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Introduction into the circulation of unused defense and security lands of the Far Eastern Federal District

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Abstract. The article sets forth material that relates to the current state and prospects of introducing into circulation unused defense and security lands in the Far Eastern Federal District of Russia. The article shows which factors are constraining and which are stimulating such development, as well as the degree of influence of each group of factors on the identification, assessment and formation of a land plot, as well as recommendations for their civilian use in the Russian Far East. In the process, a number of major problems were identified related to the management of land owned by the Russian Ministry of Defense, in particular in the subjects of the Far Eastern Federal District. The practical significance is that the results of the study can be useful when working with unused defense and security lands not only in the Far Eastern region, but throughout the Russian Federation.

1. Introduction

In recent years, in the Russian Federation in connection with the development of market management, mortgage lending and housing construction, the turnover of land plots has intensified. The growth in the number of transactions with real estate, the expansion of economic freedom of business entities did not always occur in compliance with legal requirements. The unresolved issues of differentiating land ownership and the misinterpretation of certain parts of Federal Law No. 137-FL of October 25, 2001 “On the Enactment of the Land Code of the Russian Federation” by local authorities led to the fact that land plots were unlawfully involved in civilian traffic from the composition of industrial and other special purpose lands, including defense and security lands. Violations of the law in distinguishing between land and property funds entailed unauthorized seizures of land, the elimination of many critical military infrastructure and theft of property and caused significant damage to Russia's defense and security.

In the course of the work, a number of major problems were identified related to the management of land owned by the Russian Ministry of Defense, in particular, in the subjects of the Far Eastern Federal District [1]. The research regions are Khabarovsk Territory, Amur Region, Jewish Autonomous Region, Primorsky Territory.

The presence of significant unused land area remains a significant obstacle for the Russian Federation complicating sustainable social and economic development, especially in the face of external restrictions and sanctions of the international community [2]. Issues related to the formation of effective mechanisms for involving unused lands in the economy were considered by many scientists and practitioners, among which we highlight the following: N.I. Kresnikova (2017), S.N.



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Volkov, S.A. Lipsky (2017), V.V. Alakoz, V.N. Khlystun (2016).

2. Materials and methods

When developing proposals for involving unused defense and security lands in the economy, an analysis was made of their identification and condition at the time of identification, and a methodology was proposed for introducing such lands into circulation and proposals for their intended use. The balance method was used on materials obtained from publicly available sources (reports, statistical material). As a result of the application of these methods, the main problems in the introduction of such lands in the regions of the Far Eastern Federal District were identified and suggestions were made for the development of their further use.

3. The study of the establishment and involvement in the economic turnover of unused lands of defense and security in the regions of the Far East

In the course of the work, a number of main problems were identified related to the management of land owned by the Russian Ministry of Defense, presented in the flowchart (Figure 1).

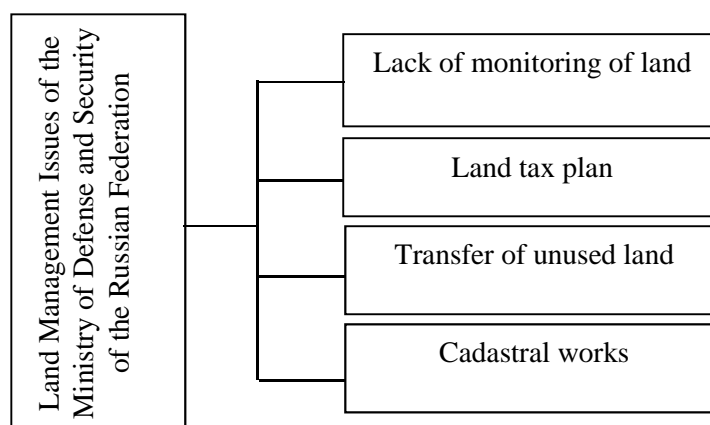


Figure 1. Problems associated with the management of land owned by the Russian Ministry of Defense

The lack of modern scientific research on defense and security lands, the constant updating of real estate legislation, the practical needs of the Armed Forces of the Russian Federation, military units, organizations and bodies ensuring the country's defense and security, the national significance of defense and security lands determine the relevance of the work presented [3].

In accordance with Decree of the Government of the Russian Federation dated December 29, 2008 No. 1053, the Ministry of Defense of Russia exercises functions of managing federal property under the authority of operational management or economic management of the federal state unitary enterprises and state institutions subordinate to the Ministry of Defense of Russia, as well as exercising the powers of the Minister of Defense of the Russian Federation in the management bodies of open joint stock companies with federal participation.

The Property Relations Department of the Ministry of Defense of Russia, in accordance with the Regulation approved by Order of the Minister of Defense of the Russian Federation of February 25, 2014 No. 110 (as amended by order of the Minister of Defense of the Russian Federation of November 24, 2015 No. 708), exercises the authority to manage property of Russian Defense Ministry [4].

In the Far Eastern Federal District, property management activities of the Ministry of Defense of Russia are carried out by an institution subordinate to the Department of Property Relations of the Ministry of Defense of Russia represented by the Federal State Treasury Institution "Far Eastern Territorial Administration of Property Relations" of the Ministry of Defense of Russia.

To understand the essence of the concept of “land of defense and security,” you need to understand that this category includes land plots provided to the relevant subjects of legal relations for the deployment and permanent activities of military units, institutions, military schools, enterprises and organizations of the Armed Forces of the Russian Federation, border and internal troops, military units and military formations.

Based on article 93 of the Land code of the Russian Federation, defense and security lands currently include lands that are used or reassigned to support the activities of the Armed Forces of the Russian Federation, other troops, military formations and bodies, organizations, enterprises, institutions that perform functions for the armed protection of the integrity and inviolability of the territory of the Russian Federation, the protection of the State border of the Russian Federation, information security, and other types of security in closed administrative-territorial entities, and the rights to which the participants of land relations have acquired on the basis of the Land Code of the Russian Federation and other Federal laws [5].

According to Article 27 of the Land Code of the Russian Federation, the land plots of the Ministry of Defense of Russia are withdrawn from circulation, which means that they can be exclusively owned by the Russian Federation and cannot be the subject of transactions related to the sale of real estate.

On the territory of the Far Eastern Federal District there is a predominant number of federal real estate objects and land plots owned by the Russian Ministry of Defense. The reason for this is the rapid reduction of military units throughout Russia. Moreover, the release of land occurs without reclamation and demolition / dismantling of unused buildings and structures. Ultimately, abandoned military camps are cluttered, and once functioning buildings turn into ruins.

In this regard, only a small part of the land is used for its intended purpose, namely for defense and security,. This situation is more related to the limited functionality of the use of land by the Armed forces of the Russian Federation [6].

Moreover, a significant part of these objects is unused and in unsatisfactory condition. Most of the real estate is a large area (over 20 hectares) of land with a low building density (former landfills, warehouses, bases) (Figure 2a).



Figure 2. a) Land of defense and security; b) The leased land plot located within the boundaries of the aerodrome of the Ministry of Defense of Russia

If there is no need to deploy troops on the territory subordinate to the Ministry of Defense of Russia, the land will be released. In this situation, the only possible option for using the released land is its transfer to the ownership of municipalities, the treasury of the Russian Federation, or other persons.

One of the problematic issues of the application of Article 39.6 of the Russian Land Code is the provision of land for rent to state institutions that are not under the jurisdiction of the Russian Ministry of Defense. For example, a number of airfields of the Armed Forces of the Russian Federation in the Far East, by law, belong to the group of jointly-based airfields, that is, land use of the airfield is carried out not only by the Russian Ministry of Defense, but also by other agencies, for example, the Ministry of Emergencies of Russia, the Federal Air Transport Agency, etc. [7].

The Federal Air Transport Agency is in charge of a number of state unitary enterprises, including the Federal State Unitary Enterprise State Corporation for the Organization of Air Traffic in the Russian Federation, which, as part of the implementation of federal targeted programs 2015-2020, is the responsible customer for the construction of federal transport facilities (objects of the navigation system, tracking system objects, reconstruction of runways). That is, for the implementation of the tasks facing this organization, a land plot should be allocated (Figure 2b).

Article 39.10 of the Land Code of the Russian Federation, which governs the provision of land plots on the right of gratuitous use, does not resolve the issue of providing land plots on this right to implement the goals of federal targeted programs.

Federal Law of October 6, 2003 “On General Principles of Local Self-Government” No. 131-FL stipulates that issues of local importance include issues relating directly to the provision (organization) of the life of the population of the corresponding municipality of a particular constituent entity of the Russian Federation, the solution of which according to the Constitution of the Russian Federation, implemented by local authorities both independently and by the population.

In this regard, the transfer of real estate and land to the ownership of the constituent entities of the Russian Federation and municipalities is actively ongoing on the basis of the Federal Law of 08.12.2011. No. 423-FL “On the procedure for the gratuitous transfer of military real property to the ownership of constituent entities of the Russian Federation, municipal property and on amendments to certain legislative acts of the Russian Federation” (hereinafter - the Law No. 423-FL), in accordance with part 1 of article 2 of which ownership of buildings, structures, facilities and so on is transferred free of charge to municipalities [8]. In accordance with paragraph 6 of Article 2 of Law No. 423-FL, if military real estate is no longer necessary to ensure that the federal authorities exercise powers in the field of national defense and state security, such property is subject to transfer to municipal ownership free of charge.

The procedure for the transfer of such land plots is not only related to the transfer to ownership of public law entities of real estate located on such land plots (i.e. property complexes of military towns not used for defense and security), but also concerns the transfer of individual (free from development) land plots that are necessary for the municipality to solve the problems of socio-economic development.

Decisions made on the transfer of land to the ownership of constituent entities of the Russian Federation or municipalities are fully substantiated. Since, by virtue of the Registration Law, the return of transferred real estate, in respect of which registration of a public law entity has been carried out, is possible only by a court decision.

In order to speed up and simplify the procedure for the transfer of military real estate objects, the following measures were enshrined in Law No. 423-FL.

First, Part 5 of Art. 2 of Law No. 423-FL states that the absence of state registration of the right of ownership of the Russian Federation to military real estate, the absence of its state registration, the lack of land boundaries is not an obstacle to the decision to transfer military real estate from federal property to the ownership of a constituent entity of the Russian Federation or municipal property. These features were established even in contravention of clause 1.2 of Art. 20 of the Federal Law “On State Registration of Real Estate” dated July 13, 2015 No. 218-FL, which does not allow the state registration of the right to an immovable property, which is not considered to be accounted for in accordance with the Federal Law “On Cadastral Activity” of July 24, 2007 No. 221-FL, with the exception of cases specified by federal law, in connection with which, for the state registration of the

ownership of municipalities to the immovable property transferred to them, it is necessary that these objects were registered in the state Real Estate Cadaster.

Secondly, in part 6 of Art. 2 of Law No. 423-FL the wording of the compulsory transfer of military property to municipal property is enshrined: “if there is no need for military real estate to ensure that the federal authorities exercise powers in the field of national defense and state security, such property is subject to free transfer to municipal property”. However, this type of transfer of property violates the property rights of municipalities, restricts their independence in matters of local importance, puts them in an unequal position with other owners of property and, therefore, contradicts Articles 8, 130, 132, 133 of the Constitution of the Russian Federation.

One of the problems of Law No. 423-FL is that real estate objects are usually transferred in disrepair, and local governments lack funding for the repair and maintenance of these objects. In 2012, amendments to the aforementioned Law were developed, providing for the obligation of the authorized federal executive bodies in the field of management and disposal of military property to agree on the amount of financing for the current maintenance of the transferred objects and that the real estate should be suitable for operation. However, in the current version of Law No. 423-FL, this amendment was not made. In accordance with the prevailing judicial practice, the transferring party (Ministry of Defense of the Russian Federation) is not obligated to bring the transferred property in proper technical condition or to finance its current repair.

For example, from the Resolution of the Arbitration Court of the Far Eastern District of June 23, 2015 No. F03-2197 / 2015 in case No. A73-12147 / 2014, it follows that the administration of Khabarovsk filed a lawsuit with the Ministry of Defense of the Russian Federation to recover losses in the form of expenses for repair of property transferred to municipal ownership, which was in unsuitable technical condition. The satisfaction of the claim was denied, and the burden of maintenance transferred to the municipal ownership of the property was assigned by virtue of Art. 210 of the Civil Code of the Russian Federation on the owner, namely the administration of Khabarovsk.

Often, municipalities refuse to accept immovable property objects that do not have economic potential, in most cases destroyed or damaged buildings and structures, as well as the land plots on which they are located (Figure 3) [9]. These actions are contrary to Law No. 423-FL and inevitably lead to legal action.

For example, in accordance with the order of the Deputy Minister of Defense of the Russian Federation No. 286 dated 03/28/2017, real estate objects, including land plots, were transferred to the ownership of the municipality of Nikolaevsk-on-Amur city. At the same time, the administration of the Nikolaevsk-on-Amur city refused to sign the deed of transfer because of the poor condition of the objects being transferred. In this regard, the Ministry of Defense of Russia appealed to the court with a request to oblige the administration of the Nikolaevsk-on-Amur city to sign a deed of transfer. The court decided to satisfy the requirements of the Ministry of Defense of Russia and oblige the administration of the Nikolaevsk-on-Amur city to accept the real estate objects specified in order No. 286 of 03/28/2017, justifying this in accordance with paragraph 2.2 of article 2 of Law No. 423-FZ (as amended by the Federal Law dated August 03, 2018 No. 308-FL effective from August 14, 2018) that if buildings are not intended for citizens to live in, the structures are in disrepair, precluding their further operation, land plots with located on them structures are transferred to municipal ownership.

Controversial real estate objects are separate structurally isolated items of real estate that are subject to registration in the register of municipal property. Without the acceptance of objects for budget accounting, it is impossible to finance them at the expense of the local budget, which poses a potential threat to their maintenance, failure of water supply, sanitation, and destruction of buildings [10].

A military town is a complex of buildings, structures and technical systems with stationary equipment and technical equipment located in them or a separate building (structure) located on one or more land plots intended for cantonment of formations and military units.



Figure 3. Land plots on which destroyed or dilapidated buildings and structures of the Ministry of Defense of Russia are located on the territory of the Far Eastern Federal District, planned for transfer to municipal ownership

The boundaries of military camps are the boundaries of land used to deploy the corresponding military units, formations, military educational institutions of higher education, other organizations of the Armed Forces of the Russian Federation, internal troops of the Ministry of Internal Affairs of the Russian Federation, and state security bodies. If the boundaries of the land are not set in accordance with applicable law, the boundaries of the land are determined by its actual use.

At the same time, the publication of administrative acts on the transfer to municipal ownership or property of constituent entities of the Russian Federation of property complexes of military camps (including land plots) entailed the illegal registration of the rights of municipal authorities to large areas of land plots of the Ministry of Defense of Russia.

As an example, let's take a look at the transfer of real estate objects of the Ministry of Defense of Russia to the ownership of the municipal formation of the Vladivostok city.

So, during the gratuitous transfer of military real estate, including land, from federal property to the ownership of the municipal formation of the Vladivostok city (on the basis of the order of the Deputy Minister of Defense of the Russian Federation dated March 19, 2013 No. 146) the property of military town No. 5 was transferred, including land (without specifying characteristics: area, cadastral number) necessary for the operation of the transferred real estate objects.

When a land plot is transferred to municipal ownership without specifying its characteristics, the administration of the municipality independently conducts cadastral work to form land plots necessary for the use of the transferred real estate objects, and the original land plot not occupied by the transferred real estate remains within the changed boundaries in the ownership of the Russian Federation (run by the Russian Ministry of Defense).

However, the Vladivostok City Administration applied for registration of the ownership right of the municipal entity of the Vladivostok city on a land plot within the boundaries of which the above-

mentioned real estate objects are located, without registration on the state cadastral registration of the land plot under transferred objects.

As a result, on the basis of the decision of the Fifth Arbitration Court of Appeal dated 02.24.2016 in case A51-15106 / 2015, the ownership of the municipal entity of the Vladivostok city on the above land plot was registered.

At the same time, in accordance with the Command of the Eastern Military District, the above-mentioned land plot is included in the border of the territory planned for development in the interests of the Armed Forces of the Russian Federation.

This circumstance delays the development of the necessary territory, thereby hindering the implementation of the basic functions of the Russian Ministry of Defense, namely, ensuring the defense and security of the state.

Summing up, we can conclude that the transfer of land and military property to the ownership of municipalities and subjects of the Far Eastern Federal District is impeded by the absence in the budgets of the receiving and transmitting parties of expenditures aimed at the demolition of emergency buildings and structures with the subsequent restoration of the land plot, as well as the conduct of boundary works on the formation of land under the transferred objects.

It should be noted that despite the continued reduction in the formations of the Armed Forces and other military units of the Russian Federation, the transfer of movable and immovable military property to local authorities and individual economic entities, and the demilitarization of the economy, defense and security lands, continue to play an important role in the functioning of the military-industrial complex, in the national security system of the Russian Federation, in ensuring the protection of state secrets.

At the moment, the main problems of managing the lands of defense and security are related to the fact that the monitoring functions of the land plots of the Ministry of Defense of the Russian Federation are not performed (Figure 4).

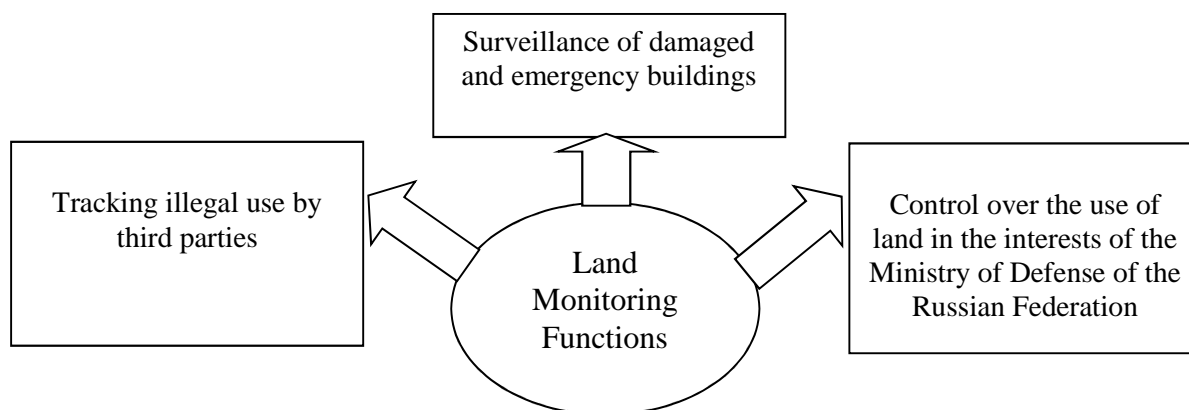


Figure 4. Problems associated with the lack of monitoring of land plots of the Ministry of Defense of Russia

Land management of the Ministry of Defense of the Russian Federation on the territory of the Far Eastern Federal District is carried out by the Federal State Institution "Far Eastern Territorial Administration of Property Relations" of the Ministry of Defense of Russia (hereinafter - the Institution), located in Khabarovsk.

The property managed by the Institution was transferred as a result of the reorganization of the apartment-operating units and departments of marine engineering services of the Ministry of Defense of Russia located in the Far East.

The signing of transfer acts took place without reconciling cartographic material and title documents. Actual use and condition of real estate has not been verified. Part of the land, at the time of transfer, had already been transferred to municipal ownership earlier, removed from the state cadastral

registration or information about them was canceled, due to the lack of registered rights. A part of the transferred land plots used by the Ministry of Defense of the Russian Federation located on the territory of the Far Eastern Federal District are not included in the state cadastral registration. Statistical data on the land plots of the Ministry of Defense of Russia, registered by the Institution, are presented in the block diagram (Figure 5).

Currently, the Institution has more than 2500 land plots registered, it is not possible to systematize information and control the rational use of which by the Institution's forces [11]. In this regard, the territories of former military towns are littered and used by third parties without the appropriate permits.

Based on the above, it was proposed:

To organize an annual inventory of real estate objects used by the Ministry of Defense of the Russian Federation, located on the territory of the far Eastern Federal district, with the implementation of inspection. Based on the results of this inspection, it is necessary to analyze the information received and prepare lists of land plots used and planned for use in the interests of the Russian Ministry of Defense.

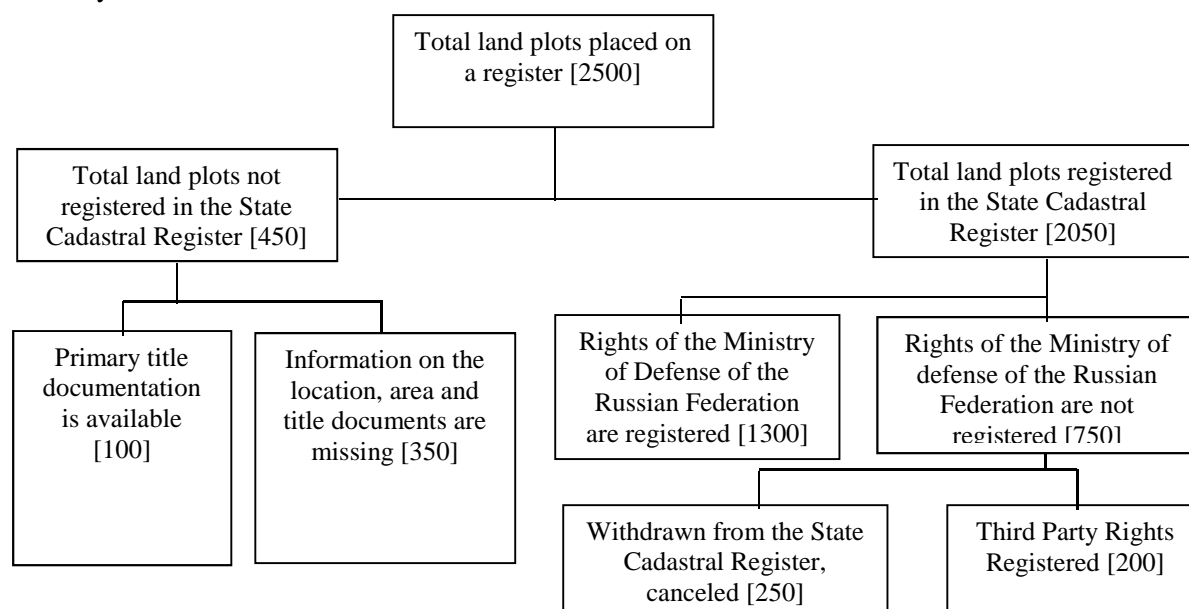


Figure 5. Information about the land plots of the Ministry of Defense of Russia located on the territory of the Far Eastern Federal District

When preparing lists of transferred land, it is necessary to classify land plots in the following categories:

- used in the interests of the Ministry of Defense of Russia;
- used by third parties without legal grounds (illegal);
- not registered on the state cadastral register;
- released, not used in the interests of the Ministry of Defense of Russia;

For each category of land, it is necessary to carry out the following activities, presented in Figure 6.

1. Assigning to the territorial garrisons, which, in turn, assign them to military formations; the land plots used by them under the acts of reception and transmission with the attachment of photo-fixing materials and information on the actual use of the lands.

2. Together with law enforcement agencies, conducting inspections of land plots, drawing up relevant acts, organizing judicial and claim work to recover damages from guilty persons for unjustified use of real estate of the Ministry of Defense of Russia.

3. In relation to land plots that are not included in the state cadastral registration, the Institution shall organize work on the search for title documents and make information on previously recorded land plots.

4. Land plots not used and not planned for use in the interests of the Ministry of Defense of Russia shall be transferred to municipal ownership, property of the subject or treasury of the Russian Federation [12].

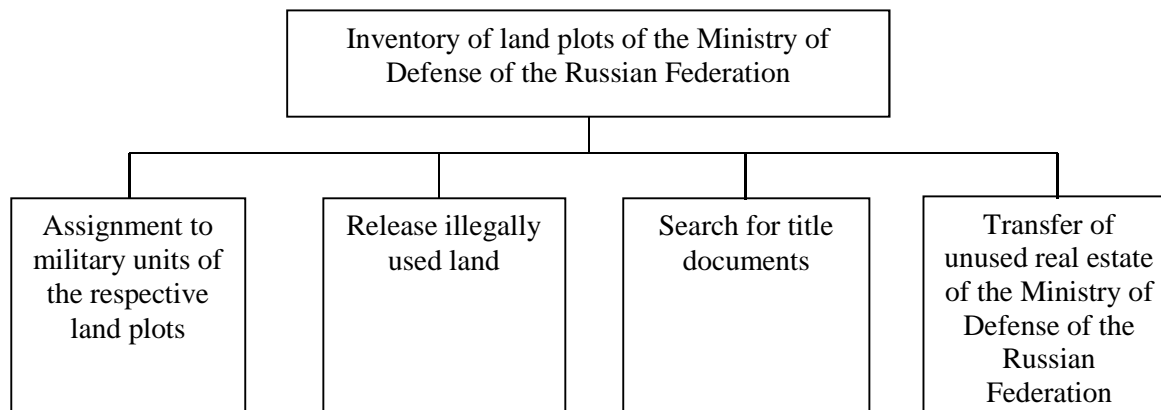


Figure 6. Activities carried out based on the results of the inventory

4. Conclusion

Due to the rapid reduction of military units throughout Russia, the release of land occurs without reclamation and demolition / dismantling of unused buildings and structures. Ultimately, abandoned military camps are cluttered, and once functioning buildings turn into ruins.

As a result of the analysis of data on real estate objects of the Ministry of Defense of Russia, it can be concluded that the main problems associated with the management of defense and security lands are: lack of monitoring of land plots; payment of land tax; transfer of unused real estate; carrying out cadastral works.

In the course of the study, based on the available data and the current legislation, proposals were formulated to streamline and systematize data on land plots of the Russian Ministry of Defense, as well as to minimize cases of their irrational use.

The main proposal is that the institution, together with the military administration, conduct an annual inventory of real estate used by the Ministry of Defense of the Russian Federation located on the territory of the Far Eastern Federal District, with an inspection.

According to the results of the inventory, it is necessary to apply the obtained systematized data to:

1. Assign to the territorial garrisons, which, in turn, assign to military formations and formations, the land plots used by them under the acts of reception and transmission with the attachment of photo-fixing materials and information on the actual use of land.

2. Together with law enforcement agencies, to conduct inspections of land plots, drawing up relevant acts, organizing judicial and claim work to recover damages from guilty persons for unjustified use of real estate of the Ministry of Defense of Russia.

3. With regard to land plots not included in the state cadastral registration, the Institution shall organize work on the search for title documents and make information on previously registered land plots.

4. Land plots not used and not planned for use in the interests of the Ministry of Defense of Russia shall be transferred to municipal ownership, property of the subject or treasury of the Russian Federation.

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