federal regulations pertaining to water quality and erosion control should be followed. Additionally, modification of stream banks and water flow should be avoided to maintain present water quality and physical structure.

d. Use of pesticides, particularly malathion, should be managed according to a FWS consultation letter dated June 11, 1998. The grantee should avoid (or eliminate or minimize) fogging in the vicinity of all high to moderate quality foraging habitat. FWS requested that if malathion is used it should be sprayed only during daylight hours no earlier than one hour after sunrise and no later than one hour prior to sunset between March 15 and October 31. Use atmospheric conditions to determine appropriate timing for fogging on lands directly adjacent to foraging areas.

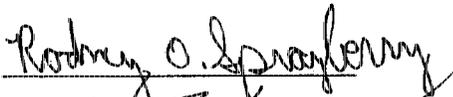
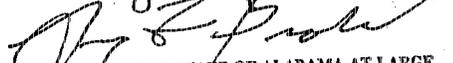
**27. AIRCRAFT OBSTRUCTION POWER LINE MARKERS.**

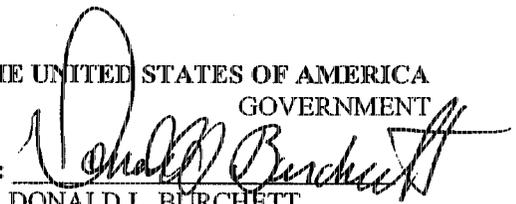
All orange Aircraft Obstruction Power Line Markers shall remain in place, but grantee shall have no obligation to maintain, repair or replace such markers, but agrees that it will replace such markers if replacement markers are provided by the United States.

THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this 20<sup>th</sup> day of September, 1999.

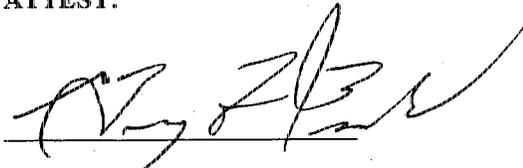
WITNESS:

  
  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: Aug. 16, 2000.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

THE UNITED STATES OF AMERICA  
GOVERNMENT  
by:   
DONALD L. BURCHETT  
Chief, Real Estate Division  
Mobile District  
U.S. Army Corps of Engineers

THIS EASEMENT is also executed by the grantee this 20<sup>th</sup> day of September, 1999.

ATTEST:

  
NOTARY PUBLIC STATE OF ALABAMA AT LARGE.  
MY COMMISSION EXPIRES: Aug. 16, 2000.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS.

ALABAMA POWER COMPANY  
GRANTEE  
by: 

**REQUEST FOR APPROVAL OF  
DISPOSAL OF BUILDINGS AND IMPROVEMENTS**

*For use of this form, see AR 405-90; the proponent agency is Office of the Chief of Engineers.*

DATE

26 January 1999

NAME OF INSTALLATION

LOCATION

ACCOUNTABLE OFFICER

Fort McClellan, Alabama

Calhoun County

Rose R. Prater

POST NO.	DESIGNATION AND DESCRIPTION <i>(Include information on installed property to be removed prior to disposal)</i>	TYPE OF CONSTRUCTION*	ORIGINAL COST & YEAR BUILT <i>(Estimate if not known)</i>
<u>ELECTRICAL DISTRIBUTION</u>			
01102	Category Code 81241, Fac Number OELEC (Overhead Electric), 857,691 LF  (Primary and secondary services to include meters.)	P	\$8,142,200. 1917
01102	Category Code 81242, Fac Number UELEC (Underground Electric), 108,888 LF	P	\$1,185,000. 1977
01102	Category Code 81230, Facility Number LIGHT (Exterior Lighting), 777,683 LF	P	\$2,207,000. 1941
01102	Category Code 81360, Facility Number TRANS (Transformers), 737 each (168 pad mounted and 569 pole mounted single-phase transformers)	P	\$1,385,100. 1987
01102	Category Code 89113, Building Number 01029 (Sub/Switch Station Bldg), 106 SF, reinforced concrete foundation, block walls with built-up gravel roof.	P	\$500. 1954
01102	Category Code 81320, Facility Number 01030 (Substation), 14,000 KV	P	\$151,700. 1954
<b>TOTAL COST</b>			<b>\$13,071,500.</b>

CONTINUE ON ADDITIONAL SHEETS IF NECESSARY

\* P - Permanent

S - Semi-permanent

T - Temporary (See AR 420-70)

**DA FORM 337**  
1 MAY 88

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.

REMARKS (Include conditions prompting disposal, and indicate whether land on which property is located is leased or government-owned)

These facilities and building are located on Government-owned land.

None of these facilities are considered historically significant.

Fort McClellan is scheduled for closure 30 Sep 1999 due to BRAC. Preparation of this DA Form 337 is required to initiate the disposal of utility systems.

Report of Excess was prepared 19 Jul 1995 and the Notice of Availability of Surplus Land and Buildings located at Fort McClellan, AL was published in the Federal Register on 22 August 1996. The Notice of Availability stated that "Infrastructure includes roads, storm water, and utility systems. Utility systems available include electric, gas, water, sewer, telephone and central heating/cooling plants.

Property and facilities are anticipated to be in the possession of the new owner to begin operation by 17 Sep 1999.

These utilities are located on Fort McClellan main post and Pelham Range.

THE ESTIMATED TOTAL SALE VALUE OF THE PROPERTY <input checked="" type="checkbox"/> IS <input type="checkbox"/> IS NOT IN EXCESS OF <del>500,000</del> \$100,000.	SIGNATURE OF ESTIMATOR <i>Rose R. Prater</i> ROSE R. PRATER, Realty Specialist
TYPED NAME, GRADE, AND ORGANIZATION OF FINAL APPROVING AUTHORITY PAUL N. DUNN, COL, GS, TRADOC ENGINEER	SIGNATURE <i>Paul N. Dunn</i>
FINAL DISPOSITION OF PROPERTY	