

**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA**

STANDING ROCK SIOUX TRIBE,	)	
	)	
Plaintiff,	)	
	)	
and	)	
	)	
CHEYENNE RIVER SIOUX TRIBE,	)	
	)	
Plaintiff-Intervenor,	)	
	)	
v.	)	Case No. 1:16-cv-01534 (JEB)
	)	(consolidated with Cases No.
UNITED STATES ARMY CORPS OF	)	1:16-cv-01796 & 1:17-cv-00267)
ENGINEERS,	)	
	)	
Defendant,	)	
	)	
and	)	
	)	
DAKOTA ACCESS, LLC,	)	
	)	
Defendant-Intervenor.	)	

**UNITED STATES ARMY CORPS OF ENGINEERS’ STATUS REPORT**

On August 10, this Court directed the Corps to “submit a status report by August 31, 2020, detailing the options it is considering on vacatur, steps taken by that point, and those that remain.” Minute Order dated August 10, 2020. The Court also directed that, “[i]n the interim, the parties shall discuss in good faith mitigation measures that could lessen the likelihood and severity of any oil leak in or around Lake Oahe.” *Id.* Pursuant to that order, the Corps respectfully provides the following Status Report.

**I. The Army and Corps' Regulations and the Omaha District's Memorandum regarding encroachments**

Following this Court's order vacating the easement allowing the Dakota Access Pipeline (Pipeline) to cross under Lake Oahe, ECF No 545, as per the policies and procedures of the Department of the Army (Army), the United States Army Corps of Engineers (Corps), and the Corps' Omaha District, the Pipeline now constitutes an "encroachment" on federal property. In the Corps' remedy briefing, ECF Nos. 507, 536, and during the August 10, 2020, status conference, the Corps described the process for addressing encroachment as outlined by the Corps' Engineer Regulations and an Omaha District Memorandum providing guidance as to application of those regulations. Consistent with this Court's instructions at the August 10, 2020 Conference, the Corps herein describes in greater depth the relevant Engineer Regulations and the processes the Corps is undertaking guided by these documents.

There are two main Corps and Army Regulations<sup>1</sup> and one Memorandum at issue here:

- First, a Department of the Army publication that describes the Army's policies and procedures regarding real estate. *See* Exhibit 1, Department of the Army, *Management of Title and Granting Use of Real Property*, Army Regulation (AR) 405-80, October 10, 1997.

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<sup>1</sup> The Army and Corps documents described herein are titled "Engineer Regulations" and "Army Regulations," respectively. The Army and its components generally refer to their published internal procedures and rules as "regulations." *See* <https://go.usa.gov/xGYuH> (Army Regulations); <https://go.usa.gov/xGYuF> (Corps Engineer Regulations). However, it is important to note that these documents were not published through notice-and-comment rulemaking pursuant to the Administrative Procedure Act (APA). *See* 5 U.S.C § 551(g) (defining a regulation as a legislative rule promulgated under the notice-and-comment procedures of 5 U.S.C. § 553); 44 Fed. Reg. 3168-01. Under the definitions of the APA these documents are not "regulations" but "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. § 553(b)(A).

- Second, the Corps' Real Estate Handbook. *See* Exhibit 2, U.S. Army Corps of Engineers, *Real Estate Handbook*, Engineer Regulation (ER) 405-1-12, September 30, 1994 (hereinafter, Real Estate Handbook).
- Third, the Corps' Omaha District's internal Memorandum regarding the District's process for addressing encroachments consistent with Corps and Army Regulation. *See* Exhibit 3, U.S. Army Corps of Engineers, Omaha District, *Real Estate Encroachments*, DM 405-2-1, October 1, 1980 (hereinafter, Omaha Memorandum).

In general, the Army's Management of Title and Granting Use of Real Property document provides the Army's "policy relating to granting use of real property." Exhibit 1 at 1. The Corps' Real Estate Handbook "describes existing procedures pertinent to the real estate activities of the Corps of Engineers as they relate to the acquisition, management and disposal of lands for the Department of the Army (military and civil works)..." Procedures Relating to Acquisition, Management and Disposal of Lands, 44 Fed. Reg. 3168-01; Exhibit 2. The Omaha Memorandum "[p]rescribes policy and procedures" the District uses to address encroachments. Exhibit 3 at 1.

Regarding encroachments specifically, the Real Estate Handbook provides that the Corps' general "policy is to require removal of encroachments" and restoration of the premises. *Id.* at 8-12. However, the Handbook provides for exceptions to this general policy, noted within the four primary means of curing an encroachment. *Id.* at 8-13. The "four basic methods of curing an encroachment" are "removal, disposal, exchange, and outgrant..." Exhibit 2 at 8-14. Exchange in this context means "exchange of Government-owned lands and interests therein for private lands and lands owned by states, other non-Federal agencies, and their instrumentalities."

*Id.* at 11-49. Disposal involves selling, giving away, or otherwise disposing of property interests of the United States. *Id.* at 11-42. Although every option available to the Corps in its exercise of enforcement discretion is being considered, the two most plausible options at this point are “removal” and “outgrant.” *See id.*

Neither the Army or Corps Regulations or the Omaha Memorandum require the Corps to take any particular action to cure an encroachment within a specified time period, nor is there any requirement to ultimately cure the encroachment at all. And a determination to take any enforcement action rests within the discretion of the Corps and the Department of Justice as appropriate. However, if the Corps ultimately seeks to exercise its enforcement discretion to cure the encroachment through removal, the Management of Title and Granting Use of Real Property document and Real Estate Handbook provide for the Corps initially to seek to have the encroaching party remove the encroachment voluntarily. If the encroaching party is cooperative, the regulations provide for the Corps to allow “a reasonable period of time . . . for voluntary removal.” *Id.* at 8-14. If the encroaching party is not cooperative in removing the encroachment, the Handbook provides for the matter “to be referred to the U.S. Attorney.”<sup>2</sup> *Id.*

As noted above, the Army’s Management of Title and Granting Use of Real Property document, Corps’ Real Estate Handbook, and Omaha Memorandum recognize that an encroachment can be resolved through an outgrant, which is an umbrella term for an instrument that authorizes, *inter alia*, “private organizations . . . to use Army (military or civil) controlled real

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<sup>2</sup> The Corps does not have independent litigating authority and thus any enforcement actions brought as described here would be subject to the discretionary litigating authority of the Department of Justice under the direction of the Attorney General. *See* 28 U.S.C. § 516; Sourcebook for United States Agencies (2018), <https://www.acus.gov/research-projects/sourcebook-united-states-executive-agencies-second-edition>.

property.” *Id.* at 8-33; Exhibit 1 at 11. The Real Estate Handbook provides that “[a] lease, easement or license may be appropriate depending on the nature of the encroachment. In easements areas, a consent to structure, if applicable under the easement estate, may be issued after the fact.” *Id.* at 8-15. The method of approving an outgrant depends on the encroachment at issue. In this case, any easement for the Pipeline could be granted—just like the original, now vacated easement—under the process set forth in the Mineral Leasing Act (MLA), 30 U.S.C. § 181 *et seq.* This process governs rights-of-way through federal lands “for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.” The MLA authorizes the head of a federal agency “which has jurisdiction over Federal lands” to grant “[r]ights-of-way through any Federal lands” for such purposes. 30 U.S.C. § 185(a) and (b)(3); *see* ECF Nos. 183, 238.

Rights-of-way under the MLA are “subject to such terms and conditions as the . . . agency head may prescribe regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination.” 30 U.S.C. § 185(f). To decide whether to grant easements under the MLA, the Corps generally follows the policies and procedures in Chapter 8 of the Real Estate Handbook, and the Army’s Management of Title and Granting Use of Real Property document. *See* Exhibits 1-2. The Real Estate Handbook provides for the Corps to evaluate whether “the proposed easement will not be inconsistent with the authorized purposes of the Federal installation or project.” Exhibit 2. The Handbook also provides for site-specific environmental, cultural, and operational requirements to be added to the easement as appropriate. *Id.* The Corps may also impose any special requirements for safe operation of a pipeline or related facilities. Exhibit 3 at 8-110 and 8-113. If the Corps finds that a pipeline is not inconsistent with the authorized purposes of the Corps project and its lands, the Corps may sign a

real estate instrument that grants the easement.

The Real Estate Handbook's specified procedures for outgrants expressly contemplate "Compliance with NEPA." Exhibit 2 at 8-22. In particular, those procedures explain that "the environmental review required by NEPA" might result in preparation of an "Environmental Impact Statement (EIS)." *Id.*

**II. The process the Corps is following and steps taken regarding the encroaching Pipeline**

The Omaha Memorandum provides the procedures the Omaha District is following to address the encroaching Pipeline, consistent with the Army and Corps Regulations. This process involves, in general, coordination between the various Corps components and other agencies to ascertain whether the Pipeline's unauthorized use presents risk to the Corps' project and to find the best way to ultimately "cure" the encroachment, or, in other words, to resolve the situation of unauthorized use of the property interest. Specifically, the Corps has undertaken the following steps:

First, coordination is ongoing between various Corps components including the Real Estate Division, Operations Division, the Area Engineer, Real Estate Field Office, and the Department of Justice as outlined by the Omaha District Memorandum. *See* Exhibit 3 at 7.

Second, as discussed at the August 10, 2020, conference, because of the nature of this encroachment—a pipeline—the Corps has also sought input from the Pipeline and Hazardous Materials Safety Administration (PHMSA) and Department of Energy (DOE). This coordination is also ongoing.

Third, the Corps is proceeding with the EIS process pursuant to this Court's March 25, 2020, order (ECF No. 496). The Corps anticipates finalizing a formal Notice of Intent to prepare an EIS by September 4, 2020 and anticipates submitting it to be processed for publication in the

Federal Register shortly thereafter.

Fourth, the Corps is in contact with and coordinating with the owner of the Pipeline, Dakota Access LLC (“Dakota Access”), regarding the encroachment. On August 17, 2020, the Corps notified Dakota Access of the Pipeline’s encroachment status and described the process the Corps is embarking on to determine the appropriate resolution of the encroachment on federal lands. *See* Exhibit 4 (Correspondence between the Corps and Dakota Access). In that notice, the Corps conditioned its discretion to not immediately recommend an enforcement action to the Department of Justice upon Dakota Access’s agreement to expressly abide by the conditions contained in the vacated easement and to provide any information that the Corps requests to inform its review of measures to address the encroachment. On August 20, Dakota Access confirmed that it will continue to comply with the easement conditions and provide information the Corps requests as outlined in the Corps’ letter. *Id.*

Fifth, consistent with the Court’s directive to confer with the parties regarding mitigation, the Corps is engaging in discussions regarding potential additional safety measures. The Corps has held several discussions with Dakota Access and has received correspondence from the Plaintiff Tribes. The Corps is also aware of additional communications between the Tribes and Dakota Access. On August 20, 2020, Dakota Access sent a letter to the Tribes stating that, although the company did not believe additional mitigation was necessary, “it nonetheless is willing to consider other mitigation measures that Plaintiffs believe would be appropriate.” Exhibit 5. Dakota Access asked the Tribes to propose “specific proposed mitigation measures that you believe could further enhance DAPL’s safety.” *Id.* On August 28, 2020, the Plaintiff Tribes sent the Corps and Dakota Access a letter stating the Tribes’ position is that the only way to ensure the safety of the pipeline is to “shut it down pending a full environmental review.”

Exhibit 6. The Tribes also take the position that they need additional information and will not discuss mitigation measures before receiving such information. *Id.* The Corps will consider the Tribes' request for information and nonetheless invites the Tribes to propose any safety-enhancing mitigation measures they believe are warranted. The Corps will consider any such proposals if and when it receives them.

Sixth, as stated at the August 10, 2020, status conference, the Corps will consider communications from the Plaintiff Tribes as part of the process. In addition to the communications described above, the Corps received a letter, Exhibit 7, from Plaintiff Yankton Sioux Tribe asking the Corps to direct Dakota Access to "empty the Dakota Access Pipeline of oil and cease operation of the Pipeline indefinitely." *Id.* The Corps will consider that letter as it proceeds with its process.

### **III. Steps the Corps anticipates taking regarding the encroaching Pipeline**

Consistent with the Army and Corps' Regulations and the Omaha District Memorandum, the Corps anticipates continuing to seek information and to coordinate internally and with other federal agencies as it continues the encroachment review process. Specifically, the steps the Corps anticipates include the following:

First, the Corps anticipates additional coordination between its offices and officials. *See* Exhibit 3 at 7.

Second, the Corps anticipates additional coordination between the Corps, PHMSA, and DOE. The Corps anticipates continuing to seek PHMSA's input as to how to continuously assess the safety of the Pipeline and Lake Oahe crossing, including but not limited to informing the Corps' engagement pursuant to the court-ordered discussion of mitigation measures. The Corps anticipates also continuing to seek PHMSA's input as to any other relevant design, safety,



or operational factors the agency should consider while evaluating the encroachment.

Third, as described above, the Corps anticipates finalizing the NOI for the EIS ordered by this Court and publishing it in the Federal Register.

Fourth, the Corps anticipates additional coordination with Dakota Access regarding information requests and any additional mitigation measures that may be considered.

Fifth, as discussed at the August 10, 2020, conference, the Corps anticipates completing an evaluation under the encroachment policies described above and making a recommendation to the Department of Justice regarding whether to seek enforcement action against the encroaching Pipeline. At the August 10, 2020, conference, the Corps represented that it intended to make an initial decision as to enforcement action against to Pipeline within 60 days. However, the Corps notes that, if it declines to pursue an enforcement action within 60 days, it does not waive any right to seek such an enforcement action in the future. The Corps retains the ability to exercise its enforcement discretion to adapt its enforcement recommendations based on new information. Therefore, in its discretion the Corps may elect to take enforcement action at any time, or defer making a decision on enforcement action until completion of the NEPA and MLA processes when it has made a decision whether a new easement is warranted.

Dated: August 31, 2020

Respectfully submitted,

JEAN E. WILLIAMS  
Deputy Assistant Attorney General  
United States Department of Justice  
Environment & Natural Resources Division

By: Reuben Schiffman  
REUBEN SCHIFMAN, NY BAR  
MATTHEW MARINELLI, IL Bar 6277967  
U.S. Department of Justice  
Natural Resources Section

P.O. Box 7611  
Benjamin Franklin Station  
Phone: (202) 305-4224 (Schifman)  
Phone: (202) 305-0293 (Marinelli)  
Fax: (202) 305-0506  
reuben.schifman@usdoj.gov  
matthew.marinelli@usdoj.gov

ERICA M. ZILIOLI, D.C. Bar 488073  
U.S. Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington, DC 20044  
Phone: (202) 514-6390  
Fax: (202) 514-8865  
Erica.Zilioli@usdoj.gov  
*Attorneys for the United States Army Corps  
of Engineers*

OF COUNSEL:  
MILTON BOYD  
MELANIE CASNER  
U.S. Army Corps of Engineers  
Office of Chief Counsel  
Washington, DC

**CERTIFICATE OF SERVICE**

I, Reuben S. Schiffman, hereby certify that on August 31, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and copies will be sent electronically to the registered participants as identified in the Notice of Electronic Filing.

*/s/ Reuben Schiffman*  
REUBEN S. SCHIFMAN

# Exhibit 1

**Army Regulation 405–80**

Real Estate

**Management of  
Title and  
Granting Use of  
Real Property**

Headquarters  
Department of the Army  
Washington, DC  
10 October 1997

**UNCLASSIFIED**

# ***SUMMARY of CHANGE***

AR 405-80

Management of Title and Granting Use of Real Property

This regulation revises policy relating to granting use of real property and adds policy on management of title. Specifically, this revision--

- o Changes the regulation title to incorporate the real property management activities performed by the Army Corps of Engineers (title page).
- o Incorporates changes in law (chaps 1-4).
- o Revises responsibilities based on organizational changes (chap 2).
- o Increases the delegations of authority to lower levels (chaps 2-4).
- o Updates and consolidates delegations of authority into this regulation (chap 3).
- o Allows delegations, subject to qualifying criteria, to named individuals below the USACE district chief of real estate level (chap 3).
- o Updates policy on granting the use of DA real property (chap 4, section I).
- o Adds section on management of title and unauthorized use. (chap 4, section II)
- o Eliminates detailed procedures from the regulation. (chap 4)
- o Adds management control review checklist. (appendix C)

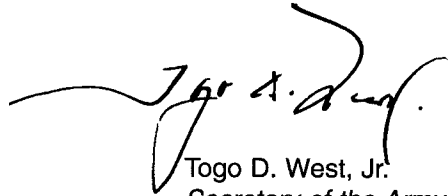
Headquarters  
Department of the Army  
Washington, DC  
10 October 1997

**\*Army Regulation 405–80**

Effective 11 November 1997

Real Estate

**Management of Title and Granting Use of Real Property**



Togo D. West, Jr.  
Secretary of the Army

property. It consolidates and delegates authority to issue, execute, manage, renew, supplement or revoke outgrants authorizing the use of Army real property and to perform certain management activities.

**Applicability.** This regulation is applicable to all Army agencies responsible for Army real property, including the Active Army, the Army National Guard (ARNG), the U.S. Army Reserve (USAR), and the Army Corps of Engineers (civil works). The provisions of this regulation do not apply to real property acquired under the Homeowners Assistance Program. The Secretary of the Army, or his designee, may make specific exceptions.

**Proponent and exception authority.** The proponent of this regulation is the Chief of Engineers (COE). The COE has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation. The COE may delegate the approval authority, in writing, to a division chief within the proponent agency in the grade of colonel or the civilian equivalent.

**Army management control process.**

This regulation contains management control provisions in accordance with AR 11–2 and contains checklist for conducting management control reviews.

**Supplementation.** Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the COE, Washington, DC 20314–1000.

**Suggested Improvements.** Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the COE (Attn: CERE-Z), Washington, DC 20314–1000.

**Distribution.** Distribution of this regulation is made in accordance with initial distribution number (IDN) 093458, intended for commanded levels A, B, C, D, and E for Active Army, D and E for Army National Guard, and E for U.S. Army Reserve.

**History.** This printing publishes a complete revision of this regulation. Because the publication has been extensively revised, the changed portions have not been highlighted.

**Summary.** This regulation states the policy on management of title, unauthorized use, and granting use of Army controlled real

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## Chapter 1 General

### 1–1. Purpose

This regulation sets forth the authority and prescribes policies for management of the United States of America title to real property under the jurisdiction or control of the Department of the Army (DA), granting the use of that real property to non-Army users, and oversight of unauthorized uses of that real property.

### 1–2. References

Required publications and prescribed form are listed in appendix A.

### 1–3. Explanation of abbreviations and terms

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

### 1–4. Authority to grant use of real property

*a.* The United States (US) Constitution (article IV, sec 3, clause 2) gives Congress the power to dispose of and make all needful rules and regulations respecting the territory or other property of the US.

*b.* Congress has enacted specific legislation giving the Secretary of the Army (SA) authority to grant the use of real property under his administrative control. Statutory authorities are listed in appendix B.

*c.* The SA also has the general administrative authority to grant uses of real property which do not adversely affect title, ownership, or control.

*d.* The SA may grant the right to use real property under authority implied from other powers granted by Congress.

## Chapter 2 Responsibilities

### 2–1. The Secretary of the Army (SA)

The SA will—

*a.* Serve as trustee for the real property under the jurisdiction and control of the Army.

*b.* Delegate responsibility for the real estate programs.

### 2–2. The Assistant Secretary of the Army (Installations, Logistics and Environment) (ASA(I,L&E))

The ASA(I,L&E) will—

*a.* Act for the SA on real estate issues.

*b.* Have primary responsibility for the Army's real estate programs.

### 2–3. The Deputy Assistant Secretary of the Army (Installation and Housing) (DASA(I&H))

The DASA(I&H) will—

*a.* Execute the real estate responsibilities.

*b.* Formulate policies and programs for the management, requirements and availability of Army-controlled military real property.

*c.* Formulate policies and programs for the procedural and technical aspects of the outgranting of both military and civil works real properties, including delegations.

*d.* Formulate policies and programs for the management of title and unauthorized uses of both military and civil works real properties, including delegations.

*e.* Ensure and oversee the implementation of those policies and programs.

*f.* Review and process both military and civil works outgrant documents for signature at the Secretariat level.

*g.* Delegate, as appropriate, authority to issue, execute, manage, renew, supplement or revoke outgrants.

*h.* Make Determinations of Availability and execute outgrants, as appropriate.

*i.* Serve as the primary point of contact with the Office of the

Secretary of Defense (OSD) and other agencies for Army real estate programs.

### 2–4. The Assistant Secretary of the Army (Civil Works) (ASA(CW))

The ASA(CW) will—

*a.* Have primary responsibility for the supervision of the functions of the DA relating to all aspects of the civil works program and for the Army components of the National Cemetery Program, such as the Arlington National Cemetery and the Soldiers' and Airmen's Home National Cemetery.

*b.* Formulate policies and programs for the management, requirements and availability for outgranting of Army-controlled civil works real property, the Arlington National Cemetery and the Soldiers' and Airmen's Home National Cemetery.

*c.* Ensure and oversee the implementation of those policies and programs.

*d.* Make Determinations of Availability, as appropriate

### 2–5. The Assistant Chief of Staff for Installation Management (ACSIM)

The ACSIM will—

*a.* Review Reports of Availability (ROA) for consistency with DA requirements for those outgrants on Army-controlled military real property requiring approval by higher authority, except for property under the jurisdiction of the Chief, National Guard Bureau or the Chief, Army Reserve.

*b.* Make Determinations of Availability, as delegated.

*c.* Oversee installation management activities.

### 2–6. The Chief, National Guard Bureau (NGB) or the Chief, Army Reserve (OCAR)

*a.* The NGB or OCAR, with regard to real property under their jurisdiction, will—

(1) Review Reports of Availability (ROA) for consistency with DA requirements for those outgrants requiring approval by higher authority.

(2) Make Determinations of Availability, as delegated.

(3) Oversee real property management activities.

*b.* The NGB will—

(1) Make Determinations of Availability (DOA) by approval of the Report of Availability (ROA) prepared by their subordinate offices, except those requiring approval by higher authority or those authorized for redelegation.

(2) Specify authorized uses of real property compatible with mission requirements and policies in this regulation.

(3) Ensure programming and budgeting for real property actions covered by this regulation.

### 2–7. The Chief of Engineers (COE)

The COE will—

*a.* Serve as the DA staff official responsible for the Army real property programs.

*b.* Determine and issue appropriate DA regulations.

*c.* Provide technical advice and support to ASA(I,L&E), ASA(CW) and to the Army Staff on real estate matters.

*d.* Administer the programs covered by this regulation for Army-controlled real property.

*e.* Issue guidance on procedural and technical implementation of the policies and general procedures in this regulation.

*f.* Perform staff liaison and coordination, as required.

### 2–8. The Commanding General, U.S. Army Corps of Engineers (CG, USACE)

The CG, USACE will—

*a.* Manage and execute the real property programs for the Army, military and civil.

*b.* Oversee delegations to USACE divisions and districts and establish qualifying standards for any redelegation of authority.

*c.* Issue guidance on procedural and technical implementation of the policies and general procedures in this regulation.

d. Establish appropriate formats for outgrants and other outgrant documents.

e. Provide training in procedures, policies, authorities and documents covered by this regulation.

f. Process Reports of Availability (ROA) for those outgrants on Army-controlled real property requiring approval by higher authority.

g. Make Determinations of Availability, as delegated.

## **2-9. Commanders of Major Army Commands (MACOMs)**

a. The MACOMs Commanders will—

(1) Designate a MACOM chief real property officer responsible for staff support of its real property matters.

(2) Make Determinations of Availability (DOA) by approval of the Report of Availability (ROA) prepared by their subordinate installation, except those requiring approval by higher authority or those authorized for redelegation.

(3) Specify authorized uses of real property compatible with mission requirements and policies in this regulation.

(4) Ensure programming and budgeting for installation real property actions covered by this regulation.

(5) Authorize the use of real property outside the continental United States (OCONUS) areas for non-Army use in accordance with the Status of Forces Agreements, treaties or other agreements under which the Army controls such real property.

b. The Arlington National Cemetery and the Soldiers' and Airmen's Home National Cemetery are assigned to the Commander, Military District of Washington.

## **2-10. Commander, U.S. Army Reserve Command (USARC)**

The USARC Commander, with regard to real property for which they are accountable, will—

a. Designate a chief real property officer responsible for staff support of its real property matters.

b. Make Determinations of Availability (DOA) by approval of the Report of Availability (ROA) prepared by their subordinate regional commands, except those requiring approval by higher authority or those authorized for redelegation.

c. Specify authorized uses of real property compatible with mission requirements and policies in this regulation.

d. Ensure programming and budgeting for real property requirements covered by this regulation.

## **2-11. Commanders, U.S. Army Corps of Engineer (USACE) Division**

a. The USACE Division Commanders will—

(1) Manage, plan, and oversee the real property programs within their geographic area.

(2) Review appraisals for outgrant actions.

(3) Issue, execute, manage, renew, supplement or revoke outgrants of real property in accordance with this regulation, implementing regulations, the outgrant document, or separate delegations of authority.

(4) Oversee and manage the integrity of the government's title and unauthorized use by non-Army parties.

(5) Provide technical real estate services, guidance, and assistance.

b. The USACE Division Commanders, with regard to civil works real property for which they are accountable, will—

(1) Designate a chief real property officer responsible for staff support of its real property matters.

(2) Make Determinations of Availability (DOA) by approval of the Report of Availability (ROA) prepared by their subordinate commands, except those requiring approval by higher authority or those authorized for redelegation.

(3) Specify authorized uses of real property compatible with mission requirements and policies in this regulation.

(4) Ensure programming and budgeting for real property actions covered by this regulation.

## **2-12. Commanders, U.S. Army Corps of Engineers (USACE) Districts**

a. The USACE District Commanders will—

(1) Manage, plan, and oversee the real property programs within their geographic area.

(2) Provide appraisals of fair market value or otherwise determine consideration for outgrant actions.

(3) Issue, execute, manage, renew, supplement or revoke outgrants of real property in accordance with this regulation, implementing regulations, the outgrant document, or separate delegations of authority.

(4) Oversee and manage the integrity of the government's title and unauthorized use by non-Army parties in accordance with this regulation, implementing regulations, the outgrant document, or separate delegations of authority.

(5) Provide technical real estate services, guidance, and assistance and coordinate actions with the appropriate using DA element.

b. The USACE District Commanders, with regard to civil works real property for which they are accountable, will—

(1) Designate a chief real property officer responsible for staff support of all real property matters.

(2) Review Army controlled real property to identify any such property which may be made available for use by others.

(3) Review requests from non-Army entities for outgrant of Army controlled real property.

(4) Prepare and process ROA for outgrants of land or facilities under project control.

(5) Account for all outgrants in a real property inventory.

(6) Program and budget resources for real property actions covered by this regulation.

## **2-13. Installation Commanders (IC)**

a. The IC will—

(1) Designate a chief real property officer responsible for staff support of all real property matters.

(2) Review Army controlled real property to identify any such property which may be made available for use by others.

(3) Review requests from non-Army entities for outgrant of Army controlled real property.

(4) Notify the appropriate USACE district commander of any possible title disputes, encroachments, real estate claims, or boundary questions.

(5) Prepare and process ROA for outgrants of land or facilities under installation control.

(6) Account for all outgrants in the installation real property inventory automated system.

(7) Program and budget resources for real property actions covered by this regulation, to include reimbursement of USACE administrative costs.

b. The IC will—

(1) Grant short-term, revocable licenses for the use of property incidental to installation administration, in accordance with this regulation.

(2) Grant a revocable license to document property provided in accordance with a Federal Acquisition Regulation (FAR) contract, except for certain uses under a construction contract, for the same term as the contract, in accordance with this regulation.

(3) Grant short-term, revocable licenses of land, facilities or space for the regular, occasional or non-recurring use to state or local governments, youth, civic, community or non-profit organizations, in accordance with this regulation.

(4) Grant leases to military personnel for trailer sites.

## **2-14. Commanders, U.S. Army Reserve Regional Support Commands (USAR RSC) and U.S. Property and Fiscal Officers (USP&FO)**

a. The Commander, USAR RSC for Army reserve facilities or

the USP&FO for ARNG facilities for which they are accountable will—

(1) Designate a chief real property officer responsible for staff support of all real property matters.

(2) Review real property to identify any such property which may be made available for use by others.

(3) Review requests from non-Army entities for outgrant of real property under their control.

(4) Notify the appropriate USACE district commander of any possible title disputes, encroachments, real estate claims, or boundary questions.

(5) Prepare and process ROA for outgrants of land or facilities under their control.

(6) Account for all outgrants in a real property inventory.

(7) Program and budget resources for real property actions covered by this regulation, to include reimbursement of USACE administrative costs.

*b.* The Commander, USAR RSC or the USP&FO will—

(1) Grant short-term, revocable licenses for the use of property incidental to installation administration, in accordance with this regulation.

(2) Grant a revocable license to document property provided in accordance with a Federal Acquisition Regulation (FAR) contract, except for certain uses under a construction contract, for the same term as the contract, in accordance with this regulation.

(3) Grant short-term, revocable licenses of land, facilities or space for the regular, occasional or non-recurring use to state or local governments, youth, civic, community or non-profit organizations, in accordance with this regulation.

## **2-15. Commander, Tenant Activity**

The commander of a tenant activity will—

*a.* Provide the IC, the USAR RSC, or the USP&FO, or their real property officer, an annual report of property no longer required by the tenant, coordinated with the appropriate MACOM, NGB or USARC.

*b.* Approval of the MEDCOM will be obtained prior to making any major changes in the functional arrangement or layout of any part or portion of hospitals, health clinics, troop clinics, laboratories, dental or other clinics, and quarters specifically constructed for AMEDD personnel, including civilian personnel.

## **Chapter 3 Delegations of Authority**

### **3-1. Delegation**

The CG, USACE and the USACE Director of Real Estate are delegated the authority to issue, execute, manage, renew, supplement or revoke outgrants authorizing the use of Army real property, and are authorized, as appropriate, to redelegate this authority to USACE Division or District Commanders, or the USACE division or district Chiefs of Real Estate.

### **3-2. Required Approvals of Availability**

*a.* The Determination of Availability (DOA) for military outgrant actions will be made by the MACOM Commander, Chief, NGB, or USARC Commander, having jurisdiction or accountability for the property, except for the following:

(1) DASA(I&H) will make the DOA for leases or licenses issued under the authority of 10 USC 2667 which exceed a five year term, except for the following which have been determined by SA to promote the national defense or be in the public interest and do not require approval for the terms stated:

(a) For the construction of public schools by state or political subdivisions, for a term of 25 years with an option to renew for another 25 years.

(b) For agricultural, grazing or haying purposes for a 5 year term with an option to renew for another 5 years;

(c) For the construction of a bank or credit union for a term of 25 years; and

(d) For industrial facilities for a term of 25 years with an option to renew for another 25 years.

(2) The ASCIM, NGB, or OCAR, after coordination with other appropriate DA elements, will make the DOA for:

(a) An outgrant, regardless of value, that significantly reduces, redirects, adds to or affects an installation mission, including an outgrant to another military department, a state National Guard or Federal agency for large or significant areas.

(b) An outgrant, except an easement, to Federal, state or local governmental agencies which involves new construction of facilities which exceeds the construction approval authority of the MACOM.

*b.* The Determination of Availability (DOA) for civil works outgrant actions will be made by the USACE Division Commander, or the USACE District Commander if so delegated, having jurisdiction or accountability for the property, except for the following:

(1) The ASA(CW) will make the DOA for:

(a) Leases or licenses issued under the authority of 16 USC 460d which exceed a 25 year term, except for the following which have been determined by SA to be in the public interest for the terms stated. Leases or licenses to a state or political subdivision for a term of 50 years and leases for commercial concession purposes for a term of 25 years, with an option to renew for another 25 years.

(b) Leases or licenses issued under the authority of 10 USC 2667 which exceed a five year term, except for agricultural, grazing or haying purposes for a 5 year term with an option to renew for another 5 years.

(2) The CG, USACE will make the DOA for an outgrant, regardless of value, that significantly reduces, redirects, adds to or affects a project mission, including an outgrant to another military department or Federal agency for large or significant areas.

*c.* The DASA(I&H) will approve modifications of public domain land withdrawals for military purposes which require Secretary of Interior review or approval.

*d.* The ASA(CW) will approve modifications of public domain land withdrawals for civil works purposes which require Secretary of Interior review or approval.

*e.* See chapter 4, paragraph 4-4 for outgrant actions which require a DOA/ROA.

### **3-3. Additional Redelelegation**

*a.* The Director of Real Estate will establish qualifying standards for re delegation of execution authority below the division or the district Chief of Real Estate.

*b.* The Director of Real Estate may authorize division or district Chiefs of Real Estate to redelegate authority to execute, manage, renew, supplement, or revoke licenses or permits, which do not require an appraisal or formal estimate of value and which are for a term of 5 years or less, to individuals who meet the applicable standards, as follows:

(1) To individuals under their supervision.

(2) To individuals at civil works projects.

(3) To individuals recommended by the appropriate MACOM, NGB, or USARC.

*c.* The Director of Real Estate may authorize division or district Chiefs of Real Estate to redelegate authority to execute, manage, renew, supplement, or revoke outgrants to their Chiefs, Management and Disposal, who meet the applicable standards.

*d.* Any redelegations will include appropriate oversight and control procedures to ensure that documents are signed only by competent persons in compliance with Army policy and applicable laws.

*e.* The MACOM Commander, Chief, NGB, Chief, or USARC Commander, as appropriate, for military outgrant actions, or USACE Division Commander, for civil works outgrant actions, may redelegate the authority to make the DOA when authority to execute has been redelegated below the USACE division level.

*f.* No further redelegation is needed to authorize execution of short-term, revocable licenses delegated to Installation Commanders, USAR RSC Commanders, or the USP&FO by this regulation.

**3-4. Revocation of prior delegations**

Prior to this regulation, general delegations of authority have been given within Army both in regulations and in separate delegations. In an effort to simplify, this regulation hereby supersedes, replaces, and revokes all previous general outgrant delegations of authority. Installation or project specific delegations remain in effect.

**Chapter 4  
Policy****Section I  
General Outgranting****4-1. General**

*a.* The written document setting out the terms and conditions of non-Army use of real property is called an outgrant. The outgrant program involves the Government as landowner managing its real property holdings and authorizing the use of that property by others. Realty outgrant instruments consist of leases, licenses, easements and permits. (Definitions are in the Glossary.) Consents, Memorandums, and Interservice, Interdepartmental and Interagency Support Agreements (ISAs) are not outgrants.

*b.* DA goals are to ensure proper management and use of real property authorized for mission purposes; to promote multiple use of DA lands, if authorized; to minimize additional real property acquisition; to reduce maintenance and custody costs and to dispose of real property interests no longer required for DA needs or to discharge DA responsibilities, including environmental.

*c.* Use of Army-controlled real property is granted for non-Army use only when authorized by law or administrative authority. The use granted must be of direct benefit to the US, promote the national defense or an Army mission, or be in the public interest. The use must also be compatible with the installation/ project mission. All such non-Army use must be authorized by an appropriate realty instrument, except for OCONUS where use must be authorized in accordance with the Status of Forces Agreements, treaties or other agreements under which the Army controls such real property.

*d.* All outgrants will be for a stated consideration to the United States, in accordance with the applicable authority. Fair market value, if applicable, will be determined by the USACE district using qualified personnel, in accordance with appraisal standards.

*e.* Authority to enter into outgrants is set out in paragraph 1-4. Specific statutory authorities are described in Appendix A, Section I.

**4-2. Identification of potentially available real property**

*a.* DA real property is surveyed and periodically reviewed to determine the current use of property, the degree of utilization, interim or collateral use which could improve management, and properties excess to Army needs. See AR 405-70 and AR 420-70 for military real property and applicable engineer regulations for civil works real property. Property identified as excess will be disposed of in accordance with AR 405-90.

*b.* Property may also be identified as available for non-Army use during the master planning process or other management reviews. See AR 200-3 and AR 210-20.

*c.* Property identified above, even if a future use is planned, should be made available for other interim or collateral use by outgrant.

*d.* Occasionally, non-Army parties will propose outgrants or outgrants will be authorized by special legislation.

*e.* Pursuant to the Stewart B. McKinney Homeless Assistance Act (Section 501 of Title V, 42 USC 11411, as amended by Public Law 101-645, 29 Nov 90), certain properties are required to be reported to the Department of Housing and Urban Development for determination of availability for use of facilities to assist the homeless.

**4-3. Non-Army users of real property**

Except where a preference is required by law, Army-controlled real property that is available for use for non-Army purposes will be granted in the following order of preference to:

- a.* Non-Army entities which support an Army, installation/project, or national defense mission.
- b.* Other military departments or DOD activities or agencies.
- c.* Other Federal agencies or activities.
- d.* Contractors who support *b* and *c* above.
- e.* State or local government agencies or entities.
- f.* Private parties.

**4-4. Availability**

*a.* Army controlled real property will be authorized for use by a non-Army party after it has been determined available by an appropriate official who approves a Determination of Availability (DOA) with supporting Report of Availability (ROA). A DOA/ROA is not required for an easements to support a utility contract, a lease for trailer sites or a license under the IC's, USAR RSC's or the USP&FO's authority as set out in paragraphs 2-13*b* and 2-14*b*. The availability for these will be documented by memorandum.

*b.* A ROA for proposed outgrants is initiated and prepared at the installation/project level. This document provides the information necessary for review and approval of availability and preparation of the real property instrument which will authorize the approved use. A conceptual ROA may be used to obtain approval of higher authority prior to completion of all supporting reports and documentation. See AR 140-483 for additional USAR and AFRC procedures.

*c.* A supplement to the original ROA may be used for renewals of outgrants, provided the purpose, grantee and length of term remains the same.

*d.* On those installations where the Army National Guard has jurisdiction over the property to be outgranted (the US Property and Fiscal Officer has accountability), the ROA will be prepared by the state National Guard representatives and submitted to the Chief, National Guard Bureau for approval.

*e.* ROAs will be submitted through command channels to the NGB, MACOM, or USARC, having accountability of the real property for a DOA, except those requiring approval by higher authority as set forth in chapter 3. The authority to determine availability may be redelegated for actions redelegated in accordance with paragraph 3-3.

*f.* When real property under outgrant is needed for Army purposes, the revocation/termination of availability will be approved at the same level of command that was needed for the original DOA.

**4-5. Installation disposition-inactive or closed**

When an installation, or a part thereof, is inactivated or closed but is intended to remain in inventory, it may be made available for other military or Federal use or for leasing, unless there are cogent reasons why this should not be done. Interim operation and maintenance by a non-Army party can benefit the US. This property is not excess to DA until it is not required for DA needs and DA has discharged its responsibilities, including environmental restoration. Property is not excess based upon MACOM, NGB, or USAR requirements alone. The requirements and policy in AR 405-90 must be applied.

**4-6. Required Congressional report**

DA must report to the Armed Services Committees proposed leases or licenses of military real property located in the US, its territories or its possessions, when the estimated annual fair market rental value exceeds the threshold set forth in 10 USC 2662. The threshold is based on rental value, regardless of the actual cash rental collected. This requirement is not applicable to permits, easements or to leases for agricultural purposes. This report is prepared by the appropriate USACE district commander and forwarded to HQUSACE (CERE-L) for submission to the committees. DASA(I&H) will review the Title 10 report for actions that are subject to reporting requirements of Congress contained in 10 USC 2662.

**4-7. Lands containing dangerous materials, ammunition, explosives or chemicals or hazardous, toxic or radioactive waste (HTRW)**

For non-Army use, it is Army policy to decontaminate real property using the most appropriate technology consistent with the proposed use of the property. The level of contamination may preclude making the property available. Refer to AR 200-1 for required assessments and notices.

**4-8. Environmental, cultural and historical factors**

DA will not authorize the use of real property, water or other natural resources when the use conflicts with the goals and intent of overall Federal policy on environmental quality and historical preservation. All actions will comply with applicable Federal or state environmental, historical, and cultural protection requirements as well as any applicable coastal zone management plans, floodplain and wetland management. See AR 200-2.

**4-9. Storage of toxic and hazardous materials**

Title 10, USC 2692 prohibits the storage or disposal of non-DOD owned toxic or hazardous materials on DA installations or projects with certain exceptions. The temporary storage or disposal of explosives in order to protect the public or to assist Federal law enforcement agencies and materials required for use in, or produced as a result of, an approved outgrant for industrial purposes are excepted from this prohibition (see AR 75-15).

**Section II****Management of Title and Unauthorized Uses****4-10. Abandonment of railroad, road or other rights-of-way**

*a.* When a non-Army railroad or road is abandoned or ceases to be used, the property underlying the easement or right-of-way may, in some instances, revert to the adjoining property owner or may involve other issues of title and use. The fenced and marked boundary may not be dispositive of the government's rights and title. Any notice of a proposed abandonment should be referred immediately to the appropriate USACE district commander.

*b.* Disposal of a Federal railroad or road easement should be in accordance with AR 405-90.

**4-11. Encroachment and Trespass**

*a.* Encroachment or trespass may occur both on land over which the United States holds an easement interest and on land owned in fee by the United States. Encroachment involves construction or placement of improvements and structures and trespass pertains to unauthorized transient use and occupancy. Trespass is usually handled at the local level.

*b.* The general DA policy is to require removal of encroachments, restoration of the premises and collection of appropriate administrative costs and fair market value for the term of the unauthorized use. Exceptions to this general policy may be considered for unintentional encroachments after a determination that the area involved is no longer required, either temporarily or permanently, for mission or operational purposes. When an exception to removal is approved, the encroachment may be cured by disposal, exchange, and outgrant or consent (for easement). Litigation may be required to enforce the Government's rights and interests. The appropriate USACE district commander will be consulted immediately upon discovery of a suspected encroachment.

*c.* Property near airfields shall be managed to account for potential obstructions encroaching on the use of the airfield and airspace. Encroachment through use of property near an airfield can render the airfield unusable or degrade its ability to conduct various types of operations. See 14 CFR 77.27 and 77.28.

**4-12. Claims involving damage to real property or arising under outgrants**

*a.* Claims involving takings of private property by the Army or damages to real property arising from an inlease, right-of-entry,

maneuver permits or other contracts are covered by AR 405-15 or applicable engineer regulations.

*b.* Claims are also defined by the disputes clause in the outlease document.

*c.* Unauthorized use by others of DA property are discussed above.

**4-13. Boundary line or title disputes**

The specific case must be evaluated as to whether or not it is an encroachment, a boundary line issue or a disputed title action. Close review of the acquisition files and surveys is necessary. The appropriate USACE district commander will be consulted immediately upon notice of any suspected title issues.

**4-14. Withdrawal Review Program.**

The Withdrawal Review Program under the Federal Land Policy and Management Act of 1976 (FLPMA), Title 43, United States Code, Section 1714(1), directs the Secretary of the Interior to review certain classes of public domain land withdrawals. When the USACE District Commander, the IC, USAR RSC, or USP&FO, and the District BLM reach agreement on the terms of the proposed modification, the District Commander will execute appropriate documents or, if the action requires approval by the Secretary of Interior, will submit a withdrawal review transmittal assembly through USACE command channels to HQUSACE (CERE-M) for review and approval by the Secretary of the Army.

**Section III****Special Outgrants or Uses****4-15. Requests to search for treasure trove**

*a.* Notice of any request to search for treasure will be sent to HQUSACE (CERE-M) with the names and addresses of all parties to the proposed contract or license and with a local map showing the general search area. These actions require care because of the complexity of the overlapping laws.

*b.* A ROA will be processed through command channels with recommendations as to whether the search should be authorized and any terms, limitations, and conditions as necessary.

*c.* GSA issues contracts to protect the interest of the Government in searches for and sales of treasure trove, which has been wrecked, abandoned, or become derelict, and which should be returned to the Government, under Section 3755 of the Revised Statutes (40 U.S.C. 310). These contracts allow for just and reasonable compensation to be paid to the persons who salvage the property. This statute has been determined to cover salvage of shipwrecks. GSA should not issue the contract until the Army consent is obtained. The GSA contract will state the terms, limitations and conditions of the land availability. By law, the requested search may not cause any costs or claims to the Government. These contracts may be subject to other laws, see 4-15e below.

*d.* Request to search for treasure trove may also be authorized under a license, especially if the Government claims no right to the treasure.

*e.* The distinction between treasure trove and archaeological and other artifacts may be difficult, so that other laws governing these sites or items must be considered, i.e., the Archaeological and Historical Preservation Act, Archaeological Resources Protection Act, the Abandoned Shipwreck Act of 1987 and the Antiquities Act of 1906. Occasionally, various mining laws have been used as a guide for other searches.

*f.* Metal detectors may not be used by individuals on a military installation unless the individual is in search of a lost personal item or unless a license or contract as discussed above has been granted.

**4-16. Mineral leasing**

*a.* Policy on mineral leasing is set out in AR 405-30. Mineral interests on acquired lands and public domain lands are leased by the Bureau of Land Management, Department of Interior.

*b.* Geothermal energy. Under 10 USC 2689, the SA may develop, or authorize development of, any geothermal energy resource within

lands under SA control, including public lands, for use or benefit of DOD.

#### **4-17. Non Department of Defense Federal agencies**

*a.* Fair market value will be charged for land and building space granted to non Department of Defense (non-DOD) Federal agencies, in their official capacity, except as follows:

(1) Real property and related services provided to an organization that solely supports or substantially benefits a project or installation mission. The Coast Guard is an Armed Service (see Title 10 U.S.C. 101) and will not be charged.

(2) Land held under existing permits. Agencies should only be charged when entering into new outgrants or renewal of existing outgrants.

(3) The activity being conducted on the real property benefits or enhances the national defense.

(4) Cases in which the income produced by a charge is less than the expense of administering the charge.

(5) Permits in the nature of easements granting a right-of-way for roads, pipelines, cables, or similar purposes.

*b.* Requests to waive consideration based solely on the basis that the non-DOD activity being conducted on the property benefits or enhances the national defense must be submitted through command channels to ASCIM for approval of the national defense basis for the waiver.

*c.* Collection of charges may be authorized under an Interservice Support Agreement (ISA), in accordance with applicable DOD regulations.

#### **4-18. Sanitary landfills**

It is Army policy that Army-controlled real property will not be leased, licensed or permitted for landfill purposes, unless the landfill is solely to be used by DA.

#### **4-19. Use of space and buildings by Army exchange activities**

See policies and procedures in AR 60-10.

#### **4-20. Private organizations on Army installations**

AR 210-1 defines and classifies private organizations operating on Army installations and prescribes the support and services that can be provided. The use of space or facilities will be provided through either a lease or a license:

*a. License.* Use may be granted by means of a revocable-at-will license where the use will be occasional, nonregular, regular part-time, or full-time use of space. The license may permit storage of equipment and supplies provided that such storage does not interfere with, nor restrict, the normal use of the facility by other users.

*b. Lease.* Use may be granted by lease where the use will be the guaranteed sole use of space or a facility on a full-time basis; guaranteed use of space for a specific period of time; or storage of in-place equipment or supplies that impairs or restricts normal use of the facility by other users. Rent in CONUS will be established by the USACE district engineer.

*c. Use of real property outside the continental United States (OCONUS).* Areas will be in accordance with the Status of Forces Agreements, treaties or other agreements under which the Army controls such real property.

#### **4-21. Hunting, trapping, and fishing on Army installations**

See instructions and procedures in AR 200-3.

#### **4-22. Post Offices**

Space may be provided under the authority of 39 USC 406 and 411. Postmasters will arrange for use of space with the appropriate accountable officer. An appropriate support agreement will be established and the use of space documented by a permit.

#### **4-23. Rental quarters and trailer sites**

*a.* Civilian employees and other non-military personnel will be assigned and rented quarters in accordance with AR 210-50. Rental

rates for civilian and military personnel will be established as detailed in AR 210-12.

*b.* Trailer sites to military personnel will be leased using DA Form 373-R-E (DA Lease of Trailer Site). DA Form 373-R will be locally reproduced on 8 1/2- by 11- inch paper. A copy of the form for reproduction purposes is located at the back of this regulation. An electronically generated DA Form 373-R must contain all data elements and follow the exact format of the existing reproduced form. The form number of the electronically generated form must be shown as DA Form 373-R-E and the data must be the same as shown on the current edition of the form.

#### **4-24. Motion pictures, TV and video productions**

Use of real property for non-government, entertainment-oriented, motion pictures, TV or video productions requires coordination and approval by DOD. Refer to AR 360-5 for military real property and appropriate engineer regulations for civil works real property. Actions require appropriate real estate outgrants for the use proposed.

#### **4-25. Airfields**

*a.* Use of DA airfields by others will require a lease, license, or permit as appropriate for the proposed use, except in emergency situations where loss of life is at stake. Use of airfields outside the continental United States must be in accordance with the appropriate Status of Forces Agreements, treaties or other agreements under which the Army controls such real property. Refer to AR 95-2.

*b.* In order to ensure conformity to plans and policies for allocation of airspace by the Federal Aviation Administration (FAA) Administrator under the Federal Aviation Act of 1958, as amended, no military airport or landing area, or missile or rocket site, shall be acquired, established, or constructed, or any runway layout substantially altered, unless reasonable notice thereof is given the FAA Administrator so that he/she may advise the appropriate Congressional committees and other interested parties as to the effect of such action on the use of airspace by aircraft. (49 USC App 1349)

*c.* Abandonment of the airfield or closing of runways or taxiways are considered a change in use which requires notification.

*d.* Airspace shall be considered in real estate transactions.

*e.* In accordance with 10 USC 9513, the Secretary of the Air Force, with the consent of the Secretary of Army for installations under their jurisdiction, may contract with the Civil Reserve Air Fleet (CRAF) carriers for use of military airfields to include such terms and conditions appropriate to promote the national defense or to protect the interests of the United States.

#### **4-26. Utility contracts and easements**

Real property may be authorized for use in support of a utility purchase contract providing utilities to the DA installation or project. No separate easement is required. However, if the utility company provides services to others, even if through the same facilities, an easement will be required. Cable television or other cable-type systems provided to the DA installation or project under a service or purchase contract will be treated as a utility.

#### **4-27. Consent to Easement or to Structure within Easement**

A consent is not an outgrant. A consent merely approves or consents to a use where the estate held by the United States is less than fee. Reference the Glossary. A consent does not require preparation of a Report of Availability (ROA).

#### **4-28. Industrial facilities**

Industrial facilities that are retained in the Army inventory until DA discharges its responsibilities for remediation of environmental conditions or for future mobilization or national defense purposes should be leased under 10 USC 2667, if not required to support current mission, to avoid maintenance costs. HQ, IOC has been delegated authority to provide real property under a Facility Use Contract in those situations authorized by law or where leasing is

not the best alternative. This use will be documented as set out in subsection 4–29 below. Rental offsets are authorized.

#### **4–29. Property provided under a Federal Acquisition Regulation (FAR) Contract**

Property provided in accordance with a FAR contract must be documented by a real estate instrument, usually a license, so as to reflect the use in the real property inventory.

#### **4–30. Construction Contract - Permission to erect structures**

Contractors may be authorized to use property and to erect temporary structures in connection with a Government construction contract. The permission will be for the contract period and will provide for removal and restoration of the premises when the contract expires. Any such structure suitable for Army use may be relinquished to and become the property of the United States. Use of structures or facilities for any purpose other than fulfillment of the construction contract will be authorized only by a real property instrument.

#### **4–31. Memorandums of Agreement, Memorandums of Understanding, or Interservice Support Agreements**

Memorandums of Agreement (MOA), Memorandums of Understanding (MOU), or Interservice, Interdepartmental and Interagency Support Agreements (ISAs) are not outgrants. MOAs and MOUs document areas of responsibility or mutual understanding. The installation provider/host and customer/tenant will document requirements for recurring support on an ISA to define the support services and the basis for calculating reimbursement for the services using the most recent DOD/DA guidance on reimbursement. If use of DA real property is contemplated under these agreements, that use must be supported by the appropriate realty outgrant instrument. The ISA reimbursable charges are not considered rent, however the ISA may collect a charge for use of space. The greater of fair market rental or calculated reimbursable cost for facility and real property support should be collected, but not both. Reimbursement may be provided in the ISA or the outgrant.

#### **4–32. Special purpose licenses**

Special use licenses may be issued for ARNG and USAR purposes and certain civic and public uses. Reference Appendix B.

#### **4–33. Short-term Installation Licenses**

*a.* The IC, USAR RSC or the USP&FO may grant revocable licenses for the regular, occasional or non-recurring use of available land, facilities or space to state or local governments; youth, civic, community, private or non-profit organizations; or off-post individuals as set out in 2–13*b* and 2–14*b*. These grants may be without charge and may include utilities, in-place equipment, and janitorial services without charge, when the use granted is incidental to other users of the facility. The licenses may be for up to 7 consecutive days or not to exceed 30 non-consecutive days in any 12 month period.

*b.* The IC, USAR RSC or the USP&FO may grant revocable licenses for the use of property incidental to installation administration, for example, a license to make deliveries. Such licenses may be granted for terms up to 5 years and without charge.

#### **4–34. Foreign Countries**

Use of real estate on CONUS installations by foreign countries is generally covered by treaty or other agreement with the United States which controls the type of support and facilities to be provided.

#### **4–35. Educational Use**

*a.* Leases, or licenses, may be granted to states or political subdivisions thereof, and the Commonwealth of Puerto Rico for public school purposes specifically limited to school facilities, classroom and closely related academic uses at the high school level or below. Where bare land is leased for school construction, the acreage will

not exceed criteria established by the appropriate state authority or the Department of Education for the particular type of school.

*b.* Existing facilities may also be leased or licensed to public educational institutions for other educational purposes. Rooms or buildings may be provided to support the DA Continuing Education Program under 10 USC 4302.

*c.* Permits may also be issued to the Department of Education for school purposes.

## Appendix A References

### Section I Required Publications

#### AR 60–10

Army and Air Force Exchange Service General Policies (Cited in para 4–19.)

#### AR 75–15

Responsibilities and Procedures for Explosive Ordnance Disposal (Cited in para 4–9.)

#### AR 95–2

Air Traffic Control, Airspace, Airfields, Flight Activities and Navigation Aids (Cited in para 4–25.)

#### AR 140–483

Army Reserve Land and Facilities Management (Cited in para 4–4.)

#### AR 200–1

Environmental Protection and Enhancement (Cited in para 4–7.)

#### AR 200–2

Environmental Effects of Army Actions (Cited in para 4–8.)

#### AR 200–3

Natural Resources: Land, Forest, and Wildlife Management (Cited in para 4–2, 4–21.)

#### AR 210–1

Private Organizations on Department of the Army Installations and Official Participation in Private Organizations (Cited in para 4–20.)

#### AR 210–12

Establishment of Rental Rates for Quarters Furnished Federal Employees (Cited in para 4–23.)

#### AR 210–20

Master Planning for Army Installations (Cited in para 4–2.)

#### AR 210–50

Housing Management (Cited in para 4–23.)

#### AR 360–5

Army Public Affairs, Public Information (Cited in para 4–24.)

#### AR 405–15

Real Estate Claims Founded Upon Contract (Cited in para 4–12.)

#### AR 405–30

Mineral Exploration and Extraction (Cited in para 4–16.)

#### AR 405–70

Utilization of Real Property (Cited in para 4–2.)

#### AR 405–90

Disposal of Real Estate (Cited in para 4–2, 4–5, 4–10, and 4–31.)

#### AR 420–70

Facilities Engineering: Building and Structures (Cited in para 4–2.)

### Section II Related Publications

This section contains no entries.

### Section III Prescribed Forms

#### DA Form 373–R

DA Lease of Trailer Site (Prescribed in para 4–23.)

### Section IV Referenced Forms

This section contains no entries.

## Appendix B Statutory Authorities

**B–1. Leases for Non-Excess or BRAC property (10 USC 2667).**

**B–2. Easements for Transportation of Oil, Natural Gas, Synthetic Liquid or Gaseous Fuel (30 USC 185, as amended).**

**B–3. Easements for Electric Power and Communication Lines and Structures and Facilities for Various Communication Services (43 USC 961)**

**B–4. Easements for Gas, Water and Sewer Pipelines (10 USC 2669).**

**B–5. Easements for Various Rights-of-Ways (10 USC 2668).**

**B–6. Easements for Ferry Landings, Bridges and Livestock Crossings (10 USC 4777).**

**B–7. Easements for other purposes (40 USC 319).**

**B–8. Leases or Licenses at Water Resource Development Project (16 USC 460d).**

**B–9. Licenses for Fish and Wildlife Conservation (16 USC 663).**

#### **B–10. Licenses issued under statutory authority**

The SA may issue a license under the leasing or easement authorities and is also authorized under several miscellaneous statutes to issue special purpose licenses:

- a. National Guard (32 USC 503);
- b. American Red Cross (10 USC 2670, 2602);
- c. Young Men's Christian Association (YMCA) (10 USC 4778);
- d. Short-term civic use of Army Reserve Centers (10 USC 2233, 2235)

**B–11. Post Offices (39 USC 406 and 411).**

**B–12. Geothermal energy (10 USC 2689).**

**B–13. Civil Reserve Air Fleet (CRAF) Commercial Use of Military Airfields (10 USC 9513).**

**B–14. Facilities for Reserve Components (10 USC 18235)**

**B–15. Enlisted members of Army: schools (10 USC 4302)**

## Appendix C Management Control Review Checklist

### C–1. Function

The function covered by this checklist is granting of use of real property.

### C–2. Purpose

The purpose of this checklist is to assist the USACE Division and



District chiefs of real estate, the MACOM real property officer, the installation real property officer, or other real property officer accountable for DA real property in evaluating the key management controls listed below. It is not intended to cover all controls.

### **C-3. Instructions**

Answers must be based on the actual testing of key management control (for example, document analysis, direct observation, sampling, simulation, other). Answers which indicate deficiencies must be explained and corrective action indicated in supporting documentation. These management controls must be evaluated at least once every five years. Certification that this evaluation has been conducted must be accomplished on DA Form 11-2-R (Management Control Evaluation Certification Statement).

### **C-4. Test Questions**

*a.* Is property that has been identified as not currently utilized, but for which a future use is planned, being made available for other interim or collateral use by outgrant? YES /NO/NA

*b.* Is property identified as available for non-Army use during the master planning process or other management reviews being made available for other use by outgrant? YES/NO/NA

*c.* Was Army controlled real property authorized for use by a non-Army party only after it was determined available by a duly authorized official who approved a Determination of Availability (DOA) with supporting Report of Availability (ROA), for all actions not covered by an exception to the DOA requirement? YES/NO/NA

*d.* Was a report made to the Armed Services Committees on all proposed leases or licenses of military real property located in the US, its territories or its possessions, where the estimated annual fair market rental value exceeded the threshold set forth in 10 USC 2662, except for leases for agricultural purposes? YES/NO/NA

*e.* Were all identified encroachments removed, the premises restored and appropriate administrative costs and fair market value for the term of the unauthorized use collected, except for those authorized to be resolved by other methods? YES/NO/NA

*f.* Is the use of DA real property under Memorandums of Agreement (MOA), Memorandums of Understanding (MOU), or Interservice, Interdepartmental and Interagency Support Agreements (ISAs), FAR contracts, except for construction contracts, supported by the appropriate realty outgrant instrument? YES/NO/NA

*g.* Was the revocation/termination of the availability of real property held under a current outgrant approved at the same level as the original Determination of Availability? YES/NO/NA

*h.* Is outgranted property periodically inspected for compliance with the terms of the outgrant document? YES/NO/NA

*i.* Are procedures in place to insure that cash rents collected from grantees will be deposited into special accounts identified as such for the appropriate Finance and Accounting Office? YES/NO/NA

### **C-5. Supervision**

This checklist replaces the checklists for Real Estate Administration, Outgranting, previously published in DA Circular 11-93-2.

### **C-6. Comments**

Help make this a better tool for evaluating management controls. Submit comments to the Chief of Engineers.

**Glossary****Section I  
Abbreviations****ACSIM**

The Assistant Chief of Staff of the Army (Installation Management)

**AMC**

Army Materiel Command

**AR**

Army Regulation

**ARNG**

Army National Guard

**ASA(CW)**

The Assistant Secretary of the Army (Civil Works)

**ASA(IL&E)**

The Assistant Secretary of the Army (Installations, Logistics, and Environment)

**CFR**

Code of Federal Regulations

**DA**

Department of the Army

**DOA**

Determination of Availability

**DOD**

Department of Defense

**FORSCOM**

US Army Forces Command

**FPMR**

Federal Property Management Regulation

**GSA**

General Services Administration

**HQDA**

Headquarters, Department of the Army

**HTRW**

Hazardous, Toxic or Radioactive Waste

**HUD**

The Department of Housing and Urban Development

**ISA**

Interservice, Interdepartmental, and Inter-agency Support Agreement

**MACOM**

Major Army Command

**MDW**

Military District of Washington

**OCAR**

Office of the Chief, Army Reserve

**OSD**

Office of the Secretary of Defense

**ROA**

Reports of Availability

**SA**

Secretary of the Army

**SI**

Secretary of the Interior

**TM**

Technical Manuals

**US**

United States

**USC**

United States Code

**USACE**

United States Army Chief of Engineers

**USAR**

United States Army Reserve

**USAR RSC**

United States Army Reserve, Regional Support Command

**USARC**

United States Army Reserve Command

**Section II  
Terms****Active Installation**

A facility in use by active organizations.

**Consent**

A consent is not an outgrant. The need for a consent arises from the ownership of servient and dominant estates. A consent agreement allows the owner of the underlying fee estate to use his land in a manner that the Government has determined will not interfere with the estate it acquired (usually an easement), in the nature of a license. Another type of consent is an approval of restrictions that were specifically reserved in an easement, such as structures.

**Contamination**

See hazards.

**Determination of Availability**

The decision document which approves the real property as being available for the non-Army use proposed. Based upon a Report of Availability.

**District and Division Commanders**

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

**Easement**

An easement grants the right to use property for a specific purpose. It may be temporary or permanent. Easements are granted under several authorities.

**Excess real property**

Any real property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof. DA property that has been determined excess to DA must be screened with other DOD elements before it is excess to DOD agency requirements.

**Exclusive use**

The right of the occupant to maintain full-time control and prohibit the use of the premises by any other party. A lease grants exclusive use but a license does not.

**Fair market value**

Fair market value is defined in the Uniform Appraisal Standards for Federal Land Acquisition, Interagency Land Acquisition Conference 1992, as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable purchaser who desired but is not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy. Also called simply market value. In ascertaining that figure, consideration should be given to all matters that might be brought forward and reasonably be given substantial weight in bargaining by persons of ordinary prudence, but no consideration whatever should be given to matters not affecting market value. Fair market rental value would be what a knowledgeable tenant would pay as rent from a knowledgeable landlord. Determined by an appraisal or other approved method for the type of transaction.

**Fee owned**

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

**Fee simple**

See fee owned. May also be referred to as fee.

**Hazards**

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 hazard to public health or the environment or exceed applicable regulatory standards.

**Holding agency**

The Federal agency with accountability for the property.

**Improvements**

An addition or betterment to land amounting to more than repair or replacement and costing labor or capital (for example, buildings, pavements, roads, fences, pipelines, landscaping, 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 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.

#### **Inlease**

Property acquired for Army use by a lease; to distinguish it from an outlease.

#### **Installed building equipment**

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

#### **Installation Commander**

Senior officer responsible for an installation.

#### **Interservice, Interdepartmental, and Interagency Support Agreement**

A formal agreement that defines recurring services to be provided by one supplier to one or more receivers, and defines the basis for calculating reimbursement charges for the services.

#### **Inventory value**

The value as shown on property records. May be acquisition value, updated value or actual value.

#### **Lease**

A lease is a written agreement which conveys a possessory interest in real property, usually exclusive, for a period of time for a specified consideration. A lease carries a present interest and estate in the land for the period specified. The estate of the lessee, or tenant, is called the term and the estate of the lessor, or landlord, is the reversion. Generally, the lessee may occupy and use the premises for any lawful purpose not injurious to the reversion. However, the lease may contain express provisions or conditions restricting the use of the property.

#### **License**

A license is a bare authority to an individual, an organization, a corporation, a state or local governmental entity, or another federal agency, to do a specified act or series of acts on the licensor's property without acquiring any estate therein, and authorizes an act which would otherwise constitute a trespass. Use is not exclusive and there is no alienation of title, ownership, or control of Government property. The license instrument provides written evidence of the permission granted and of the obligations, responsibilities, and liabilities imposed on the licensee. A license may be issued pursuant to specific authority, as a lesser right under lease or easement authorities, or pursuant to the general administrative powers of the Secretary of the Army.

#### **Memorandum of Agreement (MOA)**

A document that defines general areas of responsibility and agreement between two or more parties, normally headquarters or major

command level components. MOAs that establish responsibilities for providing recurring support should be supplemented with an Interservice Support Agreements that specify the services and define the basis for reimbursement.

#### **Memorandum of Understanding (MOU)**

A document that defines areas of mutual understanding between two or more parties, normally headquarters or major command level components. MOUs that identify expectations of recurring support should be supplemented with ISAs that specify the services and define the basis for reimbursement.

#### **Nonexcess property.**

Not excess real property.

#### **Non-exclusive Use**

Owner retains the right to authorize concurrent or joint occupancy of the premises. This term includes the intermittent, recurring use of the premises.

#### **Outgrant**

A legal document which conveys or grants the right to use Army-controlled real property.

#### **Overseas command**

All commands outside the continental US, except Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands and the Canal Zone.

#### **Permit**

See License. For real estate purposes, the terms permit and license are considered identical and interchangeable. Wherever a permit is used, a license could properly be used. A real estate permit is generally used to authorize use of DA real property by another Federal agency.

#### **Personal property**

Any property not considered real property.

#### **Public domain**

Land owned by the US and administered by the Secretary of the Interior, through the Bureau of Land Management (BLM), which has never been conveyed out of Federal ownership (that is, land acquired by treaty, conquest, or session).

#### **Real estate**

See real property. Interests in real property are referred to as estates.

#### **Real property**

Refer to 41 CFR 101-47.103.12; generally real property is:

*a.* Any interest in land, together with the improvements, structures and fixtures, for example, installed equipment, located thereon and appurtenances thereto, under the control of the Army, (interest include leaseholds, easements, rights-of-way, water rights, air

rights, and rights of lateral and subjacent support) or

*b.* Improvements of any kind, structures and fixtures, for example., installed equipment, under the control of the Army when designated for disposition with the underlying land, or

*c.* Standing timber and embedded gravel, sand, stone, or underground water under the control of the Army whether designated for disposition by the Army or by severance and removal from the land, excluding timber felled, water stored and gravel, sand or stone excavated by or for the Government prior to disposition. Also see real estate.

#### **Report of Availability**

A document which provides the appropriate command authority the information necessary to determine whether real property can be considered for use by a non-Army entity. The detailed report contains environmental, cultural, historical reviews; site specific restrictions and other information needed to prepare an outgrant.

#### **Reserved public lands**

See withdrawn public lands.

#### **Right-of-entry**

A right to go upon the real property of another for a short duration for a specified purposes. Rights-of-entry are not technically an outgrant, but are merely a short-term permission to enter the property. They are similar to licenses. Examples include a right-of-entry for construction (pending obtaining permanent rights), or for drilling or other testing purposes.

#### **Right-of-way**

An easement.

#### **Service contract**

A Federal Acquisition Regulation (FAR) procurement contract to perform work for the government for payment to the Government under which space may be provided if essential to the execution of the contract.

#### **Transfer**

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

#### **Withdrawn public lands**

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

### **Section III Special Abbreviations and Terms**

This section contains no entries.

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DEPARTMENT OF THE ARMY

LEASE OF TRAILER SITE

For use of this form, see AR 405-80; the proponent agency is Office of The Chief of Engineers

THIS LEASE, made between the Secretary of the Army, of the first part and

of the second part, WITNESSETH:

That the Secretary of the Army, by virtue of the authority contained in Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the party of the second part, hereinafter designated as the lessee, for a term of \_\_\_\_\_, beginning \_\_\_\_\_, 19\_\_\_\_\_, and ending \_\_\_\_\_, 19\_\_\_\_\_.

but revocable at will by the Secretary of the Army, the following described property:

A certain plot of land, approximately 30 feet in width and 50 feet in depth, designated Site No. \_\_\_\_\_ of the trailer-camp area within the \_\_\_\_\_ Military Reservation \_\_\_\_\_.

THIS LEASE is granted subject to the following provisions and conditions:

1. CONSIDERATION. That the lessee shall pay to the United States rental in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) per annum, payable in equal monthly installments in advance, and the lessee shall also pay to the United States on demand any sum which may be expended after the expiration, revocation, or termination of this lease in restoring the premises to the condition required by provision No. 11 hereof. Compensation shall be made payable to the Finance and Accounting Officer and forwarded by the lessee direct to \_\_\_\_\_.

2. IMPROVEMENTS. That the lessee shall place no improvements upon the property leased hereby other than a trailer and such temporary additions thereto as may be approved by the Commanding Officer.

lessee's use and occupation of the said property, shall be promptly repaired or replaced by the lessee to the satisfaction of the said officer, or in lieu of such repair or replacement the lessee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damages to or destruction of Government property.

3. USE OF COMMON AREAS. That the lessee shall have the right to use, in common with others, such facilities within the trailer camp area as may be designated by said officer.

7. TAXES. That the lessee shall pay to the proper authority, when and as the same becomes due and payable, all taxes, assessments, and similar charges which, at any time during the term of this lease, may be taxed, assessed, or imposed upon the Government or upon the lessee with respect to or upon the leased premises. In the event any taxes, assessments, or similar charges are imposed with the consent of the Congress upon property owned by the Government and included in this lease (as opposed to the leasehold interest of the lessee therein), this lease shall be renegotiated so as to accomplish an equitable reduction in the rental provided above, which shall not be greater than the difference between the amount of such taxes, assessments, or similar charges and the amount of any taxes, assessments, or similar charges which were imposed upon such lessee with respect to his leasehold interest in the premises prior to the granting of such consent by the Congress; provided that in the event that the parties thereto are unable to agree within 90 days from the date of the imposition of such taxes, assessments, or similar charges, on a rental which in the opinion of the said officer, constitutes a reasonable return to the Government on the leased property, then, in such event, the said officer shall have the right to determine the amount of the rental, which determination shall be binding on the lessee.

4. TRANSFERS AND ASSIGNMENTS. That the lessee shall neither transfer nor assign this lease or any property on the demised premises, not sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without permission in writing from the said officer.

5. INDEMNITY. That the United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the said premises, or for damages to the property of the lessee, or for injuries to the person of the lessee, or for damages to the property or injuries to the person of the lessee's family, servants, or others who may be on said premises at their invitation or the invitation of any one of them, arising from governmental activities, and the lessee shall hold the United States harmless from any and all such claims.

6. PROTECTION OF PROPERTY. That the lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the lessee. That any property of the United States damaged or destroyed by the lessee incident to the lessee's use and occupation of the said property,



8. TERMINATION. That this lease may be terminated by the lessee at any time by giving to the said officer at least ten (10) days notice in writing; provided that, in case of such termination or in case of termination by the Government for causes other than breach of the lease terms by the tenant, refund of rental paid in advance shall be made on a pro-rata basis for the days of the monthly rental period subsequent to the actual vacation of the premises by the tenant.

9. SUPERVISION BY THE INSTALLATION COMMANDER. That the use and occupation of the premises leased hereby and the use of designated common facilities shall be subject to the general supervision and approval of the said officer and to such rules and regulations as may be prescribed by him from time to time.

10. COST OF UTILITIES. That the lessee shall pay the cost, as determined by the said officer, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the lessee. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the method prescribed by the said officer upon bills rendered monthly.

11. RESTORATION. That, on or before the date of expiration of this lease, or its termination by the lessee, the lessee shall vacate the demised premises, remove the property of the lessee therefrom, and restore the premises to as good order and condition as that existing upon the date of commencement of the term of this lease, damages beyond the control of the lessee and due

to fair wear and tear excepted. If, however, this lease is revoked, the lessee shall vacate the premises, remove said property therefrom, and restore the premises to the condition aforesaid within such time as the said officer may designate. In either event, if the lessee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Secretary of the Army said property shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the premises to be restored at the expense of the lessee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

12. OFFICIALS NOT TO BENEFIT. That no Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation or company.

13. APPLICABLE LAWS AND REGULATIONS. The lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

14. SEVERAL LESSEES. If more than one lessee is named in this lease the obligations of said lessees herein contained shall be joint and several obligations.

THIS LEASE is not subject to Title 10, United States Code, Section 2662.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_

\_\_\_\_\_

THIS LEASE is also executed by the lessee this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_

\_\_\_\_\_ (SEAL)  
\_\_\_\_\_





<b>MANAGEMENT CONTROL EVALUATION CERTIFICATION STATEMENT</b>		1. REGULATION NUMBER
<i>For use of this form, see AR 11-2; the proponent agency is ASA(FM).</i>		2. DATE OF REGULATION
3. ASSESSABLE UNIT		
4. FUNCTION		
5. METHOD OF EVALUATION <i>(Check one)</i>		
a. CHECKLIST		b. ALTERNATIVE METHOD <i>(Indicate method)</i>
APPENDIX <i>(Enter appropriate letter)</i>		
6. EVALUATION CONDUCTED BY		
a. NAME <i>(Last, First, MI)</i>	b. DATE OF EVALUATION	
7. REMARKS <i>(Continue on reverse or use additional sheets of plain paper)</i>		
8. CERTIFICATION		
I certify that the key management controls in this function have been evaluated in accordance with provisions of AR 11-2, Management Control . I also certify that corrective action has been initiated to resolve any deficiencies detected. These deficiencies and corrective actions <i>(if any)</i> are described above or in attached documentation. This certification statement and any supporting documentation will be retained on file subject to audit/inspection until superseded by a subsequent management control evaluation.		
a. ASSESSABLE UNIT MANAGER		
(1) TYPED NAME AND TITLE	b. DATE CERTIFIED	
(2) SIGNATURE		



**UNCLASSIFIED**

PIN 003254-000

## Exhibit 2

DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
Washington, D.C. 20314-1000

DAEN-REP

\*  
Regulation  
No. 405-1-12

20 November 1985

\*

REAL ESTATE HANDBOOK  
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## CHAPTER 1

## PROGRAMMING AND CONTROL

## SECTION I. GENERAL

1-1. Purpose. This chapter provides guidance in the theory, methods, and systems to be applied by real estate management in the planning and scheduling of real estate program, the measuring and reporting of progress in accomplishing the programs, and the application of review and analysis in managing resources and controlling program activities.

1-2. Applicability. This chapter is applicable to all Division and District Engineers having real estate responsibilities.

1-3. Definitions.

a. Programming. The word "programming" is a general term used to encompass most of the basic activities of management. The activities are threefold: planning, executing, and evaluating. Thus, programming entails in the first phase, the planning of work to be done; in the second phase, the recording of work execution; and in the third phase, the reviewing and analyzing of performance against planned work. Real estate schedules are the means of expressing the plans for the program year. Real estate cost performance reports are the means of recording accomplishments for the program year. Review and analyses provide management a means of evaluating performance and determining the efficiency of use of available resources.

b. Control Within recognized management principles, the term "control" signifies the actions which management must take or the methods and "tools" it must use to ensure that work which is performed matches that which was planned. The systems of real estate work progress monitoring, work measurement, cost analysis, and performance evaluation as prescribed in this chapter are examples of controls to be applied in the effective execution of real estate program activities.

1-4. Responsibility. It is the responsibility of Division and District Engineers to adhere to sound and recognized management principles and make optimum use of existing controls provided by the real estate work measurement, cost accounting, and reporting systems in the planning and management of their real estate programs. Additional internal controls or reporting and monitoring system may be instituted where the size, scope, and complexity of programs make such action appropriate to insure proper management.

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## SECTION II. PLANNING

1-5. General. Real estate planning as outlined herein denotes all actions taken by management in the development of real estate programs and objectives and in the devising of means to attain those programs and objectives. It encompasses the planning of resources, the establishing of activity schedules, the determination of timing and priorities, and the planning of methods and procedures to accomplish the planned work in the most efficient manner. It should be distinguished from project acquisition planning described in Chapter 2, dealing with development and preparation of technical reports and project data designed to obtain land acquisition authorization, even though the foregoing activities are also elements of planning. Sound planning principles must be adhered to at all levels of real estate management. It is especially critical at the operating levels of Division and District organizations with prime responsibility to accomplish specific missions. Whether for long-range purposes or in development of annual schedules, real estate planning decisions must consider all facets that bear on mission accomplishment. The recognition of constraints imposed by policy, laws, available resources, and the relationship with other features of project development is vital to proper planning. Planning must also incorporate the characteristics of flexibility so as to accommodate changes, updating, and alternatives that may be necessitated by various factors. Basic to sound planning is the determination and defining of objectives and goals and the establishing of priorities. This requires extensive coordination with Commands and agencies for which real estate services are being provided. It requires that real estate management be a full partner in overall project planning, development, and management. Budgeting of funds determining manpower requirements, planning for contractual services, and organizational planning must be compatible with activity schedules. Likewise, activity schedules must be compatible with project development plans and long- and short range plans of Commands and agencies. The complexity of real estate planning requires that management be fully conversant with and make optimum use of performance capability studies, cost experience data, and other tools which the real estate activity and cost accounting structure and work measuring systems provide.

1-6. Scheduling. Real estate schedules are designed to convey in terms of work units and dollars the planned accomplishments, phased by quarters (cumulative) for the current fiscal year for real estate administration, Homeowners Assistance Program administration, rental payments, initial alteration payments, restoration payments, HAP payments, relocation assistance payments, and land payments. Schedules will be developed to produce realistic work projections for the program year, recognizing manpower capabilities and funding resources available. The fund

authorization document furnished by the Engineer Comptroller at the beginning of each fiscal year will be used by Division and District Engineers in preparing military schedules. In the preparation of civil works schedules, close coordination will be exercised with project planning, construction, and operations elements to assure compatibility with project development and management plans. Acquisition program schedules must be based on analyses of each installation and project, taking into consideration the sequence and time-phasing of preliminary acquisition steps since each preliminary action is dependent on completion of other preliminary actions; e.g., mapping, legal descriptions, title evidence and appraising. Schedules will include all current uncompleted directives and new directives and acquisition and construction starts for which funds are expected to be appropriated or made available for the current year. Chapter 14 provides guidance for the preparation and submission of annual real estate schedules. After the initial submission of schedules, revised schedules will not be furnished. However, program or funding changes during the course of the fiscal year which result in major deviations from schedule will be reported as provided in Chapter 14.

### SECTION III. EXECUTION

1-7. General. Execution as used herein, is the achievement of objectives in accordance with a preestablished plan. To executive, managers must have sufficient controls and must exercise managerial judgments in making sure that controls are used in a consistent and effective manner. In work execution, emphasis should be placed on those controls or reporting systems that produce performance data in a timely manner to allow corrective action. Of equal importance is the use of controls that identify factors that will have the greatest impact on achievement or lack of achievement of objectives. To provide basic elements essential to development of controls, real estate administrative actions have been categorized into major activities, each with a defined unit of work measurement. This activity structure corresponds "with the prescribed real estate administrative cost accounting structure. From these structures have been developed the scheduling, reporting, and performance evaluation systems for use of real estate management. Further refinements to these systems may be essential to effective tracking of critical factors in executing at the operating levels. Review and analysis of the concepts described in Section IV, this chapter, provide data helpful in the recognition of deficiencies during program execution. Where such analyses and other available systems do not provide data in a timely manner, it is incumbent on management to develop and implement actions or systems that will produce desired results.

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1-8. Reporting. The reporting system outlined in this pamphlet is designed to convey in terms of work units and dollars the actual accomplishments, phased by quarters (cumulative) for the current fiscal year for real estate administration, Homowners Assistance Program (HAP) administration, rental payments, initial alteration payments, restoration payments HAP payments, relocation assistance payments, and land payments. Guidance for the preparation and submission of real estate cost and performance progress reports is provided in Chapter 14. The reports provide management with progress data and a comparison of accomplishments versus schedules for all program activities. They also provide the data for computation of work activity unit costs for performance analysis. In order for the system to produce the benefits for which it is designed, accurate and uniform reporting procedures are essential. Division Engineers will maintain appropriate review of reporting procedures to assure the uniform interpretation and application by operating organizations within their respective Divisions.

#### SECTION IV. REVIEW AND ANALYSIS

1-9. Activity Control. The real estate activity scheduling and reporting systems outlined in this chapter, together with cost information developed by the cost accounting structure prescribed in ER 37-2-10 and 37-345-10, provide the basic data for analyzing and controlling real estate activities. Program review and analysis documents using the progress and performance data from these systems have been developed at various organizational levels. Such documents reflect current progress status, provide comparative analysis, and allow timely institution of remedial measures where deficiencies are indicated. Program managers should use these materials continually to analyze and compare projected and actual levels of attainment and to identify problem areas and imbalances in resource application. Further progress analyses and comparisons can be developed at the Division or District levels to provide control data on individual installation and project activities. Accomplishments and rate of progress experience are of value of realistically planning and scheduling future year activities and programs.

1-10. Performance Evaluation. The work measurement units defined for real estate activities in Chapter 14 in concert with the real estate cost accounting structure, provide quantitative analysis of work accomplishment and a method of evaluating performance. Most review and analysis documents provide unit administrative cost data which reflect the administrative cost of producing a unit of work in the various activity categories. Such costs may be compared at the different Corps organizational levels. Where published review and analysis documents do not provide comparisons at the lowest organizational levels, i.e., project or installation, the data may be developed locally for more detailed or accurate study. Published unit costs are not designed

to establish performance standards. However, such performance comparisons afford management at all levels good indicators as to the degree of efficiency or effectiveness of operations. They provide a means of recognizing those areas or situations where more intense management efforts are needed to improve performance. In evaluating work performance under the work measurement system provided, consideration must be given to varying circumstances, conditions and complexities which affect unit costs at different locations. Such factors must always be recognized when comparing local performance against Corps-wide or other broad based performance data.

1-11. Manpower Guidance. Rate of progress experience in accomplishing various real estate activities within given dollar and manpower resources, together with performance levels developed through use of the real estate work measurement system provide guidelines in determining manpower and staffing requirements. It is particularly beneficial in the planning and staffing of new project real estate programs since performance data for simular programs are usually available through locally developed review and analyses documents and studies. The number of units produced in one man-year effort may be readily computed from actual administrative cost data and the work unit measurement system provided in Chapter 14. As an example, the document published annually by DAEN-REP-R entitled "Review of Real Estate Administration and Real Property Acquisition Program Activities" provides such data on a Division basis for all Corps Divisions within the continental United States. These data may be further refined by computing at District and lower levels to provide information from a narrower base. Managers, however, should exercise care in the application of performance data in the form of units produced in one man-year effort in assessing manpower requirements. The technique should be considered along with all other known factors or conditions that may affect performance.

TABLE 1-1

TABLE OF REGULATORY REFERENCES

AR 37-1

ER 11-1-22

ER 37-345-10

ER 37-2-10

TABLE 1-1

TABLE OF REGULATORY REFERENCES

AR 37-1

ER 11-1-22

ER 37-345-10

ER 37-2-10



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CHAPTER 2

REAL ESTATE PROJECT PLANNING - MILITARY AND CIVIL WORKS

SECTION I. PREFACE

2-1. This Chapter sets out basic procedures to be followed in planning and scheduling for the acquisition of lands in connection with Military and Civil Works projects. It is not intended to be taken as absolute, without modification, but more as a guide to insure all aspects involved and potential problems are fully considered in planning for the acquisition of additional lands. Proper planning in the initial stages of any project can and should eliminate unnecessary delays during the acquisition phase.

2-2. Sections II through VIII are devoted basically to Civil Works projects, with Section IX covering Military Planning and Project Authorization. Some cross references have been made between the Military and Civil Works sections where certain procedures apply equally to both.

SECTION II. GENERAL

2-3. Purpose. Sections II through VIII of this Chapter describe the authorities and procedures of the Corps of Engineers relating to real estate planning and project authorization for the acquisition of land and interests therein for all water resource projects.

2-4. Applicability. Sections II through VIII are applicable to all Division and District Engineers having civil works real estate responsibilities.

2-5. River and Harbor and Flood Control Projects.

a. River and Harbor Projects. The Act of Congress approved 24 April 1888 (33 U.S.C. 591) authorizes acquisition of land for river and harbor purposes. These include the construction, operation, maintenance and improvement of both natural and artificial waterways, the construction of locks and dams, dikes, bulkheads, jetties, revetment and other bank protection works, and spoil disposal dikes and retaining structures for construction and maintenance. Unless otherwise specified by Congress, local interests furnish, free of cost to the United States, all lands, easements and rights-of-way required for initial construction, \*

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\* operation and subsequent maintenance. A cash contribution may also be required if enhancement of land values results from disposal of spoil dredged from project areas (ER 1150-2-301 and EM 1120-2-101).

b. Flood Control Projects. The Act of Congress approved 1 March 1917 [33 U.S.C. 701) authorizes acquisition of land for flood control purposes, and Section 2 of the Act of Congress approved 28 June 1938, as amended (33 U.S.C. 701c-1), authorizes the acquisition of land and interests therein for dam and reservoir projects, channel improvements, and rectification projects for flood control at Federal expense. Dam, reservoir and lake projects are generally constructed entirely at the expense of the United States and are maintained and operated with the use of Federal funds. Local interests are not required to furnish lands, easements and rights-of-way for dam and reservoir projects, unless specifically authorized by law for small reservoirs which provide localized flood protection (EM 1120-2-101). For local flood protection projects except channel improvement or channel rectification projects authorized by the Flood Control Acts of 1936, 1937 and 1938, local interests must provide, without cost to the United States, all necessary lands, easements, and rights-of-way. They must also hold and save the United States free from damages due to the construction, operation and maintenance of the project, except where such damages are due to the fault or negligence of the United States or its contractors, and maintain and operate all the works after completion, in accordance with regulations prescribed by the Secretary of the Army. Channel improvement and channel rectification projects authorized by the Acts of 1936, 1937 and 1938 are built entirely at Federal expense and no local cooperation is required. Exceptions to these rules are provided by law in the case of certain specific projects such as hurricane protection, shore protection, beach erosion control or other purposes. As in river and harbor projects, a cash contribution may also be required if enhancement of land values results from disposal of spoil dredged from project areas (ER 1150-2-301 and EM 1120-2-101).

2-6. The Navigational Servitude. As a general rule the United States does not acquire interests in real estate which it already possesses or over which jurisdiction is or can be legally exercised. Irrespective of the ownership of the banks and bed of a stream below ordinary high water mark, and irrespective of western water rights under the prior appropriation doctrine, no further Federal interest is required for navigation projects in navigable streams below the ordinary high water limit. It is required, therefore, that the acquisition plan consider the extent if the navigational servitude. \*

\* a. ER 1165-2-302 contains the practice and procedures regarding navigation.

b. The navigational servitude affects abutting uplands, in that the special site value attributable to their location near a navigable stream is noncompensable. However, this has been partially changed by Section 111 of Public Law 91-611. In all cases where real property is acquired by the United States for public use in connection with any improvements of rivers, harbors, canals or waterways of the United States, the compensation to be paid shall be the fair market value of such real property based upon all uses to which such real property may reasonably be put, including its highest and best use, any of which uses may be dependent upon access to or utilization of such navigable waters. In cases of partial acquisitions of real property, no depreciation in the value of any remaining real property shall be recognized, and no compensation shall be paid for any severance to such remaining real property which results from loss of or reduction of access from such remaining real property to such navigable waters because of the acquisition of real property or the purposes for which such real property is acquired.

c. Injury to private property within or abutting non-navigable streams is compensable if inflicted in the course of an exercise of the navigation power limited to the navigable mainstream. U. S. v. Kansas City Life Ins. Co., 339 U. S. 799 (1950), U. S. v. Cress, 243 U. S. 316 (1917).

2-7. Buildings. Buildings for human occupancy, as well as other structures which would interfere with the operation of the project, or which would be substantially damaged by inundation, are prohibited below the guide acquisition line unless otherwise specifically approved by the Chief of Engineers.

2-8. Estates. Standard estates for acquisition of land or interests therein are contained in Chapter 5 of this pamphlet. Non-standard estates should be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for approval.

### SECTION III. NAVIGATION PROJECTS

2-9. Land to be Acquired in Fee. All lands necessary for permanent structures, construction areas, public access areas and fish and wildlife purposes will be acquired in fee. No interests need be acquired in areas subject to the Government's right of navigational servitude (para 2-6). Spoil disposal areas may be acquired in fee upon approval of HQDA (DAEN-REA-P). \*

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\* 2-10. Lands Over Which Easements are to Acquired.

a. Permanent easements are required for channel improvements, navigation pools, navigation aids, and spoil disposal areas for future maintenance. Requirements for navigation aids should be coordinated by the District Engineer with the local Coast Guard District Commander.

b. Temporary easements maybe acquired for temporary disposal of spoil, and temporary construction and borrow areas.

c. In navigation-only projects, the right to permanently flood should be acquired in all lands located within the navigation pool and the right to occasionally flood should be acquired in lands above the pool. However, when the area to be occasionally flooded above the navigation pool consists of a narrow band of land, the right to permanently flood may be taken therein, to avoid acquisition of two different estates from the same ownership, and/or to reduce overall costs of acquisition.

SECTION IV. RESERVOIR PROJECTS

2-11. Joint Land Acquisition Policy for Reservoir Projects. The joint policies of the Department of the Interior and the Department of the Army, governing the acquisition of land for reservoir projects, are published in the Federal Register, dated 22 February 1962, Volume 27, page 1734. On 2 July 1966 the Joint Policy was again published in 31, F. R. 9108, as follows:

"JOINT POLICIES OF THE DEPARTMENTS OF THE INTERIOR  
AND OF THE ARMY RELATIVE TO RESERVOIR PROJECT LANDS

"A joint policy statement of the Department of the Interior and the Department of the Army was inadvertently issued as a Notice in 27 F.R. 1743. Publication should have been made as a final rule replacing regulations then appearing in 43 CFR Part 8. The policy as it appears in 27 F. R. 1734 has been the policy of the Department of the Interior and the Department of the Army since its publication as a Notice and is now codified as set forth below.

June 28, 1966

Sec.

8.0 Acquisition of lands for reservoir projects.

\*

- \* 8.1 Lands for reservoir construction and operation
- 8.2 Additional lands for correlative purposes
- 8.3 Easements
- 8.4 Blocking out
- 8.5 Mineral rights
- 8.6 Buildings

Authority: The provisions of this Part 8 issued under Sec. 7, 32 Stat. 389, sec. 14, 53 Stat. 1197; 43 U.S.C. 421, 389.

8.0 Acquisition of lands for reservoir projects.

Insofar as permitted by law, it is the policy of the Departments of the Interior and of the Army to acquire, as a part of reservoir project construction, adequate interest in lands necessary for the realization of optimum values for all purposes including additional land areas to assure full realization of optimum present and future outdoor recreational and fish and wildlife potentials of each reservoir.

8.1 Lands for reservoir construction and operation.

The fee title will be acquired to the following:

- (a) Lands necessary for permanent structures.
- (b) Lands below the maximum flowage line of the reservoir including lands below a selected freeboard where necessary to safeguard against the effects of saturation, wave action, and bank erosion and to permit induced surcharge operation.
- (c) Lands needed to provide for public access to the maximum flowage line as described in paragraph lb, or for operation and maintenance of the project.

8.2 Additional lands for correlative purposes.

The fee title will be acquired for the following: \*

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\* (a) Such lands as are needed to meet present and future requirements for fish and wildlife as determined pursuant to the Fish and Wildlife Coordination Act.

(b) Such lands as are needed to meet present and future public requirements for outdoor recreation, as may be authorized by Congress.

### 8.3 Easements.

Easements in lieu of fee title may be taken only for lands that meet all of the following conditions:

(a) Lands lying above the storage pool.

(b) Lands in remote portions of the project area.

(c) Lands determined to be of no substantial value for protection or enhancement of fish and wildlife resources, or for public outdoor recreation.

(d) It is to the financial advantage of the Government to take easements in lieu of fee title.

### 8.4 Blocking out.

Blocking out will be accomplished in accordance with sound real estate practices, for example, on minor sectional subdivision lines; and normally, land will not be acquired to avoid severance damage if the owner will waive such damage.

### 8.5 Mineral rights.

Mineral, oil and gas rights will not be acquired except where the development thereof would interfere with project purposes, but mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access.

### 8.6 Buildings.

Buildings for human occupancy as well as other structures which would interfere with the operation of the project for any project purpose will be prohibited on reservoir project lands." \*

\* 2-12. Application of Joint Policy by Corps of Engineers. In order to assure that the water and land areas of reservoirs constructed by the Corps are available to the public, the lands which provide access along the shore of the reservoir will be supplemented at selected locations for concentrated public use. Where projects have either recreation or fish and wildlife, or both, as project purposes, additional lands will be acquired as set out in the authorization and specified in design memoranda. The policy contemplates that the United States own in fee a continuous area of land around the reservoir above the water level to insure ready access along the shore. However, certain exceptions have been adopted, as set forth hereinafter. Under the Joint Policy the Corps will take an adequate interest in lands, including areas required for public access, to accomplish all of the authorized purposes of the project and thereby obtain maximum public benefits therefrom. The statements in the policy which define the land interests to be acquired in particular areas are guidelines in application of policy.

a. Land to be Acquired in Fee.

(1) Lands necessary for the dam site, construction areas and permanent structures.

(2) The lands below a guide contour line (guide acquisition line) established with a reasonable freeboard allowance above the top pool elevation for storing water for flood control, navigation, power, irrigation, and other purposes, referred to in this paragraph as the "full pool" elevation. In nonurban areas generally, this freeboard allowance will be established to include allowances for induced surcharge operations plus a reasonable additional freeboard to provide for adverse effects of saturation, wave action and bank erosion. Factors such as estimated frequency of occurrence, probable accuracy of estimates, and relocation costs, will be taken into consideration. Where this freeboard does not provide a minimum of 300 feet horizontally from the conservation pool, defined as the top of all planned storage not devoted exclusively to flood control, then the guide acquisition line will be increased to that extent. In the vicinity of urban communities or other areas of highly concentrated developments, the total freeboard allowance between the full pool elevation and the acquisition line may be greater than prescribed for nonurban areas generally, and shall be sufficient to assure that major hazards to life or unusually severe property damages would not result from floods up to the magnitude of the standard project flood. In such circumstances, however, consideration may be given to easements rather \*

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\* than fee acquisition for select sections if found to be in the public interest. However, when the project design provides a high level spillway, the crest of which for economy of construction is substantially higher than the storage elevation required to regulate the reservoir design flood, the upper level of fee acquisition will normally be at least equal to the top elevation of spillway gates or crest elevation of ungated spillway, and may exceed this elevation if necessary to conform with other criteria prescribed herein.

(3) Lands to be acquired for public use, being those reflected in the Recreation Resources Appendix of the Phase I General Design Memorandum (ER 1120-2-400). The Phase I General Design Memorandum is required to be prepared and submitted for approval prior to submission of the Real Estate Design Memorandum.

(4) Lands required for operation and maintenance of the project for:

(a) Frequently used operational areas.

(b) Clearing and disposition of debris.

(c) Maintenance, repair, and restoration.

(d) Anticipated erosion.

(e) Safeguarding public health, and malaria and mosquito control.

(f) Sanitation.

(5) Lands specifically authorized by the Congress for recreation and fish and wildlife purposes as defined by the Federal Water Project Recreation Act (PL 89-72) and Fish and Wildlife Coordination Act of 1958 (PL 85-624, 16 U.S.C. 661 et seq).

(a) All lands to be acquired for fish and wildlife purposes, either mitigation enhancement lands or estates therein required for other project purposes, will be presented in such a way as to distinguish clearly all such lands under each of the separate authorities involved. Specific guidance on fish and wildlife resources is contained in ER 1120-2-400 and ER 1120-2-404.

(b) The purpose of PL 89-72 is to provide a uniform policy with respect to recreation and fish and wildlife benefits and costs of Federal multiple-purpose water resource projects, and for other purposes. \*



\* 1. PL 89-72, as amended by Section 77 of PL 93-251, does, however, create a unique provision relating to local participation in the recreation and fish and wildlife developments in water resource projects. Provisions of that Act, as amended, must be adhered to and contracts for administration of project lands and cost-sharing shall follow the amendments contained in Section 77 of PL 93-251.

2. Section 3(b) of PL 89-72 further provides that, notwithstanding the absence of an indication of intent as specified above, lands may be provided in project planning which would preserve the recreation and fish and wildlife potential of the project for subsequent development by local interests. The act prescribes that local interests must within 10 years after initial operation of the project enter into agreements specified above. In the event such agreements are not obtained, the proposed facilities cannot be constructed and the Corps may utilize the lands acquired for any lawful purpose within the Corps' jurisdiction or may offer said land for sale to its immediate prior owner or his immediate heirs at its appraised fair market value at the time of disposal. In the event that an agreement with the prior owner or his heirs cannot be reached in 90 days, disposal of the property will ensue pursuant to usual disposal procedures.

3. The provisions of PL 89-72, as amended, are construed to apply to planning for projects authorized in 1965 or thereafter. Accordingly, all planning for future projects must be coordinated with local interests as defined in the law and all design memoranda relating to land acquisition or development of recreation or fish and wildlife areas must clearly set forth the potential of the project for such development and the intent of local interests in fulfilling the requirements of this law.

4. Public Law 89-72, as amended, does not impose a requirement for local participation in all recreation and fish and wildlife areas. Development of recreation areas and planning for fish and wildlife areas will be in accordance with the guidelines set forth in this Chapter and related regulations.

(6) Lands for resource preservation and/or enhancement in fulfillment of the National Environmental Policy Act of 1969 (Public Law 91-190, 83 Stat. 852) and Executive Order 11514 will be those approved in the authorizing document and/or those approved in the Recreation Resources Appendix of the General Design Memorandum.

(7) Uneconomic remnants required to be purchased in fee under Section 301(9) of Public Law 91-646 (para 2-20). \*

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\* (8) Recommendations maybe made in the Real Estate Design Memorandum to eliminate lands from acquisition located within the approved guide acquisition line but above the guide contour line which are highly developed or devoted to public uses such as parks, golf courses, cemeteries, etc. Also, where for reasons of steep terrain, presence of highways and railroads, severe severance, or for other reasons, sound real estate practice indicates requirement for some adjustments in the area above the guide contour line, recommendations for such adjustments will be included in the real estate design memorandum, or will be subsequently submitted with proposed final real property acquisition lines, for approval of the Division Engineer in accordance with Section VII, this Chapter.

(9) Lands which will be covered by any sediment delta that is expected to form as the result of aggravation of streams draining into the reservoir. The estimate of this area shall be based upon the probable sediment inflow for a period at least equal to the economic life of the project.

b. Lands Over Which Easements are to be Acquired.

(1) Lands in reservoir areas of flood-control-only projects, which do not provide conservation pools, except as required for public access.

(2) Lands required for a relatively short time for temporary structures or for use during the construction period only.

(3) The Joint Policy of 1962 provides that flowage easements may be acquired in reservoir projects if all four conditions of Section 8-3 of the Joint Policy are met. For the purposes of land acquisition, to distinguish between fee and flowage easement "remote portions of the project area" as referred to in Section 8-3 of the Joint Policy are defined as those lands lying upstream from the conservation pool (the top elevation of all storage other than that devoted exclusively to flood control use) on the main stream and all significant tributaries thereof.

(4) Lands downstream from the dam and required only for operational purposes.

(5) In flood control projects which do not have conservation pools, the right to occasionally flood should be acquired in all lands, except that the right to permanently flood should be acquired in those lands which may be subjected to permanent flooding, as in the case of a trash pool.

\* c. Levees in Lieu of Acquisition.

(1) Where construction of levees or flood walls and necessary associated facilities for protection of lands and properties located within potential flowage limits of a reservoir is proposed in lieu of acquisition of fee title or easements over such properties, the protective structures shall meet the following minimum functional requirements:

(2) In urban communities or other areas of highly concentrated developments where overtopping of levees would result in major hazards to life or unusually severe property damage under anticipated future conditions, levee grades and designs shall be adequate to withstand without failure the occurrence of the standard project flood, assuming the reservoir is filled to highest level that is reasonably likely to prevail at the beginning of such a flood.

(3) Under circumstances where it can be reasonably shown that possible overtopping of protective levees or flood walls as proposed would not result in unusual hazards to life or major property damage, levee grades shall be as high as economically practicable in consideration of apparent risks and costs involved, and flowage easements or other appropriate assurances from local interests shall be obtained insofar as necessary to protect the Government in the event the protective structures are overtopped.

SECTION V. MINERAL ACQUISITION PRACTICES

2-13. Procedure. The procedure of the Corps of Engineers in acquiring the necessary land or interests therein to accommodate projects authorized by the Congress is to permit the reservation of the minerals in the land, unless the reservation is inimical to the operation of the project. In all cases wherein a reservation is permitted, the mineral interests are subordinated to the primary project purposes, including public access and preservation of environmental quality.

2-14. General.

a. The multiplicity of ownerships in mineral interests, the variety of minerals and the different methods of mineral exploration, recovery and production make it impracticable to define in advance specific guidelines concerning the reservation of mineral interests and their subordination to primary project purposes in any given project. The initial planning documents, real estate design memoranda, and master plans will fully discuss and consider the extent of acquisition and/or reservation of mineral interests. \*

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\* b. Generally fee title to all subsurface interests will be acquired in areas required for all structures, areas required for project operations and public use including access, and in areas where the value of the subsurface interests is nominal. Reservation of coal, oil, gas and other minerals will be permitted whenever any aspect of mineral development will not interfere with project purposes. The reservation of mineral rights will be predicated upon the Government's right to so regulate their development as to eliminate any interference with project purposes and to minimize any adverse impact on the environment including aesthetic values.

2-15. Reservation Minerals.

a. When it has been determined that the reservation of minerals will not interfere with the purposes of the project, the minerals will be subordinated in accordance with the following guidelines:

(1) The estate providing for the subordination will not be utilized unless approved by HQDA (DAEN-REA).

(2) Any subordination agreement, together with additional regulations incorporated by reference, must clearly define:

(a) The rights and obligations of the Government and the mineral owner, operator, and/or lessee.

(b) The control to be exercised over site development for mining purposes.

(c) Required land reclamation or restoration.

(d) Restrictions against pollution and degradation of project environment and aesthetics.

(e) Provisions for compliance inspection by the Government of all site development and mining activities over which the Government has control under (b) above.

b. After execution of a subordination agreement as provided above, the District Engineer will develop a program for the surveillance of mineral activities at each project.

c. The representatives of the Division and District Engineers are to be fully informed concerning the rights and responsibilities of the Government and the mineral owner and/or operator under the terms of the estates acquired for the subordination of minerals, and will periodically inspect all mining activities to insure compliance with the terms of the subordination agreement and any plan incorporated by reference into such agreement. \*

\* 2-16. Off-Project Mineral Activity. In connection with all drainage upstream where there is present or potential mineral activity upstream from a project or on nearby lands outside the project limits, the District Engineer will:

a. Establish and maintain liaison with Federal and State agencies having responsibility for the regulation of mineral activities and the control of environment in order to prevent adverse effects of mining on the project.

b. Institute a system for monitoring adverse effects on the project such as sedimentation and acid drainage.

c. Take steps to insure that Corps personnel in charge of the project are familiar with State and Federal laws governing the control of mineral recovery and the environment, as well as the Federal or State agencies responsible for the enforcement of such laws.

d. Division and District Engineers are requested to use the Refuse Act of 1899 and any other legal remedies that may be appropriate in a particular situation in order to protect the interests of the United States and preserve the integrity of the project.

#### SECTION VI. FEASIBILITY REPORTS AND DESIGN MEMORANDA

2-17. Feasibility Investigations and Reports. Suvrey investigations and reports are the studies and reports, specifically authorized by Congress and made by Division and District Engineers as assigned by the Chief of Engineers, to determine the scope, justification, and degree of Federal interest in protection and development of harbors, waterways, shores and beaches, and river basins. For water resource projects the reports include determination of needs of alternative plans of protection and development to be considered for recommendation to Congress for authorization as Federal projects. Survey reports should clearly specify real estate requirements, both immediate and prospective, and the responsibilities of Federal and non-Federal agencies relative thereto. The real estate estimates in the reports should be recent enough to be meaningful for the purpose intended. Documentation regarding the estimates, such as when and by whom made, nature and extent of field investigation, search for comparable sales and similar factual material, shall be maintained. \*

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\* 2-18. Phase I and Phase II General Design Memoranda.

a. The General Design Memorandum (GDM) is a report on an authorized project. Its form and content are set forth in ER 110-2-1150. It includes a real estate section, which consists of a general discussion of real estate requirements for the project, recommendations as to estates to be acquired, a gross appraisal of the necessary land and interests therein, and other features considered desirable to present all major real estate problems and to recommend solutions. Subject to the availability of data, minerals in the project area should be covered in the manner set forth in Section V. Detailed sales data are not necessary, but may be included if it is anticipated that recommendations will be made for early acquisition of interior tracts.

b. Real Estate personnel will prepare the real estate section of the GDM. The requirements for current real estate estimates and necessary documentation thereof contained in para 2-17 are also applicable to this subparagraph.

2-19. Real Estate Design Memoranda.

a. Following approval of the Phase I GDM, a Real Estate Design Memorandum (REDM) will be prepared by the Division or District Engineer. Approval of the REDM shall be in accordance with ER 1110-2-1150, para 21b(2) (j). No land shall be acquired for the project without approval of the initial REDM except (1) in the case of an advance land acquisition situation (para 2-26), (2) acquisition for local cooperation project (para 2-19d) , or (3) when a letter-type REDM has been submitted. The REIM will include the following in the order set forth below:

(1) A statement that this REDM is tentative in nature for planning purposes only and that both the final real property acquisition lines and the estimate of value are subject to change even after approval of this REDM.

(2) Project authorization, designation, location and date of approval of GDM Phase I, including the Recreation Resources Appendix.

(3) General description of the area and estimated total acreage. The total acreage will be broken down as to fee and easement areas. The fee will be further broken down to indicate, separately, the estimated acreage required for the various authorized project purposes. \*

\* (4) If any Government-owned land is within the area, indicate the Government's estate, degree of interest required for project purposes, and views of the local representative of the controlling agency as to use for project purposes (see Act of 26 July 1956 (70 Stat. 656) with respect to national forest land).

(5) Appraisal information containing a general statement as to character, present use and highest and best use of the land, local economic conditions which may affect the trend of real estate values in the community and the gross estimate of value for the area to be acquired under the REDM. The gross appraisal on which this estimate is based should be forwarded concurrently to HDQA (DAEN-REE) WASH DC 20314.

(6) Information necessary to ascertain responsibility under PL 91-646 including but not limited to the following:

(a) The number of persons, farms and businesses to be displaced.

(b) An estimate of all costs, including contingencies to be incurred as a result of compliance with PL 91-646. Chapter 6 of this Pamphlet sets out the items to be considered in estimating these costs.

(c) Information regarding the availability of replacement housing.

(7) Estimated cost to the United States of lands, easements, and rights-of-way necessary for acquisition by the United States for:

(a) Access roads to project area. A statement will be included as to whether existing public roads will be utilized within the purview of 33 U.S.C. 701r-1 or new rights-of-way for access roads will be acquired, with the estimated cost of such new rights-of-way. The proposed plan of access during construction will be fully described.

(b) Relocation of highways, roads, railroads, pipelines, and utilities (ER 1180-1-1, Section 73). Statement will be included as to whether the Government or the owner(s) will acquire new rights-of-way, if any, necessary for the various relocations.

(8) Number of structures and facilities which will come within the purview of Section 111 of the Act of Congress approved 3 July 1958 (Public Law 85-500), and a preliminary estimate of Government costs (ER 1180-1-1, Section 73). \*

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\* (9) A study, in accordance with Section V, of present or anticipated mineral activity in the vicinity of the project which may affect the operation thereof. A recommendation including cost estimate, if applicable, regarding the acquisition of the minerals should also be included in this section of the REDM.

(10) A discussion of standing timber and other vegetative cover in proposed recreation areas and other areas above the conservation pool which have recreation or scenic value. Recommendations should be made as to the significance of such timber and cover and as to whether reservation of standing timber should be permitted in the various parts of the fee area.

(11) A map(s) showing the area which is the subject of the REDM, indicating the acquisition guide line, contour line, the tentative blocked out fee line, multipurpose pool, and lands in which the acquisition of easements is recommended. The map(s) will show, where appropriate, the dam site, construction area, borrow areas, spoil areas, public access areas, fish and wildlife areas, and recreation areas. In addition, the appropriate map(s) will have outlined thereon the items of construction or major project features. Access roads and railroad rights-of-way required for these areas will also be shown. Chapter 3 of this Pamphlet

where it is planned to submit several REDMs covering portions of the project, the initial REDM will contain a map showing the entire project, with the information shown thereon as indicated above, insofar as this information covering the entire project is then available. All subsequent REDMs will contain the same type of map, on which will be shown the area(s) on which REDMs have been previously submitted with each such area keyed to the number of its REDM. Maps shall be of sufficient scale to be legible and to permit ready interpretation of pertinent features.

(12) An aerial mosaic, if available, to provide a pictorial support to the rest of the report concerning involved problems (Chapter 3).

(13) Discussion relating to the acquisition or relocation of towns and cemeteries within the project area (ER 1180-1-1, Section 73).

(14) A realistic estimate of administrative costs, giving due recognition to existing and foreseeable conditions. To assure direct relationship between costs and estimates, the breakdown of the estimates will conform to the prescribed acquisition activity \*



\* cost items as set forth under Real Estate Schedule/Cost and Performance, ENG Form 4564 (Section I, Chapter 14), or any further breakdown which the District Engineer may consider desirable. Included as a minimum requirement will be: estimated administrative costs for mapping, surveying, and boundary monumentation, appraising, title evidence, negotiating and closing direct purchases, condemnation, and relocation assistance.

(15) Summary of project real estate costs, total all project real estate costs by category, i.e., land cost, improvements, severance, PL 91-646 costs, relocations, minerals, contingencies administrative costs, etc.

(16) Schedule of acquisition.

(17) Discussion and recommendations concerning the non-standard estates proposed for acquisition and the real property boundary lines.

(18) The extent of the existing navigational servitude (ER 1165-2-302).

(19) The REDMs will be assigned a single basic number for each project; succeeding REMs will be given alphabetical suffixes to the basic assigned number - for example, REDM Nos. 5, 5A, 5B, etc. Copies of the letter of transmittal and endorsements thereon will be inserted in the front of each copy of the REDM. A cover sheet will list chronologically all REDMs (including supplements thereto and brief letter-type memoranda) previously submitted, and will show dates submitted by the District Engineer and, if approved, dates of approval thereof.

b. Upon approval of each REDM, the Division or District Engineer may, subject to the availability of funds; proceed with the acquisition of land and/or interests therein. The REDM, as approved, will constitute the overall real estate plan for acquisition of the area covered by the REDM. Whenever changes in the approved REDM are required, a supplementary REDM describing the proposed changes and setting forth the reasons therefor will be submitted. Approval of a supplemental REDM is required before acquisition can proceed in the area in which the changes are proposed.

c. Prior to the approval of the REDM, Division and District Engineers should, subject to the availability of funds, proceed with preliminary real estate work, in the same manner as set out \*

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- \* in Section IX. No action will be taken to solicit an offer from a landowner for the purchase of his land until the acquisition has been approved and subject to availability of funds and compliance with the applicable provisions of PL 91-646.

d. An REDM is not required for projects authorized by the Congress subject to the condition that local interests furnish without cost to the United States the necessary lands, easements, and rights-of-way. However, the GDM should include a statement enumerating the requirements of local cooperation, the name of the local interests proposing to fulfill said requirements, an estimate of land costs, and any other information pertinent thereto.

e. Number and content of Real Estate Design Memorandum.

(1) With respect to reservoir projects involving an extensive real estate program, it is considered preferable that more than one REDM be prepared so that each will cover a segment or group of segments, making up the total project, consistent with the planned schedule of acquisition.

(2) For those projects, requiring two or more REDMs to cover the project area, each REDM will include all contiguous lands for each public access point and recreational site proposed within the area covered by that REDM. Non-contiguous areas planned for these purposes that are located beyond the limits of the REDM involved will be omitted therefrom. This procedure does not apply to areas authorized for fish and wildlife purposes. Lands authorized specifically for fish and wildlife purposes may be included either in a conventional REDM, along with other project lands or be submitted as a separate REDM, depending on convenience in preparation and size of the area. However, in either event, whenever practicable, the entire area proposed for this purpose should be covered in one REDM, as a unit.

(3) For smaller projects, not involving an extensive real estate program, all real estate requirements, including those for public access, fish and wildlife, and recreation, maybe covered in a single REDM.

2-20. Blocking Out. The following are guidelines to be observed to the extent possible in preparing the REDM. These guidelines will be adhered to by the Division Engineer in his approval of the final real estate acquisition lines (paragraph 2-23 of Section VII).

a. Close blocking out will be accomplished in accordance with sound real estate practices. \*

\* b. For land acquired in fee, the blocked out final real estate acquisition line will be established in such manner as to minimize costs and cause the least disruption in the use of the remainder of the ownership.

c. Severance damages will be avoided to the extent possible consistent with real estate requirements for the project. In accordance with Section 301 of PL 9L-646, if the acquisition of part of a tract will render the remainder an uneconomic unit, an offer must be made to purchase the entire tract.

d. It is conceivable that, in certain instances, acquisition of an easement will result in an uneconomic remainder and this requires application of Section 301 of Public Law 91-646, as in subparagraph c. above.

e. A remnant without access need not be acquired if

(1) the owner desires to retain the property and releases the Government from damages for lack of access, and

(2) the obtaining of such release in lieu of acquisition is concurred in, in writing, by the local road authority, and the local road authority is released from damages due to loss of access.

f. For lands to be acquired in fee or easements, close tangent will be used, generally following the acquisition line.

g. When small portions of additional properties, not otherwise needed for the project, are within the acquisition line, they may be omitted if to do so will not materially affect the operation and maintenance of the project as determined by operational elements.

#### SECTION VII. ACQUISITION LINES

2-21. Tentative Acquisition Lines. As indicated in para 2-19a(11), Section VI, tentative acquisition lines are shown on maps which are part of the REDM. However, at that time, the lines will, to some extent, be irregular and located without full regard to their effect upon fringe tracts. It will, therefore, be necessary to establish final acquisition lines, in accordance with sound real estate practices. Accordingly, fringe tracts will not be acquired until the final acquisition lines are approved by the Division Engineer. \*

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\* 2-22. Submission. As soon as possible after authority has been granted to acquire the land and/or interest therein, the District Engineer will complete appraisals covering the fringe tracts. Thereupon, a map showing proposed final acquisition lines will be submitted to the Division Engineer, accompanied by justification and reasons therefor. This submission may be for an entire project or by segments or units. However, if the final map is submitted on a segment or unit basis, each segment or unit must be complete in itself and not be dependent on another segment or unit not submitted for approval.

2-23. Approval. The Division Engineer has the authority to approve final acquisition lines, but shall not delegate this responsibility to District Engineers. This authority is subject to the following:

a. Except for the addition or deletion of individual ownerships, or portions thereof, on the basis of the criteria contained in paragraph 2-20, Section VI, approval of any changes in the overall plan will be in compliance with ER 1110-2-1150.

b. Estates in individual tracts may be changed if consistent with the overall plan. Approval, however, will be required from HQDA (DAEN-REA-P) if the estates are non-standard.

#### SECTION VIII. PLANNING AND SCHEDULING REAL ESTATE ACTIVITIES

2-24. Normal Scheduling.

a. The objective of a planned program is to provide for the early acquisition of land to avoid enhancement in land prices and a minimum of inconvenience to the property owners. Also, it is essential that there be adequate planning of the land acquisition program to insure that there is no interference with unacquired properties as a result of construction activities.

b. It is essential that adequate funds be programmed on ENG Form 2213, Advance Engineering and Design Planning Schedule (PB-2B), to proceed with real estate planning; preparation of Real Estate Design Memoranda; determination of final project boundaries; and preliminary real estate work (see Section IX) to the point where land acquisition can be started as soon as construction funds become available.

c. Surveys and boundary monumentation and/or marking shall be completed prior to acquisition. \*

- \* d. Funds will be programmed for acquisition of lands for the construction area and/or other areas initially required within the first year, and for acquisition of lands for the other features of the project as rapidly as necessary real estate data can be assembled. For projects with major impoundment features and with scheduled construction periods of more than two years, funds will be programmed at a uniform level so that total real estate requirements will be covered by accepted offers to sell or declarations of taking filed in court by the end of two-thirds of the overall construction period.

2-25. Public Information.

a. The real estate activities of the Corps are extremely sensitive, since they disrupt the lives of individuals and take their homes, farms and businesses. Therefore, the importance of keeping landowners and others having an interest in the land informed of the land acquisition program is emphasized. In order to avoid false rumors and to permit the affected owners to formulate plans for the future, information concerning the land acquisition program, procedures with respect thereto, and the specific effect on the individual properties, will be furnished to the affected owners at the outset of the project.

b. Section 302 of Public Law 86-645 (33 U.S.C. 597) is quoted, in part, for guidance:

"Within six months after the date that Congress authorizes construction of a water resource development project under the jurisdiction of the Secretary of the Army, the Corps of Engineers shall make reasonable effort to advise owners and occupants in and adjacent to the project area as to the probable timing for the acquisition of lands for the project and for incidental rights-of-way, relocations, and any other requirements affecting owners and occupants. Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, the Corps of Engineers shall conduct public meetings at locations convenient to owners and tenants to be displaced by the project in order to advise them of the proposed plans for acquisition and to afford them an opportunity to comment. To carry out the provisions of this section, the Chief of Engineers shall issue regulations to provide, among other things, dissemination of the following information to those \*

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affected: (1) factors considered in making the appraisals; (2) desire to purchase property without going to court; (3) legal right to submit to condemnation proceedings; (4) payments for moving expenses or other losses not covered by appraised market value; (5) occupancy during construction; (6) removal of improvements; (7) payments required from occupants of Government-acquired land; (8) withdrawals by owners of deposits made in court by Government; and (9) use of land by owner when easement is acquired."

c. Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, Division and District Engineers will conduct meetings with landowners. The United States Senators of the state or states and Members of the House of Representatives of the district or districts in which the project is located should be invited to attend. Normally, the public meetings should be scheduled prior to the commencement of the land acquisition program. The agenda for the meetings will include not only the nine specific items listed in Section 302, PL 86-645, but all other items of a nature that will assist landowners and tenants in understanding all of the Corps' real estate procedures such as, but not limited to: acquisition schedules, the type of land interests to be acquired under the Joint Policy, approximate acquisition lines, management of the project, etc. In addition to the foregoing, pamphlets containing this information and the information brochure explaining the benefits to landowners under PL 91-646 will be given wide distribution at approximately the same time the landowners meeting program is initiated, and copies will be furnished to the appropriate United States Senators and Members of the House of Representatives.

d. Inquiries, comments of landowners and tenants, and problems developed at the landowners meetings should be recorded or, at least, a detailed written resume made. HQDA (DEAN-REA-P) should be informed as to the outcome of these meetings. Effective follow-up to supply any information not available at the meeting, or to consider any particular problems presented, is essential to realize the full advantage of the public relations program.

e. The provisions of this paragraph are applicable to all water resource development projects, including all local cooperation projects for which real estate is to be acquired in whole or in part by local interests. Initial information as to such \*

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\* projects for which real estate acquisition is exclusively a local interest responsibility may be given, within six months after project authorization, by either the local interest or Federal Government, through the media best adaptable under the circumstances. Advice should be given as to the timing of acquisition of the lands and lesser interests, and also as to the extent to which acquisition will be accomplished by the local interests. After appropriations, the local interests should be encouraged to sponsor and conduct a landowners meeting with attendance by Corps of Engineers representatives. If there is a joint responsibility for real estate acquisition, the local interests should explain the scheduled requirement for possession of the lands involved and their acquisition procedures, and the Corps of Engineers representatives should explain the procedures followed when lands are condemned by the Federal Government on behalf of local interests, and the authority for each action (see Chapter 5).

f. If local interests refuse to call a landowners meeting, the District Engineer should call such a meeting, to explain the general construction features of the project, to inform the landowners and tenants that local interests are obligated to acquire the necessary lands, to state that we cannot explain the exact procedures which will be followed by local interests, but to explain the procedures followed when lands are condemned by the Federal Government on behalf of local interests. If only a very few landowners and tenants are involved, local interests may hold their meeting in the District Engineer's office or at a location more convenient to the landowners and tenants. While this would not be a formal meeting, the same type of information would be furnished. Here, also the District Engineer should call such a meeting if local interests refuse to do so.

g. To summarize, public (landowners) meetings are required by Section 302 of Public Law 86-645. This requirement applies to local cooperation projects as well as to the large Federal water resources development projects. The meetings will be held by Division/District Engineers, to comply with the law, if local interests refuse to call meetings at which information would normally be furnished jointly by the local interests and by the Corps of Engineers representatives.

h. Real Estate personnel and the Public Affairs Officers of the Division and District Engineers should cooperate closely in planning vigorous public relations programs as contemplated in this paragraph and through the press, radio, and television. \*

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\* 2-26. Land Acquisition Funds for Land Acquisition in Advance of Project Construction.

a. A Land Acquisition Fund in the amount of \$2 million was established as a part of the appropriations contained in the Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1971 (Public Law 91-439). Comments of the House Appropriations Committee in establishing the Fund are contained in House Committee Report No. 91-1219, 91st Congress, 1st Session, as follows:

"New land acquisition fund. The committee has approved the budget proposal to allocate \$2 million to establish a fund for land acquisition, in advance of project construction, to alleviate severe hardship cases and to avoid price escalation. The proposal has been approved with the understanding that prior committee approval will be obtained for initial purchases in each project area and that use of the fund shall be confined to those projects on which planning has progressed to the point that the damsite has been finalized, and it is known with certainty the lands to be acquired for the project."

This fund was increased to \$3 million by the Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act of 1973 (Public Law 92-405).

b. Applicability. Expenditures from the Fund are applicable to authorized water resource development projects for which land acquisition is a Federal responsibility.

c. Guidelines for Utilization of the Fund for Advance Land Acquisitions.

(1) The Fund will be used to acquire private and non-Federal publicly-owned properties at authorized water resource development projects on which planning has progressed to the point that the damsite has been finalized and it is established with certainty that the individual properties will be required for the project.

(2) Only those individual properties will be considered for acquisition where it can be shown that advance acquisition of the properties will alleviate severe hardship to the landowner and/or will avoid unusual land price escalation. Unusual price escalation cases involve those individually owned properties where it can be demonstrated that the land value will materially escalate, \*



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\* prior to commencement of the land acquisition program for the project from future appropriations for land acquisition or construction, because of imminent actions which will change the highest and best use of land, such as zoning actions, planned construction on the land and other changes in real estate market factors which will materially escalate land values. Normal land escalation occurring to all properties in general within a project will not be considered as a basis for acquisition. Hardship cases include, but are not necessarily limited to, cases involving the following:

(a) The landowner has a valid contract to purchase a replacement property and failure to dispose of his property inside the project will force him to default the contract, forfeit his deposit, or otherwise lose the benefits of the contract, and other replacement property is not available within the same area under similar terms;

(b) The property owner is forced to relocate from the area due to his employment or other circumstances beyond his control, and the Government's project has so affected the sale of properties within the project area as to make a sale to another private party at a fair and reasonable price extremely difficult; and

(c) Illness of the owner or other members of his family, or other personal hardship makes his relocation from the area necessary and the Government's project has so affected the sale of properties within the project area as to make a sale to another private party at a fair and reasonable price extremely difficult.

(d) As indicated above, these examples are not intended to exclude other cases where, in the exercise of sound judgment, actual hardship is found to exist.

(3) Individual tract ownerships recommended for advance acquisition by Division and District Engineers and approved by OCE will be acquired by direct purchase or through the filing of condemnation proceedings, in accordance with normal procedures.

d. Procedures. Individual tract ownerships which Division and District Engineers consider are hardship cases or involve unusual price escalation, within the guidelines set forth in subpara c. above should be recommended to OCE for acquisition.

(1) Full justification must be submitted to HQDA (DAEN-CWB) WASH DC 20314 in support of the recommendation to acquire the individual ownerships. \*

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\* (2) If the recommendation is approved, action will be taken by OCE to obtain approval of the House and Senate Committees on Appropriations. Upon receipt of Committee approvals, the Division Engineer will be authorized to proceed with the acquisition action if sufficient funds are available from the Land Acquisition Fund.

(3) Appropriate records will be maintained by District or Division Engineers of allocations made from the Fund which are used for approved acquisition cases. These funds will be accounted for under a designated account number.

(4) When appropriations for land acquisition or construction of the Federal project are specifically made by the Congress, the initial allowance of funds to the project will be reduced by the amount previously allotted from the Land Acquisition Fund in order to replenish the Fund for use at other projects.

2-27. Acquisition for State or Local Interests - Resettlement Sites.

a. Section 209 of Public Law 90-483 (82 Stat. 745) enacted 13 August 1968, provides that the Secretary of the Army may, prior to the approval of title by the Attorney General, acquire, enter upon, and take possession of lands or interests in lands by purchase, donation, condemnation or otherwise, whenever any State, or any agency or instrumentality of a State or local Government, or any nonprofit incorporated body organized or chartered under the law of the State, or any nonprofit association, shall undertake to secure any lands or interests therein as a site for the resettlement of families, individuals, and business concerns displaced by a river and harbor improvement, flood control or other duly authorized water resource project, and

(1) It is determined by the Secretary of the Army that the State or local interest is unable to acquire the necessary land, or unable to acquire it with sufficient promptness, and

(2) The Governor of the State in which the site is located has requested such acquisition.

b. Cost of Acquisition. The Act also provides that:

(1) All expenses of acquisition accomplished under the authority of the Act, including any award that may be made in a condemnation proceeding, the cost of title evidence, appraisals and any other costs incident to such acquisition, shall be paid by the State, agency, instrumentality or nonprofit body. \*

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\* (2) The State, agency, instrumentality or nonprofit body may repay such amount from any funds made available to it by any Federal department, agency, or instrumentality, other than the Department of the Army.

(3) Pending such payment, the Secretary of the Army may expend from any funds appropriated for the project such sums as may be necessary to carry out Section 209.

(4) To secure such payment, the State, agency, instrumentality or nonprofit body may be required to execute a proper bond before acquisition is commenced.

(5) Any sums paid by a State, agency, instrumentality or nonprofit body under Section 209 shall be credited to the appropriation for the project.

c. Determinations Required Before Application of Section 209. No acquisition by the Department of the Army may be undertaken under this section until the Secretary of the Army has determined, after consultation with appropriate Federal, State and local government agencies, that:

(1) The development of a site is necessary in order to alleviate hardships to displaced persons;

(2) The location of the site is suitable for development in relation to present or potential sources of employment; and

(3) A plan for development of the site has been approved by appropriate local government authorities in the area or community in which the site is located.

d. Action by District or Division Engineer. When the District Engineer is of the opinion that Section 209 may be applicable to a given situation, after consultation with State and State agency officials, the Governor of the State should be advised of the pertinent provisions of the law and the assistance that can be rendered by the Secretary of the Army under the terms and conditions of the law at the request of the Governor. If planning towards resettlement is undertaken by a State, agency, instrumentality or nonprofit body, the District Engineer will keep advised of the progress of such local planning and will furnish guidelines and consultation to the local interests during development of the plan.

e. Implementation of the Plan of Resettlement. When the final plan has been developed and approved by the appropriate Federal, State and local governmental agencies (which will include information \*

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\* showing that the site is necessary to alleviate hardships to displaced persons and suitable for development in relation to present or potential sources of employment), a showing has been made that the State is unable to acquire the necessary lands or interests therein or is unable to acquire the lands with sufficient promptness, the Governor has executed a request that the Secretary of the Army acquire the lands under the terms and conditions of the Act, and the State or agency of the State has executed a proper bond in an amount deemed necessary to cover total expenditures to be made by the Army for the land acquisition, the District Engineer should submit to HQDA (DAEN-REA-P) WASH DC 20314 a brief Real Estate Design Memorandum covering the land to be acquired under the plan. The REDM should be accompanied by the final approved plan and the information listed above in order that the Secretary may make the determinations as required by Section 209(b) of Public Law 90-483 (subparagraph c. above). No action will be taken by the District Engineer to acquire the land, proposed for acquisition in the plan and the REDM, until receipt of authority from DAEN-REA-P to proceed with the acquisition. A complete record will be maintained of all land and administrative costs incident to the acquisition as a basis for a request for reimbursement to the State and/or the State agency or agencies. Upon authorization to the District Engineer to proceed with land acquisition of the site, normal Corps land acquisition procedures will be followed.

f. Conveyance of the Site to the State or State Agency or Agencies. In accordance with Section 209(c) of Public Law 90-483, upon completion of the acquisition of the site, a proper deed will be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for execution by the Secretary of the Army, for conveyance of the land to the State or State agency, as appropriate. Evidence must be submitted that the terms and conditions of the deed have the approval of the Governor and the agency to which conveyance is to be made. The deed will not be delivered until reimbursement has been made to the United States for the land and administrative costs expended by the District Engineer incident to the acquisition of the site.

#### SECTION IX. MILITARY PLANNING AND PROJECT AUTHORIZATION

2-28. Purpose. This section describes the procedures of the Corps of Engineers relating to real estate planning and project authorization for the acquisition of land and interests therein for military projects, for the Department of Energy (DOE), and for other Federal agencies as required.

2-29. Applicability. Provisions of this section are applicable to the Office of the Chief of Engineers and all Division and District Engineers having real estate responsibilities. \*

\* 2-30. General Procedures.

a. AR 405-10 and AFR 87-1 outline the policies of the Department of the Army and the Department of the Air Force, respectively, with respect to real estate acquisitions.

b. The policies of the Department of Energy (DOE) with respect to acquisition of real estate are generally set forth in requests of that agency for preparation of real estate design memorandums.

c. The purpose of the planning function is to establish a sound basis for the acquisition of land and interests therein in accordance with existing law and broad procedures of higher authority; to collect all necessary real estate data; to correlate and evaluate these data from the standpoint of establishing the necessity for the proposed acquisition; to establish that no Government-owned or Government-controlled lands are available for the intended use; to determine the required estate, in accordance with existing policies, sufficient to protect the interests of the Government; and in general, to prepare each project for submission to the head of the interested department or agency, or his designee, and, where necessary, to the Department of Defense and the Committees on Armed Services of the Senate and House of Representatives, for approval.

d. In the preparation of Real Estate Planning Reports, or Real Estate Summaries, consideration will be given to the procedures and criteria expressed in the regulations cited herein.

2-31. Site Selection. When a requirement develops for a new installation or the extension of an existing installation, site selection will be the primary responsibility of the using service. A representative of the appropriate Division or District Engineer will participate in selection of sites for the Department of the Army and, upon request, in Department of the Air Force site selection and preliminary investigations. Commanders and site boards should be informed of any available lands, including marginal lands in civil works projects and available lands under the control of other departments and agencies, suitable for the desired purpose. The using service will request the Chief of Engineers or the appropriate Division or District Engineer to prepare a Real Estate Planning Report or Real Estate Summary, making reference to the prior Site Selection Report if one was prepared. \*

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\* 2-32. Real Estate Planning Documents.

a. Real Estate Planning Reports.

(1) A Real Estate Planning Report (REPR), as shown in Figure 2-1, will be prepared by the Division or District Engineer for all major fee and easement projects other than Reserve Component projects and extinguishment of grazing privileges on Federal lands. The request for such REPR may be initiated by any command or echelon of the Army or Air Force (or by the Washington Headquarters or field operations offices of DOE for a Real Estate Design Memorandum). Certain items contained in Figure 2-1 relate only to Department of the Air Force land acquisition programs for runways and approach zones and are not applicable to other projects. Such items will be omitted from REPRs where not applicable. When forwarding the REPR, a copy of the Reviewing Appraiser Comment, concerning the estimated land values assigned therein, should be included as an inclosure to the transmittal letter.

(2) On Department of the Air Force projects where estimated cost is not in excess of \$25,000, brief REPRs are to be prepared for issuance of directives by the appropriate Air Force Regional Civil Engineer (AFRCE). Such reports need not be submitted to the Chief of Engineers except in those cases in which the major command submits a copy to Headquarters, USAF. This report should contain adequate information on the items listed in the following outline but need not be limited thereto:

(a) Requirement for the property.

(b) Cost estimate of the property with indication of the method used in arriving at the estimate.

(c) Summary sheet showing the acreages, interests to be acquired, improvements and estimated costs, including the administrative costs of acquiring the real property and all costs in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646).

(d) Map showing property to be acquired, ownerships, and relation to existing installation, where appropriate.

(e) In reports covering the acquisition of runway clearance easements, a profile, topographic, and obstruction drawing should be furnished. \*

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\* (f) Discussions of any peculiar or unusual problems anticipated in connection with the proposed acquisition including relocation assistance required by Public Law 91-646.

(g) Recommendations of the office preparing the report.

b. Planning Documents for Reserve Component Acquisitions. Figure 2-2 is a sample of an REPR for use in acquisition of land for the U.S. Army Reserve Program. This report omits some items which appear in the usual planning, report but includes other items particularly applicable to U. S. Army Reserve sites.

(1) Real Estate Planning Report. The REPR for Reserve Component acquisitions should contain the following:

(a) A list of all sites inspected with reasons for rejection of the other sites.

(b) Description of physical characteristics of the site.

(c) Type and extent of grading and drainage required.

(d) Soil and foundation conditions with classification of overburden materials (to be determined by test borings only if conditions indicate this necessity).

(e) Availability of adequate access, water supply, electricity, gas for space heating, sewage disposal, drainage conditions, and telephone services. Where it is necessary to construct or extend streets, water, sewer, or other utility facilities to serve the selected site, a written commitment will be obtained from the municipal authorities assuring the United States that the municipality will perform such work without cost to the United States, or indicating the proportionate share of the costs the municipality will bear. This commitment will be made a part of the REPR.

(f) Cost estimates of supporting facilities and any unusual building foundations, itemized to the degree practicable to indicate items, quantities, sizes, unit prices, and totals.

(g) A preliminary site plan, showing existing conditions and proposed layout, to insure adequacy of the site for its intended ultimate use.

(h) A formal legal commitment in the form of a resolution or other instrument authorizing a long-term, nominal-rental lease or a donation, together with a reference to the authority to grant the lease or make the donation, in instances where land is owned by a State, county, city or other political subdivision. \*

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\* (i) A draft of the proposed lease in terms acceptable to the lessor, taking into consideration the requirements in DOD Directive 4165.16.

(2) Agreements for Joint National Guard-Army Reserve Center. Title 10, United States Code, Sections 2231 through 2238, DOD Directives 1225.2 and 1225.5, and AR 140-478 contain policy and directions for the establishment of this type of training facility. The Division or District Engineer will participate in negotiation of the joint-use agreement and preparation of the necessary instruments, in coordination with local Army Reserve and National Guard representatives. A copy of the agreement so negotiated will be attached to each copy of the REPR prior to its distribution for review. DOD Directive 1225.2 provides in part: "The agreement shall remain in full force and effect for the fixed term of years which represents the estimated useful life of the facility." This provision has generally been interpreted as fixing the use term at 25 years, although the probable useful life of a well-maintained armory type structure is much longer. The DOD provision states a minimum requirement; however, it does not preclude the Army from securing a longer period of use. In order to secure use term more commensurate with the Government investment, joint-use agreements, at a minimum, will be set up on a 25-year basis, with the option on the part of the Government to renew for an additional 25-year period under the same terms and conditions.

(3) Real Estate Summary. Considerable time, effort and funds can be saved if REPRs are forgone in those cases involving acquisition of property for U.S. Army Reserve and Army National Guard use by transfer from another military department or the General Services Administration. The Real Estate document in support of such proposed acquisitions will be a Real Estate Summary which will contain the following elements only:

(a) Authority for request.

(b) Acreage and estate.

(c) Estimated gross fair market value.

(d) Map.

(e) Excess status of land.

(f) Description of improvements (including building numbers and square feet).

(g) Justification for use of the property as provided by the Command. Proposed construction (if any) should be included. \*



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\* (h) Engineering Feasibility Study (if construction is planned).

(i) Draft Acquisition Report is required for clearance under Title 10 U.S.C. 2662 if estimated gross fair market value is over \$50,000 for acquisition by transfer from another military department. Sample report is shown as Figure 2-4.

c. Lease Planning Reports. Reference is made to AR 405-10 and AFR 87-1, concerning requests for leasehold acquisitions. A Lease Planning Report will be submitted upon request of the Chief of Engineers or the using service. Figure 2-3 is a sample of a Lease Planning Report.

d. Grazing Land Reports.

(1) When Federal grazing lands are a part of a project and it is proposed to cancel, or to prevent the use of; grazing privileges thereon, under authority contained in the Act of Congress approved 9 July 1942, as amended (43 U.S.C. 315q), the REPR (Figure 2-1) will be utilized with appropriate changes. The report will disclose each of the ranch units comprising grazing privileges, indicating, in tabulated form, the name of each operator, acreage owned in fee, acreage of State-owned land held under lease, acreage of railroad land held under lease, acreage of other privately owned land held under lease, acreage under Federal grazing permits or licenses, total acreage in ranch unit, total carrying capacity of ranch unit, and actual number of stock being carried on each ranch unit; whether project will be classified as a permanent or temporary installation; other acquisition problems, such as mining and water rights or claims, which may be encountered; and a project map indicating project boundaries, Federal and State-owned lands, and location of mining and water rights or claims.

(2) The cost estimate will be prepared in accordance with Chapter 4 of this Pamphlet.

e. Distribution and Approval of Planning Reports.

(1) Army Projects. Upon completion of a fee and/or easement planning report or a Lease Planning Report, the report will be processed as outlined in AR 405-10. Information will be included in the transmittal letter concerning status of environmental assessment or impact statement.

(2) Air Force Projects.

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(a) Upon the completion, review and approval of fee and/or easement planning report, the District Engineer will forward copies of the planning report to the Division Engineer who will forward the original and one copy with appropriate recommendations to HQDA (DAEN-REA-L) WASH DC 20314. Simultaneously with this action, the Division Engineer will furnish the Major Air Command with six copies of the planning report for review, approval, and subsequent transmittal to Headquarters, USAF.

(b) After preparation, review and approval, the District Engineer will submit the Lease Planning Report, wherein the estimated annual rental is in excess of \$25,000, to the Division Engineer. Upon review and approval, the Division Engineer will forward the original and a copy, with appropriate recommendations, to DAEN-REA-L. Simultaneously with this action, the Division Engineer will furnish the Major Air Command with two copies of the report. The Chief of Engineers will review the report and forward the original to Headquarters, USAF, with appropriate recommendations.

(3) DOE Projects. Upon completion of a fee and/or easement real estate design memorandum and review and approval by the District Engineer and, in turn, the Division Engineer, a copy of the report will be submitted to the appropriate DOE office for review and approval. When notice of approval is received, the District Engineer will transmit, through the Division Engineer, the original and two copies of the REDM with recommendations, and evidence of approval by the DOE field office, to HQDA (DAEN-REA-P) WASH DC 20314. Upon review and approval, the Chief of Engineers will transmit the original and one copy of the REDM to Headquarters, DOE, for approval and further action.

2-33. Acquisition by Transfer from Other Government Departments or Agencies (Except Public Domain). When a requirement develops for the acquisition of Government-owned real property and an appropriate request is received for the acquisition, the District Engineer will prepare and submit, through the Division Engineer, to HQDA (DAEN-REA-L) WASH DC 20314 a Real Estate Planning Report (Figure 2-1) (or a brief report, if it is determined this would be sufficient) setting forth the requirements for the property, the market value thereof, the "in place" value of existing improvements, the estimated cost of the proposed construction, attitude of the local representative of the department or agency having control, and such other items as are necessary to give full discussion of the real estate implications, for consideration and the obtaining of a real estate directive for the acquisition by transfer. \*

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\* 2-34. Withdrawal of Public Domain for Defense Purposes.

a. The Act of Congress approved 28 February 1958 (Public Law 85-337, 72 Stat. 27) provides that all withdrawals and reservations of public domain land, water, or land and water, or restrictions on use of areas in the Continental Shelf, aggregating an area of more than 5,000 acres for any one defense project, shall be by Act of Congress. Upon receipt of a request for withdrawal or reservation of lands of the public domain or for restrictions on exploration and exploitation in the Continental Shelf, and in order that the Chief of Engineers may present the project to higher authority for approval and submission to the Congress, if approved, the District Engineer will prepare and submit, through the Division Engineer, to HQDA (DAEN-REA-L) WASH DC 20314 a Real Estate Planning Report, including the following items.

(1) A copy of the request from the Army or the using service.

(2) Complete information relative to the eight items specified in Section 3 of public Law 85-337 (43 U.S.C. 156).

(3) If the proposed withdrawal constitutes an expansion of an existing installation, pertinent data relative to the lands constituting the existing installation.

(4) Information relative to outstanding mineral, grazing, water and other rights.

(5) A statement as to the estimated cost:

(a) of extinguishing such rights; and

(b) of suspending the exercise of such rights on a leasehold (annual rental) basis.

(6) Map(s) indicating the exterior boundaries of the project; excepted areas, if any; location of mineral rights, water rights, and other resources discussed in the report.

b. The District Engineer will also prepare and include a draft of application for withdrawal covering the eight items specified in Section 3 of Public Law 85-337.

c. Upon receipt of the REPR and draft of application for withdrawal, the Chief of Engineers will prepare a Real Estate Directive. \*

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d. The REPR, draft of application for withdrawal, and Real Estate Directive will be transmitted through the Chief of Staff and the appropriate Assistant Secretary of the Army to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) for approval of the acquisition and for coordination with the Department of the Interior (Bureau of Land Management). Upon receipt of approval from the ASD (MRA&L), the Chief of Engineers will dispatch the application to the Department of the Interior and will draft the necessary legislation for processing through normal legislative channels.

e. It has been determined that the words "in the aggregate" in Section 2 of Public Law 85-337 shall be interpreted as applying only to withdrawals of land since enactment of Public Law 85-337. For example, if 4,500 acres of public land had been withdrawn prior to enactment of Public Law 85-337 and the new application for withdrawal covers 1,000 acres, the requirements of Public Law 85-337 do not have to be satisfied. If the new application covering 1,000 acres is honored and the withdrawal completed and a later requirement for 4,500 acres of public lands developed, the requirements of Public Law 85-337 would have to be satisfied.

f. Public Law 85-337 and the above instructions do not relate to the use of public lands under permit.

g. In Department of Air Force cases, the District Engineer will continue to prepare such REPRs and to furnish such other services as are requested by the Major Air Commands.

h. When the REPR contains a proposal for the acquisition of minerals, the local office of the Bureau of Land Management, Department of the Interior, will be furnished with a copy of the Mineral Section of the planning report, which will indicate the number and types of claims, areas involved, and the gross appraisal. Accompanying this Mineral Section will be a request that the Bureau of Land Management place an item in the next available budget for the funds required for the validation of the mineral claims involved. A copy of the Mineral Section, together with a copy of the request to the local office of the Bureau of Land Management, will be forwarded to HQDA (DAEN-REA-L) WASH DC 20314 for coordination with the Director, Bureau of Land Management, Department of the Interior, Washington, D. C. 20240.

#### 2-35. Required Clearances.

a. As stated in AR 405-10 and AFR 87-1, no real estate or interests therein will be acquired until there is legislative authorization for the acquisition (41 U.S.C. 14) and an appropriation available for the purpose. \*

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- \* b. AR 405-10 and AFR 87-1 also outline the clearances which must be made within the Departments of the Army and the Air Force, with the Department of Defense, and with the Committees on Armed Services of the Senate and the House of Representatives before acquisition may proceed. The Chief of Engineers is responsible for initiating all clearance actions as to Army acquisitions. The Director of Engineering and Services (AF/PRE) and the Director of Planning, Programming and Analysis (AF/RDXI), as to industrial installations, of Headquarters, USAF, are responsible for initiating all clearance actions as to Air Force acquisitions.

2-36. Authority to Issue Real Estate Directives. Where there is legislative authorization, and appropriation is available, and necessary clearances have been obtained, the formal Real Estate Directive (designating the land to be acquired, the estate to be acquired, and the amount of funds available for the acquisition) will be issued by the head of the interested department or agency, or his designee.

a. Authority to issue all Department of the Army Real Estate Directives is vested in the Chief of Engineers. The Chief of Engineers has been delegated authority from the Secretary of the Army, and has redelegated to Division and District Engineers authority, to approve:

(1) Acquisition of permits from other Government departments and agencies, excepting the use of space in the National Capital Region.

(2) The making of minor boundary changes in approved projects to avoid severance damages, by including or excluding small tracts of land which will not decrease the usefulness of the project for the purpose for which being acquired.

b. The delegated authority referred to in subparagraph a, was redelegated to Division and District Engineers, provided it can be accomplished without the allotment of additional funds, and provided that there is an existing Real Estate Directive. When there is a change in scope (area and/or funds), recommendation will be made to the Chief of Engineers for amendment of the directive.

c. The Chief of Engineers has been delegated authority to approve for the Secretary of the Army leasehold acquisitions, including renewals and extensions, and space assignments from the General Services Administration, where the estimated annual rental for any single project is not in excess of \$50,000 and the acquisition is not controversial, unusual, or inconsistent \*

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with Department of the Army policies, excepting the acquisition by lease of industrial and commercial facilities; projects requiring a certificate of necessity in accordance with the Act of Congress approved 30 June 1932, as amended (40 U.S.C. 278a); and space in the National Capital Region. This authority has been redelegated to the Division Engineer where the annual rental does not exceed \* \$50,000 and to the District Engineer where the annual rental does not exceed \$25,000.

d. Authority to issue all Department of the Air Force Real Estate Directives is vested in the Real Property Division, Directorate of Engineering and Services, HQ, USAF. Major Air Commands and Air Force Regional Civil Engineers may issue Real Estate Directives for acquisitions not exceeding \$50,000 in cost.

(1) Division Engineers will assign numbers to Real Estate Directives issued by Air Force Regional Civil Engineers. The numbers will be in a consecutive series for each Division and will be preceded by a symbol identifying the Division to which the directive is issued.

(2) All revisions to Real Estate Directives will be designated as amendments to the basic Real Estate Directive and will be appropriately numbered.

(3) Division Engineers will forward the original and one copy of each Directive, and each amendment thereto to HQDA (DAEN-REA-L) WASH DC 20314.

(4) Commanders of Major Air Commands will approve requests for leases, lease renewals, and space assignments from the General Services Administration, where the estimated cost of the project does not exceed \$50,000 per annum, and subject to any necessary clearances, excepting, however, the leasehold acquisitions listed in AFR 87-1.

e. Authority to issue DOE Real Estate Directives has been delegated by the General Manager to the Directors of Operating Divisions, DOE.

2-37. Responsibility for Acquisition. HQDA (DAEN-REA-L) is responsible for acquiring real estate for the Departments of the Army (military) and Air Force. HQDA (DAEN-REA-P) is responsible for acquiring real estate for the Department of the Army (civil works), DOE, and other Federal agencies as required.

2-38. Authority to Proceed with Acquisition.

\* a. Upon receipt of the formal Real Estate Directive by the Chief of Engineers, with necessary clearances made and an allotment of funds to the District Engineer, the Division Engineer will be authorized to proceed with acquisition in accordance with the directive and the procedures outlined in Chapter 5 (Section II) and Public Law 91-646 instructions. Where authority has been delegated, the Division or District Engineer may proceed with the acquisition upon receipt of proper directive, any necessary clearances, and allotment of funds.

b. Under no circumstances will offers be made to landowners or construction initiated prior to the issuance of instructions from the Chief of Engineers to proceed with the acquisition.

c. The Division or District Engineer will maintain liaison with the local commander and advise him when possession of the land is available.

#### 2-39. Preliminary Real Estate, Work.

a. Preliminary real estate work is defined as that action taken with regard to the individual ownerships leading up to, but not including, solicitation of offers from landowners. It includes preparation or procurement of tract ownership data (ENG Form 900 - Tract Ownership Data, where its use is considered desirable), legal descriptions and mapping, title evidence, and individual tract appraisals. At this stage of the acquisition program, it will be necessary to make some contact with landowners, tenants, or other interested persons; for example, the appraiser's discussion of the property with the owner, his agent, or other representative (Public Law 91-646, Sec. 301(2)). In any such contacts, information should be confined to the fact that acquisition of the real property is being considered; no acquisition action can be taken until funds are made available; and, after acquisition is approved, as much advance notice as possible will be given to all interested parties. Supply of ENG Form 900 may be requisitioned from the OCE Publications Depot in the prescribed manner.

b. Preliminary real estate work on Army projects will be conducted as soon as design has progressed to the point at which the exact land needed has been firmly determined, or as soon as the District Engineer has determined that it is practicable to proceed.

c. Preliminary real estate work on Air Force projects will be conducted upon request of Headquarters, USAF, or Major Air Command installations, and at the request of any of those persons designated for industrial acquisitions. \*

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TABLE 2-1

REGULATORY REFERENCES

AR 405-10

AR 140-478

AFR 87-1

EM 1120-2-101

ER 1180-1-1

ER 1110-2-1150

ER 1120-2-101

ER 1120-2-400

ER 1120-2-404

ER 1150-2-301

ER 1165 -2-302

DOD Directive 1225.2

DOD Directive 1225.5



\*

REAL ESTATE PLANNING REPORT  
(PROJECT NAME)

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Figure 2-1

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\*

SUMMARY SHEET

(PROJECT NAME)

DATE : \_\_\_\_\_

1. FEE TITLE	\$ _____
2. IMPROVEMENTS	\$ _____
3. EASEMENTS	\$ _____
4. HAZARD REMOVALS	\$ _____
5. MINERAL RIGHTS	\$ _____
6. DAMAGES	\$ _____
7. CONTINGENCIES	\$ _____
8. RELOCATIONS	\$ _____
9. UNIFORM RELOCATION ASSITANCE (PL 91-646)	\$ _____
10. ACQUISITION COSTS	\$ _____
TOTAL	\$ _____

	<u>Fiscal Year</u>	<u>Number</u>	<u>Description</u>
Land Acquisition Line Item 78		91-146	Land Fee
Related Construction Line Item	78	11-118D	Runway Extension *

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\*

REAL ESTATE PLANNING REPORT  
(PROJECT NAME)  
Fee and/or Easements

1. AUTHORITY.

Insert date of request for preparation of planning report and from whom.

2. PROJECT.

Insert name and location, indicating State, county, and distance from nearest city or town.

3. SITE SELECTION TEAM.

Insert names of members of team, date of approval of selected site, and by whom.

4. SITES INSPECTED.

List and discuss all real estate costs and other real estate implications of all other sites inspected and give reasons for rejection, including Government-owned sites considered.

5. DESCRIPTION OF SELECTED SITE.

Describe area, indicating tract numbers, names of landowners, estimated acreage and estate proposed for acquisition, attaching project map as Exhibit "A", outlining area proposed for acquisition and each ownership, indicating thereon the acreage, estate and estimated value of each tract. If Government-owned land is involved, indicate Government's estate, acreage, and degree of interest that will be granted to military department.

\*

\* 6. RELOCATIONS.

List and discuss fully each item. Indicate the estimated cost and justify the relocation, even though the relocation cost should be budgeted as a construction item. A new cemetery site is, of course, a real estate item. If a need exists for the relocation, construction, reconstruction, or improvement of a public highway, attention is invited to ER 1180-1-1 for the procedure to be followed. Attach, as Exhibit "B", a land map of the area, indicating improvements, roads, public utilities, cemeteries and all other natural or constructed facilities affected by the proposed project, and those proposed for relocation.

7. ATTITUDE OF OWNERS AND NEIGHBORHOOD

Give general discussion of this item as to effect of the proposed acquisition on the local economy and known views of the landowners and others.

8. OUTSTANDING INTERESTS AND RESERVATIONS.

List all outstanding interests, such as mineral rights, timber deeds, water rights, etc., outstanding in third parties and their estimated value. Discuss whether interests may be left outstanding, if not contrary to existing policy. Also, whether owner or lessee of such rights owns land adjacent to the area proposed for acquisition. If there are no outstanding rights, the report should so state. A discussion of undeveloped mineral resources will also be included (see Section V of this Chapter). \*

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\* 9. SALES AND SUPPORTING DATA.

List and discuss each representative or comparable property recently sold or offered for sale and the assessed value of each. This discussion must be complete in order to support the conclusions as to the gross appraisal of the land proposed for acquisition.

10. VALUATION

Prepare cost estimate of the entire area, showing number of improved units, classification of lands, severance, and estimated values per acre, indicating number, type, approximate age, overall general condition, and brief description of improvements, such as dwelling, barn, garage, etc., and type of construction; assessed values and their relationship to market value; and amount of real property tax for preceding year. This estimate will reflect actual market conditions and unit prices for the various property classification, realistically supported by detailed analysis of an adequate number of typical comparable sales and related cost data (see Chapter 4 of this Pamphlet) Summarize the cost in this paragraph and attach a copy of the detailed cost estimate as Exhibit "C".

11. UNIFORM RELOCATION ASSISTANCE COSTS.

Indicate number of eligible applicants and an estimate of the cost of reimbursement to the owners and tenants under the provisions of P.L. 91-646, approved 2 January 1971 (84 Stat. 1894; 1895)

12. RECOMMENDED ESTATE.

Recommend the estate to be acquired. If acquisition of less than fee is recommended, a statement should be included as to the \*

\* sufficiency of the estate for the proposed use, and reasons given for recommending the lesser estate. If the recommended estate is inconsistent with existing policy, a full discussion justifying such estate is required.

13. RECAPTURE RIGHTS.

In those instances where the proposed acquisition involves the reacquisition of title to land which was disposed of as surplus, discuss fully the Government's right of recapture, attaching as Exhibit "D" a copy of the contract or deed from the Federal agency.

14. GOVERNMENT-OWNED PROPERTY.

List and discuss suitability of Government-owned property within the general area and reason that it is not proposed for acquisition.

15. PROPOSED CONSTRUCTION.

Indicate the nature and estimated cost of the proposed construction to be placed on the site.

16. POSSESSION DATE.

Indicate the approximate date possession is required.

17. ADMINISTRATIVE COSTS.

A realistic estimate of administrative costs is required, giving due recognition to existing and foreseeable conditions. Includes as a minimum requirement (1) mapping and surveying; (2) appraisals; (3) title evidence; (4) negotiating and closings; (5) condemnation; and (6) costs for administration of relocation assistance under Public Law 91-646.

18. SCHEDULE OF ACQUISITION.

Discuss plan of acquisition schedule.

\*

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\* 19. RECOMMENDATION.

Discuss all pertinent facts that may influence the selection  
and final approval of the site. \*

\*

REAL ESTATE PLANNING REPORT  
 ARMY RESERVE CENTER SITE  
 (City) (State)

(Date)

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REAL ESTATE PLANNING REPORT  
ARMY RESERVE CENTER SITE  
( C i t y ) ( S t a t e )

SUMMARY OF ACQUISITION COSTS

1. Fee Title (	acres)	\$ _____
2. Improvements		_____
3. Easements (	acres)	_____
4. Severance		_____
5. Mineral Rights, Timber Rights, Crops, Etc.		_____
6. Relocations		_____
7. Uniform Relocation Assistance		_____
8. Contingencies		_____
9. Administrative Cost (M&O Funds)		_____
Total Estimated Cost		\$ _____

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\*

REAL ESTATE PLANNING REPORT  
ARMY RESERVE CENTER SITE  
(City) (State)

1. AUTHORITY.

In compliance with\_\_\_Indorsements, dated\_\_\_\_\_,  
subject: "U. S. Army Reserve Center Site,\_\_\_\_\_,\_\_\_\_\_(HQ;  
\_\_\_\_\_United States Army letter\_\_\_\_\_)” and letter DAEN-  
REA-L, date\_\_\_\_\_,subject: "Aquisition of U.S. Army  
Reserve Center Site,\_\_\_\_\_,\_\_\_\_\_" ,the following  
Real Estate Planning Report has been prepared.

2. PROJECT.

\_\_\_\_\_Unit U.S. Army Reserve Center Site,\_\_\_\_\_,  
\_\_\_\_\_.

3. SITE SELECTION TEAM.

On\_\_\_\_\_,a Site Selection Team composed of the  
following representatives conducted a U.S. Army Reserve Center  
site inspection: (list names and Headquarters). The locations  
of sites inspected are shown on Exhibit "A". Approval of the  
selected site is contained in a letter, dated\_\_\_\_\_, from  
Headquarters,\_\_\_\_\_ United States Army, to the Division  
Engineer,\_\_\_\_\_ Division.

4. SITES INSPECTED.

The following sites were inspected on\_\_\_\_\_: \*

- \* a. Site A (Location) - This site was rejected because the only access was over a graded dirt road and the possibility of this road being improved was remote. The site is a portion of a ten-acre tract and the owner would sell no portion of it.
- b. Site B (Location)(Government-owned) - This site was rejected\_ due to the triangular shape of the tract, causing undesirable building siting, and due to a deep drain across the tract necessitating very high site-preparation cost.
- c. Site C (Location) - This site was approved as first choice and is the subject of this report.
- d. Site D (Location) - This site is situated in a residential section and was rejected because of neighborhood objection to the proposed use of the site.
- e. Site E (Location) - This site is situated at the edge of a residential section with good access and utilities. It was approved as second choice.

##### 5. LOCATION AND DESCRIPTION OF SELECTED SITE.

The approved site (Site C) is situated approximately 750 feet north of \_\_\_\_\_ Avenue, fronts on the east side of \_\_\_\_\_ Street and is approximately 1.7 miles northeast of the business district. It is located in a section devoted primarily to light commercial use for which the site is zoned (M-1). It is accessible by way of \_\_\_\_\_ Street, which connects with the major east-west streets. The site is unimproved and has light to heavy undergrowth and a few small trees. Tract map is shown as Exhibit "E". \*

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\* 6. LEGAL DESCRIPTION.

That tract or parcel of land situated in the City of \_\_\_\_\_,  
\_\_\_\_\_ County, \_\_\_\_\_, being the north 520 feet of the  
east 400 feet of the SW section of Section 29, Township 28 South,  
Range 19 East, T.M. and containing \_\_\_\_\_ acres, more or less.

7. ATTITUDE OF OWNER AND NEIGHBORHOOD.

The owner is agreeable to selling the site to the Government for  
the proposed use and has established an asking price of \$24,000. No  
public or neighborhood opposition to the proposed project is anticipated.

8. CONCURRENCE OF LOCAL OFFICIALS.

Mayor \_\_\_\_\_, City manager \_\_\_\_\_, and City Engineer  
\_\_\_\_\_ concur in the proposed acquisition and use of the site  
(see Exhibit "C").

9. OUTSTANDING INTERESTS AND RESERVATIONS.

The mineral interests are outstanding in \_\_\_\_\_, who has  
consented to quitclaim these to the Government. (The value of these  
is considered in the following appraisal.) There are no other types  
of exceptions, reservations, or restrictions.

10. RELOCATIONS.

A 12-inch city water main runs along the east edge of the site and  
will not require relocation.

11. UNIFORM RELOCATION ASSISTANCE COSTS.

Indicate number of eligible applicants and an estimate of the  
cost of reimbursement to the owners and tenants under the provisions  
of P.L. 91-646, approved 2 January 1971 (84 Stat. 1894; 1895). \*

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\* 12. PRESENT USE: HIGHEST AND BEST USE OF THE LAND.

The property is unused as present, and it is considered that the highest and best use of the land is for light industry.

13. SALES AND SUPPORTING DATA.

a. Tabulation of Sales:

<u>Sale No.</u>	<u>Deed Book</u>	<u>Page</u>	<u>Date of Deed</u>	<u>Consid- eration</u>	<u>Approx. Acres</u>	<u>Price Per Acre</u>
1	1984	71	8/30/77	\$42,000	10.33	\$4,066
2	1984	308	8/15/77	10,800	2.02	5,347
3	1984	302	7/15/77	1,000	0.17	5,882
4	1975	363	7/ 5/77	5,000	2.95	1,695

b. Discussion of Sales.

(1) Sale No. 1.

(Grantor) to (Grantee). Located approximately 3/4 mile south-east of subject property, on the north side of East \_\_\_\_\_ Avenue. Access is adequate. \_\_\_\_\_ Avenue (graded dirt and shelled road) connects directly with 30th Street, 350 feet to the east, and 22nd Street, 1650 feet to the west. \_\_\_\_\_ Avenue crosses the railroad at grade. Property is almost square, with 650 feet of frontage on East \_\_\_\_\_ Avenue and 675 feet of frontage on the east right-of-way line of the \_\_\_\_\_ Railroad,s main track. Zoned "M-1, Light Industrial", and well suited for uses permitted under this classification. Purchased for erection of plant by \_\_\_\_\_ Company. Building was under construction on 26 October 1977.

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\* (2) Sale No. 2.

(Grantor) to (Grantee). Located approximately one mile south-east of subject property on the north side of East \_\_\_\_\_ Avenue. Access is good. \_\_\_\_\_ Avenue (paved street) connects directly with 30th Street, 1,000 feet to the east, and 22nd Street, 1,350 feet to the west. \_\_\_\_\_ Avenue crosses the railroad at grade. Property is almost square, with 277 feet of frontage on the north side of East \_\_\_\_\_ Avenue and 340 feet of frontage on the west right-of-way line of the \_\_\_\_\_ Railroad's main track. Zoned "M-1, Light Industrial" and well suited for uses permitted under this classification. Vacant at time of sale, but now improved with a new masonry warehouse. Sale confirmed by \_\_\_\_\_.

(3) Sale No. 3.

(Grantor) to (Grantee). Adjoins Sale No. 2 on west. Rectangular in shape. Has 25.3 feet frontage on north side of \_\_\_\_\_ Avenue and an average depth of 298 feet. Zoned "M-1, Light Industrial." Purchased for use with Sale No. 2 (as site for \_\_\_\_\_ Company Warehouse). Sale confirmed by \_\_\_\_\_.

(4) Sale No. 4.

(Grantor) to (Grantee). Located 650 feet directly east of subject property. Accessible only across other ownerships. Has no street frontage. Property is a right-angle triangle in shape, with the base of 268 feet (east-west line) being the northerly boundary, the altitude of 975 feet being the easterly boundary, and fronting 1,010 feet on the \*

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\* east right-of-way line of the \_\_\_\_\_ Railroad's main track. Zoned "M-1, Light Industrial." Unimproved. Was a part of patent tract of which subject property is also part. Sold because of poor access and separation from main part of ownership by railroad. Purchaser bought to secure additional rail frontage for larger tract zoned "M-1" adjoining to east. Sale confirmed by purchaser's wife and \_\_\_\_\_ Company.

(5) Comment. Include comments concerning degree that land involved in above sales is comparable to subject site.

14. VALUATION.

\_\_\_\_\_ acres @ \$\_\_\_\_\_ per acre....\$\_\_\_\_\_  
Contingencies..... \$\_\_\_\_\_  
Administrative Costs (O&M)..... \$\_\_\_\_\_  
Total estimated cost..... \$\_\_\_\_\_

15. SUITABILITY AND ADAPTABILITY FOR PROPOSED USE.

Approved. See Engineering Feasibility Report (Exhibit "D")

16. REMARKS AND RECOMMENDATIONS.

Site B is the only Government-owned land in the area and site preparation costs are estimated to exceed the value of the approved site. The Engineering Feasibility Report (Exhibit "D") indicates that the proposed site is considered suitable and adaptable for the proposed use and no abnormal site preparation costs are anticipated. The site is in a rapidly expanding, light commercial section. Because of this activity, it is recommended that expeditious action be given this project for the acquisition of fee simple title to the site. \*

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\*

EXHIBIT "C"

Commanding General

\_\_\_\_\_ Army

\_\_\_\_\_, \_\_\_\_\_

Dear General \_\_\_\_\_:

The City officials are pleased to learn that the construction of an Army Reserve Center in the City of \_\_\_\_\_ is contemplated.

It is agreed that the selected site on \_\_\_\_\_ Street near \_\_\_\_\_ Avenue is considered suitable for the proposed use.

Please feel free to call upon us at any time for assistance in this project.

Sincerely yours,

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Engineer \*



\*

## EXHIBIT "D"

## ENGINEERING FEASIBILITY REPORT

1. SITE DESCRIPTION (PHYSICAL CHARACTERISTICS).

The site is relatively high and flat having a gradual slope to the rear away from \_\_\_\_\_ Street. No structures are on the site, which has light to heavy undergrowth and a few small trees growing thereon. A natural drainage ditch runs south to north through the central portion of the site.

2. GRADING AND DRAINAGE.

Grading will require ditch excavation and \_\_\_\_\_ cu. yds. of fill. No underground storm drainage is necessary.

3. FOUNDATION.

Unusual subsurface conditions are not anticipated. No unusual or costly foundation problems were encountered in the construction of the nearby structures. This information was obtained from the City Engineer and local contractors.

4. WATER SUPPLY.

Adequate water supply for domestic and fire protection purposes above demands of other prospective users is available at the site (\_\_\_\_\_-inch pipe, \_\_\_\_\_ gpm, \_\_\_\_\_ psi residual pressure).

5. SANITARY SEWER.

A sewer connection of adequate flow capacity above requirements of other prospective users is available within \_\_\_\_\_ feet of the site (\_\_\_\_\_-inch pipe).

\*

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\* 6. ELECTRIC POWER AND TELEPHONE.

Electric service (aerial) is available at the site (\_\_\_\_\_ volts, three-phase, 4-wire, grounded neutral). Telephone service (aerial) is available at the site.

7. GAS.

The nearest connection to gas line of suitable capacity above demands of other prospective users is approximately \_\_\_\_\_ mile(s) south of the site (\_\_\_\_\_-inch pipe, \_\_\_\_\_lbs. pressure). Bottled gas is available in the City of \_\_\_\_\_.

8. CONCLUSION.

Based on the above findings, and on the proposed layout shown on the preliminary site plan (Exhibit "F"), the site is considered adequate for its intended use as a \_\_\_\_\_-man Army Reserve Center.

\*

\* STATEMENT OF EXCEPTIONS TO SAMPLE REAL ESTATE PLANNING REPORT  
(ARMY RESERVE CENTER SITE)

1. As to sites proposed for acquisition by transfer from the General Services Administration, the Department of the Air Force, the Department of the Navy, or from any other Government department or agency, a rough estimate as to value will be sufficient, if the value so estimated does not exceed \$50,000. In such cases, detailed estimates are not required. The same rule applies to Public Domain sites to be acquired by withdrawal.

2. Normal real estate cost data is required for Government-owned sites to be acquired by transfer, if the value is in excess of \$50,000. Also, a comprehensive statement is required for Assistant Secretary of Defense review, concerning the availability or non-availability of each potential site on Government-owned land in the immediate vicinity of the proposed facility or installation.

3. In the case of a transfer from the Department of the Air Force or the Department of the Navy, clearance must also be obtained from the Committees on Armed Services of the Congress, if the value is in excess of \$50,000. In such cases, the following additional information will be required for use in reporting the proposed action to the Committees on Armed Services of the Congress:

a. Description and amount of space currently utilized for Army Reserve activities, including the terms and conditions of occupancy.

b. Copy of last "Utilization Inspection Report" covering the space currently being used, \*

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\*

c. Plans for use of the presently occupied space after construction of the permanent Reserve Center.

d. Distance and direction of the proposed Reserve Center site from the business center of the city or other readily identifiable point.

e. Zoning classification of the proposed Reserve Center site, with indication as to whether a reserve center is one of the permitted uses.

f. The current assessed value and the current taxes on the tract proposed for acquisition.

g. Any additional information or data which may be helpful to Department of the Army witnesses in support of this project concerning the availability or non-availability of each potential site on Government-owned land in the vicinity of the reserve population and reasons for the acceptance or rejection of same.

4. It will be noted that no real estate cost data is required to support a long-term, nominal rental lease. \*

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\*

LEASE PLANNING REPORT  
(Project Name)  
(Date)

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Alterations . . . . .	
Proposed Construction . . . . .	
Restoration Costs . . . . .	
Valuation . . . . .	
Views of Lessor . . . . .	
Possession Date . . . . .	
Recommendation. . . . .	
Exhibits (list and identify)	*

Next page is 2-65

\*  
LEASE PLANNING REPORT  
(Project Name)

1. AUTHORITY.

Insert date of request for preparation of planning report and from whom.

2. SITE SELECTION TEAM.

Insert names of members of team, date of approval of selected site, and by whom.

3. SITES INSPECTED.

List and discuss all real estate implications of all other sites inspected, including Government-owned sites, and give reasons for rejection.

4. DESCRIPTION OF PROPERTY.

Identify and fully describe property, giving street number, city, county and state. Indicate gross and net usable area, if property is a building. If land is primary requirement, give acreage and attach map showing boundaries. Also attach a vicinity map showing its location with relation to the parent facility.

5. PROPOSED USE.

Give complete information as to proposed use and justification therefor.

6. SERVICES.

Indicate services to be provided under the lease. If all or part of required services are not provided, discuss requirements and estimated cost to the Government.

\*

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\* 7. ALTERATIONS.

Discuss fully what alterations are necessary, if any, and justify a certificate of necessity if required under the Act of 30 June 1932.

8. PROPOSED CONSTRUCTION.

Discuss fully any proposed construction to be placed by the Government and estimated costs thereof.

9. RESTORATION COSTS.

Discuss restoration costs to the Government upon termination of lease.

10. VALUATION.

Include estimate of the fair market value and annual rental value of the preises. The estimate will reflect actual market conditions and rental prices for similar property, realistically supported by detailed analyses of an adequate number of typical comparable cases and related appraisal data.

11. VIEWS OF LESSOR.

Give general discussion as to effect of the proposed acquisition on the local economy, and views of the lessor and others.

12. POSSESSION DATE.

Include statement of approximate date possession is required.

13. RECOMMENDATION.

Discuss all pertinent facts that may influence the selection and final approval of the site. \*

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DEPARTMENT OF THE ARMY  
SUBMITTED BY OFFICE, CHIEF OF ENGINEERS  
REAL ESTATE  
ACQUISITION REPORT NO. \_\_\_\_\_

Submitted pursuant to Title 10, United States Code, Section 2662.

Name of Installation:

Using Service:

Proposed Action:

Use:

Area:

Authorization:

Appropriation:

1. "This statement is submitted for the purpose of reporting to the Committees on Armed Services of the Senate and House of Representatives the facts concerning the proposed . . ." (Complete with a brief statement of the proposed acquisition being reported to Congress.)

2. Describe the installation for which the real property is being acquired; this data to include acreage comprising the installation and cost thereof; improvements and construction costs; dates of land acquisition and installation development, and brief statement of the installation's mission.

3. Brief statement of requirement for this acquisition.

4. "This action has been approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)."

Figure 2-4



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TABLE 2-1

REGULATORY REFERENCES

AR 405-10

AR 140-478

AFR 87-1

EM 1120-2-101

ER 1180-1-1

ER 1110-2-1150

ER 1120-2-101

ER 1120-2-400

ER 1120-2-404

ER 1150-2-301

ER 1165 -2-302

DOD Directive 1225.2

DOD Directive 1225.5

\*

REAL ESTATE PLANNING REPORT  
(PROJECT NAME)

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Schedule of Acquisition . . . . .	
Recommendation . . . . .	
Exhibit "A" Project Map	
Exhibit "B" Vicinity Map	
Exhibit "C" Detailed Cost Estimate	
Exhibit "D" Copy of Contract/Deed, Recapture Rights	*

Figure 2-1

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\*

SUMMARY SHEET

(PROJECT NAME)

DATE : \_\_\_\_\_

- 1. FEE TITLE \$ \_\_\_\_\_
- 2. IMPROVEMENTS \$ \_\_\_\_\_
- 3. EASEMENTS \$ \_\_\_\_\_
- 4. HAZARD REMOVALS \$ \_\_\_\_\_
- 5. MINERAL RIGHTS \$ \_\_\_\_\_
- 6. DAMAGES \$ \_\_\_\_\_
- 7. CONTINGENCIES \$ \_\_\_\_\_
- 8. RELOCATIONS \$ \_\_\_\_\_
- 9. UNIFORM RELOCATION  
 ASSISTANCE (PL 91-646) \$ \_\_\_\_\_
- 10. ACQUISITION COSTS \$ \_\_\_\_\_
- TOTAL \$ \_\_\_\_\_

	<u>Fiscal Year</u>	<u>Number</u>	<u>Description</u>
Land Acquisition Line Item 78		91-146	Land Fee
Related Construction Line Item	78	11-118D	Runway Extension *

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\*

REAL ESTATE PLANNING REPORT  
(PROJECT NAME)  
Fee and/or Easements

1. AUTHORITY.

Insert date of request for preparation of planning report and from whom.

2. PROJECT.

Insert name and location, indicating State, county, and distance from nearest city or town.

3. SITE SELECTION TEAM.

Insert names of members of team, date of approval of selected site, and by whom.

4. SITES INSPECTED.

List and discuss all real estate costs and other real estate implications of all other sites inspected and give reasons for rejection, including Government-owned sites considered.

5. DESCRIPTION OF SELECTED SITE.

Describe area, indicating tract numbers, names of landowners, estimated acreage and estate proposed for acquisition, attaching project map as Exhibit "A", outlining area proposed for acquisition and each ownership, indicating thereon the acreage, estate and estimated value of each tract. If Government-owned land is involved, indicate Government's estate, acreage, and degree of interest that will be granted to military department. \*

\* 6. RELOCATIONS.

List and discuss fully each item. Indicate the estimated cost and justify the relocation, even though the relocation cost should be budgeted as a construction item. A new cemetery site is, of course, a real estate item. If a need exists for the relocation, construction, reconstruction, or improvement of a public highway, attention is invited to ER 1180-1-1 for the procedure to be followed. Attach, as Exhibit "B", a land map of the area, indicating improvements, roads, public utilities, cemeteries and all other natural or constructed facilities affected by the proposed project, and those proposed for relocation.

7. ATTITUDE OF OWNERS AND NEIGHBORHOOD

Give general discussion of this item as to effect of the proposed acquisition on the local economy and known views of the landowners and others.

8. OUTSTANDING INTERESTS AND RESERVATIONS.

List all outstanding interests, such as mineral rights, timber deeds, water rights, etc., outstanding in third parties and their estimated value. Discuss whether interests may be left outstanding, if not contrary to existing policy. Also, whether owner or lessee of such rights owns land adjacent to the area proposed for acquisition. If there are no outstanding rights, the report should so state. A discussion of undeveloped mineral resources will also be included (see Section V of this Chapter). \*

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\* 9. SALES AND SUPPORTING DATA.

List and discuss each representative or comparable property recently sold or offered for sale and the assessed value of each. This discussion must be complete in order to support the conclusions as to the gross appraisal of the land proposed for acquisition.

10. VALUATION

Prepare cost estimate of the entire area, showing number of improved units, classification of lands, severance, and estimated values per acre, indicating number, type, approximate age, overall general condition, and brief description of improvements, such as dwelling, barn, garage, etc., and type of construction; assessed values and their relationship to market value; and amount of real property tax for preceding year. This estimate will reflect actual market conditions and unit prices for the various property classification, realistically supported by detailed analysis of an adequate number of typical comparable sales and related cost data (see Chapter 4 of this Pamphlet) Summarize the cost in this paragraph and attach a copy of the detailed cost estimate as Exhibit "C".

11. UNIFORM RELOCATION ASSISTANCE COSTS.

Indicate number of eligible applicants and an estimate of the cost of reimbursement to the owners and tenants under the provisions of P.L. 91-646, approved 2 January 1971 (84 Stat. 1894; 1895)

12. RECOMMENDED ESTATE.

Recommend the estate to be acquired. If acquisition of less than fee is recommended, a statement should be included as to the \*

\* sufficiency of the estate for the proposed use, and reasons given for recommending the lesser estate. If the recommended estate is inconsistent with existing policy, a full discussion justifying such estate is required.

13. RECAPTURE RIGHTS.

In those instances where the proposed acquisition involves the reacquisition of title to land which was disposed of as surplus, discuss fully the Government's right of recapture, attaching as Exhibit "D" a copy of the contract or deed from the Federal agency.

14. GOVERNMENT-OWNED PROPERTY.

List and discuss suitability of Government-owned property within the general area and reason that it is not proposed for acquisition.

15. PROPOSED CONSTRUCTION.

Indicate the nature and estimated cost of the proposed construction to be placed on the site.

16. POSSESSION DATE.

Indicate the approximate date possession is required.

17. ADMINISTRATIVE COSTS.

A realistic estimate of administrative costs is required, giving due recognition to existing and foreseeable conditions. Includes as a minimum requirement (1) mapping and surveying; (2) appraisals; (3) title evidence; (4) negotiating and closings; (5) condemnation; and (6) costs for administration of relocation assistance under Public Law 91-646.

18. SCHEDULE OF ACQUISITION.

Discuss plan of acquisition schedule.

\*

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\* 19. RECOMMENDATION.

Discuss all pertinent facts that may influence the selection  
and final approval of the site. \*



\*

REAL ESTATE PLANNING REPORT  
ARMY RESERVE CENTER SITE  
(City) (State)

(Date)

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Exhibit "B" - Sales Map	
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Exhibit "E" - Tract Map	
Exhibit "F" - Preliminary Site Plan	*

REAL ESTATE PLANNING REPORT  
ARMY RESERVE CENTER SITE  
( C i t y ) ( S t a t e )

SUMMARY OF ACQUISITION COSTS

1. Fee Title (	acres)	\$ _____
2. Improvements		_____
3. Easements (	acres)	_____
4. Severance		_____
5. Mineral Rights, Timber Rights, Crops, Etc.		_____
6. Relocations		_____
7. Uniform Relocation Assistance		_____
8. Contingencies		_____
9. Administrative Cost (M&O Funds)		_____
Total Estimated Cost		\$ _____

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\*

REAL ESTATE PLANNING REPORT  
ARMY RESERVE CENTER SITE  
( City ) ( State )

1. AUTHORITY.

In compliance with \_\_\_ Indorsements, dated \_\_\_\_\_,  
subject: "U. S. Army Reserve Center Site, \_\_\_\_\_, \_\_\_\_\_ (HQ;  
\_\_\_\_\_ United States Army letter \_\_\_\_\_)" and letter DAEN-  
REA-L, date \_\_\_\_\_, subject: "Aquisition of U.S. Army  
Reserve Center Site, \_\_\_\_\_, \_\_\_\_\_", the following  
Real Estate Planning Report has been prepared.

2. PROJECT.

\_\_\_\_\_ Unit U.S. Army Reserve Center Site, \_\_\_\_\_,  
\_\_\_\_\_.

3. SITE SELECTION TEAM.

On \_\_\_\_\_, a Site Selection Team composed of the  
following representatives conducted a U.S. Army Reserve Center  
site inspection: (list names and Headquarters). The locations  
of sites inspected are shown on Exhibit "A". Approval of the  
selected site is contained in a letter, dated \_\_\_\_\_, from  
Headquarters, \_\_\_\_\_ United States Army, to the Division  
Engineer, \_\_\_\_\_ Division.

4. SITES INSPECTED.

The following sites were inspected on \_\_\_\_\_: \*

- \* a. Site A (Location) - This site was rejected because the only access was over a graded dirt road and the possibility of this road being improved was remote. The site is a portion of a ten-acre tract and the owner would sell no portion of it.
- b. Site B (Location)(Government-owned) - This site was rejected\_ due to the triangular shape of the tract, causing undesirable building siting, and due to a deep drain across the tract necessitating very high site-preparation cost.
- c. Site C (Location) - This site was approved as first choice and is the subject of this report.
- d. Site D (Location) - This site is situated in a residential section and was rejected because of neighborhood objection to the proposed use of the site.
- e. Site E (Location) - This site is situated at the edge of a residential section with good access and utilities. It was approved as second choice.

##### 5. LOCATION AND DESCRIPTION OF SELECTED SITE.

The approved site (Site C) is situated approximately 750 feet north of \_\_\_\_\_ Avenue, fronts on the east side of \_\_\_\_\_ Street and is approximately 1.7 miles northeast of the business district. It is located in a section devoted primarily to light commercial use for which the site is zoned (M-1). It is accessible by way of \_\_\_\_\_ Street, which connects with the major east-west streets. The site is unimproved and has light to heavy undergrowth and a few small trees. Tract map is shown as Exhibit "E". \*

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\* 6. LEGAL DESCRIPTION.

That tract or parcel of land situated in the City of \_\_\_\_\_,  
\_\_\_\_\_ County, \_\_\_\_\_, being the north 520 feet of the  
east 400 feet of the SW section of Section 29, Township 28 South,  
Range 19 East, T.M. and containing \_\_\_\_\_ acres, more or less.

7. ATTITUDE OF OWNER AND NEIGHBORHOOD.

The owner is agreeable to selling the site to the Government for  
the proposed use and has established an asking price of \$24,000. No  
public or neighborhood opposition to the proposed project is anticipated.

8. CONCURRENCE OF LOCAL OFFICIALS.

Mayor \_\_\_\_\_, City manager \_\_\_\_\_, and City Engineer  
\_\_\_\_\_ concur in the proposed acquisition and use of the site  
(see Exhibit "C").

9. OUTSTANDING INTERESTS AND RESERVATIONS.

The mineral interests are outstanding in \_\_\_\_\_, who has  
consented to quitclaim these to the Government. (The value of these  
is considered in the following appraisal.) There are no other types  
of exceptions, reservations, or restrictions.

10. RELOCATIONS.

A 12-inch city water main runs along the east edge of the site and  
will not require relocation.

11. UNIFORM RELOCATION ASSISTANCE COSTS.

Indicate number of eligible applicants and an estimate of the  
cost of reimbursement to the owners and tenants under the provisions  
of P.L. 91-646, approved 2 January 1971 (84 Stat. 1894; 1895). \*

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\* 12. PRESENT USE: HIGHEST AND BEST USE OF THE LAND.

The property is unused as present, and it is considered that the highest and best use of the land is for light industry.

13. SALES AND SUPPORTING DATA.

a. Tabulation of Sales:

<u>Sale No.</u>	<u>Deed Book</u>	<u>Page</u>	<u>Date of Deed</u>	<u>Consid- eration</u>	<u>Approx. Acres</u>	<u>Price Per Acre</u>
1	1984	71	8/30/77	\$42,000	10.33	\$4,066
2	1984	308	8/15/77	10,800	2.02	5,347
3	1984	302	7/15/77	1,000	0.17	5,882
4	1975	363	7/ 5/77	5,000	2.95	1,695

b. Discussion of Sales.

(1) Sale No. 1.

(Grantor) to (Grantee). Located approximately 3/4 mile south-east of subject property, on the north side of East \_\_\_\_\_ Avenue. Access is adequate. \_\_\_\_\_ Avenue (graded dirt and shelled road) connects directly with 30th Street, 350 feet to the east, and 22nd Street, 1650 feet to the west. \_\_\_\_\_ Avenue crosses the railroad at grade. Property is almost square, with 650 feet of frontage on East \_\_\_\_\_ Avenue and 675 feet of frontage on the east right-of-way line of the \_\_\_\_\_ Railroad,s main track. Zoned "M-1, Light Industrial", and well suited for uses permitted under this classification. Purchased for erection of plant by \_\_\_\_\_ Company. Building was under construction on 26 October 1977.

\*

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\* (2) Sale No. 2.

(Grantor) to (Grantee). Located approximately one mile south-east of subject property on the north side of East \_\_\_\_\_ Avenue. Access is good. \_\_\_\_\_ Avenue (paved street) connects directly with 30th Street, 1,000 feet to the east, and 22nd Street, 1,350 feet to the west. \_\_\_\_\_ Avenue crosses the railroad at grade. Property is almost square, with 277 feet of frontage on the north side of East \_\_\_\_\_ Avenue and 340 feet of frontage on the west right-of-way line of the \_\_\_\_\_ Railroad's main track. Zoned "M-1, Light Industrial" and well suited for uses permitted under this classification. Vacant at time of sale, but now improved with a new masonry warehouse. Sale confirmed by \_\_\_\_\_.

(3) Sale No. 3.

(Grantor) to (Grantee). Adjoins Sale No. 2 on west. Rectangular in shape. Has 25.3 feet frontage on north side of \_\_\_\_\_ Avenue and an average depth of 298 feet. Zoned "M-1, Light Industrial." Purchased for use with Sale No. 2 (as site for \_\_\_\_\_ Company Warehouse). Sale confirmed by \_\_\_\_\_.

(4) Sale No. 4.

(Grantor) to (Grantee). Located 650 feet directly east of subject property. Accessible only across other ownerships. Has no street frontage. Property is a right-angle triangle in shape, with the base of 268 feet (east-west line) being the northerly boundary, the altitude of 975 feet being the easterly boundary, and fronting 1,010 feet on the \*

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\* east right-of-way line of the \_\_\_\_\_ Railroad's main track. Zoned "M-1, Light Industrial." Unimproved. Was a part of patent tract of which subject property is also part. Sold because of poor access and separation from main part of ownership by railroad. Purchaser bought to secure additional rail frontage for larger tract zoned "M-1" adjoining to east. Sale confirmed by purchaser's wife and \_\_\_\_\_ Company.

(5) Comment. Include comments concerning degree that land involved in above sales is comparable to subject site.

14. VALUATION.

\_\_\_\_\_ acres @ \$\_\_\_\_\_ per acre....\$\_\_\_\_\_  
Contingencies..... \$\_\_\_\_\_  
Administrative Costs (O&M)..... \$\_\_\_\_\_  
Total estimated cost..... \$\_\_\_\_\_

15. SUITABILITY AND ADAPTABILITY FOR PROPOSED USE.

Approved. See Engineering Feasibility Report (Exhibit "D")

16. REMARKS AND RECOMMENDATIONS.

Site B is the only Government-owned land in the area and site preparation costs are estimated to exceed the value of the approved site. The Engineering Feasibility Report (Exhibit "D") indicates that the proposed site is considered suitable and adaptable for the proposed use and no abnormal site preparation costs are anticipated. The site is in a rapidly expanding, light commercial section. Because of this activity, it is recommended that expeditious action be given this project for the acquisition of fee simple title to the site. \*



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\*

EXHIBIT "C"

Commanding General

\_\_\_\_\_ Army

\_\_\_\_\_, \_\_\_\_\_

Dear General \_\_\_\_\_:

The City officials are pleased to learn that the construction of an Army Reserve Center in the City of \_\_\_\_\_ is contemplated.

It is agreed that the selected site on \_\_\_\_\_ Street near \_\_\_\_\_ Avenue is considered suitable for the proposed use.

Please feel free to call upon us at any time for assistance in this project.

Sincerely yours,

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Engineer \*

\*

## EXHIBIT "D"

## ENGINEERING FEASIBILITY REPORT

1. SITE DESCRIPTION (PHYSICAL CHARACTERISTICS).

The site is relatively high and flat having a gradual slope to the rear away from \_\_\_\_\_ Street. No structures are on the site, which has light to heavy undergrowth and a few small trees growing thereon. A natural drainage ditch runs south to north through the central portion of the site.

2. GRADING AND DRAINAGE.

Grading will require ditch excavation and \_\_\_\_\_ cu. yds. of fill. No underground storm drainage is necessary.

3. FOUNDATION.

Unusual subsurface conditions are not anticipated. No unusual or costly foundation problems were encountered in the construction of the nearby structures. This information was obtained from the City Engineer and local contractors.

4. WATER SUPPLY.

Adequate water supply for domestic and fire protection purposes above demands of other prospective users is available at the site (\_\_\_\_\_-inch pipe, \_\_\_\_\_ gpm, \_\_\_\_\_ psi residual pressure).

5. SANITARY SEWER.

A sewer connection of adequate flow capacity above requirements of other prospective users is available within \_\_\_\_\_ feet of the site (\_\_\_\_\_-inch pipe).

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\* 6. ELECTRIC POWER AND TELEPHONE.

Electric service (aerial) is available at the site (\_\_\_\_\_ volts, three-phase, 4-wire, grounded neutral). Telephone service (aerial) is available at the site.

7. GAS.

The nearest connection to gas line of suitable capacity above demands of other prospective users is approximately \_\_\_\_\_ mile(s) south of the site (\_\_\_\_\_-inch pipe, \_\_\_\_\_lbs. pressure). Bottled gas is available in the City of \_\_\_\_\_.

8. CONCLUSION.

Based on the above findings, and on the proposed layout shown on the preliminary site plan (Exhibit "F"), the site is considered adequate for its intended use as a \_\_\_\_\_-man Army Reserve Center.

\*

\* STATEMENT OF EXCEPTIONS TO SAMPLE REAL ESTATE PLANNING REPORT  
(ARMY RESERVE CENTER SITE)

1. As to sites proposed for acquisition by transfer from the General Services Administration, the Department of the Air Force, the Department of the Navy, or from any other Government department or agency, a rough estimate as to value will be sufficient, if the value so estimated does not exceed \$50,000. In such cases, detailed estimates are not required. The same rule applies to Public Domain sites to be acquired by withdrawal.

2. Normal real estate cost data is required for Government-owned sites to be acquired by transfer, if the value is in excess of \$50,000. Also, a comprehensive statement is required for Assistant Secretary of Defense review, concerning the availability or non-availability of each potential site on Government-owned land in the immediate vicinity of the proposed facility or installation.

3. In the case of a transfer from the Department of the Air Force or the Department of the Navy, clearance must also be obtained from the Committees on Armed Services of the Congress, if the value is in excess of \$50,000. In such cases, the following additional information will be required for use in reporting the proposed action to the Committees on Armed Services of the Congress:

a. Description and amount of space currently utilized for Army Reserve activities, including the terms and conditions of occupancy.

b. Copy of last "Utilization Inspection Report" covering the space currently being used, \*

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\*

c. Plans for use of the presently occupied space after construction of the permanent Reserve Center.

d. Distance and direction of the proposed Reserve Center site from the business center of the city or other readily identifiable point.

e. Zoning classification of the proposed Reserve Center site, with indication as to whether a reserve center is one of the permitted uses.

f. The current assessed value and the current taxes on the tract proposed for acquisition.

g. Any additional information or data which may be helpful to Department of the Army witnesses in support of this project concerning the availability or non-availability of each potential site on Government-owned land in the vicinity of the reserve population and reasons for the acceptance or rejection of same.

4. It will be noted that no real estate cost data is required to support a long-term, nominal rental lease. \*

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\*

LEASE PLANNING REPORT  
(Project Name)  
(Date)

INDEX

<u>SUBJECT</u>	<u>PAGE</u>
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Exhibits (list and identify)	*

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\*  
LEASE PLANNING REPORT  
(Project Name)

1. AUTHORITY.

Insert date of request for preparation of planning report and from whom.

2. SITE SELECTION TEAM.

Insert names of members of team, date of approval of selected site, and by whom.

3. SITES INSPECTED.

List and discuss all real estate implications of all other sites inspected, including Government-owned sites, and give reasons for rejection.

4. DESCRIPTION OF PROPERTY.

Identify and fully describe property, giving street number, city, county and state. Indicate gross and net usable area, if property is a building. If land is primary requirement, give acreage and attach map showing boundaries. Also attach a vicinity map showing its location with relation to the parent facility.

5. PROPOSED USE.

Give complete information as to proposed use and justification therefor.

6. SERVICES.

Indicate services to be provided under the lease. If all or part of required services are not provided, discuss requirements and estimated cost to the Government.

\*

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\* 7. ALTERATIONS.

Discuss fully what alterations are necessary, if any, and justify a certificate of necessity if required under the Act of 30 June 1932.

8. PROPOSED CONSTRUCTION.

Discuss fully any proposed construction to be placed by the Government and estimated costs thereof.

9. RESTORATION COSTS.

Discuss restoration costs to the Government upon termination of lease.

10. VALUATION.

Include estimate of the fair market value and annual rental value of the preises. The estimate will reflect actual market conditions and rental prices for similar property, realistically supported by detailed analyses of an adequate number of typical comparable cases and related appraisal data.

11. VIEWS OF LESSOR.

Give general discussion as to effect of the proposed acquisition on the local economy, and views of the lessor and others.

12. POSSESSION DATE.

Include statement of approximate date possession is required.

13. RECOMMENDATION.

Discuss all pertinent facts that may influence the selection and final approval of the site. \*



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DEPARTMENT OF THE ARMY  
SUBMITTED BY OFFICE, CHIEF OF ENGINEERS  
REAL ESTATE  
ACQUISITION REPORT NO. \_\_\_\_\_

Submitted pursuant to Title 10, United States Code, Section 2662.

Name of Installation:

Using Service:

Proposed Action:

Use:

Area:

Authorization:

Appropriation:

1. "This statement is submitted for the purpose of reporting to the Committees on Armed Services of the Senate and House of Representatives the facts concerning the proposed . . ." (Complete with a brief statement of the proposed acquisition being reported to Congress.)

2. Describe the installation for which the real property is being acquired; this data to include acreage comprising the installation and cost thereof; improvements and construction costs; dates of land acquisition and installation development, and brief statement of the installation's mission.

3. Brief statement of requirement for this acquisition.

4. "This action has been approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)."

Figure 2-4

## CHAPTER 3

## MAPPING

## SECTION I. GENERAL

3-1. Purpose. This chapter describes the procedures for providing maps, surveys, legal descriptions, and related material on a project or installation basis for planning, acquisition, management, disposal, and audit of lands and interests in lands acquired by the Corps of Engineers for Department of the Army military and civil works projects, for the Department of the Air Force, and as agent for other Federal agencies. The criteria, general format, forms development, approval authority, maintenance, and distribution of project maps reflecting graphic depiction of all lands acquired and disposed of are as set forth in this chapter. Specific or unusual problems or inquiries concerning the planning, field instrument surveys, criteria, and development of project maps and legal descriptions, including requests for deviations from criteria established in this chapter, will be forwarded for evaluation and determination to HQDA (DAEN-REP-S) WASH DC 20314.

3-2. Applicability. This chapter is applicable to all Division and District Engineers having real estate responsibilities.

3-3. Timing. The real estate mapping program described in this chapter will be initiated as soon as possible after project advance engineering and design funds have been made available for civil works projects and after receipt of a directive from higher authority to proceed with the preliminary phases of the acquisition program for military and other projects.

## SECTION II. MOBILIZATION FOR RECONNAISSANCE

3-4. Assembly of Data. The initial phase of the real estate program involves the assembly of available maps and tract ownership data pertinent to the area to be acquired. The magnitude, extent, and complexity of the project naturally determine the extent of reconnaissance but the early assembly of all available information will prove to be useful in the later phases of mapping, determination of ownerships, description writing, and actual acquisition.

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3-5. Bureau of Land Management Data. For projects within the public land surveys, information concerning the issuance of patents, the status of homestead entries, approved field notes, plats of the public land township surveys, plats of the mineral patents, and plats of the special surveys and resurveys, may be procured from the Director, Bureau of Land Management, Department of the Interior, Washington, DC 20240; from the regional and public land survey offices; or from the appropriate state offices. Plats of the original township surveys are essential.

3-6. Published Topographic Maps. Copies of the 7 1/2 minute and 15 minute quadrangle maps of the National Topographic Map Series prepared by United States Geological Survey (Chief, Distribution Branch, United States Geological Survey, 1200 S. Eads St., Arlington, VA 22202 or Federal Center, Denver, CO 80225) and geodetic control data prepared by the National Geodetic Survey (National Geodetic Survey, Information Center, C185 Rockwall Bldg., Room 24, Rockville, MD 20852) are essential. Nautical and aeronautical charts and maps prepared by the Defense Mapping Agency may be useful. Nautical charts may be procured from the Defense Mapping Depot, Hydrographic Center Detachment, Philadelphia, PA 19111, or Clearfield, UT 84015. Aeronautical charts may be procured from the same depots, Aerospace Center Detachment. Charts and maps prepared by other federal and state agencies also may prove to be useful.

3-7. Aerial Photographs. Copies of existing aerial photographs may be procured as set forth in ER 117-1-3.

3-8. Aerial Mosaics. If mosaics are desired and suitable aerial photography already exists, the Defense Mapping Agency can undertake, upon request and subject to reimbursement, the preparation of semicontrolled mosaics upon which the principal drainage, roads, towns and railroads are located and named, and county lines delineated. If suitable aerial photography does not exist, District Engineers are authorized to procure same by contract with commercial firms without prior approval of the Chief of Engineers. The Commanding Officer, Defense Mapping Agency, has been authorized to furnish technical advice on the compilation of mosaics or to render assistance on the matter of preparing specifications for the performance of mosaic work by commercial contract, if desired. The Defense Mapping Agency also maintains current information on commercial firms qualified to perform such work.

3-9. Project Topographic Maps. If time permits and complexity of the project requires, plastic relief photomaps of the area to be mapped for acquisition may be obtained. These maps are compiled from aerial photographic methods, utilizing sufficient control to provide maps presenting horizontal positions of drainage, railroads, cultural features, roads and boundry lines. The Defense Mapping Agency can undertake, upon request and subject to reimbursement, preparation of such maps, if suitable aerial photography exists. If suitable aerial photography does not exist, projection by contract with commercial concerns is recommended. The Defense Mapping Agency can furnish technical assistance in the preparation of specifications.

3-10. Determination of Ownership. Preliminary ownership information, useful only as a guide and later to be confirmed, may be obtained from commercial plat books or, in areas in which there are oil and mineral leasing activities, commercial land ownership maps, and tax maps. ENG Form 900 will be used to record confirmed tract ownership data obtained by Corps personnel or by contract. These data will include the following:

- a. Owner's name and address.
- b. Record deed descriptions, as shown by conveyance to present owner.
- c. If deed is recorded, obtain date of same, record book and page number, county, and place of record, so that the legal description may be copied or reproduced from official records. If deed is not recorded, the description from the owner's deed will be copied in the field.

3-11. Recorded Plats. Recorded plats and recorded surveys by registered land surveyors are useful in preparing preliminary maps, particularly in urban and other highly developed areas.

### SECTION III. PREPARATION OF BASE MAPS

3-12. General. After mobilization of data and before preparation of project maps, the next step is the verification of tract ownership data and deed descriptions through field reconnaissance, as necessary, and the preparation of a base map from which the layout of each segment will be determined. Project maps will be developed from the base maps prepared from aerial mosaics or planimetric maps using the methods and procedures outlined in the following paragraphs.

3-13. Aerial Mosaics. When the area to be mapped is relatively flat and there is no appreciable error in the aerial photographs from relief displacement and the mosaic is horizontally controlled, property lines are drawn on the photograph from the deed descriptions and then traced directly on the layout sheets. If the tract corners and property lines cannot be depicted directly, field reconnaissance will be necessary to locate actual property corners on contact aerial prints or to tie the corner by short traverse lines from points which can be identified on the photographs. In rugged areas where errors in photographs from relief displacement are sufficient to materially affect the acreage or where the horizontal control is not adequate, more field reconnaissance may be required to prevent accumulation of displacements and to produce more control.

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3-14. Planimetric Maps. These maps have the advantage of full horizontal control and usually show sufficient roads and natural boundaries to permit the direct plotting of deed descriptions. Some field reconnaissance will still be required to tie by surveys the property corners to identifiable points or contact aerial prints may be used singly or in combination with other methods.

3-15. Verification of Tract Ownership Data. Whenever direct plotting of deed descriptions reveals some form of discrepancy, field reconnaissance will be required for verification of correction, as follows:

a. Verify locations of property lines and corners. If the owner is unable to satisfactorily identify his lines, a sketch of his property, based on the deed description, may prove helpful. In the course of viewing the tract for reconnaissance purposes, notes should be made concerning geographic or cadastral features not evident on available maps.

b. The description in the deed will be studied for obvious errors or discrepancies. Any deviations between calls and actual location of lines will be discussed with the owner for purposes of correction or clarification.

c. Inquiry will be made of the owner as to transaction made by him to acquire his land (number of such transactions and descriptions thereof), and a record made of the information.

d. If the present owner's title was acquired by inheritance, or by will which did not contain a description capable of being located on the ground for acquisition purposes, an effort to obtain the land description should be made through other sources, such as a previous deed covering the transaction or recent survey data used for loan purposes.

e. A record will be made of information obtained from the owner as to out-conveyances.

f. Information will be solicited from each owner concerning the identity of owner(s) of land adjoining his own.

g. A record will be made as to location and ownership of all cemeteries (including family burial plots and single graves) within the proposed project area. The reason for mapping all cemeteries and burial plots as separate tracts, even though they may not be covered by deed or by exception, should be explained to the owner.

h. Inquiry will be made of the owner concerning any unrecorded conveyances including fee, grants of gas, oil, mineral or timber by lease, easement, or other use rights.

i. Additional information and advice may be sought from county surveyors and assessors (either presently in office or their predecessors), abstractors, and others who are well informed and familiar with the area.

j. In rugged, heavily wooded, or otherwise remote areas where adequate maps do not exist and land descriptions, generally, are unsatisfactory, field reconnaissance will be required to identify property corners and sufficient field surveys made to permit plotting the tracts.

k. Field instrument property line surveys of interior property lines will be made only when the lines cannot be established or reestablished by the plotting of deed descriptions, or by other means to the satisfaction of both the Government and the owners concerned.

3-16. Pertinent Contour Lines. In all civil works projects in which the extent of acquisition is controlled by ground elevation, as in reservoir projects and navigation projects, the critical contours which define the guide acquisition line or change in estates will be plotted on the base map to define the extent of the acquisition and the layout of the project maps. These contours will be based on mean sea level datum, and will be shown in proper relationship to property lines, property corners, and other points of control. Care must be taken to assure that any adjustment of property lines does not change the location of the contour within that tract.

#### SECTION IV. MAPPING BY CONTRACT

3-17. Regulatory Procedures. District Engineers may, at their discretion, obtain project real estate maps and legal descriptions by contract. Maps and descriptions procured by contract will be in accordance with this chapter. Contracts will be prepared and executed in accordance with ER 1180-1-1.

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3-18. Identification of Mapping Contractor. Each project real estate map obtained by contract will contain the name of the contractor and the contract number in a convenient space on the map. This information should be shown as a footnote in substantially the following form:

"Mapping of the land depicted on this sheet was performed by (name and address of contractor) under Contract No. DA \_\_\_\_\_."

3-19. Payment for Contractual Services. Payment for contractual real estate surveys, mapping, and related work will be made in accordance with the provisions of ER 37-2-10 for civil works projects and ER 37-345-10 for military projects.

#### SECTION V. PREPARATION OF PROJECT MAPS

3-20. Sample Project Map. A sample project map entitled "Flytrap Lake" is available for the purpose of guidance and maintenance of a high degree of uniformity in the preparation of project segment maps. The sample map is civil works oriented to avoid excessive congestion and loss of clarity. However, the sample is equally applicable to mapping military installations by using the modifications as noted in the appropriate blocks, and by conforming with instructions in this chapter. While all possible circumstances relating to acquisition, disposal, and audit requirements cannot be clearly depicted on a one-sheet sample, the most prevalent examples are illustrated on the sample project map, (Figure 3-1).

3-21. Map Forms. After the base map has been prepared showing the extent of the project, pertinent contours, tract ownerships, acreages and other necessary cadastral information for the first programmed acquisition, project maps will be initiated. In general, only one type of project map will be prepared for planning, acquisition, management and disposal, and final audit purposes. Project Map, ENG Form 1456A and, Project Map (Continuation Sheet), ENG Form 1456C, are used for these purposes. ENG Form 1456A will be used to map the first segment or the composite of the project, and ENG Form 1456C will be used to map succeeding segments. Local reproduction of the ENG Form 1456A and C is authorized for large, multiple segment projects which contain many repetitive items such as segment index map, grid lines, standard remarks, north arrow, authorization data, etc. In such cases, it is permissible to draw the repetitive items on tracing material; attach the item to a blank ENG Form 1456A or C; make a film negative of the partially completed map and then a film positive on photographically sensitive material of the type used for ENG Forms 1456A and C. Copies of the positive can then be used to add the nonrepetitive information. Other mechanical devices or methods that will produce essentially the same end product may also be used to place the repetitive items on ENG Forms 1456A and C. The requirement for preparation of a project map for

lands acquired by condemnation by the United States for local interests with local funds, where the balance of the project will not be conveyed to the United States, is waived.

3-22. Segments. When a project is comprised of a large number of tracts, the entire area will be divided into convenient segments. Normally, each segment will be identified by a number (e.g., "Segment 1." "Segment 2.," etc), the numerical segment designation being indicative of the series of tract numbers assigned thereto. For example, all tracts in Segment 2 will be numbered in the "200" series and all tracts in Segment 13 will be numbered in the "1300" series, etc. Exceptions to this procedure would be instances where continuous parent ownerships traverse more than one segment as in paragraph 3-24 below and in instances of public lands as discussed in paragraph 3-24g(1) below. Tract number series will also agree with sheet numbers except in cases where composite or index sheets are prepared, as explained below. Each segment will be limited to one sheet. The number of parent tracts in each segment will never exceed 100. The shape of a project, such as a flood control project, or projects containing unusually large tracts, may make it necessary to divide the project into segments of less than 100 tracts. Congested areas, such as towns, villages, or subdivisions, will be drawn to a large scale and may be shown as a separate segment, unless the scale of such area can be enlarged and shown as an inset of the project map. Sufficient numbers will be reserved for additional tracts that may be encountered as acquisition progresses. In cases of projects involving large numbers of segments, composite or index maps may be prepared and used as a cover sheet showing the entire scope of the project, statistical summaries, etc. Sheets comprising the project will be numbered consecutively beginning with Sheet 1 which will also correspond to Segment 1 except in instances where composite or index maps are prepared. In such instances, the composite map will be numbered Sheet 1. Succeeding sheet numbers then will not agree with the segment numbers. For example, Segment 1 will be mapped on Sheet 2, Segment 2 will be mapped on Sheet 3, etc. Recapitulation of acquisition data is required for audit purposes to be shown on Segment 1 (or Sheet 1). See paragraph 3-54, this chapter. The perimeter of each segment will follow property lines so that no single contiguous ownership will be severed by the boundaries of a segment, except in cases of railroads, highways, utility lines, and ownerships too large to depict on one sheet. It will not be necessary to subdivide tracts crossed by political boundaries such as county lines or state lines.



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3-23. Scale. The scale of the map will be such that the map is legible and sufficiently large to permit ready interpretation of the pertinent real estate features if reduced to half size or when viewed on microfilm equipment. Scales may vary from segment to segment where warranted because of the size or shape of the tracts. The scale of the map will be one inch equals multiples of 100 feet, or multiples of 10 feet if larger scales are required. The scale will be shown graphically and will not be stated numerically.

3-24. Numbering of Tracts. Tract numbers will be assigned during preliminary field work, or as soon as the tentative taking line is established, and will not be changed after acquisition has started. Deletion of tract numbers is permissible, but numbers previously assigned to tracts and subsequently deleted will not be reassigned to other tracts. Each tract will be identified on the map by the number originally assigned and this number will be shown encircled. Circles will be approximately the diameter shown in the legend on ENG Form 1456A. Where a large number of segments are anticipated, necessitating as many as four digits, ellipses may be used to enclose the numbers. The length of the ellipse should not exceed five-eighths of an inch. If it is determined to use ellipses, they should be used on all sheets comprising the project. Numbers listed in the acquisition tract register will be identical to those identifying the corresponding tract on the map. Regardless of the number of tracts in a project, or the number of segments required to map a project, numbering will begin with 100. Segment 1 will include parent numbers beginning with 100, but will not exceed 199. Segment 2 will include parent numbers beginning with 200, but will not exceed 299. By this system of numbering, identification of the segment is apparent from the tract number except as stated in paragraph 3-22 above. If two or more noncontiguous parcels of the same interest are acquired from a single parent tract, the same basic number will be used, but each parcel will be numbered successively beginning with the number "-1" (e.g., 200-1, 200-2, 200-3, etc.). Numerical suffixes will not be assigned unless more than one parcel is involved. However, if conditions develop whereby additional parcels are to be acquired from a parent tract, when originally only one parcel was planned, the original parcel will be renumbered to conform with other parcels. If acquisition has progressed to the point where it would be impractical to renumber it, then the next parcel would be identified by the numerical suffix "-2" (e.g., 200, 200-2, 200-3, etc.). This example presumes that the land covered by the three tracts is authorized by the same directive. New basic numbers will be assigned to additional tracts subsequently authorized by new (not amended) directives. During the planning stage, when segments are being laid out and numbers are being assigned to tracts

within a segment, the possibility of additional tracts in the segment should be kept in mind. A sufficient quantity of tract numbers should be reserved for that purpose. The actual quantity of numbers to be left unassigned will depend upon such factors as: the possibility of a subdivision or one in process of development; the accuracy with which tracts originally were indicated on reconnaissance drawings; and the time intervening between dates of reconnaissance and acquisition. For purpose of mapping for acquisition, an ownership or parent tract of land is considered to be all that contiguous area of land in identical ownership. Such areas will be deemed to be contiguous even though traversed by roads, railroads, other rights-of-way, non-navigable streams, political subdivision lines etc. Where such rights-of-way are in fee ownership of the right-of-way authority, the basic tract number of the ownership being traversed will remain the same, with numerical suffixes assigned to the separated parcels. Irrespective of the number of parcels or interests to be acquired from a parent tract, the basic number of all such parcels or interests will be identical even though the parent ownership traverses more than one segment where intermittent parcels are to be acquired, such as a railroad right-of-way. Parent tracts in the same ownership but not deemed contiguous will be assigned different basic numbers. Each tract will be identified on the map and tabulated on a separate line in the tract register. The tract number will indicate the interest in real property to be acquired, as follows:

a. Fee. Tracts to be acquired in fee will be identified by the appropriate number. Alphabetical suffixes to fee tract numbers will not be used except for cemeteries and authorized subsurface tracts as provided in subparagraphs f and h below. Numerical suffixes in sequential order will be used, in lieu of alphabetical suffixes, to denote non-contiguous parcels.

b. Easements. Tract numbers of all ownerships, or portions thereof, wherein easements are to be acquired or reserved in disposal actions regardless of type, will be suffixed by the capital letter "E" (i.e., 100E), using the same basic number for fee tracts from the same owner, if any. Where more than one parcel is to be acquired by easement from an ownership, the tract numbers assigned to each parcel will contain numerical suffixes in sequence. In instances where more than one type of easement is acquired over the same easement area, or portion thereof, the same basic number, with next numerical suffix will be assigned to the entire area over which the new and separate estate is to be acquired, including the overlap portion. However, if the new and separate estate is authorized by a new (not amended) directive, a new basic number will be assigned.

c. Permits and Licenses, other than from Federal Agencies.

Tract designations involving acquisition of interests in land by permit or license, will contain the capital letter suffixes "P" and "L", respectively, regardless of whether or not acreage is involved. The use of a dash between the number and the letter suffix is not necessary.

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d. Leases. Lease tracts, including those comprising wholly-leased installations, will be numbered in the same manner as fee tracts but will include the suffix "LE." Each leased tract under continuous possession of the Government will retain its originally assigned tract number irrespective of changes of ownership or renewal of the lease contract. Where appropriate, the name of the owner will be changed to reflect the current lessor at the time of lease renewal. If parcels are to be acquired from the same owners in fee and by lease, the tracts will be given the same basic number with numerical suffixes in sequence with the leased tracts bearing the suffix "LE." If a new and later directive authorizes the fee acquisition of the parcel acquired by lease, that parcel will be assigned a new basic number and the original tract and lease contract number will be stated in the "Remarks" column of the Tract Register. Where only joint use is acquired by lease, the area will be delineated by the symbol for interior property lines, the tract given a conventional tract number, and the area shown only in the "Remarks" column of the Tract Register. If, however, the lease provides for both exclusive and joint use, the areas will be mapped as parcels and assigned one basic tract number with numerical suffix. The exclusive use area must be shown with the conventional boundary symbol and the acreage shown in the Tract Register (except for temporary acquisitions of less than ten years duration; (paragraph 3-24j). The joint use area will be mapped with the interior boundary symbol and the acreage shown only in the "Remarks" column of the Tract Register.

e. Mixed Interests. In instances where more than one type of estate is to be acquired from a single ownership, the basic number will be identical for all estates acquired from that ownership, but will be followed by the suffix denoting the estate. For example, 100-1, 100-2, 100E-1, 100E-2, 100P indicate that two fee parcels, two easement parcels, and one permit are to be acquired from the same contiguous ownership.

f. Cemeteries. Tract numbers will be assigned to all cemeteries, regardless of area and number of graves and regardless of total or partial acquisition, and will be suffixed by the capital letter "C" (e.g., 100C). In cases where the underlying fee title to cemeteries, or burial plots, is identical to that of the surrounding land, or parent tract, and the cemetery is to be acquired, the basic number will be the same as that assigned to the parent tract, but followed by the suffix "C" to identify the cemetery area, as stated above. In case such a cemetery has no existing or established boundary, a sufficient area will be described, preferable rectangular or square, to include the graves. The Tract Register will show for the parent tract

the acreage after excepting the cemetery tract and will show for the cemetery tract the acreage excepted from the parent tract. However, if the cemetery has definite boundaries and is separately owned by a cemetery or church association or others, the tract will be assigned its own tract number with the suffix "C" and the acreage stated in the Tract Register. An exception to the foregoing procedures will be made when only a part of a cemetery is acquired and it is definitely determined that no graves are located on the part to be acquired. In these cases the tract number will not be suffixed with capital letter "C" but will be treated as a normal tract and numbered in accordance with paragraph 3-24 above.

g. Government-owned Land and Interests Therein. Areas over which jurisdiction or right of use is acquired from other Federal Government departments or agencies by Executive Orders, Public Land Orders, use permits or otherwise, or areas reassigned from one installation to another (within the same department) or transferred from military to civil account (or vice versa) within the Department of the Army will be treated as follows:

(1) Public land acquired under a single instrument will be considered as one tract even though the parcels are not contiguous. All such parcels will be assigned the same alphabetical tract designation. For purposes of identifying the various parcels that may comprise the total area acquired, each parcel shall be numbered in sequence on the map with the parcel number and acreage indicated in the "Remarks" column of the Tract Register; e.g., "Par. 1, 2.75Ac.," "Par. 2, 0.91Ac.," etc. Public lands acquired under successive instruments will be similarly designated, using the next alphabetical designation for each group of parcels. Amendments to basic documents are generally considered to be part of the original instrument. In certain instances, however, it may be more practicable to regard them as separate instruments and designate new areas as additional tracts. Considerable latitude is allowed the District offices in this respect, and their determinations are usually acceptable. In any event, the map and other audit elements and reports must record gross acquisition and subsequent disposal.

(2) Lands acquired under a single instrument, but containing several different estates, will be mapped and designated according to estates; that is, should a transfer or reassignment document contain some fee lands and some easement lands, each estate will be mapped and assigned a separate alphabetical designation. As in subparagraph (1) above, all fee parcels, even though noncontiguous, will be assigned the identical alphabetical designation (capital letter). All easement tracts will be designated by the next successive capital letter but each parcel will be suffixed with the Letter "E" (to denote easement) and a numeric designator (to denote parcel numbers). For example, a water

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line easement consisting of three parcels might be designated thus (assuming the capital "A" had previously been used): BE-1, BE-2, BE-3; while a sewer line comprising two parcels might be designated BE-4, BE-5. Other lesser interests will be treated in like manner. In this connection see Chapter 13. Since there is no tract register heading for public domain lands, such land statistics will be inserted in the Transferred column of the Tract Register. Statistics for lands held under use permits from other Federal agencies, including those involving public domain, will also be entered in the Transferred column. Care should be taken that the total amount of each estate acquired is inserted on the appropriate line of the "Acquisition" block.

(3) Leased tracts are excepted from the above procedure and will, when acquired by transfer or reassignment, be mapped and designated as if they were part of the original acquisition.

(4) In instances where large parcels of Government owned land acquired from the same agency appear on more than one segment of the project map, the total acreage involved will be recorded in the Tract Register of the first sheet on which the land appears. The tract designation and the department or agency from which the lands were acquired will be shown in the Tract Register of each successive sheet depicting such land, but the "Acreage" column will be left blank and reference made under "Remarks" to the appropriate segment.

h. Subsurface Estates. All interests of the surface owner in the subsurface normally will be acquired or subordinated, in accordance with the approved mineral acquisition plan. Surface tract numbers and legal descriptions are to be used without change if the surface owner's interest in the minerals is uniform over the entire area. However, surface tract mapping problems arise whenever the surface owners interest in the subsurface is variable within, or is not conterminous with, the surface tract limits. When completed title evidence shows such variation on the surface owners mineral interest, it is generally desirable to remap the surface tract, dividing the original tract into areas of identical estate held by the surface owner. The divided portions of the original surface tract are identified by adding a suffix letter - A, -B, -C, etc., to the original surface tract number, thus indicating the reason for deviating from normal rules of surface tract designation. Procedures for numbering of outstanding mineral tracts are prescribed in Section VI of this chapter.

i. Relocations. Land, or interest in land acquired by the Government outside the project for subsequent disposal or assignment, pursuant to the provisions of relocation contracts or other forms of agreement, will be mapped and the tracts will be numbered in accordance with the

instructions contained in this regulation. In order that lands which are acquired solely for relocation purposes may be readily identified on project maps, and distinguished from primary project lands, the exterior boundaries of such areas will be identified by the same conventional symbol utilized for interior property lines. Upon conveyance by the Government of such lands under the terms of the relocation agreement, the areas disposed of will be shown on project real estate maps by conventional disposal symbol, except where the conditions of paragraph 3-57d apply. The procedures set forth are applicable to projects in the following categories:

(1) New projects being initiated, or projects which may be authorized in the future.

(2) Projects, or authorized additions thereto currently in process of acquisition.

(3) Completed maps of unaudited projects, and projects concurrently in process of audit.

(4) Additional acquisitions necessitating revised final audits.

j. Temporary Acquisitions. All short-term acquisitions, such as leases, temporary easements, or licenses acquired for borrow areas, disposal areas, and quarry sites, will be shown on project maps. The tracts will be numbered in accordance with applicable subparagraph above. The exterior boundary of all acquisitions of less than ten years duration will be identified by the same conventional symbol utilized for interior property lines. Brief explanations will be made in the tract register concerning the type and purpose of the acquisition. The duration of the temporary acquisition will be shown by entering the date of the acquisition and the date of termination (e.g., 4-1-74 to 3-31-75).

3-25. Severed Properties. Entire properties need not be shown on the preliminary maps but full information on residual areas must be available for acquisition planning, for use by the appraisers, and for other purposes in the Division and District office. Residual portions of properties severed by Government acquisition will not be shown on project maps submitted in real estate audit assemblies which bear preparation dates subsequent to 23 February 1966. Since it is the purpose of the maps in the audit assembly to show the extent of the reservations, or acquisition project, and to depict the properties or portions thereof which were acquired, the outside property lines and residual acreage of former owners serve no useful purposes insofar as historical records of Government land acquisition programs are concerned. It is preferred that residual property lines, acreage, etc., be removed from all future audit assemblies, regardless of date of map preparation, or the prominence thereof reduced as much as possible.

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3-26. Runway Approach Zones and Transition Zones (Air Force). Air space criteria is defined in Chapter 3 of AFM 86-8. Project maps for acquisition within approach and transition zones for airfields will depict the tracts to be acquired, topographic data, and elevations of the clearance surfaces. These data are essential for planning purposes, for guidance of the appraisers, and to assist the negotiator in advising the landowner concerning the severity of the rights to be acquired. Some additional field surveys may be required if the base commander cannot supply the required information. Contracts with commercial concerns for furnishing required mapping and data are authorized with costs charged as authorized in accordance with instructions in ER 37-345-10. All surveys will conform with the following criteria:

a. Surveys will extend a distance sufficient for the glide surfaces, and the transition surfaces beyond the clear zones, to clear obstructions 100 feet high. Intervening land need not be surveyed if no portion of the tract extends to within 100 feet of the said surfaces. In transition zones parallel to the runway and clear zones, surveys will extend, laterally, sufficient distances to clear obstructions 50 feet high but, in no event, more than 1,450 feet from the center line of the runway extended 1,000 feet at each end.

b. Ground control surveys and topographic surveys to show the required contours, cultural, and natural features within the area proposed for acquisition will conform, generally, to the following standards:

(1) Ground control surveys will consist of utilizing the ground position and pertinent data of existing triangulation and traverse station monuments and bench marks, and the making of essential ground control surveys, for the establishment of horizontal and vertical control for mapping by use of aerial photographs or planetable surveys.

(2) Wherever basic control surveys have been made and monuments and bench marks previously set in the region of the survey project, or in proximity thereto, by the Coast and Geodetic Survey, the Geological Survey, or other agencies or competent parties who engage in making basic control surveys, such monuments and bench marks will be used as the origin for all ground control surveys on the project. Whenever basic control surveys are not available, assumed elevations may be used for vertical control. Horizontal positions will be in agreement with other control in use by the base commander.

(3) Standard ground survey methods necessary to obtain the accuracies specified will be used. These may include triangulation and traverse for horizontal control, and spirit levels and high order of vertical triangulation for vertical control. All control surveys will originate and end on the basic control for which closures are known and available, or will be run to make a closed circuit. All permanent station

markers and bench marks set for the project will be included in, or tied to, the control surveys. Use may be made of whatever methods are feasible and practicable to establish the supplemental horizontal and vertical control needed for scale adjustment and orientation of the aerial photographs in the mapping operations.

(4) The computed coordinate position of each horizontal control station occupied and used in compiling the maps will be correct within third order accuracy; i.e., allowable error of closure of traverse not to exceed one part in 5,000 parts, before adjustment. The elevation of all control bench marks will be correct within the limits of third order accuracy; i.e., a vertical error in circuit closure not to exceed plus or minus 0.05 of a foot times the square root of the length of the circuit in miles, before adjustment.

(5) Field notes of the horizontal and vertical control surveys will be kept in a clear, legible manner, in bound notebooks, when the topographic maps have been completed, and filed in the office of the District Engineer.

(6) Cultural features to be shown on the map will include all existing buildings, roads, railroads, fence lines, property lines, woods lines, and bench marks. Above ground transmission, telephone or telegraph lines, will also be shown. All cultural features will be shown in accordance with standard topographic mapping practices.

(7) Contours will be shown at intervals of five feet and ten feet. Maximum distance to be mapped in approach zones will be limited to 25,000 feet from end of clear zone, with five-foot contour interval extending out 10,000 feet and with ten-foot contour interval through the remaining 15,000 feet.

c. In addition to the tracts to be acquired, the project map will show the locations of the runway, clear zone, and approach and transition zones, the contours of the ground surface, and the contours of the clearance surfaces. The map will show the ground elevation and the clearance surface elevation at each principal corner of each tract and at such intermediate boundary and interior points as may be critical. Each major obstruction will be plotted in its true location described (as house, barn, tree, or pole), with the elevation of the ground, top of obstruction, and clearance surface at that location stated. These elevations may be recorded to the nearest foot.

3-27. Clearance Easements. Project maps for acquisition which include clearance easements will be prepared as set forth for approach and transition zones for airfields, except the point from which the clearance surface originates is to be referenced by true bearing to the nearest one minute of arc and distance to the nearest one-tenth of a foot from nearby section corner, subdivision corner, or property corner. If



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primary and secondary fields are involved, the true bearing of radial line of division will be stated. The surveys will extend as far as obstructions exist and may be reasonably expected to be present in the foreseeable future.

3-28. Restrictive Safety Easements. On project maps for acquisitions which involve the imposition of restrictions to promote safety within a specified distance from a critical point, the point of origin is to be accurately referenced to a property corner, section corner, or other readily identifiable point, and the length of the radial line stated. It may prove to be convenient, especially in low cost areas, to convert the arc to tangents, using not less than four in a quarter circle, for the preparation of the legal description.

#### SECTION VI. MAPPING OUTSTANDING MINERALS.

3-29. Applicability. Where outstanding subsurface estates exist in a complex ownership or leasehold pattern that has little or no relation to the pattern of surface tracts, special mineral segment maps and tract descriptions will be required to accomplish the mineral acquisition. If the problem is particularly complex, it may affect real estate planning for certain projects to an extent which will justify assembly of preliminary mineral ownership or leasehold data and preparation of preliminary mineral maps of the index type. Generally, mineral mapping or surveys should not be undertaken until complete title evidence for surface tracts is available to show the nature, source, and extent of outstanding subsurface estates. When the pattern of mineral ownership or leasehold has been clearly established by investigation of data contained in titles to surface tracts, supplemental mineral surveys should be made to locate nonconforming mineral property boundaries within the segments and the preparation of mineral segment maps may be initiated.

3-30. Segment Layout and Tract Numbering. Mineral segment maps, insofar as practicable, should conform to the basic segment layout used for the surface tracts to permit maximum correlation of survey, but should be varied in area coverage or matching to preserve mineral tract outlines within the mineral segment. The rules applied to establishment of surface tracts, i.e., contiguous and identical ownership and estate to be acquired, are to be used. Tracts must also conform to the mineral estate owned, but in areas of "mixed" or "split" ownership of specific minerals, this rule must be applied with caution to avoid patchwork pattern of subsurface tracts. Generally, in these areas it is preferable to give precedence to contiguity of ownership or leases of like minerals which will result in overlapping subsurface tracts. An example of this condition is a 500-acre property of coal only, within the limits of which the oil and gas are divided into six separate ownerships. In this instance, a mineral tract number should be assigned to the coal property and six separate mineral tract numbers assigned to the oil and gas properties so as to avoid splitting the coal property into six possibly meaningless pieces of identical outstanding mineral interests. Also,

in this same instance, if there are six separate oil and gas leases, all to the same lessee, one tract number would be assigned to cover all six leases. Each outstanding mineral tract will be assigned a new basic number in the segment series which does not duplicate surface tract numbers. The letter "M" will be added to the mineral tract to denote acquisition and the letters "ME" to denote subordination. The letters "ML" will be added to the mineral lease tract number to denote extinguishment and the letters "MLE" to denote subordination. Numerical suffixes will be assigned in instances of noncontiguous subsurface acquisitions and/or subordinations in identical ownership in the same manner required for surface tracts in paragraph 3-34.

3-31. Legal Descriptions. Legal descriptions of surface tracts modified as to source of title, etc., may be utilized for subsurface tracts, provided the respective boundaries are conterminous. New descriptions will be required for subsurface tracts whose boundaries are not conterminous with surface tracts.

3-32. Tract Register of Subsurface Acquisition. Each mineral segment map will contain a "Tract Register of Subsurface Acquisition" which will show tract number, owner, acreage, brief description of the mineral estate to be acquired or subordinated, and explanation in the "Remarks" column showing surface tracts, by number, under which the subsurface tract is wholly or partially located. Surface owners and/or surface tract numbers which abut the surface should be shown on the map.

3-33. Disposition of Mineral Maps. Mineral segment maps will be audited only to confirm acquisition statistics but will not be forwarded with the audit assembly unless specifically required by Office of the Chief of Engineers. Prints and/or microfilm aperture cards of such maps will be retained in the permanent realty records maintained in the office of record.

## SECTION VII. SPECIAL MAPS.

3-34. Maps for Planning Purposes. If available, project maps will be utilized for planning purposes. In advance of the availability of project maps, other type maps or preliminary planimetric maps will be used for advance planning to present the information required by Chapter 2 for real estate design memoranda and real estate planning reports. Additional exhibits may be prepared from recorded plats, maps prepared by local governments, private firms, utility companies, aerial mosaics, photographs, planimetric maps, river charts, etc. Maps from the National Topographic Map Series, especially the seven and one-half minute quadrangle maps are useful

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for presenting comparable scale information. The scale is large enough to show the pertinent features and configuration of the tract and such features as improvements, topography, and roads with identifying name or number.

3-35. Individual Tract Maps. District Engineers may authorize the preparation and use of individual tract maps where it has been determined that detailed tract maps are necessary for the purposes described below. These maps may depict as much of the following features as required: acreages, roads, pertinent contours, residual areas, adjoining owners, metes and bounds description, principal cultural lines, drainage structures, land classification, and pertinent elevations where clearance easements are to be acquired.

a. Appraisal of fringe tracts, severed tracts, complex properties, and tracts valued in excess of \$50,000.

b. Formulation of description of complicated property boundaries.

c. Delineation of land management provisions in outgrants where the project map cannot be utilized.

d. Description for disposal of portion of the project.

e. Exhibits for relocation agreements and road vacation proceedings.

3-36. Other. Project maps will be utilized for real estate acquisition, management, disposal, and historical purposes. However, District Engineers may authorize the development and use of other type maps for purposes of special studies, reports, court exhibits, or other type activities such as control of intensive land management programs where project maps, or variations thereof, will not suffice and where their significance or importance warrants the additional cost.

#### SECTION VIII. FIELD INSTRUMENT SURVEYS

3-37. Applicability. Project boundaries will be surveyed and monumented in accordance with policies set out in paragraph 3-38 below. Full use will be made of any surveying and mapping data available within the Division and District offices to prevent duplication of field surveys. Field notes, descriptions, sketches, etc., developed during field surveys will be appropriately identified, preserved, and filed for future reference. Field instrument surveys of interior property lines will be held to a minimum and will be restricted to the circumstances as authorized in paragraph 3-39 below.

3-38. Exterior Boundaries. In all cases of fee acquisition, survey must be made ahead of acquisition for the purpose of verifying both horizontal and vertical positioning of the boundary to confirm that it includes the guide taking line or contour. Accurate and identifiable exterior property lines are necessary to preclude second acquisitions, prevent encroachments, and for proper management of Government lands. It is also necessary that an accurate boundary be established prior to acquisition of easements which preclude human habitation, improvements, or filling.

a. Military Projects. Actual field surveys of boundaries of military projects and monumenting thereof will be performed by the Division or District Engineer only when funds are specifically programmed for that purpose and the request of the appropriate representative of the using service or command has the required approvals of higher authority. However, especially for the smaller acquisitions, the boundaries should be marked with stakes to assure that the construction is confined to the acquired land and to assist in the location of perimeter fencing.

b. Civil Works Projects. As a general policy, project boundaries will be established by actual survey and the corners permanently marked. The need to perform actual surveys to locate and mark the extent of boundaries, including the line of severance between fee and flowage or other easement tracts, will depend upon local conditions and other factors. Where it is necessary to broaden the scope of surveys, or to make project-wide boundary surveys, estimates of costs, time, and manpower necessary to perform the work should be closely coordinated with other District elements. Necessary funds should be programmed and budgeted as early in the program as possible in order that the work may be accomplished in accordance with real estate planning requirements and project operational requirements. Where funds are made available, the field surveys will conform with the following criteria:

(1) Boundary Lines of Fee Acquisition. Where actual surveys are made for fee areas permanent type survey markers will generally be installed at all angle points on reservation boundaries of fee acquired land at water resource development projects. These markers may be concrete monuments, iron pipes, angle irons, tee irons, or marks on objects not likely to be disturbed. In those cases where ownerships are severed, severance lines will be established along tangents of reasonable length, except in those cases where the acquisition lines follow existing natural or other cadastral features having characteristics that clearly distinguish the land being acquired from the land left to the owner. Tangents for fee severance lines will be established with such degree of refinement that the boundary can be reestablished by metes and bounds, or by sectional subdivision lines, without reference to other data.

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(2) Marking Boundary Lines for Flowage Easements. The general practice set forth in the preceding subparagraph concerning the marking of fee boundary lines will be applicable also to perpetual flowage easement areas where encroachments may reasonably be expected from private development of adjoining lands. Where it has been determined that upper limits of flowage easements are to be marked on the ground, location of the contour will be indicated by painting on trees, outcroppings, posts, etc. If no suitable fixed objects can be found on which to paint the elevation, painted stakes may be used. If at all possible, the contour should be marked at intervisible points and especially where it crosses property lines, roads, and other prominent landmarks, and the point where it heads out in streams. Since the contour for the upper limit of the taking has previously been located by traverse and tied to the property lines and property corners, this survey can be used to mark permanently the point where the contour crosses all tract boundaries and, where deemed appropriate, interior fence lines.

(3) Marking Other Easements, Leases and Lesser Interests. Because of the various types of facilities, various interests being acquired by the Government, and the uses to which the facilities are put, definite procedures cannot be outlined herein concerning the method of establishment of lines for the acquisition of these types. Accordingly, it will be the responsibility of the District Engineer to recommend the method of locating and marking the boundaries of such lands.

(4) Accuracy of Surveys. The accuracy of field surveys is determined by the characteristics of the project. The allowable error should be commensurate with such factors as the value of the land, planned use of the land, and present or potential use of the abutting land remaining in private ownership. For the average project, the allowable errors should conform with established criteria. In horizontal surveys, as a criterion, control traverses should be of third-order accuracy and have an error of closure, on itself or points of higher accuracy, not greater than 1 in 5,000. The angular closure should be not greater than one minute times the square root of the number of instrument stations in the traverse. For other traverses, the error of closure should be better than 1 in 2,000. In vertical surveys, as a criterion, the guide contours should be marked with sufficient accuracy to preclude measurable errors in area and value of the tract. Individual markings of points on the contour should be correct within the nearest one-half foot and located from a line of differential levels which closes on itself or points of higher accuracy with five-hundredths of a foot times the square root of length of the circuit in miles.

3-39. Interior Lines. Surveys of property lines not constituting project boundaries are authorized for the following purposes:

a. For Acquisition Purposes.

(1) When property lines cannot be established by the plotting of deeds, or by other means, to the satisfaction of both the Government and the owner concerned.

(2) When, in the judgment of the District Engineer, actual ground location of property lines is necessary to determine the relationship of improvements, utilities, water sources, roads, etc., to property or taking lines or to proposed project boundaries.

(3) In cases of conflicting deed calls resulting in apparent "Overlaps" or "vacant" areas, where it appears probable that a field survey would resolve property lines disputes, thus avoiding the creation of counterclaim and resultant court actions to determine rightful ownerships.

(4) Where necessary to relocate property lines or when the owner otherwise refuses to convey title to the Government.

b. For Management and Disposal Purposes.

(1) When, in the judgment of the District Engineer, surveys of interior lines are necessary in conjunction with the establishment of exterior lines to protect the interests of the Government, such as investigations of alleged trespasses over real property controlled by the Department of the Army.

(2) To locate boundaries of areas authorized for outgrant or disposal, provided the boundaries of such areas do not coincide with property lines as they existed prior to acquisition by the Government and provided the boundaries cannot be determined by office methods.

(3) To investigate real estate damage claim.

SECTION IX. LEGAL DESCRIPTIONS

3-40. General. It is imperative that adequate tract descriptions be prepared as sufficient title evidence is available to ascertain

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the owner's name, place of record, and source of title. Generally tract descriptions can be prepared as one of the first steps of the acquisition program. Descriptions will be prepared to meet the requirements of law for finding and properly identifying the specific tract of land to which title must be approved by a designated attorney of the Corps of Engineers, or which may be the subject of condemnation action. The necessity for refinement and a high degree of accuracy in describing interior tracts is somewhat less than for exterior or fringe tracts. Accordingly, the recorded deed description may be used for acquisition of interior tracts provided they meet legal requirements and contain no apparent deficiencies or conflicts with adjoining property lines, and further provided that headings and format, as applicable, conform to instructions herein. After all information has been compiled on the base map and acquisition lines and property boundaries have been plotted thereon, the following procedures will be followed in preparing legal descriptions:

a. Bearings and distances will be obtained from coordinates which have been scaled from the base map or bearings and distances may be scaled from the base map, unless more accurate survey data are available. The most accurate data on the project boundary in most cases can be determined from the boundary monumentation survey prescribed in paragraph 3-38 above. If available, this survey data will be used in the tract descriptions. Meandering property lines having fixed or natural boundaries, such as streams, highways, railroads, etc., will be used and expressed in one approximate distance, giving the general direction of the entire course.

b. The heading of the description will be properly titled to show: tract number, name of owner, acreage, name and location of project.

c. The general descriptive location of each tract will indicate the state, county, district or parish, and all local identification that will fully describe the general location of the land.

d. The place of beginning will be selected, preferably at a corner common to three or more tracts, and fully described or referenced to a permanent marker or object which can be located or recovered, if necessary. The description will progress in a clockwise direction, giving the bearing and lengths of the courses and indicating the ownership of adjoining lands, together with a description on any markers and natural or cultural features which will assist in identifying the lands described. After the closing course has been described, the acreage contained within the area will be shown and indicated as "more or less." In states which require a statement as to the previous

and last conveyance, deed references pertaining to the land contained within the described area will be clearly shown by indicating the grantee and grantor, date of deed, record book, page, and office in which the instrument is recorded. Where the land to be acquired is identical to the land as acquired by the vendor, a statement will be made that it is the intention of the description to include the same land as that described in a deed (or deeds) from \_\_\_\_\_ to present owner. Where less than the whole tract is to be acquired, substitute "a part of the same land" for "the same land."

3-41. Right-of-way. Legal descriptions of rights-of-way may be prepared from, and based upon, centerline data, rather than following the perimeter. The point of beginning should be well referenced to an established point outside the right-of-way. In describing rights-of-way along the centerline, the right-of-way width and station identification will be indicated in the description. The net overall length of the right-of-way will also be included in the description. In instances where real estate interests are required for right-of-way purposes, an acceptable description usually will be available from design work performed preparatory to proposed construction work. In such cases, full use will be made of these data. In preparing right of-way descriptions of easement tracts acquired for an amount not in excess of \$500, District Engineers are authorized to utilize "as built" descriptions for those tracts where the underground utility lines are marked on the surface for possible recovery, relocation, or removal, and do not have to be acquired by condemnation proceedings, or are not located in the public domain or under the jurisdiction of another Government department or agency. Where transfer is involved, more definite descriptions will be needed for incorporation in Executive Orders, Public Land Orders, or other transfer instruments. Other methods and guidance for preparation of Legal descriptions of rights-of-way as recommended by the Land Surveying Committee of the American Society of Civil Engineers (ASCE) may be found in Volume 42, Number 4, of the April 1972 issue of the publication "Civil Engineering," (American Society of Civil Engineers, Editorial and General Office, 345 East 47th St., New York, NY 10017).

3-42. Overlapping Estates. In cases where it is necessary to acquire an additional interest over an area where less than fee title is being acquired, the total tract area will be recited at the end of the description. However, in order to prevent duplication of acreages of overlapping portions, an additional statement will be included at the end of the description substantially as shown in the following examples:

"... containing \_\_\_\_\_ acres, more or less, of which



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\_\_\_\_\_ acres are included in the description of Tract \_\_\_\_\_."

or

"... containing \_\_\_\_\_ acres, more or less, all of which are included in the discription of Tract \_\_\_\_\_."

Permanent easements should be described first and take precedence over temporary easements; ie., temporary always "overlaps" permanent. For permanent easements, the "overlapper" may be determined by local conditions or choice, but should be uniform throughout the project. For easements for similar rights, as for lines of sight azimuth markers and connecting azimuth markers, care must be taken that the descriptions do not overlap and there is no duplication of areas described.

3-43. Clearance Easements. Descriptions of clearance easements will include heights (above normal ground) of the clearance surfaces from which restrictions are imposed. Also, intervening and interior clearance data may be included in description which will prove helpful to the Government or to the landowner. Descriptions of approach zones, lines of sight, and masking areas will not be used for purposes of defining height restriction for clearance easements in options or condemnation assemblies. In those cases where the ground surface of clearance easement tracts is very irregular, and where there are borderline points in the interior of tracts, it may be necessary to include a topographic map from which maximum permissible heights can be readily calculated at any given point.

#### SECTION X. PROJECT MAP DETAILS

3-44. List of Items. Each project map will show the following as applicable:

- a. Type of map (Preliminary or Final).
- b. Department and Using Service.
- c. State, county (or parish), Engineer Division, Engineer District, Army Area, location relation to nearby towns or cities and transportation facilities serving the project area. The towns or cities must also appear on the vicinity map. Where there are multiple segments, distances shown on each segment will be based on the location of the individual segment to the towns or cities.
- d. In cases where projects are located. in more than one county or more than one state, the space provided on Sheet 1 will show all

counties and states involved in the entire project. In addition, each continuation sheet, ENG Form 1456C, will show the county or counties, state or states applicable to that particular sheet where it differs from the project as a whole.

e. Total acreage acquired, broken down by each type of estate, will be shown on the first sheet, paragraph 3-54.

f. Total acreage sold, transferred, reassigned, or terminated, and breakdown by legal interests, will also be shown only on first sheet, paragraph 3-55. Methods of showing disposal notations will conform to the requirements of paragraph 3-56.

g. Legend, with applicable symbols or reference to same.

h. The section within the title block headed "Office, Chief of Engineers, Washington, DC 20314" is reserved for the installation audit number. The installation audit number will be assigned as explained in paragraph 3-53.

i. Date appearing in the title block will be the date of original preparation of the preliminary map and will not be changed after the initial approval of final real property acquisition lines by the Division Engineer.

j. Signature of approving officer, together with names and initials of personnel responsible for drafting, submission and recommendation.

k. Revision block, indicating approved changes in sequential order. The last action to be reported in the revision block, prior to the submission of the audit assembly, will be indicated by the words "Final Audit," together with appropriate date. Since the date of preparation of the map in the title block is not to be changed, it is of particular importance that each significant revision to the map be noted and dated in the revision block. This information will not be removed from the map for any reason. In the event of authorized acquisition or disposal actions subsequent to approval of the audit, the revision block will be kept current.

l. The date(s) of approval of the audit and revised audits by OCE will be entered in the column entitled "Date Audit Approved" located to the left of the revision block.

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m. Acquisition authorizations for the entire project will be shown on the first sheet in the "Acquisition Authorization" block. Subsequent sheets will show only the authorizations applicable to that sheet. Congressional authorization for construction of the Army Civil Works project will also be shown in this block. Congressional approval for allocation of project funds will not be shown. Amendments to military real estate directives which authorize only the expenditure of additional funds will not be shown.

n. North arrow will be indicated by conventional symbol and reference meridian (true, magnetic or grid) to indicate angular comparison with true north. Separate north arrows will be shown for each insert.

o. Scale of map will be shown graphically, and in accordance with paragraph 3-23.

p. Real property acquisition lines; individual tract boundaries, with tract numbers; and pertinent subdivision lines, such as: Township, range, and section lines; headright and land grant boundaries, etc., will be shown. For civil works projects where both fee title and flowage easement are acquired, the fee or interior acquisition line will be indicated by the same conventional symbol as that required for the exterior or reservation boundary, except that the weight of the line should be about midway between the weight of the tract boundary and that of the reservation boundary. In such cases, the legend on the project map will be appropriately modified to reflect the use of the additional acquisition line.

q. Guide acquisition lines for acquisition and management purposes will show pertinent elevations, and these with other pertinent elevations will be shown and identified in a legend, as follows:

(1) Navigation Only Projects. Existing ordinary high water; existing normal pool; new normal pool; new ordinary high water; guide acquisition lines for easement acquisition.

(2) Flood Control and Multiple Purpose Projects. Conservation pool; static full pool; guide acquisition lines for fee and easement acquisitions.

r. Predominant geographic, cultural, and cadastral features in or near the project area will be clearly indicated to assist in orienting the project area in relation to the surrounding territory. Extraneous data and details not necessary for proper orientation or features not in close proximity to the project area will not be shown.

s. Small areas difficult to map or to show tract outlines on the scale of the project map will be mapped on a larger scale as insets in any available space within the map border.

t. Method of compilation of tract and project boundaries will be stated in a note as being based on deed descriptions, aerial surveys, actual surveys, General Land Office plats, etc.

u. Segment maps will match and tracts and tract numbers will not be duplicated on adjoining sheets, except in the case of rights-of-way, Government-owned land and other large ownerships which extend across several sheets. In this case, tract numbers will be indicated by the conventional symbol on the sheet of lowest number of which the tract appears. The same basic tract number will be shown with a dashed line, in lieu of solid line, and the symbol shown in the legend.

v. An outline of the state or states involved, showing the approximate location of the project; a vicinity map drawn to scale, showing counties, principal towns, railroads, highways, streams, political subdivisions, etc., and the location of the project in relation hereto will be included. This requirement is applicable to Sheet 1 on multi-sheet projects.

w. A segment index map of the entire project showing the location of each segment will be shown on each sheet of multiple sheet projects. The pertinent segment on the index will be shaded to correspond to the appropriate map sheet. The segment index map may be combined with the vicinity map required in subparagraph v above; however, in such cases the combined index must appear on each map sheet. (Refer to mechanical devices, stick-on, or other methods allowed for repetitive items in this chapter.)

x. Bearings and distances of all exterior fee and easement boundaries, except where these boundaries follow subdivision lines of the public land surveys will be shown. For right-of-way (fee or perpetual easement) tracts for roads, railroads, and utilities, the bearing distances and curve data may be shown along the centerline, in lieu of along the boundaries, with widths of the rights-of-way shown and at stations where there is a change in width. In cases of flowage easements where acquisition lines are defined by bearings and distances for descriptive reasons in lieu of following the guide contour, the bearings and distances will not be shown on the map. Bearings and distances for temporary easements, leases of short duration, and other lesser interests

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are not required to be shown on the maps. The foregoing requirement for depicting bearings and distances of exterior boundaries is waived for civil works project maps provided that monumentation data and survey information is on file in the appropriate Districts or Division office. In such cases a notation will be placed on Sheet 1 of the project map indicating the availability of such data.

y. A tract register in columnar form showing, with appropriate headings, the tract numbers, name of landowners, acreages and estates to be acquired or that have been acquired in each tract will be included. This information may be shown by one of the following methods, depending upon convenience and economy: mechanical means, such as Leroy or Wrico; freehand lettering; stick-on processes; typewriter or equivalent. The heading for the tract register on maps prepared subsequent to 23 February 1966 will be limited to the words "Tract Register." The number of columns in the tract register for the type of estate will be no more than reasonably may be expected to be used. Where more than one authorization or directive pertains to a segment, each tract or group of tracts will be referenced, on the exterior left side of the tract register, to the appropriate military land directive or civil works authorization (not those authorizing additional funds to satisfy deficiencies) by the use of brackets or on additional column. The estate acquired for individual tracts will be shown by insertion of the acreage in the appropriate estate column. The instructions in Chapter 13, will be followed where there is a transfer of a portion of the public domain. The instructions in Chapter 13, are applicable to use permits involving land from any Federal agency. An additional column for remarks will be provided in the last column of the tract register. This column will be utilized for brief explanations of acquisition actions. Upon accomplishment of acquisition for military installations, the column will include the date of the passing of title, which will be either the date of the deed, the date of the filing of a declaration of taking, or the date of final judgment for tracts taken by straight condemnation or a separate column will be established to accommodate these data. Typical examples of other remarks are as follows:

(1) Previously acquired as Tract No. \_\_\_\_\_

(2) Lease No. \_\_\_\_\_ date \_\_\_\_\_ from \_\_\_\_\_ (date) \_\_\_\_\_ to \_\_\_\_\_ (date) \_\_\_\_\_. (Where the lease contract has been renewed, irrespective of the number of renewals, show the original contract number and date, the effective date of the original contract, the current

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contract with the notation "This area continuously under lease from (effective date of original lease). ")

- (3) PLO No. \_\_\_\_\_ dated \_\_\_\_\_
- (4) \_\_\_\_\_ (type) \_\_\_\_\_ easement from \_\_\_\_\_ (date) to \_\_\_\_\_ (date)
- (5) Donation
- (6) Permit for (purpose) from \_\_\_\_\_ (date)
- (7) License for (purpose) dated \_\_\_\_\_  
from \_\_\_\_\_ (date) to \_\_\_\_\_ (date)
- (8) Reassigned from (project) by (Ltr., Ind., D.F.)  
dated \_\_\_\_\_ from (facility) to (facility)
- (9) \_\_\_\_\_ Acres in \_\_\_\_\_ County,  
\_\_\_\_\_ Acres in \_\_\_\_\_ County (for use where tracts  
are crossed by county lines.)
- (10) Formerly acquired under Lease No. \_\_\_\_\_
- (11) Additional \_\_\_\_\_ acres included in Tract No. \_\_\_\_\_.  
(Applicable in cases of tract overlaps, caused by the creation of  
new tract(s) requiring additional interest(s) over all or portions  
of existing tract(s), plus new acquisition extending beyond the limits  
of the original tract. In this instance the appropriate acreage  
column of the tract register will show the net acreage not involved  
in overlap, and will not include any acreage already appearing on  
the tract register.)

z. In cases where maps consist largely of easements that require explanation by remarks, and in order to reduce repetitive lettering in the "Remarks" column, one of the following procedures may be used:

- (1) The column normally captioned "Easements" may be changed, where applicable, to "Perpetual Clearance Easement." In the event other types of easements appear on the same sheet, such as roads easements, power line easements, etc., they may be shown either by separate column (where justifiable) or indicated by an asterisk and explained.
- (2) Ditto marks may be used, if desired.
- (3) Commercial type transadhesive map lettering and symbol impressions may be used.

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aa. A marginal index for the purpose of locating tracts in a project may be added when necessary by reason of the large number of tracts. The index will be shown in a separate column.

ab. Where tracts are crossed by county lines, the tract acreage to be acquired in each county will be indicated by remarks in the tract register. In addition, a breakdown, by county; of the total project acreage acquired by each legal interest will be shown on the first sheet. The breakdown will be revised to show current statistics, as necessary, upon disposals and/or acquisitions accomplished subsequent to audit approval. (Leased areas are not required to be shown by county breakdowns.) This requirement is applicable to civil works projects only.

ac. Projects which will not be surveyed and the boundary marked will have at least one corner in the boundary referenced by bearing and distance to an identifiable point by which the project boundary may be reestablished with reasonable certainty by a competent surveyor.

ad. In cases of overlapping easements, and in order that the boundaries of each easement may be readily identified, that portion of the overlapping tract will be shown by dotted lines, rather than by conventional symbol. In some instances when this procedure cannot be followed because of multiplicity of estates involved, new tracts and tract numbers will be established so that the extent of each tract will coincide with the estate, or estates, as approved.

ae. Acreage of each tract will be stated in the legal description and on the project map, generally, to two decimal places.

(1) In sectionalized areas, acreages will conform to the subdivisional surveys unless subsequent surveys certify a different acreage and such surveys are acceptable to appropriate county officials.

(2) Outside the sectionalized areas and wherever the boundaries are defined by metes and bounds the acreages will be determined to a degree of accuracy commensurate with the value of the land, the size of the tract and the accuracy of the boundaries. Recorded deed acreages will be used wherever possible. For partial acquisitions and wherever a computation of acreage is necessary, an accuracy of about one-half of one percent is sufficient and computation by double meridian distances or other mathematical methods will not be used in an attempt to obtain a higher accuracy unless the accuracy of the boundaries and the purpose of the acquisition justify that refinement.

(3) Acreage of lots and other small areas, not determined by survey, will be obtained by planimeter or by simple multiplication. Where the tract has an area of less than one-hundredth of an acre, the acreage may be stated in the deed description and tract register with more than two decimal places for clarity. However, the summation of these areas and the total area of the project will always be stated to two decimal places.

#### SECTION XI. TRANSFER OF PROJECTS

3-45. Modification of Project Map. Whenever the responsibility for acquisition of a project is transferred from one District to another District, the completed or partially completed maps will not be redrawn by receiving office. Information shown on the right side of the map, such as Division, District, signatures, initials, dates, etc., that normally would not apply after transfer will not be removed from the map. In order to show which portion of the work on the map is performed by the receiving office, the following note should be inserted immediately below the District line, "To \_\_\_\_\_ District on \_\_\_\_\_." With this information and the dates in the "Revisions" block, it will be possible to ascertain the map work performed by each office.

#### SECTION XII. PRELIMINARY PROJECT MAPS

3-46. Definition. Preliminary project maps, for the purpose of this chapter, are defined as those on which all acquisition lines have been approved, all tract information has been shown, and all other information required by Section X of this chapter as may be applicable (except statistical summaries) has been entered on the appropriate lines of the Statistical and Data column.

3-47. Review and Approval. In the interest of decentralization of operational mapping functions, review and approval of preliminary project maps, and revisions thereto, are the responsibility of the Division Engineer who will establish necessary procedures to insure adequacy, accuracy, and uniform compliance with instructions in this chapter.

3-48. (Deleted)

\*



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3-49. Multiple Segments. Where a project is large enough to justify map-segments, each segment will be prepared as soon as conditions defined in paragraph 3-46 have been met.

\* 3-50. Revisions. Revised preliminary project maps showing corrections and approved changes in the acquisition program will be clearly indicated as "Revised," with the date and nature of the revision noted chronologically in the "Revisions" block. Minor changes need not be submitted but when, in the judgment of the preparing office, the accumulation of minor changes affect the utility of the maps, revised maps will be prepared and forwarded to the Division Engineer for review and approval as required above. \*

3-51. Distribution to other Services. Copies of preliminary and revised preliminary project maps will be furnished appropriate installation commanders, Air Force Command Headquarters, and local representatives of other services and agencies upon their request. The number of copies furnished is discretionary with the District (or Division) Engineer.

#### SECTION XIII. REAL ESTATE AUDIT

3-52. General. Real Estate audit procedures prescribed in Chapter 13 designate the final project map as a component of the audit assembly. Preliminary project maps for civil works projects will be reclassified as "Final" when all authorized lands for the project have been acquired, and all data and statistics on acquisition and disposal have been shown on the map and verified by audit. Preliminary project maps for military installations will be reclassified as "Final" when the major portion of land for an installation has been acquired pursuant to authorizing directives, mapped, and audited under the conditions specified in Chapter 13.

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3-53. Assignment of Audit Numbers. Division Engineers will control and assign numbers to installations/projects qualifying for audit upon being so advised by the Districts within the Division, except where numbers have been previously assigned by OCE. This responsibility may be delegated to the District Engineer. Numbers will be assigned on a three-part basis, i.e., (1) Division /District abbreviation, (2) Department code, and (3) a sequence number to comprise four digits beginning with the number 0001. For example, LMVD in assigning a number to the New Orleans District would use: NORL (denoting the District abbreviation), followed by a dash-, then the numeral 2 indicating a civil works project) followed by a dash, and then the sequence number. Thus, the entire number would be: NORL-2-0001. SAD in assigning the Mobile District a number for a NASA project would use MOBL-5-0001. NPD would assign Seattle a number for an Air Force installations thus: SEAT-3-0001. The sequence number for each separate department in each District should begin with 1 (0001) and continue consecutively for that department. Division/District abbreviations are listed in Appendix B, ER 405-1-1-30. Department codes are listed in Appendix A, ER 405-1-1030. When using Department code 6, disregard the parenthetical note. No further identification is needed in the number since the Statistical and Data column of the map will readily identify which "other" agency as indicated. Audit and projects maps of ICBM facilities are exempt from this requirement. Previously assigned numbers for such facilities will be used. Numbers not yet assigned to ICBM facilities will be obtained from DAEN-REP-S. Upon completion of the audit, the final project map will be marked "AUDITED," inscribed with the audited installation number, and an ozalid print submitted with other required material in the audit assembly to HQDA (DAEN-REP-S) WASH DC 20314.

\* 3-54. Acquisition Block. This portion of the "Statistical and Data" column of the final project map is designed to accommodate all types of acquisitions. In particular, the "Acquisition" block is broken down into three major categories with the "Public Domain" and "Transfer" lines further broken down. The first item under "Public Domain" will include withdrawals for the entire installation. This will show lands withdrawn from the public domain by public land orders, Executive orders, proclamations and notations of rights-of-way on the public land records for use by a specific department. The second item under "Public Domain" will include use permits involving public domain. Use permits from other Federal agencies involving public domain land would also be reflected on this line. All other use permits from other Federal agencies will be reflected on the line so captioned. The "Transferred" line has been devised so as to reflect the estates of lands transferred from other departments and agencies, i.e., fee, easement and/or lesser interests. Leases transferred will not be included in this line, but will be shown in the line provided for all other leasehold acquisitions. \*

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a. Total Acres Acquired. Insert in this line the grand total of all land comprising the installation or project including the net area under jurisdiction as of 1 July 1940 for military installations and 1 January 1943 for Army civil works projects. Do not include in this land the acreage for lesser interests retained in the disposal of fee lands. Do not include duplicated acreage due to partial disposal followed by partial reacquisition, but note such exclusion keyed to the "Total Acres Acquired" line.

b. Various Interests Acquired. The total acreages of the various interests acquired will be shown opposite the appropriately designated lines. The statistics will include only the areas acquired since 1 July 1940 for military installations, and 1 January 1943 for civil works projects. The "Lesser Interests" line will be the total of all easements and other lesser interests broken down by types. Reserved \* easement acreages will be reported on a line captioned "Easements Reserved in Fee Disposal." Use permits reserved in a transfer to another Federal agency will be entered on the "Use Permit" line, with the reserved use permits separated from the other use permits and identified by "RES" printed on the left of the acreage. Where lesser interests involve less than 0.005 of an acre, indicate in parenthesis the total number of tracts involved, and indicate "0.00" as the area.

c. Additional Acquisition Data Required. In addition to the statistical data contained in the "Acquisition" block of the "Statistical and Data" column, a breakdown of the total area acquired by estates by counties, where more than one county is involved, is required for civil works projects. These data will be shown in any convenient place on sheet 1 of the final map. The breakdown will be revised to reflect current statistics, as necessary, upon disposals and/or acquisitions accomplished subsequent to audit approval. (This requirement is not applicable to leased area.)

### 3-55. Disposal Block.

a. This portion of the "Statistical and Data" column is, in the main, a counterpart of the "Acquisition" block, the second through the fifth lines being termed identically in each instance. The total disposal of the various estates as acquired will be entered on the appropriate lines. In the line caption "Sold," the total area sold by the Department having jurisdiction will be shown. In the line "Reassigned" will be shown the total area reassigned from one installation or project (within the same Department) to another, setting out the estate as required. Where more than one estate is involved, the total of each estate should be set out in brackets. The designated "Other" will be altered to suite the situation. For example, if accountability for lands declared surplus to the War Assets Administration had been assumed by that agency,

the word "other" will be changed to "TO WAA" and total area, broken down by estates and/or interests, disposed of by this method, will be entered. If lands "have been reported excess to the General Services Administration (which ordinarily does not assume accountability), the word "Other" will be changed to "To GSA" and the total area so reported, broken down by estates and/or interests, will be entered. After report of excess to GSA, disposal audit assemblies will be submitted only after disposition has been accomplished.

b. Total Acres Disposed Of. Include in this line the grand total of all lands disposed of, with the exception of the acreage of those estates over which easements or other rights have been reserved. Do not include duplicated acreages due to partial disposal followed by partial reacquisition. Note such exclusion keyed to the "Total Acres Disposed Of" line.

3-56. Disposal Notations. Due to the numerous methods of disposal, including the consummation of many disposal actions at the direction of War Assets Administration or its successor agency, General Services Administration, the following notations or a paraphrase thereof, are to be placed near the bottom margin of the final project map when applicable. When an installation is so large as to require more than one sheet, and a disposal action affects areas delineated on more than one sheet, sheet 1 should carry the appropriate notation (below) indicating the gross acreage for that disposal action while each succeeding sheet affected should cite the appropriate notation modified to indicate the amount of acreage shown disposed of by the hachuring for that particular sheet. Where part of the acreage disposed of is also mapped on sheet 1 as well as other sheets, the notation on sheet 1 should cite the gross acreage and indicate parenthetically the net area applicable to that sheet. Where all the disposal is on one sheet other than sheet 1, the notation will appear on that sheet as well as on sheet 1:

a. When accountability has been assumed by either War Assets Administration or its designated disposal agency, indicate: "Accountability assumed by \_\_\_\_\_ (name of agency) \_\_\_\_\_ for \_\_\_\_\_ acres, on \_\_\_\_\_ (date) \_\_\_\_\_."

b. When acreage has been reported to General Services Administration and that Administration has disposed of it, indicate: "\_\_\_\_\_ acres reported excess on SF 118 to General Services Administration \_\_\_\_\_ (date) who conveyed \_\_\_\_\_ acres to \_\_\_\_\_ (recipient) \_\_\_\_\_ by QCD dated \_\_\_\_\_." In instances where a conveyance is made by an agency other than GSA (after having been reported to GSA), the last portion of the note should read: "\_\_\_\_\_ acres conveyed by \_\_\_\_\_ (Department) to \_\_\_\_\_ (recipient) by QCD dated \_\_\_\_\_."

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c. Where an owning agency sells land direct, the notation should read: "      acres fee (or easement conveyed to       (name)       by quitclaim deed dated      ." In conveying an easement, care should be exercised that the estate taken originally was an easement estate only. Otherwise, an outgrant of an easement over lands originally acquired in fee would be recorded, which is not a disposal in the accepted sense.

d. When fee-owned lands described in subparagraphs b and c above are disposed of subject to the reservation of an easement by the United States, the applicable notation will be amended by the addition of:

". . . reserving to the U.S.       (type)       easements over       (number)       acres." The statistics for the fee disposal will be entered on the appropriate line of the disposal block, but will not be included in the "Total Acres Disposed Of" line. The term "Use Permit" will be used in lieu of "Easement" where lands are transferred to another Government Agency with retention of a lesser interest.

e. When Lands taken by use permit, Executive orders, public land orders or the like are returned by an action of the using agency to the same Federal agency or military or civil account from which originally taken, indicate: "      acres by use permit (or other instrument) relinquished to       (agency)       on       (date)       "

f. When lands taken by use permit, public land orders, etc., are returned to the Federal agency or military or civil account from which originally taken by virtue of a termination letter or revocation or acceptance of a relinquishment from the latter agency, or due to expiration of term, indicate: "       acres by use permit (or appropriate instrument) retransferred to       (name of agency)       on       (date)       ."

g. When lands are transferred to another Federal agency (military installation or civil works project), except when transferred for disposal by that agency or lands returned as outlined in subparagraph e and f above, indicate: "      acres transferred to       (name of agency)       on       (date)       for       (name of installation or project)       ."

h. When leases, licenses, etc., are released by termination or expiration, indicate across the areas affected: "Terminated       (date)       ." The foregoing notation will be used except when such leases, licenses, etc., are declared to War Assets Administration, reported to General Services Administration, transferred to another Federal agency (military or civil account) or sold.

i. When lands are reassigned to another installation or project, indicate: "       acres reassigned to (name of installation or project) on (date) ." The date used will be the effective date indicated in the memorandum, disposition form or other document authorizing the reassignment. If no effective date is cited, the date of the authorization will be the date of reassignment. Exceptions are covered in ER 405-1-1041.

3-57. Hachuring. The disposal symbol appearing in the "Legend" block of the "Statistical" and "Data" column (modified as described below, if necessary) will be delineated through each tract or area when disposal thereof is consummated. In instances where tracts are too small to clearly indicate disposal by the hachuring, the tract symbol may be hachured. Where a number of disposal actions have been accomplished, as appropriate, use one of the following methods to differentiate:

a. For military installation maps drawn on ENG Forms 1456a or 1456b (obsolete editions), prior to 1 November 1956 (those showing the avigation easement symbol in the Legend), vary the width of the spacing between the hachure lines for each separate disposal action. Key each separate symbol to a matching symbol in a box to the left of the disposal notation for identification.

b. For military installation maps drawn on ENG Forms 1456a, 1456b (obsolete editions), or 1456c subsequent to November 1956 (those not showing the avigation easement symbol in the Legend), hachure the different areas affected without regard to direction of lines. The symbol denoting different disposals may be slanted either left or right, downward, right to left, downward, or drawn parallel or vertical in order to achieve distinction between different disposal actions. Care should be exercised that the direction of the symbol lines chosen in each instance does not obscure tract boundaries or otherwise destroy the legibility of the acquisition delineation. Each separate symbol should be keyed to matching one in a box to the left of the disposal notation for identification.

c. For civil works project maps, use the method described in subparagraph b above except that where numerous minor disposals occur, such as conveyances of cottage sites, one symbol (directional line) may be used for a number of individual sales though the parcels are contiguous. In instances where the scale of the basic map is too small to properly identify the lots disposed of, it may be deemed advisable to use additional map sheets showing the entire areas of the cottage site subdivisions on a large scale. If the latter method is

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used, it will be necessary that the first sheet and affected subsequent sheets each carry a notation substantially as follows: "      (gross)       acres, fee,       (name of cottage site area)       conveyed as individual lots. For details, see cottage site drawing No.        (or sheet No.) with disposal tabulation." The Title box of the cottage site drawings should carry the name of civil works project with the name of the cottage site area beneath in smaller lettering.

d. If an easement or use permit is reserved over a portion of a disposed-of area, the hachure will be omitted from the retained area. If an easement or use permit is reserved over an entirely disposed-of tract, only the tract symbol of the disposed-of tract will be hachured. (Figures 3-2 and 3-2a).

3-58. Disposal Subsequent to Audit. When a disposal action is consummated at any time subsequent to approval of the final audit, the map will be revised to reflect such action. After the sheets affected are adjusted statistically, duly hachured, properly annotated, an ozalid print will be forwarded HQDA (DAEN-REP-S) WASH DC 20314, together with other revised applicable audit elements. Upon approval, the date will be entered in the "Date Audit Approved" column of the revised map, the map reduced to microfilm, and distribution made pursuant to paragraph 3-61.

3-59. Revised Audits. Audited project maps which are subsequently revised to reflect acquisitions and/or disposals will be submitted as stated in paragraph 3-60. In this connection, for military installations where several directives have been issued subsequent to the approval of an original audit and submissions of audit assemblies are made progressively pursuant to the conditions outlined in Chapter 13 the acreage shown the Statistical and Data column will be only those of the audited areas of the installations notwithstanding the fact that the Tract Register indicates acreages of unaudited tracts. Insert the word "AUDITED" above the word "ACQUISITION" in the Statistical and Data column. Those tracts not audited should be noted by the statement "NO AUDITED-ACREAGE NOT INCLUDED IN STATISTICS" adjacent to the bracketed group of tracts and identifying directive(s) required by subparagraph 3-44x. If a separate column is used, a distinctive symbol will be placed to the left of the directive(s) not audited, keyed to a note in a convenient place elsewhere explaining which directives are not audited, and including the statement that the acreages of the unaudited tracts are not included in the statistics. The "FINAL" designation on such maps will be keyed to the above statement or note until all directives have been completed and all land acreage audited, at which time the statement, notes and symbols will be removed.

3-60. Review and Approval. Final and revised final project maps will be submitted through the Division Engineer, for review concurrently with review of the entire audit assembly or revised audit assembly, as appropriate. Approval of the audit assembly or revised audit assembly by HQDA (DAEN-REP-S) WASH DC 20314 constitutes approval of the final audited map or revised final audit map. All submissions will include one copy of the project map for the Division Office files.

3-61. Distribution of Microfilm Copies. Upon approval of the audit or revised audit and upon completion of microfilming as prescribed in Section XIV, submission to HQDA (DAEN-REP-S) WASH DC 20314 will be as follows:

a. Army Military Installations and Civil Works Projects. One film-mounted ENG Form 3861 and one film-mounted ENG Form 3861a.

b. Air Force Installations. Two film-mounted ENG Forms 3861 and one film-mounted ENG Form 3861a.

c. Other Agency Projects (ERDA, NASA, etc.). One film-mounted ENG Form 3861, one film-mounted ENG Form 3861a, and an ozalid print.

3-62. Distribution to Other Services. Copies of project maps in audited and revised audited form will be furnished appropriate installation commanders, Air Force Command Headquarters, and local representatives of other services and agencies. The number of copies is discretionary with the District (or Division) Engineer.

#### SECTION XIV. MICROFILMING OF PROJECT MAPS

- \* 3-63 Size and Forms. Districts (and Divisions with real estate responsibilities) will submit all approved final and revised final project maps, as applicable under this Chapter, to HQDA (DAEN-REP-S) WASH DC 20314 on 35 mm microfilm mounted on Real Estate Tract Map aperture cards ENG Forms 3861 and 3861a. If microfilm of preliminary and revised preliminary maps (or individual segments) is desired by the Division Engineer, it will be mounted on Preliminary Real Estate Tract Map card, ENG Form 3861b. These cards are stocked in the OCE Publications Depot and may be obtained upon request through regular channels. The camera negative will be mounted on ENG Form 3861 and a Diazo or Kalvar duplicate negative on ENG Form 3861a or 3861b. Distribution and submission of approved final and revised final maps will be in accordance with paragraph 3-61.

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3-64. Specifications. Microfilming of real estate project maps will be in accordance with Military Specifications MIL-M-9868.

3-65. Maintenance of Map Libraries. In view of the responsibilities of the Division Engineers as outlined in paragraphs 3-47 and 3-60, map libraries will be maintained by all Division offices. Such libraries may be converted to the microfilm system to the extent determined practicable.

3-66. Exceptions. Maps submitted to the Division Engineers in the very early stages of acquisition for approval of taking lines, special maps, or preciously approved audited maps need not be microfilmed.

3-67. Film Mounting. Film will be mounted on ENG Forms 3861, 3861a and 3861b, so that the title block (lower right corner of ENG Forms 1456-A, and -C) of the map is positioned in the upper left corner of the aperture and the emulsion side of the film is down; glossy side up when looking at the face of the card, (Figure 3-3).

3-68. Copy Cards (Cards Containing Unexposed Film). Districts may use copy boards (cards containing unexposed film) in lieu of ENG Form 3861, 3861a and 3861b (the latter are designed for dry mounting of films). If copy cards are used, the name of the project, location, state(s), audit number, ad sheet number should be inscribed at the top of the card, and the processed film positioned as stated in paragraph 3-67 above.

3-69. Microfilm Map Control. A "Microfilmed" column will be added to the left of the "Date Audit Approved" column on the preliminary project map. The column will be used to record the map revisions and audit submissions that have been microfilmed by placing an "M" opposite the revision date or audit approval date, as appropriate. This will provide an instant reference as to what actions have been microfilmed and those remaining to be microfilmed.

TABLE 3-1

REGULATORY REFERENCES AND OTHER PERTINENT MATERIAL

TM 5-581A, General Drafting.

TM 5-618B, Construction Drafting.

ER 37-2-10

ER 37-345-10

ER 117-1-3

ER 405-1-1030

ER 405-1-1041

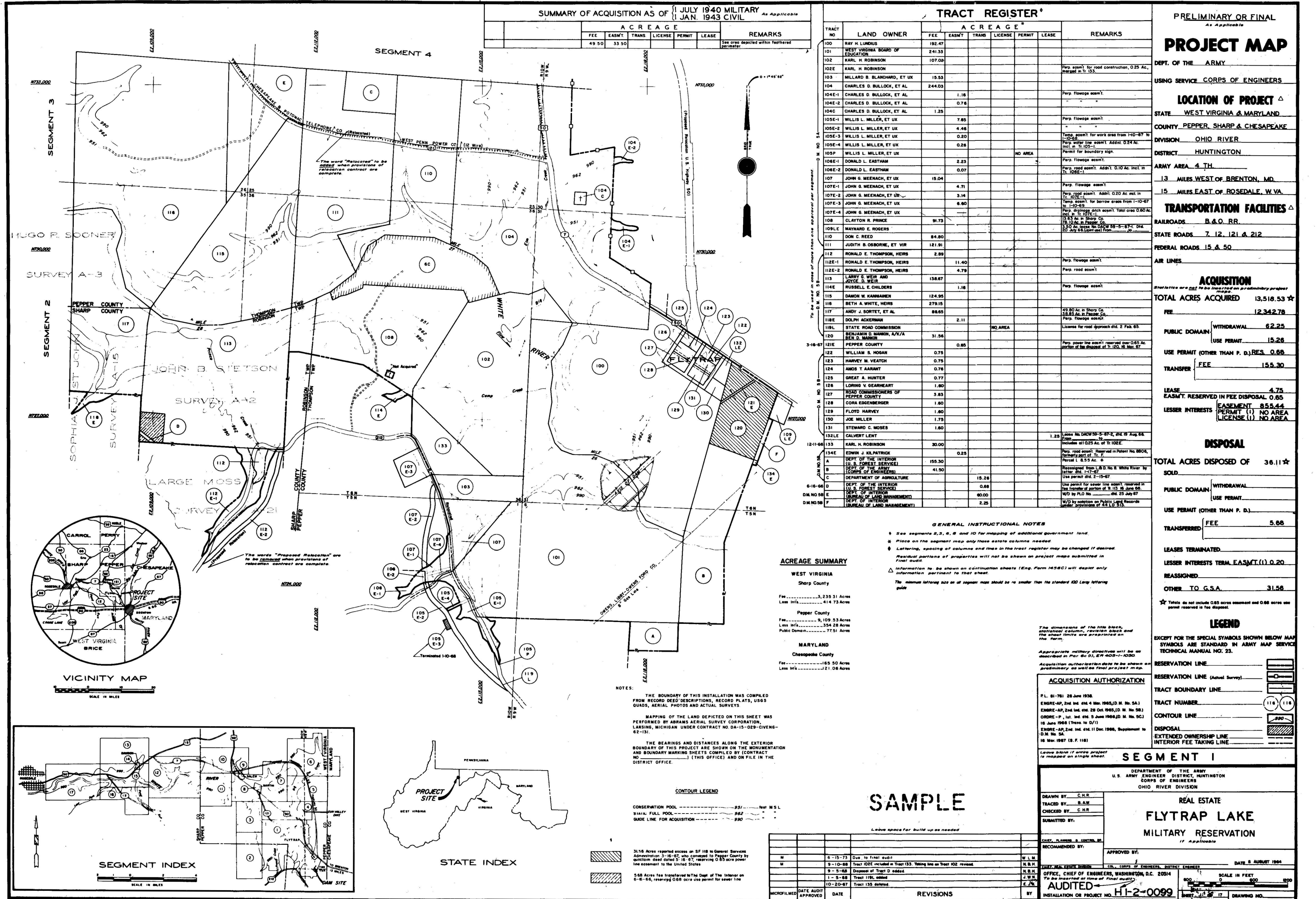
ER 1180-1-1

Military Specifications MIL-M-9868

DMATC Technical Manual S-1, Specifications for Military Maps. Obtainable from Director, Defense Mapping Agency Topographic Center, ATTN: 50260, 5500 Brooks Lane, Washington, D.C. 20315,

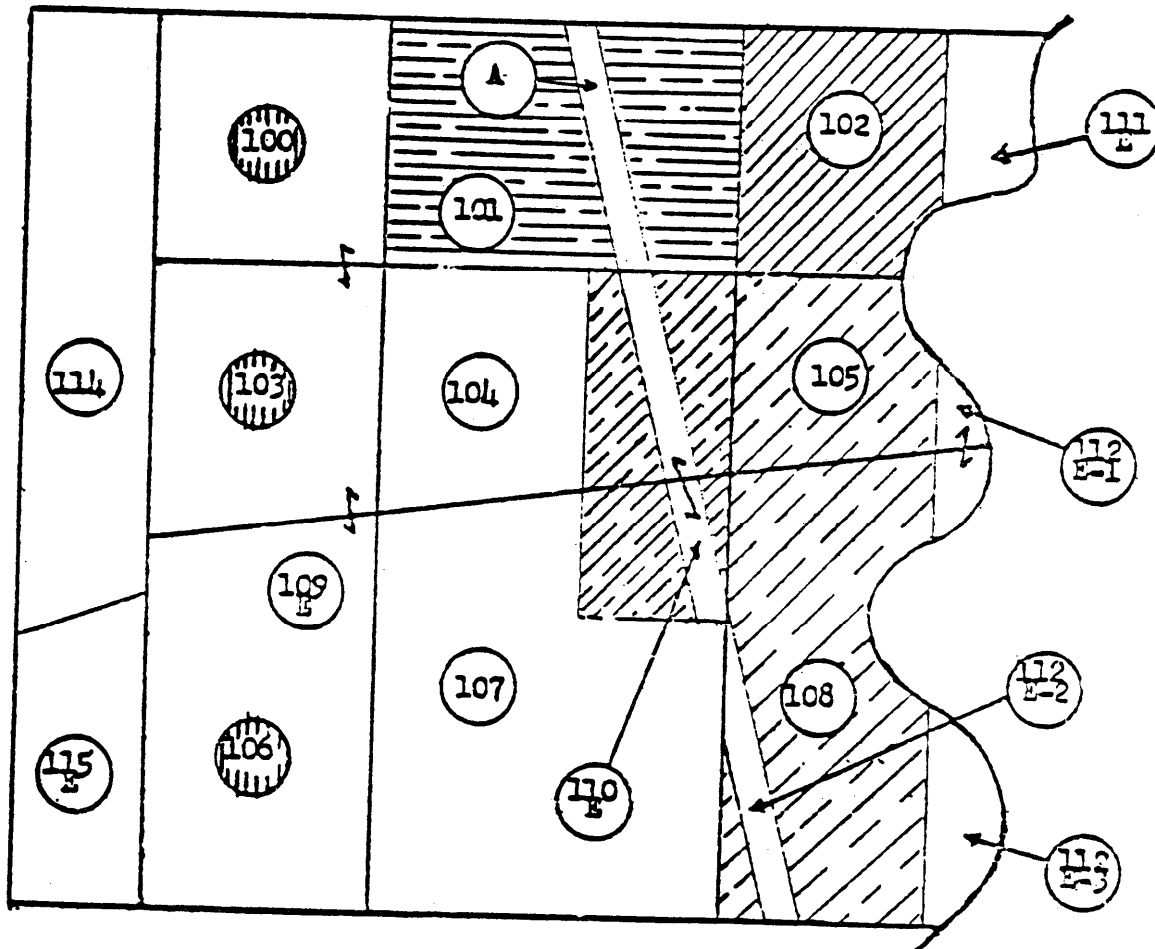
AFM 86-8, Airfield and Airspace Criteria. Obtainable from Publications Distribution Center, 2800 Eastern Blvd., Baltimore, Maryland 21220.

Manual of Instructions for the Survey of the Public Lands of The United States. Available from Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402.

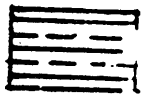


General Instructions for Mapping Reserved Easements

1. Hachuring. Sample map and explanations follow:

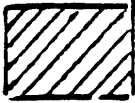


Tracts 100, 103 and 106. Entire fee interest disposed of in one deed with easement reserved over the three tracts. Only the symbols are hachured. The reserved easement is identified as Tract I09E.



Tract 101. Entire fee transferred to another Federal agency, reserving lesser interest over a portion of tract. Retained interest is considered a Use Permit and identified accordingly as Tract A.

Figure 3-2



Tract 102. Same as Tract 101 except easement is reserved in disposal of fee to other than a Federal agency. The reserved easement is identified Tract 111E.



Tracts 104 and 107. Portion of fee tracts disposed of in one deed with easement reserved over part of the disposed of area. Reserved easement identified as Tract 110E.



Tracts 105 and 108. Entire fee tracts disposed of in one deed with reservation of two types of easements, with one type (purpose) covering non-contiguous parcels. The reserved easements are identified as Tracts 112E-1, 112E-2, and 112E-3.



Tract 114. Portion of fee tract disposed of with easement reserved over entire disposed-of area. No hachure. Reserved easement identified as Tract 115E.

2. Boundaries. Interior tract boundaries for reserved easement tracts and disposed-of portions of tracts will be standard\_tract boundaries, except the line will be lighter in weight.

3. The above instructions are not applicable to rights reserved for a different installation and/or department.

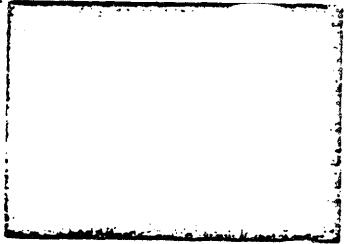
figure 3-2a

ER 405-1-12  
16 Apr 76

Preparation and Mounting  
ENG Form 3861, 3861a and 3861b

MAP CARD	CAMP ELLIS	ILL	2293	1	1
	<small>NAME OF INSTALLATION / PROJECT</small>	<small>STATE(S)</small>	<small>AQUIF NR</small>	<small>SHEET</small>	<small>SHEET</small>
	CRAIG AFB RECREATION ANNEX	ALABAMA	MOBL-3-006	1	1
	<small>NAME OF INSTALLATION / PROJECT</small>	<small>STATE(S)</small>	<small>AQUIF NR</small>	<small>SHEET</small>	<small>SHEET</small>
REAL ESTATE TRACT MAP CARD	GRAND & SIX MILE LAKES CHANTEL IMPROVEMENT	LOUISIANA	C-1893	1	2
	<small>NAME OF INSTALLATION / PROJECT</small>	<small>STATE(S)</small>	<small>AQUIF NR</small>	<small>SHEET</small>	<small>SHEET</small>

NOTE: Mount film with "Title Block" of map in upper left hand corner and film emulsion to the back.



GLOBE 507589 DMS 1338 EDITION OF 1 JUL 65 IS OBSOLETE MADE IN U.S.A.

Figure 3-3

TABLE 3-1

REGULATORY REFERENCES AND OTHER PERTINENT MATERIAL

TM 5-581A, General Drafting.

TM 5-618B, Construction Drafting.

ER 37-2-10

ER 37-345-10

ER 117-1-3

ER 405-1-1030

ER 405-1-1041

ER 1180-1-1

Military Specifications MIL-M-9868

DMATC Technical Manual S-1, Specifications for Military Maps. Obtainable from Director, Defense Mapping Agency Topographic Center, ATTN: 50260, 5500 Brooks Lane, Washington, D.C. 20315,

AFM 86-8, Airfield and Airspace Criteria. Obtainable from Publications Distribution Center, 2800 Eastern Blvd., Baltimore, Maryland 21220.

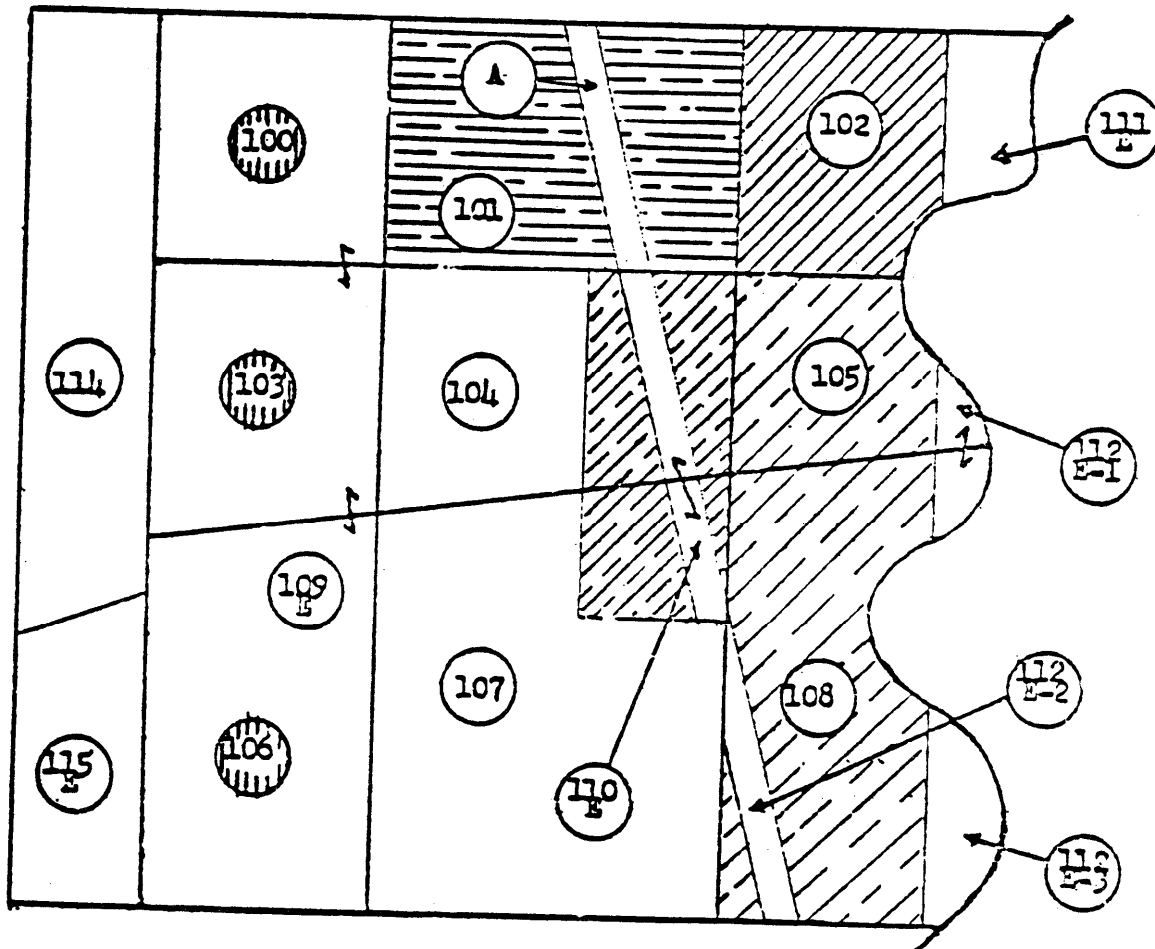
Manual of Instructions for the Survey of the Public Lands of The United States. Available from Superintendent of Documents, U. S. Government Printing Office, Washington, D.C. 20402.



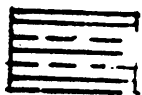


General Instructions for Mapping Reserved Easements

1. Hachuring. Sample map and explanations follow:

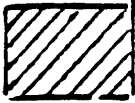


Tracts 100, 103 and 106. Entire fee interest disposed of in one deed with easement reserved over the three tracts. Only the symbols are hachured. The reserved easement is identified as Tract I09E.



Tract 101. Entire fee transferred to another Federal agency, reserving lesser interest over a portion of tract. Retained interest is considered a Use Permit and identified accordingly as Tract A.

Figure 3-2



Tract 102. Same as Tract 101 except easement is reserved in disposal of fee to other than a Federal agency. The reserved easement is identified Tract 111E.



Tracts 104 and 107. Portion of fee tracts disposed of in one deed with easement reserved over part of the disposed of area. Reserved easement identified as Tract 110E.



Tracts 105 and 108. Entire fee tracts disposed of in one deed with reservation of two types of easements, with one type (purpose) covering non-contiguous parcels. The reserved easements are identified as Tracts 112E-1, 112E-2, and 112E-3.



Tract 114. Portion of fee tract disposed of with easement reserved over entire disposed-of area. No hachure. Reserved easement identified as Tract 115E.

2. Boundaries. Interior tract boundaries for reserved easement tracts and disposed-of portions of tracts will be standard\_tract boundaries, except the line will be lighter in weight.

3. The above instructions are not applicable to rights reserved for a different installation and/or department.

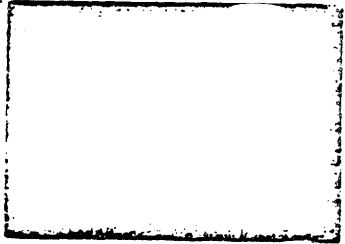
figure 3-2a

ER 405-1-12  
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Preparation and Mounting  
ENG Form 3861, 3861a and 3861b

MAP CARD	CAMP ELLIS	ILL	2293	1	1
	<small>NAME OF INSTALLATION / PROJECT</small>	<small>STATE(S)</small>	<small>AUDIT NO</small>	<small>SHEET</small>	<small>SHEET</small>
REAL ESTATE TRACT MAP CARD	CRAIG AFB RECREATION ANNEX	ALABAMA	MOBL-3-006	1	1
	<small>NAME OF INSTALLATION / PROJECT</small>	<small>STATE(S)</small>	<small>AUDIT NO</small>	<small>SHEET</small>	<small>SHEET</small>
ENG FORM 3861a AUG 76	GRAND & SIX MILE LAKES CHANTEL IMPROVEMENT	LOUISIANA	C-1893	1	2
	<small>NAME OF INSTALLATION / PROJECT</small>	<small>STATE(S)</small>	<small>AUDIT NO</small>	<small>SHEET</small>	<small>SHEET</small>

NOTE: Mount film with "Title Block" of map in upper left hand corner and film emulsion to the back.



GLOBE 507589 DMS 1338 EDITION OF 1 JUL 65 IS OBSOLETE MADE IN U.S.A.

Figure 3-3

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## CHAPTER 4

### APPRAISAL

#### SECTION I. GENERAL

4-1. Purpose. This chapter describes the general procedures, requirements, guidelines and standards governing all appraisal work undertaken in connection with the real estate responsibilities of the U.S. Army Corps of Engineers.

4-2. Applicability.

a. The provisions of this chapter are applicable to all Headquarters, U.S. Army Corps of Engineers (HQUSACE) elements and all USACE major subordinate commands (divisions), and districts having real estate responsibilities for all programs, including contracted and staff efforts for civil works, military, base closure, support for others, and work for others.

b. Except as modified in this regulation, the techniques, procedures and format outlined in the Uniform Appraisal Standards for Federal Land Acquisitions, 1992, (The Yellow Book), will be utilized in preparing appraisals for Federal purposes. USACE appraisals must also comply with the Code of Federal Regulations (49 CFR Part 24) and the general requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (FIRREA), Public Law 101-73, as well as the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation, Washington, DC, except as modified herein.

c. Jurisdictional Exceptions to USPAP may be invoked by HQUSACE or by Division Chief Appraisers, in addition to those circumstances addressed within this Chapter, when the USPAP standards are contrary to the law or agency policy. The Jurisdictional Exception is an integral part of USPAP, and a Federal agency is an acknowledged jurisdiction. Further, as used in the Jurisdictional Exception, law means a body of rules with binding legal force, to include administrative rules and regulations. One example is the Informal Value Estimates pursuant to 49 CFR Part 24. When preparing appraisals pursuant to the Jurisdictional Exception, licensed or certified staff and contract appraisers may wish to include a statement similar to the one found at Appendix 4-A of this chapter.

d. Departure from sections of USPAP's specific guidelines are allowed, but must be made with proper disclosure. Similarly, an appraiser may disregard a part or parts of USPAP in a particular assignment due to jurisdictional requirements.

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e. Since Federal real estate and Federal projects may be covered by many local and state laws, the division must interpret state legislation and local laws affecting the real property within the division. Division commanders are authorized to issue division policy and implementing guidance for districts within their area of operations amplifying the policy and requirements set out in this chapter, when required to comply with regional, state or local requirements.

f. Appraisals and valuations for military contingencies or natural disaster recovery efforts may deviate from the requirements of this chapter pursuant to mission accomplishment. Any deviations for these efforts should be coordinated directly with HQUSACE (CERE-E).

4-3. References. See Table 4-1.

4-4. Ethics.

a. Appraisers must observe ethical standards to preserve the inherent fiduciary responsibilities. The Appraisal Foundation prescribes ethical standards and provisions, which in part state that the appraiser must not engage in conduct that is unlawful, unethical, or improper. These requirements apply to all appraisers, whether staff or contract, preparing reports for or on behalf of the agency or non-Federal sponsors. One of the most important concepts is that appraisal reports must not be misleading or fraudulent.

b. USPAP divides the ethics provisions into four sections; Conduct, Management, Confidentiality, and Record Keeping. Appraisers and realty specialists providing appraisals are to comply with these provisions to the extent that they do not conflict with Federal law.

c. Under no circumstances will an appraiser (or realty specialist) be directed to make an appraisal at any predetermined value, or direction of value, or to change his or her opinion of value on any property appraised.

4-5. Appraisals versus Consulting Assignments.

a. An appraisal is an "estimate" of value based upon and supported by an analysis of all the factors, physical, legal, economic, social, and governmental, which influence or impact the rights or benefits to be derived from the ownership or use of the property appraised. Appraisals are utilized for many reasons and each report must clearly identify the purpose and use intended for the valuation. Appraisals are perceived to be unbiased, and are not a tool for advocacy.

b. Consulting assignments involve analysis or evaluation, and may or may not include an estimate of value. Consulting assignments include highest and best use studies, market studies, marketability studies, feasibility studies, rent studies, absorption analyses, and other such analytical analyses. Consultation may include providing advice and/or recommendations regarding specific courses of action to help solve real

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estate issues or problems. Often the consultant's objective is to act in the client's best interest. Many of the valuation techniques also apply to the evaluation analyses performed in consulting.

c. Reports and analyses for consulting assignments are held to the same quality standards as appraisal assignments to provide clear and informed (not misleading) conclusions or recommendations, but are not necessarily unbiased.

#### 4-6. Definition of Market Value.

a. Full Federal Projects (projects that are not cost-shared). "Under established (Federal) law the criterion for just compensation is the fair market value of the property at the time of the taking. 'Fair market value' is defined as the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desires but is not obligated to buy. In ascertaining that figure, consideration should be given to all matters that might be brought forward and reasonably be given substantial weight in bargaining by persons of ordinary prudence, but no consideration whatever should be given to matters not affecting market value. The cash or on terms reasonably equivalent to cash requirement is important and numerous courts have noted this factor." The terms fair market value and market value are ordinarily considered interchangeable.

(Source: Uniform Appraisal Standards For Federal Land Acquisitions, Page 3, Interagency Land Acquisition Conference 1992, Washington, DC)

b. Cost-Shared Projects. For appraisals accomplished by or directly on behalf of a non-Federal sponsor for acquisition and condemnation, the appropriate statutory or judicially established definition of market value in the sponsor's jurisdiction may be used. Appraisals for credit purposes, see Section V below.

c. Economic Development Conveyances (EDCs) for Base Closure. Although market value is normally based on the property's highest and best use, there are exceptions, e.g., for EDCs, the assignment calls for a specific definition of "market value" which is based upon specified uses as defined by the re-use plan (based upon statutory requirements).

#### 4-7. Highest and Best Use.

a. Market value is to be determined with reference to the property's highest and best use, the most profitable (including physically possible, legally permissible, and financially feasible) use for which the property is adaptable and needed or likely to be needed in the near future. Highest and best use cannot be predicated on a demand created solely by the project for which the property is to be acquired, unless there is a prospect and demand for that use by others than the government, nor does the project impact reduce the value. Exceptions may be used for consulting or feasibility assignments, as well as valuations

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for the Economic Development Conveyances (EDCs) under Base Closure actions.

b. The Interagency Land Acquisition Conference in 1995 concluded that only an economic highest and best use is a proper basis for the estimate of market value and, accordingly, that a highest and best use of conservation, preservation, or other use that requires the property to be withheld from economic production in perpetuity, is not a valid use upon which to estimate market value. Highest and best use is to be estimated in economic terms. The analysis and interpretation of highest and best use is an economic study of market forces focused on the subject property.

(1) The Conference also found the term "public interest value," suggested by some to describe the value estimates developed for Government acquisition of preservation lands, inappropriate and misleading. That term generally represents a prediction of price (or perhaps value to the Government) rather than market value.

(2) Sales to government entities (as comparable sales) should only be used as a last resort, and can be considered valid only when thoroughly verified to be arms length transactions, of the same highest and best use, and absent the threat of condemnation.

#### 4-8. General Requirements.

a. The market value of the pertinent real estate interest in each parcel or tract of real property being appraised will be developed by a competent qualified appraiser preparing an appropriate appraisal report indicating reasonable and supportable estimates of value. The appraisal may be prepared by either staff or contract appraiser. However, each must have demonstrated good judgment and adequate experience (competency) in estimating the market value of the particular type of property involved. The qualifications and selection of staff appraisers will be based on the OPM Position Classification Standards for the GS-1171 Appraising Series, and other guidance found in the Real Estate Career Program regulation ER 690-1-955, and Handbook EP 690-1-810.

b. USACE will engage the services of qualified and competent contract appraisers and consultants to augment staff capabilities. Preference should be given to appraisers and consultants experienced in the locality of the assignment. Contractors must be state certified (or licensed if providing residential appraisals).

c. Appraisers and review appraisers shall be disqualified from appraising, or reviewing an appraisal, on property that they have any interest in or relationship (family or business) to the owner.

d. Normally, only one appraisal per ownership or tract need be obtained. However, in cases involving controversial appraisal problems, precedent-setting issues, or first acquisition areas of large projects, more than one appraisal of the same property may be obtained. If the

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filing of a condemnation action appears likely, the district Real Estate office will consult with the local United States Attorney of the Department of Justice and reach agreement as to whether or not additional appraisals will be required (see paragraph 4-82 of this chapter for additional requirements). Ordinarily, cases will be filed based upon the existing approved appraisal, whether staff or contract.

e. Except as otherwise stated herein, each appraisal report, valuation, or analysis will be carefully reviewed by a qualified government review appraiser (see Section X, Review and Approval). Varying levels of approval authority have been, or will be, delegated to review appraisers based on their qualifications.

f. Appraisers are not required or expected to be experts in the detection or measurement of hazardous substances. However, they are required and expected to make a reasonable effort to determine whether or not a property is contaminated and to report those findings in the appraisal. The inclusion of a standard disclaimer or statement of limiting conditions pertaining to hazardous substances in the appraisal report does not relieve the appraiser from the responsibility of making a reasonable effort to determine whether or not the property is contaminated. The appraiser must note any observed, suspected or other known instances or indications of environmental contamination. The presence or impacts of such must be appropriately addressed within the report. See paragraph 4-68 below.

g. P.L. 91-646 as amended, requires in Title III that negotiations for any required real estate interest be conducted on the basis of an approved appraisal (except as exempt in paragraph 4-24 of this chapter) which reflects current market value. Any appraisal report with an effective date of six months or more prior to initiation of negotiations with the landowner, or the anticipated date of filing of a condemnation action, should be re-examined and brought up to date to reflect current market conditions. The focus will generally be on the changing market conditions rather than solely on the lapse of time. Updating a report more than 12 months old is discouraged. Administrative updates may be prepared by a review appraiser when little or no change in value is evident. Such administrative updates are considered a jurisdictional exception to USPAP. See Appendix 4-B-1 and 4-B-2 for sample formats.

h. Appraisers play an important role in the land acquisition, management, and disposal processes from the early stages of planning studies, through the completion of acquisition and credit allowances, as well as management and disposal actions. Appraisal information is needed for reconnaissance and feasibility reports, design documents and other decision documents, and credit to the non-Federal sponsor in cost shared projects. Sound cost estimates are essential for each decision. Appraisals and appraisal reviews are also critical for the system of checks and balances and to assist in the prevention of waste, fraud and abuse. Further, appraisal reviews are integral to Quality Assurance and Quality Control.



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i. Appraisers may be called upon, in condemnation proceedings or otherwise, to corroborate the validity and competence of their estimates. As such, they must familiarize themselves with basic rules of trial evidence so that their testimony will be readily admissible. Attendance at USACE or DOJ eminent domain seminars is encouraged. As witnesses, appraisers must be prepared to offer convincing testimony, and reports should contain an adequate analysis of all factual data upon which their estimates are based.

j. Legal advice should be obtained in matters pertaining to legal principles, and issues involved in valuation problems, as the need arises.

k. Public Law 91-646 as amended by Public Law 100-17 (Title III), dictates that "the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property." Before the first visit to the property, the appraiser must make every reasonable effort to contact the owner and invite the owner (or a designated agent or representative) to accompany him or her on the field inspection. If personal contact is not possible, a registered letter should be sent to the owner. The appraisal report shall reflect when and how the owner or the representative was contacted, whether or not he or she accompanied the appraiser, and any other pertinent comments.

#### 4-9. Release of Reports.

a. Appraisal reports are privileged information and shall not be divulged to anyone except authorized officials. Appraisals are generally considered pre-decisional documents and subject to the deliberative process. Courts have held that appraisal reports are an interagency memorandum within the meaning of Exemption 5 of the Freedom of Information Act (FOIA). Exemptions include internal advice, recommendations, and subjective evaluations pertaining to the decision-making process of an agency as well as records pertaining to the attorney-client privilege and the attorney work-product privilege. See AR25-55, The DA FOIA Program, paragraph 3-200, as revised 30 September 1991. Existing policy has required that denial of a formal request for release under the FOIA can only be made for USACE by the Chief Counsel who is the Initial Denial Authority for the USACE. Recommendations for denial should be forwarded through channels (Real Estate and/or Counsel) to HQUSACE, along with a full report as to the status of the property, the project, the report and the situation and circumstances involved, including the extent of any specifically privileged or confidential information presented within the appraisal report.

b. Public Law 91-646 as amended, Section 301(3), (and 49 CFR §24.102) dictates that a written statement of, and summary of the basis for, the amount of the estimate of just compensation shall be furnished the property owner. This does not mean that the appraisal report or any part of it should be given to the landowner, but only a summary of the amount and methods of appraisal.

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c. Appraisals for the Homeowners Assistance Program (HAP) are considered an exception to the above regarding release of them to the homeowner. This exception applies only to appraisals used to establish market values for HAP applicants for eligibility and benefits. Any proprietary or confidential information must be removed before release. Appraisals from nondisclosure states must be sanitized to protect the confidentiality of the appraisers' sources of information. Contract appraisers should be made aware of this policy for release of HAP appraisals.

4-10. Reserved.

4-11. Reserved.

## SECTION II. PLANNING ESTIMATES

4-12. Reconnaissance Cost Estimates.

a. Reconnaissance scope (Recon) cost estimates (sometimes called initial cost estimates) that are utilized for preliminary planning purposes only shall be prepared to the level of detail that the situation warrants, which is ordinarily considered equal to the effort expended by other functional elements for the project. These reports are not required to be in compliance with USPAP, i.e., the Jurisdictional Exception is authorized. Recon estimates should not utilize the term appraisal.

b. Recon estimates are generally utilized for initial cost estimate(s) for one or more alternative(s) presented in the Reconnaissance Report, or Project Study Plan (PSP). Recon estimates should document and note the information available or relied upon for this stage of planning. To support the Civil Works expedited recon study phase, detailed real estate information should not be included. Value conclusions prepared under this sub-paragraph are not authorized to be incorporated or utilized in any approval decision document, especially project authorization or funding documents.

c. It is important that Real Estate be involved in this early stage of planning and that real estate cost estimates be provided by Real Estate. This is also an opportune time to begin coordination with the non-Federal sponsor.

4-13. Gross Appraisals.

a. Gross appraisals are used to support Feasibility Studies, General or Limited Re-Evaluation Reports, Special or Detailed Project Reports, Real Estate Design Memoranda, Reformulation Reports, other Civil Works or Military Program decision documents (including Baseline or M-CACES Cost Estimates) or other aspects of project approval, authorization and funding. These reports are subject to policy compliance review. A high level of confidence or credibility in the real estate estimate is very important in providing advice to colleagues, the Administration,

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Congress, customers, and non-Federal sponsors. It is essential that gross appraisals be carefully prepared, giving attention to fundamental issues such as estates, severance damages, benefits, number and types of properties involved, credit policy issues, state rules vs. Federal rules, environmental concerns or impacts, existing Federal or sponsor interests, minerals, timber, water rights and so forth to reflect actual market conditions and anticipated costs.

b. Gross appraisals, as used by USACE, have some similar characteristics of a "mass appraisal" as defined by the Appraisal Foundation. Gross appraisals require documentation and support. USPAP Standards for a mass appraisal report require a written report to clearly communicate the elements, results, opinions and value conclusions of the appraisal. The Competency Provision requires assurance that the mass (gross) appraisal is developed under the supervision of an appraiser who has the requisite qualifications.

c. Gross appraisals shall be as complete and descriptive as possible, but there is no requirement for owner contact, and the appraiser may rely on tax records, cursory inspections, or other suitable information for descriptions of improvements as detailed inspections are not practical. Further, the extent of any contamination may not be known at this stage, and it may be prudent to estimate or conclude values without impacts, as long as clear and complete disclosure is made. It is not acceptable to simply assume no contamination exists, see paragraphs 4-8(f) above, and 4-68(e) below.

d. Each gross appraisal will be supported by careful analyses of an adequate number of appropriate comparable sales. Each sale will be analyzed to depict land classifications and values, building contribution estimates and other relevant information. Comparable sales will be verified with a person having direct knowledge of the transaction.

e. The outline shown in Appendix 4-C may be utilized for gross appraisals. This does not preclude obtaining and documenting additional information when needed to explain any unusual features or unique characteristics of a particular assignment. A tract-by-tract analysis may be relevant for a project when mapping is adequate to depict the property lines, the improvements and the acquisition lines or construction work limits (CWL). An analysis by property types or land classifications would be appropriate for less well defined property lines and for larger ownerships that could be developed or utilized for more than one classification.

f. Sometimes (by Division or District policy) other items are included in the gross appraisal such as P.L.91-646 relocation costs, and administrative acquisition costs (both Federal and non-Federal sponsor). If the gross appraisal includes elements originated from, or estimated by other sources, those sources should be cited.

g. Contingencies must be supported by narrative discussion, taking into account the reliability of the data available, the type and scope of

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the project and the real estate involved. Elements such as valuation variance or negotiation latitude, condemnation awards and interest, refinement of boundary lines due to ownership verification, and hidden aspects such as lavish improvements or abundant natural resources or minerals shall be clearly confronted. Contingencies should consider the number or percentage of cases that would likely go to court and what the history of awards have been in the particular court jurisdiction. These or other elements may provide support for contingency allowances that are greater than, or less than, the typical percentage (which is generally 25%). The key is to provide explanation and justification.

h. Some military projects may require an initial value estimate during site selection. A gross appraisal may then be needed for preparation of a Lease Planning Report, Real Estate Summary, or a Real Estate Planning Report, once a specific site has been selected. For assignments involving a single ownership, such as an Army Reserve Center, a single appraisal may be prepared and utilized for both gross appraisal and tract appraisal purposes.

i. The gross appraisal report as such must not be included in the Feasibility Studies, General or Limited Re-Evaluation Reports, Special or Detailed Project Reports, Real Estate Design Memoranda, Reformulation Reports, Baseline or M-CACES Cost Estimates, or other Civil Works or Military Program decision documents due to privileged information, privacy act restrictions, and approval requirements. Appropriate information can be obtained from the gross appraisal to include in those documents to provide support for the overall real estate cost estimate. Copies of these appraisals and planning reports should not be sent to customers or clients until they are approved.

j. Abbreviated or brief gross appraisals for planning purposes are authorized for simple, uncomplicated projects when the estimated value for lands, improvements, and severance damages do not exceed \$2,000,000, and is not expected to exceed twenty five to thirty per cent of total project costs. This brief gross appraisal must still address all relevant issues, and should distinguish each particular project alternative from other schemes, alignments, phases, or revisions that may be proposed for study.

4-14. Reserved.

4-15. Reserved.

4-16. Reserved.

### SECTION III. APPRAISAL REPORTS

4-17. Preface. The appraisal report is an important document which materially aids in the planning, acquisition, management or disposal of specified real estate interests. It is an indispensable factor in justifying expenditures of public funds, in the disposition of public properties, and in the protection of Federal resources. It is essential

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that appraisal reports indicate conclusively that the appraiser has considered and analyzed all available data and used logical reasoning and judgment to develop a value conclusion.

4-18. Scope of Reports.

a. Except as modified herein, all appraisal reports prepared for USACE will be in narrative form. Each report will include, as a minimum, all essential data which will disclose the purpose, the scope of the problem and the principal techniques and approaches employed. The report must contain all the pertinent supporting data required to sustain the appraiser's final conclusion of value.

b. The use of preprinted narrative sales or rental data sheets is authorized. Care should be exercised to properly relate each sale or rental to the subject in the narrative. Each comparable sale utilized must be properly confirmed to include price, terms, conditions, motivations, financing and any other pertinent information. Use of individual forms is also authorized for tabular exercises, such as used in the "cost approach." In every instance the narrative must reflect the appraiser's reasoning.

c. All appraisals that utilize the sales/rental comparison approach should be supported by an adequate number of comparable sales or rentals of similar properties. A narrative discussion of each will be included. Each sale or rental must be verified, discussed and compared to the subject property within the narrative of the report. A basic part of verifying and confirming any comparable sale is to determine what the seller agreed to sell, and what the buyer agreed to buy, including property rights conveyed, any intangibles such as the seller paying part of the buyer's closing cost or providing favorable financing, and any personal property included in the sale.

d. The appraiser must be certain that sufficient information is provided so that the users of the report will understand it and will not be misled or confused. The substantive content of the report, not its size, determines its acceptability.

e. The appraisal problem should be defined at the time of assignment. This requires establishing such things as: i) what is to be appraised; ii) the appraisal techniques and methods to be considered or used; iii) legal and engineering considerations to be followed; iv) definition of value and date of value; v) property rights involved (estates); vi) special assumptions and limiting conditions; and vii) if applicable, scope of the minimum data search, i.e., physical boundaries, any specific time parameters, and types and sizes of properties.

f. Deciding which format should be used in a given assignment depends on the complexity of the assignment, including, i) the type of property; ii) the type of problems involved; iii) the type of estate or degree of interest involved; iv) the availability of good market data; and v) the anticipated value of the property.

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g. When a number of similar parcels are being valued at the same time, Project Appraisal Reports are authorized. These will comply with paragraph C-13 of The Yellow Book.

h. Although narrative reports are generally required, standard form reports, such as the Uniform Residential Appraisal Report (URAR), the Uniform Commercial and Industrial Appraisal Report (UCIAR), the Small Residential Income Property Appraisal Report (Fannie Mae Form 1025), and the Uniform Agricultural Appraisal Report (UAAR) may be considered appropriate in some situations. The Homeowners Assistance Program is a prime example for using form reports since they involve residential property only and adequate comparables are generally available. Special in-house formats may be developed for low value repetitive assignments where the potential for condemnation does not exist.

i. USPAP provides that appraisals may either be developed as complete or limited appraisals. A "complete appraisal" is an appraisal performed without invoking the departure provision of USPAP. (See the Departure Provision, Statement on Appraisal Standards Number 7, and Advisory Opinion AO-15 of USPAP.) A limited appraisal is performed under or results from invoking the departure provision. The "Purpose" of the report, should clearly state which type of development (complete or limited) and the reporting method (self-contained report, summary report or restricted report). If the report is prepared pursuant to the jurisdictional exception to USPAP, the writer should so state.

j. The appraisal report, data, and materials used to develop the report should be retained in the appraiser's work files for a period of at least five years, or at least two years after final disposition of any judicial proceeding whichever period expires last (USPAP Ethics Provision, "Record Keeping"). These files are particularly important when the reporting method is for a summary or restricted appraisal report. See the latest USPAP standards for additional clarification. Army requirements for retention of appraisals or other documents may differ from USPAP requirements.

#### 4-19. Narrative Report Format.

a. The report format contained in The Yellow Book, Section "B" Page 63, (1992 edition) is the basic format to be used in appraisal reports for acquisition prepared by and for USACE. Exceptions to this format are authorized for some special circumstances as detailed in this regulation. Additional minimum standards and guidance can be ascertained from 49 CFR Part 24 and USPAP.

b. Each report must also include the following items, which are often overlooked or omitted:

(1) The scope of the appraisal: A paragraph which identifies the level of investigation and fact gathering undertaken by the appraiser.

(2) The estate(s) being appraised.

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(3) A legal description (for tract appraisals).

(4) Observations or findings as to contamination or stigma (or the absence of such).

(5) Qualifications of all appraisers and/or consultants contributing to the report (for all reports that leave the district office).

4-20. Tract Appraisals.

a. Appraisal assignments, other than those expressly exempt within this Chapter, are considered detailed appraisal assignments and shall comply with the provisions of 49 CFR Part 24, The Yellow Book, USPAP, and this Chapter.

b. Any change in the value estimate attributable to market trends or updating shall be fully supported by acceptable market evidence. Appraisal updates may expressly incorporate by reference all the background data, market conditions, assumptions, and limiting conditions that were contained in the original report.

c. All detailed appraisal assignments shall address and include the following specific information:

(1) When estimating market value, the appraiser shall be specific as to the estimate of exposure time linked to the value estimate. (Exposure time is always presumed to precede the effective date of the appraisal. See USPAP Standards Statement No. 6.)

(2) When estimating market value, the appraiser shall analyze and report a reasonable marketing time for the subject property. (Marketing time relates to the period immediately after the effective date of the appraisal.)

(3) Two values must be supplied when estimating market value for properties that are impacted or influenced by contamination or related stigma, or when estimating prospective future values, based on proposed developments, proposed remediation, or stabilized occupancy. The prospective value, or value based on assumed conditions, may be misleading and may constitute a "limited appraisal" as defined in USPAP. This type of appraisal (as is used for some Superfund projects) may be considered invalid by the Department of Justice, therefore, a value for the property "as-is" will ordinarily be developed within the report. One exception to providing an "as-is" value is when the Federal Government has admitted liability for the contamination or hazard and has agreed to bear the costs involved to remediate same, such as the Defense Environmental Restoration Program (DERP). Another exception is covered in paragraph 4-35(h) below. Reports requiring both values under these circumstances shall not be considered simple or non-complicated even if offsetting costs reduce the conclusion to a low value.

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4-21. Approaches to Value.

a. When appropriate, all three of the standard or traditional appraisal approaches, (Cost, Sales Comparison, and Income) are to be used in a fee simple appraisal. However, if it is not practical to use a particular approach, due to the type of property being appraised, the appraiser is required to indicate in the report that consideration was given to its use and discuss why it was not used.

b. In the Cost Approach, the appraiser must document all items of costs for development, construction, utilities, and so forth. The appraiser must fully consider all forms of depreciation such as physical deterioration, functional obsolescence, and external obsolescence, and justify the methods and factors used in developing the depreciation rates or factors. The source of any cost data shall be identified in the appraisal report. The principles of substitution and supply and demand are basic to this approach.

(1) The appraiser must estimate the value of the land as though vacant and available to be developed to its highest and best use;

(2) estimate the reproduction or replacement cost of the structure(s), including both direct (hard) costs and indirect (soft) costs, and entrepreneurial profit;

(3) estimate and deduct accrued depreciation from all sources, and;

(4) add the depreciated reproduction or replacement cost of the structure(s) and site improvements, and the land value to arrive at an indicated value for the property.

c. The Sales Comparison Approach is the most direct approach to market value and is generally preferred. It is an application of the principle of substitution.

(1) Sales of similar type properties are analyzed to develop a price at which an equally desirable and similar property can be obtained. It involves the collection and analysis of current sales of comparable properties and the comparison of these sales to the subject property. Since no two properties are identical, the appraiser must consider the market's reactions to any differences and make appropriate adjustments. Support and justification must be given for each dissimilarity which has a significant effect on value or sales price. Adjustments may be shown either by a tabular analysis or by a narrative discussion. When adequate data is available, adjustments derived from more sophisticated procedures including statistical or multiple regression analysis may be appropriate.

(2) Gross rent multipliers and gross income multipliers are sometimes used to compare the income-producing characteristics of properties in the sales comparison approach. The properties analyzed must be comparable to the subject and to one another in terms of



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physical, location and investment characteristics. Properties with similar multipliers can have very different operating expense ratios and therefore not be comparable indicators.

d. The Income Approach will normally be used to estimate the value of an income-producing property. The market value of an income-producing property depends mostly on the net income it can produce, or the principle of anticipation. The key to this approach lies in sound development of proper rates and factors, as well as knowledge and use of potential gross income, vacancy rates, collection losses, net income, and operating expense ratios of the subject and competitive properties. The market value may be estimated by developing the expected net income which is then processed by an appropriate capitalization rate or factor.

(1) The appraiser must have a basic knowledge of the principles and techniques involved and have adequate data to develop rates and factors and properly process the income into an estimate of value. Capitalization rates can often be derived from comparable sales data when sufficient competitive properties are available. The band of investment technique using mortgage and equity components is often used because many properties are purchased with debt and equity capital.

(2) Direct capitalization, yield capitalization (discounted cash flow), and residual techniques are alternative methods used to convert income or future benefits into an indication of value.

e. The valuation estimates developed by each approach must be correlated or reconciled into a final value conclusion.

4-22. Appraisal Certification. All appraisal reports must contain an appropriate certification by the appraiser. The Yellow Book and USPAP should be used for guidance.

4-23. Brief Appraisals.

a. Brief appraisal reports are authorized and recommended for valuation situations described in this section, when the total valuation or total per annum rental value does not exceed the following levels:

1) Leases (except Government-owned quarters)	\$50,000/yr
2) Acquisitions	\$25,000
3) Disposals	\$15,000

Appraisals meeting the criteria of this paragraph are considered exempt under the Jurisdictional Exception from the provisions of USPAP.

b. The requirements of AR 210-12 and OMB Circular No. A-45 will be followed when appraising Government-owned quarters for outleasing. (See paragraph 4-46 below, "Government-owned Quarters").

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c. Brief appraisals are not suitable for use in situations involving significant damages, offsetting benefits, or any other complex valuation situation. The general format for Value Finding Appraisals contained in "The Appraisal Guide," 1993 edition published by the Federal Highway Administration may be used for brief acquisition appraisals. The appraisal report will contain adequate facts and discussions as outlined in Appendices 4-D and 4-E.

d. See Section VI for additional information and requirements for rental appraisals.

4-24. Informal Value Estimates.

a. As provided by 49 CFR §24.102(c), an agency may determine that an appraisal is unnecessary because the valuation problem is uncomplicated and the market value is estimated at \$2,500 or less based on a review of available data. Informal value estimates shall be considered for efficiency (including administrative savings of salaries or other resources) and used when considered to be in the best interest of the Government. This procedure may also be utilized by non-Federal sponsors for cost shared projects pursuant to Project Cooperation Agreements (PCA).

b. Blanket waiver to \$5,000 for acquisition. 49 CFR §24.7 allows the Federal agency funding the project to waive certain requirements. A blanket waiver is granted for acquisition purposes to divisions and districts, to dispense with appraisals (use the Informal Value Estimate procedure) up to \$5,000 provided the requirements of this paragraph are met.

c. Caution should be exercised in utilizing this procedure as credibility may be lost if the owner requests a formal appraisal and the estimated value is different than the initial offer that had been based upon the informal value estimate. Informal value estimates are not considered suitable for filing in condemnation. Tracts requiring condemnation will require formal appraisals before submission of any recommendation for filing.

d. The District Chief of Real Estate in conjunction with the District Chief (or senior) Appraiser shall determine the suitability of waiving the formal appraisal requirements on those acquisitions, outgrants, or disposals of \$5,000 or less. The required documentation must then be completed on each ownership identified. Signature of concurrence will be made by a review appraiser or the Chief of Real Estate on each report. For tracts to be acquired, at least a cursory inspection will be accomplished by the author of the report.

e. Informal value estimates may be prepared by realty specialists so designated by the district Chief of Real Estate.

f. At the time of the initial contact with the owner (for acquisition), the property owner must be advised that the offer being presented is based on an informal value estimate and not based on an appraisal. If the owner requests that an appraisal be done, we must do

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an appraisal. Other requirements of Public Law 91-646 apply even though informal valuations may be utilized.

g. To utilize the informal value estimate for acquisition, outgrant, or disposal, the required minimum information outlined in Appendix 4-F must be documented in the files. This format may be reproduced for local use. Additional supporting data may be attached as necessary.

h. Informal value estimates are exempt from the provisions of USPAP, pursuant to the Jurisdictional Exception. Informal value estimates would not meet the minimum requirements of even limited restricted appraisal reports pursuant to USPAP, and are probably inappropriate for contractor use.

4-25. Reserved.

4-26. Reserved.

4-27. Reserved.

#### SECTION IV. PARTIAL ACQUISITIONS

4-28. Partial Acquisitions.

a. A substantial number of acquisitions require only portions of an ownership or ownership rights necessitating a "partial taking." With the exception of sub-paragraphs c or d below, or when properly following state rules on cost-shared projects, the appraiser is required to estimate the value of the whole ownership (commonly called the larger parcel or entirety) before the acquisition, and the value of the remainder after the acquisition - the difference being the Estimate of Compensation. The appraiser is required to allocate value to the part acquired and to any severance damages or special benefits to the remainder.

b. The appraisal of the property before the acquisition must be a complete appraisal containing adequate market data to support the estimate. The report must also include a complete appraisal on the remainder property. It must include a full description of the residual property immediately after the acquisition and, ordinarily, a complete set of market data and sales other than those used in the "before" valuation. If the remainder parcel is diminished or increased in value as a result of the acquisition, the appraiser must have adequate support and justification for the change in value. Appropriate reasons could include change in the highest and best use, a loss of access or improved access.

c. An exception to the complete before and after approach may be appropriate when the part being acquired is small or inconsequential in relation to the larger parcel, when to do so would impose costly or nearly impossible burdens, and when no damages or benefits are apparent.

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In such cases, the appraiser would assume the larger parcel to be a logical size and shape that can be reasonably appraised. If condemnation is necessary, a complete "before and after" appraisal will be required unless the US Attorney handling the case advises otherwise. The appraiser must not even appear to prepare an appraisal for purchase at one value, and later prepare one for court testimony at a different value simply because it is going to court.

d. Another exception may be appropriate when the acquisition is considered a voluntary transaction, such as with Reserve Centers, or 801 housing sites, with no expectation of condemnation. The grantor is willingly carving out a parcel to sell and would be expected to put the property on the market in a similar fashion.

e. For partial acquisitions, consideration must also be given to offsetting benefits applicable to the remaining property. A combination of legal interpretation and judicial decisions with regard to such special benefits must be used to determine whether offsetting benefits are applicable. The remainder may be of less value after the acquisition, indicating a "severance damage," or more valuable indicating a "special benefit." See paragraphs A-10 through A-15 in The Yellow Book. If the highest and best use of the part acquired, or of the remainder, is different than the larger parcel, it must be explained and supported.

f. The severance damages or benefits should be adequately described or explained in narrative form. What gives rise to their occurrence? What has changed to increase or decrease the value of the remainder? Section A-11 of The Yellow Book provides specific guidance regarding appraisals involving partial acquisitions.

g. Consideration of Uneconomic Remnants. 49 CFR §24.2(w) defines an uneconomic remnant as "... a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner."

(1) The determination of uneconomic remnants is generally based on analysis provided in an appraisal. Ordinarily the appraiser need only consider (and explain and describe) the impact of the acquisition on the residual through the before and after process, which may include assessment or application of severance damages. The agency can then determine the validity of offering to acquire the entire property including that remainder or remnant.

(2) Avoidance of uneconomic remnants is a benefit of good real estate practices (such as "blocking out" by following property lines and natural and man-made boundaries).

4-29. Easement Rights. An easement is a property right that conveys some specified use and enjoyment of the owner's property, which is less than fee ownership. Specificity is important since the rights given up

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and the rights retained will impact the analysis and conclusions of value.

4-30. Measure of Value.

a. The measure of compensation for an easement is the amount by which the market value of the ownership is diminished by the imposition of the easement. This should be developed by use of the "before and after" method of appraisal, the difference being the value of the easement (including any damages).

b. When contamination is involved, the valuation of easements should be addressed in the same manner as for fee simple valuations, see paragraph 4-68 below.

c. Analysis of temporary easements must include the time or duration of the easement estate. The duration of easements, such as temporary construction easements will need to include the duration of the construction period, as well as lead time for acquisition and the potential of slippage caused by weather or other unforeseen factors.

d. Unlike permanent easements, the value of temporary easements may be based on the rental value of the property for the period of the easement. See paragraph C-11 of The Yellow Book. One exception to the valuation by rental, would be when the physical characteristics or attributes of the tract are changed by our use of the property during the temporary period.

e. For guidance to valuation of easements granted on Government property, see Chapter 8 of this regulation, Section XIV.

f. For guidance to valuation of disposals for easements, including disposal to the owner of the servient estate, see paragraph 11-125 of this regulation.

4-31. Flowage Easements.

a. The appraisal of flowage easements (except for Gross Appraisals, Reconnaissance, or other planning estimates) will not be undertaken until hydrological and/or geological data identifying the extent of flooding (i.e. flood frequency, duration, erosion, or similar engineering data) have been completed and approved by proper authority and provided to Real Estate. The appropriate engineering data will be made available to the appraiser, and such data, both historical and proposed, will be considered in the appraisal process. The appraisal report should include the assumption that the engineering data is correct.

b. Appropriate maps depicting contour level(s) of varying hydrological (or other engineering) data will be made a part of each appraisal report.

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c. The appraiser must adequately recognize the rights to be acquired or conveyed under this easement, and the impacts on each particular property, its utility and its highest and best use.

4-32. Other Easements. Many other types of easements, i.e., road, pipeline, construction, borrow, disposal, channel improvement, floodwall or levee, transmission line, avigation, and so forth may need to be appraised. In nearly all instances, the measure of value is still obtained by the same process, to identify the amount by which the market value of the ownership is diminished by the imposition.

4-33. Reserved.

4-34. Reserved.

#### SECTION V. COST SHARED PROJECTS AND CREDIT VALUATIONS

4-35. General Concepts.

a. For planning purposes, if privately owned real property is to be acquired by the non-Federal sponsor, the state rules of compensation will normally apply and valuations should be based on those state rules.

However, when acquisition on behalf of the non-Federal sponsor (such as condemnation in Federal court) would indicate a potential difference in compensation, that difference must be emphasized, so that everyone is fully aware (and the information can be included in the Real Estate Plan). A summary of the differences between the state and Federal rules of compensation shall be presented along with the estimated effect on value or conclusions of value each way.

b. There are some exceptions to the application of the state rules for valuation. Real property interests owned by a non-Federal sponsor which were acquired prior to the date of the Congressional authorization of a specifically authorized project or prior to the date of the Division Commander's approval of the project for continuing authority projects, will be valued using Federal rules. Acquisition by the Government on behalf of non-Federal sponsors will be conducted in accordance with Federal law, policies, practices and procedures. See paragraphs 12-34 and 12-37 of this regulation.

c. Certain types of projects have been designated to require special consideration. Continuing Authorities Projects (CAP), and Section 14 Projects in particular, do not allow credit for lands that are already owned as part of the facility or structure being protected. CAP will ordinarily require analysis on a case-by-case basis. The real estate valuation effort should be commensurate with the level of detail performed by other elements.

d. In general, lands previously included in a Federally funded project are to be excluded from valuation, if the existing estate is adequate. This would apply to existing projects such as levees, floodwalls or seawalls, when the current Federal project involves replacement, reconstruction or enlargement. Legal guidance should be

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obtained before completing an appraisal involving these situations, to assure we are approaching these problems correctly.

e. Similarly, lands subject to navigation servitude will not ordinarily be valued as a part of the project if the rights are sufficient for the proposed project purpose(s). Such existing rights, as well as other existing encumbrances, must be considered within the appraisal. Seek legal guidance for these situations. Also see paragraph 4-62, and Chapter 12 of this regulation.

f. Tract appraisals are expected to be in compliance with USPAP, subject to the Jurisdictional Exception provision as applicable, as well as The Yellow Book, and 49 CFR Part 24, as may be amended (except as otherwise exempted herein).

g. Reconnaissance. USACE is generally required to perform, at Federal expense, a reconnaissance study of the water resources problem to identify potential solutions and to determine if a project should proceed to the preparation of a feasibility report. See paragraph 4-12 above. If a non-Federal sponsor has been identified, this is an excellent time to begin cooperation on the Lands, Easements, Rights-of-Way, Relocations, and Disposal Areas (LERRD) issues.

h. Feasibility. Real Estate Divisions are required to prepare a gross appraisal during the feasibility study. The staff appraiser, working closely with the non-Federal sponsor, can pass along expertise on valuation requirements and methodology, while a representative of the sponsor can impart knowledge about the local real estate market, the economy, the project area, and state laws on compensation. The types and extent of estates and acquisition practices can be discussed. The non-Federal sponsor can help provide ownership information, tax maps, market data and so forth.

i. Appraisals for acquisition purposes, whether for or by a non-Federal sponsor, or for the United States, must recognize any contamination problems and value the property accordingly. These considerations are appropriate at planning stages as well as at the time that attempts are made to acquire the land or interest in land. Such formidable issues must not be under-emphasized. See paragraphs 4-8(f) and 4-68.

(1) For CERCLA (Comprehensive Environmental Response, Compensation and Liability Act) regulated contamination, in some cases the private owner, or potentially responsible party, may be willing to pay for clean-up costs to sell the property in a "clean" condition. In some cases, it is appropriate to appraise the property as though it were clean, if such an assumption is clearly set out in the appraisal and warranted by the expected permanence and effectiveness of the clean-up. The appraiser should consider the effect on value for the length of time it will take to decontaminate or remediate the property. Further, any market demonstrated negative reaction or stigma to former contamination must be

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considered as well. See ER 1165-2-132 and other guidance in this chapter at paragraphs 4-8(f), 4-20, 4-36 and 4-68.

(2) For non-CERCLA regulated contamination such as petroleum products, costs for any required actions will (ordinarily) be considered a project cost and will be cost shared as a construction cost. Therefore, LER valuation will be based on market value of the land in the condition acquired, taking into consideration any contamination that may be present. Similarly, for lands already owned by the sponsor prior to the project, land value shall consider any contamination that may be present. See paragraphs 4-8(f), 4-36, and 4-68.

j. The non-Federal sponsor's appraiser(s) for planning, acquisition and credit appraisals, must be qualified, licensed (for residential property) or certified general, and pre-approved in writing by the Government. In no event may an appraiser have an interest in the land to be appraised or a business or family relationship with the owner thereof.

k. For cost shared projects, the non-Federal sponsor may provide the gross appraisal prepared by a qualified real estate appraiser who consults with the district appraisal staff on valuation procedures and issues. It is preferred that USACE prepare the gross appraisal with the assistance from a representative of the non-Federal sponsor. In either case, the gross appraisal is subject to review and approval by the Government.

l. Stipulations for Acquisition Appraisals. For low value tracts where the estimated market value, pursuant to paragraph 4-24 above, is less than \$5,000 (exclusive of administrative costs) the non-Federal sponsor and landowner may stipulate to the market value as discussed in 49 CFR Part 24, Section 24.102(c). Also see Chapter 12 of this regulation for stipulations on value.

#### 4-36. Crediting.

a. Appraisals are required for crediting non-Federal sponsor LERRD value and costs, except as noted below. If an acquisition appraisal is available it can be utilized for credit purposes provided it has been approved by the Government review appraiser, considering all relevant factors. The same standards apply for credit appraisals as for acquisition appraisals. See Chapter 12 of this regulation, and see ER 1165-2-131 for additional guidance.

b. If an appraisal is waived for acquisition when the market value is less than \$5,000 (exclusive of administrative costs) as discussed in paragraph 4-351 above, the Government and the non-Federal sponsor may stipulate to the amount of credit allowance for that tract. The files must be appropriately documented setting forth the reasoning behind the property's value estimate. The District Chief of Real Estate, or government review appraiser may approve the non-Federal sponsor's informal value estimate(s) that support the requested credit.



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c. When contaminated lands are encountered, the values for LERRD credit of cost shared projects may be different than values for acquisition purposes. It is frequently the non-Federal sponsor's responsibility to assure contamination clean-up and to pay the associated costs (not as a project cost). See paragraphs 4-35(h) above, and 4-68 below.

(1) When the sponsor is responsible for clean-up, then the appraisal should be based on the estimated value of the property in a "clean" condition, reflecting, however, any market reaction such as stigma that may accompany a formerly contaminated site. See Project Management Guidance Letter Number 8, Appraisal of Lands Containing Hazardous and Toxic Wastes on Local Cooperation Projects, dated 5 November 1990.

(2) However, when the cost of the clean up is to be included as a project cost item (generally non-CERCLA) and cost shared, the property will be appraised "as-is". See CECW-PA Policy Guidance Letter No. 34, Non-CERCLA Regulated Contamination Materials at Civil Works Projects, dated 5 May 1992.

d. For Emergency Streambank Protection projects (Section 14 Projects, P.L. 526, 79th Congress), the non-Federal sponsor normally will not receive credit for the value of LERs that are part of the tract of land on which the facility or structure to be protected is located. See Chapter 12 of this regulation.

e. Hurricane protection and shore protection projects will generally be treated in a manner as to not allow credit for LERRDs when the project provides direct (off-setting) benefits such as prevention of erosion or re-establishment of beaches, i.e., those lands subject to shore erosion that are required for the project. In no event shall credit be allowed for the value of LERRD areas seaward of the ordinary high water mark. For additional discussion, see CECW-RP Memorandum, Revision to Policy Guidance Letter No. 11, Credit for Lands, Easements, and Rights-of-Way (LER) at Shore Protection Projects, dated 21 April 1989.

f. LER that was owned by a non-Federal sponsor prior to the date of Congressional authorization of a specifically authorized project or prior to the date of the Division Commander's approval of the project for continuing authority projects, shall be appraised by the Federal rules of compensation.

g. Ordinarily the appraisal will not include compensation for non-real estate items such as goodwill, consequential damages, or personal property. Such items, if required by applicable state law to be paid incidental to the acquisition of real property, may be allowed under incidental costs. See paragraph 12-37 (f) of this regulation for procedures.

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h. Disagreement over credit appraisals (subject to specific terms in the Project Cooperation Agreement). In the event the district disapproves the non-Federal sponsor's credit appraisal, the sponsor may obtain a second appraisal. If the Government does not approve the non-Federal sponsor's second appraisal, or the sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the non-Federal sponsor. In the event the sponsor does not approve the Government's appraisal, the Government, after consultation with the sponsor, shall consider the Government's and the sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the market value.

i. If a non-Federal sponsor does not submit a credit appraisal, the district should document actions taken trying to obtain an appraisal from the sponsor and notify PM of the sponsor's failure to comply with the PCA.

j. Condemnation. For lands, easements, or rights-of-way acquired by eminent domain proceedings (other than in Federal courts) instituted after the effective date of the PCA, the non-Federal sponsor must submit in writing to the Government notification of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

(1) If, within 60 days, the Government disapproves the appraisal the Government and the non-Federal sponsor shall consult in good faith to promptly resolve any issues or areas of disagreement that are identified in the Government's written disapproval.

(2) If, after such good faith consultation, the Government and the non-Federal sponsor cannot agree as to an appropriate amount, then the sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding in their state court(s).

k. LERRD credit appraisals will be reviewed by a qualified Government review appraiser, and the non-Federal sponsor will be notified of the results of that review. The district is responsible to see that state rules are properly interpreted, adequately explained and properly applied. The review and approval levels as delegated to district and division review appraisers shall apply. See paragraph 4-72 for exceptions.

l. Any project that is authorized by special legislation may also contain special provisions for crediting. Legal guidance should be obtained before attempting to estimate the amount of credit due a non-Federal sponsor on any specifically authorized project(s).

m. Navigation servitude may or may not be applicable to each cost shared project and the resultant LERRD credits. See paragraph 4-62, as well as Chapter 12 of this regulation.

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n. For other aspects of credit, including donations, recreation features, greater interests, timing, effective dates, and limitations see Chapter 12 of this regulation.

4-37. Reserved.

4-38. Reserved.

#### SECTION VI. RENTAL VALUE APPRAISALS

4-39. Definition. The fair rental value (rental value or market rent) of a property is the amount which, in a competitive market, a well-informed and willing lessee would pay and which a well-informed and willing lessor would accept for the temporary use and enjoyment of the property.

4-40. Application.

a. All provisions of this chapter are applicable to reports prepared for "inleasing" the property of others, and "outleasing" of Government-owned real property. Paragraph 4-46 below, Government-owned Quarters, provides specific guidance for outleasing of quarters.

b. Except as otherwise allowed herein, appraisals for fair rental values will be made in accordance with acceptable standards applicable to the particular type of property as well as the general appraisal practices and procedures. The appraisal report will contain adequate facts and discussions as outlined in Appendices 4-D and 4-E.

c. The rental value will not be influenced by the fact that the Government may not be required to pay taxes on the property.

d. Appraisals for inlease renewals (particularly office space), must pay particular attention to improvements paid for by the Government. Guidance may be found on Page 7, paragraph A-2 of The Yellow Book, which states in part, that the property is to be valued as though the Government paid-for improvements do not exist. The purpose is to not pay a second time for those improvements that were previously paid for through either lump sum or amortized payments.

e. Qualified realty specialists who are designated by the Chief of Real Estate in concurrence with the District or Division Chief Appraiser, as well as appraisers, may utilize the following:

(1) Market surveys and automated valuation models (AVM) or statistical analyses, where adequate rental data exists, for the inleasing of family quarters, recruiter housing, and office space including recruiting facilities, and for outleases (except Government-owned quarters) for rentals up to \$25,000 per year. No review and

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approval of the report is required. Certification statements are not required.

(2) Brief appraisal formats are acceptable for simple lease valuation assignments (including recruiting facilities) not exceeding \$50,000/year. Review and approval is required. Certification statements are required.

These procedures apply only to the lease of properties that are relatively simple to evaluate and when there are at least three rental comparables very similar to the subject property, but do not apply to Government-owned quarters (see paragraph 4-46 below).

f. Measurement of space for office leases is critical in preparing valid appraisals. USACE does not prescribe any specific method of determining the area of the space being leased. Most important is that the measurement is accurate and that the same method is utilized for the subject and the comparables, or appropriate adjustments are made. Lease terms are subject to distinct interpretation in different markets; check for local variations and ask specific questions to foster understanding. Common terms utilized in the industry include the following:

(1) Occupiable Area - Method used by GSA to determine amount of space rented. Approximately equal to Net Usable Area.

(2) Usable Area - Net Usable Area - This is the space that the tenant can lock up at night; it's the space that the tenant actually occupies. This area excludes public corridors, lobbies, restrooms, equipment rooms, electrical and janitor closets, and other areas not available for tenant furnishings and personnel. The Usable Area of an office is computed by measuring to the finished surface of the office side of corridor and other permanent walls, to the center of partitions that separate the office from adjoining Usable Areas, and to the inside finished surface of the dominant portion of the permanent outer building walls. No deductions are made for columns necessary to the building.

(3) Rentable Area - Includes Usable Area plus the tenant's prorata share of common areas but excluding elements of the building that penetrate through the floor to areas above and/or below. Rentable Area/Usable Area = R/U Ratio. Usable Area times R/U Ratio = Rentable Area.

g. Independent cost estimates (ICEs) are frequently used for estimation of interior alterations for leased space, particularly recruiting facilities. These must be documented and made a part of the file. The use of cost estimating services and software to streamline this process is encouraged.

h. Some reporting requirements of the Economy Act of 1932 have been rescinded. However, the Army Secretariat has established a policy which requires reporting of all inleases (except overseas leases) when the base or shelter rent is expected to exceed 20% of the estimated fee value, or when alterations exceed 30% of the first year's rental.

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Further, (by CERE-AM memo of 20 December 1989) the Division Commanders and their Chiefs of Real Estate were delegated the authority to grant waivers of this requirement for leases of \$200,000 or under, as long as the alterations do not exceed the annual rental. In order to comply with this policy, an estimate of the fee value of the space being leased is required for inlease appraisals. A simplified estimate of fee value may be used for this purpose, including capitalizing income into value, and use of tax assessments if the assessment is found to be recent and representative of market value. Such estimates are considered exempt from the provisions of USPAP, pursuant to the Jurisdictional Exception.

4-41. Utilities and Services. Utilities and services may not be acquired under the power of eminent domain. In the absence of an agreement or contract, a lessor is not bound to furnish any utilities or building services. If the rental value appraisal is to be used in eminent domain, the value of utilities and services are to be separately itemized and adequately supported. The value conclusion will be a net rental with comparables adjusted appropriately.

4-42. Unexpired Lease. Leasehold and leased fee values will be provided if requested. See paragraph 4-63 below, "Tenant-Owned Improvements."

4-43. Special Purpose Properties. Appraisals to estimate the rental value of hotels, clubs, hospitals, golf courses and other highly specialized properties will include full information on the income capacity of the property under average competent management and under accepted standards of operation for the particular type of property involved.

4-44. Farms and Rural Properties. Appraisals to estimate the rental value of farms and other types of rural properties will report the fair annual rental value, and any direct damage to growing crops, standing timber, or improvements to be removed or destroyed for the project. The damage will be reported separately from the rental value in order to reflect the damage in the primary rental term.

4-45. Industrial Installations.

a. Appraisal reports will be obtained to support all leases of industrial installations or portions thereof. It is important that appraisals of operating industrial installations be prepared by qualified appraisers or consultants intimately familiar with the particular processes, production capabilities and related factors bearing on the value of a particular facility.

b. The appraisal report will include a detailed inventory setting forth all physical factors pertaining to the land, buildings, machinery and equipment. An adequate discussion of all factors influencing the profitable use of the facility will also be included. In the absence of comparable rentals of similar properties, or other reliable comparative guides to value for temporary use, market rental value should be estimated with particular consideration to the following methods:

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(1) Reasonable Return on Estimated Fair Value. For outleasing purposes "fair value" is defined as the prudent cost of replacement, less depreciation, of only that portion of the property that is readily adaptable or capable of competition with alternative properties which may be available to or constructed for the proposed outlessee(s). Items of equipment and any portions of a plant that do not directly contribute to the specific use may be eliminated from consideration and the rental value estimated only on items and space actually adaptable for use. The appraiser is particularly concerned with any competitive disadvantages or penalties accruing to subject property by comparison with the alternatives available to prospective users. The rental estimate should therefore be appropriately modified with respect to adequate allowances for amortization of necessary alterations to be made by the lessee. Other operating disadvantages that might tend, from the competitive viewpoint, to result in increased operating cost or other penalties that might in any way be brought forward in negotiations to establish an acceptable rental price must also be considered.

(2) Ratio of Plant Costs to Productive Capacity. In many lines of industrial enterprise, it may be possible to obtain comparable operating expense ratios with reference to the relation of average annual real estate costs or plant investment charges to the gross annual production. The difficulties of estimating production levels and obtaining sufficiently accurate data as to actual operating expense are fully appreciated. Suggested sources of such information are annual statements of prospective lessees and their competitors. It is believed that this approach to the appraisal problem is fundamentally sound, particularly so when there is an indicated demand for the full capacity of an industrial plant as originally designed. This method will serve as a reasonable check and balance against return on "fair value." It should also be very helpful as a guide to the rate of capitalization in the "fair value" approach to the rental problem.

(3) Savings. When appropriate, the estimated savings in maintenance, protection, repair and restoration, if any, will be obtained from the using service or other competent authority and furnished to the appraiser preparing the appraisal report.

4-46. Government-owned Quarters.

a. Rental schedules or valuations for Government-owned quarters furnished to civilian employees will comply with the requirements of OMB Circular A-45, and AR 210-12, (and AFR 87-16 for Air Force quarters). The rental estimates will be supported by written appraisal reports or by the use of Department of Interior's (DOI) Regional Quarters Rental Survey system reflecting adequate coverage of the items identified in OMB Circular A-45.

b. If the appraisal methodology is utilized, Government-owned quarters will be appraised by contract, unless the use of a staff appraiser is authorized by the Division Chief Appraiser. Regardless of value, these appraisal reports must be reviewed by the Division Chief

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Appraiser. Reappraisals of rental quarters (that are used for full-time occupation, and not for periodic, temporary or transient use) are required at least every fifth year. Rental appraisal reports must include an appropriate certification.

c. The use of DOI's Regional Quarters Rental Survey system is authorized and encouraged as a cost effective alternative to doing appraisals.

d. Rental rates will be adjusted annually between appraisals by application of the Consumer Price Index for Urban Wage Earners and Clerical Workers, Rent Series (CPI) maintained by the Bureau of Labor Statistics, Department of Labor, and as further required in accordance with OMB Circular A-45, revised 20 October 1993. The CPI percentage increase will be furnished annually to each division by HQUSACE (CERE-E). Regardless of value, these annual adjustments must be furnished to the Division Chief Appraiser, for post review.

4-47. Reserved.

4-48. Reserved.

4-49. Reserved.

#### **SECTION VII. OUTGRANTS AND DISPOSAL APPRAISALS**

4-50. Appraisal of Outgrants.

a. An appraisal will be made when required to estimate the consideration in outgrants, whether leases, licenses, permits or easements, to the same level of detail that private property of similar value is to be appraised under these regulations. The appraisal will be made in accordance with acceptable standards applicable to the particular type of property and the use to be made in the proposed outgrant, and in accordance with the general appraisal practices and standards outlined in this chapter. Valuations for outgrants will ordinarily be governed by the Federal Property Management Regulations (FPMRs), see §101-47.303-4, as well as Army and Engineer regulations.

b. Agricultural Leases. Rental rate surveys may be used to determine rental value ranges in lieu of a formal appraisal for low value leases (see paragraph 4-40, above), when adequate competition and/or long standing history of similar lease actions exists. Where a number of agricultural leases are located in an area, a project appraisal may be prepared which provides a conclusion of value for each land class and proposed use. A one page supplement can then be utilized for each tract or site to be leased. If utilized, the report should be updated at least every 5 years, or earlier if conditions warrant. When the lease calls for services to be performed (such as mowing) in lieu of cash payment, the value of those services should be estimated. See paragraph 8-126 of this regulation.

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c. Timber Harvesting. The use of district staff foresters, or a local installation forester where available, is encouraged to perform the timber cruise and valuation, when economical and expeditious to do so.

d. Concession Leases. The Federal policy governing concession leases on Federal lands is covered under the revised graduated rental system. See paragraph 4-50 i(2), and Chapter 8 of this regulation.

e. Public Schools. See paragraph 8-129 of this regulation.

(1) Land leases for public schools on military installations require a thorough understanding of the rights and restrictions of the lease terms and conditions. Typically, such leases allow for the facility to be used for public school purposes only, and classroom and closely related academic uses at the high school level or below. They cannot be used for adult education, or for other unrelated meetings or gatherings. Generally, the local school district must build and maintain the school facility and must remove it upon our request. See paragraph 8-129 of this regulation, for additional information.

(2) Lease analysis must take into consideration the condition of the land granted, restrictions on use, oversight and degree of Army control, termination rights, and limited commercial market for the school use granted. The obligations of maintenance, protection, repair, improvement or restoration may tend to offset some or all positive lease value.

f. Public-Private Ventures. The Army Community and Family Support Center (CFSC) is working toward providing morale, welfare and recreation (MWR) facilities through the public-private venture concept, in lieu of NAF (Non-Appropriated Fund) capital expenditures. Title 10 U.S.C. 2667 requires the Army to obtain fair market rental for the lands to be made available. The lease will be completed through a competitive process. The development will provide for a profit-sharing arrangement with the CFSC. Valuations for these land leases may be done in brief or limited format, and are a Jurisdictional Exception to USPAP. The fair market rental should reflect the terms and conditions peculiar to the lease of the specific property, which generally include restrictions on the use and access to the property, the generally prohibitive (and less public) siting of the facility on an active military installation, and terms and degree of Government control over the leased property.

g. Easement outgrants will ordinarily be appraised in the same manner as easements for acquisition, that is, by the measure of value that the parent tract or underlying fee is changed in value through the imposition of the easement.

(1) Although the impact on the underlying fee will not necessarily be commensurate with potential enhancements to some adjoining properties created by the granting of the easement, the appraisal cannot consider such impacts to an adjoining property owner. That potential enhancement



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creates other political and policy implications that are beyond the appraisal process.

(2) Some outgrants such as pipeline and utility line easements may lend themselves to the application of going rates per rod (or per foot).

Although these valuations are not governed by The Yellow Book, the before and after method may be appropriate depending on the location and type of real estate, and its highest and best use. OMB Circular A-25, and DOD Instruction 7230.7 prescribe that user charges may be based on competition in open markets, using commercial practices.

h. Standard charges or minimum rate schedules utilized for consistency of outgrants by the district and division may be used as the basis or justification of value requirement. The District Chief (or senior) Appraiser may periodically estimate values for a variety of types of outgrants issued for similar or identical purposes in order to establish and update a schedule of charges.

i. The following actions or activities are exempt from the above requirements for a complete appraisal:

(1) Banks and Credit Unions. Outgrants for banks and credit unions are regulated by directives and instructions. See paragraph 8-130 of this regulation. Special instructions for appraising proposed outleases for Banks and Credit Unions are also contained in AR 210-135, 10 U.S.C. 2667 and 12 U.S.C. 1770;

(2) Concession leases under the Graduated Rental System. Appraisals are not ordinarily needed when the Graduated Rental System is utilized, however, an appraisal may be required as an alternative, or for an appeal of the rate under special circumstances;

(3) Leases for mobile home spaces, (See AR 210-50 Chapter 13, for guidance on mobile home parks on Government land, also see AR 405-80);

(4) Those outgrant valuations that fall within the low value criteria, or the standard charges or minimum rate schedule process; and

(5) Antenna leases supported by an approved rate schedule. See GSA Bulletin FPMR D-242, Placement of Commercial Antennas on Federal Property, dated June 11, 1997.

#### 4-51. Appraisals for Disposal Actions.

a. Economic Development Conveyances (EDCs). Title XXIX of Public Law 103-160 (the Pryor Amendment) provides special guidance and procedures for valuing and disposing of base closure properties. The implementing regulations can be found in 32 CFR, Parts 175 and 176. Chapter 7 of the DOD Base Reuse Implementation Manual (BRIM) provides instructions for valuation and disposal via EDC.

b. Guidance can be found in Chapter 11 of this regulation, for disposals of fee-owned land or easements which are determined to be

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surplus to requirements of the Federal Government. FPMR Section 101-47.5 provides some guidance for easements which have no commercial value or which the estimated cost of continued care and handling would exceed the estimated proceeds from its sale. No commercial value means real property, including related personal property, which has no reasonable prospect of being disposed of at a consideration.

c. Disposal to owner of servient estate. In accordance with FPMR Section 101-47.313-1, easements may be disposed (or released) to the servient estate when the continued use, occupancy, or control of the easements is not needed for the operation, use or maintenance of property controlled by USACE. The FPMR and paragraph 11-125 of this regulation also indicate that the disposal agency may determine whether or not to charge for this disposal, depending in part on the acquisition cost of the easement. If a value is needed, consideration shall be determined by "before and after valuations" (i.e., appraising the market value of the fee subject to the easement, and then as free and clear of the easement).

d. Appraisers preparing reports for resolution of encroachments should first seek legal and policy guidance from USACE Real Estate attorneys and/or Office of Counsel.

e. Appraisals for disposal actions supported by special legislation must be appraised in accordance with any specific requirements of that legislation. Contact CERE-E for guidance in these circumstances.

f. Contract appraisal reports are ordinarily required for negotiated disposal actions, including BRAC. Additional guidance for appraisal for disposals can be found in 41 CFR 101-47.303-4 and 41 CFR 101-47.304-9(b).

4-52. Reserved.

4-53. Reserved.

4-54. Reserved.

#### **SECTION VIII. APPRAISAL OF OTHER INTERESTS**

4-55. Minerals.

a. The value of the subsurface must be included or accounted for in the appraisal report, even though owned by someone other than the surface owner. A statement will be made concerning the existence or non-existence of mineral deposits, especially those having a commercial value.

b. Many USACE projects have easements allowing collateral mineral production (coal, oil, gas, etc.). Most of these mineral or mineral leasehold interests are subject to the right of the United States to operate and maintain the project. These restrictions are called

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"subordinations" and are a reduction in the real property rights of the mineral owner. A subordination estate is a partial acquisition, and as such, requires a traditional "before and after" appraisal unless the acquisition is considered to contribute only nominally to the larger parcel. (See The Yellow Book and provisions in paragraph 4-28c above.)

c. In those instances when minerals are held separately in large blocks underlying several individual surface tracts, a statement to this effect should be included and the plan for appraising the mineral estate identified. In all areas where the mineral interests (including surface improvements which contribute directly to the production of minerals) are estimated to contribute significantly to the fee estate, the subsurface mineral value should be estimated by an appraiser who is qualified and experienced in valuing the type(s) of minerals involved. If the fee appraiser lacks sufficient knowledge to address the mineral estate, just as in any other appraisal assignment, the services of a specialist or mineral valuation expert (e.g., mining engineer, petroleum engineer, or geologist) must be obtained. The conclusions of the mineral appraiser should be adopted by the surface appraiser and the information considered (by the surface appraiser) when making adjustments to comparable sales in arriving at a final value conclusion for the interest to be acquired. The appraiser who is to testify must include all contributions to value in the appraisal, including mineral values.

d. If a separate mineral appraisal is obtained, it should be prepared first and furnished to the surface appraiser for incorporation into his report. The value of the property is not necessarily the sum of the value of the subsurface estate plus the value of the surface estate. The production of the minerals may have an adverse effect on the utilization of the surface. The removal of certain minerals (or the mining activity) may destroy surface utility, therefore care must be taken to avoid duplication of value. Similarly, the subsurface may be impacted by surface estates being acquired, even when the intent is to leave minerals outstanding in third parties (as in a subordination).

e. On many USACE projects, minerals may be left outstanding until extraction is completed or reserves exhausted (e.g., oil and gas wells), after which the rights become those of the United States. This is a form of subordination, used when such practices are compatible with project purposes. With proper planning, it permits prudent development of the natural resource. The appraiser may be required to study impacts of different estates on the same properties, and explain multi-faceted highest and best uses in the report, and testify in Federal court in defense of those opinions.

f. In the event that subsurface or mineral valuation is unfamiliar to the division or district requiring same, HQUSACE (CERE-E) WASH DC 20314 should be contacted for advice and recommendations. 4-56. Water Rights. In some parts of the United States water and water rights are critical issues. Appropriative water rights, as opposed to riparian water rights, are generally transferable. The water rights, per se, are intangible. A water right is a usufructuary right, a right to

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the use of the water only. It is generally the right to divert a specific quantity of water from a given source or supply, provided the amount available is in excess of that required by all previously vested interests still in existence. Appropriative rights generally relate to a specified quantity of water and duration of use as long as the right continues to be exercised properly. When land cannot be used advantageously without the water right, the right is an appurtenance. Water rights, particularly in the western states, are subject to state regulation and supremacy. Seek legal advice when encountering water rights issues.

4-57. Timber.

a. When the land being appraised has only young trees or timber not of merchantable size (minor share of value), the timber value may be included or incorporated into the value of the land.

b. If the property contains a substantial amount of merchantable timber, a timber cruise will be made by a professional forester or timber expert. Merchantable timber will be classified in the appraisal according to species, type, range of size, quantity, unit value, and total value. A discussion of logging, haulage, sources, and market conditions will be included. The total value of timber shall be the amount by which the timber enhances the market value of the property.

c. Care must be exercised in the use of separate timber estimates for appraising timber land, to avoid "doubling up," or including the timber value twice. When a timber cruise or estimate is used, comparable sales of recently cut-over timber land should be used to support the contributory value of the land. When such sales are not available, care must be utilized to extract the timber value from sales of timber land. The optimum situation would be to use sales that have also been cruised. Prevalent, accepted local methods for measurement of merchantable timber should be used and explained in the report.

4-58. Growing Crops.

a. Crop appraisals will ordinarily not be necessary except in those cases when it has been determined that possession of the cropland is required prior to the normal harvesting period. When the Division or District Commander has determined that the landowner or tenant cannot be permitted to harvest the crops, such will be appraised as separate property items. Crops, once severed, are considered to be personal property.

b. The crop appraisal will identify the crops by type, number of acres, estimated yield per acre taking into account all hazards, the unit value, gross market value at maturity based upon current local prices for the commodities less cost of bringing to maturity, harvest, and delivering to available markets. The expected harvest period will be reported, together with other pertinent information, in order to indicate an approximate date when the cropland may be made available for construction purposes.

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c. Valuation of perennial crops must account for the income loss, and re-establishment expenses, as appropriate, based upon the age and remaining life of the particular perennial crop.

4-59. Reserved.

4-60. Reserved.

4-61. Reserved.

#### SECTION IX. REGULATORY CONSIDERATIONS

4-62. Navigation Servitude.

a. Paragraph A-14 of The Yellow Book addresses some of the peculiarities of acquisitions involving "navigation servitude." It is actually commerce, and not navigation that is the basis for the Government's very broad powers over navigation and navigable waters.

b. Appraisers should seek legal advice when valuing riparian lands to be acquired, as well as when estimating project costs for planning purposes when navigation servitude may be applicable. The exercise of such powers may or may not be applicable to cost-shared projects. See Chapter 12 of this regulation. Also see 33 U.S.C. §595 regarding the Federal special benefits rule and the partial taking of lands adjacent to navigable waters.

4-63. Tenant-Owned Improvements.

a. 49 CFR §24.105 specifies that tenant-owned improvements to be acquired will be valued as to their contribution to the whole property or for their salvage value, whichever is greater. Therefore, the appraiser must identify the value of any tenant-owned improvements separately in the appraisal.

b. Legal advice should be sought regarding the definition of tenant-owned improvements, and their being personal property versus real property. Valuation may still be needed for relocation benefit (P.L. 91-646) purposes.

c. For the valuation of outgrants or leases when the property has been improved by the tenant/lessee, see paragraph A-2 of The Yellow Book.

(1) Although that reference deals with "government-constructed buildings and improvements" during the government's occupancy of a leased property, the same scenario holds true for a tenant or lessee who has constructed improvements pursuant to the outgrant or lease on government-owned land. The lessee should not be made to pay "twice" for those improvements (first when the improvements are made by the lessee, and second to later lease them from the lessor - who technically does not own

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them yet). Unless the outgrant/lease reads otherwise (or unless state law provides otherwise), the improvements remain the property of the lessee until abandoned or removed. Further, this condition would generally carry through (unless the lease provides otherwise) to subsequent renewals to the same tenant/lessee.

(2) For clarity and disclosure, the report should describe the property as it exists (as-is, or "as improved" by the tenant), and as it would exist absent the tenant improvements. It should specifically identify the tenant-provided improvements, but exclude them from value. In the case of renewals, it is critical that the appraiser examine former appraisals on that property, and know the terms and conditions of the lease (and particularly the original lease). Seek legal advice or assistance.

4-64. Allocation of Value for Relocation Benefits. 49 CFR Part 24 specifies that when a residentially improved tract being acquired includes more acreage than the typical homesite (in that area), the appraiser must allocate a value for the dwelling and a "typical" homesite in the acquisition appraisal.

4-65. Salvage Value.

a. When an acquisition appraisal includes improvements, the appraiser shall estimate the salvage value of those improvements.

b. 49 CFR §24.2(s) defines salvage value as "...the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis."

4-66. Federal Grazing Permits.

a. A ranch owner is not entitled to compensation for any value added to fee lands as a result of actual or potential use in combination with Taylor Grazing Act permit lands. These are revocable and create no property rights in the holder. See paragraph A-24 of The Yellow Book.

b. Under 43 U.S.C. §315q, the head of a military department may pay the holder of grazing permits for the value of the unexpired term of the permits, provided they are being canceled for military purposes. See Comptroller General Decision No. B-132774, dated 9 October 1957. The Bureau of Land Management (BLM) also has some specific guidance available, including BLM Instruction Memorandum No. 93-187, dated 29 March 1993.

4-67. The Americans With Disabilities Act (ADA).

a. Appraisers and others need to be aware of the general requirements of the five titles of the ADA (P.L. 101-336, 104 STAT.327).

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The cost to add new facilities, modify existing facilities, and remove barriers may affect the value of commercial property. The ADA may also affect income-generation capacities of the property. Appraisers will have to consider the effects of the ADA in all approaches utilized in the appraisal process.

b. Requirements of Title 3 (Public Accommodations and Services Operated by Private Entities) of the ADA include the following:

A "public accommodation" shall remove architectural barriers in existing facilities when removal is readily achievable (28 CFR §36.304). Readily achievable is defined as easily accomplishable and able to be carried out without much difficulty or expense. Generally, the cost of compliance with the ADA, the cost of remediation for removal or resolution of architectural barriers, will be the "cost to cure adjustment" for the functional obsolescence which is deducted from the market value, since the remedy will be considered a liability to a prospective buyer and because no value or additional income will result from correction of the functional obsolescence.

4-68. Contamination, and Other Environmental Issues.

a. Each appraisal must acknowledge the presence, or absence, of environmental concerns, including potential contamination whether from CERCLA [commonly known as Hazardous, Toxic, and Radiological Wastes (HTRWs)], non-CERCLA related issues, other dangerous materials or chemicals, ammunition, explosives or unexploded ordinance, and the extent/level of study available on the property or project. It is the appraiser's responsibility to inquire and report observations, and potential problems including knowledge of historic use. Potential contamination or concerns shall be reported so that additional assessment, investigation, or screening can be accomplished, as necessary. Checklists can be utilized to assist the appraiser in searching for or recognizing potential environmental issues. See paragraph 4-35 (h) and 4-36(c) for issues of contamination on cost shared projects.

b. A team approach, whether formal or informal, may be preferred. The complexity of the legal and technological issues are formidable. Professional disciplines to be represented on complex assignments might include accounting, engineering, finance, historical research, hydrology/geology, industrial hygiene/toxicology, public relations and legal.

c. Numerous state and Federal laws and regulations, as well as USACE regulations and policy guidance will impact appraisal efforts. Federal agencies may be required to comply with Federal, state and local regulations, in most instances, in the same manner and degree as non-Federal entities. See Section 120 (a), of 42 U.S.C. 9620. A listing of some of the important guidance for appraisers is included in Table 4-1. AR 200-1 (paragraph 15-6) and AR 405-80 also identify several environmental, historical and cultural laws and requirements. Check

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carefully for the most current versions as this area has undergone rapid change.

d. Stigma must be adequately considered and discussed. Stigma may take the form of negative impacts to value other than the specific contamination and its associated clean-up costs, whether to a formerly contaminated property, or to a property that may be adjacent to or in proximity to a contaminated property.

e. It is not acceptable for the appraiser to simply deny expertise in contamination and state that the appraisal analysis does not consider any such issue. The appraiser must at least identify what has (and has not) been observed, discovered, or otherwise known regarding contamination and environmental concerns.

f. Properties impacted by contamination, requiring remediation measures, will ordinarily require two value estimates, one "as-is" and one "as-clean," unless otherwise so stated in this regulation.

g. Information retained for real estate audit. When the appraisal report for acquisition indicates the presence or possibility of contamination, such information will be extracted, and inserted as a part of the realty historical file when the real estate audit is being prepared. See Chapter 13 of this regulation.

4-69. Reserved.

4-70. Reserved.

4-71. Reserved.

#### **SECTION X. REVIEW AND APPROVAL**

4-72. Procedure.

a. Review of real estate appraisals is vital to the success of the USACE real estate mission. Every appraisal (except as exempted herein) must be reviewed by a qualified Government review appraiser (reference 49 CFR §24.102d and §24.104). The review process provides an independent validation and will ensure that the appraisal and review represent concurrence as to value of not less than two professionally qualified real estate appraisers. The review appraiser should become sufficiently familiar with the property so that the review opinions can be supported. A representative sample of all types and value ranges of appraisals should occasionally (at least annually) be field reviewed, including re-verification of factual data contained therein.

b. Upon completion of an appraisal, the signed report is to be reviewed by a qualified review appraiser to assure that the information, data, and analysis developed by the appraiser substantiates the estimated value. The review function, in addition to providing quality control and quality assurance, also serves as a means of (i) resolving differences



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that might be found in two or more individual appraisals of a single property, (ii) maintaining consistency in appraisals for the various properties in a project, and (iii) ensuring that the report meets the scope and specifications, including those required by contract.

c. The use of "rubber stamped" approval or one-line "Reviewed & Approved" are not acceptable standard operating procedures especially for complex and controversial assignments. The requirements specified in USPAP Standard 3 should be followed unless the appraisal assignment is exempt. The typical review is considered a detailed review, and the action will be documented by a separate narrative memorandum signed and dated by the authorized review appraiser. Such review memorandum will be prepared in accordance with The Yellow Book and 49 CFR §24.104. See Appendix 4-G for a recommended format of a review certification.

d. If more than one appraisal is obtained for an ownership, each report should be reviewed by the same review appraiser, when possible. A copy of each appraisal report should be submitted for review regardless of variances in opinions of value. The reviewer can review both appraisals in one review memorandum, or write individual reviews.

e. No alterations or additions will be made to a signed appraisal report by anyone other than the appraiser who signed the report. A review appraiser cannot change the value reflected, nor approve an amount other than the appraiser's final conclusion of value. (Pen and ink changes to simple typos or rounding errors that do not change the value are allowed.) If, in the opinion of the review appraiser, after honest and open discussion with the appraiser, the value estimate is not adequately supported, and/or there are other adverse errors or omissions that impact the value conclusion or the integrity of the report, the reviewer will disapprove the report. See Paragraph 4-73 regarding reconciliation of differences of opinion and allowable changes.

f. Appraisal reports obtained by the Department of Justice, other agencies, or clients, and submitted for USACE review, are to be treated in the same manner as those obtained by USACE.

g. The more recent Project Cooperation Agreement's require that appraisals submitted for condemnation purposes be reviewed by USACE within 60 days. Appropriate resources must be committed to accomplish that task.

h. Narrative reviews are preferred. However, the use of form reviews such as the Standard Appraisal Review Report (S.A.R.R.) are deemed appropriate when reviewing credit appraisals for cost-shared projects. The S.A.R.R. also allows side-by-side comparison of up to three appraisals, before and after values, or of an original report plus updates, and may therefore be used to supplement a narrative review.

i. Reviews of cost estimates for reconnaissance studies, and other reports which are not considered appraisals (such as Informal Value Estimates per Paragraph 4-24) are exempted from a detailed review.

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j. Reconnaissance cost estimates or preliminary studies that serve as working documents during the plan formulation stage solely within the district and division, i.e. not for support of project approval, authorization, or funding, need not be submitted to HQUSACE for review and approval. Copies will be forwarded to Division Chief Appraisers, if requested.

k. A review appraiser is not to review any appraisal report of a property which he or she has appraised within the past two years. In this instance, the report must be assigned to another reviewer or be forwarded to the next level of review for appropriate action. This does not apply to Gross Appraisals or preliminary cost estimates.

l. A reviewer is not allowed to review an appraisal report prepared by his or her supervisor.

m. Appraisals of Government-owned quarters will be reviewed by the Division Chief Appraiser, regardless of value.

4-73. Reconciliation of Appraisal Reports.

a. It is recognized that the review function may develop some differences of opinion. In the event that a review appraiser does not agree with the value conclusion of the appraiser, the following action should be taken:

(1) Attempt to reconcile differences with the appraiser. The review appraiser should present additional evidence to the appraiser and discuss the report's problems or weaknesses. If agreement is reached, the appraiser should make appropriate changes in the report.

(2) In the event reconciliation and approval are not possible, the review appraiser may disapprove the report. The reviewer will forward the report and the review certificate to higher authority for post review and information.

(3) Under the circumstance that the reviewer forms an opinion of value that differs from that in the reviewed report, based upon additional data on the subject property or additional market data, that conclusion must be clearly and credibly supported (pursuant to USPAP Standards Rule 3-1, and Statement on Appraisal Standards Number 1). In addition, the reviewer must identify and disclose all assumptions and limiting conditions affecting the development and the reporting of an opinion of value, along with the information and data considered, the appraisal procedures followed, and the reasoning supporting the estimate of value. The reviewer in essence becomes the appraiser of record, and is responsible for all information supporting his or her conclusions of value, both that in the original appraisal and that added. That new opinion of value must then be reviewed and approved by the appropriate review appraiser.

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b. When the Government has not contracted for the appraisal, and the reviewer disagrees with the appraisal report or requires additional information, the reviewer should not contact the appraiser directly without the consent of the sponsor or client who submitted the report. Proper coordination is essential.

c. However, when differences of opinion cannot be resolved on an ethical basis, predicated upon sound reasoning and adequate data properly analyzed and applied, an additional appraisal will be obtained.

4-74. Reserved.

4-75. Reserved.

#### **SECTION XI. REVIEWER DELEGATIONS AND QUALIFICATIONS**

4-76. Delegation Process.

a. The Director of Real Estate, HQUSACE, has delegated through the Division Commanders and their Chiefs of Real Estate, to their Chief Appraisers, the authority to approve appraisal reports in the amounts stated in the delegation. Division Commanders may redelegate this authority through District Commanders and District Chiefs of Real Estate, to District Chief and Review Appraisers as appropriate, subject to restrictions and limitations contained in the primary delegation. Redlegation authority to District Review Appraisers must be approved by the Division Chief Appraiser.

b. All delegations of appraisal review authority will be to an individual by name, not to a position, based on demonstrated knowledge, skills, abilities, education, certification, and past performance. Delegations may be revoked by the appropriate Commander.

4-77. Delegation Levels.

a. Letters of delegation identify the levels of authority for review, approval and disapproval of appraisal reports, delegated to each Division Chief Appraiser. Division Chief Appraisers, and Chiefs of Real Estate, may redelegate authorities (through the Commander) to District Chief Appraisers and Review Appraisers as authorized.

b. In keeping with administration policies to increase authorities to field levels, divisions will constantly monitor the experience and qualifications of review appraisers and delegate to the maximum practicable extent consistent with those qualifications.

c. Divisions and HQUSACE (CERE-E) may review and take appropriate action on complex, difficult and controversial appraisals, including appraisals in support of BRAC and Economic Development Conveyances (EDCs), even though the value(s) may not exceed the delegated authority.

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d. From time to time, CERE-E and the Division Chief Appraisers may request specific appraisals for final review and approval or for post review. At least annually, Divisions or CERE-E will post review some of the appraisals prepared by each individual appraiser for quality assurance (QA) and compliance with regulations and USACE policy.

4-78. Qualifications of Review Appraisers.

a. A review appraiser must have a minimum of five years experience in the field of real estate appraising, and have taken and successfully completed the minimum appraisal courses required for certification as a State Certified General Appraiser as administered by each state with oversight by the Appraisal Foundation. State certification will be required to the extent practicable.

b. The experience record of the review appraiser must indicate that he or she has a thorough knowledge of all the standard appraisal techniques and approaches and has the ability to analyze the market and all pertinent data which affect value. Continuing education will be obtained to keep the review appraiser current with certification requirements.

c. Upon selection as review appraiser, a copy of the employee's qualifications and experience records, along with a copy of the appointment or delegation, will be forwarded through Division to HQUSACE (CERE-E) WASH DC 20314-1000.

4-79. Reserved.

4-80. Reserved.

**SECTION XII. CONTRACTING**

4-81. Contracted Reports and Services.

a. Contracting provides a valuable tool to augment real estate functions and increase effectiveness, flexibility and efficiency. Use of contracted reports and services is encouraged when such can be advantageous to the Government. The Federal Acquisition Regulations (FAR) system and associated requirements form the basis for procedures and authorizations in contracting.

b. It is important to obtain the contract services of the best qualified and available appraisers within the rules governing the contracting process. Price is an important factor, but equal or more important factors include capability and ability to perform each assignment, such as appraisal experience, education, professional reputation, court experience, and demonstrated competency. The concept of best value should always be reviewed with your Contracting Officer or representatives as a part of the process to obtain quality products. Best value may not always be the lowest bidder, if that bidder cannot meet the criteria or requirements for the assignment.

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c. The Yellow Book and 49 CFR §24.103 require that all contract appraisers must be state certified, and authorized to perform the proposed work in the state in which the property being appraised is located. For larger and more complex assignments, districts are encouraged to coordinate with their division to obtain an adequate list of qualified appraisers.

d. Each division/district office may request the contracting office to establish one or more contracts to improve timeliness and response when unexpected assignments or requests for appraisals are received. Indefinite Delivery Contracts, or Blanket Purchase Agreements are examples that offer advantages for appraisal services. When anticipating large projects such as Base Closure activities, an Indefinite Delivery Contract may be the type of contract to use for analyses such as land planning and re-use programs, Highest and Best Use studies, valuation analyses, and similar studies, or for Homeowners Assistance needs.

e. If the valuation/consulting problem is complex, care should be taken to insure that all qualified individuals and firms regardless of size, are encouraged to respond. Given the complexity and magnitude of some projects, the widest solicitation may be the most prudent. Small business, and small disadvantaged business participation is mandatory if the rule of two can be established. Soliciting only from businesses with classification codes of Business Consultant or Real Estate Contractor, may not yield the most qualified respondents.

f. The Federal Acquisition Streamlining Act of 1994 (P.L. 103-355) provides changes for micro-purchases (under \$2,500) by removing many restrictions and required contract clauses, and facilitates the use of credit cards. The simplified acquisition process replaced the small purchase procedures and changed the threshold for advertisement in the Commerce Business Daily (CBD). The use of Electronic Data Interchange (EDI) is a growing trend. Consult with your Contracting Officer regarding these changes and their implementing guidelines.

g. The contractor may utilize the services of qualified non-licensed persons to assist in the performance of the contract. However, all subject properties must be inspected and each report signed by a licensed or certified appraiser (as required by the assignment) as the principal appraiser.

h. The scope of work, as well as other value impacting requirements of each contract, should be appended to the appraisal report, or attached with the review when the report must leave the district.

4-82. Department of Justice Coordination. The selection of contract appraisers or consultants who may be required to give expert testimony must be coordinated with the United States Attorney in the Judicial District where the testimony will be given (or HQ DOJ, depending on who is handling the case), prior to finalizing such appraisal contract. The US Attorney's office must also approve the contractor's per diem fee for

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preparation and court testimony. When agreement cannot be reached with the US Attorney as to the selection of the appraiser(s), a complete report will be submitted to HQUSACE (CERE-E and CERE-A) for resolution with the Attorney General.

4-83. Interdepartmental Services. Division Commanders are authorized to arrange for interdepartmental services of qualified specialists in the regular employ of other USACE offices, or other Government agencies, in connection with special problems or issues such as those concerning minerals, water rights, timber, or other natural resources. Division Commanders are further authorized, at their discretion, to redelegate this authority, or any part thereof, to District Commanders and to their Chiefs of Real Estate.

4-84. Contracting Process.

a. A Government cost estimate will be prepared by a staff appraiser with experience and qualification in the valuation of real estate interests. The estimate will be developed with due consideration to the relative skill and ability required in solving the appraisal problem and the appraiser's time and expense required to complete the assignment. This estimate will be used in determining the reasonableness of the contract appraiser or consultant's fee.

b. A Scope of Work will be prepared by a staff appraiser with experience and qualifications in the valuation of real estate interests. The Scope of Work will contain specific information regarding the assignment. The Scope of Work should contain the minimum standards required for the assignment, such as compliance with USPAP and The Yellow Book, as well as detailed information about the number of parcels, improvements, land areas, mapping, real estate interest to be valued, and so forth.

c. Staff appraiser(s) (either individually or as part of a panel, as appropriate) will prepare and provide to the Contracting Officer, the technical evaluation factors to be considered in the solicitation and award of any appraisal contract which requires competition. A staff appraiser will also participate in the review of the qualifications and proposals of the prospective contractors in order to rate the qualifications of each candidate.

d. Contracting authority rests within the Contracting office. Persons who have not been so designated or authorized are not permitted to contact or solicit price quotes for any purpose, including "planning purposes." Circumvention of established procedures to expedite an action or to give a particular offeror or vendor an advantage over others is strictly prohibited.

e. Planning and preparation are key elements to successful utilization of contracting to the fullest extent. Lack of planning, for instance, does not constitute justification for sole source acquisition, or emergency contracting. The FAR specifically allows identified litigation support as an authorized purpose for sole source contracting.

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See 48 CFR 6.302-3(a)(2)(iii) and (b)(3)(i) and (c). Proper documentation including justification and approval are still required.

f. When contracting for appraisal or consulting reports, the appropriate contract forms and clauses as set forth in the contracting regulations will be used. An outline of the qualifications of the contractor will be included in the contract assembly.

g. All real estate planning schedules must take into consideration the time required for the contracting process.

4-85. Reserved.

4-86. Reserved.

### SECTION XIII. PERSONNEL STATUS AND PERFORMANCE REPORTS

4-87. Required Reports. The following recurring reports and forms are required for submission to CERE-E, Washington, D.C. 20314-1000, from the Commanders of districts and divisions having real estate responsibility.

a. Titles: Real Estate Appraisal Personnel Status, and Appraisal Performance (RCS: CERE-24).

b. Purpose: Data provided by these reports are used to monitor and regulate real estate appraisal activities, to evaluate district performance, to analyze appraisal costs, and to assist in distribution of manpower.

c. Frequency: Annually, at end of fiscal year.

d. Due Date: Submit to CDR USACE (CERE-E) WASH DC 20314-1000 not later than 1 November each year. (These can be transmitted electronically.)

e. Format:

- ENG Form 4861-R, Appraisal Personnel Status (Figure 4-1).

- ENG Form 4862-R, Appraisal Performance (Figure 4-2). This should be obtained via REMIS (Real Estate Management Information System) generated data in the form of ENG Form 4862-R.

f. Copies Required: One.

g. Prepared By: Commanders of divisions and districts having real estate responsibility. (REMIS developed data is expected to be utilized to collect or roll-up appraisal workload data, and reported via ENG Form 4862-R, Appraisal Performance.)

4-88. Reporting Instructions.

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a. APPRAISAL PERSONNEL STATUS: ENG Form 4861-R will be used to list the name, grade and approval authority of each person in the 1171 job series, and the state(s) where each is certified or licensed. If a person occupied the position for less than the full year, show the number of months (effective dates) in the position. List vacant positions and effective dates of vacancy.

b. APPRAISAL PERFORMANCE: ENG Form 4862-R will reflect total figures on real estate appraisals for each district. Divisions will provide a grand total for the division (roll-up district numbers), and include division work accomplished. This count shall include all appraisals and valuation reports which resulted in a completed appraisal report. This includes reconnaissance estimates and Gross Appraisals.

(1) Count only those reports which were completed during the fiscal year. Incomplete reports, or reports in the making, are to be counted in the following year's report. Count only the reports prepared by USACE staff or by Government contracts. Do not count appraisals prepared by a non-Federal sponsor, or submitted by other clients (although you will count the reviews you perform on those reports). If a report contains more than one value conclusion, it will be counted as one report. The total of all value conclusions will determine in which value group the report is counted. The approved or disapproved field in REMIS will trigger the count. If more than one appraisal report is prepared on the same property, each report shall be counted as an appraisal.

c. The format of ENG Form 4862-R will collect and report information as follows:

(1) Reports when the Value Conclusion(s) (per annum rental or interest appraised) was \$25,000 or less:

- a) by Staff Appraisers;
- b) by Contract Appraisers;
- c) by Others; and
- d) Reviews.

(2) Reports when the Value Conclusion(s) (per annum rental or interest appraised) was between \$25,000 and \$200,000:

- a) by Staff Appraisers;
- b) by Contract Appraisers;
- c) by Others; and
- d) Reviews.

(3) Reports when the Value Conclusion(s) (per annum rental or interest appraised) was between \$200,000 and \$2,000,000:

- a) by Staff Appraisers;
- b) by Contract Appraisers;
- c) by Others; and
- d) Reviews.

(4) Reports when the Value Conclusion(s) (per annum rental or interest appraised) was over \$2,000,001.



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- a) by Staff Appraisers;
- b) by Contract Appraisers;
- c) by Others; and
- d) Reviews.

(5) Total costs of contracts for each category of appraisal reports.

(6) Total number of contractors utilized during the fiscal year (not by category).

(7) Contract costs per report for each category of appraisal reports.

(8) Number of reviews will include reviews on non-Federal sponsor appraisals, or on those of other client-submitted reports.

(9) Any significant work product performed by the appraisal branch and not reflected in the above report should be described in a narrative supplement to the report. These include GDM, REDM, REPR, BLPR, RES and similar planning reports prepared by the appraisal staff.

4-89. Reserved.

4-90. Reserved.

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TABLE 4-1

**REFERENCES**

Americans With Disabilities Act (ADA), Public Law 101-336, 104 Stat. 327.

Public Law 101-73. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (FIRREA).

Public Law 91-646, 2 January 1971; 84 Stat. 1894 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, P.L. 100-17, specifically Title IV, Uniform Relocation Act Amendments of 1987 (the Uniform Act).

Public Law 103-160, Title XXIX (The Pryor Amendment) See 32 CFR Parts 175 and 176.

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), with 1986 Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. §9601 to 9675.

Resource Conservation Recovery Act (RCRA), with 1984 Hazardous and Solid Waste Amendments (HSWA), 42 U.S.C. §6901 to 6992k.

Defense Environmental Restoration Program (DERP), 10 U.S.C. §2701 et seq. 44 U.S.C. 3101 dealing with environmental record keeping.

Clean Air Act (CAA), 42 U.S.C. §7401 to 7642.

Federal Water Pollution Control Act, 33 U.S.C. 1321.

Outleases for Banks and Credit Unions, 10 U.S.C. 2667, 12 U.S.C. 1770, AR 210-135, and Technical Manual No. 5-380(AR 405-80).

Title 10 U.S.C. sections 2672, 2828, and 2809.

Wetlands identification, 33 CFR 328.3(b), and as clarified by U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7, dated 26 Sep 90.

Occupational Safety Health Administration (OSHA) Regulations, including 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response requirements for training.

28 CFR Part 36, Americans With Disabilities Act.

41 CFR Subpart 101-18, 101-47.303-4 and 101-47.304-9, Federal Property Management Regulations.

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49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.

Uniform Appraisal Standards for Federal Land Acquisitions, 1992 (The Yellow Book), (composed by the Interagency Land Acquisition Conference). Available from the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402-0001, or "www.usdoj.gov/enrd/land-ack".

Uniform Standards of Professional Appraisal Practice (updated annually), prepared by the Appraisal Standards Board of the Appraisal Foundation.

GSA Bulletin FPMR D-242, Placement of Commercial Antennas on Federal Property, dated June 11, 1997.

OMB Circulars A-25, A-45, A-94, and A-129.

OMB Bulletins 91-05, 92-01, and 92-06.

DOD Directive Numbers 1000.10, 1000.11, and 1000.12.

DOD Instruction Number 7230.7, User Charges.

AR 200-1, Environmental Protection and Enhancement, paragraph 15-6, Real Property Acquisition, Outgrant and Disposal Transactions.

AR 210-12, Establishment of Rental Rates for Quarters Furnished Federal Employees.

AR 210-50, Housing Management.

AR 210-135, Banks and Credit Unions on Army Installations.

AR 405-10, Acquisition of Real Property and Interests Therein.

AR 405-30, Mineral Exploration and Extraction.

AR 405-80, Management of Title and Granting Use of Real Property.

AR 405-90, Disposal of Real Estate.

ER 385-1-92, Safety and Occupational Health Document Requirements for Hazardous/Toxic Waste (HTW) Activities.

ER 405-1-12, Real Estate Handbook.

ER 1110-2-1150, Engineering After Feasibility Studies, Appendix A, paragraph 21.

ER 1165-2-131, Project Cooperation Agreements for New Start Construction Projects.

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ER 1165-2-132, Hazardous, Toxic, and Radioactive Waste (HTRW) Guidance for Civil Works Projects.

ER 1110-2-1301, Cost Estimates - Planning and Design Stages, Appendix B, Page B-3.

Real Property Appraiser's Handbook, U.S. Army Corps of Engineers (October 1955).

Commander's Guide to Environmental Management, October 1990, published by USATHAMA, Report No. CETHA-EC-TR - 90175.

CECW-LN Project Management Guidance Letter No. 8, dated 5 November 1990, Subject: Appraisal of Lands Containing Hazardous and Toxic Wastes on Local Cooperation Projects.

CECW-PA Policy Guidance Letter No. 34, dated 5 May 1992, Non-CERCLA Regulated Contaminated Materials at Civil Works Projects.

CECW-RP Guidance Letter No. 11, Credit for Lands, Easements, and Rights-of-Way at Shore Protection Projects, dated 13 Oct 88; and revision dated 21 Apr 89.

CECW-PN Memorandum dated 5 Feb 88, Subject: Valuing Lands, Easements, and Rights-of-Way Contributed to Section 14 Projects.

CERE-AM, Memorandum dated 20 December 1989, Subject: Revised Economy Limitations.

CERE-AM, Memorandum dated 13 February 1990, Subject: Revised Economy Limitations.

The Effects of Contamination on the Market Value of Property, prepared by O.R. Colan Associates, Inc. in April 1992, for the Federal Highway Administration (FHWA).

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<b>APPRAISAL PERSONNEL STATUS</b> (ER 405-1-12)	REPORTING PERIOD	RCS: CERE-24
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THRU:	TO:	FROM: (Division/District)
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DIVISION / DISTRICT	POSITION/TITLE	NAME OF PERSON	GRADE	STATE OF LICENSE OR CERTIFICATION	APPROVAL AUTHORITY LIMITS

ENG FORM 4861-R, JUN 95

(Edition of November '83 is obsolete

(Proponent: CERE-E)

Figure 4-1

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<b>APPRAISAL PERFORMANCE</b> (ER 405-1-12)	REPORTING PERIOD	RCS: CERE-24
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THRU:		TO:			FROM:			
APPRAISAL REPORTS VALUE RANGE	TOTAL APPRAISAL REPORTS	BY STAFF APPRAISERS	BY CONTRACT APPRAISERS	BY OTHERS	TOTAL COST OF CONTRACTS	NUMBER OF CONTRACTORS	CONTRACT COST PER APPRAISAL	REVIEW REPORTS
Appraisals ≤ \$25,000						_____		
\$25,001 to \$200,000						_____		
\$200,001 to \$2 million						_____		
Over \$2 million						_____		
TOTALS:	-----	-----	-----	-----	-----	-----	-----	-----

ENG FORM 4862-R, DEC 98

(Edition of June '95 is obsolete)

(Proponent: CERE-E)

Figure 4-2

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APPENDIX 4-A

**JURISDICTIONAL EXCEPTION**

Under the heading of **Jurisdictional Exception**, the 1997 edition of the Uniform Standards of Professional Appraisal Practice state: "If any part of these standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction."

As designed for the internal use of USACE, the Brief Appraisal and the Project Cost Estimate depart from Uniform Standards Rules 2-2. For these type reports, state licensed or certified appraisers may wish to include a statement in the report similar to the following:

This (Payment Estimate, Project Cost Estimate, Brief Appraisal, Informal Value Estimate, etc.) was prepared for the internal use of my employer, the U.S. Army, Corps of Engineers. Though not complying with all provisions of the Uniform Standards of Professional Appraisal Practice, the document does conform to USACE regulations. For purposes of this estimate, I have been advised that the U.S. Army Corps of Engineers operates under the Jurisdictional Exception provision of USPAP.

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date

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signature



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APPENDIX 4-B-1

**ADMINISTRATIVE APPRAISAL UPDATE**  
(Example showing time adjustment)

TRACT NO. 99

CAMP SWAMPY, LA

The original appraisal of Tract No. 99 was completed by Mr. I.S. Goody with a date of value of 10 January 1997. His value conclusion was \$99,500 as of that date. The report was approved by Mega District. Negotiations on this tract have not been finalized.

I have examined the subject report to provide a current value estimate of this parcel. The original report is incorporated herein by reference. This update is presented for continuing action.

The subject tract contains 36.25 acres and is improved with a single family brick veneer residence. The tract fronts on a county road (FM-225).

I contacted Mr. Goody on 12 August 1997 and discussed this tract with him. He indicated that if he updated this report to the current date, he would increase his previous appraisal by approximately 0.5% per month, not compounded. This would result in a total increase of 4.5% or a value conclusion of \$104,000, rounded. No other change is considered likely. No other physical changes are known to have occurred since the original appraisal of 10 January.

Mr. Goody referenced Sales Nos. CS-623, CS-628, and CS-642 as more recent sales that reflect and support the above adjustment for time.

This time adjustment is consistent with the conclusions of current appraisals being done by Mr. Goody and other appraisers at Camp Swampy. Therefore, it is my considered opinion that the estimated market value of Tract No. 99, Camp Swampy, as of 12 August 1997 is \$104,000.

12 August 1997

---

A. B. Carlson  
Review Appraiser

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APPENDIX 4-B-2

**ADMINISTRATIVE APPRAISAL UPDATE**

(Example showing no value change for time)

TRACT NO. 399

CAMP SWAMPY, LA

The original appraisal of Tract No. 399 was completed by Mr. A.R. Strong with a date of value of 1 September 1996. His value conclusion was \$110,000 as of that date. The report was approved by Mega District. Negotiations on this tract have not been finalized.

I have examined the subject report to provide a current value estimate of this parcel. The original report is incorporated herein by reference. This update is presented for continuing action.

The subject tract contains 66.75 acres and is improved with a pole barn and stock pond. The tract fronts on a county road (FM-225).

I contacted Mr. Strong on 5 April 1997 and discussed this tract with him. He indicated that he viewed the market as static at the current time, and that he would likely conclude with the same value as before if preparing an appraisal today. No other change is considered likely.

No other physical changes are known to have occurred since the original appraisal of 1 September 1996.

I reference Sales Nos. CS-674, CS-682, and CS-692 as more recent sales that reflect and support that the current economy and real estate market is rather stable in this area. These sales are also similar to the subject property and further support the conclusion of value.

This conclusion is consistent with other appraisals recently prepared for acquisitions at Camp Swampy. Therefore, it is my considered opinion that the estimated market value of Tract No. 399, Camp Swampy, as of 5 April 1997 is \$110,000.

5 April 1997

\_\_\_\_\_  
A. B. Carlson  
Review Appraiser

4-B-2

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APPENDIX 4-C

**GROSS APPRAISALS**

Specific information to incorporate in Gross Appraisals includes the following:

1. TITLE PAGE. This shall include (1) the name, location and type of project, (2) the non-Federal sponsor name - for cost shared (cooperation) projects, or the Installation or Project name, if appropriate, (3) the name of the individual making the report, and (4) the effective date of the appraisal. The effective date should be reasonably close to the date completed.

2. TABLE OF CONTENTS. This can be considered optional for short reports but is seen as essential for longer, more complicated reports. All pages in the report (including the Addendum/Exhibits) must be numbered.

3. STATEMENT OF LIMITING CONDITIONS AND ASSUMPTIONS. In addition to the standard statements, this should include a reference to the level of mapping or detail utilized for this appraisal effort. Indicate the scope of field work and investigations. Include legal opinions as appropriate, and any other valuation-relevant conditions or assumptions.

4. PURPOSE OF APPRAISAL. This shall include the reason for the appraisal (cite any applicable authority), and a definition of all values required, e.g. market value.

5. ESTATES OR PROPERTY RIGHTS. Identify the interests/estates to be acquired, such as fee simple, fee less minerals, permanent flowage easement, temporary construction easement (for xx years), channel improvement easement, navigation easement, clear zone easement, line of sight easement, and so forth. The length or duration of any temporary easements must be identified. Discuss the restrictions of the easements, and the rights remaining to the underlying fee owner.

6. EXISTING EASEMENTS OR INTERESTS. Previously acquired governmental interests (including navigation servitude and other rights already held by the Government) on the project area, whether by Federal or non-Federal entities, must be addressed. The appraiser must also consider existing land use regulations and reasonably probable modifications, economic supply and demand, the physical adaptability of the property, and neighborhood trends (avoid stereotyped or biased assumptions).

7. ENVIRONMENTAL ISSUES. The appraiser's knowledge of the presence (or absence) of environmental concerns, including potential Hazardous, Toxic, and Radiological Wastes (HTRWs), and the extent/level of study available on the property or project. It is the appraisers responsibility to investigate and report observations, and potential problems including knowledge of historic use. Several guidance papers have been issued on this topic, and industry guidance continues to evolve. CERCLA contamination may be considered different than non-CERCLA for project cost purposes.

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8. AREA, CITY AND NEIGHBORHOOD DATA. This should be specific data having a bearing on the project, and exclude or minimize the boilerplate. It should include information such as population and employment (growth or decline) and other significant factors and trends that may directly affect the appraised property or project.

9. PROPERTY/PROJECT DATA. Adequate narrative must be provided to allow the reader to visualize the area and the lands involved. Include maps and other descriptive material that are sufficiently complete to properly identify the property appraised.

a. Site. Describe the location, frontage, access, zoning, soil types, land classifications, drainage, topography, typical productive capability, available utilities, timber, mineral deposits, water rights, existing easements/encumbrances, and any other physical attributes or limitations. A statement should be made concerning the existence or nonexistence of mineral deposits having a commercial value. In case of partial acquisitions, discuss access both before and after the acquisition and impacts to the remaining tracts. Also discuss the positive as well as the detrimental and hazardous factors inherent in the location of the property, such as wetlands, or Historic Districts. Coordination with state and local officials may be required to obtain information on such impacts.

b. Improvements. This description may be by narrative or schedule form and shall include information as to the size, age, and type of construction of major improvements. Tax records confirmed by a drive-by inspection should usually provide adequate information for most Gross Appraisals.

c. Ownership Data. Ownerships should be addressed to the extent possible. Tract/ownership count should be provided.

10. ANALYSIS OF HIGHEST AND BEST USE. The report shall state, and briefly explain, the highest and best uses that are reasonable and probable for the properties in the project area.

11. CONSIDERATION OF FEDERAL & STATE RULE CONCEPTS FOR COST SHARED PROJECTS.

a. If privately owned real property is to be acquired by the non-Federal sponsor or a local governmental agency, the state rules of compensation will normally apply and the Gross Appraisal should be based on the state rules. A summary of the differences between the state and Federal rules of compensation shall be presented along with the estimated effect on value using state rules as compared to the Federal rules. When the application of state rules would have a substantial impact on the estimated cost of the real estate interests, a discussion should be included as to the possibility and feasibility of the land being acquired by the U. S. Government.

b. There are some exceptions to the application of the state rules. If the state rules allow compensation for non-real estate items such as goodwill, consequential damages, and personal property, these items are not to be included in the Gross Appraisal. A second exception applies to real property owned by a sponsor and which was not acquired in anticipation of the current project under consideration. Federal rules will be used in these instances. This means that benefits as well as damages can be considered in estimating the value due to the project acquisition.

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12. CONSIDERATION OF VALUE BY APPLICABLE APPROACHES.

a. The comparable sales utilized shall be weighed and briefly explained in relation to the subject property to indicate the reasoning behind the appraiser's final value estimate from this approach.

b. If the appraiser utilizes the cost approach he/she should state the source (book and page if a national service) of all figures used. The dollar amounts of depreciation shall be explained in narrative form. Depreciation should be estimated from the market.

c. If the Income Approach is utilized, adequate factual data to support each figure and factor used shall be developed, and shall be arranged in detailed form to show at least (1) estimated gross economic rent or income; (2) allowance for vacancy and credit losses; and (3) an itemized estimate of total expenses including reserves for replacements. Capitalization of net income shall be at the rate prevailing for this type of property and location. The capitalization technique, method and rate used shall be explained in narrative form supported by a statement of sources of rates and factors.

13. CORRELATION. The report should clearly identify how the market data relate to the subject properties. The reader must be able to follow how the appraiser reached a valuation conclusion. If more than one approach has been used, an explanation should be included as to how the different approaches have been utilized and how they relate to the subject properties.

14. SEVERANCE DAMAGES. Include discussion of impact on the remainder (for partial acquisitions) to justify or support estimated severance damages.

15. SUMMARY. Summarize the estimated costs by area/stage/phase/reach/site, by estates within each area, and allocated by land classification, improvements and severance damages within each area. The contributory value of minerals, timber and other items on the subject property must be estimated, even if expert analysis from a timber consultant or mineral consultant is not available.

16. CONTINGENCIES (If included in the Gross Appraisal). Documentation.

17. CERTIFICATION. Consistent with The Yellow Book and USPAP.

18. MAPS. As applicable.

19. PHOTOGRAPHS. Pictures shall show relevant aspects of the project, the major improvements, typical land views, plus any unusual features. When a large number of buildings are involved, a few pictures may be used as representative samples for each type. Photographs of the best comparables should be included. All graphic material shall include captions.

20. COMPARABLE DATA DETAILS. A complete write-up of the comparable (sales) information will be included. The details should include all pertinent data relevant to the transactions, including items such as minerals, timber, or contamination issues, and their contributory value or impact on value. All comparable data must be verified.

21. APPRAISER QUALIFICATIONS. Include the qualifications of all persons contributing to the report.

APPENDIX 4-D

**GENERAL INSTRUCTIONS for BRIEF INLEASE APPRAISALS**

The application of this format will be limited to those proposed lease actions when the total rental does not exceed \$50,000 per annum.

This appraisal report format may be utilized by appraisers and those designated realty specialists authorized to perform these leasing actions.

This report is to be reviewed by a qualified review appraiser.

**NEIGHBORHOOD DESCRIPTION:**

This section should include a general description of the area of the subject property, location, conformity, trends, relationship to shopping, employment, services, public transportation, and schools.

**DESCRIPTION OF SUBJECT BUILDING AND SITE:**

This should include building size, condition, construction type and quality, floors, age, features, HVAC, site size, access, topography, curb appeal, and available utilities.

**DESCRIPTION OF LEASED SPACE:**

This should include such items as size, condition, amenities, finish, room count and arrangement, appliances and/or fixtures (if applicable), and comments on the desirability or lack of desirable features considering the proposed use.

**DESCRIPTION OF PROPOSED LEASE:**

This should include all relevant terms and conditions. The report should state whether or not utilities and/or services are included, renewal options, escalation clauses, and perquisites or detriments involved.

**COMPARABLE MARKET DATA AND ANALYSIS:**

A minimum of three comparable rentals must be utilized for comparison and analysis.

The appraiser or realty specialist must make appropriate adjustments to derive the indicated market rental of the subject property.

If a fee value estimate is required, per the Economy Policy, the net rental may be capitalized for a simplified value estimate.

**ATTACHMENTS:**

Attach map(s) showing location of subject and the comparable rentals utilized. Attach photographs of the subject facility and the comparable rentals utilized.

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APPENDIX 4-D

SUGGESTED FORMAT for BRIEF INLEASE APPRAISAL \$50,000 OR LESS per ANNUM	
ADDRESS OF PROPERTY	TYPE OF PROPERTY
NAME OF OWNER (AGENT)	OWNER'S (AGENT'S) ADDRESS AND TELEPHONE NO.
Neighborhood Description	
Description of Subject Building and Site	
History	
Description of Lease Space	
ATTACH NEIGHBORHOOD MAP AND PHOTOGRAPHS OF SUBJECT AND COMPARABLES	
HIGHEST AND BEST USE =	
Terms / Conditions of Proposed Lease	
RENOVATION, REPAIRS, ETC. - TO BE PERFORMED BY OWNER PRIOR TO OCCUPANCY	
ATTACH COST ESTIMATES OF GOVERNMENT REQUIRED ALTERATIONS TO BE INSTALLED BY LESSOR	

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(suggested format)		COMPARABLE MARKET DATA AND ANALYSIS			
GENERAL DATA -- SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2		COMPARABLE NO. 3	
TENANT NAME:					
ADDRESS:					
CITY, STATE, ZIP:					
DATE OF LEASE:					
SQUARE FEET:					
LEASE TERM:					
TENANT IMPROVEMENTS:					
PARKING:					
SUMMARY of RENT					
BASE RENT:					
REAL ESTATE TAXES:					
UTILITIES:					
CLEANING:					
CAM (Common Area):					
OTHER CHARGES:					
PARKING:					
TOTAL RENT:					
ADJUSTMENTS:		\$/ADJ		\$/ADJ	
LOCATION (NEIGHBORHOOD):					
LOCATION (in Property):					
CONDITION / AGE:					
OPERATING EXPENSE:					
STEP-UP / ESCALATION:					
TENANT IMPROVEMENTS:					
PARKING:					
OTHER:					
OTHER:					
OTHER:					
TOTAL ADJUSTMENTS:					
INDICATED RENT:					
MARKET RENT SELECTION:					



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APPRAISER COMMENTS: (suggested format)

COMPARABLE 1: The indicated rent is \$ \_\_\_\_\_ per square foot.

COMPARABLE 2: The indicated rent is \$ \_\_\_\_\_ per square foot.

COMPARABLE 3: The indicated rent is \$ \_\_\_\_\_ per square foot.

VALUE CORRELATION / CONCLUSION:

<p>BASE / SHELTER RENTAL VALUE = \$ _____</p> <p>ANNUAL MARKET RENTAL INCL UTIL &amp; SERVICES = \$ _____</p> <p>AMORTIZATION OF IMPROVEMENTS = \$ _____</p>	<p>I CERTIFY THAT I HAVE INSPECTED THE SUBJECT PROPERTY AND THE COMPARABLES USED IN THIS REPORT. I HAVE NO PERSONAL INTEREST, PRESENT OR PROSPECTIVE IN THE PROPERTY, OR WITH THE OWNERS THEREOF. THE VALUES REPORTED REPRESENT MY BEST UNBIASED JUDGEMENT.</p> <p>DATE _____</p> <p>SIGNATURE _____</p> <p>NAME &amp; TITLE:</p>
--	---

REVIEWING APPRAISER'S COMMENTS:

I CERTIFY THAT I HAVE REVIEWED THIS REPORT. I HAVE (HAVE NOT) INSPECTED THE PROPERTY. I HAVE NO PERSONAL INTEREST IN THE PROPERTY. I CONCUR (DO NOT CONCUR) IN THE VALUE CONCLUSIONS REPORTED ABOVE. THE REPORT IS (IS NOT) APPROVED.

DATE \_\_\_\_\_ SIGNATURE \_\_\_\_\_

NAME & TITLE:

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APPENDIX 4-E

**RENTAL APPRAISALS**

Rental Value Appraisal Reports will include the following:

1. Summary page.
2. Definitions.
3. Neighborhood and area analysis.
4. Land description, showing street frontages, lot depths, topography, access, available utilities, property taxes and insurance.
5. Adequate description of improvements and furnishings, including type of construction, total floor space, method used to measure the space, floor load for storage space, number of rentable rooms, or income-producing space, nonproductive or public space, available utilities, compliance with fire safety requirements, conformance with the Americans With Disabilities Act of 1992, and presence of any hazardous materials such as asbestos or lead based paint.
6. Highest and best use.
7. Analysis and discussions of current rentals of similar properties and rental history of the property appraised. Analysis of vacancy rates of subject and comparables.
8. Discussion of the appraisal process and rental rates applicable to the terms of the proposed lease, particularly as to any differential in the rate of return applicable to customary long term rentals.
9. Appraiser' certification and required exhibits (i.e., location map, site plan, floor plan with scale or dimensions, comparable map, photos, comparable rental sheets).

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APPENDIX 4-F

U.S. ARMY CORPS OF ENGINEERS  
**SUGGESTED FORMAT FOR INFORMAL VALUE ESTIMATE**  
(\$5,000 or Less)

1. Project Data
  - a. Project Name: \_\_\_\_\_
  - b. Tract Number: \_\_\_\_\_

(attach photo  
for acquisitions)
2. Ownership Data:
  - a. Owner Name: \_\_\_\_\_
  - b. Owner Address: \_\_\_\_\_  
\_\_\_\_\_
3. Property Data:
  - a. Property Location: \_\_\_\_\_  
\_\_\_\_\_
  - b. Neighborhood Description: \_\_\_\_\_  
\_\_\_\_\_
  - c. Property Description (Describe land and improvements being valued; show units of measurement being used, i.e. sq. ft. or acres): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. Estate owned/being valued: \_\_\_\_\_  
\_\_\_\_\_
5. Basis/support for value of subject property: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Remarks or additional explanation: \_\_\_\_\_  
\_\_\_\_\_
7. Conclusion: My opinion of the market value for the subject property interest as of the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_ is \$\_\_\_\_\_

I certify that I have no personal interest, present or prospective in the property, or with the owners thereof. The value reported represents my best unbiased judgement. Pursuant to ER 405-1-12, paragraph 4-24, this estimate is exempt from the provisions of USPAP by virtue of the Jurisdictional Exception.

Date \_\_\_\_\_ Signature \_\_\_\_\_

Name and Title: \_\_\_\_\_

CONCUR: \_\_\_\_\_  
DATE: \_\_\_\_\_ Signature & Title

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APPENDIX 4-G

**SAMPLE REVIEW FORMAT AND REVIEWER CERTIFICATION**  
(As guided by USPAP)

DIVISION/DISTRICT OFFICE

PROJECT:

PROPERTY / TRACT:

OWNER:

LOCATION:

APPRAISER:

EFFECTIVE DATE OF APPRAISAL:

ESTATE APPRAISED:

HIGHEST AND BEST USE:

VALUATION SUMMARY:

SCOPE OF REVIEW: Disclose the nature, extent, and detail of the review process undertaken.

GENERAL COMMENTS: Form an opinion as to the completeness of the report under review. Form an opinion as to the apparent adequacy and relevance of the data and the propriety of any adjustments to the data. Form an opinion as to the appropriateness of the appraisal methods and techniques used and develop the reasons for any disagreement. Form an opinion as to whether the analyses, opinions, and conclusions in the report under review are appropriate and reasonable, and develop the reasons for any disagreement. State forth your opinions, reasons and conclusions.

CERTIFICATION:

I certify that to the best of my knowledge and belief:

-- the facts and data reported by the review appraiser and used in the review process are true and correct.

-- the analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased professional analyses, opinions and conclusions.

-- I have no (or the specified) present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.

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-- my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this review report.

-- my analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions, and in conformity to the Uniform Standards of Professional Appraisal Practice.

-- I did (did not) personally inspect the subject property(s) of the report under review.

-- no one provided significant professional assistance to the person signing this review report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

(As applicable) The Appraisal Foundation through each state's division of registration of Real Estate Appraisers requires a mandatory program of continuing education for recertification. I am in compliance with the requirements of the program."

(signature)  
Signature Block

DATE: \_\_\_\_\_

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TABLE 4-1

**REFERENCES**

Americans With Disabilities Act (ADA), Public Law 101-336, 104 Stat. 327.

Public Law 101-73. Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (FIRREA).

Public Law 91-646, 2 January 1971; 84 Stat. 1894 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, P.L. 100-17, specifically Title IV, Uniform Relocation Act Amendments of 1987 (the Uniform Act).

Public Law 103-160, Title XXIX (The Pryor Amendment) See 32 CFR Parts 175 and 176.

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund), with 1986 Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. §9601 to 9675.

Resource Conservation Recovery Act (RCRA), with 1984 Hazardous and Solid Waste Amendments (HSWA), 42 U.S.C. §6901 to 6992k.

Defense Environmental Restoration Program (DERP), 10 U.S.C. §2701 et seq. 44 U.S.C. 3101 dealing with environmental record keeping.

Clean Air Act (CAA), 42 U.S.C. §7401 to 7642.

Federal Water Pollution Control Act, 33 U.S.C. 1321.

Outleases for Banks and Credit Unions, 10 U.S.C. 2667, 12 U.S.C. 1770, AR 210-135, and Technical Manual No. 5-380(AR 405-80).

Title 10 U.S.C. sections 2672, 2828, and 2809.

Wetlands identification, 33 CFR 328.3(b), and as clarified by U.S. Army Corps of Engineers Regulatory Guidance Letter No. 90-7, dated 26 Sep 90.

Occupational Safety Health Administration (OSHA) Regulations, including 29 CFR 1910.120 Hazardous Waste Operations and Emergency Response requirements for training.

28 CFR Part 36, Americans With Disabilities Act.

41 CFR Subpart 101-18, 101-47.303-4 and 101-47.304-9, Federal Property Management Regulations.

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49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs.

Uniform Appraisal Standards for Federal Land Acquisitions, 1992 (The Yellow Book), (composed by the Interagency Land Acquisition Conference). Available from the Superintendent of Documents, U. S. Government Printing Office, Washington, DC 20402-0001, or "www.usdoj.gov/enrd/land-ack".

Uniform Standards of Professional Appraisal Practice (updated annually), prepared by the Appraisal Standards Board of the Appraisal Foundation.

GSA Bulletin FPMR D-242, Placement of Commercial Antennas on Federal Property, dated June 11, 1997.

OMB Circulars A-25, A-45, A-94, and A-129.

OMB Bulletins 91-05, 92-01, and 92-06.

DOD Directive Numbers 1000.10, 1000.11, and 1000.12.

DOD Instruction Number 7230.7, User Charges.

AR 200-1, Environmental Protection and Enhancement, paragraph 15-6, Real Property Acquisition, Outgrant and Disposal Transactions.

AR 210-12, Establishment of Rental Rates for Quarters Furnished Federal Employees.

AR 210-50, Housing Management.

AR 210-135, Banks and Credit Unions on Army Installations.

AR 405-10, Acquisition of Real Property and Interests Therein.

AR 405-30, Mineral Exploration and Extraction.

AR 405-80, Management of Title and Granting Use of Real Property.

AR 405-90, Disposal of Real Estate.

ER 385-1-92, Safety and Occupational Health Document Requirements for Hazardous/Toxic Waste (HTW) Activities.

ER 405-1-12, Real Estate Handbook.

ER 1110-2-1150, Engineering After Feasibility Studies, Appendix A, paragraph 21.

ER 1165-2-131, Project Cooperation Agreements for New Start Construction Projects.

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ER 1165-2-132, Hazardous, Toxic, and Radioactive Waste (HTRW) Guidance for Civil Works Projects.

ER 1110-2-1301, Cost Estimates - Planning and Design Stages, Appendix B, Page B-3.

Real Property Appraiser's Handbook, U.S. Army Corps of Engineers (October 1955).

Commander's Guide to Environmental Management, October 1990, published by USATHAMA, Report No. CETHA-EC-TR - 90175.

CECW-LN Project Management Guidance Letter No. 8, dated 5 November 1990, Subject: Appraisal of Lands Containing Hazardous and Toxic Wastes on Local Cooperation Projects.

CECW-PA Policy Guidance Letter No. 34, dated 5 May 1992, Non-CERCLA Regulated Contaminated Materials at Civil Works Projects.

CECW-RP Guidance Letter No. 11, Credit for Lands, Easements, and Rights-of-Way at Shore Protection Projects, dated 13 Oct 88; and revision dated 21 Apr 89.

CECW-PN Memorandum dated 5 Feb 88, Subject: Valuing Lands, Easements, and Rights-of-Way Contributed to Section 14 Projects.

CERE-AM, Memorandum dated 20 December 1989, Subject: Revised Economy Limitations.

CERE-AM, Memorandum dated 13 February 1990, Subject: Revised Economy Limitations.

The Effects of Contamination on the Market Value of Property, prepared by O.R. Colan Associates, Inc. in April 1992, for the Federal Highway Administration (FHWA).



TABLE 4-1

REGULATORY REFERENCES AND OTHER PERTINENT MATERIAL

Uniform Appraisal Standards for Federal Land Acquisitions, 1973  
(Interagency Land Acquisition Conference) - available from the  
Superintendent of Documents, U.S. Government Printing Office,  
\* Washington, D. C. 20402-0001.

A Procedural Guide for the Acquisition of Real Property by Government  
Agencies, Department of Justice, 1972 - available from the  
Superintendent of Documents, U. S. Government Printing Office,  
Washington, D. C. 20402-0001.

Uniform Relocation Assistance and Real Property Acquisition Policies Act  
of 1970 (Public Law 91-646, 2 January 1971; 84 Stat. 1894).

OMB Circular A-45

DOD Directive No. 1000.10

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<b>APPRAISAL PERSONNEL STATUS</b> (ER 405-1-12)	REPORTING PERIOD	RCS: CERE-24
--	------------------	--------------

THRU:	TO:	FROM: (Division/District)
-------	-----	---------------------------

DIVISION / DISTRICT	POSITION/TITLE	NAME OF PERSON	GRADE	STATE OF LICENSE OR CERTIFICATION	APPROVAL AUTHORITY LIMITS

ENG FORM 4861-R, JUN 95

(Edition of November '83 is obsolete

(Proponent: CERE-E)

Figure 4-1

APPRAISAL PERSONNEL STATUS <small>(ER 405-1.11)</small>		REPORTING PERIOD	RCS: DAEN-RE-24
THRU:		FROM:	
DIVISION/DISTRICT <small>a</small>	POSITION/TITLE <small>b</small>	NAME <small>c</small>	GRADE <small>d</small>
		APPROVAL AUTHORITY LIMITS <small>e</small>	
<p><b>FOR ILLUSTRATION PURPOSES ONLY</b>                  (Local reproduction authorized - blank masters available from local FMO)</p>			

(Proponent: DAEN-REE)

ENG FORM 4861-R, Nov 83

Figure 4-1

DIVISION/DISTRICT <i>a</i>	POSITION/TITLE <i>b</i>	NAME <i>c</i>	GRADE <i>d</i>	APPROVAL AUTHORITY LIMITS <i>e</i>
<p><b>FOR ILLUSTRATION PURPOSES ONLY</b>            (Local reproduction authorized - blank masters available from local FMO)</p>				

(Reverse of ENG Form 4861-R)

Figure 4-1 continued

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<b>APPRAISAL PERFORMANCE</b> (ER 405-1-12)	REPORTING PERIOD	RCS: CERE-24
---	------------------	--------------

THRU:		TO:			FROM:			
APPRAISAL REPORTS VALUE RANGE	TOTAL APPRAISAL REPORTS	BY STAFF APPRAISERS	BY CONTRACT APPRAISERS	BY OTHERS	TOTAL COST OF CONTRACTS	NUMBER OF CONTRACTORS	CONTRACT COST PER APPRAISAL	REVIEW REPORTS
Appraisals ≤ \$25,000						_____		
\$25,001 to \$200,000						_____		
\$200,001 to \$2 million						_____		
Over \$2 million						_____		
TOTALS:	-----	-----	-----	-----	-----	-----	-----	-----

ENG FORM 4862-R, DEC 98

(Edition of June '95 is obsolete)

(Proponent: CERE-E)

Figure 4-2

APPRAISAL PERFORMANCE <small>(ER 405-1-11)</small>					REPORTING PERIOD		RCS: DAEN-RE-24	
THRU:			TO:		FROM:			
DIVISION/DISTRICT <i>a</i>	TOTAL APPRAISALS <i>b</i>	APPRAISALS BY CONTRACTOR <i>c</i>	TOTAL COST OF CONTRACTS <i>d</i>	CONTRACT COST PER APPRAISAL <i>e</i>	NUMBER OF CONTRACTORS <i>f</i>	TOTAL GDM's, REDM's, REPR's AND BLPR's <i>g</i>	MISCELLANEOUS REPORTS <i>h</i>	REVIEW REPORTS
<p><b>FOR ILLUSTRATION PURPOSES ONLY</b>                      (Local reproduction authorized - blank masters available from local FMO)</p>								

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USACE\_ESMT006075  
 Figure 4-2

ENG FORM 4862-R, Nov 83

(Proponent: DAEN-REE)

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 20 Nov 85

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APPENDIX 4-A

**JURISDICTIONAL EXCEPTION**

Under the heading of **Jurisdictional Exception**, the 1997 edition of the Uniform Standards of Professional Appraisal Practice state: "If any part of these standards is contrary to the law or public policy of any jurisdiction, only that part shall be void and of no force or effect in that jurisdiction."

As designed for the internal use of USACE, the Brief Appraisal and the Project Cost Estimate depart from Uniform Standards Rules 2-2. For these type reports, state licensed or certified appraisers may wish to include a statement in the report similar to the following:

This (Payment Estimate, Project Cost Estimate, Brief Appraisal, Informal Value Estimate, etc.) was prepared for the internal use of my employer, the U.S. Army, Corps of Engineers. Though not complying with all provisions of the Uniform Standards of Professional Appraisal Practice, the document does conform to USACE regulations. For purposes of this estimate, I have been advised that the U.S. Army Corps of Engineers operates under the Jurisdictional Exception provision of USPAP.

---

date

---

signature

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APPENDIX 4-B-1

**ADMINISTRATIVE APPRAISAL UPDATE**  
(Example showing time adjustment)

TRACT NO. 99

CAMP SWAMPY, LA

The original appraisal of Tract No. 99 was completed by Mr. I.S. Goody with a date of value of 10 January 1997. His value conclusion was \$99,500 as of that date. The report was approved by Mega District. Negotiations on this tract have not been finalized.

I have examined the subject report to provide a current value estimate of this parcel. The original report is incorporated herein by reference. This update is presented for continuing action.

The subject tract contains 36.25 acres and is improved with a single family brick veneer residence. The tract fronts on a county road (FM-225).

I contacted Mr. Goody on 12 August 1997 and discussed this tract with him. He indicated that if he updated this report to the current date, he would increase his previous appraisal by approximately 0.5% per month, not compounded. This would result in a total increase of 4.5% or a value conclusion of \$104,000, rounded. No other change is considered likely. No other physical changes are known to have occurred since the original appraisal of 10 January.

Mr. Goody referenced Sales Nos. CS-623, CS-628, and CS-642 as more recent sales that reflect and support the above adjustment for time.

This time adjustment is consistent with the conclusions of current appraisals being done by Mr. Goody and other appraisers at Camp Swampy. Therefore, it is my considered opinion that the estimated market value of Tract No. 99, Camp Swampy, as of 12 August 1997 is \$104,000.

12 August 1997

---

A. B. Carlson  
Review Appraiser



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APPENDIX 4-B-2

**ADMINISTRATIVE APPRAISAL UPDATE**

(Example showing no value change for time)

TRACT NO. 399

CAMP SWAMPY, LA

The original appraisal of Tract No. 399 was completed by Mr. A.R. Strong with a date of value of 1 September 1996. His value conclusion was \$110,000 as of that date. The report was approved by Mega District. Negotiations on this tract have not been finalized.

I have examined the subject report to provide a current value estimate of this parcel. The original report is incorporated herein by reference. This update is presented for continuing action.

The subject tract contains 66.75 acres and is improved with a pole barn and stock pond. The tract fronts on a county road (FM-225).

I contacted Mr. Strong on 5 April 1997 and discussed this tract with him. He indicated that he viewed the market as static at the current time, and that he would likely conclude with the same value as before if preparing an appraisal today. No other change is considered likely.

No other physical changes are known to have occurred since the original appraisal of 1 September 1996.

I reference Sales Nos. CS-674, CS-682, and CS-692 as more recent sales that reflect and support that the current economy and real estate market is rather stable in this area. These sales are also similar to the subject property and further support the conclusion of value.

This conclusion is consistent with other appraisals recently prepared for acquisitions at Camp Swampy. Therefore, it is my considered opinion that the estimated market value of Tract No. 399, Camp Swampy, as of 5 April 1997 is \$110,000.

5 April 1997

\_\_\_\_\_  
A. B. Carlson  
Review Appraiser

4-B-2

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APPENDIX 4-C

**GROSS APPRAISALS**

Specific information to incorporate in Gross Appraisals includes the following:

1. TITLE PAGE. This shall include (1) the name, location and type of project, (2) the non-Federal sponsor name - for cost shared (cooperation) projects, or the Installation or Project name, if appropriate, (3) the name of the individual making the report, and (4) the effective date of the appraisal. The effective date should be reasonably close to the date completed.

2. TABLE OF CONTENTS. This can be considered optional for short reports but is seen as essential for longer, more complicated reports. All pages in the report (including the Addendum/Exhibits) must be numbered.

3. STATEMENT OF LIMITING CONDITIONS AND ASSUMPTIONS. In addition to the standard statements, this should include a reference to the level of mapping or detail utilized for this appraisal effort. Indicate the scope of field work and investigations. Include legal opinions as appropriate, and any other valuation-relevant conditions or assumptions.

4. PURPOSE OF APPRAISAL. This shall include the reason for the appraisal (cite any applicable authority), and a definition of all values required, e.g. market value.

5. ESTATES OR PROPERTY RIGHTS. Identify the interests/estates to be acquired, such as fee simple, fee less minerals, permanent flowage easement, temporary construction easement (for xx years), channel improvement easement, navigation easement, clear zone easement, line of sight easement, and so forth. The length or duration of any temporary easements must be identified. Discuss the restrictions of the easements, and the rights remaining to the underlying fee owner.

6. EXISTING EASEMENTS OR INTERESTS. Previously acquired governmental interests (including navigation servitude and other rights already held by the Government) on the project area, whether by Federal or non-Federal entities, must be addressed. The appraiser must also consider existing land use regulations and reasonably probable modifications, economic supply and demand, the physical adaptability of the property, and neighborhood trends (avoid stereotyped or biased assumptions).

7. ENVIRONMENTAL ISSUES. The appraiser's knowledge of the presence (or absence) of environmental concerns, including potential Hazardous, Toxic, and Radiological Wastes (HTRWs), and the extent/level of study available on the property or project. It is the appraisers responsibility to investigate and report observations, and potential problems including knowledge of historic use. Several guidance papers have been issued on this topic, and industry guidance continues to evolve. CERCLA contamination may be considered different than non-CERCLA for project cost purposes.

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8. AREA, CITY AND NEIGHBORHOOD DATA. This should be specific data having a bearing on the project, and exclude or minimize the boilerplate. It should include information such as population and employment (growth or decline) and other significant factors and trends that may directly affect the appraised property or project.

9. PROPERTY/PROJECT DATA. Adequate narrative must be provided to allow the reader to visualize the area and the lands involved. Include maps and other descriptive material that are sufficiently complete to properly identify the property appraised.

a. Site. Describe the location, frontage, access, zoning, soil types, land classifications, drainage, topography, typical productive capability, available utilities, timber, mineral deposits, water rights, existing easements/encumbrances, and any other physical attributes or limitations. A statement should be made concerning the existence or nonexistence of mineral deposits having a commercial value. In case of partial acquisitions, discuss access both before and after the acquisition and impacts to the remaining tracts. Also discuss the positive as well as the detrimental and hazardous factors inherent in the location of the property, such as wetlands, or Historic Districts. Coordination with state and local officials may be required to obtain information on such impacts.

b. Improvements. This description may be by narrative or schedule form and shall include information as to the size, age, and type of construction of major improvements. Tax records confirmed by a drive-by inspection should usually provide adequate information for most Gross Appraisals.

c. Ownership Data. Ownerships should be addressed to the extent possible. Tract/ownership count should be provided.

10. ANALYSIS OF HIGHEST AND BEST USE. The report shall state, and briefly explain, the highest and best uses that are reasonable and probable for the properties in the project area.

11. CONSIDERATION OF FEDERAL & STATE RULE CONCEPTS FOR COST SHARED PROJECTS.

a. If privately owned real property is to be acquired by the non-Federal sponsor or a local governmental agency, the state rules of compensation will normally apply and the Gross Appraisal should be based on the state rules. A summary of the differences between the state and Federal rules of compensation shall be presented along with the estimated effect on value using state rules as compared to the Federal rules. When the application of state rules would have a substantial impact on the estimated cost of the real estate interests, a discussion should be included as to the possibility and feasibility of the land being acquired by the U. S. Government.

b. There are some exceptions to the application of the state rules. If the state rules allow compensation for non-real estate items such as goodwill, consequential damages, and personal property, these items are not to be included in the Gross Appraisal. A second exception applies to real property owned by a sponsor and which was not acquired in anticipation of the current project under consideration. Federal rules will be used in these instances. This means that benefits as well as damages can be considered in estimating the value due to the project acquisition.

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12. CONSIDERATION OF VALUE BY APPLICABLE APPROACHES.

a. The comparable sales utilized shall be weighed and briefly explained in relation to the subject property to indicate the reasoning behind the appraiser's final value estimate from this approach.

b. If the appraiser utilizes the cost approach he/she should state the source (book and page if a national service) of all figures used. The dollar amounts of depreciation shall be explained in narrative form. Depreciation should be estimated from the market.

c. If the Income Approach is utilized, adequate factual data to support each figure and factor used shall be developed, and shall be arranged in detailed form to show at least (1) estimated gross economic rent or income; (2) allowance for vacancy and credit losses; and (3) an itemized estimate of total expenses including reserves for replacements. Capitalization of net income shall be at the rate prevailing for this type of property and location. The capitalization technique, method and rate used shall be explained in narrative form supported by a statement of sources of rates and factors.

13. CORRELATION. The report should clearly identify how the market data relate to the subject properties. The reader must be able to follow how the appraiser reached a valuation conclusion. If more than one approach has been used, an explanation should be included as to how the different approaches have been utilized and how they relate to the subject properties.

14. SEVERANCE DAMAGES. Include discussion of impact on the remainder (for partial acquisitions) to justify or support estimated severance damages.

15. SUMMARY. Summarize the estimated costs by area/stage/phase/reach/site, by estates within each area, and allocated by land classification, improvements and severance damages within each area. The contributory value of minerals, timber and other items on the subject property must be estimated, even if expert analysis from a timber consultant or mineral consultant is not available.

16. CONTINGENCIES (If included in the Gross Appraisal). Documentation.

17. CERTIFICATION. Consistent with The Yellow Book and USPAP.

18. MAPS. As applicable.

19. PHOTOGRAPHS. Pictures shall show relevant aspects of the project, the major improvements, typical land views, plus any unusual features. When a large number of buildings are involved, a few pictures may be used as representative samples for each type. Photographs of the best comparables should be included. All graphic material shall include captions.

20. COMPARABLE DATA DETAILS. A complete write-up of the comparable (sales) information will be included. The details should include all pertinent data relevant to the transactions, including items such as minerals, timber, or contamination issues, and their contributory value or impact on value. All comparable data must be verified.

21. APPRAISER QUALIFICATIONS. Include the qualifications of all persons contributing to the report.

APPENDIX 4-D

**GENERAL INSTRUCTIONS for BRIEF INLEASE APPRAISALS**

The application of this format will be limited to those proposed lease actions when the total rental does not exceed \$50,000 per annum.

This appraisal report format may be utilized by appraisers and those designated realty specialists authorized to perform these leasing actions.

This report is to be reviewed by a qualified review appraiser.

**NEIGHBORHOOD DESCRIPTION:**

This section should include a general description of the area of the subject property, location, conformity, trends, relationship to shopping, employment, services, public transportation, and schools.

**DESCRIPTION OF SUBJECT BUILDING AND SITE:**

This should include building size, condition, construction type and quality, floors, age, features, HVAC, site size, access, topography, curb appeal, and available utilities.

**DESCRIPTION OF LEASED SPACE:**

This should include such items as size, condition, amenities, finish, room count and arrangement, appliances and/or fixtures (if applicable), and comments on the desirability or lack of desirable features considering the proposed use.

**DESCRIPTION OF PROPOSED LEASE:**

This should include all relevant terms and conditions. The report should state whether or not utilities and/or services are included, renewal options, escalation clauses, and perquisites or detriments involved.

**COMPARABLE MARKET DATA AND ANALYSIS:**

A minimum of three comparable rentals must be utilized for comparison and analysis.

The appraiser or realty specialist must make appropriate adjustments to derive the indicated market rental of the subject property.

If a fee value estimate is required, per the Economy Policy, the net rental may be capitalized for a simplified value estimate.

**ATTACHMENTS:**

Attach map(s) showing location of subject and the comparable rentals utilized. Attach photographs of the subject facility and the comparable rentals utilized.

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APPENDIX 4-D

SUGGESTED FORMAT for BRIEF INLEASE APPRAISAL \$50,000 OR LESS per ANNUM	
ADDRESS OF PROPERTY	TYPE OF PROPERTY
NAME OF OWNER (AGENT)	OWNER'S (AGENT'S) ADDRESS AND TELEPHONE NO.
Neighborhood Description	
Description of Subject Building and Site	
History	
Description of Lease Space	
ATTACH NEIGHBORHOOD MAP AND PHOTOGRAPHS OF SUBJECT AND COMPARABLES	
HIGHEST AND BEST USE =	
Terms / Conditions of Proposed Lease	
RENOVATION, REPAIRS, ETC. - TO BE PERFORMED BY OWNER PRIOR TO OCCUPANCY	
ATTACH COST ESTIMATES OF GOVERNMENT REQUIRED ALTERATIONS TO BE INSTALLED BY LESSOR	

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(suggested format)		COMPARABLE MARKET DATA AND ANALYSIS			
GENERAL DATA -- SUBJECT PROPERTY	COMPARABLE NO. 1	COMPARABLE NO. 2		COMPARABLE NO. 3	
TENANT NAME:					
ADDRESS:					
CITY, STATE, ZIP:					
DATE OF LEASE:					
SQUARE FEET:					
LEASE TERM:					
TENANT IMPROVEMENTS:					
PARKING:					
SUMMARY of RENT					
BASE RENT:					
REAL ESTATE TAXES:					
UTILITIES:					
CLEANING:					
CAM (Common Area):					
OTHER CHARGES:					
PARKING:					
TOTAL RENT:					
ADJUSTMENTS:		\$/ADJ		\$/ADJ	
LOCATION (NEIGHBORHOOD):					
LOCATION (in Property):					
CONDITION / AGE:					
OPERATING EXPENSE:					
STEP-UP / ESCALATION:					
TENANT IMPROVEMENTS:					
PARKING:					
OTHER:					
OTHER:					
OTHER:					
TOTAL ADJUSTMENTS:					
INDICATED RENT:					
MARKET RENT SELECTION:					

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APPRAISER COMMENTS: (suggested format)

COMPARABLE 1: The indicated rent is \$ \_\_\_\_\_ per square foot.

COMPARABLE 2: The indicated rent is \$ \_\_\_\_\_ per square foot.

COMPARABLE 3: The indicated rent is \$ \_\_\_\_\_ per square foot.

VALUE CORRELATION / CONCLUSION:

<p>BASE / SHELTER RENTAL VALUE = \$ _____</p> <p>ANNUAL MARKET RENTAL INCL UTIL &amp; SERVICES = \$ _____</p> <p>AMORTIZATION OF IMPROVEMENTS = \$ _____</p>	<p>I CERTIFY THAT I HAVE INSPECTED THE SUBJECT PROPERTY AND THE COMPARABLES USED IN THIS REPORT. I HAVE NO PERSONAL INTEREST, PRESENT OR PROSPECTIVE IN THE PROPERTY, OR WITH THE OWNERS THEREOF. THE VALUES REPORTED REPRESENT MY BEST UNBIASED JUDGEMENT.</p> <p>DATE _____</p> <p>SIGNATURE _____</p> <p>NAME &amp; TITLE:</p>
--	---

REVIEWING APPRAISER'S COMMENTS:

I CERTIFY THAT I HAVE REVIEWED THIS REPORT. I HAVE (HAVE NOT) INSPECTED THE PROPERTY. I HAVE NO PERSONAL INTEREST IN THE PROPERTY. I CONCUR (DO NOT CONCUR) IN THE VALUE CONCLUSIONS REPORTED ABOVE. THE REPORT IS (IS NOT) APPROVED.

DATE \_\_\_\_\_ SIGNATURE \_\_\_\_\_

NAME & TITLE:



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APPENDIX 4-E

**RENTAL APPRAISALS**

Rental Value Appraisal Reports will include the following:

1. Summary page.
2. Definitions.
3. Neighborhood and area analysis.
4. Land description, showing street frontages, lot depths, topography, access, available utilities, property taxes and insurance.
5. Adequate description of improvements and furnishings, including type of construction, total floor space, method used to measure the space, floor load for storage space, number of rentable rooms, or income-producing space, nonproductive or public space, available utilities, compliance with fire safety requirements, conformance with the Americans With Disabilities Act of 1992, and presence of any hazardous materials such as asbestos or lead based paint.
6. Highest and best use.
7. Analysis and discussions of current rentals of similar properties and rental history of the property appraised. Analysis of vacancy rates of subject and comparables.
8. Discussion of the appraisal process and rental rates applicable to the terms of the proposed lease, particularly as to any differential in the rate of return applicable to customary long term rentals.
9. Appraiser' certification and required exhibits (i.e., location map, site plan, floor plan with scale or dimensions, comparable map, photos, comparable rental sheets).

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APPENDIX 4-F

U.S. ARMY CORPS OF ENGINEERS  
**SUGGESTED FORMAT FOR INFORMAL VALUE ESTIMATE**  
(\$5,000 or Less)

1. Project Data

- a. Project Name: \_\_\_\_\_
- b. Tract Number: \_\_\_\_\_

(attach photo  
for acquisitions)

2. Ownership Data:

- a. Owner Name: \_\_\_\_\_
- b. Owner Address: \_\_\_\_\_  
\_\_\_\_\_

3. Property Data:

- a. Property Location: \_\_\_\_\_  
\_\_\_\_\_

- b. Neighborhood Description: \_\_\_\_\_  
\_\_\_\_\_

- c. Property Description (Describe land and improvements being valued; show units of measurement being used, i.e. sq. ft. or acres): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 4. Estate owned/being valued: \_\_\_\_\_  
\_\_\_\_\_

- 5. Basis/support for value of subject property: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 6. Remarks or additional explanation: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 7. Conclusion: My opinion of the market value for the subject property interest as of the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_ is \$\_\_\_\_\_

I certify that I have no personal interest, present or prospective in the property, or with the owners thereof. The value reported represents my best unbiased judgement. Pursuant to ER 405-1-12, paragraph 4-24, this estimate is exempt from the provisions of USPAP by virtue of the Jurisdictional Exception.

Date \_\_\_\_\_ Signature \_\_\_\_\_

Name and Title: \_\_\_\_\_

CONCUR: \_\_\_\_\_  
DATE: \_\_\_\_\_ Signature & Title

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APPENDIX 4-G

**SAMPLE REVIEW FORMAT AND REVIEWER CERTIFICATION**  
(As guided by USPAP)

DIVISION/DISTRICT OFFICE

PROJECT:

PROPERTY / TRACT:

OWNER:

LOCATION:

APPRAISER:

EFFECTIVE DATE OF APPRAISAL:

ESTATE APPRAISED:

HIGHEST AND BEST USE:

VALUATION SUMMARY:

SCOPE OF REVIEW: Disclose the nature, extent, and detail of the review process undertaken.

GENERAL COMMENTS: Form an opinion as to the completeness of the report under review. Form an opinion as to the apparent adequacy and relevance of the data and the propriety of any adjustments to the data. Form an opinion as to the appropriateness of the appraisal methods and techniques used and develop the reasons for any disagreement. Form an opinion as to whether the analyses, opinions, and conclusions in the report under review are appropriate and reasonable, and develop the reasons for any disagreement. State forth your opinions, reasons and conclusions.

CERTIFICATION:

I certify that to the best of my knowledge and belief:

-- the facts and data reported by the review appraiser and used in the review process are true and correct.

-- the analyses, opinions, and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report, and are my personal, unbiased professional analyses, opinions and conclusions.

-- I have no (or the specified) present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.

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-- my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this review report.

-- my analyses, opinions, and conclusions were developed and this review report was prepared in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions, and in conformity to the Uniform Standards of Professional Appraisal Practice.

-- I did (did not) personally inspect the subject property(s) of the report under review.

-- no one provided significant professional assistance to the person signing this review report. (If there are exceptions, the name of each individual providing significant professional assistance must be stated.)

(As applicable) The Appraisal Foundation through each state's division of registration of Real Estate Appraisers requires a mandatory program of continuing education for recertification. I am in compliance with the requirements of the program."

(signature)  
Signature Block

DATE: \_\_\_\_\_

\*

CHAPTER 5

ACQUISITION

SECTION I. PROCUREMENT OF TITLE EVIDENCE, TITLE CLEARANCE, AND CLOSINGS

5-1. General.

a. Purpose. This section prescribes the procedures relating to the procurement of title evidence, title clearance, and closings for the acquisition of real estate and interests therein for all land acquisition programs administered by the Chief of Engineers. Exceptions in connection with the acquisition of properties under the Homeowners Assistance Program are set forth in Chapter 7.

b. Applicability. It is applicable to all Division and District Engineers having real estate responsibility.

c. Guidelines.

(1) The satisfactory progress of land acquisition programs necessitates the prompt procurement of title evidence and prompt title clearance. One of the following types of title evidence should be obtained, after considering the cost of the several types and other factors mentioned below. to effect these objectives, careful planning is essential, including a determination of the most acceptable and available type of title evidence and the source from which such title evidence may be procured. The Chief of Engineers is responsible for procuring all title evidence, including title evidence needed for lands which are acquired by condemnation proceedings. The early procurement and examination of the title evidence and title clearance will expedite payment to landowners from whom offers are obtained or against whom condemnation proceedings are filed.

(2) Insured certificates of title or policies of title insurance shall be obtained wherever possible. This is on the theory that the Government is buying title searching service as well as the title evidence itself and is avoiding the time and cost of examining abstracts of title, generally voluminous in nature.

(3) Where it is not possible to obtain certificates of title or title insurance, abstracts of title may be obtained, as a last resort.

(4) As used in this Section, an abstract of title is a synopsis or digest of all instruments of record affecting the title to a specific parcel of land. It neither guarantees nor insures the title. A Certificate of title is a contract whereby a title company certifies that title to a specific parcel of land is good and unencumbered of record in a named \*

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\* person expecting only such defects and encumbrances as are shown therein. The liability of the company is limited to an amount specified in the certificate. A title insurance policy is a contract which insures that the owner or mortgagee will not suffer any loss or damage by reason of defects in the title to the property, or liens or encumbrances thereon existing at the date of the policy, except those defects, liens, or encumbrances which the policy specifically excepts. Liability thereunder is not limited to matters of record but extends to matters beyond the record.

(5) The Directory of the American Land Title Association may be obtained upon request to the Association at 1828 L Street, N.W., WASH DC 20036, or to any major title insurance company. This Directory lists, by States, the abstract and title companies which provide title insurance. These companies are acceptable to the Attorney General. Requests for furnishing title certificates or title insurance should be made to the major title insurance companies in addition to local abstracters and title companies.

(6) From past experience, it is considered that the procurement of certificates of title or title insurance is more economical than abstracts of title and the use of these types of title evidence expedites payment to landowners. In the majority of the States either certificates of title or title insurance are obtainable and the premium for issuance of such certificates or policies is based on a schedule of fees approved by the State Insurance Commission or some similar State agency. The premium fixed by such schedules, in most cases, includes the charge for title examination (preliminary certificate of title or preliminary binders) and the charge for insurance (final certificates of title or title guarantee policy) and any variance from the prescribed fees is considered a violation of the State law or regulation. Most State Insurance Commissions have recognized and approved the forms of certificates of title and title insurance policies prescribed by the Attorney General and have authorized their use in lieu of owners' policies. Division and District Engineers should familiarize themselves with the State title insurance laws and regulations. If prices quoted by all possible sources seem exorbitant, the matter should be referred to HQDA (DAEN-REA-P) WASH DC 20314 for action.

## 5-2. Title Evidence.

### a. Acceptable Types of Title Evidence.

(1) Certificates of title are acceptable title evidence. Certificates of title must be in a form acceptable to the Attorney General. An acceptable form of certificate of title which has been approved by the Attorney General has been issued by the Chief of Engineers as ENG Form 903, Certificate of Title. \*

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\* (a) In contracting for certificates of title, ENG Form 1016, Specifications for Furnishing and Delivering Certificates of Title Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, will be used.

(b) Any title or abstract company approved by the Department of Justice and authorized and qualified to issue certificates of title in the State where the land is located will be acceptable to furnish certificates of title (Department of Justice "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States, 1970.") In those few jurisdictions where bar associations or other public or professional bodies hold that the issuance of certificates of title is the issuance of title opinions and therefore the practice of law and where title companies as corporations cannot engage in the practice of law, insured certificates of title may be procured from attorneys, acceptable to the Lands Division of the Department of Justice, acting as agents for title companies. The procedure for the selection of attorneys is set forth in paragraph 5-3b.

(c) Certificates of title will be based on a search of all records affecting the title to the land and be unqualified as to the period of search. In the event that it is not practicable to obtain certificates of title, unqualified as to the period of search, all pertinent facts will be referred to the Department of Justice for consideration and approval.

(d) Certificates of title or title insurance policies shall not limit the liability of the title company to a sum less than 50 percent of the reasonable value of the property. If property is acquired by donation or exchange, the value will be determined by the Corps of Engineers. However, as to acquisitions valued at more than \$50,000, the liability of the title company may be limited to 50 percent of the first \$50,000 and 25 percent of that portion of the value in excess of that amount. This limitation on the general rule has been approved by the Department of Justice. The appropriate ENG Forms for specifications for supplying title evidence may be amended, if that limited liability can be obtained. A certificate of title or title insurance policy by one title company for a single acquisition valued at more than 25 percent of the admitted assets (after deducting existing liabilities secured or unsecured and excluding any trust or escrow funds) of the issuing company is not acceptable.

(e) Generally, it is not necessary to obtain a final certificate of title when land is acquired by condemnation proceedings. However, it may be necessary that an intermediate certificate of title be obtained setting \*

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forth the limitation of liability of the title company. Division and district commanders will be governed by the requirements of the local United States Attorney as to the necessity of obtaining an intermediate or final certificate of title.

(f) Certificates of title, whether preliminary, intermediate, or final, will be procured in sufficient numbers to satisfy the needs of the district involved. Normally an original and two signed copies of each certificate of title will suffice.

(g) The specifications may be supplemented to require the title company to have a local representative stationed convenient to the project office, when, because of the nature of the project (anticipated complexities of title, high purchase prices, or other reasons), it is considered advisable that a local representative be available to perform preclosing interim title searches on request of the contracting officer.

(h) The title company's local representative must be authorized to pass on the sufficiency of the proposed deed to the United States; to give final approval of curative material furnished to satisfy title objections set forth in certificates of title; and to testify in court relative to the status of title, if called upon to do so.

(2) Title guarantee or title insurance policies are acceptable title evidence.

(a) Interim binders on owner's title guarantee or title insurance policies supplemented by an owner's title guarantee policy or title insurance policy in the forms approved by the Attorney General, ENG Form 1014, Interim Binder on Owner's Title Guarantee (Insurance) Policy, and ENG Form 1015-R, Owner's Title Guarantee (Insurance) Policy (Figure 5-15), will be acceptable as evidence of title only in acquisition in those states where certificates of title may not be issued. ENG Form 3893-R, Endorsement (Figure 5-1), is the form of endorsement for use with the title insurance policies when changes or corrections become necessary. No other substantial variation in the form of interim binder or the form of title guarantee or title insurance policy will be acceptable without prior approval of the Attorney General. The forms will be completed by Corps of Engineers personnel. \*

(b) Companies contracting to issue such interim binders or preliminary reports and title guarantee or title insurance policies must have authority under the laws of the state of their incorporation and their charter to issue the same. They must also be financially sound and be willing and able to issue such binders and policies for all tracts for the amount of liability as set forth above.



\*

(c) In contracting for title guarantee or title insurance policies, ENG Form 1016, Specifications for Furnishing and Delivering Certificate of Title Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, will be used.

(d) The interim binder or preliminary report must disclose the title holders of record and contain full information on all matters set forth in the binder as affecting the title. This data must be in sufficient detail to enable an attorney examining the report to determine the nature and extent of such matters and their effect on the validity of the title of the land described therein. The contents of the report must meet the requirements of ENG Form 1016.

(e) The provisions of subparagraphs 5-2a(1) (d), (e), (f), (g), and (h) also apply to title guarantee or title insurance policies.

(3) Abstracts of title may be acceptable title evidence.

(a) Abstracts of title complying with the rules for abstracts in "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" issued by the Department of Justice, 1970, are acceptable title evidence if prepared by abstractors acceptable to the Attorney General. These may include abstractors employed by a department or agency of the Government. Corps of Engineers personnel generally will not prepare abstracts of title. However, where there is a comparatively small amount of abstract work to be performed, it may be desirable to have the abstracts prepared by qualified Government personnel. In such cases, the prior approval of the Chief of Engineers will be obtained. The request should justify the preparation of abstracts by Government personnel.

(b) The form and contents of abstracts of title will meet the requirements in the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States," issued by the Department of Justice, 1970, and ENG Form 1012, Specifications for Furnishing and Delivering Abstracts of Title.

(c) The period of search of an abstract of title to be acceptable to the Attorney General will, wherever possible, begin with some undisputed source of title such as an original grant or patent from the sovereign. Where it is impossible or impracticable to begin with such grant or patent, refer to "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States," issued by the Department of Justice, 1970, and ENG Form 1012 for guidance.

(d) In contracting for abstracts of title, ENG Form 1012 will be used. ENG Form 1012 provides for an unlimited period of search. For the purpose of conserving Government funds and in applicable easement acquisitions, \*

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Division and District Engineers are authorized to modify ENG Form 1012 to provide for the minimum period of search allowable under the regulations of the Department of Justice, when deemed to be to the best interest of the Government.

(4) Where the consideration to be paid by the Government is \$1,000 or less, acquisition in fee may be based upon a title search by a staff attorney when it is deemed to be in the best interest of the Government. The Preliminary Certificate of Title, ENG Form 909, shall be based upon a search of the local land records beginning with a deed or other instrument transferring title recorded at least 40 years prior to the date of the preliminary certificate. The Final Certificate of Title on ENG Form 1013, shall be executed by a qualified Corps of Engineers' attorney, preferably the same attorney who executed the preliminary certificate, and shall be based on a further search of the local land records from the date of the preliminary certificate to and including the date and time of recordation of the deed to the United States or to the date title passes in a condemnation proceeding. The attorney preparing such preliminary or final certificate of title shall also prepare title notes evidencing the results of his search of the records. The Certificate of Title will set forth in detail all liens, encumbrances, outstanding interests and other estates adversely affecting the title.

b. Easements. The standards and requirements as to title evidence for fee acquisition, set forth above, will be observed in the acquisition of all easements, except as follows:

(1) Preliminary certificates of title of approved title companies for easement acquisitions will be in the same form approved by the Attorney General for fee acquisitions and issued by the Chief of Engineers as ENG Form 903. Final certificates of title in easement acquisitions, however, must show title to the easement vested in the United States in the same land described in the certificate and the deed to the United States. A form of final certificate of title for easements approved by the Attorney General and issued by the Chief of Engineers as ENG Form 1017, Final Certificate of Title for Easements, will be used in easement acquisitions.

(2) In contracting for certificates of title to easements, ENG Form 1016, Specifications for Furnishing and Delivering Certificates of Title, Owner's Title Guarantee (Insurance) Policies and Continuations Thereof, may be used provided the following paragraph is substituted in the detailed specifications: "Each certificate of title

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shall be executed in triplicate on legal size paper. Preliminary certificates of title shall be in the form attached hereto, ENG Form 903, and final certificates of title for easements, showing title vested in the United States, shall be in the form attached hereto, ENG Form 1017."

(3) In jurisdictions where it is not possible to obtain certificates of title commercially, title guarantee (insurance) policies may be obtained. In such cases, appropriate adjustment in forms and specifications will be made, comparable to those prescribed for certificates of title to easements above.

(4) For easements costing more than \$100 but not in excess of \$5,000, the requirements of the Attorney General have been waived. In such cases, it is acceptable to use certificates of title prepared and executed by a qualified Corps of Engineers' attorney. The Preliminary Certificate of Title, ENG Form 909, shall be based upon a search of the local land records beginning with a deed or other instrument transferring title recorded at Least 25 years prior to the date of the preliminary certificate. The Final Certificate of Title on ENG Form 1013, shall be executed by a qualified Corps of Engineers' attorney, preferably the same attorney who executed the preliminary certificate, and shall be based on a further search of the local land records from the date of the preliminary certificate to and including the date and time of recordation of the deed to the United States or to the date title passes in a condemnation proceeding. The attorney preparing such preliminary or final certificate of title \* shall also prepare title notes evidencing the results of \* his search of the records. The Certificate of Title will set forth in detail all liens, encumbrances, outstanding interests and other estates adversely affecting the title.

(5) As to easements which cost \$100 or less, acquisition shall be in accordance with the provisions of Paragraph (5) on page 5 of said Standards, which permit such acquisition to be based on a last owner search. Any search authorized by these provisions may be conducted by a qualified attorney employed by the Corps of Engineers.

\* 5-3. Contracting for Title Evidence.

a. Survey of Area and Source of Title Evidence. Contemporaneously with the preparation of the real estate design memorandum, or real estate planning report, the Division or District Engineer is requested to:

(1) Give careful consideration to the problems involved to determine the most acceptable type of title evidence; its source, availability of title plants, costs, and time of procurement, so that the most advantageous bid(s) may be received and accepted and the acquisition schedule maintained. In considering costs of abstracts of title versus certificates of title or title insurance, the workhours involved in the examination of abstracts of title by both Corps and Department of Justice personnel should be considered.

(2) Determine the total number of tracts in the project area. In major projects, it may be desirable to invite bids for title evidence for each county or other specified areas, in addition to the entire project, in order to maintain the acquisition schedule.

(3) Determine the names and addresses of title companies and abstractors available to furnish title evidence and whether such companies or abstractors have been approved by the Attorney General as acceptable companies or abstractors. Current information on approved title companies and abstractors may be obtained direct from the Land and Natural Resources Division, Department of Justice, WASH DC 20530.

b. Selection Procedure.

(1) Normally selection of persons or firms to perform title evidence services will be based upon formal advertising in accordance with the Armed Services Procurement Regulation (ASPR).

(2) In those States where the furnishing of title evidence is held to constitute the practice of law and the State canons of legal ethics prohibit attorneys from engaging in competitive bidding for such services, contracts for title evidence services must necessarily be negotiated. In such cases, negotiations shall be conducted with attorneys or law firms duly authorized to practice law in the jurisdiction within which the real property is located. Division and District Engineers shall notify HQDA (DAEN-REA-P) WASH DC 20314 before negotiating for title evidence, and submit the list of attorneys with whom negotiations may be conducted. Selection shall be in accordance with the procedures set forth below:

(a) A contract for title services shall be based upon, but not limited to, consideration of the following professional qualifications necessary for the satisfactory performance of the services required: \*

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1. Professionally trained for type of work;
2. Specialized experience in the type of work required;
3. Capacity to accomplish the work in the required time;
4. Past experience, if any, with respect to performance on Corps of Engineers contracts;
5. Location in the general geographical area of the project to which the services relate, provided that there is an appropriate number of qualified attorneys or law firms therein for consideration; and
6. Volume of work previously awarded, with the objective of effecting an equitable distribution of title evidence contracts among qualified attorneys and law firms.

(b) A preselection list of qualified attorneys and law firms shall be prepared by a preselection board from data submitted by interested attorneys and law firms and from other pertinent information which may be available. The list shall be approved by the District Engineer or his designee.

(c) A selection board shall review the qualifications of each of the attorneys or law firms on the preselection list, in accordance with the procedure established in paragraph 5-3b(2) (a) and shall recommend to the District Engineer, in order of preference, a minimum of three for approval for contract negotiations.

(d) Upon approval of the selections by the District Engineer and such approval as may be required by paragraph 5-3b(2) (f), negotiations shall be initiated with the first selected attorney or law firm. If the negotiations result in a price which exceeds the Government estimate, revised to correct errors of fact or judgment, if any, by more than ten percent, the Contracting Officer shall terminate the negotiations and request a proposal from the attorney or law firm next in order of preference.

(e) Preparation of preselection lists and selections for contracts estimated to cost more than \$10,000, shall be accomplished by formally constituted boards consisting of at least three members, one of whom shall be the District Counsel or an attorney on his staff, and one of whom shall be the Chief, Real Estate Division, or a member of his staff.

(f) Special approval shall be required for certain selections as indicated below: \*

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\* 1. When the estimated cost of a contract to be negotiated exceeds \$100,000, the selection shall require the approval of the Division Engineer.

2. When an attorney or law firm, to which the District has awarded contracts totalling over \$100,000 during the current fiscal year, has been selected by the District for additional negotiations, the selection shall require the approval of the Division Engineer.

3. When the estimated cost of a contract to be negotiated exceeds \$200,000, the selection shall require the approval of the Director of Real Estate, OCE, or his designee, with the concurrence of the Chief Counsel or his designee.

c. Forms to be Used. When purchasing title evidence, Standard Form 33, Solicitation, Offer, and Award, which form embraces an invitation, bid, and acceptance, should be used with copies of ENG Form 1012 or ENG Form 1016, depending upon the type of title evidence to be obtained. Standard Form 33 will state that time is of the essence; that ability to comply with delivery requirements is mandatory; that the specifications attached thereto constitute a part of the proposed contract; the quantity and description of the supplies by item to be furnished; the time, place, and method of delivery; and the primary period of contract and extensions. Bids must be submitted in the form required by the invitations for the bids, so that the successful bid can be accepted on Standard Form 33 and a formal contract consummated thereby. The contract must incorporate all the covenants, terms, and conditions which are contemplated.

d. Base Price vs. Per-Item Basis. The invitation will call for the furnishing of an approximate number of certificates of title, abstracts of title, or preliminary binders and title guarantee (insurance) policies, as the case may be, at a stated price per certificate of title, abstract, or preliminary binder and title guarantee (insurance) policy. If this basis of payment is not possible, payment for abstracts may be made on a per-item or per-page basis and certificates of title and interim binders and title guarantee (insurance) policies may be paid for in accordance with an established rate schedule based on the cost of the property. Where necessary, alterations in the payment paragraphs of the specifications may be made in order to comply with local practices, State statutes, or other special requirements.

e. Specifications. The specifications for title service will follow ENG Form 1012 for abstracts, ENG Form 1016 for certificates of title and ENG Form 1014 for interim binders on owner's title guarantee (insurance) policies. Additional provisions may be added as circumstances require, but basic requirements will not be changed. \*

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- \* f. Several Contracts for Title Evidence. To meet the acquisition schedule, it may be necessary to enter into several contracts for title evidence to lands within a designated project area. In such cases, the portions of the projects to be covered by each contract will be defined according to established political subdivisions, such as districts, townships, counties or any specified part thereof.

5-4. Award of Contracts.

a. Contract Awards. Contract awards will be made only by duly qualified contracting officers in accordance with applicable procurement regulations.

b. Review of Title Evidence Contracts. The Contracting officer, if an employee of the Real Estate Division, or otherwise the Real Estate representative designated by the Division or District Engineer, will review contracts for title evidence. If this review is made by a Real Estate employee other than a Contracting Officer, he will advise the Contracting Officer relative thereto. The Contracting Officer or the Real Estate representative will ascertain that the Department of Justice has approved the bidder, and the contract will not be awarded to any bidder not so approved. The Contracting Officer, or the Real Estate representative who is to advise him, will familiarize himself with "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States," issued by the Department of Justice, 1970.

c. Distribution. Upon acceptance, copies of title evidence contracts will be distributed in the same manner as other contracts.

5-5. Ordering Title Evidence.

a. Placing Orders. Where the contract does not specify the order in which title evidence for particular tracts will be furnished, orders will be submitted to the abstractor or title company on ENG Form 1011, Order for Title Evidence. An accurate legal description of the tract of land involved will be attached to the order or will be typed thereon.

b. Orders Based on Contiguous Areas. If the contract does not contain a list of tracts for which title evidence is to be furnished, orders will be based on contiguous areas of land in identical ownership and will be deemed to be contiguous even though crossed by roads, railroads, rights-of-way, or streams. In such event the variation in quantity shall not exceed plus or minus ten percent as prescribed by ASPR. If there has been a severance of surface and \*

\* subsurface estates, determination of what constitutes a tract will be based on ownership of the surface. However, in unusual cases where such a contiguous area is composed of several parcels derived through separate chains of title and requiring separate searches of each chain of title down to a comparatively recent date or where such contiguous area lies in more than one section, the Contracting Officer may contract to pay a specified reasonable additional charge for each such additional chain or section if such additional charge is customary in the locality where the land lies.

c. Type of Title Evidence. The order will set forth the type of evidence to be furnished. When abstracts are contracted for, the following rules will be observed:

(1) If an abstract of title in satisfactory form cannot be procured from the landowner, a new abstract will be ordered.

(2) If an abstract in satisfactory form is procured from a landowner, the abstract will be transmitted to the abstractor with an order for a continuation of the old abstract.

5-6. Payment for Title Services.

a. Approval. The Contracting Officer will approve payment for all title evidence obtained in connection with the acquisition of land from funds available to the Division or District Engineer for that purpose, whether the land is acquired by purchase or condemnation.

b. Review. When abstracts are furnished on a per-item or per-page basis, the contents must be carefully reviewed by a qualified representative of the Division or District Engineer, to insure that bills are not excessive and that abstracts do not include superfluous material. Where erroneous or superfluous material is included in abstracts, the bills involved will be corrected so that payment for such material is not made. All title evidence will be examined to determine that there has been full compliance with the specifications.

c. Payment for Title Evidence. Payments for title evidence will be made by the Contracting Officer from available funds for the project to which the title evidence pertains, upon receipt of certified and approved vouchers.

d. Preparation of Invoices for Title Services. The abstractor or title company will submit a certified, invoice for services rendered, to the office to which the title evidence was delivered for review. The invoice must specify the particular type of title evidence furnished, the tract number, name of owner, name of project, and contract number. Invoices found to be correct will be certified as to receipt of the services by the receiving office and will be transmitted to the division or District Engineer for further action and payment.

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5-7. Approval of Title by the Attorney General.

a. General. Section 355 of the Revised Statutes of the United States, as amended (40 U.S.C. 255), formerly required the written opinion of the Attorney General in favor of the validity of the title to lands as a prerequisite to the expenditure of public funds thereon.

b. Delegation. Pursuant to the provisions of Public Law 91-393, approved 1 September 1970, authority to approve title to lands being acquired for the use of the Department of the Army, or of any other department or agency for which the Department of the Army is authorized to acquire land, has been delegated to the Department of the Army, subject to the supervision and review of the Attorney General (Figure 5-2). Generally, military authorization and/or appropriation legislation expressly authorizes construction on the land prior to approval of title.

c. Redelegation. The authority delegated to the Department of the Army pursuant to Public Law 91-393 has been redelegated to Division and District Engineers with real estate responsibility.

d. Issuance of Title Opinions. Division and District Engineers are authorized to designate staff attorneys to give written approval of the sufficiency of title to land for the purposes for which the property is being acquired. Such attorneys shall issue preliminary and/or final opinions of title.

(1) Attorneys designated for such purposes will have as a minimum five years legal experience, from the date of admission to a State bar, including three years experience in the law of real property. Real estate attorneys on the staffs of Division and District Engineers, who possess these qualifications, will be designated by the Division and District Engineers, in writing, to pass on the sufficiency of title to lands pursuant to the said delegation. The names of such attorneys shall be furnished to HQDA (DAEN-REA-P) WASH DC 20314 as soon as possible.

(2) A final opinion of title shall be issued in all acquisitions, except for easement acquisitions not in excess of \$1,000 which are governed by paragraph 5-9b.

(3) Division and District Engineers are authorized to waive the issuance of written preliminary opinions of title where the closing of the case is based upon a certificate of title or title insurance issued by an acceptable and approved title company, in either fee or easement acquisitions. \*

(4) A preliminary and a final opinion of title shall be issued in all fee and easement acquisitions involving abstracts of title, except for easement acquisitions not in excess of \$1,000 which are governed by paragraph 5-9b.

(5) Any final title opinion issued pursuant to the delegated authority shall substantially follow the format of Figure 5-3, Attorney's Final Title Opinion.

e. Opinion of Attorney General. Whenever the District or Division Engineer determines that a title defect is of such character that a possibility exists that it may be waived, the case shall be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for review and transmittal to the Attorney General for a title opinion. The letter of submittal shall contain or be accompanied by the information and data required by paragraph 5-12b.

f. Rejection Opinion. If it is obvious that no possibility of waiver of a title defect exists, a title opinion shall be issued according to the procedure set forth in paragraph 5-7d. Copies of such opinion shall be submitted with the condemnation assembly.

5-8. Title Clearance - Certificate of Title and Title Insurance.

a. Curative Action. Upon receipt of an acceptable ENG Form 903, Certificate of Title, or ENG Form 1014, Interim Binder On An Owner's Title Guarantee. (Insurance) Policy, the title evidence will be reviewed by a qualified real estate attorney of the Corps of Engineers. Where the title evidence indicates that the acquisition of the land or interest therein by purchase is feasible, and a satisfactory ENG Form 42, Offer to Sell Real Property, or ENG Form 2970, Offer to Sell Easement, is received from the landowner and accepted by the Government, curative action will be conducted and curative material will be processed as follows:

(1) With regard to the title objections set forth in Schedule "B" of certificates of title or interim binders, it will be necessary to take such curative action as will insure the issuance of a final certificate of title or title guarantee or insurance policy showing title vested in the United States of America, subject only to those objections, if any, which have been administratively waived (Section II, this Chapter).

(2) As set forth in the title contract, the title company will authorize its local representative to give final approval of curative material furnished to satisfy such objections and insure their elimination from the final certificate of title or title guarantee or insurance policy. As such curative material is approved, the local representative of the title company will:

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(a) Initial, or otherwise indicate on the margin of the preliminary certificate or interim binder, the fact that the objection has been eliminated through the procurement of satisfactory curative material.

(b) Determine whether or not he wishes the curative instrument recorded and if the instrument is to be recorded, so indicate on the margin of the certificate or interim binder. By the express terms of the offer to sell, the vendor is responsible for payment of recording fees on such curative material.

\* (c) Where curative material is not recorded, the title company will be permitted to retain such material if they wish it for their files; otherwise, it will be placed with the title assembly. If the original curative instruments are retained by the title company, true copies will be retained with the material to be filed and a copy will be transmitted with the copy of the final title assembly to CDR USACE (DAEN-REA-P)WASH DC 20314, pursuant to paragraph 5-10p(4).

b. Intermediate Certificates or Interim Binders. In the following types of cases, it may be necessary, after examination of the preliminary certificates of title or interim binder, to obtain intermediate certificates of title or interim binders in order to perfect title prior to closing the transaction:

(1) when the signer or the offer is not the record title holder but is the holder of a contract for purchase, recorded or unrecorded, the preliminary certificate of title or interim binder will show title in the record title holder. In such cases, the certificate or binder will make appropriate reference to the contract. It will recite the action necessary to complete the contract and effect transfer of title from the record holder to the contract purchaser. When the deed to the contract purchaser is recorded, an intermediate certificate of title or interim binder, in proper form, will be obtained.

(2) In those cases in which record title is vested in a deceased person, the preliminary certificate of title or interim binder may be issued in the name of the deceased record owner, followed by the word "deceased", and will be accompanied by a letter from the title company stating whether a judicial proceeding will be required, or whether affidavits of heirship, or other forms of proof, will suffice to permit the issuance of intermediate certificate or binder showing title vested in the heirs of the deceased.

(a) Where a judicial proceeding is required, action will immediately be taken by the owners to perfect title by such proceeding, and upon completion, an intermediate certificate of title

\* or interim binder should be obtained. If such action cannot be completed within 60 days, action will be taken to acquire the tract by condemnation, paragraph 5-12a.

(b) Where a judicial proceeding is not required, it will be necessary to effect the necessary curative action and obtain an intermediate certificate or interim binder showing title in the heirs of the deceased record owners.

(3) In those cases in which conveyance to the United States is to be made by a fiduciary, a corporation, a political subdivision, or an unincorporated association, the certificate of title or interim binder will state whether the proposed grantor has legal authority to convey valid title to the United States, and if so, will cite the source of the authority. If the preliminary certificate of title or interim binder does not so indicate, it will be returned to the title company for correction or for issuance of an intermediate certificate of title or interim binder.

(4) Where the certificate of title or interim binder contains any objection, or reference to liens of taxes, assessments, bonds, or other indebtedness of a road improvement, school, drainage, or other type of special improvement district, the specifications provide that the certificate or interim binder will also contain reference to the statute or statutes, under which the district was created, its bonds issued, and its taxes levied; the amount of taxes and assessments levied and bonds issued; and other additional pertinent information. If the preliminary certificate or interim binder does not contain sufficient information to enable an examining attorney to determine the nature and extent of the lien, if any, on the land, of such taxes, assessments and bonds, it will be returned to the title company for correction or for issuance of an intermediate certificate of title or interim binder. If the preliminary certificate or interim binder does not clearly indicate that the bonds or taxes of such district become a lien annually at the same time as the lien of ad valorem taxes attaches to land in the State and that the lien is of the same nature as the lien of ad valorem taxes, the information specified above must be obtained and a determination must be made as to the nature and extent of the liens of such bonds and taxes.

(5) Where the certificate of title or interim binder discloses a covenant or condition restricting the use of the land, the certificate or interim binder will set forth the restriction, will quote the provision imposing the restriction or creating the right of reverter for a breach thereof, and will state whether a release will eliminate the objection. If such information is not contained \*

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\* in the preliminary certificate of title or interim binder, it will be returned to the title company for correction or for issuance of an intermediate certificate of title or interim binder. If a release will eliminate the objection, action will be taken to obtain an appropriate release from the person or persons holding the right of reverter. Should the title company hold that the title cannot be perfected by a release or if an acceptable release cannot be obtained, action will be taken to acquire the tract by condemnation.

(6) When the specifications require the title company to include any of the above information in the preliminary certificate of title or interim binder and it is necessary to obtain an intermediate certificate of title or interim binder due to the omission of such information from the preliminary report by the title company, the intermediate certificate of title or interim binder will be furnished without cost to the United States.

c. Question of Law. Any difficult or complicated question of law raised by an objection or exception in a preliminary or intermediate certificate of title or interim binder should be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for review and transmittal to the Attorney General for an opinion. The letter of submittal shall contain a full statement of the facts and references to the provisions of applicable statutes and pertinent decisions of state courts on the question involved. This action should be taken before closing. This action should also be taken on questions involving the nature and extent of the liens of bonded indebtedness, assessments, or taxes to meet the bonded indebtedness of special improvement districts, or relating to restrictive covenants.

5-9. Title Clearance - Easements.

a. Easements Costing in Excess of \$1,000. Curative action and clearance of title to easements costing in excess of \$1,000 will be the same as in fee acquisitions, as outlined above, except as follows:

(1) Under an agreement with the Department of Justice, title to easements will be approved subject to outstanding encumbrances, such as mortgages, deeds of trust, judgments, and vendors' liens, where the tract is not encumbered in excess of 50 percent of the reasonable value of the remaining property, and the consideration being paid for the easement does not represent a sum in excess of ten percent of the value of the remaining property. (As to taxes, see paragraph 5-10k(6). \*

(2) For the purpose of making the determinations necessary to apply the formula set forth in (1) above, resort may be had to the tract appraisal, provided it is based on a "before and after" approach, in which case the amount of the "after" appraisal will be used as the reasonable value of the remaining property. In the event no such appraisal has been made, a memorandum estimate by a qualified appraiser (staff or contract) will be obtained. Determination of the total encumbrances may be made on the basis of the face of the encumbering instruments. However, if it is necessary to determine that the total amount of the outstanding liens as of the date of closing has been reduced to an amount less than 50 percent of the reasonable value of the remaining property, such reduction must be evidenced by signed statements from the lienees or their authorized representatives. The appraisal or memorandum estimate and the lienee statements will be placed in the tract file.

(3) On the basis of the determinations described in (2) above, the appropriate information will be inserted on ENG Form 3536, Statement Concerning Outstanding Encumbrances, which will be signed by the closing agent. The original will be retained as a separate document in the final title assembly and a copy will be submitted to CDR USACE (DAEN-REA-P) WASH DC 20314, pursuant to paragraph 5-10p(4).

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b. Easements Costing Not in Excess of \$1,000.

(1) Requirements for the release or subordination to such easements of mortgages, deeds of trust, judgments, vendors' liens, taxes which are a lien, whether or not presently due and payable, and similar encumbrances will ordinarily be the same as for easements costing in excess of \$1,000.

(2) In unusual circumstances, these requirements need not be applied if the purchase price of the easement is insufficient to satisfy the liens and interest, or the amount of such liens or interest is small in comparison with the value of the land in which the easement is being acquired, and in comparison with the cost of condemnation proceedings to clear the title. In such cases, the Division or District Commander (or the Chief, Real Estate Division, if delegated such authority) may waive such title infirmities as he determines will not interfere with the use of the easement by the Government or jeopardize the interests of the United States, provided:

(a) The easement deed contains a general warranty covenant by the grantor to satisfy all such unpaid taxes and other liens and to warrant the title against any encumbrances or interests left outstanding.

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\* (b) The Division or District Engineer (or the Chief, Real Estate Division, if delegated the authority) has determined that such outstanding liens, encumbrances, or interest, if left outstanding, will not interfere with the Government's use of the easement, or will not jeopardize the interests of the United States, and in his opinion the title is sufficient. A certificate to this effect should be attached to the Final Title Assembly.

c. Curative Action.

(1) Curative action will be initiated promptly in all cases to eliminate all title defects or encumbrances, except those which may be administratively waived, those which may be eliminated by the payment of money and cleared at the time of closing, and those which may be waived as hereinafter provided. Curative material need not be recorded, however, until the closing of the transaction.

(2) All encumbrances, defects, outstanding interests, and other matters shown in the preliminary certificates of title or interim binders, must be cured and eliminated before delivery of the purchase check, except those of a nature which have been waived as not interfering with the Government's use of the easement or as not jeopardizing the interest of the United States.

5-10. Closing of Cases.

a. Closing and Settlement Officers. Payment and closing of cases will be initiated immediately upon completion of curative action, by qualified Closing Officers employed by the Corps of Engineers. To be qualified, a Closing Officer must be employed in the Real Estate Division of a Division or District Office, or in a Real Estate Project or Suboffice, in an Attorney-Advisor position, or in a Realty Officer position if he is a member in good standing of the Bar of a State, Possession, or the District of Columbia, and has been instructed in Federal procedure and in the requirements for closing land acquisition transactions by a Division or District Closing Officer and has been approved by the Division or District Engineer to close land acquisition transactions independently. It is no longer necessary for Closing Officers to be individually bonded. Contracting for closing services will require prior approval of HQDA (DAEN-REA-P).

b. Payment. Payment for land, or interests therein, will be made from funds available to the Division or District Engineer. \*

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c. General. The details of the closing necessarily differ according to the number of vendors and the outstanding interests, the number and variety of the encumbrances and title objections to be met, and miscellaneous other details resulting from complications in the particular title. Upon receipt of the check and title papers, the Closing Officer will review the entire file relating to the acquisition, fully acquaint himself with the terms and conditions of the sale, and with the condition of the title, and will ascertain whether there are any special conditions to be performed, or requirements to be met, on the part of the landowner or the Government and what objections to the title are to be eliminated before valid title may vest in the United States.

d. Curative Data. The Closing Officer will determine the character and amount of all outstanding interests in, liens on, or claims against the land, which are to be satisfied out of the purchase price, and see that necessary curative action has been taken and curative data obtained to cure all defects in and meet all objections to the title. If the title evidence consists of a certificate of title of a title company, or a title guarantee policy, approval of the curative material, obtained to eliminate the title objections, must be obtained from the title company.

e. Continuation of Title Search. The Closing Officer will satisfy himself that no change has occurred in the land records from the date of the prior certification which will adversely affect the title to the real estate interest being acquired by the United States. Where deemed appropriate because of the complexities of the title, the amount of the purchase price, or other reason, the local representative of the title company or the abstractor will be requested to examine the title records for the purpose of making this determination, and a continuation of the title evidence should be obtained, if considered necessary. Otherwise, the interim title search may be made by the Closing Officer.

(1) If no adverse change in the status of title has occurred since the date of the preliminary or the latest certification of the title by the abstractor or the title company, as the case may be, the Closing Officer will proceed to close the case.

(2) In case of change in ownership during the period, the Closing Officer will order a continuation of the abstract or an intermediate certificate of title or interim binder, as the case may be, and take such action as necessary to cure the title.

f. Payment and Closing Sheet. ENG Form 1566, Payment and Closing Sheet and Receipt for United States Treasurer's Check, covering all charges to be eliminated by payment of money to be

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\* deducted from the purchase money check, will be prepared in advance of closing. This sheet will show, in detail, all disbursements of the purchase money, including all amounts to be expended for satisfaction of:

(1) Taxes and assessments.

(2) Outstanding judgments--State and Federal.

(3) Mortgages, deeds of trust, and other liens.

(4) Amounts received under any contract or bond.

(5) Landowner's balance after all charges are deducted from the purchase price.

g. Division or District Inspection of Premises. The Closing Officer or other authorized Division or District employee will personally make an inspection of the premises to ascertain whether any person is occupying the property in whole or in part.

(1) The Closing Officer or an authorized Division or District employee will prepare ENG Form 798, Certificate of Inspection and Possession.

(2) If any person other than the vendor is found in possession, the Closing Officer will secure a disclaimer on ENG Form 1290, Disclaimer. The disclaimer will be modified to make allowance of any provision in the offer to sell permitting possession after closing.

(3) The Closing Officer or an authorized Division or District employee will check to determine that the buildings, improvements, and crops listed on the appraisal report are still on the land being conveyed. Where buildings, improvements, and crops have been reserved by the landowner, it will be determined that only the items reserved have been removed. Whenever possession of land is surrendered to the Government before the time of payment and closing, an immediate inspection and report ENG Form 1567, Report on Vacation of Property, will have been made. The Closing Officer may rely upon this report for the inspection required in the first part of this subparagraph unless he is aware of circumstances which would make a supplemental inspection and report proper. If no such inspection and report have been made and possession has been surrendered to the Government, the inspection and report must be made at this time. \*

\* (4) The Closing Officer or an authorized Division or District employee will determine whether there have been repairs or improvements to or construction on the premises which might give rise to mechanics liens.

(5) The ENG Form 798 will be executed and placed with the title papers. If executed by an employee other than the Project Manager or Closing Officer, it must be approved by the Project Manager or Closing Officer, to indicate that the Project Manager or Closing Officer has authorized the employee signing the certificate to make the inspection and is satisfied it has been properly done.

h. Deed to the United States.

(1) The deed to the United States will be drafted in accordance with the "Standards for the Preparation of Title Evidence in Land Acquisition by the United States," issued by the Department of Justice in 1970.

(2) Where the landowner's name appears in various forms among the title papers, full use will be made of the "also known as" clause in identifying the grantor in the deed to the United States.

(3) The deed shall contain a quitclaim clause by which the grantor quitclaims to the United States all right, title, and interest which the grantor may have in the banks, beds, and waters of any streams bordering the said land to be conveyed, and also all interest in alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land and in any means of ingress or egress appurtenant thereto.

(4) Recording fees, transfer taxes, and similar expenses incidental to conveying real property to the United States; penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and the pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is the earlier, shall be paid by the Government pursuant to authority of Section 303, Public Law 91-646, approved 2 January 1971.

i. Satisfaction of Liens and Encumbrances. All Mortgages, deeds of trust, judgments, mechanics liens, and similar encumbrances will be satisfied and released or discharged of record. In the acquisition of easements, liens and encumbrances should be satisfied, released or subordinated to the Government's easement, except as provided in paragraph 5-9a, or unless administratively waived under paragraph 5-9c. \*

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\* j. Payments to Tenants and Lessees. Amounts due lessees, or other tenants, under ENG Form 1564, Consent to Offer to Sell, will be paid from the purchase price or by the landowner direct. In either case, proper receipts and releases will be obtained.

k. Satisfaction and Release of Liens of Taxes and Assessments.

(1) Except as provided in paragraphs 5-9b and 5-10k(6), all taxes and assessments which, under the law of the State where the land is located, are a lien on the property as of the date of the delivery and recordation of the deed to the United States must be paid at or before closing, unless provision for their payment is made as follows:

(a) Where closing takes place before the completion of the assessment and levy of the taxes necessary to the determination of the amount of the taxes, or before the taxes are due and payable, a sufficient sum will be withheld from the purchase price to satisfy such taxes when the amount is later determined or they later become due and payable. In cases where the amount of taxes has not been determined, an estimate will be made, after consultation with the assessor and consideration of the amount of taxes paid on the land for the preceding year. The amount withheld should be at least 20 percent in excess of the amount of taxes assessed against the property for the preceding year.

(b) If the taxes are not due and payable under State law, though the amount has been determined at the time of closing, payment will not be made to the collector or other official charged with the collection of taxes, unless he has authority to accept payment and receipt for them in advance of the due date.

(2) Funds withheld for the payment of taxes will be transmitted promptly to the Division or District Engineer in the form of cashier's check or money order payable to the Treasurer of the United States, unless the taxes are paid or held in escrow by the title company. The Closing Officer, in transmitting such payments, must clearly identify, by name, the vendor from whom the tax money was withheld, and must identify the land for which the taxes were withheld by its tract number in the project. He must also identify the taxes for payment of which the money has been withheld by specifying the type of taxes, such as county, city, or school. He will set forth the year each became or becomes due and fully explain the manner in which payment or withholding has been handled in order that proper payment will be effected by the Division or District Engineer when the taxes are due and payable. Any balance of the amount withheld and not needed to satisfy the taxes will be refunded to the grantor. \*

(3) Where payment of the taxes is not possible at the time of closing and funds are withheld for this purpose, the Closing Officer will immediately notify the local tax official that title to the particular tract has been conveyed to the United States and that funds have been withheld for the payment of taxes, specifying the taxes for which an amount has been withheld and stating that such funds are in the custody of the Division or District Commander. In giving such notice, he will use ENG Form 894, Notice to Tax official.

(4) When the taxes become due and payable, the Division or District Commander will pay such taxes from the funds withheld from the purchase price. Any excess between the amount of taxes actually paid and the amount withheld will be refunded to the grantor by the Division or District Commander. Refund checks will be transmitted to the grantor only after it has been definitely determined that all taxes which were liens on the tract are shown as satisfied on the books of the tax collector. This is necessary to avoid the possibility of a refund being made before satisfaction of all tax liens. The tax receipt should be filed with the original title papers and a copy will be submitted to CDR USACE (DAEN-REA-P) WASH DC 20314 pursuant to paragraph. 5-10p (4).

(5) Where the evidence of title consists of certificates of title or title insurance, and funds are withheld for payment of taxes, the amount so withheld may be turned over to the title company, provided:

(a) The title company is financially responsible and will agree to issue a final certificate of title or title policy in which no tax liens or unpaid taxes will be noted or, if noted, will be followed by the statement: "For the payment of which provision has been made by deposit of a sufficient sum with this company."

(b) The title company will enter into an escrow agreement with the grantor to hold such sum for the satisfaction of the taxes when they become due, and to return to the grantor any excess remaining after their payment.

(6) Agreements has been reached with the Department of Justice that, in the acquisition of easements, the following will apply:

(a) No provision need be made for the payment of taxes which are a lien but are not due and payable, provided that the purchase price of the easement, including severance damage, is not in excess of 50 percent of the reasonable value of the entire contiguous property of the vendor. In the event the value of the easement has been determined by a "before and after" appraisal, the amount of the "after" appraisal will be utilized in making the necessary

determination. In the event no such appraisal has been made, it will not be necessary to prepare a complete appraisal of the value of the contiguous property. In lieu thereof, a memorandum estimate by a qualified appraiser (staff or contract) will be obtained and placed in the tract file. In either case, the appropriate information will be inserted on ENG Form 3536, Statement Concerning Outstanding Encumbrances.

(b) It will not be necessary to withhold funds for payment of current taxes which are due and payable, if the purchase price of the easement is insufficient to pay such taxes. In such case, Item 4 of ENG Form 3536 and the third block of that form will be completed.

(c) ENG Form 3536 will be signed by the Closing Officer and the original will appear as a separate document in the Final Title Assembly.

1. Payment and Recordation of Deed.

(1) No disbursement of the purchase price shall be made until:

(a) A duly executed deed has been accepted;

(b) All outstanding charges, liens, or encumbrances on the land have been satisfied and discharged, or a sufficient sum has been withheld from the purchase price to satisfy and discharge such charges, liens and encumbrances; and

\* (c) The title is sufficient for the purpose for which it is being acquired, and all objections thereto have been eliminated or administratively waived in writing.

(2) When the requirements of subparagraph (1) above have been satisfied, the balance of the purchase price shall be delivered to the landowners.

(3) The deed and all instruments which release liens or encumbrances on the property shall be promptly recorded.

m. Closing of Easement Acquisitions.

(1) Easements Costing in Excess of \$1,000. Closing requirements and procedures with respect to easements costing in excess of \$1,000 are the same as in fee acquisitions, except as to mortgages, deeds of trust, judgments, vendors' liens, and similar title infirmities (paragraph 5-9a), and as to taxes which are liens but which are not due and payable (subparagraph 5-10k(6)).

\* (2) Easements Costing Not in Excess of \$1,000. Closing requirements and procedures with respect to easements costing not in excess of \$1,000 are the same as a fee acquisition except that title infirmities may be waived as provided in paragraph 5-9b.

n. Payment and Closing Under Power of Attorney. Where the landowner is unable or unwilling to be present personally or to pay from his own funds the amount necessary to satisfy all encumbrances and expenses, the following steps may be taken:

(1) Obtain a power of attorney from the landowner. Standard Form 232, Power of Attorney by Individual for the Collection of a Specified Check Drawn on the United States Treasury, will be used. If the landowner is a corporation, Standard Form 236, Power of Attorney by a Corporation for the Collection of a Specified Check Drawn on the Treasurer of the United States, and Standard Form 237, Resolution by Corporation Conferring Authority Upon an Officer to Execute a Power of Attorney for the Collection of Checks Drawn on the Treasurer of the United States, will be used. The power of attorney will be drawn in favor of the Closing Officer making the payment and closing. Immediately after the post office address of the Closing Officer, the following will be inserted, "Agent for the Disbursing Officer." This insertion must be initialed by the person(s) executing the power of attorney. (Above forms are available through the local GSA Regional Office.)

(2) Obtain from the landowner ENG Form 1569, Order to Disburse Under Power of Attorney. It will be noted that this form specifically recites types of indebtedness or expense, the names of the persons to be paid under the power of attorney, and the estimated, but not necessarily the exact, amounts thereof. It is important that all items (including cost of revenue stamps, recordation fees for curative material, and bank service charges) be itemized on the form.

(3) The Closing Officer then will take the necessary action for and on behalf of the landowner to discharge the indebtedness and pay expenses under the ENG Form 1569.

(4) If it is possible to have all interested parties, other than the landowner, present at one time and to make all payments simultaneously, a round table closing will be conducted. The Closing Officer, under the power of attorney and order to disburse, will endorse and cash the Treasurer's check and will make the individual disbursements in actual cash.

(5) If it is possible to determine definitely all items of payment simultaneously, but it is not possible to have all interested parties present at one time, the Closing Officer will, under the power of attorney and order to disburse, endorse and cash the Treasurer's check, obtain separate cashier's checks for all items of payment (including the bank services charge for the issuance of such checks), and deliver the checks.\*

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\* (6) Where it is not possible to determine definitely all items of payment simultaneously, the Closing Officer, under power of attorney and order to disburse, will endorse and cash the Treasurer's check and will obtain separate cashier's checks for all items of payment for which disbursements may be properly made and for any balance representing the total of any items, the amounts of which cannot be definitely determined; in other words, for the residue of the amount of the United States Treasurer's check. In every instance, the cashier's checks will be drawn to provide for endorsement by the Closing Officer or landowner as later determined to be appropriate.

(7) Curative material which requires recordation will be recorded for and on behalf of the landowner and will then be placed with the title papers.

(8) The usual tax receipts, mortgage releases, judgment satisfactions, etc., will be obtained for each monetary encumbrance which has been discharged. These instruments will be placed with the title papers, unless the landowner wishes to retain them.

(9) Separate receipts on ENG Form 1571, Receipt for Payment Under Power of Attorney, must be obtained for each disbursement made under the power of attorney and order to disburse, including a receipt for the balance of the purchase price paid to the landowner. One copy of such receipt will be placed in the project files.

(10) The Closing Officer will prepare an original and two copies of ENG Form 1570, Report of Disbursement Under Power of Attorney, showing the exact amount of each disbursement made under the power of attorney and order to disburse. The Closing Officer will prepare an original and two copies of appropriate certification thereon. The original and two copies will be signed by the landowner, who will retain one copy. The Closing Officer will place one copy in the files of the project office and will place the original with the title papers. The separate receipts on ENG Form 1571 for each disbursement made will be attached to the original ENG Form 1570.

o. Procurement of Check.

(1) After acceptance and distribution of the offer assembly and the acquisition is ready for closing, the following instruments and supporting data will be transmitted to the Finance and Accounting Officer for scheduling of SF 1166, Voucher and Schedule of Payments, and issuance of check:

(a) Two true copies of the preliminary opinion of the Attorney General, where required; or \*

\* (b) Two true copies of a preliminary certificate of title or title guarantee policy where the preliminary opinion of the Attorney General is not required; or

(c) Two copies of ENG Form 909, Attorney's Preliminary Certificate of Title, in easements acquisition which cost less than \$1,000; and

(d) Two true copies of other supporting data evidencing amount due and payable, such as statement of closing attorney; and

(e) Two true copies of the offer assembly or deed executed by the vender, if offer form has not been utilized.

(2) The following statement, appropriately modified, signed by the Chief, Real Estate Division, may be transmitted in lieu of the above listed certificates: "I certify that the check requested hereby is to pay an obligation of the United States as reflected on the attached (Offer to Sell) (easement or deed). I further certify that the parties signatory to this document and shown on the voucher as payees are the same parties reflected in a preliminary certificate of title issued by the \_\_\_\_\_ Title Company in the possession of the Real Estate Division of this office. The completion of the transaction will be in accordance with existing regulations pertaining to the closing of real estate acquisitions." The landowner's signature on a voucher is not necessary. On payments involving civil funds, paragraph 3-7g, ER 37-2-10, will be followed.

p. Procedure After Payment. When the above closing requirements have been met, the Closing Officer will:

(1) Immediately order a final continuation of the type of title evidence which has been contracted for. The final title evidence must be dated as of the date of recordation of the deed to the United States, or a subsequent date, to show a valid title vested in the United States of America subject only to those title defects which have been administratively waived or to those liens and encumbrances for which sufficient funds were withheld from the purchase price to satisfy and discharge them.

(2) Check carefully ENG Form 1566, Payment and Closing Sheet and Receipt for United States Treasurer's Check, to see that funds have been properly disbursed.

(3) Review the continued abstract, final certificate of title, or title insurance policy, as soon as they are prepared and determine that the proper preliminary and final title evidence and related papers on the case have been completed in proper order. Thereupon a Final Title Opinion will be prepared. \*



\* (4) Transmit a copy of the final title assembly to CDR USACE (DAEN-REA-P) WASH DC 20314, including copies of the final title opinion, title evidence, and related papers. This final title assembly must be chronologically arranged and should include copies of the following:

(a) Abstract of title, properly continued through time of closing; or preliminary, intermediate, and original of final certificate of title; or interim binder and original of the Title Guarantee (Insurance) Policy.

(b) Curative instruments and material pertaining to title defects appearing in the abstract, the final certificate of title, or the title guarantee or insurance policy.

(c) Deed to the United States, executed, stamped, acknowledged, and recorded.

(d) Copy of the accepted offer to sell (ENG Form 42 or ENG Form 2970).

(e) Completed ENG Form 798.

(f) Completed ENG Form 1566.

(g) Statement regarding payment of taxes or amount withheld to pay the taxes.

(h) Where required, completed ENG Form 1290.

(i) If the power of attorney procedure is followed, power of attorney on proper Department of the Treasury Form and completed ENG Forms 1569 and 1571.

(j) Certified copy of any waiver letter or certificate.

(k) Any other papers relating to the title or closing of the case.

(5) The original executed and recorded deed will be retained by the Division or District Commander for the project files. \*

(6) Similar action will be taken by the Closing Officer in acquisition of easements costing not in excess of \$1,000.

5-11. Final Title Assembly.

\*

Disposition of Final Title Assemblies. Copies of the final title opinion and related papers will be forwarded to CDR USACE (DAEN-REA-P) WASH DC 20314 for review and disposition. In addition, copies of deeds and related papers in acquisitions for the Strategic Petroleum Reserve Program of the Department of Energy will be forwarded to: Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, Louisiana 70123.

b. Division/District Files. The original documents will be retained \* for Division or District files.

5-12. Transfer to Condemnation.

a. Transfer of Tracts from Purchase to Condemnation. If at any time in the course of acquisition by purchase, it becomes apparent that title clearance and closing cannot be completed within 60 days of the offer to sell, action will immediately be taken to acquire the land by condemnation in order to make funds available to the landowner.

b. Contents of Letter of Submittal. In such cases the letter of submittal will contain or be accompanied by:

- (1) All title evidence;
- (2) An analysis of the title defects and a statement of the attempts which have been made to cure the defects;
- (3) A statement of the attempts to have the title infirmities waived by the title company and the reasons for refusal; or
- (4) The curative material which has been obtained to remedy the infirmities; and
- (5) Two copies of the offer to sell from the apparent owners.

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\* SECTION II. ACQUISITION BY PURCHASE, DONATION, AND TRANSFER

5-13. General. This Section describes the procedures of the Corps of Engineers relating to the acquisition of land and interests therein for both military and civil works projects by purchase, donation and transfer.

a. Applicability. This Section is applicable to all Division and District Engineers having real estate responsibilities.

b. Acquisition Authority.

(1) Limitation. Acquisition of land for use by the United States requires express authorization (10 U.S.C. 2676, 41 U.S.C. 14).

(2) Military. Title 10 U.S.C. 2571 authorizes transfer of real property between Defense elements without compensation if the Secretaries approve. Title 10 U.S.C. 2662 provides that acquisition of fee title or transfer of real property owned by the United States to another Federal agency, military department or a state must be reported to the Committees on Armed Services of the Senate and House of Representatives if the estimated value is more than \$50,000 and the transaction may not be consummated until after 30 days have expired from the date the report is submitted to the Committees. Title 10 U.S.C. 2663 provides for acquisition by the Secretary of a military department during time of war or when war is imminent of any interest in land, including temporary use, required for a Defense installation, munitions plant or power plant for production of munitions, through negotiation and purchase, by condemnation or by gift. Title 10 U.S.C. 2672 provides that the Secretary of a military department may acquire any interest in land, including temporary use, by gift, purchase, exchange of United States owned land or otherwise that he or his designee determines is needed in the interest of national defense and does not cost more than \$50,000 exclusive of administrative costs or the amounts of deficiency judgments.

(3) Civil Works. Acquisition of real property for civil works projects for which provision has been made by law is authorized in 33 U.S.C. 591-595a and 701. As in the case of military projects, the Secretary of the Army is also authorized to accept donations of lands and materials required for civil works projects.

c. Rights-of-Entry. Rights-of-entry for construction may be obtained by the Division or District Engineer, after he has been authorized by the Chief of Engineers to acquire the land, pending \*

- \* completion of acquisition by purchase or the filing of condemnation proceedings with declaration of taking. In the event the landowner will not voluntarily grant a right-of-entry, an appraisal of the required interest should be made and negotiations conducted on the basis thereof. If the negotiations are not successful, a declaration of taking should be submitted to acquire the necessary rights. The same procedure will be used for acquiring rights-of-entry for other purposes, such as survey and exploration (Section VI of this Chapter).

#### 5-14. Prerequisites to Acquisition.

a. Authority to Begin Acquisition. Action to acquire a tract of land will not be initiated until the Real Estate Design Memorandum (for all projects except military) or Real Estate Planning Report (for Army, other than Civil Works, and Air Force projects) is approved and specific authorization of the Chief of Engineers, or the appropriate Air Force Regional Civil Engineer (AFRCE) (Chapter 2 of this Pamphlet), to proceed with the acquisition of the project is received by the Division and District Engineer and funds have been made available. Upon such approval, the Division or District Engineer is authorized to initiate action for the acquisition of the estate approved for the particular project in accordance with the procedures hereinafter set forth.

b. Tract Descriptions. Authority to initiate engineering planning of a project will state the mapping procedures provided for in Chapter 3. It is necessary that land requirements be determined, that the various tracts be identified by ownership, and that accurate tract descriptions be developed. Tract ownership data may be developed by Division or District personnel from the local land records or procured by contract from a qualified local Government official, abstractor or title company representative.

c. Title Evidence. With approval to proceed with acquisition, title evidence contracts can be initiated. The procedures for obtaining title evidence are covered in Section I of this Chapter. Preliminary title evidence to confirm ownership and status of the title is prerequisite to negotiating for acquisition of the land or interests therein.

d. Appraisals. Concurrently with the procurement of title evidence, the appraisal of the land should begin. The appraisal, when approved, forms the basis for the determination of fair market value which will not be less than the approved appraised value. The appraisal procedures are covered in Chapter 4 of this Pamphlet. Normally, one appraisal per tract (ownership) will be obtained; however, in unusual cases such as those which involve novel, unique or controversial appraisal concepts, there is no \*

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objection to obtaining more than one appraisal covering the same tract if considered advisable by the Division or District Engineer. When fee tracts are acquired by eminent domain procedures, where the value of the property is between \$50,000 and \$100,000, only one appraisal need be provided to the Department of Justice so long as it is a contract appraisal; two appraisals will be provided for values exceeding \$100,000. Easement tracts acquired by eminent domain procedures, in excess of \$50,000, will require two appraisals. At least one of the two appraisals must be made by a contract appraiser. Generally, in these cases, the second appraisal is procured only after negotiations indicate that agreement on price cannot be reached and that acquisition by condemnation will be required. The second appraisal will be procured in order that the Corps can take advantage of any negotiating flexibility that the second appraisal may afford in order to preclude court action. It is also necessary that the appraisals be relatively current in point of time (not to exceed six months) since dependent upon the real estate activity and degree of stability of the local economy, significant changes may take place in relatively short periods of time.

e. Environmental Considerations. Paragraph D3, Attachment 1 to Inclosure 1, DOD Directive 6050.1, dated 19 March 1974, subject: "Environmental Considerations in DOD Actions," requires close environmental scrutiny of real estate acquisitions, disposals and outgrants to determine if said actions constitute a "Major Action Significantly Affecting the Quality of the Human Environment (MASAQHE)." If the action is determined to be a MASAQHE, then an environmental impact statement is required. Paragraph D3 is quoted here for ready reference:

"D. Certain types of actions require close environmental scrutiny because of the possibility that they may either affect the quality of the environment or create environmental controversy. It may be desirable in such cases to have a complete presentation of the environmental aspects of the proposed action available for any interested party. For these reasons, consideration shall be given to documenting the environmental effect of the following types of actions in writing: (The written environmental assessment need not be elaborate for actions in which it is readily determinable that the impact would not be significant; however, negative declarations must be supported by written environmental assessments which generally meet the EIS format requirements.)

\* \* \* \* \*

"3. Real estate acquisition, disposal and outgrants."

\* \* \* \* \*

### 5-15. Negotiations.

a. Acquisition Objectives. The objective of a land acquisition program is to acquire land at a price that will afford each landowner his constitutional guarantee of "just compensation" as that \*

\* term has been defined by Federal judicial decisions. The Government must never pay less than just compensation unless a gift is intended. In eminent domain proceeding, the just compensation due a landowner is determined judicially by court award or by settlement prior to trial; in a purchase case, it is determined by negotiations leading to a satisfactory price and agreement with the landowner. While it is recognized that an appraisal is only an informed opinion and does not establish or determine just compensation, it is also recognized that, in negotiating for the purchase of land, an appraisal is the best and sometimes the only reliable opinion of the market value of the land which is supported by a thorough, acceptable analysis of market conditions at the time of purchase. Therefore, in the negotiation for the purchase of land, an approved current appraisal shall establish the minimum price to be paid for the land being acquired by the Corps of Engineers. Negotiations or offers below this price are prohibited except where the property is being acquired on a competitive basis and condemnation is not authorized.

b. Negotiating Objectives. In all cases, it is important that the negotiator receives adequate guidelines and explicit instructions. Promptly, after the amount of the estimates just compensation is established, the negotiator shall make an initial offer in the full amount of the fair market value, shall advise the landowner that the land was appraised for such amount, and shall furnish the landowner a written statement of, and summary of the basis for, said amount. A concentrated effort will be made to acquire the land for that amount. This written statement will be in the form of a letter which may be delivered personally or by first class mail. Figure 6-1 in Chapter 6-1 of this Pamphlet is an illustrated format for this letter statement. Information furnished to each landowner is expected to vary; therefore, it is emphasized that the sample letter is only illustrative of the guidelines herein provided. Such summary will include, as a minimum, the following items:

(1) Definition of the term "fair market value."

(2) An accurate legal description and location identification of the real property and the interest(s) therein to be acquired (legal description and estate may be attached).

(3) The amount of the offer and a statement that such amount:

(a) Is the amount believed by the agency to be just compensation for the property;

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\* (b) Is not less than the approved appraisal of the fair market value of the property;

(c) Disregards any increase or decrease in the fair market value caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner;

(d) Does not reflect any consideration of or allowance for any relocation assistance and payments which the owner is entitled to receive.

(4) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant removable building equipment, which are considered to be part of the real property for which the offer of just compensation is made. The inventory shall include a statement of the utility and condition of said buildings, structures, fixtures, and other improvements.

(5) A description of the appraisal technique used, i.e., market approach, income approach, or cost approach, in sufficient detail to explain clearly to the landowner the process by which his property was valued. Thus, as an illustration, where the market approach was used, the explanation should include the number of comparable sales used, their general location and type, the factors considered in adjusting sales of subject property, and any other information which would help the landowner understand what was done to value his property. A statement that comparable sales of similar properties were examined without more explanation is not sufficient. Similar information should be given when any other appraisal technique is used. Unusual cases will require a more detailed explanation.

(6) An identification of land classification categories (do not show acreage breakdown).

(7) If only a portion of a property is to be acquired, an apportionment of the total estimated just compensation for the partial acquisition between:

(a) The amount representing the just compensation for the real property to be acquired;

(b) The amount, if any, representing severance damages to the remainder, together with a brief narrative description of the cause thereof; and \*

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\* (c) In the event "off-setting benefits" are involved, these must be shown, along with a narrative explanation and the land-owner shall be given a "person-to-person" explanation by the negotiator.

(8) If the property contains a dwelling, the value of said dwelling and homesite shall be set forth separately, with the statement that this figure will be used in calculating housing relocation benefits under Title II of Public Law 91-646.

(9) If any building, structure, fixture, or other improvement, comprising part of the real property, has been identified as being owned by a tenant who has the right or obligation to remove it at the expiration of his term, the amount of the value of such building, structure, fixture, or other improvement, being the greater of:

(a) The amount which the tenant's improvement contributes to the fair market value of the real property to be acquired; or

(b) The fair market value of the tenant's improvement for removal from the real property. The basis of such amount shall be included.

c. Appraisal reports or the appraiser's analysis (complete breakdown of principal value elements) will not be revealed by the negotiator unless specifically authorized. Cases involving property for which the highest and best use cannot be definitely established, and to which the exceptions mentioned in subparagraph a. above do not apply, will be reported to HQDA (DAEN-REA) WASH DC 20314 for specific instructions. If the land is being donated, initial offers, of course, are not necessary, and the appraisal will be significant in negotiations only when considering the conditions under which the donation is made as, for example, an agreed valuation for tax purposes. Negotiations will be based on current market values, which normally means that last offers will be based on appraisals not over six months old. Exceptions will be required in instances of rapid escalation of values when the appraisal is quickly outdated or in instances of a relatively static market or other condition resulting in a minimal change in property values. In such cases an explanation will be necessary.

d. Exceptions.

(1) Corps Employees. If an employee of the Corps of Engineers has a direct interest in a tract of land being acquired \*



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\* by the Corps for public use, the tract will be acquired by condemnation. In cases of this nature, appraisal reports should be prepared, reviewed and forwarded together with a declaration of taking, with the condemnation assembly. The negotiator's report, of course, will not be included. The Department of Justice will be requested to handle all further matters pertaining to settlement or trial of the case. The Department of Justice has agreed to accept full responsibility for negotiations and approval of settlements or awards in such cases, without contacting any Corps personnel other than the owner of the interests being acquired.

(2) Members of Congress. Since, under 18 U.S.C. 431 and 432, members of Congress who hold interests in land that is required for project purposes cannot contract for sale of such interests to the Government, these interests will also be acquired by condemnation. Negotiations for acquisition by purchase or for settlement without trial cannot be conducted by officers or agents of the United States. The determination of just compensation must be made by judicial proceedings. Appraisal reports and the condemnation assembly should be prepared and forwarded as set forth in subparagraph (1) above.

e. Negotiating Guidelines.

(1) The negotiator should be thoroughly familiar with the Division and District negotiating guidelines and should study the background data of the project, consisting of the authorizing act, survey report, project document, design memoranda, etc.; the applicable appraisal reports; tract ownership data; preliminary title certificates; and other related material. He should be entirely familiar with the project and the owner's individual property before initiating negotiations.

(2) The owner shall be provided with available brochures which explain the project and the PL 91-646 benefits, together with the written statement and summary required by paragraph 5-15b above. The negotiator should explain to the landowner the Government's requirement for the land, the amount of land required, the estate(s) to be acquired, the terms and conditions of the Government's contract form, and the fact that relocation assistance benefits may be available. He should furnish the landowner a copy of a map indicating the boundaries of that portion of his land to be acquired, where the entire ownership is not being acquired or where different estates are being acquired in the same ownership, specifying the estate in each area.

(3) Negotiations will be continued in an effort to obtain acceptance of the Government's offer or a reasonable counteroffer from the landowner, or until it is definitely determined that such \*

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\* a counteroffer will not be forthcoming. It is not intended that negotiations be continued until an unacceptable counteroffer is finally obtained. However, in an effort to obtain a reasonable counteroffer above the Government's estimate, the negotiator will, if necessary, take the initiative in suggesting a series of prices within a range which, in accord with the guidelines discussed in paragraph 5-16 of this Section, has been predetermined to be reasonable.

(4) The interest of both owners and tenants must be considered and protected. The tenant is a proper party to the transaction, and every effort must be made to obtain the consent of the landowner and tenant as to the price to be paid to the tenant for his leasehold interest. This can be accomplished by the tenant's execution of ENG Form 1564, Consent to Offer to Sell Real Property, which shall then accompany the owner's offer to sell. In cases where the tenant executes this form, payment for the tenant's interest can be made to him in the closing of the purchase transaction. The procedure will be followed whenever possible. An exception is permitted in those cases where the landowner and tenant prefer to handle the matter as a private transaction between themselves. In such cases, it should be determined that a satisfactory agreement has been made by the landowner and tenant. Consideration should be given to any interest which the tenant may have in growing crops. This procedure is also applicable to any third party having an interest in the property, except through severance of a subsurface estate.

(5) Negotiations with landowners will be conducted in a fair and courteous manner. The negotiator must not, under any circumstances, resort to coercion or threats of condemnation.

(6) The negotiator has no authority to obligate the Government in any manner beyond the contract form. He must refrain from oral promises or understandings and include all terms and conditions in the contract form.

(7) Although appraisal reports cannot be made available for inspection by a landowner, the various elements of value considered by the appraisers may, and should, be discussed with the landowner to satisfy him that all elements of compensable values and damages have been considered in arriving at an overall value for the property being acquired. Care will be exercised during any discussion not to reveal specific amounts related to any elements considered in the appraisal, except the acquisition cost assigned to the dwelling for purpose of calculating replacement housing payment under Section 203, Public Law 91-646. \*

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\* (8) Any interest in a tract of land sought to be acquired, or any type of relationship with the owner, disqualifies the negotiator from participating in negotiations for the acquisition of that particular tract.

(9) An appraiser is not, under any circumstances, permitted to negotiate for the acquisition of a tract of land for which he has prepared the appraisal or reviewed it as reviewing appraiser.

f. Discussions With Landowners. In order to avoid the creation of negotiating patterns, and keeping in mind that counteroffers must be justified as being just and reasonable, discussions with landowners should be conducted without disclosing the extent of the delegations and redelegations of authority to accept counteroffers. However, during negotiations on individual tracts, the landowner must be advised that, in the event of condemnation, the deposit will be in an amount no less than the approved appraised value, since the question of value cannot be resolved by negotiations. It must further be made clear that this advice is not in the nature of a threat, but is an explanation of the statement of policy directed by the Congress and the law. The negotiator will also inform each owner that offers and counteroffers made during negotiations are made without prejudice in the event of condemnation. The negotiator will make a notation on the Negotiator's Report (paragraph 5-15g of this Section) to the effect that he has so informed the owner.

g. Obtaining the Written Counteroffer; Preparation of Negotiators Report. If the negotiator considers that a counteroffer in excess of the approved appraised value is in the amount which should be considered for acceptance, the counteroffer will be reduced to writing on ENG Form 42, Offer to Sell Real Property, or on ENG Form 2970, Offer to Sell Easement, and be properly executed by the landowner. In such cases, a complete written record of negotiations with respect to each tract or ownership, as appropriate, will be maintained by means of ENG Form 3423, Negotiator's Report, Part I. This record will state the chronological history of negotiations, all elements considered in evaluating the landowner's final counteroffer, and the justification for such recommendation in accordance with paragraph 5-16 of this Section. The justification will be fully recorded in ENG Form 3423A, Negotiator's Report, Part II, which is a separate page of this report, and which will be removed in the Office of the Chief of Engineers prior to submitting the counteroffer assembly to higher authority for approval. Final action in the counteroffer, either by the Secretary of the Army, the Chief of Engineers or under the delegated authority to Division and District Engineers, will be entered on this record as soon as that information is available. \*

\* 5-16. Counteroffers.

a. Consideration of Counteroffers. In negotiations with landowners, if agreement cannot be reached with a landowner as to the purchase price established by the appraisal, the lowest price demanded by the landowner may be considered by the Division and District Engineer, and the Chief of the Real Estate Division, on the basis of the following factors:

(1) Variations in Appraisals. In the usual case, the Corps will have the opinion of only one appraiser with respect to the market value of the particular tract of land. It must be recognized that the opinion of a second equally competent appraiser might be higher or lower than that of the appraiser who appraised the property. Hence in considering counteroffers of landowners, Division and District Engineers should keep in mind that two equally competent appraisals may reflect reasonably divergent opinions of value as to the same property. Instances requiring two appraisals are covered in paragraph 5-14d of this Section.

(2) Built-in- Costs, Prior Counteroffers, Settlements and Liability Risks of Proceeding to Trial. It is recognized that there are certain Government administrative costs and liability risks involved when property is condemned by the United States and the land value is judicially determined. These items are definite in character but the attendant costs will vary. "Built-in" costs of proceeding to trial include, but are not limited to, the following items: Salaries of all Government personnel participating in trial preparation, pre-trial hearings, and the actual trial; cost of an additional appraisal(s); witness fees of contract appraisers employed by the Corps of Engineers or the Department of Justice; travel costs of all Government personnel and consultants participating in trial preparation, pre-trial hearings, and the actual trial; and cost of preparing trial documents and exhibits. Consideration should also be given to prior counteroffers which have been accepted and settlements approved prior to trial. "Liability risks" of proceeding to trial are the amount of the anticipated award over and above the appraised value, taking into consideration probable testimony on behalf of the Government and the landowners, as well as the history of condemnation awards in the Federal court jurisdiction in which the lands are located, and the amount of interest on a deficiency judgment which would result from the anticipated award. Serious consideration of the above factors may justify a recommendation for authority to accept a counteroffer which otherwise would appear too liberal. \*

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\* (3) Non-Compensable Elements of Value. Elements of value based on consequential damages or speculative values, as defined by the Federal courts, may not be recognized in considering a landowner's counteroffer. However, even though a landowner's counteroffer might include non-compensable items of value, favorable consideration of the counteroffer may be given if it can be justified on the basis of variances in appraisals, built-in costs, and liability risks of proceeding to trial.

(4) Value of Reserved Items. The salvage value of improvements and the value of crops and/or timber reserved by the landowners, as provided in paragraphs 5-18g, 5-18h, and 5-18i, will not be included in the amount of the counteroffer in determining the excess of counteroffers over appraised values when applying the dollar and percentage limitations in the delegations of authority to Division and District Engineers for acceptance of counteroffers. The determination of the excess will be made on the basis of the appraised value of the interests being acquired (including the value of the reserved items) compared to the cash payment which will be made to the landowner if the Government accepts his counteroffer. However, this method of analyzing the counteroffer is intended for use only in determining the limitations of authority. The overall transaction must be in the interest of the United States and not afford an unwarranted windfall to the vendor.

b. Application and Limits of Delegated Authority. The negotiating procedures outlined herein will apply to all acquisitions by the Corps of Engineers for the Army (military and civil), Air Force, Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and other Federal agencies which utilize the services of the Corps for acquisition of real estate. Delegations of authority to Division and District Engineers and to the Chiefs of their Real Estate Divisions to accept offers in excess of the appraised valuation have been made. Offers which do not exceed the approved appraised value may be accepted by authorized Division and District personnel regardless of the amount. Other offers will be handled as outlined in the paragraphs which follow.

c. Exercise of Delegated Authority. The approval of a counteroffer over the appraised value, but within the authority redelegate to Divisions and Districts, will be evidenced by the Division Engineer, the District Engineer, the Chief of the Real Estate Division, or the incumbent of the position to which redelegations have been made, in one of the following manners: \*

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\* (1) Manually accepting, on behalf of the United States, the offer to sell, as provided in paragraph 5-19; or

(2) Manually executing a dated notation of approval of the purchase price, to be placed in the tract file, preferably on the original of the Negotiator's Report (paragraph 5-15g).

d. Submission of Counteroffers to the Chief of Engineers.  
Recommendations for the grant of authority to accept counteroffers which are considered reasonable, but which cannot be accepted by the Division Engineer, the District Engineer, or the Chief of the Real Estate Division, within the limitations of delegated authority, will be submitted to HQDA (DAEN-REA) WASH DC 20314 for consideration. Negotiator's Reports, prepared in accordance with paragraph 5-15g, will accompany this submission; the contents thereof need not be repeated in the transmittal letter or in forwarding indorsements. The assembly will consist of the forwarding correspondence and the Negotiator's Report, with any additional material needed to support the recommendation of the Division and District Engineer. An analysis should be made of this offer as compared with other counteroffers accepted for the project, as well as with results in condemnation cases settled before trial. Signed offers will not be forwarded unless they contain deviations requiring approval by the Chief of Engineers. Appraisal reports are helpful and may be necessary reference for proper consideration of the recommendation. In the event the appraisal report was approved by HQDA (DAEN-REE), the forwarding letter should refer to the approval correspondence and data. It will not be necessary to inclose copies of the appraisal report. Where only a portion of an ownership is required, information should be furnished in the Negotiator's Report or in the transmittal correspondence (1) as to whether or not the remainder portion is considered to be an uneconomic remnant and (2) if so, as to whether or not an offer was made to acquire the entire property. Further, a statement is required as to whether or not it is considered that the acquisition will have any adverse effect on the acquisition of the remaining land required for the project.

5-17. General Negotiation Procedures.

a. Provisions of Military Construction Appropriation Act.

(1) Section 108 of the Military Construction Appropriation (MCA) Act of 1978 (PL 95-101) provides that no part of the funds provided in the Act shall be used for purchase of land or easements in excess of the value as determined by the Corps of Engineers, except:

(a) Where there is a determination of value by a Federal Court;  
or \*

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\* (b) Purchases negotiated by the Attorney General or his designee; or

(c) Where the estimated value is less than \$25,000; or

(d) As otherwise determined by the Secretary of Defense to be in the public interest.

(2) The above wording, except for subsection (d), constitutes a limitation on accepting or submitting a recommendation for approval of a counteroffer in excess of the appraised value. Subsection (d) brings military acquisition within the general acquisition policy required under PL 91-646. Future MCA Acts should be carefully examined to determine if any limitations on acquisition have been restored.

b. Local Cooperation Projects. The participation of a non-Federal agency in a federally-assisted project will be in accord with Section 221 of PL 91-611 and Chapter 12 of this Pamphlet. Acquisition of real property by a non-Federal agency will be in accord with Sections 210 and 305 of PL 91-646 and this chapter.

c. Negotiations on the Basis of Ownership; "Package-Deal" Negotiations.

(1) Normally, negotiations for all interests in all tracts which are being acquired from one parent ownership will be negotiated at one time. These tracts will usually consist of all those to which the same basic tract number has been assigned. Exceptions may be made only where negotiations for some of the tracts in a series must be accomplished to obtain possession, or for other critical reasons. Piecemeal acquisition must be avoided if at all possible.

(2) When more than one tract is operated by the owner as a unit, negotiations should take place on the two or more tracts or groups of tracts, whether or not they bear the same basic tract number.

(3) In cases where an owner insists on a "package-deal" negotiation on all tracts in the same ownership, or having at least one common owner, the negotiations will be considered as one transaction.

(4) Tracts which are in the same ownership, but which are not operated as a unit, should, unless the owner desires otherwise, be negotiated separately, on the basis of the separate appraisals which would be prepared in this type of case. \*

- \* (5) Under subparagraphs (1), (2) and (3) above the limitations of authority to accept counteroffers will be applied to the entire transaction.

d. Dissemination of Information Relative to Section 302, Public Law 86-645. The information disseminated to the public on Army military and civil works projects, as required by Chapter 2 of this Pamphlet, will reflect the procedure for engaging in practical negotiations, in an effort to avoid litigation. As to the dissemination of information relative to delegation and redelegation of authority, and the extent thereof, specific reference thereto will not be made in information pamphlets and will not be volunteered in public meetings. However, in individual negotiations, and in answer to specific questions raised in public meetings or by letter, the existence of such authority may be disclosed, but the extent thereof will not be divulged. While the objective is to reach agreement with landowners at prices which can be just and reasonable, it is considered that the exact extent of present delegations and redelegations of authority represents the exercise of internal departmental discretion, subject to change at any time, and is information which should be withheld from release to avoid the creation of negotiating patterns; and to give Division Engineers, District Engineers, and Chiefs of the Real Estate Divisions freedom to exercise true discretion within the limits of current delegated and redelegate authority.

e. Acquisition by Condemnation if Negotiations Fail. As soon as it is determined that a satisfactory agreement cannot be reached after full consideration of all reasonable counteroffers received, action will be promptly taken to acquire the property by condemnation proceedings, including the filing of a declaration of taking, in order to make funds available to the landowner and to maintain the project acquisition schedule (Section IV of this Chapter). The landowner should be advised in writing, sufficiently in advance of the submission of the condemnation assembly to the Chief of Engineers, that condemnation proceedings will be recommended and the reason therefor. Condemnation assemblies will include copies of the Negotiator's Reports or other written records of negotiations. The estimated compensation to be deposited in the registry of the Federal District Court with the filing of a declaration of taking will be in the amount of the approved appraisal.

5-18. Exceptions and Reservations.

a. General. Prior to the enactment of PL 91-646, the Corps encompassed a very generous policy of priority leasing with respect to former owners and tenants, in order to ease the burden \*



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\* of people who had to relocate because of the Corps' projects. Recognizing the inadequacies of the well-intentioned attempts by acquiring agencies to make whole the former landowner or tenant, the Congress enacted PL 91-646 which was approved on 2 January 1971. It would appear that the Congress intended that such law provide for the fair and equitable treatment of persons who are displaced, without having to rely on interim measures, such as priority leasing, to ease the inevitable relocation. In House Report 91-1656, the Committee on Public Works of the House of Representatives noted the likelihood that adequate housing may not be available readily and indicated this as its reason for including the provision in the law that satisfactory replacement housing must be available before displacement. In view of this, it is incumbent on the District Engineer to be opportune in seeking out replacement housing and to be judicious in the early relocation of owners and tenants before market changes eliminate any available supply of replacement homes. It is also essential that the District, Engineer be diligent in providing the required relocation assistance advisory services and benefits authorized by the law.

b. Possession by Government. It will be the objective of the District Engineer to have the premises vacated and to cause unneeded improvements to be removed at the earliest practicable date and conform to the Congressional intention hereinabove expressed. In addition to the above, reasons for this objective are:

(1) To provide for the expeditious payment of benefits to former owners and tenants;

(2) To complete administration of the actual relocation of owners and tenants in a timely manner;

(3) To avoid maintenance and security problems with respect to acquired improvements;

(4) To prevent vandalism, trespassing and poaching with respect to acquired improvements;

(5) To avoid any implication that former owners or tenants may be permitted to remain indefinitely on the federally acquired property;

(6) To cause land to be leased on the basis of the most practicable size and configuration rather than on the basis of the size of the units acquired;

(7) To permit the general public to bid for the lease of federally owned land rather than restricting the privilege of leasing to the former owner or tenant; and \*

\* (8) To avoid a backlog of incomplete actions when construction or flooding is imminent or the land is otherwise required.

c. Possession Reserved to Former Owners and Tenants. It is considered that the policy of granting priority leases to former owners and tenants has been overridden by the enactment of PL 91-646. Accordingly, this policy is being phased out, and where applicable, the acquisition agreement will set forth the dates agreed upon for the vacation of the premises by the owner and tenant without commitments, express or implied, as to the leasing of the premises after such dates. Procedure for providing for vendor's continued possession after the Government's acquisition is covered in subparagraph 1. below.

d. Outstanding Rights.

(1) When the United States is acquiring title subject to outstanding rights, the offer will differentiate between:

(a) Property which the vendor is excepting or rights which he is reserving and which are created for the first time; and

(b) Rights which third parties have acquired in the past, generally referred to as outstanding rights in third parties.

(2) Exceptions or reservations of rights which the vendor may retain, without interfering with the construction or operation of the project, will be set forth in the offer and deed by a clause following the description, beginning with the words: "Excepting \*\*\*\*" or "Reserving \*\*\*\*." Any other outstanding rights, subject to which the United States is acquiring title, held by third parties will be set forth in the offer and deed by a clause, following the description, beginning with words, "Said premises are conveyed subject to \*\*\*\*." Negotiations with the surface owner will include the owner's interest in the sub-surface, unless acquisition of a lesser interest has been authorized by directive or specific approvals. These negotiations will not include interest severed and outstanding in third parties by purchase or lease, unless the surface owner agrees to remove the outstanding interest or agrees to obtain a subordination from the holder of the outstanding interest if that is consistent with the acquisition plan. If negotiations with the surface owner are successful, an Offer to Sell will be obtained, reciting the outstanding interest in the "Subject to" paragraph of the form, unless the surface owner has agreed to remove the outstanding interest (or obtain a subordination, if appropriate), in which case the Offer to Sell must recite specifically that the surface owner is assuming this obligation. In order to carry out the requirements of this paragraph, the title evidence must be examined prior to negotiations or, in any event, prior to acceptance of the Offer to Sell. \*

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\* e. Right to Repurchase Prohibited. In no case will an offer be obtained in which the vendor reserves the right to repurchase the property. Such a reservation would be contrary to the Federal Property and Administrative Services Act of 30 June 1949, 63 Stat. 377, 40 U.S.C. 471, et seq.

f. General Reservation Guidelines.

(1) Reservations of the right to remove crops, timber, buildings, and improvements during a specified period will not be permitted without express approval of the Division or District Engineer on civil works projects, the Army or Air Force using service on military projects, or the Federal agency, if other than the Army or Air Force, for which the land is being acquired.

(2) At the time of the approval of the acquisition by the Chief of Engineers, a determination will generally have been made as to whether subsurface rights and/or water rights will be acquired or left outstanding. Acquisition will be on the basis of such determination and as outlined below. Lands will be acquired subject to minerals, oil and gas rights or other similar interests severed and outstanding in third parties by purchase or lease and as approved by the Chief of Engineers.

(3) Where it is not possible to acquire or subordinate an outstanding interest by negotiation and the interest will not interfere with the operation of the project, consideration may be given to obtaining a waiver from the Office of the Chief of Engineers on the basis of taking a calculated risk rather than resorting to condemnation (see paragraph 5-18k). Waivers will be considered on a tract-by-tract basis or on a project segment basis. Since such waivers involve several elements of the Office of the Chief of Engineers (Civil Works or Military Construction as well as Real Estate), the basis for the calculated risk must be fully explained.

(4) Concurrently with the negotiations to acquire from the surface owner, negotiations should be opened with the owner of the subsurface rights or other interests severed and outstanding in third parties by purchase or lease and required for the project, unless these interests are held in "block ownership." Block ownership exists where a person, corporation, or other entity owns subsurface or other interests in connection with more than one surface tract and in sufficient amount for the entire interest holding to have added value, for operational or other reasons, because it is in a block ownership. In other words, block ownership exists when the acquisition of a part of the block would require the assessment of severance damage, even if the value of \*

- \* the interest or the amount of the severance damage would be in a nominal amount. On this basis, subsurface or other interests need not be contiguous to constitute a block ownership. Block ownership interests will not be acquired (or subordinated) piecemeal.

(5) Acquisition of the required interests, including subordination, held in block ownership should be started as soon as the extent of an operational unit is determined. As stated in subparagraph (4) above, all interests in a tract of land should be acquired at one time or as close in time as possible. Dual acquisitions of entire areas, one for surface rights and then for subsurface interests, should be avoided and acquisition of separate interests should be scheduled to coincide.

g. Reservation of Buildings and Improvements. The reservation by vendors of the right to remove buildings and improvements will be permitted under the following conditions:

(1) Where the Division or District Engineer, in civil works projects, the using service in Army and Air Force projects, or the Federal agency, if other than the Army or Air Force, for which the land is being acquired, has determined that they will not be needed for the purpose of the project;

(2) The consideration to the Government for the reservation will be an amount negotiated at not less than the appraised salvage value of the building and improvements which are reserved, and such amount will be deducted from the negotiated price at the time of negotiation prior to execution of the offer;

(3) Where a reservation is permitted, the following clause will be inserted in the offer, following the description of the land:

"Excepting and reserving to the Vendor the right to remove (enter description of buildings) on or before \_\_\_\_\_ 19 \_\_\_\_, which the Vendor agrees not to relocate on other land be acquired for the project; provided, however, that, in the event that the said buildings and improvements are not completely removed on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said buildings and improvements which remain without notice to the Vendor; and provided further that, in the event said buildings and improvements are relocated on other land to be acquired for the project, the United States shall have good and indefeasible title to said buildings and improvements without notice or further compensation to the Vendor."

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- \* The date on which the buildings or improvements must be removed must be fixed so that there is no interference with construction or carrying out the mission of the project. The date for the removal should allow a reasonable time for removal of the improvements, usually not more than 90 days, except that for valid reasons the Division or District Engineer may grant an extension of time for removal. The right to remove such buildings cannot be prolonged indefinitely and certainly such right cannot survive the limited right of possession reserved to former owners and tenants as provided in paragraph 5-18c.

h. Reservation of Growing Crops.

(1) The reservation by the owners of the right to harvest and remove growing crops should be encouraged in order to conserve land acquisition funds and to avoid the costs incident to disposal of crops by the Government, whenever there is a probability that possession of the land will not be required prior to the harvest season.

(2) Where a reservation is permitted, the following clause will be inserted in the offer, following the description of the land: "Reserving to the vendor the right to harvest all of the growing crops located on the above described land on or before \_\_\_\_\_ 19 \_\_\_\_\_. In the event the crops are not harvested on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said crops, without notice to the vendor." The date on which the crops must be removed must be fixed so that there is no interference with construction or carrying out the mission of the project.

(3) The consideration to the Government for the reservation will be an amount not less than the appraised value of the crops as of the date of surrender of possession as disclosed by an approved appraisal report, and such amount will be deducted from the purchase price at the time of preparation and execution of the offer.

(4) Where a tenant has an interest in growing crops, the value of his interest must be fixed by use of ENG Form 1564, Consent to Offer to Sell Real Property, which provides that the value of the tenant's interest, as agreed upon by the landowner and tenant, will be paid from the purchase price for the land. The use of this form not only protects the tenant but, in addition, provides a simple method for extinguishing rights \*

\* which the United States is legally bound to recognize. Where a tenant wishes to reserve the right to remove crops, it must be done in the name of the landowner, and in like manner. To accomplish the foregoing, any other form is satisfactory, in lieu of ENG Form 1564, as long as closing requirements are satisfied.

i. Reservation of Timber.

(1) The reservation of the right to remove timber by vendors will be permitted only with the express approval of the Division or District Engineer, with the concurrence of the using service in cases other than civil works projects of the Corps of Engineers.

(2) Reservation of the right to remove timber will be handled in substantially the same reannex as that described for the reservation of buildings and improvements. If owned by a third party, ENG Form 1564 will be used in the same manner as for crops unless the timber interests are held in block ownerships. The consideration to the Government for the reservation will be an amount not less than the appraised value of the timber, giving full weight to any unusual difficulty in harvesting and transporting which are caused by the size, shape and location of the stand reserved, time limitations for removal, clearing requirements over and above those normally involved in prudent harvesting, and similar factors. If necessary, the stand reserved will be re-appraised on this basis. An amount not less than this appraised value will be deducted from the purchase price at the time of preparation and execution of the offer.

(3) Where a reservation is permitted, the following clause will be inserted in the offer following the description of the land: "Reserving to the vendor the right to cut and remove on or before \_\_\_\_\_ 19 \_\_\_\_, all trees in excess of \_\_\_\_\_ inches in diameter at breast height (DBH) located on the above-described land. In the event the timber is not removed on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said timber, without notice to the vendor."

j. Coal, Oil, Gas or Other Minerals. Acquisition of land or interests therein for project purposes will usually include the subsurface as well as the surface, except in areas where minerals have more than a nominal value. When the mineral, oil and gas rights have an identifiable value or are the subject of separate estates in the land, such mineral, oil and gas rights will not be acquired except where the development thereof would interfere with project \*

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\* purposes, but mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access, and not be inimitable to the environment. This is covered in more detail in Chapter 2 of this Pamphlet. It is essential, however, in many acquisitions that the subsurface rights be acquired. In others, where these rights need not be extinguished, provision must be made in the offer and the deed to subordinate such rights to project requirements, by excluding the owners of such rights from the area, or limiting the exercise of such rights so that they will not interfere with the primary purposes of the project, including public access. The following guidelines are applicable in these cases:

(1) Where it has been determined that subsurface rights in the vendor, or outstanding in third parties, must be acquired, extinguished or subordinated, such arrangements will be made in the course of obtaining an offer for the surface or subsurface interests. Where the negotiations for acquisition, extinguishment or subordination of subsurface rights will be delayed, and it is considered advisable to proceed with surface acquisition to keep pace with project requirements, appropriate recommendations and justification will be submitted to HQDA (DAEN-REA) WASH DC 20314 for approval.

(2) If the owners of the surface and subsurface rights are agreeable, the separate interests can be acquired in a single transaction by use of ENG Form 1564, Consent to Offer to Sell Real Property. This method is the most desirable one, and, if used, the purchase price in the offer will cover both the surface and subsurface interests and the offer will not be taken "subject to" the subsurface rights.

(3) Subordination of the subsurface interest based upon the value of the minerals in place and which will allow continued production by the mineral owner or lessee must be pursuant to such terms as will safeguard the Government's interest and preclude a windfall to the mineral owner or lessee. Value of the minerals in place will not exceed the recoverable portion of said minerals using agreed upon production methods. See Chapter 2 of this Pamphlet for detailed treatment in the section pertaining primarily to Real Estate Design Memoranda.

(4) When the third-party owner of subsurface rights refuses to enter into an agreement as contemplated in subparagraph (2) above, the title to the surface estate may be acquired separately, and the subsurface rights outstanding in third parties acquired as a separate transaction. The offer for the acquisition of the surface

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\* estate will provide for the conveyance of all interests of the surface owner in and to the subsurface estate, as well as all surface rights, and provide for taking "subject to" the subsurface rights outstanding in third parties. In such cases, the negotiations described in paragraph 5-15 will be conducted on the basis of the approved appraisal, less the appraised value of the outstanding subsurface rights.

(5) Where it has been determined that the subsurface rights and interests therein need not be acquired, but the owners of such rights must be excluded from the area, and the owner of the surface is the owner of the subsurface estate, the offer will contain a clause providing that he relinquish, for the period that title to the tract is vested in the Government, all rights to enter upon the lands covered by the offer or that he will limit entry and exploration in a named manner so as not to interfere with the operation of the project. If third parties own subsurface rights or interests, a similar waiver of the exercise of such rights must be procured from all third parties having any interest in the subsurface estate, whether as lessees or assignees. The waiver by third parties must be obtained at the time the offer is procured for the surface estate, unless these subsurface interests are held in block ownership.

k. Title Exceptions - Administrative Waivers

(1) A distinction should be made between those title defects, objections, liens or encumbrances which, if not eliminated, might possibly defeat or adversely affect the Government's title, and those interests in the property owned by parties other than the grantor. All encumbrances, defects, and outstanding interests which cannot be waived under subparagraphs (2), (3), and (4) below must be eliminated or a waiver of the defect secured from the Attorney General.

(2) Title may be taken subject to an outstanding third party interest which has been administratively waived. Requests for administrative waivers shall be submitted to HQDA (DAEN-REA) WASH DC 20314 for consideration, together with recommendations from Division and District Engineers. The recommendation for waiver should be coordinated with the using agency, if other than Department of the Army land (military or civil works), and should be accompanied by a certificate signed by the Chief, Real Estate Division or the Chief Appraiser, certifying that the outstanding interest has no contributory value to the estate being acquired and will not interfere with the purpose for which the property is being acquired. \*



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\* (3) It has previously been administratively determined that all lands for Department of the Army (military or civil work) or Air Force projects may be acquired "subject to existing easements for public roads, public highways, public utilities, railroads and pipelines," and "to the reservations, exceptions and any other outstanding rights contained in or referred to in patents issued by the United States," and also "to water rights, claims or title to water, if any, or other similar title exceptions." A decision as to whether any of these exceptions should be eliminated is the responsibility of the Division or District Engineer, after coordination with the using service if other than the Department of the Army. If such interests are to be left outstanding, they should be included in the "subject to" clause of the Offer to Sell.

(4) Offers to Sell may be accepted subject to subsurface mineral interests owned by third parties in accordance with paragraph 5-18d. In such case, the "subject to" clause of the Offer to Sell should recite the specific interest which is being left outstanding. Where it is not possible to acquire or subordinate an outstanding subsurface interest by negotiations and the outstanding interest will not interfere with construction, operation or maintenance of the project, consideration may be given to obtaining a waiver from HQDA (DAEN-REA) WASH DC 20314 on the basis of taking a calculated risk rather than resorting to condemnation. Such waivers may be considered on a tract-by-tract, segment-by-segment, or project basis. Where a number of small mineral interests in a project are to be recommended for waiver, it is preferable that the recommendation be submitted on an entire project or group of segments at one time. Such a recommendation should specifically identify the subsurface mineral interests which are to be left outstanding, together with the estimated value of each interest, and should be accompanied by a map(s) on which the areas affected by the outstanding interests have been outlined. The basis for the calculated risk should be explained fully.

1. Possession Reserved to Vendor.

(1) The objective in acquisition is to obtain possession for project purposes at the earliest practicable time. It is recognized, however, that there are occasions when possession by the Government may be delayed and provision must be made for continued possession by the former owner in order to meet the requirements of the Government's acquisition policy and to further soften the impact of the Government's acquisition. The retention of possession will enable the owner-occupant of farm land, or residential property, \*

\* to receive his purchase money and remove improvements reserved by him, and permit occupants who may be former owners or tenants the privilege of harvesting growing crops and sufficient time to relocate to other locations. Accordingly, the Division or District Engineer may make provision for the former owner, occupant, and/or his tenant(s) to remain in possession of the land under the terms and conditions as follows:

(a) If the tract is to be acquired by direct purchase, the provision for retention will be written into the offer (ENG Form 42, ENG Form 2970, or ENG Form 1564) and will read substantially as follows: "Notwithstanding the provisions of paragraph \_\_\_\_\_ of this offer, (and/or consent to option) the occupant (vendor and/or his tenant) now in possession of the property, in consideration of the protection and maintenance of the land, buildings, and structures, and protection of the property against loss by fire, waste, or other causes, to which the occupant hereby agrees, reserves the right to occupy the property until \_\_\_\_\_ Such occupancy is subject to revocation by the (Division) (District) Engineer at any time by giving \_\_\_\_\_ days notice in writing to the occupant if possession of the property is required by the United States; and provided further that the vendor-occupant or his tenant will remove no improvements or timber unless otherwise provided herein."

(b) When the tract is to be acquired by condemnation, the circumstances of the right to remain in possession, which has been established as hereinafter set forth, will be fully described in the correspondence forwarding the condemnation assembly to HQDA (DAEN-REA-C) WASH DC 20314. The retention of possession without payment of rent is directed to the benefit of the occupant of the property with some property maintenance consideration to the Government. This procedure will not be used to permit non-occupant owners a means of retaining possession without payment of rent and at the same time collect cash rents or unreserved crop rents from tenants.

(c) When the land being acquired is utilized by the owner and/or tenant for agricultural or related purposes, a period of possession may be allowed, if consistent with project requirements, to permit the crop owner to harvest growing crops, and to avoid abrupt dislocations. The period of possession reserved in the offer, or for which request for the order of the court is deferred in declaration of taking cases, should generally be co-extensive with the crop season or the date that, by custom in the community, leases of such properties ordinarily expire, provided, however, \*

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\* that such period does not exceed 12 months from the date title vests in the Government. Reservation of possession or delay in entry of order of possession that will interfere with the Government's requirements for use of the land will not be allowed.

(d) In the case of owner-occupied residential property other than farm residences, possession may be permitted for a sufficient time to allow orderly relocation, but no longer than 12 months after title vests in the Government.

(e) In connection with the acquisition of commercial, industrial, tenant-occupied residential property other than residences occupied by farm tenants, and special use properties, ordinarily the procedures of reserving possession to the vendor by a clause in the offer, or deferring the right to possession under a declaration of taking proceeding, should not be utilized. In such cases, after title vests in the United States, the continued possession of the property by vendor or tenant should be formalized by an outlease from the Government. However, if in the opinion of the Division and District Engineer a reservation for possession in the offer or deferral of order of possession is desirable in certain instances from a public relations standpoint or for other compelling reasons, such cases will be forwarded to HQDA (DAEN-REA) WASH DC 20314 for consideration.

(f) The reservation of use and occupancy in the vendor and/or tenant under the terms of the offer or deferment of possession must be based on adequate consideration to the Government. It is anticipated, however, that items such as the vendor's maintenance of the land, buildings, and structures, his protection of the property against loss by fire, waste, or other causes, and the fact that his possession can be revoked within a short period of time, will, in most instances, offset any rental for the period of the reserved occupancy or deferred possession which might otherwise be due. However, if possession is reserved by the vendor in the acquisition of commercial, industrial, and special use properties, or other type of property having a potentially high income factor, the fair rental value for the period of reserved use or deferred possession must be deducted from the agreed purchase price.

(g) Special provisions for protection of the Government, such as those appearing in ENG Form 1366, Department of the Army Lease - River and Harbor or Flood Control Property, will be added to the reservation clause in the offer in cases where, in the opinion of the Division or District Engineer, they are necessary or desirable. If the case is not to be closed by direct purchase, the letter to the vendor notifying him of the Government's intention to file a \*

\* declaration of taking will set forth the fact that possession is to be deferred and for what period, and will contain a statement as to the Government's expectation that the vendor will properly maintain and protect the premises, and perform such other acts (or refrain from such acts) as deemed advisable by the Division or District Engineer. Both the letter of notice and the reservation clause in the offer will provide that the right to possession may be revoked on 30 days notice to the vendor.

(2) It is recognized that farmers may experience difficulty in finding substitute farms needed for their livelihood within one year, and other owners and tenants may encounter difficulty in relocating within one year. Therefore, the District Engineer, as an exception to the procedure in subparagraph (1) above, may lease properties to former owners or tenants at the fair market rental value for up to one additional year where the circumstances justify such action, and, in such event, the record will contain the reasons justifying the action. Any occupancy by the former owner or tenant beyond 12 months from the date the property was acquired by the Government will be covered by a lease and will provide payment of the fair market rental value of the property leased.

(3) The District Engineer, through channels, may request the Chief of Engineers to grant exceptions to this policy where unusual circumstances warrant such consideration. In keeping with the intent of this action, it is hoped that such cases will be minimal in number.

(4) The following will apply with respect to advance land acquisition projects. Former owners and tenants whose properties were acquired prior to 1 August 1972 will be allowed to remain on the property by lease on a year-to-year basis until the establishment of a land management use plan and thereafter, if the property is available for leasing, for a single five-year term. Former owners and tenants whose properties are acquired after 1 August 1972 will be allowed to remain on the property by lease on a year-to-year basis until construction commences, provided the property is available for leasing. After construction commences, if the property is not immediately required for project purposes, such former owners or tenants will be allowed to remain on the property by lease for an additional two years. Continued possession of properties acquired after the date construction commences will be governed by the procedure outlined in subparagraph (1) above.

m. Schools, Cemeteries, and Facilities of State and Local Governments. ER 1180-1-1, Section 73, provides for the discretionary relocation by the Chief of Engineers of schools and \*

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- \* other local governmental facilities, and acquisition of the sites under Section 111 of PL 85-500. Section 73 will be followed in the acquisition and relocation of cemeteries. Where the school was formerly a part of an abutting tract, offers for the abutting tracts will contain a clause whereby the vendor or vendors agree to quitclaim all right, title, and interest whether vested or reversionary, in and to the school site in executing the deed to the United States.

n. Reservations Prior to Completion of Offer. Where immediate possession of areas is necessary and is obtained by right-of-entry or the filing of condemnation proceedings, owners often wish to move, taking with them buildings and improvements, or wish to harvest timber or crops, prior to any offer by the Government for the sale of their land. This action is authorized only under the following conditions:

(1) Appraisals of all the land, buildings, improvements, timber, and crops of the particular tract are completed and approved.

(2) A determination is made by the Division or District Engineer that the buildings, improvements, and timber will not be needed, and the harvesting of timber or crops will not interfere with construction or operation of the project.

(3) ENG Form 1565, Agreement for Removal of Property, will be obtained from all persons having an interest in the property to be removed. This agreement will recite the amount which the owner is willing to have deducted from the value of the tract as a whole for the right of removal, which may not be less than the appraised salvage value of the buildings, improvements and timber, and the appraised value of the crops, as set out in paragraphs 5-18g, 5-18h, and 5-18i.

(4) ENG Form 1565 will be obtained and accepted by the Division or District Engineer, or the Chief of the Real Estate Division.

(5) If an offer is obtained later, an appropriate reservation must be inserted in the Offer to Sell to reflect the prior agreement relative to reservations and removals of property and the agreed value of same.

(6) If it is necessary later to file a declaration of taking on the particular tract, a copy of the agreement (ENG Form 1565) will be forwarded with the correspondence transmitting the \*

\* declaration of the taking assembly for use of the Department of Justice in the court action. The agreement by its own terms will serve as a stipulation as to the amount to be deducted from the ultimate award for the right of removing buildings, improvements, timber or crops.

o. Less or Damages to Improvements, Timber, or Crops.

(1) Insurance Protection Against Risks. The Government does not carry property insurance of any nature. Vendors, however, may be advised as to their liability for certain losses, and that insurance protection against such risks is optional. When buildings, improvements, timber, or crops on land being acquired by the United States are protected by insurance in effect when acquisition activities are initiated, the time and method of cancellation and negotiation for refund on premiums paid will be the responsibilities of the vendor. In order to avoid double payments to vendors, any amounts actually collected by vendors under the terms of the insurance policies for damage or loss occurring after acceptance of the offer by the Government will be deducted from the purchase price, regardless of when title is vested in the United States or the right to possession is exercised.

(2) Fixing Liability.

(a) Prior to Vesting Title in Government. Buildings improvements, timber, or crops on land acquired by the United States by purchase or condemnation remain the property of the vendor until title has been vested in the United States by delivery of a deed of conveyance or filing of a declaration of taking, and loss or damage thereto caused by fire, acts of God, theft, or vandalism, before such vesting of title, will be borne by the vendor, except as provided below.

(b) Possession by Government. When the right to possession has been exercised by the United States under an accepted Offer to Sell, condemnation proceeding, or possession has otherwise been surrendered to and accepted by the United States, losses arising from damage to buildings, improvements, timber, or crops by fire, acts of God, theft, or vandalism will be borne by the United States. If, however, prior to vesting of title, the right to possession has been exercised, or surrender has been made and accepted only to part of the property, and the vendor continues to use buildings and/or to cultivate or harvest crops or timber, such loss will be borne by the vendor as to buildings, timber or crops retained. \*

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\* (c) Title in Government. After title has vested, losses to buildings, timber or crops not caused by the willful act or gross negligence of vendor will be borne by the United States; provided, however, that if the vendor continues in possession of buildings, timber or crops, after title has vested, and the deed, stipulation or order of court has reserved to the vendor the right to remove such buildings, timber or crops, loss or damage thereto, both before and after removal, caused by fire, act of God, theft, or vandalism will be borne by the vendor, only to the extent of the amount deducted from the purchase price, as provided in the deed, stipulation or order of court, for the right to remove.

p . Other Reservations. The following rights may be reserved to the owner wherever such reservation will be to the financial advantage of the Government and it has been determined by the Division or District Engineer that the reservation of the rights will not interfere with the operation of the project. These rights may be reserved in the Offer to Sell and in the condemnation estate but only whenever mutual agreement between the owner and the Government concerning all phases of the acquisition except just compensation has been reached, or by stipulation for settlement of condemnation cases, subject to approval of revestment, if any, by DAEN-REA.

(1) Rights-of-Way for Stock to Water. Reservations of rights-of-way will be permitted for watering stock, in the case of bona fide livestock operators, such as dairymen and ranchers. Such rights-of-way will be limited to a reasonable width and will not be permitted in public access and use areas. The reservations will be so worded as not to require the owners to fence the rights-of-way, but to provide that if they elect to do so, they must provide gates at satisfactory intervals to permit crossing of the rights-of-way.

(2) Rights-of-Way for Water Pipeline for Domestic Use. Reservations of rights-of-way for water pipelines for domestic use (household, stock watering, garden, farm yard, but excluding irrigation) may be permitted by providing for the reservation of a temporary or permanent easement.

(3) Rights-of-way for Water Pipeline for Irrigation Use.

(a) In areas where irrigation is commonly practiced, or is of paramount importance, owners of remainder or contiguous lands will be permitted to reserve a sufficient real estate interest to place water pipelines across Government-owned lands, in order to obtain financing for irrigation development and/or in order to be assured of being able to carry on irrigation operations. In "water rights" \*

\* States (prior appropriation of water rights), the reservation of such interests will be permitted only to those owners who have established water rights from the State, or who may in the future obtain such rights. When irrigation is a project purpose, such reservation must be coordinated with the Bureau of Reclamation (Chapter 8 of this pamphlet).

(b) Under these circumstances, a landowner may be permitted to reserve an easement and right-of-way for a water pipeline and pumping unit across the land he conveys, by appropriate provisions in the offer to sell and in the deed to the United States. In "water rights" States, this reservation will be "for the exercise of established water rights, although no right to use water is created hereby." (This phraseology is to be incorporated in the reservation.) The reservation will also include any pertinent provisions considered essential by the Division or District Engineer, such as requirement to install the pipeline underground and at a specified depth.

(c) Reservations of this nature will also be permitted in those cases where acquisition is by condemnation. In these acquisitions, the reservation may be recited in the complaint and declaration of taking, whenever full agreement except as to just compensation has been reached, or it may be permitted later by stipulation.

(d) When the project is located in an area in which the Bureau of Reclamation is developing, or planning to develop, irrigation districts or systems, prior coordination with the Bureau will provide that copies of all deeds and final condemnation judgments which recite reservations under this subparagraph will be furnished to the local office of the Bureau. Thereafter, the Bureau of Reclamation will be responsible for supervising the exercise of the easements to insure compliance with Reclamation laws.

(e) Plans to provide for irrigation will be fully covered in the Real Estate Design Memorandum.

[4] Acquisitions in which these rights are to be reserved must, of course, be based on an appraisal of the fair market value of the estate to be acquired. Since the appraisal would probably be made originally on the basis that there would be no reservation, revision must be prepared whenever the reservation appears to be appropriate, to reflect the reduction in severance damages or other financial advantage accruing to the Government. Consideration of counteroffers which include proposals for these reservations by the landowner will be based on and compared with the appraised fair market value of the estate proposed to be acquired. Deposits with a declaration of taking will be based on the appraised fair market value of the estate to be acquired by the condemnation action. \*



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\* 5-19 Preparation and Execution of Offers.

a. Fee Acquisition Offer Form. The use of the latest revision of ENG Form 42, Offer to Sell Real Property, is required in all authorized projects, except in those cases where agreements with the landowners can be fully reflected in an executed deed, and where the provisions of paragraphs 5-13c, 5-14a and 5-18 are not applicable or can be fully complied with without the use of an Offer to Sell. When an agreement as to terms has been reached with the owner, or a counteroffer has been received which will be considered for acceptance or submitted for consideration by higher authority, a draft of the offer will be prepared, with particular attention to the following instructions:

(1) No changes or interlineations in the printed portions of the offer form will be permitted, unless authorized by the Chief of Engineers, except where the words "general warranty deed" are changed to another form of deed under Section I of this Chapter.

(2) Insert legal land description of property to be acquired, or attach description by Exhibits to be identified on page 1.

(3) The word "none" should be inserted in the blank spaces following the first and third lines, respectively, on page 2 of the offer form when title is being acquired free and clear of all rights outstanding in third parties and the vendor is not permitted to except or reserve any right or interest in the property to be conveyed to the Government.

(4) Particular attention is directed to paragraph 5-18 of this Section, regarding exceptions and reservations and outstanding rights in third parties. No exceptions or reservations of crops, timber, buildings and improvements, subsurface rights, or any other interest will be incorporated in any offer to sell unless the required approvals have first been obtained.

(5) In any case where the offer form deviates from the standard approved forms or contains any conditions, exception, or reservation contrary to these instructions, the assembly will be forwarded to HQDA (DAEN-REA) WASH DC 20314 for consideration with the recommendations of the Division and District Engineer. This may be done at the same time a counteroffer is submitted to DAEN-REA in accordance with paragraph 5-16d of this Section.

(6) The landowner's name will be set forth in the offer in the exact way in which it appears on record. \*

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\* (7) When it is necessary for a corporate agent, fiduciary, or any person other than an individual owner to execute the offer, satisfactory evidence of the authority to act for the owner must be attached to each of the copies of the Offer to Sell.

(8) Where it is necessary to attach sheets to the offer in order to fully set forth the terms of reservations, exceptions, or outstanding rights in third parties, such additional sheets must be securely attached and initialed by all parties signing the Offer to Sell.

(9) The name and address of the person or persons to whom notice of acceptance is to be sent must be accurately set forth. The address where the landowner can be reached after he vacates the property, if different from the address to which the notice is to be sent, should be obtained.

b. Submission, Acceptance, and Distribution of Offers to Sell.

(1) For each purchase transaction, the original offer and four copies will be signed by the landowner and spouse, if any. A copy (5th) will be left with the landowner when the offer is obtained.

(2) Division and District Engineers, the Chiefs of the Real Estate Divisions, and the incumbents of the position to which authority is delegated as provided in paragraph 5-16b of this chapter are authorized to accept offers to sell for the acquisition of land or interests in land and easements, licenses, permits, or similar acquisition instruments, provided the price set forth in the instrument is within their authority to approve or has been approved in writing by higher authority. The Division or District Engineer may also delegate to Project Managers (including the heads of any field offices with responsibility for real estate acquisition) authority to execute real estate instruments by which land or interests in land are acquired by agreement with landowners, provided the consideration set forth in the instrument is within the approved appraised value or has been approved as provided in paragraph 5-16c. Upon approval of the offer or other instrument requiring payment to the landowner, a determination that necessary funds are available, and acceptance of the instrument under the authority contained in this subparagraph, the instrument will be numbered in conformity with existing regulations and will immediately be distributed as follows:

(a) Original offers to sell will be retained at the Division or District for site audit. \*

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(b) Send signed copy to vendor as provided in subparagraph (3) below.

(c) Attached conformed copy to title assembly.

(d) File signed copy with project records.

(3) Upon acceptance of the Offer to Sell, the Division or District Engineer will notify the vendor by transmitting a signed copy of the contract (accepted offer) to vendor by ENG Form 53, Notice of Acceptance of Offer to Sell Real Property.

(4) Upon acceptance of the Offer to Sell, the Division or District Engineer will notify the using service, in the case of military acquisition, that the Offer to Sell has been accepted and that the Government has "the right of immediate occupancy and use of the land," subject to the terms of the accepted offer. The land should be clearly identified to the using service.

(5) Instruments which do not provide for payments to landowners will be distributed in accordance with regulations governing such cases.

c. Easement Acquisition Offer Form.

(1) The use of ENG Form 2970, Offer to Sell Easement, is required for the acquisition of all types of easement estates, such as flowage, spoil, drainage, road, railroad, utility, restrictive or safety (Army and Air Force), clearance (Air Force), and other required easement acquisitions, except in those cases where agreements with landowners can be fully reflected in an executed deed, and where the provisions of paragraph 5-16b and paragraph 5-18d are not applicable or can be fully complied with without the use of an Offer to Sell. Pages 1 and 2 of ENG Form 2970, containing the terms and conditions of the acquisition, are standard and need no modification. The tract of land in which the particular easement will be acquired will be described in Exhibit "A," and the easement estate will be set forth in Exhibit "B" to ENG Form 2970. Division Engineers are authorized to approve deviations in ENG Form 2970 in all cases where the easement does not cost more than \$500, provided that any deviation from the estates listed in Figure 5-6 of this chapter, must have the prior approval of DAEN-REA. When easements are being acquired from a vendor from whom fee is also being acquired, ENG Forms 42 and 2970 may be combined into one instrument in order to complete the entire acquisition as one transaction. \*

\* (2) In the acquisition of easements for rights-of-way for access roads, utility lines, etc., which cross or encroach upon rights-of-way or property of railroad companies, public utility companies, cities, counties and states, ENG Form 893, License for Installations Upon Right-of-Way, may be accepted, at the discretion of the Division or District Engineer, provided it is determined that such companies, municipalities, counties, or states are not vested with authority to convey a perpetual easement and the granting of a license under the conditions recited in ENG Form 893 will protect the interests of the United States and grant sufficient use of the right-of-way or land for project purposes. Normally a license of this nature should be obtained for a nominal consideration. Occasionally it will be necessary to provide for the payment of a small fee to cover the licensor's engineering and administrative expenses. In such cases, the consideration for the granting of a license will not exceed \$100. In cases where the licensor demands a consideration equal to the appraised value of the right to be acquired, consideration will be given to the acquisition of a perpetual easement by condemnation, if the licensor is not vested with authority to grant such an easement.

(3) The description of the tract over which an easement is being acquired should be prefaced by terminology similar to that of ENG Form 42 which makes the tract inclusive of the abutting owner's interest in contiguous roads and other easements, if any.

(4) Offer assemblies will be prepared, accepted, and distributed in the same manner as provided for fee acquisition, except that ENG Form 3422, Notice of Acceptance of Offer to Sell Easement, will be used.

d. Payment. After acceptance and distribution of the offer assembly and the acquisition is ready for closing, payment will be made as provided in Section I.

e. Cancellation of Contracts. If, for any reason, it is necessary to cancel a contract for acceptance by the Government of the Offer to Sell, the cancellation will be effected by using EM Form 1572, Agreement for Mutual Cancellation of Contract. Upon execution of this agreement by the landowner and the Division or District Engineer, or the Chief of the Real Estate Division, distribution of the original and copies of the agreement will be the same as for the accepted Offer to Sell.

f. Transfer of Tracts from Purchase to Condemnation. If, at any time in the course of acquisition by purchase, it becomes \*

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- \* apparent that acquisition by purchase will involve substantial delay or cannot be accomplished, action will be taken to acquire the land by condemnation.

g. Acquisition of Land by Donation.

(1) In cases where the acquisition of real property has been authorized and approved by donation, ENG Form 42; Offer-to Sell Real Property, or ENG Form 2970, Offer to Sell Easement, will be entered into setting forth the terms and conditions of the donation and conveyance to the United States.

(2) The offer, when approved and accepted, will be distributed in accordance with paragraph 15-19b(2).

(3) Title clearance and closing of donation cases are processed in the same manner as any other fee or easement acquisition.

h. Vacation of Property by Landowners and Tenants.

(1) Notice to Landowners. From the inception of the project, landowners and tenants will be instructed to notify the Division or District Engineer or Real Estate Project Manager, in writing, as soon as they vacate their property; to turn in their keys whenever possible in order that the buildings may be kept under lock; and to keep the Division or District Engineer or Real Estate Project Office advised of any changes in address in order to expedite title clearance, payment, closing action, and the distribution of funds in condemnation proceedings. Landowners and tenants will be informed that, in order to protect their interests, they should not move from their property and that the Government will not require them to surrender possession until:

(a) They have received notice of acceptance of an offer granting the Government the right of immediate possession; or

(b) They have been served notice of the filing of a condemnation proceeding by which the Government has obtained the right of possession.

(2) Complete Appraisals Prior to Vacation. Where an offer is accepted or a declaration of taking is filed, the individual tracts will have been surveyed and appraised. In condemnation proceedings for possession, these may be cases in which individual tract surveys and appraisals will not have been completed at the time the condemnation proceeding is filed. In such cases, landowners and tenants will not be required to surrender possession, and buildings and improvements will not be removed or destroyed in the conduct of construction work, until individual appraisals have been completed and photographs have been procured (Section IV of this Chapter).

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\* (3) Inspection of Property.

(a) As soon as a landowner or tenant gives notification that he is vacating his property, or as soon as this information is obtained from any other source, the District Engineer will immediately have a member of his staff make a personal inspection of the property and execute ENG Form 1567, Report on Vacation of Property. The inspection will be made with a view of determining whether all buildings, improvements and crops on the land to be acquired, as listed in the appraisal report, are still on the land and in substantially the same condition as they were on the date of the appraisal.

(b) Where buildings, improvements and crops have been removed under a reservation in the offer, an appropriate entry will be made in paragraph (3) of ENG Form 1567.

(c) Where buildings, improvements, and crops have been removed or destroyed in the conduct of construction work on the project, an appropriate entry will be made in paragraph (3) of ENG Form 1567.

(d) It will be determined whether or not the land is wholly unoccupied and vacant and whether there is evidence of present use thereof for farming and other operations.

(e) The original report will be retained in the real estate project files. The second copy will be held for the use of the closing attorneys on purchase cases, or for the use of the local representative of the Department of Justice in condemnation cases.

i. Public Relations. One of the most difficult problems encountered in the real estate activities of the Department of the Army, particularly from a public relations standpoint, is that of the sudden dislocation of families, tenants as well as owners, and the relocation of these families. Special attention, therefore, will be given to their problems.

j. Payment of Relocation Assistance and Acquisition. PL 91-646 provides for reimbursement of certain expenses incurred by owners and tenants who are displaced as the result of Federal and federally-assisted programs. Payment of relocation assistance benefits and certain costs incurred by the vendor in transfer of title to the Government and certain litigation expenses incurred by the owner is provided for under that Act. \*

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\* 5-20. Other Acquisition.

a. Acquisition From Other Federal Departments and Agencies.

(1) Transfers. Transfers will be obtained from other Government agencies after issuance of real estate directives.

Muniments of title will be obtained from the transferring agency, if possible, and be forwarded to HQDA (DAEN-REP) WASH DC 20314, with the original transfer letter or document. Title 10 U.S.C. 2571 authorizes transfer of real property within the Department of Defense (10 U.S.C. 2662).

(2) Permits. Upon receipt of a proper request from an authorized command, service or agency, Division or District Engineers and the Chiefs of the Real Estate Divisions are authorized to obtain, accept, and renew permits from other Government departments or agencies for the temporary (five years) use of land (except public domain for Air Force) and buildings. (For space assignments from General Services Administration (GSA), see Section V of this Chapter.) The use of over 500 acres of public domain land must have prior approval by the Assistant Secretary of Defense (MRA&L) pursuant to Department of Defense Directive 4165.12.

b. Withdrawal of Public Domain Lands and Right-of-Entry Permits for Temporary Use.

(1) Withdrawal of public domain lands will be necessary if a site is selected for construction and/or there is a continuing military use. Except in time of war, withdrawals in excess of 5,000 acres for military use must be by authority of an Act of Congress (PL 85-337, 43 U.S.C. 156).

(2) Requests for withdrawal of public domain land will be made to the appropriate State or Regional Supervisor of the Bureau of Land Management (BLM), Department of the Interior, by the Division or District Engineer, pursuant to 43 CFR 295, as soon as a real estate directive is issued.

(a) If use of the land is needed promptly to meet a construction deadline or for other use, the request for withdrawal will contain this information, and the BLM supervisor will be requested to expedite submission of his report to BLM in Washington, and to publish the proposed withdrawal in the Federal Register as soon as possible. \*

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\* (b) A copy of the request will be forwarded to HQDA (DAEN-REA) WASH DC 20314 (with a copy to HQ, USAF (PP&R), WASH DC 20330, on Air Force projects), with request for assistance in obtaining issuance of the Public Land Order in time to meet construction or military use deadline.

(3) Pursuant to authority of 43 U.S.C. 416, requests for withdrawal of public domain lands may also be made to the appropriate State or Regional BLM Supervisor by the Division or District Engineer for the reservation of those public domain lands which will eventually be required for authorized Civil Works projects, in order to proceed with planning phase work and to prevent adverse private entry thereon. Such action will permit administrative jurisdiction to remain with the present Government agency for continued utilization not in conflict with the eventual purpose of the project. A copy of the request will be furnished to DAEN-REA.

(4) If a withdrawal is requested, the BLM Supervisor cannot grant a permit to use the area; however, permits can be obtained for survey and exploration purposes, since these do not involve construction or military use of the land.

(5) Necessary rights-of-way will be obtained under the authority of Section 507, PL 94-579, approved 21 October 1976.

c. Acquisition of Outstanding Rights on Public Domain.

(1) Acquisition of Possessory Rights to Mining Claims.

(a) Upon issuance of a real estate directive to extinguish outstanding mining interests in the public domain, and notification that the Bureau of Reclamation (BLM) has withdrawn the public domain from appropriation under the public land laws and the public mining and leasing laws, the Division or District Engineer will, if necessary to obtain possession for construction or other project purposes, recommend to the Chief of Engineers the filing of a complaint in an eminent domain proceeding, based on a perimeter description of the project, and the obtaining of an order of immediate possession. Thereafter, the Division or District Engineer will promptly determine the possessory mining claims within the area withdrawn, and he is authorized to acquire such claims for either a nominal sum or an amount not to exceed the combined estimated costs of obtaining a detailed appraisal report and having the validity of the claim investigated by the BLM. This authority is limited to \$1,000 per claim.

(b) If an offer to settle is made on the basis provided in subparagraph (a) above, and is not satisfactory to the possessory \*



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\* mineral owner, the Division or District Engineer will request the BLM to investigate the validity of the claim. In such case, under Comptroller General Decision B-143921, the District Engineer is authorized to make an agreement with the BLM for reimbursement of the following:

1. Examination of the claim itself and assembling of the evidence to support the claim of invalidity.

2. The presentation of the evidence, the cross-examination of witnesses for the mining claimant and other related expenses (Chapter 2 of this Pamphlet).

(c) The Corps of Engineers is not authorized to reimburse the BLM for hearing of the evidence and the rendering of the decision as to the validity of the mining claim.

(d) If determined to be valid, claims will be appraised and an offer will be made to the owner at the approved appraised value. BLM is authorized to determine value of the claims and the Division or District Engineer may wish to arrange with BLM to perform this service on a reimbursable basis. In the event the offer based on the approved appraisal is not acceptable to the owner, and a reasonable settlement cannot be effected by negotiation, the Division or District Engineer will forward a report to HQDA (DAEN-REA) WASH DC 20314 with recommendation as to whether the claim should be acquired by declaration of taking or be left outstanding. Those cases in which occupants were dispossessed under the order of immediate possession, referred to in subparagraph [a] above, will be given priority attention in all phases of the procedure set out herein, including preparation and submission of declaration of taking assemblies in appropriate instances.

(2) Acquisition of Grazing Rights.

(a) Grazing rights in the public domain are granted pursuant to the provisions of a series of Congressional acts commonly referred to as the Taylor Grazing Act, 43 U.S.C. 315 et seq. Section 315q of this Act provides as follows: "Whenever use for war or national defense purposes of the public domain or other property owned by or under the control of the United States prevents its use for grazing, persons holding, grazing permits or licenses and persons whose grazing permits or licenses have been or will be cancelled because of such use shall be paid out of the funds appropriated or allocated for such project such amounts as the head of the department or agency so using the lands shall determine to be fair and reasonable for the losses suffered by \*

\* such persons as a result of the use of such lands for war or national defense purposes. Such payments shall be deemed payment in full for such losses. Nothing contained in this section shall be construed to create any liability not now existing against the United States." It is emphasized that payments under this section are administrative; further that this section applies only to military projects.

(b) Upon issuance of a real estate directive to acquire or terminate grazing rights in the public domain or other property owned or controlled by the United States and notification that the Government department controlling such lands has granted a right-of-entry or transferred the lands to the Departments of Army or Air Force, the Division or District Engineer will initiate action to acquire or terminate such grazing rights as authorized by the real estate directive.

(c) Appraisals will be prepared in accordance with Chapter 4 of this Pamphlet and the guidelines set forth in Comptroller General Decision No. B-132774, dated 9 October 1957.

(d) Discussions with landowners concerning acquisition of a ranch unit will be conducted in accordance with the procedures for fee acquisition.

(e) Offers will be prepared, accepted, and distributed as provided in paragraph 5-19 of this Section.

(f) Title procurement and title clearance relating to the acquisition of title to any fee lands within the ranch unit will be the same as in any other fee acquisition. In preparing title evidence covering leasehold interests, a search of the records will be made by the Division or District Engineer Office and ENG Form 909, Attorney's Preliminary Certificate of Title, will be prepared. In connection with the search of the records, it should be noted that Federal grazing privileges may be pledged or encumbered with mortgages.

d. Acquisitions Under Provisions of Relocation Contracts.

(1) When land or interests therein, including subordination of minerals, required for project purposes are acquired under the provisions of relocation agreements negotiated in accord with Section 73, ER 1180-1-1, it will be necessary to procure title evidence covering such land and interests, under the guidelines set out in Section I of this Chapter. If the value of interests so acquired is not otherwise determinable for compliance with paragraph 5-16 of this Section, said value will be determined by the Division or District Engineer by means of a memorandum appraisal to be retained in the tract file. While this type of acquisition does \*

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- \* not involve the closing procedure set forth in Section I of this Chapter, so much of the title assembly described as is applicable, plus an executed or certified true copy of the relocation contract, will be used in the examination and approval of the title. The disposition of final title assemblies will be governed by Section I of this Chapter.

(2) The procedures described in this Section do not apply to the extinguishment of outstanding rights, including subordination of easements and similar interests, under the provisions of relocation contracts, as differentiated from the acquisition of land or easements, or the subordination of oil, gas, and other mineral rights, to be utilized for project purposes.

e. Acquisition By Exchange

(1) Military. The authority to acquire land by exchange for military projects is provided in 10 U.S.C. 2672, and in the Military Construction Authorization Act passed each year. As an example Sections 601 and 702, PL 95-82, 1 August 1977, the Military Construction Authorization Act, 1978, provides in part, that "the authority to acquire real estate or land includes authority to make surveys and to acquire land, and interests in land (including temporary use), by gift, purchase, exchange of Government-owned land, or otherwise." Title 10 U.S.C. 2662a-4 provides that a transfer of real property owned by the United States to another Federal agency or another military department or to a state must be reported to the Committees on Armed Services if the estimated value of the property is more than \$50,000. A prerequisite to any acquisition by exchange is authority for the acquisition.

(2) Civil Works. The authority to exchange land or other Government property for private lands or property in execution of an authorized river and harbor or flood control work or improvement is found in 33 U.S.C. 558b and 558b-1.

(3) Coordination with the Office of Management and Budget (OMB). OMB requests that each proposal to use Government-owned property in a land acquisition exchange be cleared with the appropriate Associate Director of OMB. Disposal actions where exchange through the authority of the General Services Administration or specific legislation is envisioned will be cleared with OMB prior to filing a disposal report pursuant to 10 U.S.C. 2662. A draft letter to the Associate Director, Office of Management and Budget will be submitted to HQDA (DAEN-REA) WASH DC 20314 stating the requirement for the new acquisition, the description of the property to be exchanged, its estimated fair market \*

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\* value, and a justification for the exchange of that property as constituting its highest and best use. OMB clearance will be required before disposal reports outlining exchange proposals are filed with the Congress.

### SECTION III. INVOLUNTARY ACQUISITION BY THE UNITED STATES

5-21. General. This Section describes procedures of the Corps of Engineers relating to the involuntary acquisition of land and interests in land on the basis of a physical appropriation or use by the United States. It is applicable to all Division and District Engineers having real estate responsibilities.

5-22. Examples of Involuntary Acquisitions. While the Secretary of the Army and Secretary of the Air Force have no authority to acquire interests in real property except under express authorization and appropriation made by Congress, the Government may, nevertheless, in the performance of an authorized act involuntarily acquire an interest in real property, for which the owner is entitled to just compensation. Whenever a plaintiff successfully prosecutes litigation which establishes that an interest in real property has been taken, the interest so taken should be confirmed in the form of a grant, wherever possible. The instrument should be recorded in the public land records and permanently retained in the real estate files, as evidence of the interest taken and as a protection against possible future claims of purchasers for value without notice. No employee or representative of the Corps of Engineers shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his property, as prescribed by Public Law 91-646. Examples of involuntary acquisition are:

- a. Damage to real property caused by flooding, saturation, seepage, erosion, or other causes arising out of the construction, operation, or maintenance of an authorized project.
- b. Damage as a result of overflights of aircraft.
- c. Other instances where Government actions result in a restriction of the use of property.

5-23. Litigation Reports. In those cases where a landowner files suit alleging that the Government took his property or an interest therein, a litigation report should be furnished in accordance with ER 1180-1-1. Litigation reports will be submitted in quadruplicate in cases involving military installations, and in triplicate in \*

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\* cases involving civil works. District and Division Engineers will furnish an additional copy direct to the local United States Attorney in actions in a United States District Court. In addition to the information required by ER 1180-1-1, there will be furnished preliminary certificates of title to properties subject to the taking, covering a period of search of at least 25 years prior to initiation of the action, and indicating the date of acquisition of the plaintiff's interest. Certificates may be procured commercially, or may be prepared by a staff attorney.

a. Avigation Easements. Reports on actions alleging the taking of an avigation easement should include the following information together with supporting exhibits:

(1) Permanency of the installation and its designated use;

(2) Dates of commencement of use of the runway involved and of each extension thereof;

(3) Date of commencement of take-offs and landings by regularly assigned aircraft of the type (identify) causing the taking;

(4) Frequency and actual height of flight of the particular aircraft over some portion of plaintiff's property;

(5) Any applicable zoning regulations affecting use of the property;

(6) A drawing at an approximate scale of 1" to 400' showing the location and length of the present runway, its original length, and each extension, and also showing the location of plaintiff's property with relation to the approach-departure zone of the runway and the longitudinal distance in feet, measured along the extended center line from the end of the runway and the lateral distance measured perpendicular to the extended center line, of the plaintiff's property and of any dwellings thereon.

(7) A vertical projection of the drawing at an approximate scale 1" to 100' showing the approach-departure clearance surface at the specified slope ratio and the mean sea level heights of the end of the runway and of the plaintiff's property and any dwellings thereon; and

(8) Name of the person qualified to testify concerning preparation of the drawing.

b. Clearance Easements. Litigation reports on actions alleging the taking of a clearance easement will contain the following: \*

- \* (1) Details of any prior acquisition of clearance easements over the same property;
- (2) Statement as to any outstanding clearance easement directives, including criteria for approach and transition zones, status of negotiations, and copies of appraisal reports;
- (3) Statement that all acquisition of clearance easements has been stopped, unless their prompt acquisition is necessary to provide for current flight operation; and
- (4) Recommendation that there be included in the estate, in the event of settlement, provisions for the clearance of existing obstructions and prohibition against future obstructions, provided that circumstances will permit a delay in the acquisition of a clearance easement until completion of the litigation.

c. Appraisal Reports. Appraisal reports will be submitted to HQDA (DAEN-REE) WASH DC 20314 after the Department of Justice has determined the date (or dates) of taking. These reports will reflect the "before" and "after" values of the property, based on the assumption that the United States acquired an easement on that date (or dates).

5-24. Procurement of Deed and Title Assembly. In any case in which the Court determines that the United States has taken an interest in real property, the Department of Justice will attempt to have included in the findings and in the judgment a precise description of the interests taken. An attempt will also be made to provide in the judgment that payment by the United States will not be required until the plaintiff has delivered a deed or other acceptable conveyance of the interest taken.

a. Preparation of Instrument. Upon receipt from the Department of Justice of information as to the nature of the settlement which has been reached, a deed will be prepared, drafted in accordance with Section I of this Chapter, covering the estate provided in the judgment.

b. Execution and Recording of Deed. The Division or District Engineer will obtain proper execution of the deed, record the same, procure a final certificate of title of a commercial title company or a staff attorney, and obtain a final title opinion pursuant to the provisions of the Delegation to the Department of the Army for the Approval of the Title to Lands Being Acquired for Federal Public Purposes, dated 4 December 1970, and issued by the Assistant Attorney \*

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\* General, Land and Natural Resources Division, Department of Justice (Figure 5-2 of this Chapter). The title assembly and final title opinion should be forwarded to HQDA (DAEN-REA-P) WASH DC 20314, with information copy of transmittal letter to Division Engineer.

c. Notification to the Department of Justice. If the recorded deed and the final certificate of title are not readily available, the Division or District Engineer will notify the Land and Natural Resources Division of the Department of Justice by letter, with a copy to the appropriate United States Attorney, that the deed has been properly executed and delivered by the plaintiff and has been entered for record in order that settlement will not be delayed.

d. Disposition of Final Title Assembly, Mapping, and Audit. When a final title opinion has been obtained, the Division or District Engineer will assign a tract number to the areas in which the interest has been acquired, will add the tract to the project map, and will transmit the final title opinion and related papers to HQDA (DAEN-REA-P) WASH DC 20314. The tract will be included in the audit of the installation to which it pertains. Audits will be revised for this purpose, if necessary. The amount of the judgment received by the plaintiff will be shown in the audit assembly, with a proper notation that it represents the amount of the judgment entered in the litigation, which will be identified in the audit by its civil number, and by designation of the Court in which it was rendered. A copy or abstract of the judgment will be inserted in the District Office audit assembly, identified as follows: "Directive by judicial decree for the acquisition of Tract No. ; being an easement (or other interest), containing \_\_\_\_\_ acres."

e. Action in Lieu of Confirmatory Deed. Where a confirmatory deed cannot be obtained, the Division or District Engineer will obtain from the Clerk of the Court a copy of the final judgment (or an appropriately excerpted copy of the final judgment) , acknowledged or properly certified to permit recordation in the local land records. The Division or District Engineer will record same and later transmit the appropriate title assembly to HQDA (DAEN-REA) WASH DC 20314. If the final judgment does not contain language which clearly vests title in the United States of the interest in land for which compensation was paid, request should be made of the United States Attorney to move the Court to amend the judgment to show that such title has vested. \*

\* SECTION IV. ACQUISITION BY CONDEMNATION PROCEEDINGS

5-25. General. This section describes the procedures of the Corps of Engineers relating to the acquisition of real estate and interests therein by condemnation proceedings. It is applicable to the Office of the Chief of Engineers (OCE) and to all Division and District Engineers having real estate responsibilities.

5-26. Applicable Statutes in Condemnation Proceedings. A complaint in condemnation, and any declaration of taking filed in conjunction therewith, will contain a citation of the congressional authorization and appropriation acts for the particular project, and any other applicable acts of Congress. Existing acts of Congress authorizing the acquisition of land and interests therein are outlined in AR 405-10 and Chapter 2 of this Pamphlet. Acts of Congress applicable, generally, to condemnation proceedings are outlined below.

a. Military Projects.

(1) Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257) authorizes the head of any Government department or agency to acquire real estate, otherwise authorized for acquisition, by condemnation proceedings.

(2) Section 2663 of Title 10, United States Code, authorizes the Secretary of a military department to acquire by condemnation any interest in land, including temporary use of the site, construction, or operation of fortifications, coast defenses, or military training camps.

(3) Section 9773 of Title 10, United States Code, authorizes the Secretary of the Air Force to acquire by condemnation additional permanent air bases and depots, enlarge existing air bases and depots, bombing and machine gun ranges, and areas for the training of tactical units.

(4) Section 2233 of Title 10, United States Code, authorizes the Secretary of Defense (with authority to delegate) to acquire by purchase, lease, or transfer, facilities, necessary for the Reserve Components. The authority to acquire by purchase has been held to include the authority to condemn. Therefore, this section authorizes condemnation for both Army and Air Force Reserve Training Sites. \*



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\* b. Civil Works Projects.

(1) Rivers and Harbors.

(a) The Act of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591) authorizes the Secretary of the Army to cause proceedings to be instituted for the acquisition by condemnation of any land, right of way, or materials needed to maintain, operate, or prosecute works for the improvement of rivers and harbors for which provision has been made by law.

(b) Section 5 of the Act of Congress approved July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) provides that possession of lands being acquired by condemnation proceedings for river and harbor works may be taken, provided adequate provision shall have been made for payment of just compensation.

(2) Flood Control.

(a) The Act of Congress approved March 1, 1917 (39 Stat. 950, 33 U.S.C. 701) makes the provisions of the Act of Congress approved April 24, 1888 (subparagraph b(1)(a) above) applicable to flood control works.

(b) Section 6 of the Act of Congress approved August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c-2) makes the provisions of Section 5 of the Act of Congress approved July 18, 1918 (subparagraph b(1)(b) above) applicable to flood control works.

(3) Local Cooperation. The Acts of Congress approved June 29, 1906 (34 Stat. 632, 33 U.S.C. 592) and August 8, 1917 (40 Stat. 267, 33 U.S.C. 593) provide that the Secretary of the Army may institute condemnation proceedings for the acquisition of land or easement therein for river and harbor works which local interests undertake to furnish free of cost to the United States. The provisions of these Acts were made applicable to flood control works by the Acts of Congress approved March 1, 1917 and August 18, 1941 (subparagraphs b(2)(a) and (b) above).

c. Other Pertinent Statutes.

(1) The Act of Congress approved July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) provides that the United States shall have the right to take immediate possession of land to the extent of the interest condemned. The exercise of this right is subject, however, to the policy considerations set forth in the Act of Congress approved January 2, 1971, Public Law 91-646. \*

\* (2) The Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a) makes provision for the filing of a declaration of taking in conjunction with condemnation proceedings and provides that title to the land or interests in land included in the declaration of taking vests in the United States upon filing with the court and deposit of the estimated compensation in the registry of the court.

(3) Title III of the Act of Congress approved January 2, 1971 (Public Law 91-646, 84 Stat. 1894) contains policies and guidelines for acquisition of land.

5.27. Filing of Complaint Without Declaration of Taking.

a. Only in exceptional cases will the Chief of Engineers give favorable consideration to the filing of a complaint in condemnation, and the request for an order of possession, without the concurrent filing of a declaration of taking and deposit of estimated compensation in the registry of the court. Examples of situations in which complaints may be used are, as follows:

(1) Immediate possession is required for some essential military need and time does not permit preparation of an appraisal, title work; or negotiations.

(2) Condemnation proceedings are necessary in connection with a cemetery, in order to secure court approval of the relocation and reinterment plan in accordance with the procedure outlined in ER 1180-1-1.

(3) Where right of entry for survey and exploration, appraisal purposes, or other similar need is required, and there is no material interference with the owner's possession. However, where there is material interference with the owner's possession, or it is considered there will be significant damage to the land, a deposit of estimated compensation may be necessary.

b. Approval Required. Prior to submission of a complaint assembly, except in cemetery cases, all pertinent facts justifying the need for such action will be submitted to the Division Engineer for approval. If the proposed action is approved, the Division or District Engineer will inform all affected landowners and tenants of the action being taken, the necessity therefor, and the subsequent procedure to be followed by the Government in conducting negotiations to acquire the land after the filing of the complaint. \*

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\* c. Complaint Assembly. The following assembly will be submitted to HQDA (DAEN-REA-C) WASH DC 20314 where only a complaint is to be filed:

(1) Five copies of individual tract descriptions identified as Exhibit "A". (Reproduced copies will be accepted if clear and legible.)

(2) Five copies of segment or project maps, showing each tract or area to be acquired shaded or outlined in red and identified as Exhibit "B".

(3) Five copies of a list of the names and addresses of the persons purporting to own the tracts or having an interest therein, identified as Exhibit "C".

(4) Five copies of the exact estate or interest to be acquired, identified as Exhibit "D".

(5) In Air Force projects and acquisitions for other agencies, one additional copy of each exhibit will be required.

(6) In Air Force project acquisitions, the additional information set out in paragraph 5-28f will be submitted: in duplicate.

(7) In those jurisdictions that adopt the alternate form declaration of taking, complaint assemblies should be similar to the schedules submitted for the declaration of taking assembly.

d. Letter of Transmittal. Where complaint assembly is submitted, the letter of transmittal should include the following information:

(1) A statement indicating the date of approval of the Real Estate Design Memorandum in civil works projects or the date of the Real Estate Directive for other projects, and whether the land included in the complaint assembly is within the approved project boundary line, together with the citations of the authorization and appropriation acts which cover the acquisition.

(2) The approved appraised valuation and date of appraisal of the interest to be acquired or, if appraisals have not been prepared, the estimated value with a statement indicating the basis of the estimate.

(3) Information as to whether the land included in the complaint assembly is vacant or occupied, together with the date any occupants will be required to vacate the premises. \*

\* (4) If possession is required, an explanation of the need therefor and the reasons why the normal land acquisition schedule was not met.

(5) Results of contacts with the landowners and tenants and their views with respect to the filing of condemnation proceedings.

(6) A statement as to the plan and schedule to acquire such land after filing of the complaint in order to make funds available to the landowners and tenants.

(7) In assemblies concerning land for other than civil works projects, a statement indicating whether all of the land authorized in the Real Estate Directive is included in the assembly. Any variance between the area or estate authorized in the directive and those in the assembly should be fully explained.

(8) In military assemblies, a statement of expected local resistance to the proposed acquisition and efforts made to adjust military requirements to the local situation.

(9) Whether there have been any Congressional inquiries regarding the acquisition.

e. Action After Filing Complaint. After filing of a complaint proceeding, action to acquire the land involved, either by direct purchase or by the filing of a declaration of taking, will be completed as soon as possible.

(1) Where a satisfactory Offer to Sell is obtained and accepted, the transaction will proceed through the stages of title clearance, payment and closing. Upon final approval of title, the Division or District Engineer will recommend to the Chief of Engineers that the Department of Justice be requested to dismiss the tract from the proceeding.

(2) Where a satisfactory lease of the premises included in a leasehold condemnation proceeding is obtained and accepted, the Division or District Engineer will recommend to the Chief of Engineers that the Department of Justice be requested to dismiss the tract from the proceeding.

(3) The recommendation of the Division or District Engineer for dismissal of a tract from condemnation will include the following information:

(a) Name of project.

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\* (b) Caption of the complaint and civil action number assigned thereto.

(c) The date the final title approval was rendered; on lease cases, the date the lease was accepted.

(d) A statement as to whether the particular deed or lease includes the same land described in the complaint under the same tract number.

(e) A statement as to whether the particular deed or lease includes all outstanding interests involved in the complaint insofar as the specific parcel of land is concerned. If all outstanding interests are not covered by the deed or lease instrument, a statement of the proposed method of acquiring those interests which remain outstanding, either by filing a declaration of taking or by direct purchase, or a recommendation that they be left outstanding permanently.

5-28. Acquisition by Declaration of Taking. If it has been determined that acquisition of a tract cannot be accomplished by purchase due to failure to reach an agreement with the owners as to value, inability to contact the owners, title defects, or for other reasons, acquisition will be completed by the filing of a declaration of taking in a condemnation proceeding and the concurrent deposit of the estimated compensation in the registry of the court. The requirements for a declaration of taking are set forth in 40 U.S.C. 258a.

a. Declaration of Taking Assembly. The assembly to be submitted by the Division or District Engineer to the Chief of Engineers, with a recommendation for the filing of a declaration of taking, will contain the following:

(1) Seven copies of the declaration of taking. (Reproduced copies will be accepted if clear and legible). The copy to be executed and filed in court must be free of errors and erasures.

(2) Seven copies of tract descriptions and names and addresses of purported owners, identified as Schedule "A" to the declaration of taking.

(3) Seven copies of a segment or project map, showing the individual tracts outlined in red, or shaded in such a way as to identify them, constituting Schedule "B" to the declaration of taking.

(4) In acquisitions for Air Force and other agencies, one additional copy of each of the above is required. \*

\* (5) As to tracts which are appraised at \$50,000 or more, it is necessary to have at least two appraisals for each such tract in condemnation. One copy of each appraisal will be forwarded with the assembly for those tracts valued less than \$100,000, and two copies where the value is \$100,000 or more. Also, a copy of the appraisal should be forwarded when there is a counteroffer of \$50,000 or more, no matter what the appraisal is. In all such cases where two appraisals are necessary, at least one will be by a contract appraiser approved in advance by the United States Attorney in whose jurisdiction the case will be filed.

(6) Appraisals must be on a current basis so that at the time of submission of the assembly, the review certificates should indicate that the review has been made within thirty days prior to submission of the assembly.

(7) Guides in preparing declarations of taking for acquisitions for the Departments of the Army (Military and Civil) and Air Force are contained in Figure 5-5.

(8) Each case where there is an accepted Offer to Sell on which we will ask the Department of Justice to obtain judgment should be submitted as a separate Declaration of Taking.

b. Negotiator's Report. Each declaration of taking assembly should be accompanied by a separate Negotiator's Report, ENG Form 3423 (Parts I and II), in duplicate, for each tract of land included in the assembly. The Negotiator's Report should be current, i.e., it should indicate a contact with the landowner, or his representative, at a time reasonably close to the date of submittal of the assembly, and should reflect that actual, practical and realistic negotiations were conducted in accordance with the procedure set forth in Section II of this Chapter. The Negotiator's Report should be complete, but should be concise and not made unduly lengthy by extraneous material. It should contain so much of the following information as may be pertinent:

(1) A brief physical description of the property, including its present use and highest and best use claimed by both the Government and the landowner.

(2) Number of discussions and date and place of each discussion, and a statement that the landowner was furnished a summary of the basis for the Government's valuation prior to negotiations. \*

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\* (3) Statement of each offer made by the negotiator, any counteroffer received from the landowner, and any figures suggested by the negotiator in an effort to obtain a reasonable counteroffer above the Government's estimate of value.

(4) Where the discussions reveal that further negotiations would not be productive, a statement that the real estate representative explained that it was necessary that the interests be obtained through condemnation, not in a sense a threat but as an effort on behalf of the Government to secure an impartial determination by the court of the differences of opinion as to value, and in order to make funds available to the landowner.

(5) If the owner cannot be contacted for the purpose of conducting negotiations, a full explanation of the circumstances and the efforts made to contact the owner should be set forth in the Negotiator's Report.

(6) A statement that any remaining property of the owner enjoys access and is an economic unit, or if it is an uneconomic remainder, that the Government has offered to acquire the remainder.

(7) Where there is an Offer to Sell, the Negotiator's Report should include a statement that no separate representations were made in order to obtain the offer; if this was the case. If any such representations were made, they should be fully explained. The report should also include the negotiator's telephone number.

c. Letter of Transmittal. The letter of transmittal to be submitted with a declaration of taking assembly will contain the following:

(1) The date of the real estate directive or the date of approval of the real estate design memorandum which includes the land to be condemned, a statement that the land is within the approved project boundary line, and the date of approval of the boundary line.

(2) A statement concerning the availability of funds.

(3) A list of the dates of the appraisals of the tracts in the assembly and the dates of the last review thereof. If more than one approved appraisal exists for any tract, the deposit will be in the amount of the highest approved appraisal. If the value of growing crops has been included in the appraisal, a statement concerning same is required in the transmittal letter pursuant to subparagraph h(3) below. \*

- \* (4) A statement that all owners of land included in the assembly, whose addresses are known, have been notified in writing that condemnation will be recommended and the reason therefor. The information furnished to the owners should include the name and address of the United States Attorney who will advise and assist them in applying for withdrawal of the funds deposited in the registry of the court. The notice to the owners should also state the date on which possession of their property will be required.
- (5) A statement concerning the date when possession of each tract included in the assembly should be obtained. This should include information as to when the 90-day notice was given, as required by Sec. 301(5) of Public Law 91-646, or if not required, an explanation as to why not.
- (6) In assemblies involving other than civil works projects, a statement as to whether or not all of the land authorized in the real estate directive is included in the proposed declaration of taking. Any variance that may exist between the acreage in the directive and the acreage in the declaration of taking should be fully explained.
- (7) For military projects, a statement of the expected local resistance to the proposed acquisition by condemnation, and the efforts which have been made to adjust requirements to the local situation.
- (8) For those assemblies involving the first case in a particular project, information as to:
- (a) When the initial land acquisition for the project took place.
  - (b) The total acreage for the project and the estimate of the cost thereof; if available, two copies of the project brochure furnished to landowners should be forwarded.
  - (c) Whether or not an environmental impact statement has been filed, and, if not, when it is expected to be filed.
- (9) Two copies of each accepted Offer to Sell covering any of the tracts included in the declaration of taking will be submitted with the assembly.
- (10) Whether there have been any Congressional inquiries regarding the acquisition.
- d. Title Defects. If a tract is recommended for condemnation due to title defects, three copies of the title opinion will be submitted with the assembly. \*



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\* e. Deposit of Funds. Two copies of the declaration of taking, as finally approved and signed, will be transmitted by the Chief of Engineers to the Division and District Engineer. Procurement and delivery of a check to the United States Attorney for deposit in the registry of the court will be authorized, subject to the availability of funds.

f. Additional Information to Accompany Air Force Acquisitions. Each condemnation assembly (complaint or declaration of taking) covering the acquisition of land for an Air Force project will include the following information and material, in duplicate:

(1) A map showing the base boundaries, outlining in red all land included in the applicable real estate directive, and showing the land included in the condemnation assembly hachured in red. In the case of an off-base facility, the map will show the nearest boundary of the main base with relation to the off-base facility, outlining in red all land in the applicable real estate directive, with the land covered by the condemnation assembly hachured in red.

(2) On the same map or a larger scale map, the following information on each tract in the applicable real estate directive:

(a) Tract number.

(b) Acreage.

(c) Ownership.

(d) Contours.

(e) Existing improvements.

(f) Proposed construction, including utilities, drainage ditches, and other supporting facilities.

(3) Summary of status of acquisition of all land included in the applicable real estate directive. ENG Form 3905-R (Figure 5-4) will be used for this purpose. All discrepancies in figures for acreages and costs should be fully explained.

(4) If any of the land included in the applicable real estate directive is held under voluntary lease or leasehold condemnation, report for each such tract the annual rental, the period of time the leasehold interest has been held, and whether it is a voluntary lease or a condemnation leasehold. If the land is not under lease, this fact should be reported.

\* (5) If the United States has previously acquired an easement interest (clearance easement, safety area easement, etc.) in any of the land included in the condemnation assembly, identify the real estate directive which authorized the previous acquisition by number, date, interest acquired, acres, cost and method of acquisition (including lease number, tract number, caption with civil action number as applicable). A negative report is required.

(6) If severance damage is involved in any of the land included in the condemnation assembly, include a detailed statement of the facts and justification for the severance allowed, unless the severance damage has been adequately explained in a Real Estate Planning Report or a Real Estate Requirements Estimate, in which case such Report or Estimate should be identified for reference.

(7) A copy of the appraisal report on which the deposit in a declaration of taking is based, irrespective of value.

g. Interests Included in Declaration of Taking.

(1) The estate recommended for use in a declaration of taking should conform to the estate approved by the Chief of Engineers in Civil Works projects and to the applicable directive in military and other agency projects. Any deviation should be fully explained and justified in the transmittal letter. Examples of estates which have been approved for use in declarations of taking are contained in Figure 5-6. A condemnation proceeding is an in rem action. The definition of "property" and what constitutes property is generally determined by reference to State law. Therefore, full consideration should be given to the applicable State law in connection with requests for deviations from the standard approved estates.

(2) Normally, under the "unit" rule a condemnation proceeding should include all interests in a given tract authorized for acquisition even though an Offer to Sell may have been obtained and accepted from the surface owner with an outstanding interest in the subsurface estate recited in the "Subject to" paragraph. In such a case, if it is necessary to condemn due to title difficulties or failure of the owner to carry out the terms of the Offer to Sell, the deposit will be increased by the appraised value of the outstanding subsurface interest. The only exception to including subsurface interests outstanding in third parties is in the case of block ownership of subsurface interests; i.e., where a person, corporation, or other entity owns subsurface interests under more than one surface tract and in sufficient \*

\* amount for the entire interest holding to have added value, for operational or other reasons, because it is in a block ownership. In other words, block ownership exists when the acquisition of a part of the block would require the assessment of severance damage, even if the value of the interest or the amount of the severance damage would be in a nominal amount. On this basis, subsurface interests need not be contiguous to constitute a block ownership.

(3) If future negotiations to acquire or subordinate the subsurface interests left outstanding under paragraph (2) above (or any non-block subsurface interests "excepted" from direct purchase cases) are unsuccessful, and the outstanding interest cannot be waived under the provisions of Section II of this Chapter, then acquisition or subordination of the outstanding interest should be accomplished by condemnation proceedings. In so doing, block ownerships should be condemned as a unit rather than on a piecemeal basis. Full information should be submitted with such assemblies as to the method of acquisition of each surface ownership affected by the subsurface acquisition.

h. Payment for Crops. At the time the declaration of taking assembly is prepared, it will be necessary that a determination be made as to whether the value of growing crops should be added to the value of the land improvements in determining the amount to be deposited as estimated compensation. The determination will be made as follows:

(1) If the crops have been harvested, or it is known or highly probable that the crops will be harvested by the landowner or tenant, no deposit will be made for the crops.

(2) The approved appraised value of crops will be included in the amounts to be deposited in all other cases.

(3) The letter forwarding the declaration of taking to the Chief of Engineers will state whether the value of growing crops has been included in the amount recommended for deposit, and will set forth a statement of the facts upon which the action is based.

i. Filing and Possession. Upon the filing of a complaint, accompanied by a declaration of taking, the court has the power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the United States (40 U.S.C. 258a). Requests for orders of possession should be made only after all requirements of Public Law 91-646 regarding possession have been satisfied.\*

\* (1) The Division or District Engineer will ascertain from the United States Attorney the date on which the condemnation proceeding with declaration of taking is filed and the date on which possession is available. The using service of the Army and Air Force or the local representative of other agencies will be informed of the date on which possession of the land is available.

(2) The above information, together with the civil number assigned to the case, and a copy of the complaint and order of possession will be furnished to HQDA (DAEN-REA-C) WASH DC 20314 within six weeks after the date the case was forwarded by the Chief of Engineers to the Department of Justice. If this cannot be accomplished, an explanation will be furnished by such date.

(3) Where an Order of Possession is obtained but the landowner refuses to comply, it may be necessary to obtain a Writ of Assistance from the court. Prior to requesting the United States Attorney to obtain such a Writ, all pertinent facts should be reported to DAEN-REA-C.

(4) The United States Attorney should be requested to have judgment entered in accordance with the terms of any accepted Offers to Sell immediately after the filing of the case, since delay in taking such action works to the disadvantage of the Government. Any difficulty in securing prompt action by the United States Attorney in this matter should be reported to DAEN-REA-C.

j. Amendments.

(1) If at any time it becomes necessary to amend a complaint or declaration of taking previously filed, an amendment assembly will be submitted to DAEN-REA-C together with a full statement of the facts requiring the amendment. The letter of transmittal should certify that the tracts affected by the amendment have not been adjudicated.

(2) No amendment should be submitted which will result in a revestment of an interest in property, unless a stipulation for revestment has been obtained from the former owner in accordance with paragraph 5-29 below.

(3) If, after the filing of a declaration of taking, a substantially higher appraisal is approved for any reason, and a settlement does not appear imminent, an amendment will be submitted promptly to increase the amount of the deposit.\*

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\* k. Alternate Form Declaration of Taking. An alternate form of Declaration of Taking has been approved by the Judicial Conference on an optional basis, and must be used where the local District Court requires. Under this form a Declaration of Taking may have up to 15 ownerships, but each ownership will be set up separately so that it may be included in a separate civil action. In other words, there may be up to 15 separate civil actions which are keyed in to one Declaration of Taking. An example of this type of Declaration is included in Figure 5-5. In this form, Schedule "A" will include the authority and public uses. Schedule "B" will include the description, the estimated compensation, and the estate to be acquired. Schedule "C" will be the plan showing the land to be acquired. It will be noted that there will be a separate Schedule "A", "B", and "C" for each ownership. The schedules may include more than one tract where the ownership is unified and is an economic unit. All of the civil actions will be keyed in to the Declaration of Taking by a Master File number. The Master File number must be used on all correspondence pertaining to tracts in this type of an assembly.

5-29. Revestment of Title by Stipulation. When fee title or an interest in property has been acquired by the United States by declaration of taking in a condemnation proceeding and it is determined to be in the best interest of the Government to wholly or partially exclude said property or interests therein, or to acquire a lesser estate, such exclusion or diminution in the estate can be accomplished by stipulation with the former owner under the provisions of the Act of Congress approved October 21, 1942 (40 U.S.C. 258f).

a. Required Approval. All stipulations involving a revestment of title must be forwarded to DAEN-REA-C for approval with a full statement of the facts, related data and recommendations. Approval of the revestment action must be obtained from the appropriate using agency. Such stipulations will not be filed in the condemnation proceedings by the United States Attorney until the specific approval of the Chief of Engineers is obtained and the matter coordinated by the Chief of Engineers with the Department of Justice. It should be stressed in negotiations that final approval of the stipulation is under the jurisdiction of the Attorney General, based on the recommendation of the Chief of Engineers.

b. Reduction of Price. A stipulation for revestment should provide for a deduction from the agreed price or from the ultimate award of an amount equal to the difference between the value of the property originally taken and the value of said property after the proposed exclusion of a part thereof or acquisition of a lesser \*

\* interest therein, i.e., the stipulation should be an over-all settlement of the case whenever possible. If it is impossible to reach an amicable agreement for complete settlement for the Government's acquisition of the tract, an agreement as to the area and estate, leaving final determination as to compensation with the court, may be submitted with facts showing that the proposed action is in the best interest of the Government. The stipulation should also include a release concerning any benefits under Sec. 304, Public Law 91-646, because of the reversion, particularly when no agreement is reached concerning compensation.

c. Required Information. A sample stipulation for reversion is contained in Figure 5-8 which may be adapted to fit the particular project and tract involved. In this connection, the following requirements should be observed:

(1) The stipulation will not provide for any change in the amount of the deposit unless the stipulation provides for an overall settlement of the case or the entire tract is to be excluded from the acquisition.

(2) The areas in which the Government has acquired an interest and those in which an interest will be retained after the reversion will be fully described.

(3) The estates to be retained by the Government after the reversion will be accurately described; where the owner reserves mineral or other interests or use, appropriate restriction of exploration and subordination to the paramount right of the Government to use the property for the required purpose will be included.

(4) The stipulation should include, as part of the consideration:

(a) Consent by the former owner to the Government's acquisition of the revised area and the estates therein in the event the stipulation is approved.

(b) Withdrawal of any answer contesting the Government's right to acquire the property and any interrogatories theretofore filed.

(c) A waiver of any and all claims by the former owner, his heirs and assigns, against the United States, the State, County and political subdivisions thereof for loss of access to the land (where applicable).

(5) The stipulation will include, as an exhibit, maps delineating the fee area in red, the easement area in blue, and the area to be reverted in yellow.

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\* (6) The letter of transmittal in connection with any revestment in Civil Works projects should include information as to whether the area in which title is to be revested has a potential for recreational use without regard to the currently established public access areas.

d. Application. The foregoing procedure applies only to instances where a declaration of taking has been filed. Where only a complaint has been filed, the necessary revisions may be made by securing a satisfactory Offer to Sell and deeds to the United States or by amending the complaint and filing a declaration of taking containing the revised descriptions or estates.

5-30. Distribution, Reservations, and Title Evidence. Distribution of the estimated compensation deposited in the registry of the court is the responsibility of the United States District Court. However, the Division or District Engineer will assist the United States Attorney in arranging for the distribution of funds deposited with a declaration of taking in order that landowners may receive either partial or total payment as soon as possible.

a. Distribution. Partial or total distribution may be made upon a showing to the court that the claimant is the proper person to receive the money on deposit (40-U.S.C. 258a). An examination of the title evidence by the United States Attorney, together with a physical inspection of the premises, is usually sufficient to enable the United States Attorney to ascertain the proper claimants so that he may consent to the entry of an order of distribution. Distribution may be made without prejudice to the owner's right to contest for a higher award than the sum deposited by the United States.

b. Inspection and Title Evidence. As soon as a condemnation proceeding is filed, a physical inspection of the premises will be made and the United States Attorney will be furnished the following:

(1) ENG Form 798, Certificate of Inspection and Possession, or such other similar form as may be requested.

(2) ENG Form 1567, Report on Vacation of Property.

(3) Title evidence and all available curative material covering the tracts of land included in the declaration of taking.

(4) Copies of all Offers to Sell, leases, relocation agreements, etc., which are pertinent to the case and would be useful in making distribution.\*

\* c. Reservations. If the landowners are to be permitted to remove crops, timber, buildings or other improvements from land acquired in the declaration of taking (by approval of the Division or District Engineer), a stipulation for reservation of these items may be obtained at this time. The stipulation should be in a form acceptable to the United States Attorney, should specify the date on or before which the reserved items are to be removed, and should provide that if the reserved items are not removed on or before said date, the right of removal shall terminate automatically and the United States shall have a good and indefeasible title to these items without further notice. The consideration to the Government for the reservation will be in an amount not less than the appraised value of the crops, or not less than the appraised salvage value of the timber, buildings or other improvements which are reserved, and the stipulation should provide that such amount shall be deducted from the amount of the final award.

d. Continuation of Title Evidence. A continuation of the existing title evidence will be obtained to include a search of the records to a date subsequent to the date of filing of the Notice of Lis Pendens, the Judgment on Declaration of Taking, or the filing of the complaint in those states where such filing constitutes notice. The additional title evidence will be furnished to the United States Attorney as soon as possible after filing of the case.

5-31. Procedure Prior to Trial.

a. General. After filing of condemnation proceedings, the Division or District Engineer will maintain close liaison with the United States Attorneys and will render all possible assistance to the United States Attorneys in negotiating settlements, preparing cases for trial, and in conducting such trials. When the Division or District Engineer is informed that a case has been set for trial involving an unusual or novel issue of fact or law, or where the Government testimony will be \$100,000 or more, he will promptly furnish this information to DAEN-REA-C. In addition, the Division or District Engineer should:

(1) In coordination with the United States Attorney, conduct discussions for settlement with landowners and other interested parties defendant. When a satisfactory agreement has been reached, an executed stipulation in a form satisfactory to the United States Attorney will be obtained. A suggested form of stipulation as to just compensation is contained in Figure 5-8. In this connection, the closest cooperation and collaboration must exist between \*



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\* representatives of the Department of the Army and the Department of Justice; no settlement negotiations should be conducted by Corps personnel without the knowledge and consent of the United States Attorney. If the property owner is unwilling to execute a stipulation until assured that the amount of the settlement will be accepted by the Government, formal execution of the stipulation may, in such instances, be delayed. However, the offer will be processed in accordance with the applicable provisions of paragraph b below.

(2) Furnish maps, photographs and other necessary exhibits for trial.

(3) Assist in preparing expert witnesses for trial.

(4) Take necessary action to assure the presence of witnesses at the trial. District personnel who qualify as expert witnesses will be made available.

(5) Be represented at the trial by an attorney thoroughly familiar with Federal court procedures, condemnation law, and the details of the project affected by the condemnation proceedings.

b. Stipulated Settlements.

(1) Where the amount of the stipulation obtained in accordance with subparagraph a(1) above does not exceed the high, approved appraisal prepared by an appraiser employed by, or under contract with, the Corps of Engineers, and the proposed settlement will completely dispose of the issue of compensation for all interests acquired in the tract in the proceeding, approval of the settlement will be recommended by the Division or District Engineer or the Chief of the Real Estate Division directly to the United States Attorney. The Division or District Engineer will inform DAEN-REA-C of the action taken, either by sending a copy of the letter addressed to the United States Attorney or by separate correspondence.

(2) Where the total settlement for all interests acquired in a given tract does not exceed \$40,000 and the proposed settlement will completely dispose of the issue of compensation for all interests acquired in the tract in the proceeding, Division and District Engineers and the Chiefs of the Real Estate Divisions are also authorized to recommend approval of settlements directly to the United States Attorney. In leasehold condemnation cases the monetary limitation includes the full lease term and not merely the per annum rental. DAEN-REA-C will be informed of the action taken in the same \*

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\* manner as in subparagraph (1) above. Even though the total settlement for all interests acquired in a given tract does not exceed \$40,000, the proposed settlement will be submitted to DAEN-REA-C for consideration in the following instances:

(a) If the United States Attorney and the Division or District Engineer cannot agree as to whether a particular settlement should be consummated.

(b) If the stipulation involves a novel issue of law or question of policy which would adversely affect the disposition of other tracts in a project.

(c) If revestment of any land or interests therein or change in estate is involved.

(3) All proposed settlements not covered by subparagraphs (1) and (2) above will be forwarded to DAEN-REA-C, together with specific recommendations of the Division and District Engineers and a full statement of the facts. Three copies of the signed stipulation will be forwarded to DAEN-REA-C with the report in those situations where the stipulation contains any unusual conditions or terms. The report should contain the following:

(a) The amount of the deposit and the amount of the proposed settlement.

(b) The amounts and dates of all Government appraisals. Where the Department of Justice appraisal is substantially above or below the Corps of Engineers' appraisals, the Division and District reviewing appraisers should carefully examine the appraisals and ascertain whether the facts in the case and the appraisal techniques have been consistently applied, and should prepare a comparative analysis.

(c) The appraisal valuations by the property owners, their appraisers, or other witnesses who may testify for the owners, if such can be ascertained.

(d) A statement of the recommendation of the United States Attorney as to the proposed settlement.

(e) Such other matters as should be considered by the Chief of Engineers in determining whether the proposed settlement is satisfactory; e.g., any pattern of awards which has been established as \*

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- \* the result of other trials concerning land at the same project, or in the same Federal judicial district, disposition of any accepted Offer to Sell, any unusual legal or factual issue involved, any unusual factors which would increase the hazard of proceeding to trial, or the anticipated effect of the settlement on remaining acquisition in the project.

(f) Whether or not funds are available to satisfy any deficiency.

(g) The report should contain the required information in tabulation form. For each item the statement should be short and concise; lengthy reports are not required.

(4) A copy of the report and recommendation sent to the Chief of Engineers will be immediately transmitted to the United States Attorney. If the settlement is satisfactory, the Chief of Engineers will forward a letter of approval to the Department of Justice, recommending that the stipulation be approved, filed and judgment entered thereon. A copy of the letter of approval will be sent to the Division or District Engineers. Receipt of such copy is authority to satisfy the judgment when entered, provided funds are available.

(5) If a stipulation is obtained by a United States Attorney in excess of their authority, they will forward the proposed settlement to the Department of Justice. Simultaneously, in accordance with procedures agreed upon by the Chief of Engineers and the Department of Justice, the United States Attorney will transmit copies of the transmittal letter and of the proposed stipulation to the Division or District. The Division or District Engineer will immediately forward the letter outlined in subparagraph (3) above to the Chief of Engineers.

(6) All settlements negotiated for interests acquired in condemnation proceedings will be inclusive of interest and will include all claims of any nature arising as a result of the taking of the estate recited in the complaint or declaration of taking, with the exception of benefits to which the landowner may be entitled under Public Law 91-646. In leasehold condemnation cases, all proposed settlements should include not only an agreement as to compensation for the period of the leasehold but also an agreement as to any and all claims arising from restoration of the premises, if known. See also paragraph 5-35b below.

(7) Where surface and subsurface interests are acquired in a single condemnation proceeding, it is desirable to settle by \*

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\* stipulation, or to go to trial, on the "unit" basis. Many United States Attorneys insist on this course of action. However, Division or District Engineers should cooperate with United States Attorneys who wish to negotiate for stipulated settlements which may not include all of the interests acquired in a given proceeding as to a specific tract or tracts, provided appraisal reports have been prepared in such a manner as to make the appraised value of the several interests ascertainable.

(8) If an offer of settlement is not intended to include the full interest which was condemned in a particular tract, the letter transmitting the settlement offer will specifically identify the interests included in the settlement, the interests which remain unsettled, and the amount of estimated compensation remaining on deposit for the unsettled interests. The amounts remaining on deposit for the unsettled interests should be the appraised valuation of such interests.

(9) Landowners will be advised during negotiations for settlement that offers to settle are not binding on the United States until accepted by a duly authorized representative of the Department of Justice.

(10) In cases where tracts which are covered by accepted Offers to Sell are acquired by declaration of taking because of title defects or the failure of the landowner to carry out the terms of the Offer to Sell, the United States Attorney will be informed by letter and furnished copies of the Offer to Sell. The consideration contained in the Offer to Sell is considered binding upon the landowner despite the fact that condemnation is used to acquire title to the land. No settlement will be approved by the Division or District Engineer in an amount exceeding the amount contained in the Offer to Sell unless the Offer has been set aside by court order. Reports submitted in accordance with subparagraph (3) above will contain a statement as to the status of any Offer to Sell which may have been accepted.

c. Appraisal Review. Department of Justice, Land and Natural Resources Division Directive No. 11-68, dated 22 November 1968, provides that where two or more appraisals for a particular property have a valuation spread in excess of 10 percent of the high appraisal figure, the United States Attorney should submit such appraisals to the local representative of the Corps for approval. Every effort should be taken to see that this policy is followed so that the Corps has full knowledge of the appraisal reports on which settlement negotiations or trial preparation is based. \*

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\* In those instances where the United States Attorney and the Division or District Engineer cannot agree as to whether an appraisal or appraiser should be used at trial or in connection with settlement negotiations, copies of all appraisals, together with the analysis of the reviewing appraiser, should be submitted to HQDA (DAEN-REE) WASH DC 20314 for further consideration and possible discussion with the Department of Justice.

5-32. Awards.

a. Approval by Division or District. Division or District Engineers and the Chiefs of the Real Estate Divisions have been authorized to approve court awards (including jury or commission awards) where such awards do not exceed the highest testimony presented at the trial by a qualified appraiser employed by the Government. In such cases, the United States Attorney will be notified that the award is approved and the Chief of Engineers will be notified of such action.

b. Approval by Chief of Engineers.

(1) If the award is in excess of the highest testimony presented at the trial by a qualified appraiser employed by the Government, or involves a matter of a doubtful or controversial nature, a report concerning the trial will be forwarded by the Division or District Engineer to DAEN-REA-C. The report should contain, but not be limited to, the following information:

(a) The amount of the verdict or award.

(b) The appraisal valuations given in testimony by all witnesses, including any pertinent comments on the effectiveness of the witnesses, as appropriate.

(c) A statement of the recommendations of the United States Attorney as to the acceptance of the verdict or award, if available without causing a delay in submittal of the report.

(d) Where the trial concerned less than all interests acquired in a given tract, the report should state the precise interests adjudicated at the trial, the other interests which remain unadjudicated, the proposed disposition of the unadjudicated interests and the amount of the deposit allocated to the unadjudicated interests.

(e) Whether or not funds are available to satisfy any deficiency plus interest . \*

(2) Long narrative reports of the events at a trial or hearing are not necessary except in unusual cases. A brief, but complete, statement of the pertinent facts will be adequate in most cases. A form for trial reports, ENG Form 3906-R, Report of Trial or Hearing, is shown at Figure 5-9; however, it is not intended that this form constitute the entire report. Where the case was tried by a Commission, copies of the Commissioners' Report will be submitted with each copy of the trial report. Close liaison must be maintained with the United States Attorney's Office in order that these reports will be received promptly after they are filed in the case.

(3) The report outlined above should be accompanied by the recommendation of the Division or District Commander as to what action should be taken with respect to the Commissioners' Report, court award or jury verdict. This recommendation should include a discussion of any matters which should be considered by HQUSACE in determining whether the award is satisfactory, e.g., the history of the past awards at this project or in the same judicial district, the basis used by the commission in arriving at its determination of value, whether enhancement from the project or a second taking was an issue, the disposition of any accepted Offer to Sell on any tract involved in the trial, etc. (The basis of findings of value to be included in the report of a commission appointed under Rule 71A(h) was considered by the Supreme Court in United States v. Merz, 376 U.S. 192). Where the recommendation is to reject the award, specific reasons with supporting legal analysis should be given. The fact, standing alone, that an award is considered excessive is not sufficient reason upon which to base an appeal.

(4) The report and recommendation should be received by HQUSACE within five working days after the Commissioners' Report has been filed or the trial concluded. In order to accomplish reporting within the prescribed time limits, District Commanders will forward reports and recommendations direct to CDR USACE (DAEN-REA-C) WASH DC 20314-1000, with a copy to the appropriate Division Commander. The Division Commander will submit comments and recommendations to DAEN-REA-C within three working days after receipt of the copy of the District Commander's report. The District must insure that our right to object is extended if the situation warrants.

c. Payment of Awards and Settlements.

(1) If an award or stipulated settlement requires the deposit of a deficiency, judgment will be entered by the court and thereafter

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transmitted to the Division or District Commander by the Department of Justice for procurement of a check for deposit in the registry of the court in satisfaction of the final judgment.

(2) The copy of the letter from CDR USACE to the Department of Justice recommending approval of an award or settlement, if required under paragraphs 5-31b(3) or 5-32b above, will constitute authority for payment of the deficiency, provided funds are available. If approval is not recommended by CDR USACE to the Department of Justice and the judgment is submitted to the Division or District Commander for payment, it should be forwarded to DAEN-REA-C without action. Upon receipt of a judgment where payment is authorized and funds are available, the Division or District Commander will immediately procure and deliver the check to the United States Attorney and inform DAEN-REA-C of the action taken.

5-33. Procedure After Final Judgment. Generally, it is not necessary to obtain a final certificate of title or title insurance policy in condemnation cases where the intermediate or continuation certificate of title is continued to a date subsequent to the date of filing of the Notice of Lis Pendens, and the liability of the title company is not limited to an amount less than 50 percent of the total consideration paid for the land by the United States.

a. Final Title Opinion. The final title assembly will be examined and a final title opinion issued. Send copies of the final title opinion and related papers to CDR USACE (DAEN-REA-P) WASH DC 20314-1000. The original documents will be retained for Division/District files. \*

b. Report Required to Close Case. When all interests in a proceeding have been disposed of by final judgment, the Division or District Commander will so advise CDR USACE in order that the case may be closed. This report should not be made until the time for appeal has expired or any pending appeals have been resolved. The report should include a copy of the final judgment or other order of the court disposing of the case, and a statement that all monies deposited in the registry of the court have been disbursed.

5-34. Condemnation for Local Cooperation Projects. Under the provisions of the River and Harbor Acts approved June 29, 1906 (33 U.S.C. 592) and August 8, 1917 (33 U.S.C. 593), and the flood Control Acts approved March 1, 1917 (39 Stat. 950) and August 18, 1941 (33 U.S.C. 701c-2), respectively the Secretary of the Army

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\* may cause proceedings to be instituted in the name of the United States for acquisition by condemnation of lands, easements or rights-of-way which local interests undertake to furnish free of cost to the United States. Requests for the institution of proceedings in the name of the United States will be addressed by the local parties to the Secretary of the Army and submitted to the Division or District Engineer. No land will be acquired on behalf of local interests by the filing of condemnation proceedings until local interests have furnished the Division or District Engineer with satisfactory assurances in accordance with the authorization act, and sufficient funds have been deposited with the Division or District Engineer to pay the expenses of the proceedings and any awards that may be made in the proceedings.

a. General. The Corps of Engineers will institute condemnation proceedings on behalf of a local interest only when the local interest:

(1) Lacks authority to acquire the necessary real estate interests by eminent domain; or

(2) Cannot obtain possession by local eminent domain proceedings in time to meet the construction schedule; or

(3) Unusual circumstances exist so that acquisition by local interests would not be in the best interest of the United States.

b. Information to Accompany Assembly. Upon request of the local interests that the real estate interest be acquired by condemnation proceeding in the name of the United States, the Division or District Engineer will transmit to HQDA (DAEN-REA-C) WASH DC 20314 an appropriate condemnation assembly, prepared in accordance with paragraph 5-28 above, with recommendations and the following information:

(1) Citation of authorizing act.

(2) Whether valid assurances have been accepted, giving date of acceptance.

(3) That the estate or estates to be acquired conform to the requirements set forth in Chapter 12 of this Pamphlet.

(4) Appraisal values of the interest proposed for acquisition.

(5) That sufficient funds to cover court awards and expenses of the proceedings have been deposited by local interests with the Division or District Engineer. \*



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- \* (6) Efforts made by local interests to acquire the real estate interests and reasons for requesting the United States to file condemnation proceedings.

5-35. Leasehold Condemnation Requirements.

a. Requirements for Extension. The interest acquired in land by a leasehold condemnation proceeding terminates after a one-year term, unless notice to extend the term is filed in the appropriate United States District Court. In all leasehold cases, the Division or District Engineer will ascertain from the using service whether the premises included in such condemnation proceedings will be required for an additional term. This should be done sufficiently in advance of the end of the term to allow adequate time for the action necessary to extend the term. These instructions apply to civil works projects as well as military projects.

(1) The Department of the Air Force will ascertain and advise the Chief of Engineers concerning the future requirements for the land in Air Force leasehold cases. Where the Department of the Air Force has a continuing requirement for land included in condemnation leasehold cases which are not extendible, the appropriate Division and District Engineers will be informed at the earliest practicable date.

(2) Extension of the term in a leasehold condemnation case must be accomplished through the Department of Justice which, upon request of the Chief of Engineers, will issue instructions to its field representatives to prepare a notice of election to extend the term and file it in the appropriate United States District Court. The Chief of Engineers should be advised of requirements of using services for extension of leasehold condemnation cases five months prior to the time that filing notice of extension with the court is due. The majority of pending leasehold condemnation cases require that notice to extend the term be filed with the court 30 days prior to the end of the term, although a few cases require the notice of extension to be filed at least 60 days prior to the end of the term. Negative reports are required.

(3) Since the General Services Administration is the disposal agency for excess and surplus airport property, all condemnation leaseholds forming an integral part of an airport should be extended and kept in force with the concurrence of the Department of the Air Force unless and until contrary instructions are received from the General Services Administration. In the event a bombing range or other installation in which leasehold interests have been acquired by condemnation is excess or surplus, but will not be decontaminated prior to the end of the term, the leasehold condemnation \*

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\* proceeding will be extended beyond that date. In reporting leasehold condemnation cases to be extended within the categories mentioned in this paragraph, full information as to the necessity for extension in each case should be furnished DAEN-REA-C.

(4) Specific authorization for deposit of funds in condemnation leasehold cases will be issued to Division and District Engineers by the Chief of Engineers.

b. Termination of Leasehold Condemnation Proceedings. If the need for all or part of the land included in a leasehold condemnation proceeding should terminate prior to the expiration of the term condemned, in the case of fixed term estates, or prior to the expiration of the right to renew by filing notice of extension, the Division or District Engineer, upon notification by the using service that the land is no longer needed, shall advise DAEN-REA-C accordingly. Prompt action will be taken by the Division or District Engineer to comply with the applicable requirements of Chapter 11 of this Pamphlet relative to screening real property excess to one component of the Department of Defense with all other components and Federal agencies outside of the Department of Defense. Where restoration is involved, a report will be furnished DAEN-REA-C setting forth the status thereof.

c. Report to Close Leasehold Condemnation Cases. When the term condemned has expired or all interests have been terminated and all interests have been disposed of by final judgment, the Division or District Engineer will so advise DAEN-REA-C in order that the case may be closed. Report in accordance with paragraph 5-33b above shall be furnished and shall also include a statement that the issue of restoration has been settled. \*

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\* SECTION V. ACQUISITION BY LEASING

5-36. General. This section outlines the procedures of the Corps of Engineers the leasing of real estate and interests therein for military and civil works purposes. It is applicable to all Division and District Engineers having real estate responsibilities. To the extent practicable, this section will be followed by overseas commanders, in conjunction with the provisions of AR 405-10, Chapter 3. In general, this section also applies to the leasing of land and improvements for other Government agencies which authorize the Corps to acquire leasehold interests.

5-37. Authority.

a. Authority to lease real property interests for the Department of the Army in the United States, the Commonwealth of Puerto Rico, and the Virgin Islands is derived from annual appropriation acts.

b. Title 10, U.S.C. 2675 authorizes the acquisition by lease, in any foreign country, of structures and real property relating thereto that are needed for military purposes. Leases under Section 2675 may not be for a period of more than five years, except that a lease under this section for military family housing facilities and real property relating thereto may be for a period of more than five years but may not be for a period of more than ten years.

5-38. Responsibilities.

a. The Corps is responsible for acquiring space in buildings, or land, or both land and buildings, under its own authority or through the General Services Administration (GSA) in designated urban centers, for the Departments of the Army and Air Force; Department of the Navy, including the Marine Corps, for recruiting and main stations; Department of Energy and the Nuclear Regulatory Commission, excluding space in GSA urban centers; National Aeronautics and Space Administration, as requested; and other agencies, such as the Department of Defense, upon request. In carrying out these responsibilities, Division and District Engineers will:

(1) Furnish staff supervision to using services on all leasing matters, as well as technical assistance and guidance.

(2) Develop plans and studies, usually in the form of Lease Planning Reports, for commanders of using services when appropriate.

(3) Make recommendations to the using services and/or the Chief of Engineers on important lease and lease planning matters. \*

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(4) Submit controversial or unusual leasing matters to HQDA (DAEN-REA-L) WASH DC 20314, for consideration and resolution, together with a summary of the facts, copies of proposed lease documents, other pertinent data, and recommendations thereon.

b. In accordance with Reorganization Plan No. 18 of 1950 (40 U.S.C. 304c) and under the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471), the Public Buildings Service of GSA assumed all functions with respect to the acquisition by lease of general-purpose space; the assignment and reassignment of such leased space and of Government-owned space; and the operation, maintenance, and custody thereof in selected urban centers. The Administrator, GSA, is authorized to assign and reassign office space in the United States upon his determination that such assignments or reassignments are advantageous to the Government in terms of economy, efficiency, or national security after consulting with the heads of the executive agencies concerned.

c. Reorganization Plan No. 18 also provided that the Administrator may delegate any function transferred to him to the head of any agency of the executive branch of the Government.

d. Reorganization Plan No. 18 did not transfer to the Administrator any function with respect to:

(1) Buildings or space in buildings located on a military installation, or similar facility of the Department of Defense unless a permit for its use shall have been issued by the Secretary of Defense, or his duly authorized representative; or

(2) Space in Government-owned or leased buildings utilized for special purposes and not generally suitable for use by other agencies.

5-39. Definitions.

a. General-purpose space is space in buildings, including land incidental thereto, suitable for the general use of Government agencies, including but not limited to office space, general storage space, inside parking space, and warehouse space.

b. Special-purpose space is space in buildings, including land incidental thereto, wholly or predominantly utilized for the special purposes of an agency, and not generally suitable for general-purpose use, including but not limited to hospitals, housing, and laboratories.

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c. Initial alterations are any improvements, additions, repairs or structural changes which are necessary to adapt leased premises or facilities to needs of the using service and which are approved prior to occupancy.

d. Subsequent alterations or upgrades are any improvements, additions, repairs or structural changes which are found to be necessary to further adapt leased property to the needs of the using service after occupancy.

e. Temporary improvements are those which can be removed without damage either to the property installed or the leased property, and to which the Government retains title.

5-40. Lease Authorization and Approvals.

a. Title 10 Reports. Under the provisions of 10 U.S.C. 2662, a lease proposal or renewal with an estimated annual rental in excess of \$50,000 (gross rent as recited in the lease or for each project covered by one or more leases) must be reported to the Armed Services Committees of Congress. The General Services Administration (GSA) charges a Standard Level User Charge (SLUC) for furnishing space. For Title 10 reporting purposes, where GSA leases space at Corps request, the SLUC figure, if greater than the gross contract rental figure, shall control. For all leases which require Title 10 clearance, the Division/District Engineers will prepare and submit an Acquisition Report to HQDA (DAEN-REA-L) WASH DC 20314 in the format shown in Figure 5-10. The report will support an action to obtain approvals from the Assistant Secretary of the Army (Installations, Logistics and Financial Management) and the Deputy Assistant Secretary of Defense (Installations and Housing) for the proposed lease prior to its submission to the Committees, and will serve as a basis for a hearing before the Real Estate Subcommittee of the House Armed Services Committee. Draft acquisition report pursuant to Title 10 for a lease renewal should be submitted at least 12 months in advance of the termination date of the lease. An explanation for any delay in forwarding the draft acquisition report is required in the transmittal letter if lease terminates prior to one year. Supporting data for this report will include the following:

(1) The geographical area in which the availability of Government-owned space was surveyed, together with reasons for limiting the area. The mission is to be set forth in detail, along with the reason(s) why space in this particular geographical area \* is essential to the performance of the mission.

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\* (2) Current and required space (including parking) for each using service. For GSA leases the square feet should be the same

(3) Statement covering all Government-owned buildings and facilities under the control of the military departments in that area, together with the reasons why each was rejected. Even though no space is available, a list of the installations in the area will be furnished.

(4) Statement from GSA indicating that no space is available to that agency and other Federal agencies in the area or, in the alternative, a list of space that is available, together with reasons why the space is not acceptable to the using service.

(5) Identification of the headquarters and personnel making the determination that any available Government-owned space is not suitable.

(6) Original request, signed by the responsible head of the using agency, that action be taken to obtain required clearances under 10 U.S.C. 2662. The using service shall advise whether or not a long-range use is contemplated.

(7) A statement of the current and anticipated contract rentals and current and anticipated SLUC for GSA leases. The SLUC should be as reported by GSA, unless an explanation is provided.

b. The Economy Act. Section 322 of the Act of Congress approved 30 June 1932, as amended (40 U.S.C. 278a) provides that no appropriation shall be obligated or expended for the rent of any building or part of a building to be occupied for Government purposes at a rental in excess of the per annum rate of 15 percent of the fair market value of the rented premises at date of the lease under which the premises are to be occupied by the Government, nor for alterations, improvements, and/or repairs of the rented premises in excess of 25 percent of the amount of the rent for the first year of the rental term, or for the entire rental if the full term is less than one year. The provisions of Section 322, as applicable to rentals, shall apply only where the rental to be paid shall exceed \$2,000 per annum.

c. Exception to Economy Act. The Act of Congress approved 28 April 1942 (40 U.S.C. 278b) provides that 40 U.S.C. 278a shall \*

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\* not apply during war or a national emergency declared by Congress or by the President to such leases or renewals of existing leases of privately-owned or publicly-owned property as are certified by the Secretary of the Army or the Secretary of the Navy or by such person or persons as he may designate, as covering premises for military or civilian purposes necessary for the prosecution of the war or vital in the national emergency. The provisions of the National Emergencies Act, Public Law 94-412 (90 Stat. 1255), 14 September 1976, shall not apply to the powers and authorities conferred by 40 U.S.C. 278b and actions taken thereunder.

d. Federal Property and Administrative Services Act. The Administrator, GSA is authorized by 40 U.S.C. 490a(8) to alter and improve rented premises without regard to the 25 percent limitation of 40 U.S.C. 278a upon a determination by the Administrator that the alterations and improvements are advantageous to the Government in terms of economy, efficiency, or national security, and that the total cost of the proposed work to the Government for the expected life of the lease shall be less than the cost of alternative space which needs no such improvements.

e. Certificates of Necessity. Department of the Army requests for Certificates of Necessity pursuant to 40 U.S.C. 278b will be forwarded to the Assistant Secretary of the Army through DAEN-REA-L, In any case requiring the issuance of a Certificate of Necessity, the amount requested will be sufficient to provide for all improvements which can be foreseen and that will be required during the term of the lease. Should unforeseen, essential requirements arise at a later date, an additional Certificate of Necessity to cover such work will be necessary. It is required that the using service furnish Division or District Engineers with a request for a Certificate of Necessity, explaining the circumstances, followed by a statement that the continued use of the leased premises, or the work to be performed, as the case may be, is vital in the national emergency. All requests by Division and District Engineers will include a completed ENG Form 869-R, 15 percent Valuation Certificate (Figure 5-14).

f. Approval - Chief of Engineers.

(1) The Chief of Engineers is authorized to approve leases where proposed temporary construction to be placed on land by the Government has an estimated cost equal to or in excess of the current market value of the property, or where the estimated rentals to be paid in the future, plus the cost of restoration, would exceed 50 percent of the current market value of the property. \*

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\* (2) Leases, renewals, or lease extensions, which are controversial, unusual, or inconsistent with existing policies, require the approval of the Chief of Engineers.

(3) Any lease involving clearances by higher authority will be submitted to HQDA (DAEN-REA-L) WASH DC 20314.

(4) Leases, renewals, or lease extensions of industrial properties, other than for bakeries, laundries, and drycleaning facilities, are to be submitted to DAEN-REA-L for prior approval.

(5) Division and District Engineers, and Chiefs of the Real Estate Divisions, are authorized to perform emergency maintenance and repairs to leased premises not in excess of \$500 where lessors refuse to perform, or under such circumstances that the lessor cannot perform. Where the cost exceeds \$500, approval by DAEN-REA-L is required. The Comptroller General has ruled that where the lessor is obligated to perform maintenance and repairs under the terms of the lease and after demand of and refusal by the lessor, the Government makes such repairs in order to utilize the property to the fullest extent, the cost should be withheld from rental payments under the lease as soon as possible after work is completed (15 Comp. Gen. 1064). However, no rental payments will be withheld and no repairs made after demand and a refusal by the lessor, without prior approval of DAEN-REA-L.

g. Division and District Engineer Authorization.

(1) Division Engineers and their Chiefs of the Real Estate Division have been delegated, without authority to redelegate, leasing authority to approve leases where the annual rent, excluding services and utilities, unless said services and utilities are included in the recited rental consideration, is in excess of \$25,000, but not in excess of \$50,000. The \$50,000 limitation will be strictly observed because of the reporting requirements under the provisions of 10 U.S.C. 2662.

(2) District Engineers and their Chiefs of the Real Estate Divisions are authorized to approve leases wherein the rental excluding utilities and services, unless included in the recited rental consideration, does not exceed \$25,000 per annum.

(3) Except for space in the National Capital Region, Division and District Engineers are authorized to process all requests for the assignment of space in Government-owned buildings or leased space in the GSA urban centers to the regional GSA office having \* jurisdiction.



\* 5-41. Leasing Guidelines. Division and District Engineers, and the Chiefs of the Real Estate Divisions, are authorized to execute leases, or renewals of leases, negotiated in accordance with the procedures expressed herein, upon receipt of a proper request from an authorized command, service, or agency, subject to any required approvals or clearances. When there is no Real Estate Division, as such, but the Division or District Engineer has responsibility for leasing activities, he may delegate this authority to the officer or civilian in charge of real estate activities,

a. Leasing Requests. Requests for space or land will be received by the Chief of Engineers, or the appropriate Division or District Engineer. Requests will include the data outlined in AR 405-10 (para 2-2c). Division and District Engineers will coordinate space or land requirements with appropriate commanders to assure responsive lease processing. If required, a Lease Planning Report, or narrative report covering essential information, will be furnished the using service for review and recommendations. Funding requirements, usually in the form of citations, will have been met by the using service prior to lease execution. If approvals by higher authority are required, the Division or District Engineer will initiate appropriate action to obtain the necessary clearances.

(1) Army Commands. Upon receipt of a request from an Army Command, negotiations for obtaining acceptable leases will be carried to completion in accordance with present procedures for military leases.

(2) Air Force. Upon receipt of a lease request approved by Headquarters, U.S. Air Force, or an Air Force major command, the appropriate Division or District Engineer will negotiate and lease the required property. The provisions of AFR 87-1 prescribe the Department of the Air Force policies and procedures that are to be followed.

(3) National Guard. All requests for the leasing of facilities for National Guard purposes will emanate from the Chief, National Guard Bureau. Army National Guard leasing requirements will be transmitted through DAEN-REZ-R to DAEN-REA-L. Air National Guard requirements will be transmitted to DAEN-REA-L through Headquarters, U. S. Air Force.

(a) Upon receipt of authority from the Chief of Engineers, negotiations will be conducted for obtaining an acceptable lease, in accordance with the approved lease request. The appropriate United States Property and Fiscal Officer generally makes separate \*

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\* service contracts for utilities, except sewage disposal, and services, and is responsible for the maintenance of all buildings used exclusively by the Air National Guard. Representatives of the Corps of Engineers do not participate in obtaining contracts for utilities and services. In cases where such a contract is impracticable, the lease may include any and all utilities and services as part of the rental consideration, with the cost of the various services and utilities to be itemized. The "use clause" in the lease will provide for occupancy of the premises for "Government purposes". The wording, "For use by the Air National Guard and/or United States Air Force, and, in time of war or national emergency, by other units of the Armed Forces of the United States or for any other use by the Federal Government," will be acceptable if it is not possible to insert the for "Government purposes" provision.

(b) Leases made by representatives of a State with private parties for use of premises by the National Guard of the State involved, under which State funds are used for rental payments, are not the responsibility of the Division or District Engineer.

(4) Department of Energy/Nuclear Regulatory Commission. Space is acquired by these agencies direct from GSA in the designated urban centers pursuant to Reorganization Plan No. 18. In instances where general purpose space is not obtained through GSA and instances involving the leasing of special-purpose space, managers of field offices of subject agencies are authorized to initiate requests to Division or District Engineers for the leasing of properties where the net per annum rental does not exceed \$50,000. Leasing of properties where the net rental per annum exceeds \$50,000 requires the prior approval of the appropriate agency head, i.e., the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, or their designees.

(5) Metropolitan Washington, D. C. All requests for leased space in the National Capital Region will be processed in accordance with DOD Instruction 5305.5.

b. Requirements Survey. The availability, use, and adaptability of property owned by the Government, whether under control of the GSA or other agencies, shall be thoroughly explored before additional space is leased, or existing leases are renewed, or construction commenced. Particular attention is to be given to the availability of space, or land, at military reservations, camps, posts, or stations.

(1) A statement covering the non-availability of Government-owned space, or if such is available and not suitable, reasons why \*

\* it is not suitable, for occupancy by the requesting using service, should be made for each lease executed by the Corps of Engineers, excluding family housing leases.

(2) Suitable privately-owned space shall be acquired only when satisfactory Government-owned space is not available. Rental charges will be consistent with prevailing rates in the community for comparable facilities.

(3) The quality of office space for Government occupancy shall be appropriate for the efficient and economical performance of required operations, affording employees safe, healthful and convenient facilities.

(4) Full consideration shall be given to the efficient performance of the mission and programs of the using service.

c. Government-Owned and General Services Administration Furnished Space. If Government-owned space is available, the Division or District Engineer will inform the using agency, and details of occupancy will be developed. If it is necessary for GSA to lease space, the Division or District Engineer will make a careful review to determine if there are any statutory or regulatory limitations involved. If so, appropriate action will be taken to satisfy the limitations. During the processing of all GSA space assignments and leases, the Division or District Engineer is the only official contact representative with GSA. This procedure is to be emphasized at all times with the using service.

(1) The Division or District Engineer will submit a Standard Form 81, Request for Space, to the appropriate GSA Regional Office for space assignment in urban centers under the jurisdiction of GSA. The requirement to submit this form applies to lease renewals or lease supplements, and for space assignments in Federal office buildings. Excluded from this procedure is a proposed space assignment in the National Capital Region.

(2) Except for the acquisition of general-purpose space of 2,500 square feet or less, outside the designated urban centers, and special-purpose space of 2,500 square feet or less, irrespective of the location, the need for any type of building space will be made known to the appropriate GSA Regional Office by filing Standard Form 81, Request for Space.

(3) The designated urban centers are listed in Figure 5-11.

d. Advertising. As a general rule, procurement of space will be by formal advertising. However, in leasing certain types of premises where only one location will serve the Government's purpose, \*

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\* such as municipal airports, recruiting stations, and similar facilities, negotiations without advertising are permissible. In instances where building space is needed and the requirement cannot be met through the use of existing buildings, there must be advertising to solicit bids for the furnishing of the space. In every instance, it is essential that efforts be made to seek competition. For each lease, a statement will be prepared concerning competition in the solicitation for space or land and Standard Form 1036, Statement and Certificate of Award, will be used. Where specific space or land is needed, and competition is therefore not involved, the facts and circumstances will be fully explained and such explanation will be made a part of the lease file for future reference.

e. Appraisals. Appraisals are required as a basis for making rental determinations in all leases except those for a nominal consideration. At the discretion of the Division and District Engineers, and the Chiefs of the Real Estate Divisions, formal or detailed appraisals can be dispensed with for leases wherein the annual rent does not exceed \$5,000. Where the rental of a building or part of a building, or family housing unit, exceeds \$3,600 per annum, excluding services and utilities, it may be necessary to estimate the fee value of the property contemplated for leasing to determine whether or not the rental rate is in excess of 15 percent of the fee value of the property. For family housing leases, the opinion of fee value will be in short summary form and will be supported by general evidence of comparable values of the unit to be leased. If the proposed annual rental, excluding services and utilities, of a family housing unit exceeds 15 percent of the estimated fee value, the unit will not be leased.

f. Determination of Valid Interest. Persons executing leases for and on behalf of the United States of America will satisfy themselves, before executing leases, that the prospective lessors have an interest in the real estate which will assure the validity of the lease. Where leased lands are used as a site for construction, the land records of the county will be examined by a staff attorney familiar with land title records, who will execute a certificate that he has examined the said records and that title is vested in the lessor, subject to the infirmities, liens and encumbrances noted in the certificate. In lieu of such examination, a certificate from the Register of Deeds, County Recorder or other qualified officer is acceptable. If considered advisable in unusual cases, title evidence may be obtained from commercial sources.

g. Outstanding Rights and Damages.

\*

\* (1) Where the land is subject to outstanding oil, gas, mineral, or similar interests, the Division or District Engineer will determine, from the appropriate command, in advance of the consummation of the lease, whether the continued exercise of the mineral or outstanding rights will interfere with the contemplated use of the premises.

(2) Where buildings, structures, or growing crops are located on land to be leased, a determination will be made by the Division or District Engineer, in coordination with the appropriate command, as to whether they will interfere with the use of the premises.

(3) Where the lessor will not be permitted to harvest crops or remove improvements and timber which will be destroyed by the Government, the appraised value thereof will be determined, and such amount will be included in the rental for the initial term of the lease, together with an express provision relieving the Government of restoration.

(4) Leases of land for bombing, artillery, rifle ranges, and other extraordinary usage will specify that the leased premises are to be used for such purpose, and an effort will be made to include in the lease a provision waiving restoration and claims for damages, particularly where the premises are wastelands or unproductive,

(5) Where the lessor will not consent to a waiver of restoration, the estimated value of such damage, if it can be determined in advance, will be included in the rental for the initial term of the lease, and the lease will contain an express provision relieving the Government from responsibility for restoration.

(6) If restoration is not waived, and the damages cannot be determined in advance, a provision may be included in the lease to the effect that the rental payments do not include compensation for damages arising from the use of the premises for the purpose leased and that, upon termination of the lease, the damages, mutually determined, will be paid by supplemental agreement to the lease. In the event the amount of the loss or damage cannot be mutually determined, the lessor may file a claim for the alleged loss or damage in accordance with Chapter 10 of this Pamphlet.

h. Services and Utilities. Services, such as janitorial, heat, air conditioning, light and water, should be included in leases for building space wherever possible. Whether services are paid for as part of the rent, or by a service contract, the time period for furnishing heat, air conditioning and light, i.e., usual business hours, 24-hour basis, Saturdays and Sundays, should be clearly stated. \*

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\* i. Other Contracts. The negotiation and execution of contracts not involving an interest in real estate are the responsibility of the services concerned.

j. Condition Surveys.

(1) Whenever possession of any premises is acquired by lease or other agreement, or by condemnation for a term of years, the Division or District Engineer will cause a survey and inspection of the condition of the real and personal property to be made as of the time the Government takes possession.

(2) The survey and inspection required above will be made jointly with the lessor, or his duly authorized representative. The report will be signed by both parties.

(3) The initial survey report must be made with great care since it is the basis for future restoration claims by a lessor. The use of photographs is encouraged. Full explanatory data covering condition of the premises will be added to the report if, in the opinion of the Chief, Real Estate Division, a useful purpose will be served thereby. The survey report of real property, and the inventory and condition report of personal property, will be made with care, as the condition reflected as of the date of initial occupancy will be compared with the condition shown by the terminal reports made upon vacation of premises.

(4) A survey is not required of unimproved land where an appraisal has been made and the condition of the land is set forth by the appraiser and made a part of the record.

(5) A survey will be made wherever property of another Federal agency is used, with the exception of post offices and Federal buildings. In the event privately-owned buildings, crops, or other property, are on the Federal property, a report will be made outlining the terms and conditions under which they were placed thereon, and the value thereof will be appraised as of the date of possession.

(6) Normally, ENG Forms 3143 and 3143A, Joint Survey and Inspection of Condition of Government Leased Property, are adequate for the joint survey and inspection. In certain cases, narrative reports may, at the discretion of the Division or District Engineer, be considered preferable; however, local forms will not be developed for this purpose.

\*

\* k. Possession. Possession of real property will not be taken until required approvals and clearances are obtained and a lease is executed. When requested by an appropriate command, rights-of-entry for exploration and survey, or construction, will be obtained in accordance with instructions in Section VI of this Chapter.

l. Condemnation of Leaseholds. Where the required leasehold interest cannot be acquired by a negotiated lease, the recommendation of the Division or District Engineer for the institution of condemnation proceedings will be submitted to HQDA (DAEN-REA-C) WASH DC 20314, in accordance with Section IV of this Chapter, setting forth the negotiations that have been conducted with the property owner(s) and all other factors supporting the recommendation.

m. Decease of Lessor.

(1) Any claim on account of death of a lessor (except uncurrent depository check claims) may be settled without submission to the Chief of Engineers where no doubt exists as to the amount and validity of the claim or as to whom payment may be made under the laws of the domicile of the decedent.

(2) Any claim for rent or services due a deceased lessor which is considered doubtful will be forwarded to HQDA(DAEN-REM) WASH DC 20314 in accordance with Chapter 10 of this Pamphlet.

n. Recording Leases. If the property is located in a State requiring the recording of leases, all statutory requirements will be met. Leases, and supplemental agreements prior to termination, involving property upon which substantial Government improvements are to be constructed, will be recorded in all cases.

o. Change in Ownership.

(1) When the title to premises leased to the Government is transferred, the contracting officer shall satisfy himself that the new owner has a valid interest in the premises covered by the lease, and thereafter enter into a supplemental agreement between the old and new owners and the Government, for distribution in the same manner as the original lease.

(2) Upon being notified or otherwise determining that a foreclosure proceeding has been filed against the leased premises, or that the enforcement of a deed of trust or mortgage is imminent, the Division or District Engineer will take such action as is appropriate under State laws for protection of the United States. This would consist of filing by the United States Attorney with the court, or with the trustee, receiver, or commissioner, as the \*

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\* case might be under local law, of a notice of the Government's lease on the property, with request that the foreclosure proceedings be made subject thereto. If the proceeding is made subject to the lease, an abstract of such proceeding will be made, certified by a staff attorney, and distributed in the same manner as the original lease. If considered advisable, a supplemental agreement to the old lease will be made with the new owner; or a superseding lease may be executed and distributed. If the proceeding results in vesting title in a new owner, free and clear of the Government's lease, attempt will be made to negotiate a new lease; if this fails, condemnation action will be taken sufficiently early to protect the interests of the United States. Negotiation and condemnation in this latter type of situation must be based on a current appraisal.

p. Supplemental Agreements. Modification of existing leases will be in the form of supplemental agreements and will be prepared, executed, and distributed in the manner prescribed for the original lease. Where a supplemental agreement provides for an increase in space at an increased rental, the supplemental agreement should contain appropriate recitals of this fact, and provide that the Government, thereafter, may, upon 30 days notice, partially reduce, or discontinue, the use of the space covered by either the supplemental agreement, the basic lease, or both. Supplemental agreements enlarging or reducing space will show the total area and rental comprising the basic lease and preceding supplemental agreements.

q. Annual Review of Leases. Annual review of leasing requirements and space assignments from GSA are to be initiated by the Division or District Engineer not later than one year before the end of the lease term for each lease.

(1) Special attention will be given by Division and District Engineers to leases which expire by their own terms and continued occupancy is required at annual rentals of \$50,000 or more. These leases require approval by the Department of Defense and reporting to the Armed Services Committees of the Congress by the Chief of Engineers. An Acquisition Report together with full justification, as set forth in paragraph 5-40a, in support of each lease (or project covered by more than one lease) must be furnished. For leases in which it is not clear whether Title 10 reporting is required, DAEN-REA-L will be informed of the facts for decision. Attention will be given also to existing leases having annual rentals between \$30,000 and \$50,000. It is probable that current appraisals will indicate annual rental rates in excess of \$50,000 and, therefore, require a Title 10 report.\*



- \* (2) If the using command anticipates that there will be further need for the leased property, and the total estimated rentals to be paid by the Government, excluding utilities and services, for the additional period, plus the cost of restoration, will exceed 50 percent of the estimated current market value of the property, DAEN-REA-L will be informed of all details in order that the review required by paragraph 1-8, AR 405-10, may be made. Only estimated future rent payment is to be considered and not the rental paid in the past for the property. In applying this formula, if the period of future use cannot be ascertained but it is likely that a property will be used for a long period of time, use a period of five years for calculations.

r. Lease Renewals and Extensions.

(1) Leases entered into under authority of the annual appropriation acts may include a provision for automatic renewal after expiration of the initial term subject to the availability of appropriated funds. However, if the property is still needed after lease expiration, a new lease is required and the old lease will not be extended by supplemental agreement for the new term. Where the lease requires notice in writing to be given to the lessor to exercise the option of renewal, notice will be served by the use of ENG Form 221, Notice of Renewal of Contract or Lease, in accordance with the terms of the lease. The notice, properly addressed, will be sent by certified mail, with return receipt requested. Adequate time, in addition to the number of days specified in the lease, will be allowed for delivery to, and receipt by, the lessor. The Division or District Engineer will maintain adequate records to assure prompt service of notice to avoid the lapse of leases.

(2) No lease will be renewed or kept in existence unless it has been administratively determined, through advertising or otherwise, that other suitable property at a lower rental is not obtainable. At all times, and in particular during the lease renewal review period, the Division or District Engineer will take cognizance of the availability of property in the area of the using service that is Government-owned, or property under GSA control.

s. Payment of Rents.

(1) One of the most important factors involving good relationships between the Government and the lessor is the prompt payment of the rent. Under existing regulations, the rent is paid by the using commands. The Division or District Engineer makes rental payments for leases when the Corps is the using service and \*

\* for recruiting facilities, since the Chief of Engineers is the Department of Defense Executive Agent for recruiting facilities acquisition. It is therefore appropriate for the Division or District Engineer to inquire periodically of the using commands whether delays in processing payments are encountered. If payments are not being made within seven working days after payment is due, appropriate action will be taken to correct the delay; if no action is taken after a reasonable time allowed for correction of procedures, DAEN-REA-L will be informed fully of the facts and an investigation will be conducted.

(2) Prior to payment, the Division or District Engineer, or his designee, will certify for submission to the Disbursing Officer that the leased property was occupied or available for use. The following certification, contained on Standard Form 1166, Voucher and Schedule for Payments, is used: "I hereby certify that the leases identified hereon were in effect for the month (or other period) indicated, and that the space was occupied, or available for use, by the Department of the Army."

5-42. Maneuver Agreements. Joint training exercises or maneuvers are conducted by elements of the Department of Defense. Land use requirements vary with the exercise objectives and the force elements which participate. The Corps participates in the planning and acquires rights to use land and other facilities for Department of the Army exercises. The current Memorandum of Understanding by Department of the Army, United States Readiness Command (USCINCREC), and United States Army Forces, Readiness Command (USCINCARRED) on acquisition of maneuver rights for United States Readiness Command (USREDCOM) Joint Training exercises is included as Figure 5-13. This Memorandum covers timing of requests for preliminary surveys, real estate studies, funding and acquisition of maneuver rights. The Corps also responds to requests from other Department of Defense commands for maneuver rights, and the same procedure is envisioned although no Memoranda of Understanding have been entered into. Upon receipt of a request for real estate services, an estimate of the funds required for the report should be forwarded to the using command.

a. Procedures. The appropriate Division or District Engineer will be responsible for negotiating maneuver agreements and short-term leases and, after the maneuver is completed, will be responsible for negotiating restoration settlements and/or releases, as appropriate. Real estate acquisition will be in the form of agreements with landowners, granting the right to conduct maneuvers at a given time, or periodically. Short-term leases for exclusive use may also \*

be acquired for special areas (such as headquarters areas, radio relay sites, base camp sites, field hospital sites and supply dumps), and buildings needed for warehouses, ordnance shops and similar purposes directly related to the maneuver. Permits will be obtained to cover the use of lands under the jurisdiction of another Government department or agency.

b. Claims and Restoration. Notwithstanding the assignment of restoration responsibility, understanding may be reached with the maneuver director at field level whereby the command will assume responsibility for settlement of real estate damages using claim funds. However, in instances where the damage exceeds the monetary claims jurisdiction of the Army Commander pursuant to AR 27-20 and is cognizable as a contractual obligation under the maneuver permit, settlement will be accomplished by the Division or District Commander either by supplement to the permit or by processing a claim under AR 405-15 since the Division or District Commander can usually accomplish settlements more quickly for claims in excess of that amount. Therefore, it should be suggested to the maneuver director that all claims, cognizable as a contractual obligation, in excess of the director's monetary claims jurisdiction be handled by the Division or District Commander. Funds appropriated for field exercises and maneuvers are allotted to Army Commanders and include administrative costs. A copy of the status report of acquisition (Requirements Control Symbol (RCS) DAEN-RE-23), required by paragraph 4e of Figure 5-13, will be furnished CDR USACE (DAEN-REA-L) WASH DC 20314-1000. Status reports are to be submitted on the first working day of the week following close of the reporting period, in a narrative letter. \*

5-43. Family Housing Leasing Program. Section 515 of Public Law 84-161 (69 Stat. 324), as amended by Public Law 59-82, approved 1 August 1977, authorizes the expenditure of an average of \$280 per month for each military department for housing facilities in the United States (other than Alaska and Hawaii) and in the Commonwealth of Puerto Rico, and an average of \$350 per month for each military department for housing facilities in Alaska, Hawaii and Guam. In both cases the maximum rental rate per unit per month including utilities, operations and maintenance is \$450. These rental figures are subject to change each year in the annual Military Construction Authorization Acts. Updated rental figures should be obtained from the current MCA Act. The Department of Defense allocates to each department of the military the number of units it can acquire pursuant to the authorization, and each year Division and District Commanders are informed of the unit allocations by the Chief of Engineers.

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a. Leasing Requests. The Departments of the Army and Air Force direct their requests for the leasing of family housing units to the Division or District Engineer. Each military element involved has the responsibility of maintaining the national rental average. Each command prescribes the procedures to be followed in acquiring family housing units. Such procedures which include size of accommodations and maximum rental rate will be followed by the Division or District Engineer.

b. Use of Available Housing. Priority shall be given to the leasing of adequate Federal Housing Administration (FHA) and Veterans Administration (VA) held units to the extent that such units may be available at locations which are granted lease allocations. FHA Form 2372A, as modified, will be used in leasing FHA housing for use as public quarters by military personnel. A similar form, modified as needed, will be used for VA held housing units.

c. Nondiscrimination Provision. All leases for family housing units which are executed on behalf of the United States shall contain the following nondiscrimination clause: "It is understood and agreed that the Government will assign the demised premises to military personnel in accordance with Executive Order 11063, dated 20 November 1962, which provides that housing and related facilities shall be available without discrimination among tenants because of race, color, creed,sex or national origin."

d. Pest Control. In agreement with the lessor, whenever possible, the lessor will affirmatively assume responsibility for pest control in family housing units. The following clause will be included in family housing leases: "It is understood and agreed that the lessor will be responsible to provide pest control measures and pesticides, which conform to local health department regulations, to keep the premises free from pests and in a tenantable condition." It is intended that the occupant will maintain the leased premises in a clean and sanitary condition in conformance with normal standards of good housekeeping, and that the lessor will furnish leased housing in pest-free condition and maintain the premises free of pest infestation.

e. Leasing Actions.

(1) Division and District Engineers will proceed with acquiring the family housing units within the framework of the leasing requests. Care is to be taken to assure that there are no violations of the Economy Act, i.e., the net rental will not exceed 15 percent of the estimated fee value of the space or building contemplated for leasing.\*

\* (2) At the discretion of the Division or District Engineer and the Chief of the Real Estate Division, Standard Form 2B may be used for family housing leases, regardless of the rental rate.

(3) Emergency repairs may be accomplished in accordance with paragraph 5-40f(5).

f. Supplemental Payments. All leases for family housing units which are executed on behalf of the United States shall contain the following clause prohibiting supplemental payments: "The Lessor hereby agrees that the rental consideration specified herein is the only consideration to be received for the demised premises and includes payment for all utilities, maintenance and services specified herein. No other remuneration will be paid by the Government's occupant, members of his family, or any other person on their behalf."

5-44. Leases for Civil Works Purposes. Division and District Engineers and the Chiefs of the Real Estate Division are authorized to execute leases, and renewals of leases, for river and harbor or flood control purposes, subject to necessary approvals and clearances. The provisions of 10 U.S.C. 2662, which require reporting of certain lease proposals to the Armed Services Committees of the Congress, do not apply to leases for civil works.

a. Approvals Required. The following lease actions for civil works projects will be referred to DAEN-REA-L for consideration:

(1) Where the annual rental is in excess of \$50,000.

(2) Where the leasing involved is for space for both military and civil functions, and the rental for the portion used for military purposes is in excess of \$50,000. The report required is covered in paragraph 5-40a.

b. Records. The originals of leases for civil works purposes, together supporting data, will be retained at the Division or District Engineer offices for site audit in accordance with Section 7530, "General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies."

5-45. Physical Protection. It is essential that the Division or District Engineer make provision for the physical protection for \*

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\* all facilities under Corps control. Coordination with state, county, and city law enforcement officials as well as the U. S. Attorney's Office is required. These officials should be alerted at the first indication of possible disturbances. The U.S. Attorney's Office should be provided with an up-to-date list of the locations of such facilities.

a. Self-Protection Plan. Space or property controlled by GSA is the responsibility of GSA for physical protection. In accordance with 41 C.F.R. 101-20.504, a Facility Self-Protection Plan is to be established by agencies in GSA-controlled space. This requirement should be coordinated with appropriate GSA Regional personnel. A similar plan should be made operational, where feasible, in other space over which the Corps has responsibility.

b. Funding. Space under GSA control may require protection and the GSA Regional Offices may not have funds. In these situations, the facts will be made known to DAEN-REA-L, accompanied by a request for funds. Likewise, for Corps leases, funds for physical protection shall be requested from DAEN-REP if they are not already available to the Division or District Engineer.

5-46. Alterations and Construction on Leased Real Property.

a. General. Division and District Engineers will be available military elements for consultation and review of requirements involving construction on leased land or in leased space. Detailed instructions are furnished in DOD Directives 4165.12, 4165.16, 4165.20, 4270.24, 5160.58, 7040.2; DOD Instruction 5305.5; Army Regulations 140-485, 405-10, 415-25, 415-35, 420-10. Paragraph 5-40b covers the requirements of the Economy Act which are applicable to alterations and construction on leased real property. The work to be performed must be essential. Guidelines are furnished as follows:

(1) The proposed alterations and improvements must be advantageous to the Government in terms of economy, efficiency, and, where applicable, to national security.

(2) For office space, the cost should be less than the cost of other space that is available and which does not require alterations or improvements to any appreciable extent.

(3) Due regard is to be given to the convenience of the public that is served and the maintenance and improvement of safe and healthful working conditions of employees. \*

\* (4) Where the proposed temporary construction at a leased facility has an estimated cost equal to or in excess of the current market value of the property, the facts will be reported promptly to DAEN-REA-L. An exception may be granted only by the Chief of Engineers.

b. Initial and Subsequent Alterations.

(1) Initial alterations to facilities leased by the Corps are the responsibility of the appropriate Division or District Engineer.

(2) Effort will be made to include all required alterations in the rental package with the lessor performing all of the work. Careful attention will be given to possible violations of the Economy Act. Payment for initial alterations may be in a lump sum or by the month with the rent, provided the provisions of the Economy Act are complied with and the alteration costs are stated separately in the file or in the voucher.

(3) Alterations or improvements of any nature in GSA furnished space are the responsibility of GSA. Under certain circumstances, GSA may require a Certificate of Necessity in order to perform the required construction.

(4) Although alterations and improvements subsequent to occupancy are not the responsibility of the Corps, the Division or District Engineer should always review subsequent alteration projects to determine whether or not the limitations of the Economy Act are applicable. See AR 415-34, AR 415-35, and AR 420-10 for procedures and instructions.

c. Army National Guard. No initial alterations regardless of cost will be made to properties leased for the Army National Guard without prior approval of the Chief, National Guard Bureau. (Funds will be made available by the National Guard Bureau.)

d. Air Force. All alterations to premises leased for the Department of the Air Force, including Air Force Reserve and Air National Guard Units, are the responsibility of that Department including the issuance of any Certificate of Necessity for Department of Air Force elements. The only exception is the leasing and modification of leased premises for recruiting facilities.

e. Recruiting Facilities. The Chief of Engineers, as the Department of Defense Executive Agent for recruiting facilities, is responsible for initial alterations for all recruiting facilities located on military reservations or leased by the Corps. This responsibility includes recruiting offices and recruiting main stations and detachments, whether single-service or collocated. However, as to \*

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\* recruiting facilities acquired by GSA, all alterations are the responsibility of GSA and processing is accomplished through the Division or District Engineer.

f. Permanent Construction Requirements. If permanent construction is to be placed on land, the Government must have fee title or acquire title to the land or a permanent easement must be secured, with the following exceptions:

(1) Real property, including land or buildings, which the Government currently holds the right to reuse by exercise of the National Security Clause.

(2) Real property, including land or buildings, which the Government holds the right to reuse by exercise of a National Emergency Use Provision.

Since such rights apply only during the period or periods of national emergency and are extinguished by the termination thereof, every effort will be made to negotiate a lease covering such property under terms that would provide the Government the right of continuous possession for a minimum of 25 years.

(3) Real property required for installation of utility lines and necessary appurtenances thereto, provided a long-term easement or lease can be secured at a consideration of \$1.00 per term or per annum.

(4) Real Property required for air bases, provided such property can be acquired by lease containing provisions for:

(a) Right of continuous use by the Government under firm term or right of renewal for a minimum of 50 years.

(b) A rental consideration of \$1.00 per term or per annum.

(c) Reserving to the Government, title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment.

(d) Waiver by the lessor of any and all claims for restoration of the leased premises.

(e) Use of the property for "Government purposes" rather than for a specific military purpose. \*



\* (5) property required for facilities for the Reserve Components of the Armed Forces, provided such property can be acquired by lease containing provisions detailed in (4) above. Whenever possible, the insertion in a lease of a provision restricting the use of land to a specific purpose will be avoided; use a term such as "Government purposes".

(6) Property required for air defense sites, provided such property can be acquired by lease containing provisions in (4) (b), (c), and (d) above and the right of continuous use by the Government under a firm term or right of renewal for as long as required for defense purposes.

(7) Assistant Secretary of Defense (MRA&L) approval is required when leases for air bases, Reserve Components facilities, or air defense sites can be obtained containing some but not all of the above listed provisions. Such approval is also required for leases for all other types of installations upon which permanent construction is to be placed by the Government when leases can be obtained containing similar provisions. In all cases, it must be in the best interest of the Government to acquire a lesser interest than fee title.

(8) Construction projects estimated to cost less than \$25,000 will not be considered a permanent construction for purposes of the above policy.

g. DSA Reimbursement. Reimbursement to GSA for Standard Level User Charges (SLUC) and other costs incident to leasing will be in accordance with the applicable provisions of the Federal Property Management Regulation.

h. Nominal Rent Leases.

(1) Where premises are occupied by the Government at a nominal rent or rent-free basis, any alterations, improvements, and repairs necessary for occupancy may be considered as a cost of occupancy, i.e., in lieu of rent, for each year of the rental term. However, the total cost of such alterations, improvements; and repairs, plus the nominal rental, during any year of the rental term may not exceed 15 percent of the fair market value at the date of the lease, unless the total cost plus nominal rental does not exceed \$2,000 per annum.

(2) When rental plus amounts to be spent by the Government for alterations, improvements, and repairs total more than \$2,000 and more than 15 percent of the fair market value of the premises at the date of the lease, a Certificate of Necessity is required. \*

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\* (3) A Certificate of Necessity is not required for the cost of installing equipment, apparatus, appliances, machinery, fixtures, movable partitions, etc., which are not intended to become an integral part of the building and which may be removed without injuring or defacing the item or the building. Such property is considered to be the property of the Government. The lease or a supplement thereto should provide for the installation and removal of such equipment, etc.

(4) Under the limitations in 40 U.S.C. 278a, not more than 25 percent of the net rental for the original lease period, if less than one year, may be expended before a lease is actually renewed. If the whole period, including renewals, is less than a year, not more than 25 percent of the rent for such whole period may be expended for alterations, repairs, and improvements (20 Comp. Gen. 30; 29 Comp. Gen. 299). Where a lease, entered into by the Government for an original term of less than a year, is renewed for the following fiscal year, the net rental for the first year of the rental term, as distinguished from the original term, is for consideration in the computation of the amount that may be paid under the 25 percent limitation, after the lease is actually renewed.

i. Items Not Within the Purview of the Economy Act

(1) The limitations in 40 U. S. C. 278a are not applicable to leases of unimproved land (38 Comp. Gen. 143).

(2) Where fixtures, alterations, and improvements are of such character as to be of a temporary nature, and are not permanently attached to the realty so as to prevent removal thereof without destroying their usefulness or damaging them or the realty, they do not constitute alterations or improvements of the leased premises within the meaning of 40 U.S.C. 278a and therefore do not fall within the 25 percent limitation of that Act. Title to such temporary fixtures, alterations, and improvements remains in the Government (18 Comp. Gen. 144; 20 Comp. Gen. 105).

(3) Upon termination of leases, restoration of leased premises to the original condition is not considered an alteration within the purview of 40 U.S.C. 278a.

(4) When the Government is required by the terms of the lease to maintain the leased premises, such maintenance, together with the cost of such improvements and alterations as may be made by the Government, may not exceed the 25 percent restriction of the Act.

(5) Leaseholds acquired through condemnation proceedings are excluded from the purview of the Act of 30 June 1932, as amended \*  
(40 U.S. C. 278a).

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\* j. Architectural Barriers Act. The Architectural Barrier Act of 1968 (Public Law 90-480), 82 Stat. 718, 42 U.S. C. 4151, et seq., as amended, requires that when Federal funding is used in the design, construction, or alteration of certain buildings or facilities, the buildings or facilities must be designed, constructed or altered to insure that physically handicapped persons will have ready access to, and use of, such buildings. In the Corps' leasing program, when Federal funds are used to make improvements to leased premises, it is necessary that the plans and specifications for the construction or alteration work be approved in accordance with guidelines published by the American National Standards Institute (ANSI), as implemented by DOD Construction Criteria Manual 4270.1-M, Section 5-1.6.

5-47. Lease Forms and Instructions. ENG Form 856 will be used for Corps of Engineers leases in the United States and possessions, and overseas, for the leasing of unimproved land. ENG Form 527 is recommended for leases of improved property in overseas areas. Standard Forms 2, 2A, or 2B (short form) will be used for all Corps of Engineers leases of improved property in the United States and possessions. Standard Form 2B is limited to rentals not exceeding \$3,600 per annum. The General Provisions are on the reverse side of the short form lease.

a. Mandatory Clauses. The following clauses must be included in all Corps of Engineers leases:

(1) Officials not to Benefit clause (para 15 of ENG Form 527) is required by 18 U.S.C. 431.

(2) Gratuities clause (para 16a of ENG Form 527) is required by 5 U.S.C. 174d.

(3) Covenant against Contingent Fees (para 14, ENG Form 527) is required by 10 U.S.C. 2306(b).

(4) An Examination of Records clause (para 17, ENG Form 527) is required by 10 U.S.C. 2313(b). Exceptions to the use of this clause in 10 U.S.C. 2313(c) are permitted when the contractor is a foreign Government or agency thereof, or when the laws of the country involved preclude it. Also, if the Head of the Agency determines, with the concurrence of the Comptroller General, that the use of the clause would not be in the public interest, it may be omitted in leases covering land in foreign countries.

(5) The Nondiscrimination clause (Executive Order No. 11063, dated 20 November, 1962) is required in all leases in the United States. It is desirable, but is not considered mandatory in overseas leases. \*

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\* b. Hold Harmless Clauses. "Hold harmless" clause will not normally be added to the lease forms. Where lessors insist upon such a clause, however, the following is suggested for use: "The Lessors (licensors) shall not be responsible or liable for injuries to persons or damage to property when such injuries or damage are caused by or result from the Government's use of the premises under the terms of this agreement and are not due to the negligence of the Lessors."

c. Escalator Clauses. In those cases where a lessor expresses an unwillingness to enter into a lease, extending for a number of years, with a rental consideration that includes a fixed amount for utilities, the following clause may be inserted in the standard lease: "After the first term of the lease, the Lessor or the Government may, by giving notice at least 90 days prior to the anniversary date of the lease, request an adjustment in rental payments based on an increase or decrease in the cost of utilities. The request must be supported with full justification to include documentary evidence of actual utility costs incurred by the Lessor which are in excess of the amounts estimated at the beginning of the lease term. The requested adjustment in rent will be subject to negotiation, and if granted, will be provided by a Supplemental Agreement to this lease."

d. Instructions. Instructions to be followed in the preparation of leases are set forth in Figure 5-12.

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SECTION VI. ACQUISITION OF RIGHTS-OF-ENTRY

5-48. General. This section describes the procedures of the Corps of Engineers relative to obtaining rights-of-entry on lands for both military and civil works projects and in the Corps' acquisition programs for other Federal Government agencies. It is applicable to all Division and District Engineers having real estate responsibilities.

5-49. Definition. A right-of-entry is a bare authority to do a specified act or series of acts upon non-Government-owned property or non-Government-controlled property without acquiring any estate or interest therein. The principal effect of a right-of-entry is to authorize an act which, in the absence of the right-of-entry, would constitute a trespass. The written instrument furnishes evidence of the permission granted to the Government and the obligations, responsibilities, and liabilities assumed by the Government. It does not authorize any uses of the property by the Government other than those specified in the instrument.

5-50. Procedures.

a. ENG Form 1258, Right-of-Entry for Survey and Exploration, will be used to obtain authority from the owner of lands to be used for the purpose of making surveys, test borings, and other exploratory work as may be necessary to complete the particular investigation.

b. ENG Form 2803, Right-of-Entry for Construction, will be used to obtain authority from the owner of lands to be used for construction purposes when all of the following conditions apply:

(1) A Real Estate Directive has been issued on an Army (military) or Air Force project, or the Chief of Engineers has approved acquisition in connection with a civil works project or for another Government agency.

(2) The construction schedule does not allow sufficient time to secure the right of possession by normal acquisition procedures.

c. Upon execution of an ENG Form 2803, a copy thereof shall be forwarded to HQDA (DAEN-REA-L) WASH DC 20314 on Army Military and Air Force acquisitions, and in all other cases to HQDA (DAEN-REA-P) WASH DC 20314, together with a proposed schedule of final acquisition of the necessary interests in real estate. If final acquisition is not contemplated within six months from the date of the right-of-entry, an explanation should also be furnished as to the reason for the delay. \*

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d. Division and District Engineers may modify ENG Forms 1258 and 2803, where necessary, to meet requirements of landowners, provided such modifications do not increase the scope of the liability or responsibility of the Government over that contained in the standard forms

e. It is necessary to recognize not only the effects of entry upon a particular parcel of land, but also the effects of the passage of any vehicle (land, air, or water) on the area traversed. All possibilities of disturbing effects on the countryside shall be considered and routes selected to eliminate or minimize such disturbances.

f. Any cash settlements in lieu of restoration for damages, incurred under ENG Forms 1258 and 2803, will be consummated by supplemental agreement in accordance with Section X, Chapter 11 of this Pamphlet. \*

\* SECTION VII: PROCUREMENT OF OPTIONS PRIOR TO REAL ESTATE DIRECTIVES  
(MILITARY)

5-51. Purpose and Scope. This section describes the procedures relating to the procurement of options to purchase real estate interests for Army or Air Force military requirements prior to the issuance of a real estate directive. It is applicable to all Division and District Engineers having military real estate responsibility.

5-52. Authority and Applicability.

a. Authority. Subsections (a) and (b) of Section 2677 of Title 10, United States Code, as amended by Section 707 of the Act of Congress approved 27 October 1971 (85 Stat. 412), provide that:

(1) The Secretary of a military department may acquire an option on a parcel of real property before or after its acquisition is authorized by law, if he considers it suitable and likely to be needed for a military project of his department.

(2) As consideration for an option so acquired, the Secretary may pay from funds available to his department for real property activities, an amount that is not more than five percent of the appraised fair market value of the property.

(3) For each six-month period ending on 30 June or 31 December, during which he acquires options under subsection (a), the Secretary of each military department shall report those options to the Committees on Armed Services of the Senate and House of Representatives.

b. Applicability.

(1) Where land is needed for proposed construction and the siting of said construction is firm.

(2) When there is a definite indication of material enhancement in value due to change, or proposed change, in use by the land owner, price increase due to publicity given to contemplated Government acquisition, or abnormal increases in market value.

(3) Where there is a definite possibility of private construction which would constitute obstructions in existing or proposed glide angle planes and transitional planes at air bases.

5-53. Implementation. When a District or Division Engineer determines that any of the conditions described in paragraph 5-52b exist in \*

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\* connection with any proposed land acquisition project for military purposes not yet authorized by law, or if authorized, not yet covered by a real estate directive, he will initiate the following actions:

a. Planning Report. A planning report will be developed and submitted in accordance with Chapter 2 of this Pamphlet. The report will include the purpose for which the property is "likely to be needed;" the estimated probable increase in value, if applicable; and the justification for negotiating for options under the authority cited in paragraph 5-52. The report will identify any real estate planning reports previously prepared which included the land in question. Any future planning reports relating to the same land will contain appropriate references to this report.

b. Property Identification. Upon receipt of authority to acquire options and determination that funds are available, the District or Division Engineer will obtain and verify ownership data in accordance with paragraphs 3-10 and 3-15, Chapter 3 of this Pamphlet. If it is deemed necessary, title evidence may be obtained in accordance with Section I, this Chapter.

c. Appraisal. Detailed tract appraisals will be prepared in accordance with Chapter 4 of this Pamphlet.

d. Procurement of Options.

(1) Negotiations for the option will be in accordance with procedures outlined in Section II, this Chapter, except that ENG Form 2926, Option to Purchase Real Property, will be used. An attempt should be made to include a provision in the option giving the Government the right to acquire all or part of the land covered by the option where the land held in a single ownership can be separated into definable parcels and the possibility exists that, as planning is developed, the entire tract will not be required.

(2) The following instructions for the use of ENG Form 2926 will be followed:

(a) Insert amount to be paid for the option privilege. This amount cannot exceed five percent of the appraised value.

(b) If the land has been separated into definable parcels in accordance with (1) above, the option should describe each parcel and provide for a separate purchase price inclusive of any severance damage, as well as an agreed purchase price for the entire tract. The amount to be paid for the option privilege will be apportioned among the separate parcels. \*



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\* (c) The expiration date of the option on unauthorized projects should be far enough in advance to permit the insertion of a land acquisition line item in the next available budget; enactment of legislation; apportionment of funds by the Office of Management and Budget; clearance within the Department of Defense; clearance with the Committees on Armed Services of the Senate and House of Representatives, if required; issuance of real state directive; and allotment of funds.

(d) Since options obtained under this section will normally be recorded, ENG Form 2926 will be acknowledged in the form used in the jurisdiction in which the real property is located.

e. Report. When all options within the approved area have been acquired, and prior to their being exercised by the Government, a report (exempt report, paragraph 7-2b, AR 335-15) will be made to HQDA (DAEN-REA-L) WASH DC 20314 including, but not limited to, the following items:

- (1) Project identification
- (2) Directive authorizing acquisition of options
- (3) Number of tracts optioned
- (4) Expiration date of options
- (5) Total acreage optioned
- (6) Total amount to be paid if options are exercised
- (7) Total amount paid for option privilege
- (8) One copy of each option
- (9) One copy of each appraisal

5-54. Exercise of Options. Upon issuance of a real estate directive for acquisition of the optioned real property, the District or Division Engineer will be authorized to exercise the option and proceed with the acquisition in accordance with the procedures outlined in Sections I and II, this Chapter. \*

TABLE 5-1. REGULATORY REFERENCES

SECTION I

40 U.S.C. 255  
 10 U.S.C. 2304  
 Public Law 91-393  
 Public Law 91-646  
 Defense Acquisition Regulation (formerly Armed Services  
 Procurement Regulation)  
 ER 37-2-10  
 ER 1180-1-1  
 "Standard for the Preparation of Title Evidence in Land  
 Acquisitions by the United States, 1970" - available from  
 the Department of Justice, Land and Natural Resources  
 Division, WASH DC 20530-0001

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SECTION II

DOD Directive 4165.12  
 AR 405-10  
 ER 1180-1-1

SECTION IV

AR 405-10  
 ER 405-1-12 - Chapters 2, 4, 5 (Section II), 11, and 12  
 Land and Natural Resources Division Directive No. 11-68 -  
 available from the Department of Justice, Land and Natural  
 Resources Division, WASH DC 20530-0001

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SECTION V

Executive Order 11063, 20 Nov 62  
 Executive Order 11246, 24 Sep 65  
 DOD Directives 4165.12, 4165.16, 4165.20, 4270.24, 5160.58  
 7040.2  
 DOD Instruction 5305.5  
 DOD Construction Criteria Manual 4270.1-M  
 AR 27-20  
 AR 140-485  
 AR 405-10  
 AR 405-15  
 AR 415-15  
 AR 415-25

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AR 415-34  
AR 415-35  
AR 420-10  
AFR 87-1  
ER 405-1-12 - Chapter 5 (Sections I, IV, and VI) and Chapter 10  
GAO Policy and Procedures Manual for Guidance of Federal  
Agencies - available from U.S. General Accounting Office,  
WASH DC 20314-0001

SECTION VI

AR 405-10  
AR 415-10  
ER 405-1-12 - Chapter 11 (Section X)

SECTION VII

AR 405-10  
AFR 87-1  
ER 405-1-12 - Chapters 2, 3, 4, and 5 (Sections I and II)

\*

ENDORSEMENT

\*

Attached to Policy No.

Issued by

\_ \_ \_ \_ TITLE INSURANCE COMPANY

Schedule A of the above policy is hereby amended in the following particulars:

(a) Paragraph 1 of Schedule A is hereby deleted and the following is substituted:

1. The estate or interest in the land described or referred to in this Schedule covered by this policy is:

(An easement for \_ \_ \_ \_ \_ .)

(b) Paragraph 2 of Schedule A is hereby deleted and the following is substituted:

2. Title to the estate or interest covered by this policy at the date hereof is vested in:

THE UNITED STATES OF AMERICA

(Follow with appropriate reference to Declaration of Taking or Deed.)

(c) Paragraph 3 of Schedule A is hereby deleted and the following is substituted:

3. The land referred to in this policy is situated in the County of \_ \_ \_ \_ \_ , State of \_ \_ \_ \_ \_ , and is described as follows:

(Here give description of land actually acquired.)

Schedule B of the above policy is hereby amended in the following particulars:

(a) Paragraphs numbered \_ \_ \_ , \_ \_ \_ , \_ \_ \_ and \_ \_ \_ of Schedule B are hereby deleted.

(Enumerate those paragraphs eliminated by proper releases, conveyances, etc,) \*

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\* (b) Schedule B of the above policy is amended by adding the following paragraphs numbered \_ \_ \_ to \_ \_ \_, inclusive.

Subparagraph 2(d) of the General Exceptions of the above policy is hereby deleted.

The effective date of the above policy is hereby extended to \_ \_ \_

(Date of recording of Deed or Notice of Action, since no insurance is to be afforded as to regularity of proceedings.)

The total liability of the Company under said policy and this endorsement thereto shall not exceed, in the aggregate, the sum of \$ \_ \_ \_ \_ and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, General Exceptions and the Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated:

\_ \_ \_ \_ \_ TITLE INSURANCE COMPANY,

By \_ \_ \_ \_ (Authorized Officer) \_ \_ \_ \_ \*

ASSISTANT ATTORNEY GENERAL  
LAND AND NATURAL RESOURCES  
DIVISION

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Department of Justice  
Washington, D.C. 20530

\* DELEGATION TO THE DEPARTMENT  
OF THE ARMY FOR THE APPROVAL  
OF THE TITLE TO LANDS BEING  
ACQUIRED FOR FEDERAL PUBLIC  
PURPOSES.

Pursuant to the provision of Public Law 91-393, approved September 1, 1970, 84 Stat. 835, amending R. S. 355 (40 U.S.C. 255), and acting under the provisions of Order No. 440-70 of the Attorney General, dated October 2, 1970, the delegation of authority issued to your Department on October 2, 1970, is hereby amended to provide that the responsibility for the approval of the sufficiency of the title to land for the purpose for which the property is being acquired by purchase or condemnation by the United States for the use of your Department or any other department or agency for which the Department of the Army is authorized to acquire land is, subject to the general supervision of the Attorney General and to the following conditions, hereby delegated to your Department.

This delegation of authority is further subject to:

1. Compliance with the regulations issued by the Assistant Attorney General on October 2, 1970, a copy of which is enclosed.

2. This delegation is limited to:

(a) The acquisition of land for which the title evidence, prepared in compliance with these regulations, consists of a certificate of title, title insurance policy, or an owner's duplicate Torrens certificate of title.

(b) The acquisition of lands valued at \$100,000.00 or less, for which the title evidence consists of abstracts of title or other types of title evidence prepared in compliance with said regulations.

\*

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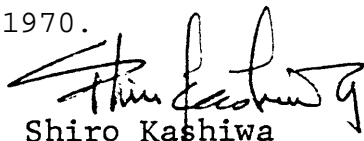
Change 4

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- 2 -

\* As stated in the above-mentioned Act, any Federal department or agency which has been delegated the responsibility to approve land titles under the Act may request the Attorney General to render his opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles.

This 4th day of December, 1970.



Shiro Kashiwa

Assistant Attorney General  
Land and Natural Resources Division \*

**Department of Justice**  
**Washington**

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\*  
REGULATIONS OF THE ATTORNEY GENERAL PROMULGATED IN  
ACCORDANCE WITH THE PROVISIONS OF PUBLIC LAW 91-393  
APPROVED SEPTEMBER 1, 1970, 84 STAT. 835, AN ACT  
TO AMEND SECTION 355 OF THE REVISED STATUTES, AS  
AMENDED, CONCERNING APPROVAL BY THE ATTORNEY  
GENERAL OF THE TITLE TO LANDS ACQUIRED FOR  
AND ON BEHALF OF THE UNITED STATES  
AND FOR OTHER PURPOSES

---

---

Pursuant to the above-mentioned Act, the following regulations are hereby issued by Assistant Attorney General Shiro Kashiwa under Order No. 440-70 of the Attorney General, dated October 2, 1970, for the purpose of establishing standards governing the approval of the title to lands to be acquired for Federal public purposes.

1. APPROVAL OF TITLE PRIOR TO THE PAYMENT  
OF THE PURCHASE PRICE

(a) When agencies acquire land without obtaining the title opinion of the Attorney General pursuant to delegations of authority from the Attorney General, the title evidence must be examined by competent attorneys and the title must be approved in compliance with provisions of the above-mentioned statute. Also, all title objections relating to outstanding rights, liens or claims which, if not eliminated, might possibly defeat or adversely affect the Government's title or cause losses to the United States, must be eliminated prior to the payment of the purchase price for the land.

(b) If the vendor is unable to convey all of the lands or interests provided for under the terms of the option or contract agreement, a proportionate reduction must be made in the agreed purchase price or the department or agency must \*



determine that it was intended to acquire the property or interest described in the deed for the consideration stated in the option or contract.

## 2. TITLE EVIDENCE

(a) The title evidence to the lands must be promptly obtained in reasonable compliance with the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" issued by this Department, hereinafter referred to as the "Standards." which publication is incorporated herein by this reference. The title evidence must cover and properly describe all lands and interests which are to be acquired. The usual conditions of title policies which provide for the subrogation of the rights of the insured and for the right of title companies to defend suits against the insured are not applicable to the Federal Government and have been deleted from the approved form of policy. Other provisions of the prescribed form are more advantageous to the Government than the provisions of the usual forms of policies.

(b) Before contracting for the preparation of title evidence, the agency must determine, if the contractor is an attorney who is to prepare abstracts of title, that he is qualified and authorized to prepare abstracts; that his reputation in the community is satisfactory and that he has complied with any statutory or other requirements. If certificates of title or policies of title insurance are to be issued the agency must determine that the admitted assets of the corporation, after deducting existing liabilities secured and unsecured and excluding any trust and escrow funds, are sufficient to permit the company to assume the required risk under the certificate or policy, and that the corporation is authorized to issue these forms of title evidence in the jurisdiction in which the lands are located.

(c) Also preliminary and final certificates of title and insurance binders and policies must, except as to easements to be acquired for nominal or very small considerations, set out

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\* the risk assumed which must be in an amount not less than the liability required in the "Standards." Occasionally title companies will issue such evidence which includes statements that no monetary liability is assumed by the company or the certificates or policies may contain provisions which may prevent a recovery from the title company in the event of a title loss. Such statements or provisions are not acceptable. Also, certificates of title and title insurance policies which limit the liability of the title companies by providing that the United States is required, as co-insurer or otherwise to assume any portion of the liability, are not acceptable.

### 3. CONVEYANCES BY CORPORATIONS

(a) When the Government's vendor is a corporation and the title evidence consists of a certificate of title or an abstract of title the interested department or agency must, in addition to the requirements set out in the "Standards," obtain proof of the validity of the corporate existence and the corporation's authority to convey the land. This is not required when the title evidence consists of satisfactory title insurance policies since this type of title evidence is not limited to a search of the public records.

### 4. AUTHORITY TO ACQUIRE LANDS

(a) Before an agency of the Government may acquire real property it is essential that the Congress has authorized such acquisition, either specifically or by clear inference. Of course any interest may be acquired in real property which may be authorized by the Congress, however, it is very seldom that a particular interest is authorized by legislation.

(b) Any deficiency in the agency's statutory authority to acquire lands or any lack of appropriations to pay for the property must be remedied before processing further. These legal principles should be kept in mind when looking for defects: \*

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(1) No land shall be purchased by the United States except under a law authorizing such purchase. R.S. § 3736, 41 U.S.C. sec. 14.

(2) Authority to purchase land on account of the United States need not be conferred by express provision of statute but may be implied. 40 Op.A.G. 69-70.

(3) The authorization of a Federal program and an appropriation to pay for it is an implied authority to acquire the property necessary to carry out the program. United States v. Kennedy, 278 F.2d 121 (C.A. 9, 1960).

(4) The proposed acquisition must comply with any conditions precedent set up by the authorizing statute. Maiatico v. United States, 302 F.2d 880 (C.A. D.C. 1962). E.g., it may require that land shall be acquired only within a specified area. See sec. 8(a), Act of September 9, 1959, 73 Stat. 479, 481, repealed by sec. 1, Act of June 8, 1962, 76 Stat. 92; Act of September 28, 1962, 76 Stat. 650. Or the consent of the state legislature may be required. E.g., see 16 U.S.C. sec. 516. Or the former owners may not be deprived of the use and occupancy of the property without their consent for a set period of 25 years. See sec. 4(a)(1), Act of August 7, 1961, 75 Stat. 284, 288.

(c) If defects in the agency's authority to acquire are found, or if the extent of that authority is so unclear as to raise serious doubts, the simplest solution may be a clarifying statute or explicit authorization in the appropriation act.

5. CHARACTER OF TITLE WHICH  
MAY BE APPROVED

(a) The agency must determine that the proposed interest in property is in accord with the authorizing legislation and that such interest is sufficient for the purposes for which the property is being acquired -- also that the purchase price is commensurate with such interest.

\*

(b) Frequently vendors desire to convey lands to the Government by deeds which contain provisions for the reversion of the title when the property ceases to be used for a specified purpose. Also there may be restrictive covenants or agreements in conveyance to prior owners under which the title might revert to the grantors in such deeds upon the use of the property for an unauthorized purpose or for other reasons. When permanent type improvements or improvements of substantial value are to be erected on lands, a defeasible title to such lands is not acceptable and must not be approved, unless the estate is clearly authorized by the Congress.

(c) Other covenants and conditions in the deeds to the United States or in prior deeds may limit the use of the property in a manner which may prevent the sale and disposition of the property under laws relating to the disposition of surplus property so as to prevent the sale and substantial portion of the Government's investment in the property. Titles are not acceptable which are subject to such covenants and conditions in the absence of clear authorizing legislation.

(d) Restrictive covenants related solely and strictly to racial and religious use and occupancy, regardless of provisions for the reversion of the title, may be ignored and no action need be taken to eliminate such covenants since the courts have held that such covenants are not enforceable. If the instrument containing the covenant provides for other covenants as to the use or conveyance of the lands, any legal rights to enforce such additional covenants must be eliminated.

(e) When the fee title to land is donated to the United States for the purpose of erecting thereon certain specified permanent improvements or facilities, the fee title may be accepted subject to the reservation of a right of reverter to the grantor in the event construction of such improvements or facilities is not commenced on or before a date specified in the conveyance. The right of reverter must terminate immediately upon the expenditure of funds appropriated for the construction of such improvements or facilities.\*

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(f) A defeasible fee title to land may be acquired by purchase or donation when no permanent improvements are to be erected thereon, provided that the statute authorizing the acquisition in question does not preclude acquisition of title to the interest which the agency intends to acquire, the interest intended to be acquired is sufficient to permit the use of the land contemplated, and the consideration for the land has been determined with reference to the value of the limited interest that is acquired. In the event it is decided at some future time to erect permanent improvements on such land, the provision for defeasance must be eliminated.

(g) When it is desired to accept the title to lands, subject to any rights of reversion, the opinion of the Attorney General must be requested and full supporting facts containing a reference to any authorizing authority must be submitted for consideration.

(h) While titles to property need not be marketable, as determined by local laws, such titles must be safe from attack and sufficient to protect the Federal investment in the property. Federal departments and agencies must exercise sound legal judgment in determining the validity of titles to lands and, in case of doubt of such validity, the Attorney General must be requested to render his title opinion pursuant to the above-mentioned Act prior to the payment of the purchase price.

6. TAXES AND ASSESSMENTS AND  
OTHER LIENS

(a) Prior to or at the time of the acquisition of the title to thre property, except as to certain easements as hereinafter set out, all liens against the title must be fully paid and satisfied or adequate provision should be made therefor. This is also true of assessments in improvement districts which are liens and payable in future instruments. When the current or future taxes are liens on property at the time of acquisition and are not payable at that times except as to certain easement acquisitions hereinafter set out, at least 20

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\*percent in excess of previous years taxes must be withheld to permit the payment of the taxes, when they are due. If there has been a reassessment of the property or improvements have been made since the assessment for the previous year, sufficient additional funds must be withheld to pay the increased taxes. When states or municipalities have adopted proration statutes which authorize the cancellation of the portion of the year's taxes for the period beginning with the conveyance to the United States, the funds to be withheld may accordingly be reduced.

(b) Although United States v. Alabama, 313 U.S. 274 (1941), holds that the purchase by the United States after the lien date fixed by statute does not invalidate the lien, it cannot be enforced against the United States. If the land were sold by the Government, the tax lien may be enforced. Moreover, the Federal Government should assist the local governments in the collection of taxes which are liens on property at the time of acquisition.

(c) It is realized that the withholding of funds to pay taxes, which are liens but not due and payable at the time of the acquisition of easements, and the later payment of the taxes and accounting to the vendors for the funds represent a burden. However, in those instances in which a sum representing the greater portion of the total value of the property is paid for an easement, provision must be made for the payment of all taxes constituting liens against the land.

(d) A uniform and reasonable procedure must be followed which will reduce the burden and adequately protect the Government's interest. Therefore, in the closing of the direct purchase of easements, the titles may be approved subject to the lien of the current taxes, if they are not due and payable, without any provision for the payment of such taxes if the purchase price of the easement is not in excess of 50 percent of the reasonable value of the entire contiguous property of the vendor as determined by the appraisal obtained by the acquiring agency. \*

(e) If the consideration to be paid for an easement is more than 50 percent of the appraised value of the tract and the current taxes are not payable, funds must be withheld from the purchase price to pay the current taxes when they are due.

(f) Large mortgage companies frequently make charges of approximately \$50.00 or more as service fees to issue partial releases or subordination agreements for easements. In order to meet this problem the title to easements may be approved subject to outstanding encumbrances, such as mortgages, deeds of trust and vendors' liens, where the properties are not encumbered in excess of 50 percent of their reasonable value and the considerations being paid for the easement do not represent sums in excess of 10 percent of the value of the tract. The 10 percent may appear to be conservative; however, it must be anticipated that changes in market conditions may greatly affect real estate values.

(g) It is not intended strictly to limit the approval of titles to easements subject to infirmities to those easements to be acquired for the minor considerations indicated above; however, the agency undertaking to approve the title should bear in mind that as to easements to be acquired for large considerations there is frequently a greater possibility that some of the infirmities might jeopardize the Government's interests.

(h) In other words, the title to an easement costing \$150.00 might be approved subject to a possible outstanding lien or minor interest due to the savings in the time and expense necessary to eliminate such interest, whereas in acquiring an easement for the payment of \$10,000.00 or more, the approval of the title subject to the lien or interest would probably not be justified.

#### 7. DEED TO THE UNITED STATES

(a) The deed to the United States must be prepared in compliance with the "Standards. "

\* 8. FINAL TITLE PROCEDURE AND EVIDENCE

(a) Prior to consummation of purchases and the payment of the agreed considerations to property owners the following action should be taken:

(1) The abstractor or title company should be required to examine the records covering the period since the date of the last testification to determine that no adverse change in title has occurred. If such change has occurred, the necessary action must be taken to eliminate any possible claims.

(2) A representative of the acquiring agency must make an inspection of the premises to ascertain whether any persons are holding in whole or in part adversely to the United States or its vendors, whether there are any adverse encroachments on the site and whether any material has been furnished or work performed under which mechanics or materialmen's liens may be asserted. If any persons other than the Government's vendors are in possession of any portion of the property, disclaimers must be executed by such persons and delivered to the representative of the agency. Also, releases must be obtained if the inspection indicates that recent work has been performed under which such claims might be asserted. Forms of certificate and inspection and disclaimer are contained in the above-mentioned "Standards."

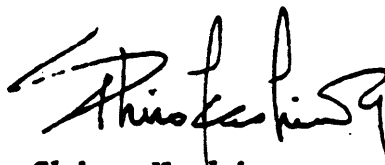
(3) The representative of the agency must prepare a closing statement covering in detail all charges to be eliminated by payment of money to be deducted from the purchase money check, including all taxes and assessments constituting liens against the property except as to certain easements as set out in 6(d) above (in the absence of an authorized purchase contract providing otherwise, the payment of such taxes, assessments, stamp or transfer taxes must be entirely borne by the vendor), regardless of whether the of taxes and assessments have been determined (see 6(a) above); outstanding judgments, both State and Federal; mortgages, or deeds of trust; amounts reserved under any bonds for title affecting the acquired land; and all liens, statutory or otherwise. \*



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(4) After the recordation of the deed to the United States and all instruments releasing liens or encumbrances, the title evidence must be continued to the date of the closing and the recordation of such deed and instruments, and, if the preliminary title evidence consists of a certificate of title or title insurance binder, final certificates of title or title policies, in proper form, must be obtained showing that valid title is vested in the United States.

Issued this 2nd day of October 1970.

A handwritten signature in black ink, appearing to read "Shiro Kashiwa". The signature is fluid and cursive, with a large initial "S" and "K".

**Shiro Kashiwa**

Assistant Attorney General  
Land and Natural Resources Division

5-214

Figure 5-2k

ATTORNEY'S FINAL TITLE OPINION

\* Re: \_\_\_\_\_ (Name of Project) Homeowners Assistance program  
\_\_\_\_\_ (Tract No. ) or (Application No. \_\_\_\_\_)

Grantor: \_\_\_\_\_

Address of Property: \_\_\_\_\_

I, \_\_\_\_\_, do hereby certify:

(1) That I am an Attorney employed by the Department of the Army, \_\_\_\_\_ District, Corps of Engineers, \_\_\_\_\_, \_\_\_\_\_, and am authorized to pass on the sufficiency of title to land under the delegation of authority issued by the Attorney General of the United States on 2 October 1970, as amended, and as implemented by the Department of the Army;

(2) That I have examined the title evidence and related papers pertaining to certain land, located at the above address, which is more particularly described in the inclosed deed; and

(3) That the title evidence and related papers disclose valid title to (Said land) (the interests in said land as set forth in the deed) to be vested in the United States of America, subject to the rights, interests or easements noted in Schedule A attached hereto, which, it has been determined, will not interfere with the proposed use of the land. 1/

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Attorney)

1/ For Homeowners Assistance Program cases, substitute the following paragraph: "(3) That the title evidence and related papers disclose valid marketable title to said land to be vested in the United States of America, subject to the rights, interests or easements noted in Schedule A attached hereto." \*

\*

SUMMARY

Summary of status of acquisition of all land included in  
 Real Estate Directive No. \_\_\_\_\_, dated \_\_\_\_\_,  
 issued by \_\_\_\_\_, directing acquisition of  
 (USAF, AFIR, or Major Command)  
 \_\_\_\_\_ acres in fee, \_\_\_\_\_ easements over \_\_\_\_\_  
 (type)  
 acres, leasehold interest in \_\_\_\_\_ acres, and \_\_\_\_\_  
 (Relocations, Other  
 \_\_\_\_\_, in a total estimated amount of \$ \_\_\_\_\_.  
 Elements)

Method of acquisition	Total Tracts	Total Acres	Total Dollars
Purchase completed			
Accepted offers to sell (Purchase not completed)			
Declarations of taking filed			
This proposed declaration of taking			
Under negotiation			<u>1/</u>
Tracts not appraised			<u>2/</u>
<b>Total</b>			

1/ Appraised value

2/ Estimated value

\*

FIGURE 5-5

Part 1

(DEPARTMENT OF THE ARMY MILITARY PROJECTS)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	DECLARATION
vs.	)	OF
	)	TAKING
ACRES OF LAND, MORE	)	
OR LESS, SITUATE IN	)	
COUNTY, STATE OF	)	CIVIL NO. _____
AND	)	
ET AL,	)	
Defendants	)	

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

I, \_\_\_\_\_, Secretary of the Army,  
do hereby declare that:

1. (a) The land hereinafter described is taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S. C. 258aJ, and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257); Section 2663 1/ of Title 10, United States Code, which authorizes the acquisition

1/ In acquisitions for Reserve components, 2233 also should be inserted.

\*

Figure 5-5

\* of land for military purposes; the Act of Congress approved  
(Public Law           ), 2/ which act authorizes  
acquisition of the lands and the Act of Congress approved  
(Public Law           ), 2/ which act (appropriated  
funds) (made funds available) for such purposes.

(b) The public uses for which said land is taken are  
as follows: The said land is necessary to provide for the establish-  
ment of (additional) facilities for the use of the Department of  
the Army and for other military uses incident thereto. The said  
land has been selected by me for acquisition by the United States  
for use in connection with  
in                   , and for such other uses as may be  
authorized by Congress or by Executive Order.

2. A general description of the land being taken is set  
forth in Schedule "A" attached hereto and made a part hereof, and  
is a description of (part of) the same land described in the com-  
plaint in the above entitled cause.

3. The estate(s) taken for said public uses is (are)

4. (A) plan(s) showing the land taken is (are) annexed hereto  
as Schedule "B" and made a part hereof.

2/ In citing laws enacted during or prior to the 84th Congress,  
the Public Law should precede the Congressional designation,  
i.e. (Public Law 1000 - 84th Congress).

Figure 5-5a \*

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Change 7  
8 Feb 79

\* 5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the registry of the said court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

IN WITNESS WHEREOF, the United States of America, by its Secretary of the Army, thereunto authorized, has caused this declaration to be signed in its name by said \_\_\_\_\_, Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_\_, in the City of Washington, District of Columbia.

---

Secretary of the Army

Figure 5-5b

ER 405-1-12

Change 7

8 Feb 79

\*

PART 2

(DEPARTMENT OF THE AIR FORCE PROJECTS)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. )  
ACRES OF LAND, MORE )  
OR LESS, SITUATE IN )  
COUNTY, STATE OF )  
AND )  
ET AL, )  
Defendants )

DECLARATION  
OF  
TAKING

CIVIL NO. \_\_\_\_\_

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

I, the undersigned, \_\_\_\_\_ (title)

do hereby make the following decloration by direction of the  
Secretary of the Air Force:

1. (a) The land hereinafter described is taken under and  
in accordance with the Act of Congress approved February 26, 1931  
(46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto  
and amendatory thereof, and under the further authority of the  
Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C.  
257); Sections 2663 and 9773 1/ of Title 10, United States Code,

1/ In acquisitions for Reserve components, 2233 also should be  
inserted.

Figure 5-5c \*

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8 Feb 79

\* which authorizes the acquisition of land for military purposes;  
the Act of Congress approved (Public Law  
) , 2/ which act authorizes acquisition of the land, and  
the Act of Congress approved (Public Law  
) , 2/ which act (appropriated funds) (made funds  
available) for such purposes.

(b) The public uses for which said land is taken are as follows: The said land is necessary to provide for the establishment of (additional) facilities for the use of the Department of the Air Force and for other military uses incident thereto. The land has been selected under the direction of the Secretary of the Air Force for acquisition by the United States for use in connection with Air Force Base, County, State of and for such other uses as may be authorized by Congress or by Executive Order.

2. A general description of the land being taken is set forth in Schedule "A", attached hereto and made a part hereof, and is a description of (part of the same land described in the complaint in the above entitled cause.

3. The estate(s) taken for said public uses is (are)

4. (A) plan(s) showing the land taken is (are) annexed hereto as Schedule "B" and made a part hereof.

2/ In citing laws enacted during or prior to the 84th Congress, the Public Law should precede the Congressional designation, i.e. (Public Law 1000-84th Congress).

Figures 5-5d \*



ER 405-1-12

Change 7

8 Feb 79

5. The sum estimated by the undersigned as just compensation for the said land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land, is set forth in Schedule "A" herein, which sum the undersigned causes to be deposited herewith in the registry of the said court for the use and benefit of the persons entitled thereto. The undersigned is of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

IN WITNESS WHEREOF, the undersigned, the\_\_\_\_\_(title)\_\_\_\_\_

---

hereunto subscribes his name by direction of the Secretary of the Air Force, this\_\_\_\_\_ day of \_\_\_\_\_A.D 19\_\_\_\_\_, in the City of Washington, District of Columbia.

---

Figure 5-5e

\*

\*

PART 3

(DEPARTMENT OF THE ARMY CIVIL WORKS PROJECTS)  
(RIVER AND HARBOR AND/OR FLOOD CONTROL PROJECTS)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA	)	
Plaintiff,	)	
	)	DECLARATION
vs.	)	OF
	)	TAKING
ACRES OF LAND, MORE	)	
OR LESS, SITUATE IN	)	
COUNTY, STATE OF	)	CIVIL NO. _____
AND	)	
ET AL,	)	
Defendants	)	

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

I, \_\_\_\_\_, Secretary of the Army,

do hereby declare that:

(RIVER AND HARBOR PROJECTS)

1. (a) The land hereinafter described is taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act(s) of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591) (and July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) 1/), which act(s) authorize(s) the acquisition of land for river and harbor purposes; the Act of

1/ May be cited, if local District Court rules so require, when immediate possession is necessary.

Figure 5-5f \*

ER 405-1-12  
Change 7  
8 Feb 79

\* Congress approved \_\_\_\_\_ (Public Law \_\_\_\_\_),  
which act authorizes the \_\_\_\_\_ and the Act of  
Congress approved \_\_\_\_\_ (Public Law \_\_\_\_\_) which  
act appropriated funds for such purposes.  
(FLOOD CONTROL PROJECTS)

1. (a) The land hereinafter described is taken under and in  
accordance with the Act of Congress approved February 26, 1931 (46  
Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and  
amendatory thereof, and under the further authority of the Acts of  
Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591), (and)  
March 1, 1917 (39 Stat. 950, 33 U.S.C. 701), (July 18, 1918 (40 Stat.  
911, 33 U.S.C. 594) and August 18, 1941 (55 Stat. 650, 33 U.S.C.  
701c-2) 2/ ), which authorize the acquisition of land for flood con-  
trol projects; the Act of Congress approved \_\_\_\_\_ (Public Law  
\_\_\_\_\_) , which act authorizes the construction of the (project)  
as part of the general comprehensive plan for flood control and  
other purposes in the \_\_\_\_\_ River Basin; and the Act of Congress  
approved \_\_\_\_\_ (Public Law \_\_\_\_\_), which act appropriated  
fund for such purposes.

(b) The public uses for which said land is taken are as  
follows: The said land is necessary to provide for \_\_\_\_\_ and  
for other uses incident thereto. The said land has been selected  
by me for acquisition by the United States for use in connection  
with \_\_\_\_\_ and for such other uses as may be authorized  
by Congress or by Executive Order.

2/ May be cited, if local District Court rules so require, when  
immediate possession is necessary.

Figure 5-5g \*

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\* 2. A general description of the land being taken is set forth in Schedule "A" attached hereto and made a part hereof, and is a description of (part of) the same land described in the complaint in the above entitled cause.

3. The estate(s) taken for said public uses is (are)

4. (A) plan(s) showing the land taken is (are) annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the registry of said court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

IN WITNESS WHEREOF, the United States of America, by its Secretary of the Army, thereunto authorized, has caused this declaration to be signed in its name by said \_\_\_\_\_, Secretary of the Army, this \_\_\_\_day of \_\_\_\_\_, A.D. 19\_\_\_\_, in the City of Washington, District of Columbia.

---

Secretary of the Army

Figure 5-5h \*

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\*

PART 4

(DEPARTMENT OF THE ARMY CIVIL WORKS PROJECTS)  
(LOCAL COOPERATION PROJECTS)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ACRES OF LAND, MORE )  
OR LESS, SITUATE IN )  
COUNTY, STATE OF )  
AND )  
 )  
ET AL, )  
Defendants )

DECLARATION  
OF  
TAKING

CIVIL NO. \_\_\_\_\_

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

I, \_\_\_\_\_, Secretary of the Army,  
do hereby declare that:

1. (a) The land hereinafter described is taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act(s) of Congress approved June 29, 1906 (34 Stat. 632, 33 U.S.C. 592) 1/ (and March 1, 1917 (39 Stat. 950, 33 U.S.C. 701) 2/ 3/, which act(s)

- 1/ The Act of August 8, 1917 (40 Stat. 267, 33 U.S.C. 593), will be cited if in aid of a State or State agency.
- 2/ Cited in flood control cases. If in aid of State or State agency, the Act of August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c-2) will be cited.
- 3/ The Acts of July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) and August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c-2) may be cited, if local District Court roles so require, when immediate possession is necessary.

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\* authorize(s) the acquisition of land or easements therein for local river and harbor (and flood control) projects; the Act of Congress approved (Public Law ), which act authorizes the

(b) The public uses for which said land is taken are as follows: The said land is necessary to provide for

and for other uses incident thereto. The said land has been selected by me for acquisition by the United States for use in connection with

and for such other uses as may be authorized by Congress or by Executive Order.

2. A general description of the land being taken is set forth in Schedule "A" attached hereto and made a part hereof, and is a description of (part of) the same land described in the complaint in the above entitled cause.

3. The estate(s) taken for said public uses is (are)

4. (A) plan(s) showing the land taken is (are) annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said

Figure 5-5j \*

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\* land, with all buildings and improvements thereon and all appur-  
tenances thereto and including any and all interests hereby taken  
in said land, is set forth in Schedule "A" herein, which sum I  
cause to be deposited herewith in the registry of the said court  
for the use and benefit of the persons entitled thereto. I am of  
the opinion that the ultimate award for said land probably will  
be within any limits prescribed by law on the price to be paid  
therefor.

IN WITNESS WHEREOF, the United States of America, by  
its Secretary of the Army, thereunto authorized, has caused this  
declaration to be signed in its name by said \_\_\_\_\_  
\_\_\_\_\_, Secretary of the Army, this \_\_\_\_\_ day  
of \_\_\_\_\_, , A.D. 19\_\_\_\_\_, in the City of Washington,  
District of Columbia.

\_\_\_\_\_  
Secretary of the Army

Figure 5-5k \*

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\*

PART 5

(NEW FORMAT DECLARATION OF TAKING)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	DECLARATION
vs.	)	OF
	)	TAKING
ACRES OF LAND, MORE	)	
OR LESS, SITUATE IN	)	
COUNTY, STATE OF	)	
AND	)	CIVIL NO. _____
ET AL,	)	
Defendants	)	

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

I, \_\_\_\_\_, Secretary of the Army,  
do hereby declare that:

1. The land hereinafter described is taken under and in accordance with the authority set forth in Schedule "A" annexed hereto and made a part hereof.
2. The public uses for which said land is taken are also set forth in said Schedule "A".
3. A general description of the tracts of land being taken, the estimated just compensation therefor, and the estates taken for said public uses are set forth in Schedule "B" annexed hereto and made a part hereof.

Figure 5-5 1 \*



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\* 4. A plan showing the land taken is annexed hereto as Schedule "C" and made a part hereof.

5. The gross sum estimated by me as just compensation for all of said land, which aggregates \_\_\_\_\_ acres, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land is \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), which sum I cause to be deposited herewith in the registry of the court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

IN WITNESS WHEREOF, the United States of America, by its Secretary of the Army, thereunto authorized, has caused this declaration to be signed in its name by said \_\_\_\_\_, Secretary of the Army, this \_\_\_\_ day of \_\_\_\_\_, A.d., 19\_\_\_\_, in the City of Washington, District of Columbia.

\_\_\_\_\_  
Secretary of the Army

Figure 5-5m \*

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\*

SCHEDULE "A"

AUTHORITY FOR THE TAKING:

The authority for the taking of the land is under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Acts of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591), and March 1, 1917 (39 Stat. 950, 33 U.S.C. 701), which authorize the acquisition of land for flood control projects; the Act of Congress approved (Public Law ), as modified by the Act of Congress approved (Public Law ), which act authorizes the project hereinafter referred to, and the Act of Congress approved (Public Law ), which act appropriated funds for such purposes.

PUBLIC USES:

The public uses for which said land is taken are as follows: The said land is necessary to provide for flood control in the River Basin and for other uses incident thereto. The said land has been selected for acquisition by the United States for use in connection with the construction and establishment of the and for such other uses as may be authorized by Congress or by Executive Order.

(NOTE: DO NOT NUMBER THE PAGES OF ANY SCHEDULE.)

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\*

SCHEDULE "B"

TRACT NO. \_\_\_\_\_

DESCRIPTION:

TRACT NO. \_\_\_\_\_

DESCRIPTION:

- (Note: 1. Provide adequate space here for additional parties; and
2. Please add as parties defendant local, county or state taxing authorities who may have or claim an interest by reason of taxes or assessments due and exigible.)

Estimated compensation deposited in the registry of the court for the above described property:

Estate Taken: (a) As to Tract No. \_\_\_\_\_, the fee simple title, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

(b) As to Tract No. \_\_\_\_\_ a perpetual right, power, privilege and easement or servitude in, on and to the land described, to enter upon and deposit dredged material or earth and water carrying same at any time during the improvement, maintenance and operation of the main channel of the Missouri River; reserving to the owner or owners of said land, or any interest therein, their heirs and assigns, all such rights and privileges in and to the same as may be used and enjoyed without interfering with or abridging the rights, privileges, easements and servitudes hereby acquired, provided that no structures for human habitation shall be constructed or maintained thereon, subject, however, to existing easements for public roads and highways, canals, public utilities, railroads and pipelines. \*

(NOTE: DO NOT NUMBER THE PAGES OF ANY SCHEDULE)

Figure 5-5o

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\*

ESTATES

1. FEE.

The fee simple title to (the land described in Schedule A) 1/ (Tracts Nos. \_\_\_\_, \_\_\_\_, and \_\_\_\_), subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines. 2/

2. FEE EXCEPTING AND SUBORDINATING SUBSURFACE MINERALS.

The fee simple title to (the land-described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_, and \_\_\_\_ ), subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; excepting and excluding from the taking all (coal) (oil and gas) in and under said land and all appurtenant rights used in connection with the exploration, development, production and removal of said (coal) (oil and gas), including any existing structures and improvements; provided, however, that the said (coal) (oil and gas) and appurtenant rights so excepted and excluded are hereby subordinated to the prior right of the United States to flood and submerge the land as may be necessary in the construction, operation and maintenance of the project; provided further that any exploration or development of said (coal) (oil and gas) in and under said land shall be subject to Federal and State laws with respect to pollution of waters of the reservoir, and provided that the type and location of any structure, improvement and appurtenance thereto now existing or to be erected or constructed on said land in connection with the exploration and/or development of said (coal) (oil and gas) shall be subject to the prior written approval of the District Engineer, U.S. Army Engineer District, \_\_\_\_\_, or his duly authorized representative. 2/

1/ In any estate enumerate the tract numbers only where two or more different estates are acquired in the same complaint or declaration of taking. This applies to all approved estates listed in this figure. The estate recited in an exhibit of a complaint and in paragraph 3 of the declaration of taking will be double spaced.

2/ Where an outstanding interest in the subsurface mineral estate is part of a block ownership which is to be excluded from the taking in accordance with paragraph 5-28g(2), the following clause will be added: "excepting and excluding from the taking all interests in the (coal) (oil and gas) which are outstanding in parties other than the surface owners and all appurtenant rights for the exploration, development and removal of said (coal) (oil and gas) so excluded."

Figure 5-6 \*

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\* 3. FEE EXCLUDING MINERALS (With Restriction on Use of the Surface).

The fee simple title to (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_), subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; excepting and excluding from the taking all (coal) (oil and gas), in and under said land and all appurtenant rights for the exploration, development, production and removal of said (coal) (oil and gas), but without the right to enter upon or over the surface of said land for the purpose of drilling and extracting therefrom said (coal) (oil and gas).

4. FEE EXCLUDING MINERALS (With Restriction on Use of the Surface and Subordination to the Right to Flood).

The fee simple title to (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_), subject, however, to existing easements for public roads highways, public utilities, railroads and pipelines; excepting and excluding from the taking all (coal) (oil and gas) in and under said land and all appurtenant rights for the exploration, development, production and removal of said (coal) (oil and gas), but without the right to enter upon or over the surface of said land for the purpose of drilling and extracting therefrom said (coal) (oil and gas); provided, however, that the said (coal) (oil and gas) and appurtenant rights so excepted and excluded are subordinated to the prior right of the United States to flood and submerge the land in connection with the operation and maintenance of the \_\_\_\_\_ project.

5. FLOWAGE EASEMENT (Permanent Flooding)

The perpetual right, power, privilege and easement permanently to overflow, flood and submerge (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_), (and to maintain mosquito control) in connection with the operation maintenance of the \_\_\_\_\_ project as authorized by the Act of Congress approved \_\_\_\_\_, and the continuing right to clear and remove any brush, debris and natural obstructions which, in the opinion of the representative of the United States in charge of the project, may be detrimental to the project, together with all right, title and interest in and to the timber, structures and improvements situate on the land (excepting \_\_\_\_\_, (here identify those structures not designed for human habitation which the District Engineer determines may remain on the land)); provided that no structures for human habitation shall be constructed or maintained on the land, that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, and that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method

Figure 5-6a \*

- \* of excavation and/or placement of landfill; 3/ the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution.

6. FLOWAGE EASEMENT (Occasional Flooding).

The perpetual right, power, privilege and easement occasionally to overflow, flood and submerge (the land described in Schedule A) (Tracts Nos.\_\_\_\_, \_\_\_\_ and \_\_\_\_). (and to maintain mosquito control) in connection with the operation and maintenance of the \_\_\_\_\_ project as authorized by-the Act of Congress approved \_\_\_\_\_, together with all right, title and interest in and to the structure; and improvements now situate on the land, except fencing (and also excepting \_\_\_\_\_ (here identify those structures not designed for human habitation which the District Engineer determines may remain on the land )) 4/ ; provided that no structures for human habitation shall be constructed or maintained on the land, that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, and that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill; 3/ the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution.

3/ If sand and gravel or other quarriable material is in the easement area and the excavation thereof will not interfere with the operation of the project, the following clause will be added: "excepting that excavation for the purpose of quarrying (sand) (gravel) (etc.) shall be permitted, subject only to such approval as to the placement of overburden, if any, in connection with such excavation;"

4/ See page 5-238

Figure 5-6b

\*

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\* 7. FLOWAGE EASEMENT (Portions of Land to be Subjected to Permanent Inundation and Portions to be Subjected to Occasional Flooding).

The perpetual right, power, privilege and easement in, upon, over and across (the land described in Schedule "A") (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_ ) for the purposes set forth below:

a. Permanently to overflow, flood and submerge the land lying below elevation \_\_\_\_\_ (and to maintain mosquito control,) in connection with the operation and maintenance of the \_\_\_\_\_ project for the purposes as authorized by the Act of Congress approved \_\_\_\_\_, together with all right, title and interest in and to the timber and the continuing right to clear and remove any brush, debris and natural obstructions which, in the opinion of the representative of the United States in charge of the project may be detrimental to the project.

b. Occasionally to overflow, flood and submerge the land lying above elevation \_\_\_\_\_ (and to maintain mosquito control,) in connection with the operation and maintenance of said project.

Together with all right, title and interest in and to the structures and improvements now situate on the land, except fencing above elevation \_\_\_\_\_ (and also excepting \_\_\_\_\_ (here identify those structures not designed for human habitation which the District Engineer determines may remain on the land)) 4/ provided that no structures for human habitation shall be constructed or maintained on the land, that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, and

4/ Where substantial residential structures exist in areas subject to very infrequent flooding, and will not interfere with project operations, the following clause may be substituted "(and also excepting the structure(s) now existing on the land, described as \_\_\_\_\_, which may be maintained on the land provided that portion of the structure(s) located below elevation \_\_\_\_\_feet, mean sea level, shall be utilized for human habitation to the extent that sleeping accommodations will be maintained therein)". The next clause would then be modified to read "provided that no other structures for . . . . . "

Figure 5-6c \*

\* that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill; 3/ the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution.

8. CHANNEL IMPROVEMENT EASEMENT.

A perpetual and assignable right and easement to construct, operate, and maintain channel improvement works on, over and across (the land described in Schedule A) (Tracts Nos.\_\_\_\_, \_\_\_\_ and \_\_\_\_ ) for the purposes as authorized by the Act of Congress approved \_\_\_\_\_, including the right to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush, buildings, improvements and/or other obstructions therefrom; to excavate: dredge, cut away, and remove any or all of said land and to place thereon dredge or spoil material; and for such other purposes as may be required in connection with said work of improvement; reserving, however, to the owners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

9. FLOOD PROTECTION LEVEE EASEMENT.

A perpetual and assignable right and easement in (the land described in Schedule A) (Tracts Nos.\_\_\_\_, \_\_\_\_ and \_\_\_\_ ) to construct, maintain, repair, operate, patrol and replace a flood protection levee, including all appurtenances thereto; reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

3/ If sand and gravel or other quarriable material is in the easement area and the excavation thereof will not interfere with the operation of the project, the following clause will be added: "excepting that excavation for the purpose of quarrying (sand) (gravel) (etc.) shall be permitted, subject only to such approval as to the placement of overburden, if any, in connection with such excavation;"

Figure 5-6d \*



\* 10. DRAINAGE DITCH EASEMENT.

A perpetual and assignable easement and right-of-way in, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_) to construct, maintain, repair, operate, patrol and replace a drainage ditch, reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

11. ROAD EASEMENT.

A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_) for the location, construction, operation, maintenance, alteration replacement of (a) road(s) and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; (reserving, however, to the owners, their heirs and assigns, the right to cross over or under the right-of-way as access to their adjoining land at the locations indicated in Schedule B); 5/ subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

12. RAILROAD EASEMENT.

A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_) for the location, construction, operation, maintenance alteration and replacement of a railroad and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and other vegetation, structures, or obstacles within the limits of the right-of-way; (reserving, however, to the landowners, their heirs and assigns, the right to cross over or under the right-of-way as access to their adjoining land at the

5/ The parenthetical clause maybe deleted, where necessary; however, the use of this reservation may substantially reduce the liability of the Government through reduction of severance damages and consideration of special benefits; therefore, its deletion should be fully justified. Also, access may be restricted to designated points as in Estate No. 12.

Figure 5-6e \*

- \* locations indicated in Schedule B; 6/ subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

13. UTILITY AND/OR PIPELINE EASEMENT.

A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_, and \_\_\_\_), for the location, construction, operation, maintenance, alteration; repair and patrol of (overhead) (underground) (specifically name type of utility or pipeline); together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

14. BORROW EASEMENT.

A perpetual and assignable right and easement to clear, borrow, excavate and remove soil, dirt, and other materials from (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_, and \_\_\_\_); 7/ subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges in said land as may be used without interfering with or abridging the rights. and easement hereby acquired.

15. TEMPORARY WORK AREA EASEMENT.

A temporary easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_, and \_\_\_\_), for a period not to exceed \_\_\_\_\_, beginning with date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors as a (borrow area) (work area), including the right to (borrow and/or deposit fill, spoil and waste material thereon) (move, store and remove equipment and supplies, and erect and remove temporary

6/ The use of this reservation clause may substantially reduce the liability of the Government through reduction of severance damages.

7/ The easement estate may be limited as to time, depending upon project requirements.

Figure 5-6f

\*

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- \* structures on the land and to perform any other work necessary and incident to the construction of the \_\_\_\_\_ Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

16. TEMPORARY EASEMENT FOR EXPLORATION.

A temporary easement in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_), for a period not to exceed \_\_\_\_\_, beginning with date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors, to survey, appraise, conduct test borings, and conduct other exploratory work necessary to the design of a public works project; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however to existing easements for public roads and highways, public utilities, railroads and pipelines.

17. LEASEHOLD ESTATE.

A term for years ending March 31, 19 \_\_\_\_, extendible for yearly periods thereafter, at the election of the United States, until March 31, 19 \_\_\_\_, notice of which election shall be filed in the proceeding at least thirty (30) days prior to the end of the term hereby taken, or subsequent extensions thereof, together with the right to remove, within a reasonable time after the expiration of the term taken, or any extension thereof, any and all improvements and structures heretofore or hereafter placed thereon by or for the United States; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

18. EXTINGUISHMENT OF RIGHTS IN CEMETERY OR EXTINGUISHMENT OF MINERAL RIGHTS.

All outstanding right, title and interest in (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_, subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

19. RESTRICTIVE EASEMENT.

A perpetual and assignable easement for the establishment, maintenance, operation and use for a (restricted) (safety) area

\* in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_), consisting of the right to prohibit human habitation; the right to remove buildings presently or hereafter being used for human habitation; the right to prohibit gatherings of more than twenty-five (25) persons; the right to post signs indicating the nature and extent of the Government's control; and the right of ingress and egress over and across said land for the purpose of exercising the rights set forth herein; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired.

20. RIGHT OF ENTRY FOR SURVEY AND EXPLORATION.

An assignable easement, in, on, over and across the land described in Exhibit "A" for a period of ( ) months beginning with the date possession of the land is granted to the United States, consisting of the right of the United States, its representative, agents, contractors and assigns to enter upon said land to survey, stake out, appraise, make borings; and conduct tests and other exploratory work necessary to the design of a public works project; together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles as required in connection with said work; subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowner(s), their heirs, executors, administrators, successors and assigns, all such right, title, interest and privilege as may be used and enjoyed without interfering with or abridging the rights and easement hereby acquired.

Figure 5-6h

\*

5-243

Next page is 5-245

\*

Figure 5-7

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDMENT
	)	TO
	)	DECLARATION OF TAKING
ACRES OF LAND, MORE	)	
OR LESS, SITUATE IN	)	
COUNTY, STATE OF	)	CIVIL NO. _____
AND	)	
	)	
ET AL,	)	
Defendants	)	

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

WHEREAS, on \_\_\_\_\_, a proceeding was instituted by the filing of a complaint in this Honorable Court in the name of the United States of America for the acquisition of certain interests in land situate in the County of \_\_\_\_\_, State of \_\_\_\_\_, and

WHEREAS, on \_\_\_\_\_, a declaration of taking including all of (part of) the land described in the complaint was duly filed in said proceeding; and

WHEREAS, (Recite any previous amendments to the declaration of taking that may have been filed, with the purpose thereof) and

Figure 5-7 \*

ER 405-1-12

Change 7

8 Feb 79

\* WHEREAS, (Set forth purpose(s) of the proposed amendment; the following are illustrative only).

WHEREAS, it is necessary to (further) amend said declaration of taking insofar as it relates to Tract No. \_\_\_\_\_, to increase the area of said tract from \_\_\_\_\_ acres to \_\_\_\_\_ acres, and to deposit additional funds in the amount of \_\_\_\_\_ to increase the estimated compensation for said Tract No. \_\_\_\_\_ as revised herein.

WHEREAS, it is necessary to (further) amend said declaration of taking in order to revise the descriptions of Tracts Nos. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ to describe adequately the land in which interests were intended to be acquired.

WHEREAS, it is necessary to (further) amend said declaration of taking to include additional land designated herein as Tract No. \_\_\_\_\_ containing \_\_\_\_\_ acres, and to deposit additional funds in the amount of \_\_\_\_\_ as estimated compensation for said Tract No. \_\_\_\_\_.

(FOR ARMY CASES)

NOW, THEREFORE, I, the undersigned, \_\_\_\_\_, Secretary of the Army, pursuant to the powers and authorities recited in the complaint and declaration of taking filed in the above entitled proceeding, do hereby (further) amend said declaration of taking as follows:

(FOR AIR FORCE CASES)

NOW, THEREFORE, I, the undersigned, the \_\_\_\_\_ (title) \_\_\_\_\_, by direction of the Secretary of the Air

Figure 5-7a \*

ER 405-1-12

Change 7

8 Feb 79

\* Force and acting pursuant to the powers and authorities recited in the complaint and declaration of taking filed in the above entitled proceeding, do hereby amend the declaration of taking as follows:

(The following are illustrative only)

Substitute (no. of acres) in the second line of the first page of Schedule "A" attached to and made a part of said declaration of taking in lieu of (no. of acres).

Substitute Schedule "AA" attached hereto and made a part hereof in lieu of the description and estimated compensation for Tract No. \_\_\_\_ on pages \_\_\_\_ and \_\_\_\_ of Schedule "A" attached to and made a part of said declaration of taking.

Substitute Schedule "AA" attached hereto and made a part hereof in lieu of page \_\_\_\_\_ of Schedule "A" attached to and made a part of said declaration of taking.

Substitute " \_\_\_\_\_ DOLLARS" in the last two lines of the \_\_\_\_\_ page of Schedule "A", attached to and made a part of the declaration of taking as heretofore amended, in lieu of " \_\_\_\_\_ DOLLARS."

Substitute Schedule "BB" attached hereto and made a part hereof in lieu of the plan of Tracts Nos. \_\_\_\_, \_\_\_\_, \_\_\_\_, and \_\_\_\_ delineated on Segment \_\_\_\_\_, Schedule "B" attached to and made a part of the declaration of taking.

Figure 5-7b

ER 405-1-12  
Change 7  
8 Feb 79

\* (Insert such other statements as are considered necessary)

(Where additional funds are to be deposited with the amendment, the following paragraph should be included):

The sum of \$ \_\_\_\_\_ has been deposited into the registry of the court as the estimated just compensation for the acquisition of the land included in the above mentioned declaration of taking. The sum of \$ \_\_\_\_\_ is now estimated by (me) (the undersigned) to be just compensation for the acquisition of the land. Therefore, (I) (the undersigned) cause(s) to be deposited herewith in the Registry of this Honorable Court the additional sum of \$ \_\_\_\_\_ for the use and benefit of the persons entitled thereto. (I) (the undersigned) am (is) of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

It is intended by this amendment that the aforesaid declaration of taking (as heretofore amended) is not changed, and is not intended to be changed, in any respect except as hereinabove expressly set forth.

(FOR ARMY CASES)

IN WITNESS WHEREOF, the United States of America, by its Secretary of the Army, thereunto authorized, has caused this amendment to be signed in its name by said \_\_\_\_\_, Secretary of the Army, this \_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, in the City of Washington, District of Columbia.

---

Secretary of the Army



ER 405-1-12

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8 Feb 79

\* (FOR AIR FORCE CASES)

IN WITNESS WHEREOF, the undersigned, the \_\_\_\_\_ (title)

\_\_\_\_\_  
hereunto subscribes his name by direction of the Secretary of the  
Air Force this \_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, in the  
City of Washington, District of Columbia.

Figure 5-7d \*

5-249

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Figure 5-8

PART 1

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	STIPULATION AS TO
	)	JUST COMPENSATION
	)	
ACRES OF LAND, MORE	)	
OR LESS, SITUATE IN	)	
COUNTY, STATE OF	)	
AND	)	
	)	
ET AL,	)	
Defendants	)	

It is hereby stipulated and agreed by and between the United States of America, hereinafter called the plaintiff and \_\_\_\_\_, hereinafter called the defendant(s), that:

WHEREAS, action in condemnation was commenced in the above Court on \_\_\_\_\_, by the filing of a complaint in condemnation and a declaration of taking on behalf of the United States of America, at the request of the Secretary of the \_\_\_\_\_, and

WHEREAS, under the provisions of the Declaration of Taking Act (46 Stat. 1421), title to the estate condemned in Tract No. \_\_\_\_\_, as such estate and tract are described in the Declaration of Taking filed herein, vested in the United States of America, and the right to just compensation for the same was likewise, under the provisions of said Act, vested in the persons entitled thereto; and

Figure 5-8 \*

ER 405-1-12  
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\* WHEREAS, \_\_\_\_\_ (was) (were] the owner(s) in fee simple of the land hereinabove described and (has) (have) so represented to the plaintiff; all other parties having any interest in or claim to said lands having heretofore filed proper disclaimers in this cause;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the above-named parties that the sum of \$ \_\_\_\_\_, inclusive of interest, is the just compensation in full to be paid by the plaintiff for the estate condemned in Tract No. \_\_\_\_\_ as such estate and tract are described in the Declaration of Taking filed herein and it is agreed that from said sum there shall first be paid any and all liens, taxes and encumbrances against said land including adverse claims by lessees.

The defendant(s). \_\_\_\_\_, hereby enter(s) (his) (their) appearance(s) in this action and expressly waive(s) service of summons, complaint, and all right to a hearing on the complaint and pleadings filed in this action and the right to the appointment of a Jury or Commission for the determination of just compensation.

The above-named parties hereby agree to the entering of a judgment in conformity with this stipulation, setting forth the conditions and provisions thereof.

Figure 5-8a \*

ER 405-1-12

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\* Executed on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Defendant

UNITED STATES OF AMERICA

BY \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness

Figure 5-8b \*

5-253

Next page is 5-255

PART 2

(PRIMARILY CIVIL - MAY BE ADAPTED TO OTHER)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ACRES OF LAND, MORE )  
 OR LESS, SITUATE IN )  
 COUNTY, STATE OF )  
 AND )  
 )  
 ET AL, )  
 Defendants )

STIPULATION FOR REVESTMENT

AS TO TRACT \_\_\_\_\_

WHEREAS, the plaintiff, United States of America, commenced the above entitled action for the purpose of acquiring by eminent domain certain lands described as follows, to-wit:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The tract of land above described contains \_\_\_\_\_ acres, more or less.

WHEREAS, by reason of the filing of a declaration of taking and the depositing of \_\_\_\_\_ as estimated just compensation for the taking

Figure 5-8c \*

ER 405-1-12

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\* thereof, title to such land, to the extent of the estate described below, vested in the United States of America on \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

WHEREAS, it has been determined to be necessary to reduce the 1/total acreage acquired in the proceeding; and

WHEREAS, it has been determined to be necessary to revise the estate acquired in a portion of the remaining land in order to 1/provide for a perpetual flowage easement therein; and

WHEREAS, it has been determined to be necessary to revise the estate acquired in the remainder of the tract in order to revest in the former owners title to the oil, gas and other minerals under-1/lying said land subordinate, however, to the prior rights of the United States in connection with the \_\_\_\_\_ Project; and

WHEREAS, the defendant(s) \_\_\_\_\_ (has) (have) agreed to accept the sum of \$ \_\_\_\_\_ inclusive of interest, as just compensation for the interests acquired in the proceeding and (has) (have) agreed further that the balance of monies remaining on deposit in the registry of the court, to-wit. the sum of \$ \_\_\_\_\_ , shall be returned to the United States of America.

1/ Insert applicable paragraphs.

Figure 5-8d \*

ER 405-1-12  
Change 7  
8 Feb 79

NOW, THEREFORE, IT IS STIPULATED AND AGREED BY AND BETWEEN  
THE UNITED STATES OF AMERICA, PLAINTIFF, AND THE ABOVE-NAMED  
DEFENDANT(S) \_\_\_\_\_ as follows:

(a) That the defendant(s) herein consent(s) to the acquisition  
by the United States of the estates in the land as hereinafter set  
forth;

(b) That said defendant(s) consent(s) to the withdrawal of  
any answer and/or interrogatories heretofore filed in the proceeding  
contesting the Governments right to acquire the land;

(c) That there shall be substituted for the legal description  
of Tract No. \_\_\_\_\_ and the estate acquired therein, as set forth in  
the complaint in condemnation and the declaration of taking hereto-  
fore filed in the proceeding, the descriptions and estates set forth  
below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) That with respect to the aforementioned lands as to which  
a perpetual flowage easement is to be acquired, the defendant(s)  
herein expressly waive(s) for (himself) (themselves), (his) (their)  
heirs, successors, and assigns any and all claims against the United  
States or the State, County and political sub-division in which the  
land is located for loss of access thereto.

Figure 5-8e \*

ER 405-1-12  
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8 Feb 79

\* (e) That all right, title, and interest of the stipulating defendant(s) in and to any and all portions of the tract as set forth in the complaint in condemnation and the declaration of taking heretofore filed in the proceeding which are not included in paragraph (c) above shall be excluded from the proceeding and title thereto shall be revested in said defendant(s) to the extent held by (him) (them) immediately prior to the taking;

(f) That the fair market value and the full just compensation to be paid for the taking of all the interests acquired in the proceeding, and for the Government's use of that portion and/or interest in the land, title to which is revested by this stipulation, including all damages arising therefrom, is the sum of \$ \_\_\_\_\_, inclusive of interest

(g) That judgment shall be entered pursuant hereto fixing just compensation as above stated, directing payment to the person or persons entitled thereto and adjudging title to the estates as set forth herein to be vested in the United States of America;

(h) That said sum shall be subject to all liens, encumbrances and charges existing against said lands at the time of the taking, and that any and all compensation ascertained and awarded in this proceeding in favor of any parties now or subsequently named as defendants shall be payable and deductible from said sum, and the parties consent to the entry of all orders, judgments and decrees appropriate to effectuate this stipulation.

Figure 5-8f \*



ER 405-1-12

Change 7

8 Feb 79

\* In support of the foregoing stipulation, it is hereby represented to the court as follows:

I.

That this stipulation is intended as a voluntary appearance and express waiver of service of notice and of all other process and pleading, notice of hearing, and trial by jury.

II.

That except as aforesaid on said date no other person, party or corporation was in possession of said lands and there were no unrecorded liens, leases, encumbrances or transfers outstanding affecting said property.

III.

That except as herein set forth no other person, party or corporation is entitled to receive any portion of the just compensation to be paid for the taking of said lands and there is no reason why the said just compensation should not be paid as herein set forth.

WHEREFORE, the parties hereto pray for judgment as appropriate to effectuate this stipulation.

DATED this \_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_,

UNITED STATES OF AMERICA, Plaintiff

By \_\_\_\_\_

Defendant

Approved:

Defendant

\_\_\_\_\_  
Attorney for Defendant

Figure 5-8g

\*

ER 405-1-12  
 Change 7  
 8 Feb 79

\* (For use in connection with report required by paragraph 5-32b,  
 Chapter ER 405-1-2)

REPORT OF TRIAL OR HEARING

Project: \_\_\_\_\_ Court: \_\_\_\_\_

Date of Trial or Hearing: \_\_\_\_\_ Place: \_\_\_\_\_

Trial Held Before: Jury ( ), Commission ( ), Judge ( )

Date of Award or Verdict: \_\_\_\_\_

Government Represented By: \_\_\_\_\_ Landowner Represented By: \_\_\_\_\_

<u>Civil No.</u>	<u>Filed</u>	<u>Tract No.</u>	<u>Acres</u>	<u>Estate</u>	<u>Deposit</u>
_____	_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	_____	_____

1/ Award: \_\_\_\_\_  
 Deposit: \_\_\_\_\_  
 Deficiency: \_\_\_\_\_

1/ With (without) interest at 6% from date of taking:

TESTIMONY

VALUATION

<u>Witness (Name &amp; Designation)</u>	<u>Before Taking</u>	<u>After Taking</u>	<u>Difference</u>
<u>Landowner:</u>			
_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____
<u>Government: (Name &amp; Designation - D/A or D/J)</u>			
_____	_____	_____	_____
_____	_____	_____	_____

REMARKS: (Include statement of informal recommendation of U.S. Attorney, if available, also comments or recommendation of representative reporting)

ENG Form 3906-R, 1 Mar 72 Reported By: \_\_\_\_\_

Figure 5-9 \*

ER 405-1-12  
Change 9  
30 May 79

\*

SAMPLE FORMAT - ACQUISITION REPORT FOR LEASING

DEPARTMENT OF THE ARMY  
SUBMITTED BY OFFICE, CHIEF OF ENGINEERS  
REAL ESTATE  
ACQUISITION REPORT NO. \_\_\_\_\_

Submitted pursuant to Title 10, United States Code, Section 2662.

Name of Installation:

Using Command:

Proposed Action:

Use:

Area:

Estimated Annual Rental:

Authority:

1. "The Department of the Army proposes...." (Here make a brief statement of the proposed leasing action being reported to Congress.)

2. Describe premises currently occupied by this activity, including area, annual rental, type of space (land, office, storage, parking, etc.), terms of current lease (e.g., beginning and termination dates, renewal and cancellation privileges, services and utilities furnished by the lessor), and services provided by using service, if any. If current space is inadequate or no longer available, so indicate and give reasons.

3. Brief discussion of the necessity for leasing, plus current and estimated future space requirements if known; mission of the using agency; number of personnel to use new space, and any foreseeable increase in personnel; statement as to the non-availability of Government-owned or leased facilities to satisfy this requirement; description of premises to be leased (if known), broken down in components (land, building space, office, storage, parking space, etc.), with square footage or other unit of measure; and estimated annual rental for such component and total estimated annual rental; and other terms anticipated in a new lease. (Add any other pertinent information peculiar to the action being reported.) Include statement of any known long-range plans for this activity and a permanent location therefor. If the area to be leased is in a large metropolitan area, indicate the Congressional District.

ER 405-1-12

Change 9

30 May 79

\* 4. Brief statement of proposed action: "The Department of the Army proposes to (enter into the lease transaction or obtain suitable alternate space) (concur in the leasing of space as outlined above by the General Services Administration for a term not to exceed five years.)"

5. Provide information relative to rental payment. If leasing is to be accomplished by the General Services Administration, state the current and estimated Standard Level User Charge (SLUC). The charge is payable by the Department of the Army and is required under the provisions of Public Law 92-313, Public Buildings Amendments of 1972, effective 1 July 1974.

6. Concluding paragraph: "This action has been approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)." (When leasing is to be done by the General Services Administration: "The Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) approves the space requirement which the General Services Administration proposes to satisfy through leasing as outlined herein.")

(To be prepared by typewriter as required. Furnish, in transmitting correspondence, but not as part of the report, an area, county or city map appropriately marked to show location of all Government-owned or controlled buildings, installations, and facilities; furnish reasons why these are not available or suitable for the proposed use and include any other pertinent information.)

Figure 5-10a \*

ER 405-1-12

Change 9

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## \* DESIGNATED URBAN CENTERS OF THE GENERAL SERVICES ADMINISTRATION

Aberdeen, SD Brown County	Amarillo, TX Potter County Randall County
Abilene, TX Jones County Taylor County	Anaheim-Santa Aria-Garden Grove, CA Orange County
Akron, OH Portage County Summit County	Ann Arbor, MI Washtenaw County
Alaska The entire State	Asheville, NC Buncombe County
Albany, GA Dougherty County	Athens, GA Clarke County
Albany, IL Whiteside County	Atlanta, GA Clayton County Cobb County DeKalb County Fulton County Gwinnett County
Albany, OR Linn County	Atlantic City, NJ Atlantic County
Albany-Schenectady-Troy, NY Albany County Rensselaer County Saratoga County Schenectady County	Augusta, GA-SC Richmond County, GA Aiken County, SC
Albuquerque, NM Bernalillo County	Augusta, ME Kennebec County
Alexandria, LA Rapides Parish	Austin, TX Travis County
Allentown-Bethlehem-Easton, PA-NJ Lehigh County, PA Northampton County, PA Warren County, NJ	Bakersfield, CA Kern County
Altoona, PA Blair County	Baltimore, MD Baltimore City Anne Arundel County

Figure 5-11 \*

ER 405-1-12

Change 9

30 May 79

\*

Baltimore County	Brownsville-Harlingen-San Benito, TX
Carroll County	Cameron County
Howard County	
Baton Rouge, LA	Buffalo, NY
East Baton Rouge Parish	Erie County
	Niagara County
Battle Creek, MI	Burlington, VT
Calhoun County	Chittenden County
Bay City, MI	Butte, MT
Bay County	Silver Bow County
Beaumont-Port Arthur, TX	Calexico-El Centro, CA
Jefferson County	Imperial County
Orange County	
Billings, MT	Canton, OH
Yellowstone County	Stark County
Binghamton, NY-PA	Casper, WY
Broome County, NY	Natrona County
Tioga County, NY	
Susquehanna County, PA	Cedar Rapids, IA
	Linn County
Birmingham, AL	Champaign-Urbana, IL
Jefferson County	Champaign County
Bismarck, ND	Charleston, SC
Burleigh County	Berkeley County
	Charleston County
Boise, ID	Charleston, WV
Ada County	Kanawha County
Boston, MA	Charlotte, NC
Essex County	Mecklenburg County
Middlesex County	Union County
Norfolk County	
Plymouth County	Charlottesville, VA
Suffolk County	Charlottesville City
Bridgeport, CT	Albemarle County
Fairfield County	
New Haven County	Chattanooga, TN-GA
	Hamilton County, TN
Brockton, MA	Walker County, GA
Bristol County	
Norfolk County	Cheyenne, WY
Plymouth County	Laramie County

Figure 5-11a \*

* Chicago, IL	Concord, NH
Cook County	Merrimack County
DuPage County	
Kane County	Corpus Christi, TX
Lake County	Nueces County
McHenry County	
Will County	Dallas, TX
	Collin County
Cincinnati, OH-KY-IN	Dallas County
Clermont County, OH	Denton County
Hamilton County, OH	Ellis County
Warren County, OH	
Boone County, KY	Davenport-Rock Island-Moline, IA-IL
Campbell County, KY	Scott County, IA
Kenton County, KY	Henry County, IL
Dearborn County, IN	Rock Island County, IL
Cleveland, OH	Dayton, OH
Cuyahoga County	Greene County
Geauga County	Miami county
Lake County	Montgomery County
Medina County	Preble County
Clinton, OK	Decatur, IL
Custer County	Macon County
Cody, WY	Denver, CO
Park County	Adams County
	Arapahoe County
Colorado Springs, CO	Boulder County
El Paso County	Denver County
	Jefferson County
Columbia, MO	Des Moines, IA
Boone County	Polk County
Columbia, SC	Detroit, MI
Lexington County	Macomb County
Richland County	Oakland County
	Wayne County
Columbus, GA-AL	Dubuque, IA
Chattahoochee County, GA	Dubuque County
Muscogee County, GA	
Russell County, AL	
Columbus, OH	Duluth-Superior, MN-WI
Delaware County	St. Louis County, MN
Franklin County	Douglas County, WI
Pickaway County	

Figure 5-11b \*

ER 405-1-12  
 Change 9  
 30 May 79

<p>* Durango, CO              LaPlata County</p> <p>Durham, NC              Durham County</p> <p>Elkins, WV              Randolph County</p> <p>El Paso, TX              El Paso County</p> <p>Erie, PA              Erie County</p> <p>Eugene, OR              Lane County</p> <p>Evansville, IN-KY              Vanderburgh County, IN              Warrick County, IN              Henderson County, KY</p> <p>Fall River, MA-RI              Bristol County, MA              Newport County, RI</p> <p>Eargo-Moorhead, ND-MN              Cass County, ND              Clay County, MN</p> <p>Fayetteville, NC              Cumberland County</p> <p>Fitchburg-Leominster, MA              Middlesex County              Worcester County</p> <p>Flint, MI              Genesee County              Lapeer County</p> <p>Fort Collins, CO              Larimer County</p> <p>Fort Lauderdale-Hollywood, FL              Broward County</p> <p>Fort Smith, AR-OK              Crawford County, AR</p>	<p>Sebastian County, AR              LeFlore County, OK              Sequoyah County, OK</p> <p>Fort Wayne, IN              Allen County</p> <p>Fort Worth, TX              Johnson County              Tarrant County</p> <p>Frankfort, KY              Franklin County</p> <p>Fresno, CA              Fresno County</p> <p>Gadsden, AL              Etowah County</p> <p>Gainesville, FL              Alachuca County</p> <p>Galveston-Texas City, TX              Galveston County</p> <p>Gary-Hammond-East Chicago, IN              Lake County              Porter County</p> <p>Grand Forks, ND              Grand Forks County</p> <p>Grand Island, NB              Hall County</p> <p>Grand Junction, CO              Mesa County</p> <p>Grand Rapids, MI              Kent County              Ottawa County</p> <p>Great Falls, MT              Cascade County</p> <p>Greeley, CO              Weld County</p>
--	--

Figure 5-11c \*



* Green Bay, WI Brown County	Huron, SD Beadle County
Greensboro-High Point, NC Guilford County	Idaho Falls, ID Bonneville County
Greenville, SC Greenville County Pickens County	Indianapolis, IN Hamilton County Hancock County Hendricks County Johnson County Marion County Morgan County Shelby County
Greenwood, MS LeFlore County	Jackson, MI Jackson County
Hamilton-Middletown, OH Butler County	Jackson, MS Hinds County Rankin County
Harrisburg, PA Cumberland County Dauphin County Perry County	Jackson, TN Madison County
Hartford, CT Hartford County Middlesex County Tolland County	Jacksonville, FL Duval County
Hawaii The entire State	Jefferson City, MO Cole County
Helene, MT Lewis and Clark County	Jersey City, NJ Hudson County
Hot Springs, AR Garland County	Johnstown, PA Cambria County Somerset County
Houston, TX Harris County	Kalamazoo, MI Kalamazoo County
Huntington-Ashland, WV-KY-OH Cabell County, WV Wayne County, WV Boyd County, KY Lawrence County, OH	Kansas City, MO-KS Cass County, MO Clay County, MO Jackson County, MO Platte County, MO Johnson County, KS Wyandotte County, KS
Huntsville, AL Limestone County Madison County	

Figure 5-11d \*

ER 405-1-12

Change 9

30 May 79

* Kenosha, WI Kenosha County	Little Rock, North Little Rock, AR Pulaski County
Klamath Falls, OR Klamath County	Logan, UT Cache County
Knoxville, TN Anderson County Blount County Knox County	Lorrain-Elyria, OH Lorain County
Lafayette, LA Lafayette Parish	Los Angeles-Long Beach, CA Los Angeles County
Lake Charles, LA Calcasieu Parish	Louisville, KY-IN Jefferson County, KY Clark County, IN Floyd County, IN
Lancaster, PA Lancaster County	Lowell, MA Middlesex County
Lansing, MI Clinton County Eaton County Ingham County	Lubbock, TX Lubbock County
Laredo, TX Webb County	Lynchburg, VA Lynchburg City Amherst County Campbell County
Las Vegas, NV Clark County	Macon, GA Bibb County Houston County
Lawrence-Haverhill, MA-NH Essex County, MA Rockingham County, NH	Madison, WI Dane County
Lawton, OK Comanche County	Manchester, NH Hillsborough County Merrimack County
Lewiston-Auburn, ME Androscoggin County	Manhattan, KS Riley County
Lexington, KY Fayette County	McCook, NB Red Willow County
Lima, OH Allen County	Medford, OR Jackson County
Lincoln, NB Lancaster County	Memphis, TN-AR Shelby County, TN Crittenden County, AR

Figure 5-11e \*

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 Change 9  
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* Meriden, CT New Haven County	Nashville, TN Davidson County Sumner County Wilson County
Meridian, MS Lauderdale County	Newark, NJ Essex County Morris County Union County
Miami, FL Dade County	New Bedford, MA Bristol County Plymouth County
Midland, TX Midland County	New Britain, CT Hartford County
Milwaukee, WI Milwaukee Ozaukee County Waukesha County	New Haven, CT New Haven County
Minneapolis-St. Paul, MN Anoka County Dakota County Hennepin County Ramsey County Washington County	New London-Groton-Norwich, CT New London County
Missoula, MT Missoula County	New Orleans, LA Jefferson Parish Orleans Parish St. Bernard Parish St. Tammany Parish
Mobile, AL Baldwin County Mobile County	Newport News-Hampton, VA Hampton City Newport News City York County
Monroe, LA Ouachita Parish	New York, NY Bronx County Kings County New York County Queens County Richmond County Nassau County Rockland County Suffolk County Westchester County
Montgomery, AL Elmore County Montgomery County	Norfolk-Portsmouth, VA Chesapeake City Norfolk City Portsmouth City Virginia Beach City
Morgantown, WV Monongalia County	
Muncie, IN Delaware County	
Muskegon-Muskegon Heights, MI Muskegon County	
Muskogee, OK Muskogee County	

Figure 5-11f

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* Norwalk, CT Fairfield County	Burlington County, NJ Camden County, NJ Gloucester County, NJ
Odessa, TX Ector County	Phoenix, AZ Maricopa County
Ogden, UT Weber County	Pierre, SD Hughes County
Oklahoma City, OK Canadian County Cleveland County Oklahoma County	Pittsburgh, PA Allegheny County Beaver County Washington County Westmoreland County
Olympia, WA Thurston County	Pittsfield, MA Berkshire County
Omaha, NB-IA Douglas County, NB Sarpy County, NB Pottawattamie County, IA	Portland, ME Cumberland County
Orlando, FL Orange County Seminole County	Portland, OR-WA Clackamas County, OR Multnomah County, OR Washington County, OR Clark County, WA
Parkersburg, WV Wood County	Portsmouth, NH Rockingham County
Peterson-Clifton-Passaic, NJ Bergen County Passaic County	Providence-Pawtucket-Warwick, RI-MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, MA
Pensacola, FL Escambia County Santa Rosa County	Bristol County, MA Norfolk County, MA Worcester County, MA
Peoria, IL Peoria County Tazewell County Woodford County	Provo-Orem, UT Utah County
Philadelphia, PA-NJ Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	Pueblo, CO Pueblo County
	Puerto Rico The entire Commonwealth

Figure 5-11g \*

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* Racine, WI Racine County	St. Albans, VT Franklin County
Raleigh, NC Wake County	St. Joseph, MO Buchanan County
Rapid City, SD Pennington County	St. Louis, MO-IL St. Louis City, MO Jefferson County, MO St. Charles County, MO St. Louis County, MO Madison County, IL St. Clair County, IL
Reading, PA Berks County	
Reno, NV Washoe County	
Richmond, VA Richmond City Chesterfield County Hanover County Henrico County	Salem, OR Madison County Polk County
Roanoke, VA Roanoke City Roanoke County	Salina, KS Saline County
Rochester, NY Livingston County Monroe County Orleans County Wayne County	Salisbury, MD Wicomico County
Rockford, IL Boone County Winnebago County	Salt Lake City, UT Davis County Salt Lake County
Rolla, MO Phelps County	San Angelo, TX Tom Green County
Rome, GA Floyd County	San Antonio, TX Bexar County Guadalupe County
Sacramento, CA Placer County Sacramento County Yolo County	San Bernardino-Riverside-Ontario, CA Riverside County San Bernardino County
Saginaw, MI Saginaw County	San Diego, CA San Diego County
	San Francisco-Oakland, CA Alameda County Contra Costa County Marin County San Francisco County San Mateo County
	San Jose, CA Santa Clara County

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Figure 5-1lh \*

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* Santa Barbara, CA Santa Barbara County	Springfield, IL Sangamon County
Sante Fe, NM Santa Fe County	Springfield, MO Greene County
Savannah, GA Chatham County	Springfield, OH Clark County
Scottsbluff, NB Scotts Bluff County	Stamford, CT Fairfield County
Scranton, PA Lackawanna County	Steubenville-Wierton, OH, WV Jefferson County, OH Brooke County, WV Hancock County, WV
Seattle-Everett, WA King County Snohomish County	Stillwater, OK Payne County
Sheridan, WY Sheridan County	Stockton, CA San Joaquin County
Shreveport, LA Bossier Parish Caddo Parish	Syracuse, NY Madison County Onondaga County Oswego County
Sioux City, IA-NB Woodbury County, IA Dakota County, NB	Tacoma, WA Pierce County
Sioux Falls, SD Minnehaha County	Tallahassee, FL Leon County
South Bend, IN St. Joseph County Marshall County	Tampa-St. Petersburg, FL Hillsborough County Pinellas County
Spartanburg, SC Spartanburg County	Temple, TX Bell County
Spokane, WA Spokane County	Terre Haute, IN Clay County Sullivan County Vermillion County Vigo County
Springfield-Chicopee-Holyoke, MA Hampden County Hampshire County Worcester County	

Figure 5-11i \*

* Texarkana, TX-AR Bowie County, TX Miller County, AR	Washington, D. C.-MD-VA District of Columbia Montgomery County, MD Prince Georges County, MD
Toledo, OH-MI Lucas County, OH Wood County, OH Monroe County, MI	Alexandria City, VA Fairfax City, VA Falls Church City, VA Arlington County, VA Fairfax County, VA
Topeka, KS Shawnee County	Waterbury, CT Litchfield County New Haven County
Trenton, NJ Mercer County	Waterloo, IA Black Hawk County
Tucson, AZ Pima County	Wenatchee, WA Chelan County
Tulsa, OK Creek County Osage County Tulsa County	West Palm Beach, FL Palm Beach County
Tuscaloosa, AL Tuscaloosa County	Wheeling, WV-OH Marshall County, WV Ohio County, WV Belmont County, OH
Tyler, TX Smith County	Wichita, KS Butler County Sedgwick County
Utica-Rome, NY Herkimer County Oneida County	Wichita Falls, TX Archer County Wichita County
Vallejo-Napa, CA Napa County Solano County	Wilkes-Barre-Hazleton, PA Luzerne County
Vicksburg, MS Warren County	Wilmington, DE-NJ-MD New Castle County, DE Salem County, NJ Cecil County, MD
Virgin Islands The entire Territory	Wilmington, NC New Hanover County
Waco, TX McLennan County	Winston-Salem, NC Forsyth County
Walla Walla, WA Walla Walla County Benton County	

Figure 5-11j

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\* Worcester, MA  
Worcester County

Yakima, WA  
Yakima County

York, PA  
Adams county  
York County

Youngstown-Warren, OH  
Mahoning County  
Trumbull County

Yuma, AZ  
Yuma County

Figure 5-11k

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\*

## INSTRUCTIONS FOR PREPARATION OF LEASES

The following data have been established, in addition to the general guidelines provided, to meet specific requirements related to the several lease forms that are used.

Provisions and Execution.

a. Names of all lessors will be inserted, and leases will be executed by all appropriate parties. Where husband and wife own property as tenants by the entirety, or as joint tenants with the right of survivorship, and the local law recognizes such tenancy, both husband and wife should be designated as parties, and both should execute the lease. Where applicable, a provision should be included in the lease that upon the death of the husband or wife, all rentals not paid prior to death shall be paid to the surviving spouse.

b. A complete and accurate legal description of the property to be leased will be inserted. If the leased property is vacant land, insert acreage. If the premises consist of office or warehouse space, include gross and usable square footages. The use clause should provide for occupancy of the property for "Government purposes." If the lessor objects to the general use term, the specific use to be made of the property may be inserted.

c. The commencement of the term of the lease will ordinarily be the date possession is taken, to avoid processing payment for prior occupancy as a claim.

d. ENG Forms 527 and 856 and Standard Forms 2 and 2B provide for automatic renewal, and the provisions granting the Government the right of termination should not be deleted.

e. The option to renew will be for the longest period obtainable. Where improvements are to be placed on land, or structures altered at the expense of the Government, the option of renewal should be in accordance with the provisions of Department of Defense Directive 4165.16, dated 19 December 1958, subject: Real Property; Construction on Leased Land and Release of Leaseholds.

f. ENG Form 856 is silent as to the condition in which the land is to be returned. In the event the lessor requires restoration, a clause similar to the restoration clause of ENG Form 527 may be inserted. If no restoration is required by lessor, appropriate notation will be made in the lease. \*

Figure 5-12

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- Restoration Clause. The number of days for advance notice by the lessor that restoration is required should be inserted. This period should be shorter than the number of days required to be given by the Government to terminate the lease.

Maintenance Clause. Where the lessor is not agreeable to providing all of the maintenance required in ENG Form 527 and Standard Form 2A and in the general provisions of Standard Form 2B, a modification may be made to these provisions to express the actual maintenance to be provided by the lessor. However, in such cases, and as a general rule, the lease should provide that the lessor is to maintain the exterior of the building, including the roof, and repair any structural defects in the leased premises. An express covenant in the lease, binding the Government to make repairs, is not desirable, as it may have the effect of increasing the Government's obligation to restore. Where the lease does not expressly require the lessor to maintain the premises, funds may be expended by the Government for repairs without any express provision therefor.

Risk Clause. No change will be made in this clause, which is contained in ENG Form 527 and in the Standard Forms 2A and 2B, which will place responsibility upon the Government in case of fire or other casualty.

Additional Clauses. Any essential provision may be added. References to any changes will be made in the space preceding the witness clause. The Procurement Authority citation will be included.

Evidence of Authority. The authority for execution of leases by an agent, partner, corporation officer, or other authorized person, must be attached to each lease.

Recording Leases. If the property is located in a State requiring the recording of leases; all statutory requirements must be met. Leases and supplemental agreements involving lands upon which substantial Government improvements are to be constructed will be recorded.

Numbering Leases.

a. Every lease will be numbered, regardless of consideration or the number of rental payments involved.

b. Additional instructions:

(1) Contract numbers assigned to Army (Military) and Air Force leases, and those obtained for other Federal agencies will consist of the letters "DACA" followed by the fiscal station number of the \*

Figure 5-12a

\* activity preparing the lease, a dash, the instrument identification code "5", a dash, the last two digits of the fiscal year in which the lease is executed, and a dash followed by the instrument serial number, e.g., DACA31-5-79-1.

(2) Army Civil Works leases will be numbered in the same manner as set forth above except that the letters "DACW" will precede the fiscal station number, e.g., DACW31-5-79-1.

(3) Supplemental agreements will be numbered consecutively and will bear the same identification as the original lease instrument that is being modified or amended.

(4) The lessor's Social Security number or Tax Identification number will be incorporated in all leases, except in overseas areas.

#### Rent.

a. The official designation of the Disbursing or Finance Officer will be stated in the lease. Standard Form 1166, Voucher and Schedule for Payments, and Standard Form 1167, Continuation Sheet, will be used in making rental payments from civil and/or military funds. Certification by lessors is not required. Procedures for payment of rent may change or vary, dependent upon procedural requirements that are established. For Air Force and Family Housing leases, different procedures may be dictated.

b. Air Force leases, which include Air Force Reserve and Air National Guard, may require special handing to assure prompt rental payment. The official designation of the Air Force disbursing officer by whom rental is to be paid will be obtained from the appropriate Air Force Command, and will be inserted in the lease. When lease distribution is made, notification will be given the lessor stating in the cover letter exactly the name of the disbursing office and the method of payment. This same procedure will be followed for Air Force Family Housing or BOQ leases.

#### Procedures for Lease Distribution (Military).

a. Two copies of all military leases will be signed as originals, by the lessor and the Government. Distribution will be made as follows:

(1) One signed copy will be delivered to the lessor.

(2) One signed copy will be retained by the Division or District Engineer, as applicable.

b. On other than Air Force projects, two certified true copies of the lease will be prepared, one for the occupying agency, and one for the Disbursing Officer who is to pay the rental. Such additional

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\* true copies as are necessary will be prepared, and furnished to the appropriate commands.

c. If the premises are for the National Guard (Air or Army), a certified true copy of the lease will be forwarded directly to the Chief, National Guard Bureau, Departments of the Army and Air Force, Washington, D. C. 20310.

d. If the premises are to be occupied by an activity of the Department of the Air Force, four certified true copies will be prepared, on each of which will appear, in the upper right hand corner, a notation as to the official name of the Air Force installation. These will be distributed as follows:

(1) One copy to the Disbursing Officer who is to pay the rental.

(2) One copy to Directorate of Engineering and Services, (AF/LEER), Headquarters, U. S. Air Force, Attn: Real Property Division, Washington, D. C. 20330.

(3) Two copies to the headquarters of the major command, ATTN: Air Installations Division.

Standard Lease Forms.

a. On Standard Form 2, Clause 5 will be deleted, and the following clause will be substituted: "This lease shall be automatically renewed from year to year without further notice unless and until the Government shall give notice of termination in accordance with Clause 4, provided that adequate appropriations are available from year to year for the payment of rentals, and provided further that this lease shall in no event extend beyond \_\_\_\_\_,"

b. On Standard Form 2A, two changes will be made:

(1) Under "General Provisions and Instructions," paragraph 4 will be deleted and the following provision substituted: "Alterations. The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect additions, structures or signs in or upon the premises hereby leased. Such fixtures, additions or structures shall be and remain the property of the Government and may be removed prior to the expiration or termination of this lease. The lessor may, upon not less than \_\_\_\_\_ days notice to the Government, before termination of the lease, require restoration of the leased premises. In this event, prior to the expiration \*

Figure 5-12c

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\* or termination of this lease, or prior to relinquishment of possession, whichever first occurs, the Government shall, at its sole election, either (1) restore the premises to the same condition as that existing at the time of entering upon the same under this lease, reasonable and ordinary wear and tear and damage by the elements or by circumstances over which the Government has no control excepted, or (2) pay to the lessor a sum of money representing either the diminution in the fair market value of the property due to the failure to restore, or the actual cost of restoration, whichever is the lesser amount."

(2) The following provision will be added: "17. Gratuities to Government Employees.

"(a) The Government may, by written notice to the Lessor, terminate the right of the lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the lessor, or any agent or representative of the lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

"(b) In the event this lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the lessor as it could pursue in the event of a breach of the lease by the lessor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the cost incurred by the lessor in providing any such gratuities to any such officer or employee.

"(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease."

c. On Standard Form 2B, three changes will be made:

(1) On the face of the form, in Clause 3, "Term," after the words, "...but not beyond this lease" the following words will be added: "will automatically renew itself, unless terminated by the Government as hereinafter provided." \*

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\* (2) On the reverse of the form, General Provision 3, "Alterations," will be deleted, and the following general provision will be substituted: "Alterations. The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect additions, structures or signs in or upon the premises hereby leased. Such fixtures, additions or structures shall be and remain the property of the Government and may be removed prior to the expiration or termination of this lease. The lessor may, upon not less than \_\_\_\_\_ days notice to the Government, before termination of the lease, require restoration of the leased premises. In this event, prior to the expiration or termination of this lease, or prior to relinquishment of possession, whichever first occurs, the Government shall, at its sole election, either (1) restore the premises to the same condition as that existing at the time of entering upon the same under this lease, reasonable and ordinary wear and tear and damage by the elements or circumstances over which the Government has no control excepted, or (2) pay to the lessor a sum of money representing either the diminution in the fair market value of the property due to the failure to restore, or actual cost of restoration, whichever is the lesser amount."

(3) The following general provision will be added: "12. Gratuities to Government Employees.

"(a) The Government may, by written notice to the lessor, terminate the right of the lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the lessor, or any agent or representative of the lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such leases; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

"(b) In the event this lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the lessor as it could pursue in the event of a breach of the lease by the lessor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the lessor in providing any such gratuities to any such officer or employee.\*

\* “(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.”

d. ENG Form 527 will be modified by adding the following clauses :

(1) On page 4, the following clause will be added unless the Contract (Lease) is exempt under the rules and regulations of the Secretary of Labor (41 C.F.R. 60): “18. During the performance of this Contract (Lease) , the Contractor (Lessor) agrees as follows:

“(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

“(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

“(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the said labor union or workers’ representative of the Contractor’s commitments under this nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

“(d) The Contractor will comply with all provisions of Executive Order No. 11246 of 24 September 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

“(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of 24 September 1965, and by \*

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- \* the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such roles, regulations and orders.

"(f) In the event of the Contractor's noncompliance with the nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of 24 September 1965 and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(g) The Contractor will include paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of 24 September 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States."

(2) Following Clause 18, above, the nondiscrimination clause will be added:

"19. (a) As used in this section, the term "facility" means stores, shops, restaurants cafeterias, restrooms, and any other facility of a public nature in the building in which the space covered by this lease is located.

"(b) The lessor agrees that he will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, religion, sex, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the lessor solely to tenants, their employees, customers, patients, clients, guests and invitees. \*

Figure 5-12g



\* "(c) It is agreed that the lessor's noncompliance with the provisions of this section shall constitute a material breach of this lease. In the event of such noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law. In the event of termination, the lessor shall be liable for all excess costs of the Government in acquiring substitute space, including but not limited to the cost of moving to such space. Substitute space shall be obtained in as close proximity to the lessor's building as is feasible and moving costs will be limited to the actual expenses thereof as incurred.

"(d) It is further agreed that from and after the date hereof the lessor will, at such time as any agreement is to be entered into or a concession is to be permitted to operate, include or require the inclusion of the foregoing provisions of this section in any existing agreement or concession arrangement or one in which the contracting party other than the lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend. The lessor also agrees that it will take any and all lawful actions as expeditiously as possible, with respect to any such agreement as the contracting agency may direct, as a means of enforcing the intent of this section, including, but not limited to, termination of the agreement or concession and institution of court action."

Figure 5-12h \*

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HEADQUARTERS  
DEPARTMENT OF THE ARMY  
Washington, D.C. 20314

HEADQUARTERS  
UNITED STATES READINESS COMMAND  
MacDill AFB, Florida 33608

HEADQUARTERS  
UNITED STATES ARMY FORCES, READINESS COMMAND  
Fort Monroe, Virginia 23351

MEMORANDUM OF UNDERSTANDING BY DEPARTMENT OF THE ARMY,  
USCINCRÉD, AND USCINCARRED ON ACQUISITION OF MANEUVER RIGHTS  
FOR USREDCOM JOINT TRAINING EXERCISES

1. PURPOSE. To set forth certain policies, procedures, and responsibilities agreed to by the Department of the Army, USCINCRÉD, and USCINCARRED to permit timely and effective acquisition of maneuver rights for USREDCOM joint training exercises.
2. GENERAL.
  - a. Acquisition of maneuver rights for USREDCOM joint training exercises falls into the following two distinct phases:
    - {1} Preliminary phase.
    - (2) Acquisition phase.
  - b. Actions in the preliminary phase are taken prior to six months in advance of the starting date of a given exercise and include:
    - (1) Preliminary field surveys.
    - (2) Detailed real estate study.
    - (3) USCINCRÉD directive to acquire maneuver rights.
    - (4) Congressional, public information and funding plans.
    - (5) USCINCARRED/CGCONARC directive to acquire maneuver rights.
  - c. Actions in the acquisition phase commence approximately six months prior to the starting date of an exercise and include: \*

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\* (1) Notification of Congress of the pending acquisition of maneuver rights.

(2) Initial news release and conduct of public information program.

(3) Conduct of special meetings in proposed maneuver area, if appropriate.

(4) Acquisition of maneuver rights.

(5) Reporting of the status of acquisition.

3. PRELIMINARY PHASE.

a. Preliminary field surveys

(1) These surveys are conducted by the Chief of Engineers at the request of USCINCARRED. Their purpose is to provide broad information on the feasibility, and the cost of acquiring maneuver rights in specific areas for use by USCINCREC in planning and programming these exercises. In addition, component commanders may request the assistance of the District Engineer concerned in the preparation of their environmental assessment and in the preparation of an environmental impact statement, if required. No action will be initiated during preliminary field surveys either to actually acquire maneuver rights or to divulge the intent of the U. S. Army to acquire such rights in the future.

(2) The Chief of Engineers will be given a minimum of three months in which to complete a preliminary field survey.

(3) USCINCREC may request the Chief of Engineers to conduct preliminary field surveys at any time. Information copies of such requests will be provided USCINCARRED. The Chief of Engineers will notify all interested Department of the Army staff agencies of such requests, to include the Assistant Chief of Staff for Force Development (ACSFOR), the Deputy Chief of Staff for Logistics DCSLOG), the Chief of Information (CINFO), and the Office of Chief of Legislative Liaison (OCLL). Reports of preliminary field surveys will be provided directly to USCINCREC with information copies forwarded to USCINCARRED and interested Department of the Army staff agencies. Such reports will be retained on an "Official Use Only" basis.

(4) Funds to conduct surveys will be provided out of joint exercise funds available to USCINCARRED. The Chief of Engineers will request such funds directly from USCINCARRED.

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\* b. Detailed real estate study.

(1) The Chief of Engineers will conduct a detailed real estate study for each maneuver area requiring the acquisition of maneuver rights. The study will be made prior to the start of any actual acquisition when a specific maneuver area has been selected by USCINCREC for a joint training exercise as a result of information provided to him in preliminary field surveys. The conduct of a detailed real estate study is indicative that USCINCREC will subsequently direct the acquisition of maneuver rights in the area studied. Its purpose is to establish a detailed plan and consider all ramifications including costs and problems involved in actual acquisition by the appropriate Division and District Engineers.

(2) USCINCREC will request the Chief of Engineers to conduct a detailed real estate study not later than nine months prior to the starting date of a given exercise. Copies of such requests will be furnished USCINCARRED. The study will be completed and a report submitted to USCINCREC with information copies to USCINCARRED and interested Department of the Army staff agencies not later than seven months prior to the starting date of the exercise to permit taking other preliminary phase actions before the start of the acquisition phase.

(3) After analyzing the detailed real estate study, USCINCREC will make the final decision for the maneuver area and issue a directive to acquire maneuver rights.

c. USCINCREC directive to acquire maneuver rights.

(1) This directive is given to USCINCARRED with an information copy to the Chief of Engineers and specifies location, size, period of utilization, estimated cost of the acquisition of maneuver rights, specific joint exercise funds to be used, and the target date to start acquisition. The target date will not be later than six months before the starting date of exercise.

(2) The availability of funds to effect acquisition will be cleared with USCINCARRED prior to issuing the directive.

d. Congressional; public information and funding plans.

(1) In carrying out USCINCREC's directive to acquire maneuver rights, USCINCARRED is responsible for the coordination of all matters pertaining to the timely notification of appropriate Members of Congress; making the initial approved news release (the \*

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preparation of the initial news release is the responsibility of USCINCREDE]; the conduct of special meetings in the maneuver area with state and local dignitaries, when appropriate; the conduct of overall information program, and the provision of necessary funds to support the acquisition.

(2) Plans to insure proper handling of these matters will normally be developed by USCINCARRED at a meeting held by USCINCREDE representatives with appropriate Department of the Army staff agencies (including but not limited to ACSFOR, DCSLOG, CINFO, OCLL, and Chief of Engineers), appropriate Division and District Engineer personnel, and representatives of the CONUS Army that will function as USARRED/CONARC agent for the acquisition.

e. USARRED/CONARC directive to acquire maneuver rights. This directive will be issued not later than six months prior to the starting date of the exercise. It will designate the CONUS Army that will function as the USARRED/CONARC agent for the acquisition and set forth all details for notification of Members of Congress; the initial news release; the conduct of the public information program; the conduct of special meetings with dignitaries, if appropriate; and funding.

#### 4. ACQUISITION PHASE.

a. Notification of Congress pending acquisition of maneuver rights. Such notification will be made by the Department of the Army (OCLL). Details of the notification will be as agreed in prior coordination between the Department of the Army (OCLL) and USARRED/CONARC as reflected in USARRED/CONARC directive. No overt act of land acquisition will be performed nor news release made prior to the notification of the Members of Congress concerned.

b. Initial news release and conduct of public information program.

(1) The initial news release will be prepared at USREDCOM and released in accordance with instructions of USCINCREDE as implemented by USARRED/CONARC directive.

(2) Public information program will be conducted by CONUS Army designated in USARRED/CONARC directive.

c. Conduct of special meetings in the proposed maneuver area. When appropriate, special meetings will be conducted with state and local dignitaries for the purpose of enlisting their support \*

Figure 5-13c

ER 405-1-12

Change 9

30 May 79

\* towards achieving a successful land acquisition program. Guidance for the conduct of such meetings will be contained in the USARRED/CONARC directive.

d. Acquisition of maneuver rights. USARRED/CONARC will have the overall responsibility for such acquisition. This responsibility will be executed by the CONUS Army designated as the agent for acquisition through appropriate Division and District Engineers in accordance with AR 405-10.

e. Reporting of the status of acquisition.

(1) The District Engineer designated to acquire maneuver rights will furnish reports of the status of such acquisition to USCINCRCD, USCINCARRED, appropriate Department of the Army staff agencies (ACSFOR, DCSLOG, Chief of Engineers) and to CONUS Army designated as USARRED/CONARC agent.

(2) Status reports will be furnished biweekly during the first five months and weekly during the last month of the acquisition phase. Reports will include but will not be limited to the following:

- (a) Total acres required.
- (b) Total landowners involved.
- (c) Total landowners contacted and number of agreements signed.
- (d) Total acres represented by such agreements.
- (e) Total landowners refusing permits and acres represented by such landowners.

FOR THE SECRETARY OF THE ARMY AND COMMANDERS IN CHIEF:

/s/ Verne L. Bowers  
VERNE L. BOWERS  
Major General, USA  
The Adjutant General

/s/ Jack E. Compton  
JACK E. COMPTON  
Colonel, AGC  
Adjutant General

/s/ E. Thomas  
E. THOMAS  
Colonel, AGC  
Adjutant General

Figure 5-13d \*

ER 405-1-12  
 Change 9  
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<b>15% VALUATION CERTIFICATE</b> (Under Section 322, Act of 30 June 1932, 47 Stat. 412)		LEASE NO.
		DATE
1. NAME OF LESSOR		2. NAME AND LOCATION OF BUILDING
3. TO BE USED BY		FOR
4. TOTAL AREA (Rentable space in building)		SQ. FT.
5. TOTAL AREA LEASED TO GOVERNMENT:		SQ. FT.
a. SQUARE FEET		
b. PERCENT OF ITEM NO. 4		%
6. ASSESSMENT OF ENTIRE PREMISES:		
a. ASSESSED VALUE		\$
b. LEGAL RATIO TO TRUE VALUE		%
7. ASSESSED VALUE OF PREMISES LEASED:		
a. ASSESSED VALUE (6a x 5b)		\$
b. TRUE VALUE COMPUTED ON ASSESSMENT (7a + 6b)		\$
8. STATE WHETHER ASSESSMENT IS INDICATIVE OF TRUE MARKET VALUE, AND SOURCE OF INFORMATION:		
9. FAIR MARKET VALUE, IF APPRAISED		\$
10. 15% OF VALUE OF PREMISES LEASED TO GOVERNMENT:		
a. BASED ON ASSESSED VALUE (15% of item 7b)		\$
b. BASED ON FAIR MARKET VALUE, IF APPRAISED (15% of item 9)		\$
11. RENTAL:		
a. SQUARE FEET		SQ. FT.
b. PER ANNUM		\$
12. REASONABLE VALUE OF SERVICES AND UTILITIES (Check applicable box)		
<input type="checkbox"/> JANITOR <input type="checkbox"/> ELECTRICITY <input type="checkbox"/> HEAT		
<input type="checkbox"/> WATER <input type="checkbox"/> ELEVATOR <input type="checkbox"/> OTHER		
<b>TOTAL COST</b>		\$
13. NET RENT PER ANNUM (Item 11 minus Item 12)		\$
14. LEASE FOR HOUSING (If "Yes", answer <input type="checkbox"/> YES <input type="checkbox"/> NO                      Items 14a and 14b)		14a. NO. OF OCCUPANTS
		14b. NO. OF ROOMS
15. REMARKS		
TYPED NAME AND TITLE		SIGNATURE

ENG FORM 1 MAY 73 869-R

EDITION OF 1 JAN 46 IS OBSOLETE

GPO 944 856

5-293

Figure 5-14 \*

Next page is 5-295

\*

**DEPARTMENT OF THE ARMY**

**OWNER'S TITLE GUARANTEE (INSURANCE) POLICY**

ISSUED BY

-----  
(Name of Corporation)

Policy Number

Project

Amount \$

Tract No.

----- a ----- Corporation, herein called  
(Name of Corporation) (State)  
the Corporation, for a valuable consideration

HEREBY Guarantees (Insures)

THE UNITED STATES OF AMERICA

hereinafter called the Insured, against loss or damage not exceeding

Dollars, together with costs and expenses which the Corporation may become obligated to pay as provided in the Conditions and Stipulations hereof, which the Insured shall sustain by reason of:

any defect in or lien or encumbrance on the title to the estate or interest covered hereby in the land described or referred to in Schedule A, existing at the date hereof, not shown or referred to in Schedule B or excluded from coverage by the General Exceptions;

all subject, however, to the provisions of Schedules A and B and to the General Exceptions and to the Conditions and Stipulations hereto annexed; all as of the day of , 19 , the effective date of this policy.

In Witness Whereof, the Corporation has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

COUNTERSIGNED : -----  
(Name of Corporation)

By -----  
President.  
By -----  
Secretary.

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REPLACES ENG FORM 1015, 1 MAY 66 WHICH MAY BE USED.

ENG FORM 1015-R, Jun 83

(ER 405-1-11 and EP 405-1-2)

Figure 5-15



ER 405-1-12  
Change 21  
1 Nov 83

**SCHEDULE "A"**

1. The estate or interest in the land described or referred to in this schedule covered by this policy is:

(Will be shown as a fee or such lesser estate or interest owned by the person or party named in paragraph 2 of this Schedule.)

2. Title to the estate or interest covered by this policy at the date hereof is vested in:

3. The land referred to in this policy is described as follows:

**SCHEDULE "B"**

This policy does not guarantee (insure) against loss or damage by reason of the following:

1. Current and delinquent taxes and assessments as follows:

(List all taxing districts in which the land is situated and other taxing authorities that have jurisdiction over said land for the levy of taxes; showing lien date for each and amounts for all such assessments that have not been paid on the date of the policy.)

2. Special Exceptions such as recorded easements, liens, etc., showing in addition the persons or parties holding such interests of record, and who the Company would require to convey such interest or who would be the proper parties defendant in a condemnation proceeding to eliminate such matter. The writeup could be substantially as follows:

An easement for road purposes conveyed to -----  
----- by deed recorded-----

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\*

\*

**General Exceptions:**

1. **Governmental Powers:** Because of limitations imposed by law on ownership and use of property, or which arise from governmental powers, this policy does not guarantee (insure) against:

- a. Consequences of the future exercise or enforcement or attempted exercise or enforcement of police power, bankruptcy power, or power of eminent domain, under any existing or future law or governmental regulations;
- b. Consequences of any law, ordinance, or governmental regulation, now or hereafter in force (including building and zoning ordinances), limiting or regulating the use or enjoyment of the property, estate, or interest described in Schedule "A," or the character, size, use or location of any improvement now or hereafter erected on said property.

2. **Matters Not of Record:** The following matters which are not of record at the date of this policy are not insured against:

- a. Rights or claims of parties in possession not shown of record;
- b. Questions of survey;
- c. Easements, claims of easement or mechanics liens where no notice thereof appears of record; and
- d. Conveyances, agreements, defects, liens or encumbrances, if any, where no notice thereof appears of record; provided, however, the provisions of this subparagraph 2(d) shall not apply if title to said estate or interest is vested in the United States of America on the date hereof.

3. **Matters Subsequent to Date of Policy:** This policy does not guarantee (insure) against loss or damage by reason of defects, liens or encumbrances created subsequent to the date hereof.

4. **Refusal to Purchase:** This policy does not guarantee (insure) against loss or damage by reason of the refusal of any person to purchase, lease, or lend money on the property, estate, or interest described in Schedule "A."

**CONDITIONS**

**Notice of Actions:** If any action or proceeding shall be begun or defense asserted which may result in an adverse judgement or decree resulting in a loss for which this Company is liable under this policy, notice in writing of such action or proceeding or defense shall be given by the Attorney General to this Company within 90 days after notice of such action or proceeding or defense has been received by the Attorney General; and upon failure to give such notice then all liability of this Company with respect to the defect, claim, lien, or encumbrance asserted or enforced in such action or proceeding shall terminate. Failure to give notice, however, shall not prejudice the rights of the party guaranteed (insured), (1) if the party insured shall not be a party to such action or proceeding, or (2) if such party, being a party of such action or proceeding be neither served with summons therein nor have actual notice of such action or proceeding, or (3) if this Company shall not be prejudiced by failure of the Attorney General to give such notice.

**Notice of Writs:** In case knowledge shall come to the Attorney General of the issuance or service of any writ of execution, attachment, or other process to enforce any judgement, order or decree adversely affecting the title, estate, or interest guaranteed (insured) said party shall notify this Company thereof in writing within 90 days from the date of such knowledge; and upon a failure so to do, then all liability of this Company in consequence of such judgement, order, or decree or matter thereby adjudicated shall terminate unless this Company shall not be prejudiced by reason of such failure to notify.

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\* **Defense of Claims:** This Company agrees, but only at the election and request of the Attorney General of the United States, to defend at its own cost and expense the title, estate, or interest hereby guaranteed (insured) in all actions or other proceedings which are founded upon or in which it is asserted by way of defense, a defect, claim, lien, or encumbrance against which this policy guarantees (insures), provided, however, that the request to defend is given in sufficient time to permit the Company to answer or otherwise participate in the proceeding. If any action or proceeding shall be begun or defense be asserted in any action or proceeding affecting or relating to the title, estate or interest hereby guaranteed (insured) and the Attorney General elects to defend at the Government's expense, the Company shall upon request cooperate and render all reasonable assistance in the prosecution or defense of such proceeding and in prosecuting appeals.

If the Attorney General shall fail to request and permit the Company to defend, then all liability of the Company with respect to the defect, claim, lien, or encumbrance asserted in such action or proceeding shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest such defenses and actions as it shall conceive should be taken and the Attorney General shall present the defenses and take the actions of which the Company shall advise him in writing, then then the liability of the Company shall continue; but in any event the Company shall permit the Attorney General without cost or expense to use the information and facilities of the Company for all purposes which he thinks necessary or incidental to the defending of any such action or proceeding or any claim asserted by way of defense therein and to the prosecuting of an appeal.

**Comprise of Adverse Claims:** Any compromise, settlement, or discharge by the United States or its duly authorized representative of an adverse claim, without the consent of this Company shall bar any claim against the Company hereunder. Provided, however, that the Attorney General may at this election submit to the issuing company for approval or disapproval any proposed compromise, settlement, or discharge of any adverse claim and in the event of the consent of the issuing company to the proposed compromise, settlement or discharge it shall be liable for the full payment of the full amount paid.

**Statement of loss:** A statement in writing of any loss or damage sustained by the party guaranteed (insured), and for which it is claimed this Company is liable under policy, shall be furnished by the Attorney General to this Company within 90 days after said party has notice of such loss or damage; and no right of action shall accrue under this policy under 30 days after such statement shall have been furnished. No recovery shall be had under this policy unless suit be brought thereon within 1 year after said period of 30 days. Failure to furnish such statement of loss or to bring such suit within the times specified shall not affect the Company's liability under this policy unless this Company has been prejudiced by reason of such failure to furnish a statement of loss or bring such suit.

**Policy Reduced by Payments of Loss:** All payments of loss under this policy shall reduce the amount of this policy pro tanto.

**Amendment of Policy:** No provision or condition of this policy can be waived or changed except by writing endorsed hereon or attached hereto signed by the President, a Vice President, the Secretary, and Assistant Secretary or other validating officer of the Company.

**Notices, Where Sent:** All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at (insert proper address) .

**FOR ILLUSTRATION PURPOSES ONLY**  
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\*

TABLE 5-1. REGULATORY REFERENCES

SECTION I

40 U.S.C. 255  
 10 U.S.C. 2304  
 Public Law 91-393  
 Public Law 91-646  
 Defense Acquisition Regulation (formerly Armed Services  
 Procurement Regulation)  
 ER 37-2-10  
 ER 1180-1-1  
 "Standard for the Preparation of Title Evidence in Land  
 Acquisitions by the United States, 1970" - available from  
 the Department of Justice, Land and Natural Resources  
 Division, WASH DC 20530-0001

\*

SECTION II

DOD Directive 4165.12  
 AR 405-10  
 ER 1180-1-1

SECTION IV

AR 405-10  
 ER 405-1-12 - Chapters 2, 4, 5 (Section II), 11, and 12  
 Land and Natural Resources Division Directive No. 11-68 -  
 available from the Department of Justice, Land and Natural  
 Resources Division, WASH DC 20530-0001

\*

SECTION V

Executive Order 11063, 20 Nov 62  
 Executive Order 11246, 24 Sep 65  
 DOD Directives 4165.12, 4165.16, 4165.20, 4270.24, 5160.58  
 7040.2  
 DOD Instruction 5305.5  
 DOD Construction Criteria Manual 4270.1-M  
 AR 27-20  
 AR 140-485  
 AR 405-10  
 AR 405-15  
 AR 415-15  
 AR 415-25

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AR 415-34  
AR 415-35  
AR 420-10  
AFR 87-1  
ER 405-1-12 - Chapter 5 (Sections I, IV, and VI) and Chapter 10  
GAO Policy and Procedures Manual for Guidance of Federal  
Agencies - available from U.S. General Accounting Office,  
WASH DC 20314-0001

SECTION VI

AR 405-10  
AR 415-10  
ER 405-1-12 - Chapter 11 (Section X)

SECTION VII

AR 405-10  
AFR 87-1  
ER 405-1-12 - Chapters 2, 3, 4, and 5 (Sections I and II)

\*

ENDORSEMENT

\*

Attached to Policy No.

Issued by

\_ \_ \_ \_ TITLE INSURANCE COMPANY

Schedule A of the above policy is hereby amended in the following particulars:

(a) Paragraph 1 of Schedule A is hereby deleted and the following is substituted:

1. The estate or interest in the land described or referred to in this Schedule covered by this policy is:

(An easement for \_ \_ \_ \_ \_ .)

(b) Paragraph 2 of Schedule A is hereby deleted and the following is substituted:

2. Title to the estate or interest covered by this policy at the date hereof is vested in:

THE UNITED STATES OF AMERICA

(Follow with appropriate reference to Declaration of Taking or Deed.)

(c) Paragraph 3 of Schedule A is hereby deleted and the following is substituted:

3. The land referred to in this policy is situated in the County of \_ \_ \_ \_ \_ , State of \_ \_ \_ \_ \_ , and is described as follows:  
(Here give description of land actually acquired.)

Schedule B of the above policy is hereby amended in the following particulars:

(a) Paragraphs numbered \_ \_ \_ , \_ \_ \_ , \_ \_ \_ and \_ \_ \_ of Schedule B are hereby deleted.

(Enumerate those paragraphs eliminated by proper releases, conveyances, etc,) \*

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\* (b) Schedule B of the above policy is amended by adding the following paragraphs numbered \_ \_ \_ to \_ \_ \_, inclusive.

Subparagraph 2(d) of the General Exceptions of the above policy is hereby deleted.

The effective date of the above policy is hereby extended to \_ \_ \_

(Date of recording of Deed or Notice of Action, since no insurance is to be afforded as to regularity of proceedings.)

The total liability of the Company under said policy and this endorsement thereto shall not exceed, in the aggregate, the sum of \$ \_ \_ \_ \_ and costs which the Company is obligated under the Conditions and Stipulations thereof to pay.

This endorsement is made a part of said policy and is subject to the Schedules, General Exceptions and the Conditions and Stipulations therein, except as modified by the provisions hereof.

Dated:

\_ \_ \_ \_ \_ TITLE INSURANCE COMPANY,

By \_ \_ \_ \_ (Authorized Officer) \_ \_ \_ \_ \*

ASSISTANT ATTORNEY GENERAL  
LAND AND NATURAL RESOURCES  
DIVISION

ER 405-1-12  
Change 4  
5 Sep 78

Department of Justice  
Washington, D.C. 20530

\* DELEGATION TO THE DEPARTMENT  
OF THE ARMY FOR THE APPROVAL  
OF THE TITLE TO LANDS BEING  
ACQUIRED FOR FEDERAL PUBLIC  
PURPOSES.

Pursuant to the provision of Public Law 91-393, approved September 1, 1970, 84 Stat. 835, amending R. S. 355 (40 U.S.C. 255), and acting under the provisions of Order No. 440-70 of the Attorney General, dated October 2, 1970, the delegation of authority issued to your Department on October 2, 1970, is hereby amended to provide that the responsibility for the approval of the sufficiency of the title to land for the purpose for which the property is being acquired by purchase or condemnation by the United States for the use of your Department or any other department or agency for which the Department of the Army is authorized to acquire land is, subject to the general supervision of the Attorney General and to the following conditions, hereby delegated to your Department.

This delegation of authority is further subject to:

1. Compliance with the regulations issued by the Assistant Attorney General on October 2, 1970, a copy of which is enclosed.

2. This delegation is limited to:

(a) The acquisition of land for which the title evidence, prepared in compliance with these regulations, consists of a certificate of title, title insurance policy, or an owner's duplicate Torrens certificate of title.

(b) The acquisition of lands valued at \$100,000.00 or less, for which the title evidence consists of abstracts of title or other types of title evidence prepared in compliance with said regulations. \*



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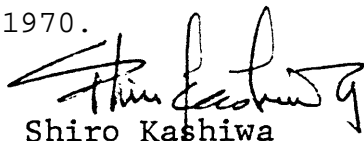
Change 4

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\* As stated in the above-mentioned Act, any Federal department or agency which has been delegated the responsibility to approve land titles under the Act may request the Attorney General to render his opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles.

This 4th day of December, 1970.



Shiro Kashiwa

Assistant Attorney General  
Land and Natural Resources Division \*

**Department of Justice**  
**Washington**

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\*  
REGULATIONS OF THE ATTORNEY GENERAL PROMULGATED IN  
ACCORDANCE WITH THE PROVISIONS OF PUBLIC LAW 91-393  
APPROVED SEPTEMBER 1, 1970, 84 STAT. 835, AN ACT  
TO AMEND SECTION 355 OF THE REVISED STATUTES, AS  
AMENDED, CONCERNING APPROVAL BY THE ATTORNEY  
GENERAL OF THE TITLE TO LANDS ACQUIRED FOR  
AND ON BEHALF OF THE UNITED STATES  
AND FOR OTHER PURPOSES

---



---

Pursuant to the above-mentioned Act, the following regulations are hereby issued by Assistant Attorney General Shiro Kashiwa under Order No. 440-70 of the Attorney General, dated October 2, 1970 , for the purpose of establishing standards governing the approval of the title to lands to be acquired for Federal public purposes.

1. APPROVAL OF TITLE PRIOR TO THE PAYMENT  
OF THE PURCHASE PRICE

(a) When agencies acquire land without obtaining the title opinion of the Attorney General pursuant to delegations of authority from the Attorney General, the title evidence must be examined by competent attorneys and the title must be approved in compliance with provisions of the above-mentioned statute, Also, all title objections relating to outstanding rights, liens or claims which, if not eliminated, might possibly defeat or adversely affect the Government's title or cause losses to the United States, must be eliminated prior to the payment of the purchase price for the land.

(b) If the vendor is unable to convey all of the lands or interests provided for under the terms of the option or contract agreement, a proportionate reduction must be made in the agreed purchase price or the department or agency must \*

determine that it was intended to acquire the property or interest described in the deed for the consideration stated in the option or contract.

## 2. TITLE EVIDENCE

(a) The title evidence to the lands must be promptly obtained in reasonable compliance with the "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States" issued by this Department, hereinafter referred to as the "Standards." which publication is incorporated herein by this reference. The title evidence must cover and properly describe all lands and interests which are to be acquired. The usual conditions of title policies which provide for the subrogation of the rights of the insured and for the right of title companies to defend suits against the insured are not applicable to the Federal Government and have been deleted from the approved form of policy. Other provisions of the prescribed form are more advantageous to the Government than the provisions of the usual forms of policies.

(b) Before contracting for the preparation of title evidence, the agency must determine, if the contractor is an attorney who is to prepare abstracts of title, that he is qualified and authorized to prepare abstracts; that his reputation in the community is satisfactory and that he has complied with any statutory or other requirements. If certificates of title or policies of title insurance are to be issued the agency must determine that the admitted assets of the corporation, after deducting existing liabilities secured and unsecured and excluding any trust and escrow funds, are sufficient to permit the company to assume the required risk under the certificate or policy, and that the corporation is authorized to issue these forms of title evidence in the jurisdiction in which the lands are located.

(c) Also preliminary and final certificates of title and insurance binders and policies must, except as to easements to be acquired for nominal or very small considerations, set out

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\* the risk assumed which must be in an amount not less than the liability required in the "Standards." Occasionally title companies will issue such evidence which includes statements that no monetary liability is assumed by the company or the certificates or policies may contain provisions which may prevent a recovery from the title company in the event of a title loss. Such statements or provisions are not acceptable. Also, certificates of title and title insurance policies which limit the liability of the title companies by providing that the United States is required, as co-insurer or otherwise to assume any portion of the liability, are not acceptable.

### 3. CONVEYANCES BY CORPORATIONS

(a) When the Government's vendor is a corporation and the title evidence consists of a certificate of title or an abstract of title the interested department or agency must, in addition to the requirements set out in the "Standards," obtain proof of the validity of the corporate existence and the corporation's authority to convey the land. This is not required when the title evidence consists of satisfactory title insurance policies since this type of title evidence is not limited to a search of the public records.

### 4. AUTHORITY TO ACQUIRE LANDS

(a) Before an agency of the Government may acquire real property it is essential that the Congress has authorized such acquisition, either specifically or by clear inference. Of course any interest may be acquired in real property which may be authorized by the Congress, however, it is very seldom that a particular interest is authorized by legislation.

(b) Any deficiency in the agency's statutory authority to acquire lands or any lack of appropriations to pay for the property must be remedied before processing further. These legal principles should be kept in mind when looking for defects: \*

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(1) No land shall be purchased by the United States except under a law authorizing such purchase. R.S. § 3736, 41 U.S.C. sec. 14.

(2) Authority to purchase land on account of the United States need not be conferred by express provision of statute but may be implied. 40 Op.A.G. 69-70.

(3) The authorization of a Federal program and an appropriation to pay for it is an implied authority to acquire the property necessary to carry out the program. United States v. Kennedy, 278 F.2d 121 (C.A. 9, 1960).

(4) The proposed acquisition must comply with any conditions precedent set up by the authorizing statute. Maiatico v. United States, 302 F.2d 880 (C.A. D.C. 1962). E.g., it may require that land shall be acquired only within a specified area. See sec. 8(a), Act of September 9, 1959, 73 Stat. 479, 481, repealed by sec. 1, Act of June 8, 1962, 76 Stat. 92; Act of September 28, 1962, 76 Stat. 650. Or the consent of the state legislature may be required. E.g., see 16 U.S.C. sec. 516. Or the former owners may not be deprived of the use and occupancy of the property without their consent for a set period of 25 years. See sec. 4(a)(1), Act of August 7, 1961, 75 Stat. 284, 288.

(c) If defects in the agency's authority to acquire are found, or if the extent of that authority is so unclear as to raise serious doubts, the simplest solution may be a clarifying statute or explicit authorization in the appropriation act.

5. CHARACTER OF TITLE WHICH  
MAY BE APPROVED

(a) The agency must determine that the proposed interest in property is in accord with the authorizing legislation and that such interest is sufficient for the purposes for which the property is being acquired -- also that the purchase price is commensurate with such interest.

\*

(b) Frequently vendors desire to convey lands to the Government by deeds which contain provisions for the reversion of the title when the property ceases to be used for a specified purpose. Also there may be restrictive covenants or agreements in conveyance to prior owners under which the title might revert to the grantors in such deeds upon the use of the property for an unauthorized purpose or for other reasons. When permanent type improvements or improvements of substantial value are to be erected on lands, a defeasible title to such lands is not acceptable and must not be approved, unless the estate is clearly authorized by the Congress.

(c) Other covenants and conditions in the deeds to the United States or in prior deeds may limit the use of the property in a manner which may prevent the sale and disposition of the property under laws relating to the disposition of surplus property so as to prevent the sale and disposal of a portion of the Government's investment in the property. Titles are not acceptable which are subject to such covenants and conditions in the absence of clear authorizing legislation.

(d) Restrictive covenants related solely and strictly to racial and religious use and occupancy, regardless of provisions for the reversion of the title, may be ignored and no action need be taken to eliminate such covenants since the courts have held that such covenants are not enforceable. If the instrument containing the covenant provides for other covenants as to the use or conveyance of the lands, any legal rights to enforce such additional covenants must be eliminated.

(e) When the fee title to land is donated to the United States for the purpose of erecting thereon certain specified permanent improvements or facilities, the fee title may be accepted subject to the reservation of a right of reverter to the grantor in the event construction of such improvements or facilities is not commenced on or before a date specified in the conveyance. The right of reverter must terminate immediately upon the expenditure of funds appropriated for the construction of such improvements or facilities.\*

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(f) A defeasible fee title to land may be acquired by purchase or donation when no permanent improvements are to be erected thereon, provided that the statute authorizing the acquisition in question does not preclude acquisition of title to the interest which the agency intends to acquire, the interest intended to be acquired is sufficient to permit the use of the land contemplated, and the consideration for the land has been determined with reference to the value of the limited interest that is acquired. In the event it is decided at some future time to erect permanent improvements on such land, the provision for defeasance must be eliminated.

(g) When it is desired to accept the title to lands, subject to any rights of reversion, the opinion of the Attorney General must be requested and full supporting facts containing a reference to any authorizing authority must be submitted for consideration.

(h) While titles to property need not be marketable, as determined by local laws, such titles must be safe from attack and sufficient to protect the Federal investment in the property. Federal departments and agencies must exercise sound legal judgment in determining the validity of titles to lands and, in case of doubt of such validity, the Attorney General must be requested to render his title opinion pursuant to the above-mentioned Act prior to the payment of the purchase price.

6. TAXES AND ASSESSMENTS AND  
OTHER LIENS

(a) Prior to or at the time of the acquisition of the title to thre property, except as to certain easements as hereinafter set out, all liens against the title must be fully paid and satisfied or adequate provision should be made therefor. This is also true of assessments in improvement districts which are liens and payable in future instruments. When the current or future taxes are liens on property at the time of acquisition and are not payable at that times except as to certain easement acquisitions hereinafter set out, at least 20

- 7 -

\*percent in excess of previous years taxes must be withheld to permit the payment of the taxes, when they are due. If there has been a reassessment of the property or improvements have been made since the assessment for the previous year, sufficient additional funds must be withheld to pay the increased taxes. When states or municipalities have adopted proration statutes which authorize the cancellation of the portion of the year's taxes for the period beginning with the conveyance to the United States, the funds to be withheld may accordingly be reduced.

(b) Although United States v. Alabama, 313 U.S. 274 (1941), holds that the purchase by the United States after the lien date fixed by statute does not invalidate the lien, it cannot be enforced against the United States. If the land were sold by the Government, the tax lien may be enforced. Moreover, the Federal Government should assist the local governments in the collection of taxes which are liens on property at the time of acquisition.

(c) It is realized that the withholding of funds to pay taxes, which are liens but not due and payable at the time of the acquisition of easements, and the later payment of the taxes and accounting to the vendors for the funds represent a burden. However, in those instances in which a sum representing the greater portion of the total value of the property is paid for an easement, provision must be made for the payment of all taxes constituting liens against the land.

(d) A uniform and reasonable procedure must be followed which will reduce the burden and adequately protect the Government's interest. Therefore, in the closing of the direct purchase of easements, the titles may be approved subject to the lien of the current taxes, if they are not due and payable, without any provision for the payment of such taxes if the purchase price of the easement is not in excess of 50 percent of the reasonable value of the entire contiguous property of the vendor as determined by the appraisal obtained by the acquiring agency. \*



(e) If the consideration to be paid for an easement is more than 50 percent of the appraised value of the tract and the current taxes are not payable, funds must be withheld from the purchase price to pay the current taxes when they are due.

(f) Large mortgage companies frequently make charges of approximately \$50.00 or more as service fees to issue partial releases or subordination agreements for easements. In order to meet this problem the title to easements may be approved subject to outstanding encumbrances, such as mortgages, deeds of trust and vendors' liens, where the properties are not encumbered in excess of 50 percent of their reasonable value and the considerations being paid for the easement do not represent sums in excess of 10 percent of the value of the tract. The 10 percent may appear to be conservative; however, it must be anticipated that changes in market conditions may greatly affect real estate values.

(g) It is not intended strictly to limit the approval of titles to easements subject to infirmities to those easements to be acquired for the minor considerations indicated above; however, the agency undertaking to approve the title should bear in mind that as to easements to be acquired for large considerations there is frequently a greater possibility that some of the infirmities might jeopardize the Government's interests.

(h) In other words, the title to an easement costing \$150.00 might be approved subject to a possible outstanding lien or minor interest due to the savings in the time and expense necessary to eliminate such interest, whereas in acquiring an easement for the payment of \$10,000.00 or more, the approval of the title subject to the lien or interest would probably not be justified.

#### 7. DEED TO THE UNITED STATES

(a) The deed to the United States must be prepared in compliance with the "Standards. "

\* 8. FINAL TITLE PROCEDURE AND EVIDENCE

(a) Prior to consummation of purchases and the payment of the agreed considerations to property owners the following action should be taken:

(1) The abstractor or title company should be required to examine the records covering the period since the date of the last testification to determine that no adverse change in title has occurred. If such change has occurred, the necessary action must be taken to eliminate any possible claims.

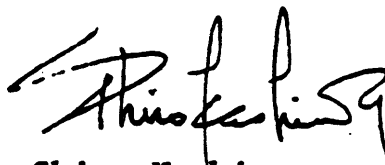
(2) A representative of the acquiring agency must make an inspection of the premises to ascertain whether any persons are holding in whole or in part adversely to the United States or its vendors, whether there are any adverse encroachments on the site and whether any material has been furnished or work performed under which mechanics or materialmen's liens may be asserted. If any persons other than the Government's vendors are in possession of any portion of the property, disclaimers must be executed by such persons and delivered to the representative of the agency. Also, releases must be obtained if the inspection indicates that recent work has been performed under which such claims might be asserted. Forms of certificate and inspection and disclaimer are contained in the above-mentioned "Standards."

(3) The representative of the agency must prepare a closing statement covering in detail all charges to be eliminated by payment of money to be deducted from the purchase money check, including all taxes and assessments constituting liens against the property except as to certain easements as set out in 6(d) above (in the absence of an authorized purchase contract providing otherwise, the payment of such taxes, assessments, stamp or transfer taxes must be entirely borne by the vendor), regardless of whether the of taxes and assessments have been determined (see 6(a) above); outstanding judgments, both State and Federal; mortgages, or deeds of trust; amounts reserved under any bonds for title affecting the acquired land; and all liens, statutory or otherwise. \*

- 10 -

(4) After the recordation of the deed to the United States and all instruments releasing liens or encumbrances, the title evidence must be continued to the date of the closing and the recordation of such deed and instruments, and, if the preliminary title evidence consists of a certificate of title or title insurance binder, final certificates of title or title policies, in proper form, must be obtained showing that valid title is vested in the United States.

Issued this 2nd day of October 1970.

A handwritten signature in black ink, appearing to read "Shiro Kashiwa". The signature is written in a cursive style with a large, sweeping initial "S".

**Shiro Kashiwa**

Assistant Attorney General  
Land and Natural Resources Division

5-214

Figure 5-2k

ATTORNEY'S FINAL TITLE OPINION

\* Re: \_\_\_\_\_ (Name of Project) Homeowners Assistance program  
\_\_\_\_\_ (Tract No. ) or (Application No. \_\_\_\_\_)

Grantor: \_\_\_\_\_

Address of Property: \_\_\_\_\_

I, \_\_\_\_\_, do hereby certify:

(1) That I am an Attorney employed by the Department of the Army, \_\_\_\_\_ District, Corps of Engineers, \_\_\_\_\_, \_\_\_\_\_, and am authorized to pass on the sufficiency of title to land under the delegation of authority issued by the Attorney General of the United States on 2 October 1970, as amended, and as implemented by the Department of the Army;

(2) That I have examined the title evidence and related papers pertaining to certain land, located at the above address, which is more particularly described in the inclosed deed; and

(3) That the title evidence and related papers disclose valid title to (Said land) (the interests in said land as set forth in the deed) to be vested in the United States of America, subject to the rights, interests or easements noted in Schedule A attached hereto, which, it has been determined, will not interfere with the proposed use of the land. 1/

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Attorney)

1/ For Homeowners Assistance Program cases, substitute the following paragraph: "(3) That the title evidence and related papers disclose valid marketable title to said land to be vested in the United States of America, subject to the rights, interests or easements noted in Schedule A attached hereto." \*

\*

SUMMARY

Summary of status of acquisition of all land included in  
 Real Estate Directive No. \_\_\_\_\_, dated \_\_\_\_\_,  
 issued by \_\_\_\_\_, directing acquisition of  
 (USAF, AFIR, or Major Command)  
 \_\_\_\_\_ acres in fee, \_\_\_\_\_ easements over \_\_\_\_\_  
 (type)  
 acres, leasehold interest in \_\_\_\_\_ acres, and \_\_\_\_\_  
 (Relocations, Other  
 \_\_\_\_\_, in a total estimated amount of \$\_\_\_\_\_.  
 Elements)

Method of acquisition	Total Tracts	Total Acres	Total Dollars
Purchase completed			
Accepted offers to sell (Purchase not completed)			
Declarations of taking filed			
This proposed declaration of taking			
Under negotiation			<u>1/</u>
Tracts not appraised			<u>2/</u>
<b>Total</b>			

1/ Appraised value

2/ Estimated value

\*

FIGURE 5-5

Part 1

(DEPARTMENT OF THE ARMY MILITARY PROJECTS)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	DECLARATION
vs.	)	OF
	)	TAKING
ACRES OF LAND, MORE	)	
OR LESS, SITUATE IN	)	
COUNTY, STATE OF	)	CIVIL NO. _____
AND	)	
ET AL,	)	
Defendants	)	

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

I, \_\_\_\_\_, Secretary of the Army,  
do hereby declare that:

1. (a) The land hereinafter described is taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S. C. 258aJ, and acts supplementary thereto and amendatory thereof, and under the further authority of the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257); Section 2663 1/ of Title 10, United States Code, which authorizes the acquisition

1/ In acquisitions for Reserve components, 2233 also should be inserted.

\*

Figure 5-5

\* of land for military purposes; the Act of Congress approved  
(Public Law           ), 2/ which act authorizes  
acquisition of the lands and the Act of Congress approved  
(Public Law           ), 2/ which act (appropriated  
funds) (made funds available) for such purposes.

(b) The public uses for which said land is taken are  
as follows: The said land is necessary to provide for the establish-  
ment of (additional) facilities for the use of the Department of  
the Army and for other military uses incident thereto. The said  
land has been selected by me for acquisition by the United States  
for use in connection with  
in                   , and for such other uses as may be  
authorized by Congress or by Executive Order.

2. A general description of the land being taken is set  
forth in Schedule "A" attached hereto and made a part hereof, and  
is a description of (part of) the same land described in the com-  
plaint in the above entitled cause.

3. The estate(s) taken for said public uses is (are)

4. (A) plan(s) showing the land taken is (are) annexed hereto  
as Schedule "B" and made a part hereof.

2/ In citing laws enacted during or prior to the 84th Congress,  
the Public Law should precede the Congressional designation,  
i.e. (Public Law 1000 - 84th Congress).

Figure 5-5a \*

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Change 7  
8 Feb 79

\* 5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the registry of the said court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

IN WITNESS WHEREOF, the United States of America, by its Secretary of the Army, thereunto authorized, has caused this declaration to be signed in its name by said \_\_\_\_\_, Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_\_, in the City of Washington, District of Columbia.

\_\_\_\_\_  
Secretary of the Army

Figure 5-5b



ER 405-1-12

Change 7

8 Feb 79

\*

PART 2

(DEPARTMENT OF THE AIR FORCE PROJECTS)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA, )  
Plaintiff, )  
vs. )  
ACRES OF LAND, MORE )  
OR LESS, SITUATE IN )  
COUNTY, STATE OF )  
AND )  
ET AL, )  
Defendants )

DECLARATION  
OF  
TAKING

CIVIL NO. \_\_\_\_\_

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

I, the undersigned, \_\_\_\_\_ (title)

do hereby make the following decloration by direction of the  
Secretary of the Air Force:

1. (a) The land hereinafter described is taken under and  
in accordance with the Act of Congress approved February 26, 1931  
(46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto  
and amendatory thereof, and under the further authority of the  
Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C.  
257); Sections 2663 and 9773 1/ of Title 10, United States Code,

1/ In acquisitions for Reserve components, 2233 also should be  
inserted.

Figure 5-5c \*

ER 405-1-12

Change 7

8 Feb 79

\* which authorizes the acquisition of land for military purposes;  
the Act of Congress approved (Public Law  
) , 2/ which act authorizes acquisition of the land, and  
the Act of Congress approved (Public Law  
) , 2/ which act (appropriated funds) (made funds  
available) for such purposes.

(b) The public uses for which said land is taken are as follows: The said land is necessary to provide for the establishment of (additional) facilities for the use of the Department of the Air Force and for other military uses incident thereto. The land has been selected under the direction of the Secretary of the Air Force for acquisition by the United States for use in connection with Air Force Base, County, State of and for such other uses as may be authorized by Congress or by Executive Order.

2. A general description of the land being taken is set forth in Schedule "A", attached hereto and made a part hereof, and is a description of (part of the same land described in the complaint in the above entitled cause.

3. The estate(s) taken for said public uses is (are)

4. (A) plan(s) showing the land taken is (are) annexed hereto as Schedule "B" and made a part hereof.

2/ In citing laws enacted during or prior to the 84th Congress, the Public Law should precede the Congressional designation, i.e. (Public Law 1000-84th Congress).

Figures 5-5d \*

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5. The sum estimated by the undersigned as just compensation for the said land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land, is set forth in Schedule "A" herein, which sum the undersigned causes to be deposited herewith in the registry of the said court for the use and benefit of the persons entitled thereto. The undersigned is of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

IN WITNESS WHEREOF, the undersigned, the\_\_\_\_\_(title)\_\_\_\_\_

---

hereunto subscribes his name by direction of the Secretary of the Air Force, this\_\_\_\_\_ day of \_\_\_\_\_A.D 19\_\_\_\_\_, in the City of Washington, District of Columbia.

---

Figure 5-5e

\*

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Change 7  
8 Feb 79

\*

PART 3

(DEPARTMENT OF THE ARMY CIVIL WORKS PROJECTS)  
(RIVER AND HARBOR AND/OR FLOOD CONTROL PROJECTS)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA	)	
Plaintiff,	)	
	)	DECLARATION
vs.	)	OF
	)	TAKING
ACRES OF LAND, MORE	)	
OR LESS, SITUATE IN	)	
COUNTY, STATE OF	)	CIVIL NO. _____
AND	)	
ET AL,	)	
Defendants	)	

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

I, \_\_\_\_\_, Secretary of the Army,

do hereby declare that:  
(RIVER AND HARBOR PROJECTS)

1. (a) The land hereinafter described is taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act(s) of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591) (and July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) 1/), which act(s) authorize(s) the acquisition of land for river and harbor purposes; the Act of

1/ May be cited, if local District Court rules so require, when immediate possession is necessary.

Figure 5-5f \*

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\* Congress approved \_\_\_\_\_ (Public Law \_\_\_\_\_),  
which act authorizes the \_\_\_\_\_ and the Act of  
Congress approved \_\_\_\_\_ (Public Law \_\_\_\_\_) which  
act appropriated funds for such purposes.  
(FLOOD CONTROL PROJECTS)

1. (a) The land hereinafter described is taken under and in  
accordance with the Act of Congress approved February 26, 1931 (46  
Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and  
amendatory thereof, and under the further authority of the Acts of  
Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591), (and)  
March 1, 1917 (39 Stat. 950, 33 U.S.C. 701), (July 18, 1918 (40 Stat.  
911, 33 U.S.C. 594) and August 18, 1941 (55 Stat. 650, 33 U.S.C.  
701c-2) 2/ ), which authorize the acquisition of land for flood con-  
trol projects; the Act of Congress approved \_\_\_\_\_ (Public Law  
\_\_\_\_\_) , which act authorizes the construction of the (project)  
as part of the general comprehensive plan for flood control and  
other purposes in the \_\_\_\_\_ River Basin; and the Act of Congress  
approved \_\_\_\_\_ (Public Law \_\_\_\_\_), which act appropriated  
fund for such purposes.

(b) The public uses for which said land is taken are as  
follows: The said land is necessary to provide for \_\_\_\_\_ and  
for other uses incident thereto. The said land has been selected  
by me for acquisition by the United States for use in connection  
with \_\_\_\_\_ and for such other uses as may be authorized  
by Congress or by Executive Order.

2/ May be cited, if local District Court rules so require, when  
immediate possession is necessary.

Figure 5-5g \*

ER 405-1-12  
Change 7  
8 Feb 79

\* 2. A general description of the land being taken is set forth in Schedule "A" attached hereto and made a part hereof, and is a description of (part of) the same land described in the complaint in the above entitled cause.

3. The estate(s) taken for said public uses is (are)

4. (A) plan(s) showing the land taken is (are) annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the registry of said court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

IN WITNESS WHEREOF, the United States of America, by its Secretary of the Army, thereunto authorized, has caused this declaration to be signed in its name by said \_\_\_\_\_, Secretary of the Army, this \_\_\_\_day of \_\_\_\_\_, A.D. 19\_\_\_\_, in the City of Washington, District of Columbia.

\_\_\_\_\_  
Secretary of the Army

Figure 5-5h \*

ER 405-1-12  
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8 Feb 79

\*

PART 4

(DEPARTMENT OF THE ARMY CIVIL WORKS PROJECTS)  
(LOCAL COOPERATION PROJECTS)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ACRES OF LAND, MORE )  
OR LESS, SITUATE IN )  
COUNTY, STATE OF )  
AND )  
 )  
ET AL, )  
Defendants )

DECLARATION  
OF  
TAKING  
  
CIVIL NO. \_\_\_\_\_

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

I, \_\_\_\_\_, Secretary of the Army,  
do hereby declare that:

1. (a) The land hereinafter described is taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Act(s) of Congress approved June 29, 1906 (34 Stat. 632, 33 U.S.C. 592) 1/ (and March 1, 1917 (39 Stat. 950, 33 U.S.C. 701) 2/ 3/, which act(s)

- 1/ The Act of August 8, 1917 (40 Stat. 267, 33 U.S.C. 593), will be cited if in aid of a State or State agency.
- 2/ Cited in flood control cases. If in aid of State or State agency, the Act of August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c-2) will be cited.
- 3/ The Acts of July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) and August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c-2) may be cited, if local District Court roles so require, when immediate possession is necessary.

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\* authorize(s) the acquisition of land or easements therein for local river and harbor (and flood control) projects; the Act of Congress approved (Public Law ), which act authorizes the

(b) The public uses for which said land is taken are as follows: The said land is necessary to provide for

and for other uses incident thereto. The said land has been selected by me for acquisition by the United States for use in connection with and for such other uses as may be authorized by Congress or by Executive Order.

2. A general description of the land being taken is set forth in Schedule "A" attached hereto and made a part hereof, and is a description of (part of) the same land described in the complaint in the above entitled cause.

3. The estate(s) taken for said public uses is (are)

4. (A) plan(s) showing the land taken is (are) annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said

Figure 5-5j \*



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8 Feb 79

\* land, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the registry of the said court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

IN WITNESS WHEREOF, the United States of America, by its Secretary of the Army, thereunto authorized, has caused this declaration to be signed in its name by said \_\_\_\_\_, Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, , A.D. 19\_\_\_\_, in the City of Washington, District of Columbia.

\_\_\_\_\_  
Secretary of the Army

Figure 5-5k \*

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Change 7  
8 Feb 79

\*

PART 5

(NEW FORMAT DECLARATION OF TAKING)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	DECLARATION
vs.	)	OF
	)	TAKING
ACRES OF LAND, MORE	)	
OR LESS, SITUATE IN	)	
COUNTY, STATE OF	)	
AND	)	CIVIL NO. _____
ET AL,	)	
Defendants	)	

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

I, \_\_\_\_\_, Secretary of the Army,  
do hereby declare that:

1. The land hereinafter described is taken under and in accordance with the authority set forth in Schedule "A" annexed hereto and made a part hereof.
2. The public uses for which said land is taken are also set forth in said Schedule "A".
3. A general description of the tracts of land being taken, the estimated just compensation therefor, and the estates taken for said public uses are set forth in Schedule "B" annexed hereto and made a part hereof.

Figure 5-5 1 \*

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8 Feb 79

\* 4. A plan showing the land taken is annexed hereto as Schedule "C" and made a part hereof.

5. The gross sum estimated by me as just compensation for all of said land, which aggregates \_\_\_\_\_ acres, with all buildings and improvements thereon and all appurtenances thereto and including any and all interests hereby taken in said land is \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), which sum I cause to be deposited herewith in the registry of the court for the use and benefit of the persons entitled thereto. I am of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

IN WITNESS WHEREOF, the United States of America, by its Secretary of the Army, thereunto authorized, has caused this declaration to be signed in its name by said \_\_\_\_\_, Secretary of the Army, this \_\_\_\_ day of \_\_\_\_\_, A.d., 19\_\_\_\_, in the City of Washington, District of Columbia.

\_\_\_\_\_  
Secretary of the Army

Figure 5-5m \*

\*

## SCHEDULE "A"

## AUTHORITY FOR THE TAKING:

The authority for the taking of the land is under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a), and acts supplementary thereto and amendatory thereof, and under the further authority of the Acts of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591), and March 1, 1917 (39 Stat. 950, 33 U.S.C. 701), which authorize the acquisition of land for flood control projects; the Act of Congress approved (Public Law ), as modified by the Act of Congress approved (Public Law ), which act authorizes the project hereinafter referred to, and the Act of Congress approved (Public Law ), which act appropriated funds for such purposes.

## PUBLIC USES:

The public uses for which said land is taken are as follows: The said land is necessary to provide for flood control in the River Basin and for other uses incident thereto. The said land has been selected for acquisition by the United States for use in connection with the construction and establishment of the and for such other uses as may be authorized by Congress or by Executive Order.

(NOTE: DO NOT NUMBER THE PAGES OF ANY SCHEDULE.)

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8 Feb 79

\*

SCHEDULE "B"

TRACT NO. \_\_\_\_\_

DESCRIPTION:

TRACT NO. \_\_\_\_\_

DESCRIPTION:

(Note: 1. Provide adequate space here for additional parties; and

2. Please add as parties defendant local, county or state taxing authorities who may have or claim an interest by reason of taxes or assessments due and exigible.)

Estimated compensation deposited in the registry of the court for the above described property:

Estate Taken: (a) As to Tract No. \_\_\_\_\_, the fee simple title, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

(b) As to Tract No. \_\_\_\_\_ a perpetual right, power, privilege and easement or servitude in, on and to the land described, to enter upon and deposit dredged material or earth and water carrying same at any time during the improvement, maintenance and operation of the main channel of the Missouri River; reserving to the owner or owners of said land, or any interest therein, their heirs and assigns, all such rights and privileges in and to the same as may be used and enjoyed without interfering with or abridging the rights, privileges, easements and servitudes hereby acquired, provided that no structures for human habitation shall be constructed or maintained thereon, subject, however, to existing easements for public roads and highways, canals, public utilities, railroads and pipelines. \*

(NOTE: DO NOT NUMBER THE PAGES OF ANY SCHEDULE)

Figure 5-5o

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\*

ESTATES1. FEE.

The fee simple title to (the land described in Schedule A) 1/ (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_), subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines. 2/

2. FEE EXCEPTING AND SUBORDINATING SUBSURFACE MINERALS.

The fee simple title to (the land-described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_ ), subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; excepting and excluding from the taking all (coal) (oil and gas) in and under said land and all appurtenant rights used in connection with the exploration, development, production and removal of said (coal) (oil and gas), including any existing structures and improvements; provided, however, that the said (coal) (oil and gas) and appurtenant rights so excepted and excluded are hereby subordinated to the prior right of the United States to flood and submerge the land as may be necessary in the construction, operation and maintenance of the project; provided further that any exploration or development of said (coal) (oil and gas) in and under said land shall be subject to Federal and State laws with respect to pollution of waters of the reservoir, and provided that the type and location of any structure, improvement and appurtenance thereto now existing or to be erected or constructed on said land in connection with the exploration and/or development of said (coal) (oil and gas) shall be subject to the prior written approval of the District Engineer, U.S. Army Engineer District, \_\_\_\_\_, or his duly authorized representative. 2/

1/ In any estate enumerate the tract numbers only where two or more different estates are acquired in the same complaint or declaration of taking. This applies to all approved estates listed in this figure. The estate recited in an exhibit of a complaint and in paragraph 3 of the declaration of taking will be double spaced.

2/ Where an outstanding interest in the subsurface mineral estate is part of a block ownership which is to be excluded from the taking in accordance with paragraph 5-28g(2), the following clause will be added: "excepting and excluding from the taking all interests in the (coal) (oil and gas) which are outstanding in parties other than the surface owners and all appurtenant rights for the exploration, development and removal of said (coal) (oil and gas) so excluded."

Figure 5-6 \*

ER 405-1-12

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\* 3. FEE EXCLUDING MINERALS (With Restriction on Use of the Surface).

The fee simple title to (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_), subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; excepting and excluding from the taking all (coal) (oil and gas), in and under said land and all appurtenant rights for the exploration, development, production and removal of said (coal) (oil and gas), but without the right to enter upon or over the surface of said land for the purpose of drilling and extracting therefrom said (coal) (oil and gas).

4. FEE EXCLUDING MINERALS (With Restriction on Use of the Surface and Subordination to the Right to Flood).

The fee simple title to (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_), subject, however, to existing easements for public roads highways, public utilities, railroads and pipelines; excepting and excluding from the taking all (coal) (oil and gas) in and under said land and all appurtenant rights for the exploration, development, production and removal of said (coal) (oil and gas), but without the right to enter upon or over the surface of said land for the purpose of drilling and extracting therefrom said (coal) (oil and gas); provided, however, that the said (coal) (oil and gas) and appurtenant rights so excepted and excluded are subordinated to the prior right of the United States to flood and submerge the land in connection with the operation and maintenance of the \_\_\_\_\_ project.

5. FLOWAGE EASEMENT (Permanent Flooding)

The perpetual right, power, privilege and easement permanently to overflow, flood and submerge (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_), (and to maintain mosquito control) in connection with the operation maintenance of the \_\_\_\_\_ project as authorized by the Act of Congress approved \_\_\_\_\_, and the continuing right to clear and remove any brush, debris and natural obstructions which, in the opinion of the representative of the United States in charge of the project, may be detrimental to the project, together with all right, title and interest in and to the timber, structures and improvements situate on the land (excepting \_\_\_\_\_, (here identify those structures not designed for human habitation which the District Engineer determines may remain on the land)); provided that no structures for human habitation shall be constructed or maintained on the land, that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, and that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method

Figure 5-6a \*

- \* of excavation and/or placement of landfill; 3/ the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution.

6. FLOWAGE EASEMENT (Occasional Flooding).

The perpetual right, power, privilege and easement occasionally to overflow, flood and submerge (the land described in Schedule A) (Tracts Nos.\_\_\_\_, \_\_\_\_ and \_\_\_\_). (and to maintain mosquito control) in connection with the operation and maintenance of the \_\_\_\_\_ project as authorized by-the Act of Congress approved \_\_\_\_\_, together with all right, title and interest in and to the structure; and improvements now situate on the land, except fencing (and also excepting \_\_\_\_\_ (here identify those structures not designed for human habitation which the District Engineer determines may remain on the land )) 4/ ; provided that no structures for human habitation shall be constructed or maintained on the land, that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, and that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill; 3/ the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution.

3/ If sand and gravel or other quarriable material is in the easement area and the excavation thereof will not interfere with the operation of the project, the following clause will be added: "excepting that excavation for the purpose of quarrying (sand) (gravel) (etc.) shall be permitted, subject only to such approval as to the placement of overburden, if any, in connection with such excavation;"

4/ See page 5-238

Figure 5-6b

\*

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\* 7. FLOWAGE EASEMENT (Portions of Land to be Subjected to Permanent Inundation and Portions to be Subjected to Occasional Flooding).

The perpetual right, power, privilege and easement in, upon, over and across (the land described in Schedule "A") (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_ ) for the purposes set forth below:

a. Permanently to overflow, flood and submerge the land lying below elevation \_\_\_\_\_ (and to maintain mosquito control,) in connection with the operation and maintenance of the \_\_\_\_\_ project for the purposes as authorized by the Act of Congress approved \_\_\_\_\_, together with all right, title and interest in and to the timber and the continuing right to clear and remove any brush, debris and natural obstructions which, in the opinion of the representative of the United States in charge of the project may be detrimental to the project.

b. Occasionally to overflow, flood and submerge the land lying above elevation \_\_\_\_\_ (and to maintain mosquito control,) in connection with the operation and maintenance of said project.

Together with all right, title and interest in and to the structures and improvements now situate on the land, except fencing above elevation \_\_\_\_\_ (and also excepting \_\_\_\_\_ (here identify those structures not designed for human habitation which the District Engineer determines may remain on the land)) 4/ provided that no structures for human habitation shall be constructed or maintained on the land, that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, and

4/ Where substantial residential structures exist in areas subject to very infrequent flooding, and will not interfere with project operations, the following clause may be substituted "(and also excepting the structure(s) now existing on the land, described as \_\_\_\_\_, which may be maintained on the land provided that portion of the structure(s) located below elevation \_\_\_\_\_ feet, mean sea level, shall be utilized for human habitation to the extent that sleeping accommodations will be maintained therein)". The next clause would then be modified to read "provided that no other structures for . . . . ."

Figure 5-6c \*

\* that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill; 3/ the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution.

8. CHANNEL IMPROVEMENT EASEMENT.

A perpetual and assignable right and easement to construct, operate, and maintain channel improvement works on, over and across (the land described in Schedule A) (Tracts Nos.\_\_\_\_, \_\_\_\_ and \_\_\_\_ ) for the purposes as authorized by the Act of Congress approved \_\_\_\_\_, including the right to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush, buildings, improvements and/or other obstructions therefrom; to excavate: dredge, cut away, and remove any or all of said land and to place thereon dredge or spoil material; and for such other purposes as may be required in connection with said work of improvement; reserving, however, to the owners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

9. FLOOD PROTECTION LEVEE EASEMENT.

A perpetual and assignable right and easement in (the land described in Schedule A) (Tracts Nos.\_\_\_\_, \_\_\_\_ and \_\_\_\_ ) to construct, maintain, repair, operate, patrol and replace a flood protection levee, including all appurtenances thereto; reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

3/ If sand and gravel or other quarriable material is in the easement area and the excavation thereof will not interfere with the operation of the project, the following clause will be added: "excepting that excavation for the purpose of quarrying (sand) (gravel) (etc.) shall be permitted, subject only to such approval as to the placement of overburden, if any, in connection with such excavation;"

Figure 5-6d \*

\* 10. DRAINAGE DITCH EASEMENT.

A perpetual and assignable easement and right-of-way in, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_, and \_\_\_\_ ) to construct, maintain, repair, operate, patrol and replace a drainage ditch, reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

11. ROAD EASEMENT.

A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_ ) for the location, construction, operation, maintenance, alteration replacement of (a) road(s) and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; (reserving, however, to the owners, their heirs and assigns, the right to cross over or under the right-of-way as access to their adjoining land at the locations indicated in Schedule B); 5/ subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

12. RAILROAD EASEMENT.

A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_ ) for the location, construction, operation, maintenance alteration and replacement of a railroad and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and other vegetation, structures, or obstacles within the limits of the right-of-way; (reserving, however, to the landowners, their heirs and assigns, the right to cross over or under the right-of-way as access to their adjoining land at the

5/ The parenthetical clause maybe deleted, where necessary; however, the use of this reservation may substantially reduce the liability of the Government through reduction of severance damages and consideration of special benefits; therefore, its deletion should be fully justified. Also, access may be restricted to designated points as in Estate No. 12.

Figure 5-6e \*

- \* locations indicated in Schedule B; 6/ subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

13. UTILITY AND/OR PIPELINE EASEMENT.

A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_, and \_\_\_\_), for the location, construction, operation, maintenance, alteration; repair and patrol of (overhead) (underground) (specifically name type of utility or pipeline); together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

14. BORROW EASEMENT.

A perpetual and assignable right and easement to clear, borrow, excavate and remove soil, dirt, and other materials from (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_, and \_\_\_\_); 7/ subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges in said land as may be used without interfering with or abridging the rights. and easement hereby acquired.

15. TEMPORARY WORK AREA EASEMENT.

A temporary easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_, and \_\_\_\_), for a period not to exceed \_\_\_\_\_, beginning with date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors as a (borrow area) (work area), including the right to (borrow and/or deposit fill, spoil and waste material thereon) (move, store and remove equipment and supplies, and erect and remove temporary

6/ The use of this reservation clause may substantially reduce the liability of the Government through reduction of severance damages.

7/ The easement estate may be limited as to time, depending upon project requirements.

Figure 5-6f

\*

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- \* structures on the land and to perform any other work necessary and incident to the construction of the \_\_\_\_\_ Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

16. TEMPORARY EASEMENT FOR EXPLORATION.

A temporary easement in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_), for a period not to exceed \_\_\_\_\_, beginning with date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors, to survey, appraise, conduct test borings, and conduct other exploratory work necessary to the design of a public works project; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however to existing easements for public roads and highways, public utilities, railroads and pipelines.

17. LEASEHOLD ESTATE.

A term for years ending March 31, 19 \_\_\_\_, extendible for yearly periods thereafter, at the election of the United States, until March 31, 19 \_\_\_\_, notice of which election shall be filed in the proceeding at least thirty (30) days prior to the end of the term hereby taken, or subsequent extensions thereof, together with the right to remove, within a reasonable time after the expiration of the term taken, or any extension thereof, any and all improvements and structures heretofore or hereafter placed thereon by or for the United States; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

18. EXTINGUISHMENT OF RIGHTS IN CEMETERY OR EXTINGUISHMENT OF MINERAL RIGHTS.

All outstanding right, title and interest in (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_, subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

19. RESTRICTIVE EASEMENT.

A perpetual and assignable easement for the establishment, maintenance, operation and use for a (restricted) (safety) area

\* in, on, over and across (the land described in Schedule A) (Tracts Nos. \_\_\_\_, \_\_\_\_ and \_\_\_\_), consisting of the right to prohibit human habitation; the right to remove buildings presently or hereafter being used for human habitation; the right to prohibit gatherings of more than twenty-five (25) persons; the right to post signs indicating the nature and extent of the Government's control; and the right of ingress and egress over and across said land for the purpose of exercising the rights set forth herein; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired.

20. RIGHT OF ENTRY FOR SURVEY AND EXPLORATION.

An assignable easement, in, on, over and across the land described in Exhibit "A" for a period of ( ) months beginning with the date possession of the land is granted to the United States, consisting of the right of the United States, its representative, agents, contractors and assigns to enter upon said land to survey, stake out, appraise, make borings; and conduct tests and other exploratory work necessary to the design of a public works project; together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles as required in connection with said work; subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowner(s), their heirs, executors, administrators, successors and assigns, all such right, title, interest and privilege as may be used and enjoyed without interfering with or abridging the rights and easement hereby acquired.

Figure 5-6h

\*

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\*

Figure 5-7

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	AMENDMENT
	)	TO
	)	DECLARATION OF TAKING
ACRES OF LAND, MORE	)	
OR LESS, SITUATE IN	)	
COUNTY, STATE OF	)	CIVIL NO. _____
AND	)	
	)	
ET AL,	)	
Defendants	)	

TO THE HONORABLE,  
THE UNITED STATES DISTRICT COURT:

WHEREAS, on \_\_\_\_\_, a proceeding was instituted by the filing of a complaint in this Honorable Court in the name of the United States of America for the acquisition of certain interests in land situate in the County of \_\_\_\_\_, State of \_\_\_\_\_, and

WHEREAS, on \_\_\_\_\_, a declaration of taking including all of (part of) the land described in the complaint was duly filed in said proceeding; and

WHEREAS, (Recite any previous amendments to the declaration of taking that may have been filed, with the purpose thereof) and

Figure 5-7 \*

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\* WHEREAS, (Set forth purpose(s) of the proposed amendment; the following are illustrative only).

WHEREAS, it is necessary to (further) amend said declaration of taking insofar as it relates to Tract No. \_\_\_\_\_, to increase the area of said tract from \_\_\_\_\_ acres to \_\_\_\_\_ acres, and to deposit additional funds in the amount of \_\_\_\_\_ to increase the estimated compensation for said Tract No. \_\_\_\_\_ as revised herein.

WHEREAS, it is necessary to (further) amend said declaration of taking in order to revise the descriptions of Tracts Nos. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ to describe adequately the land in which interests were intended to be acquired.

WHEREAS, it is necessary to (further) amend said declaration of taking to include additional land designated herein as Tract No. \_\_\_\_\_ containing \_\_\_\_\_ acres, and to deposit additional funds in the amount of \_\_\_\_\_ as estimated compensation for said Tract No. \_\_\_\_\_.

(FOR ARMY CASES)

NOW, THEREFORE, I, the undersigned, \_\_\_\_\_, Secretary of the Army, pursuant to the powers and authorities recited in the complaint and declaration of taking filed in the above entitled proceeding, do hereby (further) amend said declaration of taking as follows:

(FOR AIR FORCE CASES)

NOW, THEREFORE, I, the undersigned, the \_\_\_\_\_ (title) \_\_\_\_\_, by direction of the Secretary of the Air

Figure 5-7a \*



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\* Force and acting pursuant to the powers and authorities recited in the complaint and declaration of taking filed in the above entitled proceeding, do hereby amend the declaration of taking as follows:

(The following are illustrative only)

Substitute (no. of acres) in the second line of the first page of Schedule "A" attached to and made a part of said declaration of taking in lieu of (no. of acres).

Substitute Schedule "AA" attached hereto and made a part hereof in lieu of the description and estimated compensation for Tract No. \_\_\_\_ on pages \_\_\_\_ and \_\_\_\_ of Schedule "A" attached to and made a part of said declaration of taking.

Substitute Schedule "AA" attached hereto and made a part hereof in lieu of page \_\_\_\_\_ of Schedule "A" attached to and made a part of said declaration of taking.

Substitute " \_\_\_\_\_ DOLLARS" in the last two lines of the \_\_\_\_\_ page of Schedule "A", attached to and made a part of the declaration of taking as heretofore amended, in lieu of " \_\_\_\_\_ DOLLARS."

Substitute Schedule "BB" attached hereto and made a part hereof in lieu of the plan of Tracts Nos. \_\_\_\_, \_\_\_\_, \_\_\_\_, and \_\_\_\_ delineated on Segment \_\_\_\_\_, Schedule "B" attached to and made a part of the declaration of taking.

Figure 5-7b

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\* (Insert such other statements as are considered necessary)

(Where additional funds are to be deposited with the amendment, the following paragraph should be included):

The sum of \$ \_\_\_\_\_ has been deposited into the registry of the court as the estimated just compensation for the acquisition of the land included in the above mentioned declaration of taking. The sum of \$ \_\_\_\_\_ is now estimated by (me) (the undersigned) to be just compensation for the acquisition of the land. Therefore, (I) (the undersigned) cause(s) to be deposited herewith in the Registry of this Honorable Court the additional sum of \$ \_\_\_\_\_ for the use and benefit of the persons entitled thereto. (I) (the undersigned) am (is) of the opinion that the ultimate award for said land probably will be within any limits prescribed by law on the price to be paid therefor.

It is intended by this amendment that the aforesaid declaration of taking (as heretofore amended) is not changed, and is not intended to be changed, in any respect except as hereinabove expressly set forth.

(FOR ARMY CASES)

IN WITNESS WHEREOF, the United States of America, by its Secretary of the Army, thereunto authorized, has caused this amendment to be signed in its name by said \_\_\_\_\_, Secretary of the Army, this \_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, in the City of Washington, District of Columbia.

---

Secretary of the Army

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\* (FOR AIR FORCE CASES)

IN WITNESS WHEREOF, the undersigned, the \_\_\_\_\_ (title)

\_\_\_\_\_  
hereunto subscribes his name by direction of the Secretary of the  
Air Force this \_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, in the  
City of Washington, District of Columbia.

Figure 5-7d \*

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Figure 5-8

PART 1

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	STIPULATION AS TO
	)	JUST COMPENSATION
	)	
ACRES OF LAND, MORE	)	
OR LESS, SITUATE IN	)	
COUNTY, STATE OF	)	
AND	)	
	)	
ET AL,	)	
Defendants	)	

It is hereby stipulated and agreed by and between the United States of America, hereinafter called the plaintiff and \_\_\_\_\_, hereinafter called the defendant(s), that:

WHEREAS, action in condemnation was commenced in the above Court on \_\_\_\_\_, by the filing of a complaint in condemnation and a declaration of taking on behalf of the United States of America, at the request of the Secretary of the \_\_\_\_\_, and

WHEREAS, under the provisions of the Declaration of Taking Act (46 Stat. 1421), title to the estate condemned in Tract No. \_\_\_\_\_, as such estate and tract are described in the Declaration of Taking filed herein, vested in the United States of America, and the right to just compensation for the same was likewise, under the provisions of said Act, vested in the persons entitled thereto; and

Figure 5-8

\*

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\* WHEREAS, \_\_\_\_\_ (was) (were] the owner(s) in fee simple of the land hereinabove described and (has) (have) so represented to the plaintiff; all other parties having any interest in or claim to said lands having heretofore filed proper disclaimers in this cause;

NOW, THEREFORE, it is hereby stipulated and agreed by and between the above-named parties that the sum of \$ \_\_\_\_\_, inclusive of interest, is the just compensation in full to be paid by the plaintiff for the estate condemned in Tract No. \_\_\_\_\_ as such estate and tract are described in the Declaration of Taking filed herein and it is agreed that from said sum there shall first be paid any and all liens, taxes and encumbrances against said land including adverse claims by lessees.

The defendant(s). \_\_\_\_\_, hereby enter(s) (his) (their) appearance(s) in this action and expressly waive(s) service of summons, complaint, and all right to a hearing on the complaint and pleadings filed in this action and the right to the appointment of a Jury or Commission for the determination of just compensation.

The above-named parties hereby agree to the entering of a judgment in conformity with this stipulation, setting forth the conditions and provisions thereof.

Figure 5-8a \*

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\* Executed on the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_.

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Defendant

UNITED STATES OF AMERICA

BY \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness

Figure 5-8b \*

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PART 2

(PRIMARILY CIVIL - MAY BE ADAPTED TO OTHER)

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ACRES OF LAND, MORE )  
 OR LESS, SITUATE IN )  
 COUNTY, STATE OF )  
 AND )  
 )  
 ET AL, )  
 Defendants )

STIPULATION FOR REVESTMENT  
AS TO TRACT \_\_\_\_\_

WHEREAS, the plaintiff, United States of America, commenced the above entitled action for the purpose of acquiring by eminent domain certain lands described as follows, to-wit:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The tract of land above described contains \_\_\_\_\_ acres, more or less.

WHEREAS, by reason of the filing of a declaration of taking and the depositing of \_\_\_\_\_ as estimated just compensation for the taking

Figure 5-8c \*

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\* thereof, title to such land, to the extent of the estate described below, vested in the United States of America on \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

WHEREAS, it has been determined to be necessary to reduce the 1/total acreage acquired in the proceeding; and

WHEREAS, it has been determined to be necessary to revise the estate acquired in a portion of the remaining land in order to 1/provide for a perpetual flowage easement therein; and

WHEREAS, it has been determined to be necessary to revise the estate acquired in the remainder of the tract in order to revest in the former owners title to the oil, gas and other minerals under-1/lying said land subordinate, however, to the prior rights of the United States in connection with the \_\_\_\_\_ Project; and

WHEREAS, the defendant(s) \_\_\_\_\_ (has) (have) agreed to accept the sum of \$ \_\_\_\_\_ inclusive of interest, as just compensation for the interests acquired in the proceeding and (has) (have) agreed further that the balance of monies remaining on deposit in the registry of the court, to-wit. the sum of \$ \_\_\_\_\_ , shall be returned to the United States of America.

1/ Insert applicable paragraphs.

Figure 5-8d \*



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NOW, THEREFORE, IT IS STIPULATED AND AGREED BY AND BETWEEN  
THE UNITED STATES OF AMERICA, PLAINTIFF, AND THE ABOVE-NAMED  
DEFENDANT(S) \_\_\_\_\_ as follows:

(a) That the defendant(s) herein consent(s) to the acquisition  
by the United States of the estates in the land as hereinafter set  
forth;

(b) That said defendant(s) consent(s) to the withdrawal of  
any answer and/or interrogatories heretofore filed in the proceeding  
contesting the Governments right to acquire the land;

(c) That there shall be substituted for the legal description  
of Tract No. \_\_\_\_\_ and the estate acquired therein, as set forth in  
the complaint in condemnation and the declaration of taking hereto-  
fore filed in the proceeding, the descriptions and estates set forth  
below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) That with respect to the aforementioned lands as to which  
a perpetual flowage easement is to be acquired, the defendant(s)  
herein expressly waive(s) for (himself) (themselves), (his) (their)  
heirs, successors, and assigns any and all claims against the United  
States or the State, County and political sub-division in which the  
land is located for loss of access thereto.

Figure 5-8e \*

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\* (e) That all right, title, and interest of the stipulating defendant(s) in and to any and all portions of the tract as set forth in the complaint in condemnation and the declaration of taking heretofore filed in the proceeding which are not included in paragraph (c) above shall be excluded from the proceeding and title thereto shall be revested in said defendant(s) to the extent held by (him) (them) immediately prior to the taking;

(f) That the fair market value and the full just compensation to be paid for the taking of all the interests acquired in the proceeding, and for the Government's use of that portion and/or interest in the land, title to which is revested by this stipulation, including all damages arising therefrom, is the sum of \$ \_\_\_\_\_, inclusive of interest

(g) That judgment shall be entered pursuant hereto fixing just compensation as above stated, directing payment to the person or persons entitled thereto and adjudging title to the estates as set forth herein to be vested in the United States of America;

(h) That said sum shall be subject to all liens, encumbrances and charges existing against said lands at the time of the taking, and that any and all compensation ascertained and awarded in this proceeding in favor of any parties now or subsequently named as defendants shall be payable and deductible from said sum, and the parties consent to the entry of all orders, judgments and decrees appropriate to effectuate this stipulation.

Figure 5-8f \*

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\* In support of the foregoing stipulation, it is hereby represented to the court as follows:

I.

That this stipulation is intended as a voluntary appearance and express waiver of service of notice and of all other process and pleading, notice of hearing, and trial by jury.

II.

That except as aforesaid on said date no other person, party or corporation was in possession of said lands and there were no unrecorded liens, leases, encumbrances or transfers outstanding affecting said property.

III.

That except as herein set forth no other person, party or corporation is entitled to receive any portion of the just compensation to be paid for the taking of said lands and there is no reason why the said just compensation should not be paid as herein set forth.

WHEREFORE, the parties hereto pray for judgment as appropriate to effectuate this stipulation.

DATED this \_\_\_\_ day of \_\_\_\_\_ A.D. 19\_\_\_\_,

UNITED STATES OF AMERICA, Plaintiff

By \_\_\_\_\_

Defendant

Approved:

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Attorney for Defendant

Figure 5-8g \*

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\* (For use in connection with report required by paragraph 5-32b,  
 Chapter ER 405-1-2)

REPORT OF TRIAL OR HEARING

Project: \_\_\_\_\_ Court: \_\_\_\_\_

Date of Trial or Hearing: \_\_\_\_\_ Place: \_\_\_\_\_

Trial Held Before: Jury ( ), Commission ( ), Judge ( )

Date of Award or Verdict: \_\_\_\_\_

Government Represented By: \_\_\_\_\_ Landowner Represented By: \_\_\_\_\_

<u>Civil No.</u>	<u>Filed</u>	<u>Tract No.</u>	<u>Acres</u>	<u>Estate</u>	<u>Deposit</u>
_____	_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	_____	_____

1/ Award: \_\_\_\_\_  
 Deposit: \_\_\_\_\_  
 Deficiency: \_\_\_\_\_

1/ With (without) interest at 6% from date of taking:

TESTIMONY

VALUATION

<u>Witness (Name &amp; Designation)</u>	<u>Before Taking</u>	<u>After Taking</u>	<u>Difference</u>
<u>Landowner:</u>			
_____	\$ _____	\$ _____	\$ _____
_____	_____	_____	_____
<u>Government: (Name &amp; Designation - D/A or D/J)</u>			
_____	_____	_____	_____
_____	_____	_____	_____

REMARKS: (Include statement of informal recommendation of U.S. Attorney, if available, also comments or recommendation of representative reporting)

ENG Form 3906-R, 1 Mar 72 Reported By: \_\_\_\_\_

Figure 5-9 \*

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\*

SAMPLE FORMAT - ACQUISITION REPORT FOR LEASING

DEPARTMENT OF THE ARMY  
SUBMITTED BY OFFICE, CHIEF OF ENGINEERS  
REAL ESTATE  
ACQUISITION REPORT NO. \_\_\_\_\_

Submitted pursuant to Title 10, United States Code, Section 2662.

Name of Installation:

Using Command:

Proposed Action:

Use:

Area:

Estimated Annual Rental:

Authority:

1. "The Department of the Army proposes...." (Here make a brief statement of the proposed leasing action being reported to Congress.)

2. Describe premises currently occupied by this activity, including area, annual rental, type of space (land, office, storage, parking, etc.), terms of current lease (e.g., beginning and termination dates, renewal and cancellation privileges, services and utilities furnished by the lessor), and services provided by using service, if any. If current space is inadequate or no longer available, so indicate and give reasons.

3. Brief discussion of the necessity for leasing, plus current and estimated future space requirements if known; mission of the using agency; number of personnel to use new space, and any foreseeable increase in personnel; statement as to the non-availability of Government-owned or leased facilities to satisfy this requirement; description of premises to be leased (if known), broken down in components (land, building space, office, storage, parking space, etc.), with square footage or other unit of measure; and estimated annual rental for such component and total estimated annual rental; and other terms anticipated in a new lease. (Add any other pertinent information peculiar to the action being reported.) Include statement of any known long-range plans for this activity and a permanent location therefor. If the area to be leased is in a large metropolitan area, indicate the Congressional District.

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\* 4. Brief statement of proposed action: "The Department of the Army proposes to (enter into the lease transaction or obtain suitable alternate space) (concur in the leasing of space as outlined above by the General Services Administration for a term not to exceed five years.)"

5. Provide information relative to rental payment. If leasing is to be accomplished by the General Services Administration, state the current and estimated Standard Level User Charge (SLUC). The charge is payable by the Department of the Army and is required under the provisions of Public Law 92-313, Public Buildings Amendments of 1972, effective 1 July 1974.

6. Concluding paragraph: "This action has been approved by the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)." (When leasing is to be done by the General Services Administration: "The Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) approves the space requirement which the General Services Administration proposes to satisfy through leasing as outlined herein.")

(To be prepared by typewriter as required. Furnish, in transmitting correspondence, but not as part of the report, an area, county or city map appropriately marked to show location of all Government-owned or controlled buildings, installations, and facilities; furnish reasons why these are not available or suitable for the proposed use and include any other pertinent information.)

Figure 5-10a \*

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## \* DESIGNATED URBAN CENTERS OF THE GENERAL SERVICES ADMINISTRATION

Aberdeen, SD Brown County	Amarillo, TX Potter County Randall County
Abilene, TX Jones County Taylor County	Anaheim-Santa Aria-Garden Grove, CA Orange County
Akron, OH Portage County Summit County	Ann Arbor, MI Washtenaw County
Alaska The entire State	Asheville, NC Buncombe County
Albany, GA Dougherty County	Athens, GA Clarke County
Albany, IL Whiteside County	Atlanta, GA Clayton County Cobb County DeKalb County Fulton County Gwinnett County
Albany, OR Linn County	
Albany-Schenectady-Troy, NY Albany County Rensselaer County Saratoga County Schenectady County	Atlantic City, NJ Atlantic County
Albuquerque, NM Bernalillo County	Augusta, GA-SC Richmond County, GA Aiken County, SC
Alexandria, LA Rapides Parish	Augusta, ME Kennebec County
Allentown-Bethlehem-Easton, PA-NJ Lehigh County, PA Northampton County, PA Warren County, NJ	Austin, TX Travis County
	Bakersfield, CA Kern County
Altoona, PA Blair County	Baltimore, MD Baltimore City Anne Arundel County

Figure 5-11 \*

ER 405-1-12

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\*

Baltimore County	Brownsville-Harlingen-San Benito, TX
Carroll County	Cameron County
Howard County	
Baton Rouge, LA	Buffalo, NY
East Baton Rouge Parish	Erie County
	Niagara County
Battle Creek, MI	Burlington, VT
Calhoun County	Chittenden County
Bay City, MI	Butte, MT
Bay County	Silver Bow County
Beaumont-Port Arthur, TX	Calexico-El Centro, CA
Jefferson County	Imperial County
Orange County	
Billings, MT	Canton, OH
Yellowstone County	Stark County
Binghamton, NY-PA	Casper, WY
Broome County, NY	Natrona County
Tioga County, NY	
Susquehanna County, PA	Cedar Rapids, IA
	Linn County
Birmingham, AL	Champaign-Urbana, IL
Jefferson County	Champaign County
Bismarck, ND	Charleston, SC
Burleigh County	Berkeley County
	Charleston County
Boise, ID	Charleston, WV
Ada County	Kanawha County
Boston, MA	Charlotte, NC
Essex County	Mecklenburg County
Middlesex County	Union County
Norfolk County	
Plymouth County	Charlottesville, VA
Suffolk County	Charlottesville City
Bridgeport, CT	Albemarle County
Fairfield County	
New Haven County	Chattanooga, TN-GA
	Hamilton County, TN
Brockton, MA	Walker County, GA
Bristol County	
Norfolk County	Cheyenne, WY
Plymouth County	Laramie County

Figure 5-11a \*



* Chicago, IL	Concord, NH
Cook County	Merrimack County
DuPage County	
Kane County	Corpus Christi, TX
Lake County	Nueces County
McHenry County	
Will County	Dallas, TX
	Collin County
Cincinnati, OH-KY-IN	Dallas County
Clermont County, OH	Denton County
Hamilton County, OH	Ellis County
Warren County, OH	
Boone County, KY	Davenport-Rock Island-Moline, IA-IL
Campbell County, KY	Scott County, IA
Kenton County, KY	Henry County, IL
Dearborn County, IN	Rock Island County, IL
Cleveland, OH	Dayton, OH
Cuyahoga County	Greene County
Geauga County	Miami county
Lake County	Montgomery County
Medina County	Preble County
Clinton, OK	Decatur, IL
Custer County	Macon County
Cody, WY	Denver, CO
Park County	Adams County
	Arapahoe County
Colorado Springs, CO	Boulder County
El Paso County	Denver County
	Jefferson County
Columbia, MO	Des Moines, IA
Boone County	Polk County
Columbia, SC	Detroit, MI
Lexington County	Macomb County
Richland County	Oakland County
	Wayne County
Columbus, GA-AL	Dubuque, IA
Chattahoochee County, GA	Dubuque County
Muscogee County, GA	
Russell County, AL	
Columbus, OH	Duluth-Superior, MN-WI
Delaware County	St. Louis County, MN
Franklin County	Douglas County, WI
Pickaway County	

Figure 5-11b \*

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<p>* Durango, CO              LaPlata County</p> <p>Durham, NC              Durham County</p> <p>Elkins, WV              Randolph County</p> <p>El Paso, TX              El Paso County</p> <p>Erie, PA              Erie County</p> <p>Eugene, OR              Lane County</p> <p>Evansville, IN-KY              Vanderburgh County, IN              Warrick County, IN              Henderson County, KY</p> <p>Fall River, MA-RI              Bristol County, MA              Newport County, RI</p> <p>Eargo-Moorhead, ND-MN              Cass County, ND              Clay County, MN</p> <p>Fayetteville, NC              Cumberland County</p> <p>Fitchburg-Leominster, MA              Middlesex County              Worcester County</p> <p>Flint, MI              Genesee County              Lapeer County</p> <p>Fort Collins, CO              Larimer County</p> <p>Fort Lauderdale-Hollywood, FL              Broward County</p> <p>Fort Smith, AR-OK              Crawford County, AR</p>	<p>Sebastian County, AR              LeFlore County, OK              Sequoyah County, OK</p> <p>Fort Wayne, IN              Allen County</p> <p>Fort Worth, TX              Johnson County              Tarrant County</p> <p>Frankfort, KY              Franklin County</p> <p>Fresno, CA              Fresno County</p> <p>Gadsden, AL              Etowah County</p> <p>Gainesville, FL              Alachuca County</p> <p>Galveston-Texas City, TX              Galveston County</p> <p>Gary-Hammond-East Chicago, IN              Lake County              Porter County</p> <p>Grand Forks, ND              Grand Forks County</p> <p>Grand Island, NB              Hall County</p> <p>Grand Junction, CO              Mesa County</p> <p>Grand Rapids, MI              Kent County              Ottawa County</p> <p>Great Falls, MT              Cascade County</p> <p>Greeley, CO              Weld County</p>
--	--

Figure 5-11c \*

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* Green Bay, WI Brown County	Huron, SD Beadle County
Greensboro-High Point, NC Guilford County	Idaho Falls, ID Bonneville County
Greenville, SC Greenville County Pickens County	Indianapolis, IN Hamilton County Hancock County Hendricks County Johnson County Marion County Morgan County Shelby County
Greenwood, MS LeFlore County	Jackson, MI Jackson County
Hamilton-Middletown, OH Butler County	Jackson, MS Hinds County Rankin County
Harrisburg, PA Cumberland County Dauphin County Perry County	Jackson, TN Madison County
Hartford, CT Hartford County Middlesex County Tolland County	Jacksonville, FL Duval County
Hawaii The entire State	Jefferson City, MO Cole County
Helene, MT Lewis and Clark County	Jersey City, NJ Hudson County
Hot Springs, AR Garland County	Johnstown, PA Cambria County Somerset County
Houston, TX Harris County	Kalamazoo, MI Kalamazoo County
Huntington-Ashland, WV-KY-OH Cabell County, WV Wayne County, WV Boyd County, KY Lawrence County, OH	Kansas City, MO-KS Cass County, MO Clay County, MO Jackson County, MO Platte County, MO Johnson County, KS Wyandotte County, KS
Huntsville, AL Limestone County Madison County	

Figure 5-11d \*

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 30 May 79

* Kenosha, WI Kenosha County	Little Rock, North Little Rock, AR Pulaski County
Klamath Falls, OR Klamath County	Logan, UT Cache County
Knoxville, TN Anderson County Blount County Knox County	Lorrain-Elyria, OH Lorain County
Lafayette, LA Lafayette Parish	Los Angeles-Long Beach, CA Los Angeles County
Lake Charles, LA Calcasieu Parish	Louisville, KY-IN Jefferson County, KY Clark County, IN Floyd County, IN
Lancaster, PA Lancaster County	Lowell, MA Middlesex County
Lansing, MI Clinton County Eaton County Ingham County	Lubbock, TX Lubbock County
Laredo, TX Webb County	Lynchburg, VA Lynchburg City Amherst County Campbell County
Las Vegas, NV Clark County	Macon, GA Bibb County Houston County
Lawrence-Haverhill, MA-NH Essex County, MA Rockingham County, NH	Madison, WI Dane County
Lawton, OK Comanche County	Manchester, NH Hillsborough County Merrimack County
Lewiston-Auburn, ME Androscoggin County	Manhattan, KS Riley County
Lexington, KY Fayette County	McCook, NB Red Willow County
Lima, OH Allen County	Medford, OR Jackson County
Lincoln, NB Lancaster County	Memphis, TN-AR Shelby County, TN Crittenden County, AR

Figure 5-11e \*

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* Meriden, CT New Haven County	Nashville, TN Davidson County Sumner County Wilson County
Meridian, MS Lauderdale County	Newark, NJ Essex County Morris County Union County
Miami, FL Dade County	New Bedford, MA Bristol County Plymouth County
Midland, TX Midland County	New Britain, CT Hartford County
Milwaukee, WI Milwaukee Ozaukee County Waukesha County	New Haven, CT New Haven County
Minneapolis-St. Paul, MN Anoka County Dakota County Hennepin County Ramsey County Washington County	New London-Groton-Norwich, CT New London County
Missoula, MT Missoula County	New Orleans, LA Jefferson Parish Orleans Parish St. Bernard Parish St. Tammany Parish
Mobile, AL Baldwin County Mobile County	Newport News-Hampton, VA Hampton City Newport News City York County
Monroe, LA Ouachita Parish	New York, NY Bronx County Kings County New York County Queens County Richmond County Nassau County Rockland County Suffolk County Westchester County
Montgomery, AL Elmore County Montgomery County	Norfolk-Portsmouth, VA Chesapeake City Norfolk City Portsmouth City Virginia Beach City
Morgantown, WV Monongalia County	
Muncie, IN Delaware County	
Muskegon-Muskegon Heights, MI Muskegon County	
Muskogee, OK Muskogee County	

Figure 5-11f

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* Norwalk, CT Fairfield County	Burlington County, NJ Camden County, NJ Gloucester County, NJ
Odessa, TX Ector County	Phoenix, AZ Maricopa County
Ogden, UT Weber County	Pierre, SD Hughes County
Oklahoma City, OK Canadian County Cleveland County Oklahoma County	Pittsburgh, PA Allegheny County Beaver County Washington County Westmoreland County
Olympia, WA Thurston County	Pittsfield, MA Berkshire County
Omaha, NB-IA Douglas County, NB Sarpy County, NB Pottawattamie County, IA	Portland, ME Cumberland County
Orlando, FL Orange County Seminole County	Portland, OR-WA Clackamas County, OR Multnomah County, OR Washington County, OR Clark County, WA
Parkersburg, WV Wood County	Portsmouth, NH Rockingham County
Peterson-Clifton-Passaic, NJ Bergen County Passaic County	Providence-Pawtucket-Warwick, RI-MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, MA
Pensacola, FL Escambia County Santa Rosa County	Bristol County, MA Norfolk County, MA Worcester County, MA
Peoria, IL Peoria County Tazewell County Woodford County	Provo-Orem, UT Utah County
Philadelphia, PA-NJ Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	Pueblo, CO Pueblo County
	Puerto Rico The entire Commonwealth

Figure 5-11g \*

* Racine, WI Racine County	St. Albans, VT Franklin County
Raleigh, NC Wake County	St. Joseph, MO Buchanan County
Rapid City, SD Pennington County	St. Louis, MO-IL St. Louis City, MO Jefferson County, MO St. Charles County, MO St. Louis County, MO Madison County, IL St. Clair County, IL
Reading, PA Berks County	
Reno, NV Washoe County	
Richmond, VA Richmond City Chesterfield County Hanover County Henrico County	Salem, OR Madison County Polk County
Roanoke, VA Roanoke City Roanoke County	Salina, KS Saline County
Rochester, NY Livingston County Monroe County Orleans County Wayne County	Salisbury, MD Wicomico County
Rockford, IL Boone County Winnebago County	Salt Lake City, UT Davis County Salt Lake County
Rolla, MO Phelps County	San Angelo, TX Tom Green County
Rome, GA Floyd County	San Antonio, TX Bexar County Guadalupe County
Sacramento, CA Placer County Sacramento County Yolo County	San Bernardino-Riverside-Ontario, CA Riverside County San Bernardino County
Saginaw, MI Saginaw County	San Diego, CA San Diego County
	San Francisco-Oakland, CA Alameda County Contra Costa County Marin County San Francisco County San Mateo County
	San Jose, CA Santa Clara County

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* Santa Barbara, CA Santa Barbara County	Springfield, IL Sangamon County
Sante Fe, NM Santa Fe County	Springfield, MO Greene County
Savannah, GA Chatham County	Springfield, OH Clark County
Scottsbluff, NB Scotts Bluff County	Stamford, CT Fairfield County
Scranton, PA Lackawanna County	Steubenville-Wierton, OH, WV Jefferson County, OH Brooke County, WV Hancock County, WV
Seattle-Everett, WA King County Snohomish County	Stillwater, OK Payne County
Sheridan, WY Sheridan County	Stockton, CA San Joaquin County
Shreveport, LA Bossier Parish Caddo Parish	Syracuse, NY Madison County Onondaga County Oswego County
Sioux City, IA-NB Woodbury County, IA Dakota County, NB	Tacoma, WA Pierce County
Sioux Falls, SD Minnehaha County	Tallahassee, FL Leon County
South Bend, IN St. Joseph County Marshall County	Tampa-St. Petersburg, FL Hillsborough County Pinellas County
Spartanburg, SC Spartanburg County	Temple, TX Bell County
Spokane, WA Spokane County	Terre Haute, IN Clay County Sullivan County Vermillion County Vigo County
Springfield-Chicopee-Holyoke, MA Hampden County Hampshire County Worcester County	

Figure 5-11i \*



* Texarkana, TX-AR Bowie County, TX Miller County, AR	Washington, D. C.-MD-VA District of Columbia Montgomery County, MD Prince Georges County, MD
Toledo, OH-MI Lucas County, OH Wood County, OH Monroe County, MI	Alexandria City, VA Fairfax City, VA Falls Church City, VA Arlington County, VA Fairfax County, VA
Topeka, KS Shawnee County	Waterbury, CT Litchfield County New Haven County
Trenton, NJ Mercer County	Waterloo, IA Black Hawk County
Tucson, AZ Pima County	Wenatchee, WA Chelan County
Tulsa, OK Creek County Osage County Tulsa County	West Palm Beach, FL Palm Beach County
Tuscaloosa, AL Tuscaloosa County	Wheeling, WV-OH Marshall County, WV Ohio County, WV Belmont County, OH
Tyler, TX Smith County	Wichita, KS Butler County Sedgwick County
Utica-Rome, NY Herkimer County Oneida County	Wichita Falls, TX Archer County Wichita County
Vallejo-Napa, CA Napa County Solano County	Wilkes-Barre-Hazleton, PA Luzerne County
Vicksburg, MS Warren County	Wilmington, DE-NJ-MD New Castle County, DE Salem County, NJ Cecil County, MD
Virgin Islands The entire Territory	Wilmington, NC New Hanover County
Waco, TX McLennan County	Winston-Salem, NC Forsyth County
Walla Walla, WA Walla Walla County Benton County	

Figure 5-11j

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\* Worcester, MA  
Worcester County

Yakima, WA  
Yakima County

York, PA  
Adams county  
York County

Youngstown-Warren, OH  
Mahoning County  
Trumbull County

Yuma, AZ  
Yuma County

Figure 5-11k

5-276

\*

## INSTRUCTIONS FOR PREPARATION OF LEASES

The following data have been established, in addition to the general guidelines provided, to meet specific requirements related to the several lease forms that are used.

Provisions and Execution.

a. Names of all lessors will be inserted, and leases will be executed by all appropriate parties. Where husband and wife own property as tenants by the entirety, or as joint tenants with the right of survivorship, and the local law recognizes such tenancy, both husband and wife should be designated as parties, and both should execute the lease. Where applicable, a provision should be included in the lease that upon the death of the husband or wife, all rentals not paid prior to death shall be paid to the surviving spouse.

b. A complete and accurate legal description of the property to be leased will be inserted. If the leased property is vacant land, insert acreage. If the premises consist of office or warehouse space, include gross and usable square footages. The use clause should provide for occupancy of the property for "Government purposes." If the lessor objects to the general use term, the specific use to be made of the property may be inserted.

c. The commencement of the term of the lease will ordinarily be the date possession is taken, to avoid processing payment for prior occupancy as a claim.

d. ENG Forms 527 and 856 and Standard Forms 2 and 2B provide for automatic renewal, and the provisions granting the Government the right of termination should not be deleted.

e. The option to renew will be for the longest period obtainable. Where improvements are to be placed on land, or structures altered at the expense of the Government, the option of renewal should be in accordance with the provisions of Department of Defense Directive 4165.16, dated 19 December 1958, subject: Real Property; Construction on Leased Land and Release of Leaseholds.

f. ENG Form 856 is silent as to the condition in which the land is to be returned. In the event the lessor requires restoration, a clause similar to the restoration clause of ENG Form 527 may be inserted. If no restoration is required by lessor, appropriate notation will be made in the lease. \*

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•Restoration Clause. The number of days for advance notice by the lessor that restoration is required should be inserted. This period should be shorter than the number of days required to be given by the Government to terminate the lease.

Maintenance Clause. Where the lessor is not agreeable to providing all of the maintenance required in ENG Form 527 and Standard Form 2A and in the general provisions of Standard Form 2B, a modification may be made to these provisions to express the actual maintenance to be provided by the lessor. However, in such cases, and as a general rule, the lease should provide that the lessor is to maintain the exterior of the building, including the roof, and repair any structural defects in the leased premises. An express covenant in the lease, binding the Government to make repairs, is not desirable, as it may have the effect of increasing the Government's obligation to restore. Where the lease does not expressly require the lessor to maintain the premises, funds may be expended by the Government for repairs without any express provision therefor.

Risk Clause. No change will be made in this clause, which is contained in ENG Form 527 and in the Standard Forms 2A and 2B, which will place responsibility upon the Government in case of fire or other casualty.

Additional Clauses. Any essential provision may be added. References to any changes will be made in the space preceding the witness clause. The Procurement Authority citation will be included.

Evidence of Authority. The authority for execution of leases by an agent, partner, corporation officer, or other authorized person, must be attached to each lease.

Recording Leases. If the property is located in a State requiring the recording of leases; all statutory requirements must be met. Leases and supplemental agreements involving lands upon which substantial Government improvements are to be constructed will be recorded.

Numbering Leases.

a. Every lease will be numbered, regardless of consideration or the number of rental payments involved.

b. Additional instructions:

(1) Contract numbers assigned to Army (Military) and Air Force leases, and those obtained for other Federal agencies will consist of the letters "DACA" followed by the fiscal station number of the \*

Figure 5-12a

\* activity preparing the lease, a dash, the instrument identification code "5", a dash, the last two digits of the fiscal year in which the lease is executed, and a dash followed by the instrument serial number, e.g., DACA31-5-79-1.

(2) Army Civil Works leases will be numbered in the same manner as set forth above except that the letters "DACW" will precede the fiscal station number, e.g., DACW31-5-79-1.

(3) Supplemental agreements will be numbered consecutively and will bear the same identification as the original lease instrument that is being modified or amended.

(4) The lessor's Social Security number or Tax Identification number will be incorporated in all leases, except in overseas areas.

#### Rent.

a. The official designation of the Disbursing or Finance Officer will be stated in the lease. Standard Form 1166, Voucher and Schedule for Payments, and Standard Form 1167, Continuation Sheet, will be used in making rental payments from civil and/or military funds. Certification by lessors is not required. Procedures for payment of rent may change or vary, dependent upon procedural requirements that are established. For Air Force and Family Housing leases, different procedures may be dictated.

b. Air Force leases, which include Air Force Reserve and Air National Guard, may require special handing to assure prompt rental payment. The official designation of the Air Force disbursing officer by whom rental is to be paid will be obtained from the appropriate Air Force Command, and will be inserted in the lease. When lease distribution is made, notification will be given the lessor stating in the cover letter exactly the name of the disbursing office and the method of payment. This same procedure will be followed for Air Force Family Housing or BOQ leases.

#### Procedures for Lease Distribution (Military).

a. Two copies of all military leases will be signed as originals, by the lessor and the Government. Distribution will be made as follows:

(1) One signed copy will be delivered to the lessor.

(2) One signed copy will be retained by the Division or District Engineer, as applicable.

b. On other than Air Force projects, two certified true copies of the lease will be prepared, one for the occupying agency, and one for the Disbursing Officer who is to pay the rental. Such additional

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\* true copies as are necessary will be prepared, and furnished to the appropriate commands.

c. If the premises are for the National Guard (Air or Army), a certified true copy of the lease will be forwarded directly to the Chief, National Guard Bureau, Departments of the Army and Air Force, Washington, D. C. 20310.

d. If the premises are to be occupied by an activity of the Department of the Air Force, four certified true copies will be prepared, on each of which will appear, in the upper right hand corner, a notation as to the official name of the Air Force installation. These will be distributed as follows:

(1) One copy to the Disbursing Officer who is to pay the rental.

(2) One copy to Directorate of Engineering and Services, (AF/LEER), Headquarters, U. S. Air Force, Attn: Real Property Division, Washington, D. C. 20330.

(3) Two copies to the headquarters of the major command, ATTN: Air Installations Division.

Standard Lease Forms.

a. On Standard Form 2, Clause 5 will be deleted, and the following clause will be substituted: "This lease shall be automatically renewed from year to year without further notice unless and until the Government shall give notice of termination in accordance with Clause 4, provided that adequate appropriations are available from year to year for the payment of rentals, and provided further that this lease shall in no event extend beyond \_\_\_\_\_,"

b. On Standard Form 2A, two changes will be made:

(1) Under "General Provisions and Instructions," paragraph 4 will be deleted and the following provision substituted: "Alterations. The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect additions, structures or signs in or upon the premises hereby leased. Such fixtures, additions or structures shall be and remain the property of the Government and may be removed prior to the expiration or termination of this lease. The lessor may, upon not less than \_\_\_\_\_ days notice to the Government, before termination of the lease, require restoration of the leased premises. In this event, prior to the expiration \*

Figure 5-12c

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\* or termination of this lease, or prior to relinquishment of possession, whichever first occurs, the Government shall, at its sole election, either (1) restore the premises to the same condition as that existing at the time of entering upon the same under this lease, reasonable and ordinary wear and tear and damage by the elements or by circumstances over which the Government has no control excepted, or (2) pay to the lessor a sum of money representing either the diminution in the fair market value of the property due to the failure to restore, or the actual cost of restoration, whichever is the lesser amount."

(2) The following provision will be added: "17. Gratuities to Government Employees.

"(a) The Government may, by written notice to the Lessor, terminate the right of the lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the lessor, or any agent or representative of the lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such lease; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

"(b) In the event this lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the lessor as it could pursue in the event of a breach of the lease by the lessor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the cost incurred by the lessor in providing any such gratuities to any such officer or employee.

"(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease."

c. On Standard Form 2B, three changes will be made:

(1) On the face of the form, in Clause 3, "Term," after the words, "...but not beyond this lease" the following words will be added: "will automatically renew itself, unless terminated by the Government as hereinafter provided." \*

Figure 5-12d

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\* (2) On the reverse of the form, General Provision 3, "Alterations," will be deleted, and the following general provision will be substituted: "Alterations. The Government shall have the right during the existence of this lease to make alterations, attach fixtures, and erect additions, structures or signs in or upon the premises hereby leased. Such fixtures, additions or structures shall be and remain the property of the Government and may be removed prior to the expiration or termination of this lease. The lessor may, upon not less than \_\_\_\_\_ days notice to the Government, before termination of the lease, require restoration of the leased premises. In this event, prior to the expiration or termination of this lease, or prior to relinquishment of possession, whichever first occurs, the Government shall, at its sole election, either (1) restore the premises to the same condition as that existing at the time of entering upon the same under this lease, reasonable and ordinary wear and tear and damage by the elements or circumstances over which the Government has no control excepted, or (2) pay to the lessor a sum of money representing either the diminution in the fair market value of the property due to the failure to restore, or actual cost of restoration, whichever is the lesser amount."

(3) The following general provision will be added: "12. Gratuities to Government Employees.

"(a) The Government may, by written notice to the lessor, terminate the right of the lessor to proceed under this lease if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the lessor, or any agent or representative of the lessor, to any officer or employee of the Government with a view toward securing a lease or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of such leases; provided, that the existence of facts upon which the Secretary of the Army or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

"(b) In the event this lease is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the lessor as it could pursue in the event of a breach of the lease by the lessor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) which shall be not less than three nor more than ten times the costs incurred by the lessor in providing any such gratuities to any such officer or employee.\*



\* “(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this lease.”

d. ENG Form 527 will be modified by adding the following clauses :

(1) On page 4, the following clause will be added unless the Contract (Lease) is exempt under the rules and regulations of the Secretary of Labor (41 C.F.R. 60): “18. During the performance of this Contract (Lease) , the Contractor (Lessor) agrees as follows:

“(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

“(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

“(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the said labor union or workers’ representative of the Contractor’s commitments under this nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

“(d) The Contractor will comply with all provisions of Executive Order No. 11246 of 24 September 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

“(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of 24 September 1965, and by \*

Figure 5-12f

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- \* the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such roles, regulations and orders.

"(f) In the event of the Contractor's noncompliance with the nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of 24 September 1965 and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(g) The Contractor will include paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of 24 September 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States."

(2) Following Clause 18, above, the nondiscrimination clause will be added:

"19. (a) As used in this section, the term "facility" means stores, shops, restaurants cafeterias, restrooms, and any other facility of a public nature in the building in which the space covered by this lease is located.

"(b) The lessor agrees that he will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, religion, sex, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the lessor solely to tenants, their employees, customers, patients, clients, guests and invitees. \*

Figure 5-12g

\* "(c) It is agreed that the lessor's noncompliance with the provisions of this section shall constitute a material breach of this lease. In the event of such noncompliance, the Government may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law. In the event of termination, the lessor shall be liable for all excess costs of the Government in acquiring substitute space, including but not limited to the cost of moving to such space. Substitute space shall be obtained in as close proximity to the lessor's building as is feasible and moving costs will be limited to the actual expenses thereof as incurred.

"(d) It is further agreed that from and after the date hereof the lessor will, at such time as any agreement is to be entered into or a concession is to be permitted to operate, include or require the inclusion of the foregoing provisions of this section in any existing agreement or concession arrangement or one in which the contracting party other than the lessor has the unilateral right to renew or extend the agreement or arrangement, until the expiration of the existing agreement or arrangement and the unilateral right to renew or extend. The lessor also agrees that it will take any and all lawful actions as expeditiously as possible, with respect to any such agreement as the contracting agency may direct, as a means of enforcing the intent of this section, including, but not limited to, termination of the agreement or concession and institution of court action."

Figure 5-12h \*

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\*

HEADQUARTERS  
DEPARTMENT OF THE ARMY  
Washington, D.C. 20314

C  
O  
P  
Y

HEADQUARTERS  
UNITED STATES READINESS COMMAND  
MacDill AFB, Florida 33608

HEADQUARTERS  
UNITED STATES ARMY FORCES, READINESS COMMAND  
Fort Monroe, Virginia 23351

MEMORANDUM OF UNDERSTANDING BY DEPARTMENT OF THE ARMY,  
USCINCRÉD, AND USCINCARRED ON ACQUISITION OF MANEUVER RIGHTS  
FOR USREDCOM JOINT TRAINING EXERCISES

1. PURPOSE. To set forth certain policies, procedures, and responsibilities agreed to by the Department of the Army, USCINCRÉD, and USCINCARRED to permit timely and effective acquisition of maneuver rights for USREDCOM joint training exercises.
2. GENERAL.
  - a. Acquisition of maneuver rights for USREDCOM joint training exercises falls into the following two distinct phases:
    - {1} Preliminary phase.
    - (2) Acquisition phase.
  - b. Actions in the preliminary phase are taken prior to six months in advance of the starting date of a given exercise and include:
    - (1) Preliminary field surveys.
    - (2) Detailed real estate study.
    - (3) USCINCRÉD directive to acquire maneuver rights.
    - (4) Congressional, public information and funding plans.
    - (5) USCINCARRED/CGCONARC directive to acquire maneuver rights.
  - c. Actions in the acquisition phase commence approximately six months prior to the starting date of an exercise and include: \*

Figure 5-13

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\* (1) Notification of Congress of the pending acquisition of maneuver rights.

(2) Initial news release and conduct of public information program.

(3) Conduct of special meetings in proposed maneuver area, if appropriate.

(4) Acquisition of maneuver rights.

(5) Reporting of the status of acquisition.

3. PRELIMINARY PHASE.

a. Preliminary field surveys

(1) These surveys are conducted by the Chief of Engineers at the request of USCINCARRED. Their purpose is to provide broad information on the feasibility, and the cost of acquiring maneuver rights in specific areas for use by USCINCREC in planning and programming these exercises. In addition, component commanders may request the assistance of the District Engineer concerned in the preparation of their environmental assessment and in the preparation of an environmental impact statement, if required. No action will be initiated during preliminary field surveys either to actually acquire maneuver rights or to divulge the intent of the U. S. Army to acquire such rights in the future.

(2) The Chief of Engineers will be given a minimum of three months in which to complete a preliminary field survey.

(3) USCINCREC may request the Chief of Engineers to conduct preliminary field surveys at any time. Information copies of such requests will be provided USCINCARRED. The Chief of Engineers will notify all interested Department of the Army staff agencies of such requests, to include the Assistant Chief of Staff for Force Development (ACSFOR), the Deputy Chief of Staff for Logistics DCSLOG), the Chief of Information (CINFO), and the Office of Chief of Legislative Liaison (OCLL). Reports of preliminary field surveys will be provided directly to USCINCREC with information copies forwarded to USCINCARRED and interested Department of the Army staff agencies. Such reports will be retained on an "Official Use Only" basis.

(4) Funds to conduct surveys will be provided out of joint exercise funds available to USCINCARRED. The Chief of Engineers will request such funds directly from USCINCARRED.

Figure 5-13a \*

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\* b. Detailed real estate study.

(1) The Chief of Engineers will conduct a detailed real estate study for each maneuver area requiring the acquisition of maneuver rights. The study will be made prior to the start of any actual acquisition when a specific maneuver area has been selected by USCINCREC for a joint training exercise as a result of information provided to him in preliminary field surveys. The conduct of a detailed real estate study is indicative that USCINCREC will subsequently direct the acquisition of maneuver rights in the area studied. Its purpose is to establish a detailed plan and consider all ramifications including costs and problems involved in actual acquisition by the appropriate Division and District Engineers.

(2) USCINCREC will request the Chief of Engineers to conduct a detailed real estate study not later than nine months prior to the starting date of a given exercise. Copies of such requests will be furnished USCINCARRED. The study will be completed and a report submitted to USCINCREC with information copies to USCINCARRED and interested Department of the Army staff agencies not later than seven months prior to the starting date of the exercise to permit taking other preliminary phase actions before the start of the acquisition phase.

(3) After analyzing the detailed real estate study, USCINCREC will make the final decision for the maneuver area and issue a directive to acquire maneuver rights.

c. USCINCREC directive to acquire maneuver rights.

(1) This directive is given to USCINCARRED with an information copy to the Chief of Engineers and specifies location, size, period of utilization, estimated cost of the acquisition of maneuver rights, specific joint exercise funds to be used, and the target date to start acquisition. The target date will not be later than six months before the starting date of exercise.

(2) The availability of funds to effect acquisition will be cleared with USCINCARRED prior to issuing the directive.

d. Congressional; public information and funding plans.

(1) In carrying out USCINCREC's directive to acquire maneuver rights, USCINCARRED is responsible for the coordination of all matters pertaining to the timely notification of appropriate Members of Congress; making the initial approved news release (the \*

Figure 5-13b

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preparation of the initial news release is the responsibility of USCINCREDE]; the conduct of special meetings in the maneuver area with state and local dignitaries, when appropriate; the conduct of overall information program, and the provision of necessary funds to support the acquisition.

(2) Plans to insure proper handling of these matters will normally be developed by USCINCARRED at a meeting held by USCINCREDE representatives with appropriate Department of the Army staff agencies (including but not limited to ACSFOR, DCSLOG, CINFO, OCLL, and Chief of Engineers), appropriate Division and District Engineer personnel, and representatives of the CONUS Army that will function as USARRED/CONARC agent for the acquisition.

e. USARRED/CONARC directive to acquire maneuver rights. This directive will be issued not later than six months prior to the starting date of the exercise. It will designate the CONUS Army that will function as the USARRED/CONARC agent for the acquisition and set forth all details for notification of Members of Congress; the initial news release; the conduct of the public information program; the conduct of special meetings with dignitaries, if appropriate; and funding.

#### 4. ACQUISITION PHASE.

a. Notification of Congress pending acquisition of maneuver rights. Such notification will be made by the Department of the Army (OCLL). Details of the notification will be as agreed in prior coordination between the Department of the Army (OCLL) and USARRED/CONARC as reflected in USARRED/CONARC directive. No overt act of land acquisition will be performed nor news release made prior to the notification of the Members of Congress concerned.

b. Initial news release and conduct of public information program.

(1) The initial news release will be prepared at USREDCOM and released in accordance with instructions of USCINCREDE as implemented by USARRED/CONARC directive.

(2) Public information program will be conducted by CONUS Army designated in USARRED/CONARC directive.

c. Conduct of special meetings in the proposed maneuver area. When appropriate, special meetings will be conducted with state and local dignitaries for the purpose of enlisting their support \*

Figure 5-13c

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\* towards achieving a successful land acquisition program. Guidance for the conduct of such meetings will be contained in the USARRED/CONARC directive.

d. Acquisition of maneuver rights. USARRED/CONARC will have the overall responsibility for such acquisition. This responsibility will be executed by the CONUS Army designated as the agent for acquisition through appropriate Division and District Engineers in accordance with AR 405-10.

e. Reporting of the status of acquisition.

(1) The District Engineer designated to acquire maneuver rights will furnish reports of the status of such acquisition to USCINCRCD, USCINCARRED, appropriate Department of the Army staff agencies (ACSFOR, DCSLOG, Chief of Engineers) and to CONUS Army designated as USARRED/CONARC agent.

(2) Status reports will be furnished biweekly during the first five months and weekly during the last month of the acquisition phase. Reports will include but will not be limited to the following:

- (a) Total acres required.
- (b) Total landowners involved.
- (c) Total landowners contacted and number of agreements signed.
- (d) Total acres represented by such agreements.
- (e) Total landowners refusing permits and acres represented by such landowners.

FOR THE SECRETARY OF THE ARMY AND COMMANDERS IN CHIEF:

/s/ Verne L. Bowers  
VERNE L. BOWERS  
Major General, USA  
The Adjutant General

/s/ Jack E. Compton  
JACK E. COMPTON  
Colonel, AGC  
Adjutant General

/s/ E. Thomas  
E. THOMAS  
Colonel, AGC  
Adjutant General

Figure 5-13d \*



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<b>15% VALUATION CERTIFICATE</b> (Under Section 322, Act of 30 June 1932, 47 Stat. 412)		LEASE NO.
		DATE
1. NAME OF LESSOR		2. NAME AND LOCATION OF BUILDING
3. TO BE USED BY		FOR
4. TOTAL AREA (Rentable space in building)		SQ. FT.
5. TOTAL AREA LEASED TO GOVERNMENT:		SQ. FT.
a. SQUARE FEET		
b. PERCENT OF ITEM NO. 4		%
6. ASSESSMENT OF ENTIRE PREMISES:		
a. ASSESSED VALUE		\$
b. LEGAL RATIO TO TRUE VALUE		%
7. ASSESSED VALUE OF PREMISES LEASED:		
a. ASSESSED VALUE (6a x 5b)		\$
b. TRUE VALUE COMPUTED ON ASSESSMENT (7a + 6b)		\$
8. STATE WHETHER ASSESSMENT IS INDICATIVE OF TRUE MARKET VALUE, AND SOURCE OF INFORMATION:		
9. FAIR MARKET VALUE, IF APPRAISED		\$
10. 15% OF VALUE OF PREMISES LEASED TO GOVERNMENT:		
a. BASED ON ASSESSED VALUE (15% of item 7b)		\$
b. BASED ON FAIR MARKET VALUE, IF APPRAISED (15% of item 9)		\$
11. RENTAL:		
a. SQUARE FEET		SQ. FT.
b. PER ANNUM		\$
12. REASONABLE VALUE OF SERVICES AND UTILITIES (Check applicable box)		
<input type="checkbox"/> JANITOR <input type="checkbox"/> ELECTRICITY <input type="checkbox"/> HEAT		
<input type="checkbox"/> WATER <input type="checkbox"/> ELEVATOR <input type="checkbox"/> OTHER		
<b>TOTAL COST</b>		\$
13. NET RENT PER ANNUM (Item 11 minus Item 12)		\$
14. LEASE FOR HOUSING (If "Yes", answer <input type="checkbox"/> YES <input type="checkbox"/> NO                      Items 14a and 14b)		14a. NO. OF OCCUPANTS
		14b. NO. OF ROOMS
15. REMARKS		
TYPED NAME AND TITLE		SIGNATURE

ENG FORM 1 MAY 73 869-R

EDITION OF 1 JAN 46 IS OBSOLETE

GPO 944 856

5-293

Figure 5-14 \*

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1 Nov 83

\*

**DEPARTMENT OF THE ARMY**

**OWNER'S TITLE GUARANTEE (INSURANCE) POLICY**

ISSUED BY

-----  
(Name of Corporation)

Policy Number

Project

Amount \$

Tract No.

----- a ----- Corporation, herein called  
(Name of Corporation) (State)  
the Corporation, for a valuable consideration

HEREBY Guarantees (Insures)

THE UNITED STATES OF AMERICA

hereinafter called the Insured, against loss or damage not exceeding

Dollars, together with costs and expenses which the Corporation may become obligated to pay as provided in the Conditions and Stipulations hereof, which the Insured shall sustain by reason of:

any defect in or lien or encumbrance on the title to the estate or interest covered hereby in the land described or referred to in Schedule A, existing at the date hereof, not shown or referred to in Schedule B or excluded from coverage by the General Exceptions;

all subject, however, to the provisions of Schedules A and B and to the General Exceptions and to the Conditions and Stipulations hereto annexed; all as of the day of , 19 , the effective date of this policy.

In Witness Whereof, the Corporation has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

COUNTERSIGNED : -----  
(Name of Corporation)  
----- By -----  
----- Secretary.  
----- By -----  
----- Secretary.

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REPLACES ENG FORM 1015, 1 MAY 66 WHICH MAY BE USED.

ENG FORM 1015-R, Jun 83

(ER 405-1-11 and EP 405-1-2)

Figure 5-15

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**SCHEDULE "A"**

1. The estate or interest in the land described or referred to in this schedule covered by this policy is:

(Will be shown as a fee or such lesser estate or interest owned by the person or party named in paragraph 2 of this Schedule.)

2. Title to the estate or interest covered by this policy at the date hereof is vested in:

3. The land referred to in this policy is described as follows:

**SCHEDULE "B"**

This policy does not guarantee (insure) against loss or damage by reason of the following:

1. Current and delinquent taxes and assessments as follows:

(List all taxing districts in which the land is situated and other taxing authorities that have jurisdiction over said land for the levy of taxes; showing lien date for each and amounts for all such assessments that have not been paid on the date of the policy.)

2. Special Exceptions such as recorded easements, liens, etc., showing in addition the persons or parties holding such interests of record, and who the Company would require to convey such interest or who would be the proper parties defendant in a condemnation proceeding to eliminate such matter. The writeup could be substantially as follows:

An easement for road purposes conveyed to -----  
----- by deed recorded-----

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**General Exceptions:**

1. **Governmental Powers:** Because of limitations imposed by law on ownership and use of property, or which arise from governmental powers, this policy does not guarantee (insure) against:

- a. Consequences of the future exercise or enforcement or attempted exercise or enforcement of police power, bankruptcy power, or power of eminent domain, under any existing or future law or governmental regulations;
- b. Consequences of any law, ordinance, or governmental regulation, now or hereafter in force (including building and zoning ordinances), limiting or regulating the use or enjoyment of the property, estate, or interest described in Schedule "A," or the character, size, use or location of any improvement now or hereafter erected on said property.

2. **Matters Not of Record:** The following matters which are not of record at the date of this policy are not insured against:

- a. Rights or claims of parties in possession not shown of record;
- b. Questions of survey;
- c. Easements, claims of easement or mechanics liens where no notice thereof appears of record; and
- d. Conveyances, agreements, defects, liens or encumbrances, if any, where no notice thereof appears of record; provided, however, the provisions of this subparagraph 2(d) shall not apply if title to said estate or interest is vested in the United States of America on the date hereof.

3. **Matters Subsequent to Date of Policy:** This policy does not guarantee (insure) against loss or damage by reason of defects, liens or encumbrances created subsequent to the date hereof.

4. **Refusal to Purchase:** This policy does not guarantee (insure) against loss or damage by reason of the refusal of any person to purchase, lease, or lend money on the property, estate, or interest described in Schedule "A."

**CONDITIONS**

**Notice of Actions:** If any action or proceeding shall be begun or defense asserted which may result in an adverse judgement or decree resulting in a loss for which this Company is liable under this policy, notice in writing of such action or proceeding or defense shall be given by the Attorney General to this Company within 90 days after notice of such action or proceeding or defense has been received by the Attorney General; and upon failure to give such notice then all liability of this Company with respect to the defect, claim, lien, or encumbrance asserted or enforced in such action or proceeding shall terminate. Failure to give notice, however, shall not prejudice the rights of the party guaranteed (insured), (1) if the party insured shall not be a party to such action or proceeding, or (2) if such party, being a party of such action or proceeding be neither served with summons therein nor have actual notice of such action or proceeding, or (3) if this Company shall not be prejudiced by failure of the Attorney General to give such notice.

**Notice of Writs:** In case knowledge shall come to the Attorney General of the issuance or service of any writ of execution, attachment, or other process to enforce any judgement, order or decree adversely affecting the title, estate, or interest guaranteed (insured) said party shall notify this Company thereof in writing within 90 days from the date of such knowledge; and upon a failure so to do, then all liability of this Company in consequence of such judgement, order, or decree or matter thereby adjudicated shall terminate unless this Company shall not be prejudiced by reason of such failure to notify.

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\* **Defense of Claims:** This Company agrees, but only at the election and request of the Attorney General of the United States, to defend at its own cost and expense the title, estate, or interest hereby guaranteed (insured) in all actions or other proceedings which are founded upon or in which it is asserted by way of defense, a defect, claim, lien, or encumbrance against which this policy guarantees (insures), provided, however, that the request to defend is given in sufficient time to permit the Company to answer or otherwise participate in the proceeding. If any action or proceeding shall be begun or defense be asserted in any action or proceeding affecting or relating to the title, estate or interest hereby guaranteed (insured) and the Attorney General elects to defend at the Government's expense, the Company shall upon request cooperate and render all reasonable assistance in the prosecution or defense of such proceeding and in prosecuting appeals.

If the Attorney General shall fail to request and permit the Company to defend, then all liability of the Company with respect to the defect, claim, lien, or encumbrance asserted in such action or proceeding shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest such defenses and actions as it shall conceive should be taken and the Attorney General shall present the defenses and take the actions of which the Company shall advise him in writing, then then the liability of the Company shall continue; but in any event the Company shall permit the Attorney General without cost or expense to use the information and facilities of the Company for all purposes which he thinks necessary or incidental to the defending of any such action or proceeding or any claim asserted by way of defense therein and to the prosecuting of an appeal.

**Comprise of Adverse Claims:** Any compromise, settlement, or discharge by the United States or its duly authorized representative of an adverse claim, without the consent of this Company shall bar any claim against the Company hereunder. Provided, however, that the Attorney General may at this election submit to the issuing company for approval or disapproval any proposed compromise, settlement, or discharge of any adverse claim and in the event of the consent of the issuing company to the proposed compromise, settlement or discharge it shall be liable for the full payment of the full amount paid.

**Statement of loss:** A statement in writing of any loss or damage sustained by the party guaranteed (insured), and for which it is claimed this Company is liable under policy, shall be furnished by the Attorney General to this Company within 90 days after said party has notice of such loss or damage; and no right of action shall accrue under this policy under 30 days after such statement shall have been furnished. No recovery shall be had under this policy unless suit be brought thereon within 1 year after said period of 30 days. Failure to furnish such statement of loss or to bring such suit within the times specified shall not affect the Company's liability under this policy unless this Company has been prejudiced by reason of such failure to furnish a statement of loss or bring such suit.

**Policy Reduced by Payments of Loss:** All payments of loss under this policy shall reduce the amount of this policy pro tanto.

**Amendment of Policy:** No provision or condition of this policy can be waived or changed except by writing endorsed hereon or attached hereto signed by the President, a Vice President, the Secretary, and Assistant Secretary or other validating officer of the Company.

**Notices, Where Sent:** All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at (insert proper address) .

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CHAPTER 6

RELOCATION ASSISTANCE PROGRAM

SECTION I. GENERAL

6-1. Purpose. This chapter is designed to provide guidance for implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646; 84 Stat. 1894), hereinafter referred to as the Act, to assure fair, equitable, and uniform treatment of persons displaced by Federal and federally-assisted programs for which the Corps of Engineers has responsibility. All references in this chapter to sections or subsections (in the text) are references to sections or" subsections of the Act unless otherwise indicated.

\* 6-2. Applicability. This chapter is applicable to the Office of the Chief of Engineers (OCE) and to all Division and District Engineers having real estate responsibilities. It will also be applied to activity on behalf of any client agency for which the Corps serves as real estate agent, unless otherwise agreed with the client agency. \*

6-3. Basic Procedural Requirements. Procedures and forms described in chapters relating to the acquisition of real property and interests therein will be followed except as they may be modified by the requirements of the Act and this chapter.

a. A written notice of intention to acquire must be given to each individual, family, business, or farm operation to be displaced. Such notice shall be served personally or by certified (or registered) first-class mail at the earliest possible time. (See Figure 6-1).

b. In order to qualify for benefits under Title II of the Act, as a displaced person, either of two conditions must be fulfilled:

(1) The person must have moved (or moved his personal property) as a result of the receipt of a written notice to vacate which notice may have been given before or after initiation of negotiations for acquisition of the property as prescribed by regulations. (When negotiations are initiated prior to issuance of a written notice, all persons contacted should be advised that the benefits of the Act are available only when the person moves subsequent to receipt of a written notice); or

(2) The subject real property must, in fact, have been acquired, and the person must have moved as a result of its acquisition (except in those instances covered by Sections 217 and 219 of the Act). A move made after acceptance of an Offer to Sell (contract of purchase) but before closing is a move made as the result of acquisition of subject property.

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\* c. In addition, certain of the benefits provided by Title II of the Act are available as follows:

(1) Whenever the acquisition of, or notice to move from, real property used for a business or farm operation causes any person to move from other real property used for his dwelling, or to move his personal property from such other real property, such person may receive the benefits provided by Sections 202(a) and (b) and 205 of the Act.

(2) If it is determined that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, the District Engineer may offer such person relocation advisory services under Section 205(c) of the Act.

d. For real property acquisitions under Federal law, contracts or options to purchase real property shall not incorporate provisions for making payments for relocation costs and related items in Title II of the Act. Appraisers shall not give consideration to, nor include in their real property appraisals, any allowances for the benefits provided by Title II. In the event of condemnation with a declaration of taking, the estimated compensation shall be determined solely on the basis of the appraised value of the real property with no consideration being given to or reference contained therein to the payments to be made under Title II of the Act. In so far as practicable, a person negotiating for the acquisition of real property will not negotiate the relocation benefits to which a displaced person may be entitled.

e. Applications for benefits under the Act are to be made within 18 months from the date on which the displaced person moves from the real property acquired or to be acquired; or the date on which the displacing agency makes final payment of all costs of that real property, whichever is the later date. Final payment of all costs includes satisfaction of awards in condemnation proceedings. The Chief of Engineers may extend this period upon a proper showing of good cause.

f. A displaced person who makes proper application will be paid promptly after a move and, in hardship cases, may be paid in advance.

g. The provisions of the Act apply to the acquisition of all real property for, and the relocation of, all persons displaced by Federal program and projects undertaken by State agencies which receive Federal financial assistance for all or part of the cost. It is immaterial whether the real property is acquired by a Federal or State agency or whether Federal funds contribute to the cost of the real property. \*

h. The availability of relocation benefits in leasehold cases under Title II of the Act depends upon the circumstances under which the leasing action takes place. Persons vacating as the result of a Government order to vacate, a lease construction project, or the condemnation of a leasehold interest are entitled to benefits under Title II. The provisions of Title II do not apply to leasehold cases under any other circumstances.

6-4. Review of Activities for Compliance with Titles II and III. The District Engineer shall provide for the periodic review of all Federal and federally-assisted programs for which he is responsible to insure compliance with the provisions of Titles II and III of the Act.

6-5. Public Information. The District Engineer shall insure that the public receives adequate knowledge of programs involving relocations and that persons to be displaced be fully informed, at the earliest possible time, of such matters as the relocation payments and assistance available; the specific plans and procedures for assuring that suitable replacement housing will be available for homeowners and tenants, in advance of displacement; the eligibility requirements and procedures for obtaining such payments and assistance; and the right of administrative review by the Chief of Engineers.

6-6. Effective Date. The Act became effective 2 January 1971 and applies to all persons who moved after that date from real property acquired by the Government for public use.

6-7. Repeal of Laws. The Resettlement Act, 10 U.S.C. 2680, and Section 301 of the Land Acquisition Policy Act of 1960, 33 U.S.C. 596, were repealed by the Act.

6-8. Benefits to be Determined as of Date of Vacation. Where a former owner or tenant does not vacate the acquired property immediately, or such property is leased to a former owner or tenant, relocation rights will be computed as of the time the property is vacated which, under Corps policy, is not later than two years from the date of acquisition. Former owners and tenants of property acquired before 2 January 1971 who move therefrom after that date are limited to benefits under Sections 202 and 204, Public Law 91-646. No benefits shall be paid under Section 203 to any person whose property was acquired prior to 2 January 1971.

6-9. Definitions.

a. The Act. "The Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

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b. District Engineer. The term "District Engineer" as used in this chapter means any District Engineer or his Chief of Real Estate, or where the Division Engineer handles real estate on a centralized basis, the Division Engineer or his Chief of Real Estate.

c. Federal Agency. The term "Federal Agency" means any department, agency, or instrumentality in the Executive Branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve Banks, and branches thereof.

d. State/State Agency. The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands, and any political subdivision thereof. The term "State agency" means the National Capital Housing Authority, the District of Columbia Redevelopment Land Agency, and any department, agency, or instrumentality of a State or of a political subdivision of a State, or any department, agency, or instrumentality of two or more states or of two or more political subdivisions of a State or States.

e. Displacing Agency. The term "displacing agency" means a Federal agency in the case of a direct Federal project or a State agency in the case of a project receiving Federal financial assistance.

f. Federal Financial Assistance. The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

g. Person. The term "person" means any individual, partnership, corporation, or association.

h. Displaced Person. The term "displaced person" means any person who, on or after 2 January 1971, moves from real property, or moves personal property from real property as a result of acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of Sections 202(a) and (b) and 205 of the Act, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

\* i. Family. A "family" means two or more individuals who are related by blood, adoption, marriage, or legal guardianship who live together as a family unit. However, if the District Engineer considers that circumstances warrant, others who live together as a family unit may be treated as if they were a family for the purpose of determining benefits under Title II of the Act.

j. Business The term "business" means any lawful activity, excepting a farm operation, conducted primarily:

(1) For the purchase, sale, lease, and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;

(2) For the sale of services to the public;

(3) By a nonprofit organization; or

(4) Solely for the purposes of Section 202(a) of the Act, for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted. For the purpose of Section 202(c) of the Act, where a warehouse or other storage facility operated in conjunction with a business is acquired by the Government and the business is not so acquired, the warehouse or storage facility is not considered to be a business. An example is a warehouse owned by a furniture store. A lot of storage of automobiles, which was acquired, and the related car sales business or garage which was not acquired would fall in the same category.

k. Farm Operation. The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

l. Mortgage. The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws, of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

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m. Dwelling. "Dwelling" means the place of permanent or customary and usual abode of a person. It includes a single-family building, a one-family unit in a multi-family building; a unit of a condominium, or cooperative housing project; any other residential unit, including a mobile home which is either considered to be real property under State law, or cannot be moved without substantial damage or unreasonable cost or is not a decent, safe, and sanitary dwelling.

n. Owner. "Owner" means a person who holds fee title, a life estate, a 99-year, or an interest in a cooperative housing project which includes the right of occupancy of a dwelling unit, or is the contract purchaser of any such estate or interest, or who is possessed of such other proprietary interest in the property acquired as, in the judgment of the District Engineer, warrants considerations as ownership. In the case of one who has succeeded to any of the foregoing interests by devise, bequest, inheritance, or operation of law, the tenure of ownership, not occupancy, of the succeeding owner shall include the tenure of the preceding owner.

o. Financial Means. Section 205(c)(3) requires that the replacement dwelling is within the financial means of the displaced individual or family. In making this determination, the average monthly rental or housing cost (e.g., monthly mortgage payments, insurance for the dwelling unit, property taxes, and other reasonable recurring related expenses) which the displaced person will be required to pay, in general, should not exceed 25 percent of the monthly gross income or the present ratio of housing payment to the income of the displaced family or individual, including supplemental payments made by Public agencies.

SECTION II. ASSURANCE OF ADEQUATE REPLACEMENT  
HOUSING PRIOR TO DISPLACEMENT

6-10. Assurance of Availability.

a. Availability. District Engineers may not proceed with any phase of a project or authorize a State agency to proceed with any phase of a project which will cause the displacement of any person until it has been determined, or until satisfactory assurances have been received from the displacing State agency, that within a reasonable period of time prior to displacement, there will be available on a basis consistent with the requirements of Title VIII of the Civil Rights Act of 1968 (Public Law 90-284), in areas generally not less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary (hereinafter DSS) dwellings, equal in number to the number of, and available to, such displaced persons who require such dwellings and reasonably accessible to their places of employment. \*

\* b. Support. The determination or assurances shall be based on a current survey and analysis of available replacement housing by the District Engineer. Such survey and analysis must take into account the competing demands on available housing.

c. Waiver. In accordance with Section 205(c) (3), the Chief of Engineer may authorize the waiver of the assurances. This will be done on a case by case basis. Waiver shall be limited only to emergency or other extraordinary situations where immediate possession of real property is of crucial importance. Each waiver of assurance or replacement housing shall be supported by appropriate findings and a determination of the necessity for the waiver. Determinations so made shall be included in the annual report required by Section 214.

d. Decent, Safe, and Sanitary Housing. A DSS dwelling is one which is found to be in sound, clean, and weather-tight condition, and which meets local housing codes. District Engineers shall be governed by the following criteria in determining if a dwelling unit is DSS. Adjustments may only be made in the cases of unusual circumstances or in unique geographical areas.

(1) Housekeeping Unit. A housekeeping unit must include a kitchen with fully usable sink; a cooking stove, or connection for same; a separate complete bathroom; hot and cold running water in both the bathroom and the kitchen; an adequate and safe wiring system for lighting and other electrical services; and heating as required by climatic conditions and local codes.

(2) Nonhousekeeping Unit. A nonhousekeeping unit is one which meets local code standards for boarding houses, hotels, or other congregate living. If local codes do not include requirements relating to space and sanitary facilities, standards will be subject to the approval of the District Engineer.

(3) Occupancy Standards. Occupancy standards for replacement housing shall comply with Federal agency approved occupancy requirements or comply with local codes.

(4) Absence or Inadequacy of Local Standards. In those instances where there is no local housing code or a local housing code does not contain certain minimum standards or the standards are inadequate, the Chief of Engineers, based on recommendations of the District Engineer, will establish such standards.

6-11. Housing Provided as a Last Resort. When it is determined that adequate replacement housing is not available and cannot otherwise be made available, District Engineers will report the facts to the Chief of Engineers with recommendations. Such housing will be provided by the Government as a last resort.

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6-12. Loans for Planning and Preliminary Expenses. When contemplating loans for planning and other preliminary expenses authorized under Section 215, District Engineers will report the facts to the Chief of Engineers with recommendations. This provision also applies in connection with federally-assisted projects.

### SECTION III. MOVING AND RELATED EXPENSES

#### 6-13. Eligibility.

a. Any displaced person (including one who conducts a business or farm operation) is eligible to receive a payment for moving expenses. A person who lives on his business or farm property may be eligible for both moving and related expenses as a dwelling occupant in addition to being eligible for payments with respect to displacement from a business or farm operation.

b. Any person who moves from real property, or moves his personal property from real property as a result of the acquisition of such real property, in whole or in part, or as a result of a written notice of the acquiring agency to vacate real property, or solely for the purpose of Section 202(a) and (b) as a result of the acquisition of, or a written notice of the acquiring agency to vacate, other real property on which such person conducts a business or farm, is eligible to receive a payment for moving expenses.

#### 6-14. Actual Reasonable Expenses in Moving.

##### a. Allowable Moving Expenses.

(1) Transportation of individuals, families, and personal property from the acquired site to the replacement site, not to exceed a distance of 50 miles, except where the District Engineer determines that relocation beyond the 50-mile area is justified. The circumstances justifying the moving expense exceeding the 50-mile limitation should be made a part of the record. \*

(2) Packing and unpacking, crating and uncrating of personal property.

(3) Advertising for packing, crating, and transportation when the District Engineer determines that it is necessary.

(4) Storage of personal property for a period generally not to exceed 12 months when the District Engineer determines that storage is necessary in connection with relocation.

(5) Insurance premiums covering loss and damage of personal property while in storage or transit.

(6) Removal, reinstallation, reestablishment, including such modification as deemed necessary by the District Commander, and reconnection of utilities for machinery, equipment, appliances, and other items, not acquired as real property. Prior to payment of any expenses for removal and reinstallation of such property, the displaced person shall be required to agree in writing that the property is personality and that the Government is released from any payment for this property.

(7) Property lost, stolen, or damaged (not caused by the fault negligence of the displaced person, his agent or employees), in the process of moving, where insurance to cover such loss or damage is not available.

(8) Payment not to exceed \$100 for time lost from employment to supervise hired movers.

(9) In cases of emergency dislocation where permanent replacement housing is not immediately available in the area, all reasonable costs incurred in moving to and occupying temporary housing.

(10) Such other reasonable expenses which, in the opinion of the District Commander, were necessarily incurred by the displaced person.

\* b. Nonallowable Moving Expenses and Losses.

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(1) Additional expenses incurred because of higher cost of living in a new location.

(2) Cost of moving structures or other improvements for which the displaced person reserved removal rights, except as otherwise provided by law.

(3) Improvements to the replacement site, except when required in connection with the movement and reinstallation of personal property referred to in paragraph 6-14a(6).

(4) Interest on loans to cover moving expenses.

(5) Loss of good will.

(6) Loss of profits.

(7) Loss of trained employees.

(8) Personal injury.

(9) Cost of preparing the application for moving and related expenses.

(10) Searching expense in connection with locating a replacement dwelling. \*

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\* 6-15. Reasonable Expenses in Searching for Replacement Business or Farm.

a. The only allowable types of searching expenses are:

(1) Actual reasonable travel costs.

(2) Extra costs for meals and lodging.

(3) Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed \$10 per hour.

(4) Broker, real estate or other professional fees deemed necessary, in the discretion of the District Commander, to locate a replacement business or farm operation.

b. Limitation. The total amount a displaced person may be paid for searching expenses may not exceed \$500 unless the Chief of Engineers (DAEN-REH-0) determines that a greater amount is justified. Any circumstances which appear to warrant a search beyond a 50-mile radius will be included with the justification submitted to the Chief of Engineers. Searching expenses are part of the total expenses referred to in paragraph 6-17d which may require OCE approval before payment.

6-16. Actual Direct Losses by Business or Farm Operation. Payment for actual direct losses under a through c below may be made only after a bona fide effort to sell the personal property involved has been made, or such sale has been waived by the District Commander. Payments are also subject to the limitations contained in paragraph 6-17.

a. When the business or farm operation is discontinued and personal property sold, the displaced person is entitled to the difference between the fair market value of the personal property for continued use at its location and the net sale proceeds, or the estimated cost of moving 50 miles, whichever is less.

b. When business or farm personal property cannot be sold and is abandoned, the displaced person is entitled to payment for the fair market value of the personal property for continued use at its location, or the estimated cost of moving 50 miles, whichever is less, plus the reasonable costs of any attempted sale. The cost to the Government for removal of unsold or abandoned personal property shall not be an offsetting charge against any payments to the displaced person.

c. When an item of personal property used in connection with any business or farm operation that is to be reestablished is sold and replaced with a like item at the new location, reimbursement shall not exceed the replacement cost minus the net proceeds from the sale, or the estimated cost of moving the original item 50 miles, whichever is less.

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\* 6-17. Limitations on Payments for Moving and Related Expenses.

a. When the move is accomplished by the displaced person, the amount of payment shall not exceed the estimated cost of moving commercially, unless the District Commander determines a greater amount is justified.

b. When personal property used in connection with any business or farm operation to be moved is of low value and high bulk and the cost of moving would be disproportionate in relation to the value, in the judgment of the District Commander, the allowable reimbursement for the expense of moving the personal property shall not exceed the difference between the amount which would have been received for such item on liquidation and the cost of replacing the same with a comparable item available on the market. This provision will be applicable in the case of moving junk yards, stockpiled sand, gravel, minerals, metals, and other similar type items of personal property.

c. If the cost of moving or relocating an outdoor advertising display or displays is determined to be equal to, or in excess of, the in-place value of the display, consideration should be given to acquiring such display as a part of the real property, unless such acquisition is prohibited by State law.

d. Claims under paragraph 6-14, 6-15 and 6-16 which singly or together exceed \$15,000 will be submitted to CDR USACE (DAEN-REH-0), WASH DC 20314 for approval prior to payment together with justification in support of such payment. The justification will include estimated cost of moving 50 miles, when appropriate.

SECTION IV. PAYMENTS IN LIEU OF MOVING  
AND RELATED EXPENSES

6-18. Dwellings - Moving Expense Schedules; Dislocation Allowance.

a. Subsection 202(b) provides that the displaced person may receive a moving expense allowance not to exceed \$300 based on schedules established by each agency head. District Commanders will use the moving allowance schedules maintained by the respective State highway departments as the basis for such schedules. These schedules shall provide for adequacy of reimbursement in every locality. The Federal Highway Administration is required to maintain all schedules on a current basis and such schedules are normally available upon request.

b. Where there are no highway department schedules, the District Commander will join with other Federal agencies causing displacement in such areas in the development of a single moving expense schedule for the use of all displacing agencies.

c. A displaced person, who elects to receive a payment based on a schedule, shall be paid a sum not to exceed \$300 under the schedule used in the jurisdiction in which the displacement occurs regardless of where he relocates. In addition, he may be paid a dislocation allowance of \$200, provided, however, in cases of multiple occupancy, not families, only one dislocation allowance per dwelling will be paid.



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6-19. Businesses - Eligibility.

a. A person displaced from his business, as defined in Subsection 101(7)(A), (B), and (C), is eligible under Subsection 202(c) to receive a fixed payment in lieu of moving and related expenses. Care must be exercised in each instance, however, to assure that such payments are made only in connection with a bona fide business.

b. A payment in lieu of actual reasonable moving expenses may be made under Section 202(C) to the displaced owner of a business only if the District Engineer determines that during the two taxable years prior to displacement, or during such other period as may be determined to be more equitable, the business:

(1) Had average annual gross receipts of at least \$2,000 in value;  
or

(2) Had average annual net earnings of at least \$1,000 in value;  
or

(3) Contributed at least 33 1/3 percent of the average gross annual income of the owner(s), including income from all sources, such as welfare.

c. Those businesses, described in Subsection 101(7)(D) are not eligible under Subsection 202(c) until after the District related expenses.

d. Where a person is payment shall be made under Subsection 202(c) until after the District Engineer determines:

(1) That the business is not part of a commercial enterprise having at least one other establishment not being acquired, which is engaged in the same or similar business, and

(2) That the business cannot be relocated without a substantial loss of existing patronage. The determination of loss of eating patronage shall be made by the District Engineer only after consideration of all pertinent circumstances including but not limited to the following factors:

(a) Type of business conducted by the displaced concern;

(b) Nature of the clientele of the displaced concern; and

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(c) Relative importance of the present and proposed location to the displaced business and the availability of a suitable replacement location for the displaced person who operates the business.

6-20. Farms - Eligibility.

a. Entire Taking. A payment in lieu of actual reasonable moving expenses may be made to the displaced owner of a farm operation according to the criteria established for displaced owners of businesses (paragraph 6-19b), In computing gross receipts or net earnings, consideration should be given to the value of farm produce grown and used by the farm operator. Such a payment may be made to the displaced operator of a farm operation if the District Engineer determines that the farm operator has discontinued his entire farm operation at the present location or has relocated the entire farm operation.

b. Partial Taking. In the case of a partial taking, the operator will be considered to have been displaced from a farm operation if:

(1) The part taken met the definition of a farm operation prior to the taking; or

(2) The taking caused the operator to be displaced from the farm operation on the remaining land; or

(3) The taking caused such a substantial change in the nature of the existing farm operation as to constitute a displacement.

6-21. Nonprofit Organizations. Where a nonprofit organization is displaced no payment shall be made under Subsection 202(c) until after the District Engineer determines:

a. That the nonprofit organization cannot be relocated without a substantial loss of its existing patronage. The term "existing patronage" as used in connection with nonprofit organizations includes the persons, community, or clientele served or affected by the activities of the nonprofit organization.

b. That the nonprofit organization is not part of a commercial enterprise having at least one other establishment not being acquired which is engaged in the same or similar activity.

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6-22. Net Earnings. The term "average annual net earnings" as used in Subsection 202(c) means one-half of any net earnings of the business or farm operation, before Federal, State, and local income taxes, during the two taxable years immediately preceding the taxable year in which such business or farm operation moves from the real property acquired for such project, or during such other period as the District Engineer

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determines to be more equitable for establishing such earnings, and includes any compensation paid by the business or farm operation to the owner, his spouse, or his dependents during such period. If a business or farm operation has no net earnings or has suffered losses during the period used to compute "average annual net earnings", it may nevertheless receive the \$2,500 minimum payment authorized by paragraph 6-23. \*

6-23. Amount of Farm Operation or Business Fixed Payment. The fixed payment to a person displaced from a farm operation or from his place of business, including nonprofit organizations, shall be in an amount equal to the average annual net earnings of the business or farm operation, except that such payment shall not be less than \$2,500 nor more than \$10,000.

SECTION V. REPLACEMENT HOUSING PAYMENT FOR HOMEOWNERS

6-24. Eligibility.

a. In addition to other payments authorized, a displaced owner-occupant is eligible for a replacement housing payment, authorized by Section 203(a), not to exceed \$15,000, if he meets both of the following requirements:

(1) Actually owned and occupied the acquired dwelling from which displaced for not less than 180 days prior to the initiation of negotiations for the property. The term "initiation of negotiations" means the day on which the acquiring agency makes the first personal contact with the property owner or his representative and furnishes him with a written offer to purchase the real property.

\* (2) Purchases and occupies a replacement dwelling, which is DSS, not later than the end of the one-year period beginning on the date on which he receives from the displacing agency the final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date, subject to exception in paragraph 6-30(a)(1) of this chapter. \*

b. A displaced owner-occupant of a dwelling who is determined to be ineligible under Section 203 may be eligible for a replacement housing payment under Section 204.

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c. Where the owner of a displaced business or farm owns and occupies a dwelling on the same premises, such person may be eligible for a replacement housing payment in addition to the payments authorized for such displaced business or farm.

6-25. Comparable Replacement Dwelling. For the purpose of rendering relocation assistance by making referrals for replacement housing and for computation of the replacement housing payment, a comparable replacement dwelling is one which is DSS and:

a. Functionally equivalent to and substantially the same as the acquired dwelling but not excluding newly constructed housing.

b. Adequate in size to meet the needs of the displaced family or individual. However, at the option of the displaced person, a replacement dwelling may exceed his needs when the replacement dwelling has the same number of rooms or the equivalent square footage as the dwelling from which he was displaced.

c. Open to all persons regardless of race, color, religion, or national origin, consistency with the requirement of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968.

d. Located in an area not generally less desirable than the one in which the acquired dwelling is located, with respect to:

(1) Neighborhood conditions, including, but not limited to, municipal services and other environmental factors.

(2) Public utilities, and

(3) Public and commercial facilities.

e. Reasonably accessible to the displaced person's place of employment or potential place of employment.

f. Within the financial means of the displaced family or individual.

g. Available on the market to the displaced person.

h. If housing meeting the above requirements is not available on the market, the District Engineer may, upon a proper finding of the need therefor, consider available housing exceeding these basic criteria. Mobile homes may be considered as replacement dwellings, provided they meet the standards of DSS dwellings.

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\* 6-26. Replacement Housing Payment. The replacement housing payment of not more than \$15,000 is comprised of the differential payment for replacement housing, increased interest payments, and expenses incident to the purchase of a replacement dwelling.

6-27. Differential Payment for Replacement Housing. The amount established as the differential payment for the replacement housing sets the upper limit of such payment. The District Engineer may determine the amount, if any, which when added to the acquisition cost of the dwelling acquired is necessary to purchase a comparable replacement dwelling either by establishing a schedule or by using a comparative method. The displaced person is bound by the method selected for use by the District Engineer.

a. Schedule Method. The District Engineer responsible for the displacement of homeowners may make surveys to determine and certify the availability of comparable DSS housing which will meet the requirements for replacement dwellings. These surveys shall be based on a locality-wide study and must include all types of properties comparable and similar to those to be acquired by the agency. In large urban areas this survey may be confined to one area of the city or may cover several different areas if they are comparable and equally accessible to public services and places of employment. In order to assure the greatest comparability of dwellings in any such study to the dwellings being acquired, the study should be divided into classifications as to type of construction, number of rooms, price range, etc. The survey shall include the asking price of any available housing found to be acceptable as replacements as well as the selling prices of each of the various types of dwellings being studied. The amount of adjustments required for the asking price can then be determined by comparing the asking with the actual sale price of similar houses. An analysis of the survey will then develop the average selling price of various classes and types of dwelling units on the market. The District Engineer may establish a schedule of reasonable acquisition costs for comparable replacements for the various types of properties acquired with the project. Every effort should be made to enlist the assistance and services of local agencies and authorities in preparing these surveys and subsequent schedules. Also, the District Engineer should coordinate his staff's efforts with other agencies and, if feasible, arrange for one agency to conduct all surveys and keep the schedule current. When there are other federally-assisted programs which are causing displacements in the area, close coordination is necessary for assurance that the District Engineer and other agencies are not relying upon the same housing and that the total number of units certified by all agencies does not exceed the total of units actually available for replacement housing. The District Engineer should also coordinate with other agencies on the developing of the replacement housing schedules so that the computation of differential housing payments will be uniform. \*

b. Comparative Method. The District Engineer may determine the price of a comparable replacement dwelling by selecting dwellings most representative of the dwelling unit acquired, available to the displaced person, and which meet the definition of a comparable replacement dwelling. A single dwelling shall be used only when additional comparable dwellings are not available.

c. Limitations.

(1) If the displaced person voluntarily purchases and occupies a DSS dwelling at a price less than the acquisition price of the acquired dwelling, no differential payment shall be made.

(2) If the displaced person voluntarily purchases and occupies a DSS replacement dwelling at a price less than the amount estimated to be necessary under a or b, above, the replacement housing payment will be reduced to that amount required to pay the difference between the price of the acquired dwelling and the actual purchase price of the replacement dwelling.

(3) A displaced person who purchases a home which is not DSS, but which he brings up to DSS standards and occupies within the prescribed time period, will be considered eligible as contemplated by, Section 203(a) (2) of the Act.

(4) In order for a displaced person to be eligible for benefits under Section 203, his dwelling must have been acquired by the displacing agency. If a displaced person reserves the right to remove the dwelling and moves it to another location, it must be corrected, where necessary, at the owners expense, to DSS standards and occupied by the applicant before a replacement housing payment can be made. When this is done, the differential payment will be computed as if the dwelling had been purchased, i.e., by determining either the amount, if any, which when added to the acquisition cost of the dwelling acquired is necessary to purchase a comparable replacement dwelling or the actual reasonable costs incurred in moving and rehabilitating the dwelling to DSS standards and obtaining temporary housings and the value of the homesite, whichever is less. Where comparable DSS housing is available but the displaced person chooses instead to remove the acquired dwelling for rehabilitation as his replacement home, any temporary housing costs incurred are not to be considered in the computation.

(5) Even though the dwelling being acquired may be located on a tract larger than the average residential lot in the area or on a tract whose value is based on a higher and better use than residential, Section 203 of the Act requires that the replacement housing payment be based on the "acquisition cost" of the dwelling. This means that a portion of the purchase price paid for the entire property must be attributed to the dwelling and homesite. In such cases, the appraiser will be requested to insert a statement in the appraisal report reading substantially as follow: "The total appraised value of this property is \$ X' , of which \$ Y constitutes the appraised value of the dwelling and homesite." The

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sum of \$ Y will be considered the "acquisition cost" of the dwelling for the purpose of calculating Section 203 benefits. However, if the eventual purchase price of the entire property should exceed the Government's appraised value, a proportionate share of any increase over the entire property's appraised value will be applied to the dwelling unless there is evidence justifying a different acquisition cost for the dwelling in relation to the value of the tract.

(6) In the situations described in the preceding paragraph (5), the owner will be advised of the separate dwelling value in connection with an explanation of his overall relocation benefits. A contact for this purpose shall be made prior to the conclusion of negotiations for purchase of the property and not later than 10 days after initiation of such negotiations. If the owner rejects the Government's initial purchase offer, he will also be advised at that time that purchase of the entire property for any amount in excess of the Government's appraised value will result in a proportionate decrease in any differential housing payment to which he may be entitled.

6-28. Increased Interest Payment. The District Engineer shall determine the amount, if any, necessary to compensate a displaced person for any increased interest costs, including points paid by the purchaser. Such amount shall be paid only if the acquired dwelling was encumbered by a bona fide mortgage. The following shall be considered:

a. The payment shall be equal to the excess in the aggregate interest and other debt service costs of the amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the bona fide mortgage on the acquired dwelling, at the time of acquisition, over the remaining term of the mortgage on the acquired dwelling, reduced to discounted present value.

b. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

c. A "bona fide mortgage" is one which was a valid lien on the acquired dwelling for not less than 180 days prior to the initiation of negotiations. All bona fide mortgages on the dwelling acquired by the Corps of Engineers will be used to compute the increased interest cost portion of the replacement housing payment.

d. The computation of the payment for increased interest costs will be based on the actual term of the new mortgage or the remaining term of the old mortgage, whichever is the lesser, and the computation will be based on the actual amount of the new mortgage or the amount of the old mortgage, whichever is the lesser.

(1) Seller's points are not to be included in the interest computation.

(2) The actual interest rate of the new mortgage will be used in the computation.

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\* (3) Purchaser's points and/or loan origination fees will be added to the computed interest payment.

e. However, the interest payment shall be based on the present value of the reasonable cost of the interest differential, including points paid by the purchaser, on the amount of the unpaid debt on the acquired dwelling for its remaining term.

f. See format for computation of interest payment below:

REQUIRED INFORMATION

1. Outstanding balance of mortgage on acquired dwelling . . . . . \_\_\_\_\_
2. Outstanding balance of mortgage on replacement dwelling. . . \_\_\_\_\_
3. Lesser of Line 1 or Line 2 ..... \_\_\_\_\_
4. Number of months remaining until last payment is due for mortgage on acquired dwelling ..... \_\_\_\_\_
5. Number of months remaining until last payment is due for mortgage on replacement dwelling ..... \_\_\_\_\_
6. Lesser of Line 4 or Line 5 ..... \_\_\_\_\_
7. Annual interest rate of mortgage on acquired dwelling (percent) ..... \_\_\_\_\_
8. Annual interest rate of mortgage on replacement dwelling (or, if it is lower, the prevailing annual interest rate currently charged by mortgage lending institutions in the, general area in which the replacement dwelling is located) (percent) ..... \_\_\_\_\_
9. Prevailing annual interest rate paid on standard passbook savings accounts by commercial banks (percent) ..... \_\_\_\_\_
10. If applicable, any debt service costs on the loan on the replacement dwelling, such as points paid by the purchaser which are not reimbursable as an incidental expense . . . . . \_\_\_\_\_

DEVELOPMENT OF MONTHLY PAYMENT FIGURES

A. Monthly payment required to amortize a loan of \$ \_\_\_\_\_  
 (Line 3)  
 in \_\_\_\_\_ months at an annual interest rate of \_\_\_\_\_  
 (Line 6) (Line 7)  
 percent ..... \_\_\_\_\_

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\* B. Monthly payment required to amortize a loan of \$ \_\_\_\_\_  
 (Line 3)  
 in \_\_\_\_\_ months at an annual interest rate of \_\_\_\_\_  
 (Line 6) (Line 8)  
 percentage.....  
 C. Monthly payment required to amortize a loan of \$ \_\_\_\_\_  
 (Line 3)  
 in \_\_\_\_\_ months at an annual interest rate of \_\_\_\_\_  
 (Line 6) (Line 9)  
 percent. ....

**CALCULATION OF INTEREST PAYMENT**

Step 1 Subtract A from B:

Monthly payment based on rate for replacement dwelling (B)..\$ \_\_\_\_\_  
 Monthly payment based on rate for acquired dwelling (A).. ...\$ \_\_\_\_\_  
 Result (difference) ..... \$ \_\_\_\_\_

Step 2 Divide result (difference) of Step 1 by (C) (carry to 6 decimal places):

Result (difference) from Step 1.....\$ \_\_\_\_\_  
 Monthly payment based on savings rate (C) ..... +\$ \_\_\_\_\_  
 Result (quotient) ..... \$ \_\_\_\_\_

Step 3 Multiply outstanding balance of mortgage on acquired dwelling by result (quotient) of Step 2:

Outstanding Balance (from Line 3) ..... \$ \_\_\_\_\_  
 Result (quotient) of Step 2 ..... X \_\_\_\_\_  
 Result (product) ..... \$ \_\_\_\_\_

Step 4 Add to result (product) of Step 3 any debt service costs on the loan on the replacment dwelling:

Result (product) of Step 3, first mortgage. .... \$ \_\_\_\_\_  
 Result (product) of Step 3, second mortgage<sup>1/</sup> .....\$ \_\_\_\_\_  
 Sum or difference, as applicable <sup>1/</sup> ..... \$ \_\_\_\_\_ \*

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\* Add debt service costs on loan on replacement dwelling  
 (Line 10) . . . . . \$ \_\_\_\_\_  
 Amount of interest payment . . . . . \$ \_\_\_\_\_

1/ If there is more than one outstanding mortgage on an acquired dwelling, the discounted value of each mortgage must be determined. To do this, a separate computation is made to such mortgage through Step 3. A consolidated Step 4 is then completed.

6-29. Expenses Incident to Purchase of Replacement Dwelling. A displaced person may be paid, as part of the replacement housing payment, reasonable expenses incident to the purchase of the replacement dwelling. Items, such as the following, are eligible for reimbursement:

- a. Legal, closing, and related costs including title searches and guarantees, preparing conveyance contracts, notary fees, surveys, preparing drawings of plats, and charges incident to recordation;
- b. Lenders, FHA or VA appraisal fees;
- c. FHA or VA application fee;
- d. Certification of structural soundness when required by lender, FHA or VA;
- e. Credit report;
- f. Escrow agent's fee;
- d. State revenue stamps and sale or transfer taxes.

6-30. Contract for Rehabilitation or Construction of Replacement Dwellings.

a. A displaced person may, in lieu of purchasing a comparable DSS replacement dwelling, contract for the rehabilitation of an existing dwelling purchased by him, contract for the purchase of a dwelling to be constructed on a site provided by a builder or developer, or contract for the construction of a dwelling on a site which he owns or acquires for that purpose.

(1) If the date of completion of rehabilitation or construction of a replacement dwelling may be delayed, for reasons not within the reasonable control of the displaced person, beyond the time required for eligibility for payment, the District Engineer may determine the date of occupancy as the date the displaced person enters into a

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contract for such rehabilitation and construction, or for the purchase, provided, however, that no replacement housing payment will be made until the displaced person actually occupies the dwelling.

(2) Ordinarily, the displacement should not occur before replacement housing is available. However, the displaced owner may elect to contract for purchase of a dwelling to be constructed by a developer or contract for rehabilitation or construction of a dwelling and relocate into interim housing. Where comparable DSS housing is available and the displaced person makes such election, the cost of living in such interim housing is not reimbursable.

b. Whenever a displaced person is eligible for a replacement housing payment, the District Commander may, at the request of the displaced person, provide a written statement to any interested person, financial institution, or lending agency as to the displaced person's eligibility for a payment and the requirements that must be satisfied before such payment may be made. If the proposed replacement dwelling has been selected, or if plans and specifications are available for the construction or rehabilitation of the proposed dwelling, the District Commander may, after inspecting the dwelling or plans, and finding that they meet the required standards, include such finding and the amount of payment to be available in such statement.

6-31. Verification and Records. A written record of the determination that replacement housing is comparable and DSS, with supporting details, will be made and placed with the records of the case. Also, written verification of the purchase and occupancy of such dwelling will be made and filed with the records of the case.

\* 6-32. Advance Replacement Housing Payment in Condemnation Cases. No property owner should be deprived of the earliest possible payment of the replacement housing payment due such property owner. The following procedure shall be used in cases involving condemnation:

a. An advance replacement housing payment can be computed and paid to a property owner if the determination of the acquisition price will be delayed pending the outcome of condemnation proceedings. The District Commander may made a provisional payment equal to 75 percent of the estimated replacement housing payment due the displaced homeowner based on the amount of the Government's deposit with the court as just compensation for the dwelling, provided the homeowner enters into an agree- \*  
ment with the Government that:

(1) Upon final determination of the condemnation proceedings, the replacement housing payment will be recomputed as being the

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difference between, the acquisition price determined by the court and the lesser of actual price paid for or the average amount determined by the District Engineer as necessary to acquire a comparable, decent, safe, and sanitary dwelling; and

\*

(2) If the amount awarded in the condemnation proceedings as the fair market value of the dwelling acquired plus the amount of the provisional replacement housing payment exceeds the lesser of the price paid for, or the District Engineer's determined cost of, a comparable dwelling, he will refund the excess to the Government. However, in no event shall he be required to refund more than the amount of the provisional replacement housing payment. \*

b. If the property owner does not agree to such adjustment, the replacement housing payment shall be deferred until the case is finally adjudicated and computed on the basis of the final determination, using the award as the acquisition price.

6-33. Requirement to Receive Payment. Before an otherwise eligible owner-occupant may receive a replacement housing payment, the District Engineer must have verified that he purchased and occupied DSS housing within the required time. The displaced person is not required to purchase and occupy comparable housing, but he must purchase and occupy DSS housing. Upon such verification, the District Engineer will certify that the owner-occupant did purchase and occupy such housing within the prescribed time.

#### SECTION VI. REPLACEMENT HOUSING PAYMENTS FOR TENANTS AND CERTAIN OTHERS

##### 6-34. Eligibility.

a. A displaced tenant or owner-occupant of an acquired dwelling is eligible for a replacement housing payment not to exceed \$4,000, as authorized by Section 204, if he meets both of the following requirements:

(1) Actually occupied the dwelling for not less than 90 days prior to the initiation of negotiations for acquisition of the property. The term "initiation of negotiations" means the day on which the District Engineer makes the first personal contact with the property owner or his representative and furnishes him with a written offer to purchase the real property. Tenants and other persons occupying property shall be advised, in writing, when negotiations for the property are initiated with the owner thereof.

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\* (2) Is not eligible to receive a payment under Section 203.

b. An owner-occupant of a dwelling for not less than 180 days prior to the initiation of negotiations is eligible for a replacement housing payment as a tenant, as authorized by Section 204, when he rents a DSS replacement dwelling, instead of purchasing and occupying a replacement dwelling which is DSS not later than the end of the one-year period beginning on the date on which he receives from the District Engineer final payment for all costs for the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

6-35. Computation and Method of Payment. The benefits consist of a rental replacement housing payment, or if replacement housing is purchased within one year from displacement, a down payment, including expenses incident to closing. The total replacement housing payment may not exceed \$4,000.

a. Rental Supplement Housing Payment. The District Engineer may determine the amount necessary to rent a comparable replacement dwelling either by establishing a schedule or by using a comparative method; provided, however, that in computing the rental replacement housing payment under either method, the actual or economic rent of the acquired dwelling shall be subtracted from the lesser of (1) the amount of rent actually paid for the replacement dwelling; or (2) the amount determined necessary to rent a comparable replacement dwelling.

(1) Schedule Method. The District Engineer may establish a rental schedule for renting comparable replacement dwellings as described in paragraph 6-25 and which are available in the private market for the various types of dwellings to be acquired. The payment shall be computed by determining the amount necessary to rent a comparable replacement dwelling for four years (the average monthly cost from the schedule) and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last three months prior to initiation of negotiations, if such rent was reasonable. For a displaced owner-occupant, the present rental rate for the acquired dwelling should be economic rent as determined by market data. There may be other circumstances which may indicate the use of economic rather than actual rent paid by the displaced person. For the purposes of these guidelines, economic rent is defined as the amount of rent the displaced person would have had to pay for a comparable dwelling unit in an area similar to the neighborhood in which the dwelling unit to be acquired is located. The schedule should be based on current analysis of the market to determine an amount for each type of dwelling required. When more than one Federal agency is causing the displacement in a community or an area, the District Engineer shall cooperate with the other agencies concerned \*

\* in choosing the method for computing the replacement housing payment and shall use uniform schedules of average rental housing in the community or area.

(2) Comparative Method. The District Engineer may determine the average month's rent by selecting one or more dwellings most representative of the dwelling unit acquired, which is available to the displaced person and meets the definition of a comparable replacement dwelling as described in paragraph 6-25. The payment should be computed by determining the amount necessary to rent a comparable replacement dwelling for four years and subtracting from such amount 48 times the average month's rent paid by the displaced tenant in the last three months prior to initiation of negotiations, if such rent was reasonable. There may be circumstances which may dictate the use of economic rather than actual rent paid by the displaced person.

(3) Exceptions. The District Engineer may establish the average month's rent paid by the displaced person by using a period of more than three months as a basis. Also, in any case involving a low income displacee where the average rent paid for the acquired dwelling, plus heat, electricity, and water, if paid in addition to rent, exceeded 25 percent of the gross income of such displaced person, the rental supplement will be computed based on the difference between the rent to be paid for the replacement dwelling, plus the above utilities, and 25 percent of the displaced persons gross income.

(4) Alternate to (1) and (2) Above. When neither method is feasible, the District Engineer shall make recommendations to the Chief of Engineers for an alternate method of computing the payment.

(5) Method of Payment. The amount of the rental payments under Section 204(1) shall be determined and paid in a lump sum, except that it shall be paid in installments if the displaced person so requests.

b. Purchases - Replacement Housing Payment. If the displaced person elects to purchase instead of renting, the payment shall be computed by determining the amount necessary to enable him to make a down payment and to cover incidental expenses on the purchase of replacement housing, as follows:

(1) The amount of the down payment shall be the lesser of:

(a) The amount that would be required as a down payment for financing a conventional loan on a comparable dwelling; or

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\*

(b) The amount required as a down payment for financing a conventional loan on the replacement dwelling actually purchased.

The amount determined shall be added to the amount required to be paid by the purchaser as points and/or origination or loan services fee, such fees are normal to real estate transactions in the area, on the comparable dwelling or the replacement dwelling, whichever is the lesser.

(2) Incidental expenses of closing the transaction are those as described in paragraph 6-29 of this chapter.

(3) The maximum payment shall not exceed \$4,000 except that if more than \$2,000 is required, the tenant must match any amount in excess of \$2,000 by an equal amount in making the down payment.

(4) The full amount of the replacement housing payment must be applied to the purchase price and incidental costs shown on the closing statement.

#### SECTION VII. MOBILE HOMES

6-36. Mobile Home Qualifies as a Dwelling. A mobile home is a "dwelling" within the meaning of Sections 203 and 204 of the Act, regardless of whether, in law, the mobile home is realty or personality if it is, in fact, the place of permanent or customary and usual abode of a displaced person as defined in Section 101(6) of the Act.

6-37. Acquisition of Mobile Home. A mobile home will be acquired where it is considered to be real property under State law, cannot be moved without substantial damage or unreasonable cost, or is not a DSS dwelling.

6-38. Ownership Requirements Under Section 203. The owner of a mobile home, who is otherwise eligible, qualifies under the "ownership" requirement with respect to Section 203 regardless of whether or not he owns any interest in the land on which it is situated.

6-39. Removal of Mobile Home. Acquisition of title to the dwelling by the acquiring agency is a prerequisite to the payment of benefits under Section 203. If the mobile home is not acquired, it must be removed by the owner, and the moving cost is reimbursable under Section 202.

6-40. Mobile Home Acquired - Owner Also Owns Underlying Land. Where the owner of a mobile home, which is acquired, also owns the underlying land: \*

- \* a. The owner is entitled to benefits under Section 202, if otherwise eligible.
- b. The owner is entitled to benefits under Section 203, if otherwise eligible. Benefits under this Section, however, should be computed on the basis of the cost of a comparable DSS mobile home on a replacement site.
- c. The owner is entitled to benefits under Section 204 if (1) he is not eligible for a payment under Section 203 and (2) he actually and lawfully occupied the mobile home for not less than 90 days prior to the initiation of negotiations.

6-41. Mobile Home Acquired - Owner Does not Own Underlying Land.  
Where the owner of a mobile home does not own the underlying land and the Government acquires both the land and the mobile home:

- a. The owner is entitled to benefits under Section 202, if he is otherwise eligible.
- b. The owner is entitled to benefits under Section 203, if otherwise eligible, but his differential benefits are limited to the increased amount necessary to purchase a comparable DSS mobile home, without any land.
- c. The owner is entitled to benefits under Section 204 if (1) he is not eligible for a payment under Section 203 and (2) he actually and lawfully occupied the mobile home for not less than 90 days prior to the initiation of negotiations.

6-42. Mobile Home Acquired - Former Owner Reserves Right of Removal.  
Where the United States acquires a mobile home, because it is considered to be real property, the former owner should be accorded the same opportunity to reserve the right to remove it by a certain date as in the case of conventional homes.

- a. A mobile home will generally have a relatively greater value for removal than would a conventional home. Accordingly, the District Engineer should obtain a return for the mobile home which approximates its market value.
- b. The former owner is not eligible under Section 202 for payment of the costs of moving the mobile home in this situation, although reasonable costs of moving the contents separately may be allowed, at the discretion of the District Engineer. \*



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6-43. Mobile Home Not Acquired. Where the Government acquires the land only and the owner removes the mobile home:

a. The owner is entitled to benefits under Section 202, if otherwise eligible. If he uses such mobile home for his replacement home, he may be paid not only for the cost of moving the mobile home but for detaching and reattaching such mobile home in its new location.

b. Since acquisition of title to the dwelling is a prerequisite to eligibility for benefits under Section 203 and the mobile home was not acquired, the owner is not entitled to benefits under Section 203; however, in a proper case, he may be entitled to benefits under Section 204.

6-44. Mobile Home as Replacement Dwelling. A mobile home which meets the DSS standards of the Act is a suitable replacement dwelling. When a mobile home is purchased as a replacement home and located on a site owned or purchased by the applicant, its value should be included in calculating benefits under Section 203 or 204.

#### SECTION VIII. RELOCATION ASSISTANCE ADVISORY SERVICES

6-45. Relocation Assistance Advisory Program. Section 205 requires establishment of a relocation assistance advisory program for persons displaced as a result of Federal or federally-assisted programs or projects. District Engineers will provide such a program where Federal projects are involved; State agencies are required to provide the advisory program when federally assisted projects are involved. Each relocation assistance advisory program shall include such measures, facilities, or services as may be necessary or appropriate in order to:

a. Determine the need, if any, of displaced persons for relocation assistance;

b. Provide current and continuing information on the availability, prices and rentals of comparable, decent, safe, and sanitary sales and rental housing and of comparable commercial properties and farms, and locations for displaced businesses;

c. Assure that within a reasonable period of time prior to displaced there will be available comparable, decent, safe, and sanitary replacement dwellings, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment;

\*

\* d. Assist a person who is displaced from his business or farm operation in obtaining and becoming established in a suitable replacement location;

e. Supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons;

f. Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to such relocation;

g. Prior to initiation of acquisition, provide persons, from whom it is planned to acquire land, a brochure or pamphlet outlining the benefits to which they may be entitled under the Act and information concerning other assistance which might be furnished them. Such brochures should contain information that any payment received under Title II of the Act will not be considered as income for the purposes of the Internal Revenue Code of 1954, or for the purpose of determining eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

h. Advise owners and others affected that they should notify the District Engineer before they move.

6-46. Coordination of Planned Relocation Activities.

a. Federal Coordination. When two or more Federal agencies contemplate displacement activities in a given community or area, the District Engineer will establish appropriate channels of communication for the purposes of planning relocation activities and coordinating available housing resources. The District Engineer in coordination with the other agencies concerned shall consult with the appropriate Housing and Urban Development Regional/Area Office within the jurisdictional area concerning the availability of housing. Attached as Figure 6-2 is a directory of such Regional/Area Offices which are required to be maintained on a current basis by the Department of Housing and Urban Development. Subsequent updated directories are available from that Department upon request. The District Engineer shall designate a representative to meet periodically with the representatives of other Federal agencies to review the impact of their respective programs on the community or area for the purpose of providing the Housing and Urban Development Regional/Area Office with information regarding the projects which will cause displacement.

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\* b. Local Coordination. To further insure maximum coordination of relocation activities in a given community or area, the District Engineer shall consult appropriate local officials before proceeding with any proposed project in the community, consistent with the requirements of the procedures promulgated by the Office of Management and Budget Circular A-95 (Revised). That circular provides a central point of identifying local officials.

6-47. Contracting for Relocation Services.

a. Contracting with Central Relocation Agency. The District Engineer shall consider contracting with the central relocation agency in a community or area for the purpose of carrying out relocation activities. Regulations and procedures shall be prescribed by the District Engineer requiring specific performance standards for these services. Information and assistance concerning these services is available upon request from the appropriate Housing and Urban Development Regional/Area Office.

b. Contracting with Others. When a centralized relocation agency is not available in a community or if in the judgment of the District Engineer the centralized agency does not have the capacity to provide the necessary services within the time required, the District Engineer may contact with another public agency or a private contractor who can provide the necessary relocation services.

6-48. Local Relocation Office. When the District Engineer determines that the needs of displaced persons warrant, he will establish a relocation office which is reasonably convenient to the majority of the potential displaced persons. Liaison will be established with all real estate firms and realtors in the area in order to provide them with maximum knowledge of the number of displaced persons and their needs for replacement housing and also to establish a workable continuing program for such firms to provide current lists of available housing for sale, which may, in many cases, be listed exclusively with a specific firm. Extreme care must always be taken to reflect exclusive listings and identify the particular firm holding the listing. Although this is also a Government service for the benefit of displaced persons, considerable care and judgment must be exercised not to provide such services in a manner which would usurp the prerogative of private realtors or give the appearance of favoring various firms or individuals. The following information as a minimum will be maintained on a project basis:

a. Lists of available comparable and decent, safe, and sanitary dwellings.

\*

- \* b. Current data for such costs as credit data, closing costs, typical down payments, interest rates and terms.
- c. Maps showing the location of schools, parks, playgrounds, shopping, public transportation routes and other information that may be applicable.
- d. Copies of brochures explaining the Relocation Assistance Program.

SECTION IX. UNIFORM REAL PROPERTY ACQUISITION

6-49. Procedure.

a. Consistent with the procedures expressed in paragraph 6-3 in this chapter, every effort will be made, to the greatest extent practicable, to:

(1) Acquire real property by agreements with owners based on negotiations;

(2) Assure consistent treatment for owners in real property acquisition programs; and

(3) Accomplish negotiations expeditiously.

b. The summary of the appraisal provided for in paragraph 6-50 will be furnished to the landowner and a prompt offer will be made to acquire the real property for an amount not less than the estimated fair market value, as developed by the approved appraisal. This does not preclude further negotiations with respect to the purchase price.

c. Contracts or options by any agency to purchase land will not include any other payments under the Act or any reference to such payments.

d. If the acquisition of only part of a property would leave its owner with an uneconomic remnant, the Government shall offer to acquire the entire property.

e. Application of Title III of the Act in leasehold acquisitions is dependent upon the circumstances under which the leasing action takes place. When the Government initiates action to lease a specific property, the pertinent provisions of Title III of the Act apply. In cases where the owner voluntarily offers his property to the Government, the provisions of Title III do not apply.

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\* 6-50. Appraisal of Property to be Acquired.

a. Prior to initiation of negotiations, an appraisal of the real property interest to be acquired will be made.

b. The owner or his designated representative will be given an opportunity to accompany the appraiser during his inspection of the property.

c. For the purpose of promoting uniformity under Section 301(3) of the Act, the standards for appraisals used in this program, the criteria for determining the qualifications of appraisers, and the system of review by qualified appraisers, shall be consistent with the Uniform Appraisal Standards for Federal Land Acquisition published in 1972 by the Inter-agency Land Acquisition Conference.

d. Any enhancement or diminution in the value of the property prior to the date of the valuation which is caused by the public improvement for which the property is acquired or by the likelihood that the property would be acquired for such improvement, other than due to physical deterioration within the reasonable control of the owner, will be disregarded in appraising the property.

e. When the appraisal has been completed and approved, the owner of the real property will be provided with a written statement of, and summary of the basis for, the amount estimated as the fair market value of the property to be acquired. The written statement will be in the form of a letter addressed to the landowner which may be delivered personally or by first class mail. The time and manner of delivery should be made a matter of record. (Figure 6-1 is a suggested format for this letter statement.) Such summary will include, as a minimum, the following items:

(1) Identification of the real property and the estate or interest therein to be acquired including the buildings, structures, and other improvements on the land as well as the fixtures considered to be a part of the real property.

(2) The amount of the estimated just compensation for the property to be acquired as determined by the acquiring agency and a statement of the basis therefor. In the case of a partial taking, damages, if any, shall be separately stated.

f. A revised or new summary of the basis for appraisal will be furnished to the landowner either if an update of the previously approved appraisal results in a different value determination, or if a second appraisal is obtained and the Division or District Engineer determines that the second appraisal shall be the basis for purchase negotiations and deposit in condemnation proceedings.

\*

\* 6-51. Improvements Owned by Tenants.

a. Whenever any interest is acquired for a Federal or federally-assisted program in any State, the acquiring agency will acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property, including advertising signs, which the agency determines will be adversely affected by the use to which such real property will be put.

b. The following apply in determining the just compensation for any such buildings, structures, or other improvements:

(1) They will be deemed to be part of the real property to be acquired, notwithstanding the right or obligation of the tenant as against the owner of any other interest in the real property to remove them at the expiration of his term.

(2) The fair market value which such structures, buildings, or other improvements contribute to the fair market value of the real property to be acquired, or the fair market value of such buildings, structures, or other improvements for removal from the real property whichever is greater, will be paid the tenant.

c. Payments under paragraphs (1) and (2) above, will not be made:

(1) Which result in duplication of any payments otherwise authorized by law.

(2) Unless the owner of the land involved disclaims all interest in such buildings, structures, or other improvements.

(3) Unless the tenant agrees that in consideration of any such payment he will assign, transfer, and release to the acquiring agency all his right, title, and interest in and to such buildings, structures, and improvements.

d. The tenant may reject payment under this subsection and obtain payment for the buildings, structures, or other improvements in accordance with any other applicable law.

6-52. Requirement to Move.

a. The construction or development of a project will be so scheduled that, to the greatest extent practicable, no person lawfully occupying real property will be required to move from a dwelling (assuming a replacement dwelling as required by Section V will be available), or to move his business or farm operation, without at least 90 days written \*

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notice prior to the date on which such move is required. This requirement applies only in those instances where actual displacement of persons, businesses, or farm operations occurs. A notice of less than 90 days should be given only in an emergency or other extraordinary situations. When it is proposed to give an advance notice of less than 90 days, the prior approval of HQDA (DAEN-REA) WASH DC 20314 will be obtained.

b. No owner will be required to surrender possession of real property before he has been paid the agreed purchase price, or the deposit has been made with the court, in accordance with Section I of the Act of 26 February 1931 (46 Stat. 1421, 40 U.S.C. 258a) for the benefit of the owner, in an amount not less than the approved appraised fair market value of such property, or the amount of the award of compensation in the condemnation proceeding for such property.

6-53. Condemnation.

a. The time of condemnation will neither be advance nor negotiations or condemnation and the deposit of funds in court be deferred, nor any other action coercive in nature taken, in order to compel an agreement on price.

b. If real property is to be acquired by condemnation, proceedings will be instituted promptly. No action will intentionally be taken which will make it necessary for an owner to institute legal proceedings to prove the taking of his real property.

6-54. Expenses Incidental to Transfer of Title to the United States. As soon as practicable after the date of payment of the purchase price or the date of deposit in court of funds to satisfy the award in condemnation to acquire real property, the owner will be reimbursed to the extent the District Engineer determines fair and reasonable for expenses he necessarily incurred for:

a. Recording fees, transfer taxes, and similar expenses incident to conveying the real property to the United States;

b. Costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering such real property; and

c. The pro rata portion of real property taxes-paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is earlier. Reimbursement for such taxes may be made from Imprest Funds in amounts limited to \$100 per payee and may be made at closing. Payments exceeding \$100 should be processed in the usual manner. At the discretion of the District Engineer, a separate Imprest Fund may be established for this purpose following normal finance and accounting procedures, subject to the same limitation on individual payments. \*

\*

6-55. Lease to Former Owner or Occupant. If an owner or tenant is permitted to occupy the real property acquired on a rental basis for a short term or for a period subject to termination by the Government on short notice; the amount of rent required will not exceed the fair market rental value of the property to a short term occupier.

6-56. Litigation Expenses. Section 304 of the Act provides that:

a. The Federal Court having jurisdiction of a proceeding instituted by a Federal agency to acquire real property by condemnation will award the owner of any right, or title to, or interest in, such real property such sum as will in the opinion of the court reimburse such owner for his reasonable costs, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of the condemnation proceedings, if:

(1) The final judgment is that the Federal agency cannot acquire the real property by condemnation; or

(2) The proceeding is abandoned by the United States.

b. Any award made pursuant to Subsection a. of this Section will be paid by the head of the Federal agency for whose benefit the condemnation proceeding was instituted.

c. The court rendering a judgment for the plaintiff in a proceeding brought under Section 1346(a)(2) or 1491 of Title 28, U.S.C., awarding compensation for the taking of property by a Federal agency, or the Attorney General affecting a settlement of any such proceeding, will determine and award or allow to such plaintiff, as part of such judgment or settlement, such sum as will, in the opinion of the court or the Attorney General, reimburse such plaintiff for his reasonable cost, disbursements, and expenses, including reasonable attorney, appraisal, and engineering fees, actually incurred because of such proceeding.

#### SECTION X. FEDERALLY-ASSISTED PROGRAMS

6-57. Assurances.

a. General. In the case of federally-assisted programs carried out by State agencies, such agencies are required by the Act to reimburse owners for necessary expenses as specified in Sections 303 and 304 of the Act and must provide the assurances required by Sections 210 and 305 of the Act with respect to any program or project that will result in the displacement of any person or the acquisition of any real property. There is no provision for reimbursement by the Federal Government to States for such costs incurred after 1 July 1972. \*



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\* b. Information on Benefits to Affected Persons. The assurances required of State agencies by Sections 210 and 305 of the Act should include a statement that the affected persons will be adequately informed of the benefits, policies, and procedures described in the assurances.

c. Inability of States to Provide Assurances for Programs or Projects Causing Displacement. If a State agency is unable to provide the assurances required by Sections 210 and 305 of the Act, the District Engineer shall not approve any grant to; or contract or agreement with, such State agency under which Federal financial assistance will be available to pay all or part of the cost of such program or project, until such time as assurances applicable to all persons to be displaced and owners of real property to be acquired are provided.

d. Monitoring Assurances. The District Engineer shall take continuing action to conduct inspections to insure that State agencies are acting in accordance with the assurances they have provided.

6-58. Grants, Contracts, or Agreements Executed Prior to July 1972. Under Section 211 of the Act, any grant to, or contract with, a State agency executed before 1 July 1972, under which Federal financial assistance is available to pay all or part of the cost of any program or project which will result in the displacement of any person on or after 1 July 1972, or the date on which the Act becomes effective in such State, whichever is earlier, shall be amended to include the cost of providing payments and services under Section 210 and 305 of the Act.

6-59. Administration - Relocation Assistance Programs.

a. Approval. The District Engineer is responsible for assuring that State agencies comply fully with the requirements of this chapter in administering the relocation program whether relocation is by a State agency itself or by a contractor acting for the State agency so as to provide uniform and effective relocation benefits for all displaced persons.

b. Contract for Services by State Agencies. A State agency electing to contract for services pursuant to Section 212 of the Act should enter into a written contract consistent with the requirements of this chapter. Contracts shall include, as a minimum, the following provisions:

(1) That payments and assistance will be provided in accordance with the requirements of this chapter.

\*

\* (2) That records will be retained by the contractor for a period of at least three years and shall be available for inspection by representatives of the Army.

(3) That there be full compliance with Title VI of the Civil Rights Act of 1964 (Public Law 88-353).

6-60. Project Cost.

a. State Relocation Payments Part of Project Cost. The cost to a State agency of providing payments and assistance pursuant to the Act shall be included as part of the cost of a project for which the Federal Government furnishes financial assistance, and the State agency will be eligible for Federal financial assistance with respect to such payments and assistance in the same manner and to the same extent as other program or project costs.

b. Relocation Payments Excluded from Project Cost Where Displaced Person has received Comparable Benefits under Eminent Domain. No payment or assistance under the Act will be required of a State agency, or included as a program or project cost if the displaced person receives a payment required by the State law of eminent domain which is determined by the Chief of Engineers to have substantially the same purpose and effect as the payment and assistance required by the Act as set forth in this chapter. When the District Engineer is of the opinion that such situation exists, he will submit his recommendation through the Division Engineer to HQDA (DAEN-REH-0) WASH DC 20314 for determination.

SECTION XI. APPLICATION PROCESSING AND SUBMISSION  
TO DISBURSING OFFICER FOR PAYMENT OF BENEFITS

6-61. Preparation of Preliminary Relocation Data Form.

a. As soon as practicable after acquisition action is commenced, the Preliminary Relocation Data Form, ENG Form 4436 (RCS DAEN-RE-18), shown as Figure 6-3, will be prepared for each owner, tenant, or other person living on the premises who is not a member of the owner's or tenant's family, for the purpose of obtaining information relative to each prospective applicant for later use in processing his application at the time of his relocation and for the purpose of being informed on the scope of relocation assistance involved. This form should be prepared prior to vacation of the property, if practicable.

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b. If the prospective applicant has not previously been furnished with information concerning benefits under Title II of the Act, such information should be furnished at the time the Preliminary Relocation Data Form is prepared.

6-62. Application.

a. The application to be used in processing claims for relocation assistance is comprised of various forms developed by the General Services Administration and approved by the Office of Management and Budget, Standard Forms 262 through 267 (Figure 6-4). Although these forms are self-explanatory, the District Engineer will render such assistance to the applicant as may be necessary for their completion. The applications when submitted to the District Engineer, must be accompanied by supporting invoices, receipts or other items to substantiate payment for each item in the amount claimed.

b. Except as indicated herein, applications for payment of benefits must be filed with the appropriate District Engineer not later than 18 months from the date full payment for the real property acquired is made by the Government, or from the date the displaced person moves from the acquired property, whichever is later. When the property is acquired by condemnation, the date on which the Government has satisfied all awards will be considered as the date of full payment. The District Engineer shall insure that applicants are notified in writing of the filing expiration date three months prior to such date, accompanied by an offer to assist in preparation of the application. If circumstances warrant, the Chief of Engineers may authorize acceptance of a late-filed application; therefore, the District Engineer shall secure approval from HQDA(REH-0) WASH DC 20314, before denying any application for late filing. \*

6-63. Investigation Report. Upon receipt of an application, the District Engineer will make such computations as may be necessary, ENG Form 4437 (Figure 6-5) with respect to relocation benefits due based on the application form received and will complete the Report of Investigation, ENG Form 4438 (Figure 6-6).

6-64. Determination of Relocation Benefits Due Applicant. After initial review of the various forms and supporting documentation comprising the application and determination of the amounts allowable, such amounts will be recorded on the Determination of Relocation Benefits Due Applicant, ENG Form 4439 (Figure 6-7). Approval or disapproval, in whole or in part, for each element claimed will be indicated. The completed application will be forwarded with all necessary supporting documents to the appropriate disbursing officer for payment. The applicant will be advised promptly by the District Engineer of the action taken on his application. Where there is a difference between the amount claimed and the amount allowed, the applicant will be informed as to his rights on appeal.

- \* 6-65. Stocking of Forms. The various ENG forms and standard forms are stocked in the OCE Publications Depot.
- 6-66. Recommended Changes to Forms. The District Engineer will submit any recommended changes in forms to HQDA (DAEN-REH) WASH DC 20314.
- 6-67. Retention of Records. All forms and supporting documents relating to each application will be retained by the District Engineer for not less than three years.

## SECTION XII. APPEALS

6-68. Administrative Review. Procedures are set forth in this section, under Section 213(b) of the Act, for the review of the application for benefits of any person who considers himself aggrieved by a determination as to his eligibility for payments, or the amount of such payments. Such administrative review is herein-after designated as an "appeal." In the case of a State program or project receiving Federal financial assistance, a review by the head of the State agency is required in accordance with procedures established by said State agency which will insure fair, adequate, and prompt review of all appeals filed.

6-69. Notice to Applicant.

a. Prompt written notice will be given to an applicant of any determination made in connection with his application. This written notice shall include a full explanation concerning any amount claimed which has been disallowed as well as an explanation of his right to appeal. Payment of any amounts determined to be due the applicant will be made promptly and the applicant will be informed that acceptance of any such amounts will not prejudice his right to appeal any determination made in connection with his application.

b. The applicant should be advised that if he believes the decision made in connection with his application for benefits under the Act is in error, he may file an appeal with the District Engineer or with the Chief of the District Real Estate Division, in writing, within 180 days from the date of the notice of such decision, identifying any claimed errors and stating the basis for appeal. In addition, he should be advised that he may appear or be represented by counsel at a mutually agreeable time and may submit additional information at any time prior to final action on his appeal. He should also be advised that his appeal will be considered by the

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District Engineer, reviewed by the Division Engineer, and, if action favorable to him cannot be taken, submitted to the Office of the Chief of Engineers for final decision.

6-70. Filing of Appeal.

\* a. An applicant may file an appeal from a decision denying his application, or from a decision which the applicant believes to be in error in any respect. Any written objection by an applicant to a decision made on his case or to a determination of benefits due him will be considered to be an appeal and will be promptly acknowledged as such. Notwithstanding any additional correspondence or communication with the applicant, the appeal will be processed in accordance with these appeal procedures unless formally withdrawn by the applicant.

b. Although appeals are to be filed within 180 days after notice to the applicant of an adverse decision, the Chief of Engineers may authorize acceptance of a late-filed appeal under some conditions. Receipt of a late-filed appeal should be reported to HQDA(DAEN-REH-A) WASH DC 20314, with a description of all attendant circumstances, prior to processing any such appeal. \*

6-71. Processing of Appeals.

a. Appeals will be processed through channels to HQDA (DAEN-REH-A) WASH DC 20314. An attempt will be made to resolve the matter at each level of review. If a proposed solution at any level is satisfactory to the applicant, the case will be considered closed without further processing.

b. After receipt of the appeal, the alleged errors cited by the applicant and any additional information furnished in support of the appeal will be investigated promptly by the District Engineer. A report will be prepared, which will include a brief outline of the facts upon which the application is based, the initial decision from which the applicant has appealed, the basis for appeal, the scope of the investigation, factors considered in reviewing the case, the decision on appeal, and the reasons in support thereof.

c. The applicant shall have the right to request a conference concerning the appeal with the reviewing official concerned at any level of review and to present any evidence relevant to the appeal at any time prior to action by such official. The applicant will be promptly notified by the reviewing official as to the decision in the case at each stage of the appeal proceeding.

d. An appeal assembly will be prepared in sufficient copies to provide one copy for the next higher level of review and two copies (including original papers, where available) for submission to OCE. The assembly will have a jacket cover or heavy paper backing with suitable fastener at the top. It will consist of the following items, which will be assembled in the order shown below with such variations or additions as circumstances may require.

- (1) Report of review.

- \* (2) Written appeal and amendments.
- (3) Application with attachments.
- (4) Pertinent correspondence in chronological order.
- (5) Any other documents and information which have a significant bearing on the case.

6-72. Review of Appeal by the Division Engineer.

a. The Division Engineer will review the appeal as expeditiously as possible to insure that:

- (1) The District Engineer's decision on the appeal is in accordance with the law and existing regulations; and
- (2) The appeal assembly contains the necessary information in

b. If the Division Engineer concurs in the recommendation of the District Engineer, the assembly, with his comments and recommendations, will be promptly forwarded to HQDA (DAEN-REH-A). If the Division Engineer does not concur in the District Engineer's recommendation, the assembly will be returned to the District Engineer for further consideration or will be submitted to the Chief of Engineers, as may be appropriate. In the event the Division Engineer determines that favorable action is warranted on the appeal, he is authorized to direct such a solution.

6-73. Final Review of Appeal by OCE. Authority to make determinations on appeals has been delegated to the Chief of Engineers and the Director of Real Estate. If the position of the Division Engineer is not concurred in, the assembly will be returned for further consideration or for a directed solution. If the appeal is denied, the applicant will be promptly notified. This will constitute the final administrative review of the applicant's appeal and the pertinent correspondence, including a copy of the appeal assembly with original papers, will be sent to the District Engineer for filing.

6-74. Dissemination of Decisions. Except as authorized by OCE, the District Engineer will not refer to appeal decisions in letters sent to other applicants.

\*

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TABLE 6-1

REGULATORY REFERENCES AND OTHER PERTINENT MATERIAL

AR 405-10

Uniform Relocation Assistance and Real Property Acquisition Policies  
Act of 1970 (Public Law 91-646; 84 Stat. 1894)

Title VI of the civil Rights Act of 1964 (Public Law 88-353)

Title VIII of the Civil Rights Act of 1968 (Public Law 90-284)

Uniform Appraisal Standards for Federal Land Acquisition, 1972  
(Interagency Land Acquisition Conference) \*

\* Sample Format - Statement of Intention to Acquire  
Property and Proposal to Purchase  
(Prepare on appropriate letterhead)

(Office Symbol)

(Date)

Mr. and Mrs. John Doe  
Rural Road  
Anytown, Ohio 40360

Dear Mr. and Mrs. Doe:

It is necessary for the United States to acquire from you the following  
real property for use in connection with the \_\_\_\_\_ project:  
\_\_\_\_\_ acres of improved land, identified in Government records as  
Tract No. \_\_\_\_\_ This land is part of a \_\_\_\_\_ -acre tract located  
in \_\_\_\_\_ A legal description of the property is enclosed.

In compliance with the Uniform Relocation Assistance and Real Property  
Acquisition Policies Act of 1970, Public Law 91-646, we are advising  
you that the amount that has been established as just compensation for  
the \_\_\_\_\_ acres to be acquired from you is \$ \_\_\_\_\_ including \$  
severance damage to your remaining ownership, representing the cost of  
fencing the new property line. This amount is based upon and is not  
less than our approved appraisal of the fair market value of the land.  
Fair market value has been judicially defined as the price the property  
would bring in a sale between a willing seller and a willing buyer,  
neither being obligated to act. Our appraisal was made by a qualified  
real estate appraiser using standard, nationally accepted valuation  
techniques recognized by authorities in the appraisal field and taking  
into consideration the value of the land, its location and its highest  
and best use, as well as any improvements on the land. Any increase or  
decrease in the fair market value caused by the Governments project has  
been disregard. Furthermore, the amount does not reflect any considera-  
tion of or allowance for any location assistance and payments under  
Public Law 91-646 to which you may be entitled.

The appraiser found the acreage to be acquired is composed of pasture land,  
tillable bottom land, timber area and building area. The highest and best \*



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\*

(Office Symbol)

(Date)

Mr. John Doe

use of the land was considered to be a combination livestock and timber farm. The improvements to be acquired are a two-story frame dwelling, a detached garage, a barn, and a corn crib.

The basic approaches to value considered by appraisers may be classified under three heads: market data, income, and cost. In the appraisal covering your property, primary reliance was placed on market data, including the prices at which similar neighboring lands have sold recently. In making the appraisal, three farms similar to your farm, which were sold within the past 12 months, were used for comparison. These sales were adjusted on the basis of such factors as location, terms of sale, lapse of time, topography, productivity, and building utility. The income and cost approaches were then used as a check on the value as indicated by market data. After completion, the appraisal was reviewed by a qualified appraiser with many years of experience in evaluating real estate, who approved it as a well-documented conclusion of the market value of your property and a sound basis for the amount believed to be just compensation for the required acres.

We assure you that the Government will exert its best efforts to lessen the impact upon you arising from this acquisition.

Sincerely yours,

\*

DIRECTORY-REGIONAL AND AREA OFFICES  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Effective July 1976

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REGION 1

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Regional Administrator  
Maurice E. Frye, Jr.  
Rm. 800, John F. Kennedy  
Federal Building  
Boston, Massachusetts 02203  
FTS Tel. 223-4066  
Commercial, Number: (617) 223-4066

AREA OFFICES

NEW JERSEY, CAMDEN 08103  
The Parkade Building  
519 Federal Street  
FTS Tel. 488-5081  
Commercial Number: (609) 757-5081

AREA OFFICES

CONNECTICUT, HARTFORD 06103  
1 Financial Plaza  
FTS Tel. 244-3638  
Commercial Number: (203) 244-3638

NEW JERSEY, NEWARK 07102  
Gateway 1 Building  
Raymond Plaza  
FTS Tel. 341-3010  
Commercial Number: (201) 645-3010

MASSACHUSETTS, BOSTON 02114  
Bulfinch Building  
15 New Chardon Street  
FTS Tel. 223-4111  
Commercial Number: (617) 223-4111

NEW YORK, BUFFALO 14202  
Suite 800, Staller Building  
107 Delaware Avenue  
FTS Tel. 437-5735  
Commercial Number: (716) 842-3510

NEW HAMPSHIRE, MANCHESTER 03101  
Davison Building  
1230 Elm Street  
FTS Tel. 834-7681  
Commercial Number: (603) 669-7011  
Ext. 7681

NEW YORK, NEW YORK 10019  
666 Fifth Avenue  
FTS Tel. 662-5290  
Commercial Number: (212) 399-5290

CARIBBEAN AREA OFFICE

VIRGIN ISLANDS, ST. THOMAS 00801  
Federal Building  
Veterans Drive  
Commercial Number: (809) 774-1828 \*

---

REGION II

---

Regional Administrator  
S. William Green  
26 Federal Plaza, Room 3541  
New York, New York 10007  
FTS Tel. 264-8068  
Commercial Number: (212) 264-8068

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\*

REGION III

Regional Administrator  
 W. Russell G. Byers  
 Curtis Building  
 6th and Walnut Streets  
 Philadelphia, Pennsylvania 19106  
 FTS Tel. 597-2560  
 Commercial Number: (215) 597-2560

AREA OFFICES

DISTRICT OF COLUMBIA  
 WASHINGTON 20009  
 Universal North Building,  
 1875 Connecticut Ave., N.W.  
 FTS Tel. 382-4855  
 Commercial Number: (202) 673-5837

MARYLAND, BALTIMORE 21201  
 Two Hopkins Plaza  
 Mercantile Bank and Trust Building  
 FTS Tel. 922-2121  
 Commercial Number (301) 962-2121

PENNSYLVANIA, PHILADELPHIA 19106  
 Curtis Building  
 625 Walnut Street  
 FTS Tel. 597-2645  
 Commercial Number: (215) 597-2645

PENNSYLVANIA, PITTSBURGH 15212  
 Two Allegheny Center  
 FTS Tel. 722-2802  
 Commercial Number: (412) 644-2802

VIRGINIA, RICHMOND 23219  
 701 East Franklin Street  
 FTS Tel. 925-2721  
 Commercial Number: (804) 782-2721

REGION IV

Regional Administration  
 E. Lamar Seals  
 Room 211, Pershing Point Plaza  
 1371 Peachtree Street, N.E.  
 Atlanta, Georgia 30309  
 FTS Tel. 285-5585  
 Commercial Number: (404) 526-5585

AREA OFFICES

ALABAMA, BIRMINGHAM 35233  
 Daniel Building  
 15 South 20th Street  
 FTS Tel. 229-1617  
 Commercial Number: (205) 254-1617

FLORIDA, JACKSONVILLE 32204  
 Peninsular Plaza  
 661 Riverside Avenue  
 FTS Tel. 946-2626  
 Commercial Number: (904) 791-2626

GEORGIA, ATLANTA 30303  
 Peachtree Center Building  
 230 Peachtree Street, N.W.  
 FTS Tel. 285-4576  
 Commercial Number: (404) 526-4576

KENTUCKY, LOUISVILLE 40201  
 Children's Hospital Foundation Bldg.  
 601 South Floyd Street  
 Post Office Box 1044  
 FTS Tel. 352-5251  
 Commercial Number: (502) 582-5251 \*

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MISSISSIPPI, JACKSON 39213  
 101-C Third Floor, Jackson Mall  
 300 Woodrow Wilson Ave., W.  
 FTS Tel. 490-4703  
 Commercial Number: (601) 969-4703

NORTH CAROLINA, GREENSBORO 27401  
 415 N. Edgeworth Street  
 FTS Tel. 699-5361  
 Commercial Number: (919) 378-5361

SOUTH CAROLINA, COLUMBIA 29202  
 1801 Main Street  
 Jefferson Square  
 FTS Tel. 677-5591  
 Commercial Number: (803) 765-5591

TENNESSEE, KNOXVILLE 37919  
 One Northshore Building  
 1111 Northshore Drive  
 FTS Tel. 854-1222  
 Commercial Number: (615) 637-9300  
 Ext. 1222

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REGION V

Regional Administrator  
 Don Morrow  
 300 South Wacker Drive  
 Chicago, Illinois 60606  
 FTS Tel. 353-5680  
 Commercial Number: (312-353-5680)

AREA OFFICES

ILLINOIS, CHICAGO 60602  
 1 North Dearborn Street  
 FTS Tel. 353-7660  
 Commercial Number: (312) 353-7660

INDIANA, INDIANAPOLIS 46205  
 Willowbrook 5 Building  
 4720 Kingsway Drive  
 FTS Tel. 331-6303  
 Commercial Number: (317) 269-6303

MICHIGAN, DETROIT 48226  
 Patrick V. McNamara Federal Bldg.  
 477 Michigan Avenue  
 FTS Tel. 226-7900  
 Commercial Number: (313) 226-7900

MINNESOTA, MINNEAPOLIS-ST. PAUL  
 6400 France Ave., South  
 Minneapolis, Minnesota 55435  
 FTS Tel. 725-4701.  
 Commercial Number: (612) 725-4701

OHIO, COLUMBUS 43215  
 60 East Main Street  
 FTS Tel. 943-7345  
 Commercial Number: (614) 469-7345

WISCONSIN, MILWAUKEE 53203  
 744 North 4th Street  
 FTS TEL. 362-1493  
 Commercial Number: (414) 224-1493

---

REGION VI

Regional Administrator  
 Richard L. Morgan  
 Room 14C2, Earle Cabell Fed. Bldg.  
 U.S. Courthouse  
 1100 Commerce Street  
 Dallas, Texas 75242  
 FTS Tel. 749-7401  
 Commercial Number: (214) 749-7401

AREA OFFICES

ARKANSAS, LITTLE ROCK 72201  
 Room 1490, One Union Natl Plaza  
 FTS Tel. 740-5401  
 Commercial Number: (501) 378-5401

LOUISIANA, NEW ORLEANS 70113  
 Plaza Tower  
 1001 Howard Avenue  
 FTS Tel. 682-2063  
 Commercial Number: (504) 589-2063 \*

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\* OKLAHOMA, OKLAHOMA CITY 73102  
 200 North West 5th Street  
 FTS Tel. 736-4891  
 Commercial Number: (405) 231-4891

TEXAS, DALLAS 75201  
 2001 Bryan Tower, 4th Floor  
 FTS Tel. 749-1601  
 Commercial Number: (214) 749-1601

TEXAS, SAN ANTONIO 078285  
 Kallison Building  
 410 South Main Avenue  
 Post Office Box 9163  
 FTS Tel. 730-6800  
 Commercial Number: (512) 229-6800

REGION VII

Regional Administrator  
 Elmer E. Smith  
 Federal Office Bldg, Rm. 300  
 911 Walnut Street  
 Kansas City, Missouri 64106  
 FTS Tel. 758-2661  
 Commercial Number: (816) 374-2661

AREA OFFICES

KANSAS, KANSAS CITY 66101  
 Two Gateway Center  
 4th and State Streets  
 FTS Tel. 758-4355  
 Commercial Number: (816) 374-4355

MISSOURI, ST. LOUIS 63101  
 210 North 12th Street  
 FTS Tel. 279-4761  
 Commercial Number: (314) 425-4761

NEBRASKA, OMAHA 68106  
 Univac Building  
 7100 West Center Road  
 FTS Tel. 864-9301  
 Commercial Number: (402) 221-9301

REGION VIII

Regional Administrator  
 Robert C. Rosenheim  
 Executive Tower  
 1405 Curtis Street  
 Denver, Colorado 80202  
 FTS Tel. 327-4513  
 Commercial Number: (303) 837-4513

REGION IX

Regional Administrator  
 Robert H. Baida  
 450 Golden Gate Avenue  
 Post Office Box 36003  
 San Francisco, California 94102  
 FTS Tel. 556-4752  
 Commercial Number: (415) 556-4752

AREA OFFICES

CALIFORNIA, LOS ANGELES 90057  
 2500 Wilshire Boulevard  
 FTS Tel. 798-5973  
 Commercial Number: (213) 688-5973

CALIFORNIA, SAN FRANCISCO 94111  
 1 Embarcadero Center  
 Suite 1600  
 FTS Tel. 556-2238  
 Commercial Number: (415) 556-2238

HAWAII, HONOLULU 96813  
 1000 Bishop Street, 10th Floor  
 Post Office Box 3377  
 FTS Tel. (Dial 556-0220 and ask operator  
 for 546-2136)  
 Commercial Number: (808) 546-2136

REGION X

Regional Administrator  
 David W. Reyton (Acting)  
 Arcade Plaza Building  
 1321 Second Avenue  
 Seattle, Washington 98101  
 FTS Tel. 399-5414  
 Commercial Number: (206) 442-5414

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AREA OFFICES

---

OREGON, PORTLAND 97204  
520 Southwest 6th Avenue  
FTS Tel. 423-2561  
Commercial Number: (503) 221-2561

WASHINGTON, SEATTLE 98101  
Arcade Plaza Building  
1321 Second Avenue  
FTS Tel. 399-7456  
Commercial Number: (206) 442-7456

Figure 6-2d

\*

PRELIMINARY RELOCATION DATA FORM		REQUIREMENTS CONTROL SYMBOL DAEN-RE-18	
<p>The Privacy Act of 1974 requires each individual asked or required to furnish personal information to be advised of the following:</p> <p>Authority: Title II, Public Law 91-646 (84 Stat 1894) - The Uniform Relocation Assistance and Real Property Acquisition Poolicies Act of 1970.</p> <p>Principal Purpose(s): As soon as practicable after acquisition action is commenced, the Preliminary Relocation Data Form will be prepared for each owner, tenant, or other person living on the premises who is not a member of the owner's or tenant's family, for the purpose of (1) obtaining information relative to each prospective applicant for later use in processing his/her application at the time of his/her relocation, and (2) for the purpose of being informed on the scope of relocation assistance involved.</p> <p>Routine Uses: This form is an administrative tool used in processing a displaced person's application for assistance at the time of his/her relocation and for the purpose of determining what type of assistance will be provided (such as moving expenses, replacement housing payment for tenants and homeowners, and relocation advisory services.) Estimated costs are entered on the form. This form and any supporting documents relating to he application will be retained by the District Engineer for not less than three years; in appeal cases the record is permanent.</p> <p>Mandatory or Voluntary Disclosure and Effect on Individual Not Providing Information: The applicant discloses the data on a VOLUNTARY basis. The Corps of Engineers cannot, however, authorize a payment under the act unless the applicant demonstrates that he/she qualifies for the payment.</p>			
<b>PART I - PROSPECTIVE APPLICANT DATA</b>			
PROJECT			
RELOCATION ASSISTANCE REPRESENTATIVE		3. APPLICATION NO.	
4. PROSPECTIVE APPLICANT		5. SPOUSE AND OTHER DEPENDENTS	
		NAME	RELATIONSHIP
		AGE	AGE
NAME:	AGE:		
ADDRESS:			
<b>PART II - PROPERTY ACQUISITION DATA</b>			
TRACT NOS.	7. BRIEF DESCRIPTION OF PROPERTY ACQUIRED		
DATE NEGOTIATIONS INITIATED	9. DATE POSSESSION REQUIRED		
10. APPLICANT FURNISHED INFORMATION BROCHURE <input type="checkbox"/> YES <input type="checkbox"/> NO	11. APPLICATION ANTICIPATED <input type="checkbox"/> YES <input type="checkbox"/> NO		
12. INTEREST HELD BY APPLICANT <input type="checkbox"/> OWNER <input type="checkbox"/> TENANT			
13. INTEREST ACQUIRED BY THE GOVERNMENT <input type="checkbox"/> EASEMENT <input type="checkbox"/> FEE <input type="checkbox"/> LEASE			14. DATE ACQUIRED
15. APPLICANT RESIDES ON PROPERTY <input type="checkbox"/> YES <input type="checkbox"/> NO	16. EXPLAIN (ITEM 15)		
17. DWELLING OCCUPIED	DATE	18. NATURE OF BUSINESS ACQUIRED (DESCRIBE) <input type="checkbox"/> PROFIT <input type="checkbox"/> NON-PROFIT	
BUSINESS COMMENCED			
FARM OPERATION COMMENCED			

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PART III - PROPERTY TO BE RELOCATED		
TITLE	BRIEF DESCRIPTION	
	QUANTITY	VALUE
19. HOUSEHOLD FURNISHINGS		
20. BUSINESS EQUIPMENT AND FIXTURES		
21. FARM EQUIPMENT		
22. LIVESTOCK		
23. MISCELLANEOUS (EXPLAIN)		
24. SITE OF PROPOSED RELOCATION		25. MILES FROM PRESENT SITE
PART IV - REMARKS		
<p>List of attachments (if any)</p>		
DATE	NAME AND TITLE	SIGNATURE



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<b>CLAIM FOR MOVING COSTS AND RELATED EXPENSES-- FAMILIES AND INDIVIDUALS</b> (Under Sec. 202 of P.L. 91-646)		<b>IMPORTANT</b> Road Privacy Act Statement and Instructions on reverse.	OMB APPROVAL NO. <b>29-R0229</b>		
<b>SECTION I--TO BE COMPLETED BY AGENCY</b>					
1. AGENCY NAME AND ADDRESS (Include ZIP Code)		2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. (Parcel, tract, etc.)		
<b>SECTION II--TO BE COMPLETED BY CLAIMANT(S)</b>					
NAME(S) OF CLAIMANT(S)		PRESENT MAILING ADDRESS(ES) OF CLAIMANT(S) (Include ZIP code)	TELEPHONE NO(S)		
4A.	4B.		4C.		
5. Have all members of the household moved together to a replacement dwelling? <input type="checkbox"/> (A) YES <input type="checkbox"/> (B) NO (If "NO" checked, complete item 16 on reverse)					
DWELLING	ADDRESS (Include ZIP Code) (a)	APT., FLOOR OR ROOM NO. (b)	NO. OF ROOMS OCCUPIED (c)	WAS IT FURNISHED WITH YOUR OWN FURNITURE? (d)	DATE YOU MOVED (e)
6. AGENCY ACQUIRED (From which you moved)				<input type="checkbox"/> YES <input type="checkbox"/> NO	(1) INTO DWELLING  (2) FROM DWELLING
7. REPLACEMENT (To which you moved)					(1) INTO DWELLING  <i>*Excluding bathrooms, hallways and closes.</i>
8. TYPE OF PAYMENT	<input type="checkbox"/> (A) FIXED PAYMENT (Including dislocation allowance)		<input type="checkbox"/> (B) REIMBURSEMENT FOR ACTUAL MOVING EXPENSES (Including storage costs, if applicable)		<input type="checkbox"/> (C) SUPPLEMENTARY CLAIM FOR REIMBURSEMENT OF STORAGE COSTS (Complete item 15 on reverse)
<b>9. COMPUTATION OF AMOUNT OF PAYMENT (Complete item 9A or 9B)</b>					
ITEM	9A. FIXED PAYMENT CLAIM		9B. ACTUAL MOVING EXPENSES CLAIM		
	AMOUNT	FOR AGENCY USE ONLY	AMOUNT	FOR AGENCY USE ONLY	
(1) Moving Allowance (Consult Agency for amount)	\$	\$			
(2) Dislocation Allowance					
(3) Moving Cost			\$	\$	
(4) Transportation Costs--Families and Individuals (If any)					
(5) Cost of Insurance Covering Move and/or Storage					
(6) Storage Cost (Complete item 15 on reverse)					
(7) Other (Explain on additional sheet)					
	(Line (1) plus (2))		(Sum of lines (3) thru (7))		
(8) Total Amount of Claim					
(9) Amount of Advance Payment(s) Received (If any)					
(10) Amount Requested Herewith (Line (8) minus (9))	\$	\$	\$	\$	
10. NAME AND ADDRESS OF MOVING COMPANY (Include ZIP code)					
<b>11. CERTIFICATION BY CLAIMANT(S)</b>					
I (We) CERTIFY under the penalties and provisions of U.S.C. Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any other claim for, or received, reimbursement or compensation from any other source for any item of this claim, and that any receipts submitted herewith accurately reflect costs actually incurred.					
I (We) further certify that my (our) choice of type of payment was made on the basis of a full explanation by the displacing agency representative of the difference between the types of payments available.					
11A. SIGNATURE		11B. DATE	11C. SIGNATURE		11D. DATE
PENALTY FOR FALSE OR FRAUDULENT STATEMENT. U.S.C. Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."					
<b>SECTION III--TO BE COMPLETED BY AGENCY</b>					
PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE		NAME (type or print)	DATE
12. RECOMMENDED	12A. \$	12B.		12C.	12D.
13. APPROVED	13A. \$	13B.		13C.	13D.

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**SECTION II--CONTINUED (To be completed by claimant(s))**

**14. METHOD OF PAYMENT** (Check one) (Complete only if claim is for actual moving expense)

A. I (We) have paid the moving expenses and/or moving and storage expenses as evidenced by the attached itemized receipt(s) or bill(s) from the mover and/or storage company or other contractors, and I (we) therefore request reimbursement.

B. I (We) have not paid the moving expenses and/or moving and storage expenses, and I (we) therefore request that the attached itemized moving and storage bill(s) be paid directly to the mover and/or storage company or other contractors, in accordance with arrangements made in advance, and with my (our) consent, between the agency and the mover and/or storage company or other contractors.

C. I (We) hereby request and authorize the moving and/or moving and storage expenses see, to be incurred by me (us), be paid directly to the mover and/or storage company or other contractors, in accordance with the arrangements made at this time, and with my (our) consent, between the agency and the mover and/or storage company or other contractors.

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**15. STATEMENT OF CLAIM FOR STORAGE COSTS** (Complete only if personal property was moved to or from storage)

<b>15A. TYPE OF CLAIM</b> (Check one)		<b>15B. NAME AND ADDRESS OF STORAGE COMPANY</b> (Include ZIP code)	
<input type="checkbox"/> (1) INITIAL <input type="checkbox"/> (2) SUPPLEMENTARY <input type="checkbox"/> (3) FINAL			
<b>15C. STORAGE</b>	(1) TOTAL PERIOD (Mos.)	(2) PERIOD IS <input type="checkbox"/> ACTUAL <input type="checkbox"/> ESTIMATED	(3) DATE PROPERTY WAS MOVED
			<input type="checkbox"/> To STORAGE <input type="checkbox"/> FROM STORAGE
<b>15D. STORAGE COSTS</b>	(1) MONTHLY RATE	(2) TOTAL COSTS ACTUALLY INCURRED	(3) AMOUNT PREVIOUSLY
	\$	\$	(4) AMOUNT CLAIMED HEREWITH (Item (2) minus item (3))
		\$	\$

**15E. DESCRIPTION OF PROPERTY STORED**

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16. Names and addresses of household members moved to separate replacement dwelling (Complete only if you have checked item 5(b) above)	16A.
	16B.
	16C.
	16D.
	16E.
	16F.

**IN COMPLIANCE WITH THE PRIVACY ACT OF 1974**, the following information is provided: Public Law 91-646, Stat. 1894 authorized the solicitation of the information on this form for the purposes of determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the information except for audit use to ensure compliance with the law. Disclosure of the information is voluntary, however, the information is required to obtain benefits.

**INSTRUCTIONS.** This claim form is for the use of families and individuals in applying for payment of moving and related expenses. You may apply for either (1) a "fixed payment" which includes a "dislocation allowance," or (2) an amount to cover the actual moving and related expenses incurred. The displacing agency relocation representative will explain the differences between the of payments and, if you wish, will help you complete this form. If your claim is not approved or an adjustment is made in the amount claimed, the displacing agency will provide you with a written explanation of the reason and the steps that you may take to have your claim reviewed in accordance with grievance procedures established under regulations of the displacing agency.

TO APPLY FOR A FIXED PAYMENT: Complete items 4 through 8, 9A and 11.

TO APPLY FOR A PAYMENT OF ACTUAL EXPENSES: Complete items 4 through 8, 9B, 10, 11, 14, and if applicable, items 15 and 16.

A claim for actual expenses must be supported by receipts, vouchers, or similar evidence, attached hereto.

**MOVING AND RELATED EXPENSES**

**ALLOWABLE MOVING EXPENSES**

1. Transportation of individuals, families, and personal property from the acquired site to the replacement site, not to exceed a distance of 50 miles, except where the displacing agency determines that relocation beyond this 50-mile area is justified.
2. Packing and unpacking, crating and uncrating of personal property.
3. Storage of personal property for a period generally not to exceed twelve months when determined necessary by displacing agency.
4. Insurance premiums for loss to and damage of personal property.
5. Property lost, stolen, or damaged (not caused by the fault or negligence of the displaced person, his agent or employees), in the process of moving, where insurance to cover such loss or damage is not available.
6. Necessary charges for the removal and hookup of appliances, equipment and other items, not acquired as real property.

**NONALLOWABLE MOVING EXPENSES**

1. Additional expense incurred because of living in a new location.
2. Cost of moving structures or other improvements in which the displaced person reserved ownership.
3. Improvements to the replacement site, except when required by law.
4. Interest on loans to cover moving expenses.
5. Personal injury.
6. Cost of preparing the claim for moving and related expenses.
7. Payment for search cost in connection with locating a replacement dwelling.

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<b>CLAIM FOR MOVING COSTS AND RELATED EXPENSES-- BUSINESSES (Including nonprofit organizations) AND FARM OPERATIONS (Under Sec. 202, P.L.--91-646)</b>	<b>IMPORTANT</b> Read Privacy Act Statement and Instructions on reverse.	OMB APPROVAL NO. <b>29-R0229</b>
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**SECTION I-TO BE COMPLETED BY AGENCY**

1. AGENCY NAME AND ADDRESS (Include ZIP code)	2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. (Parcel, trace, etc.)
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**SECTION II--TO BE COMPLETED BY CLAIMANT(S)**

NAME(S) OF CLAIMANT(S)	PRESENT MAILING ADDRESS OF CLAIMANT(S) (Include ZIP code)	TELEPHONE NO.(S)
4B.		4C.

**5. PERSON FILING CLAIM FOR CONCERN**

5A. NAME AND TITLE (Type or print)	5B. PRESENT MAILING ADDRESS (Include ZIP code)	5C. TELEPHONE NO.
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5D. Type of Concern ("X" one)     (1) BUSINESS     (2) FARM OPERATION     (3) NONPROFIT ORGANIZATION

5E. Type Ownership ("X" one)     (1) SOLE PROPRIETORSHIP     (2) CORPORATION     (3) PARTNERSHIP     (4) NONPROFIT ORGANIZATION

PROPERTY	LOCATION OR ADDRESS (Include ZIP code)	DATE OCCUPIED	
6. AGENCY ACQUIRED (From which you moved)		6B. FROM	6C. TO
7. REPLACEMENT (To which you moved)		70. FROM	

8. STATUS ("X" one)	A. Did Concern Discontinue Operations? <input type="checkbox"/> YES <input type="checkbox"/> NO B. Does Concern Plan to Reestablish? <input type="checkbox"/> YES <input type="checkbox"/> NO	9. TYPE OF PAYMENT <input type="checkbox"/> (A) ACTUAL EXPENSES <input type="checkbox"/> (B) IN LIEU OF PAYMENT	10. TYPE OF CLAIM <input type="checkbox"/> (A) INITIAL <input type="checkbox"/> (B) SUPPLEMENTARY <input type="checkbox"/> (C) FINAL
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**11. MOVING AND RELATED EXPENSES-ACTUAL COST BASIS**

11A. Type of Move ("X" one)	<input type="checkbox"/> (1) SELF	<input type="checkbox"/> (2) COMMERCIAL	<input type="checkbox"/> (3) SELF AND COMMERCIAL
ITEM	AMOUNT	FOR AGENCY USE ONLY	
11B. Moving (Attach completed Schedule A)	\$	\$	
11C. Storage (Must be approved in advance by agency) (Attach completed Schedule A)			
11D. Actual Direct Losses of Property (Attach completed Schedule B)			
11E. Reasonable Search (Attach completed Schedule C)			
11F. Total (Sum of lines 11B thru 11C)			
11G. Amount Previously Paid			
11H. Amount Due Under This Claim (Line 11F minus 11G)	\$	\$	
12. CLAIM FOR PAYMENT IN LIEU OF ACTUAL MOVING AND RELATED EXPENSES	\$		

13. PERSON(S) TO WHOM PAYMENTS ARE TO BE MADE	13A. NAME AND ADDRESS (Include ZIP code)
	13B. NAME AND ADDRESS (Include ZIP code)

**14. CERTIFICATION BY CLAIMANT(S)**

I (We) CERTIFY under the penalties and provisions of U.S.C. Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any other claim for, or received, reimbursement or compensation from any other source for any item of this claim, and that any receipts submitted herewith accurately reflect costs actually incurred.

I (We) further certify that the choice of type of payment was made on the basis of a full explanation by the displacing agency relocation representative of the differences between the two types of payments available and the eligibility requirements for each.

SIGNATURE OF CLAIMANT OR CLAIMANT'S AGENT	NAME AND TITLE (Type or print)	DATE
14A.	14B.	14C.
14D.	14E.	14F.

**PENALTY FOR FALSE OR FRAUDULENT STATEMENT.** U.S.C. Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of my department or agency of the United States knowingly and willfully falsifies . . . or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing, or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

**SECTION III-TO BE COMPLETED BY AGENCY**

PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE	NAME (Type or print)	DATE
15. RECOMMENDED	15A. \$ \$	15B.	15C.	15D.
16. APPROVED	16A. \$ \$	16B.	16C.	16D.

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REMARKS

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**IN COMPLIANCE WITH THE PRIVACY ACT OF 1974**, the following information is provided: Public Law 91-646, Stat. 1894 authorized the solicitation of the information on this form for the purposes of determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the information except for audit use to ensure compliance with the law. Disclosure of the information is voluntary, however, the information is required to obtain benefits.

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**INSTRUCTIONS**-This claim form is for use in applying for a relocation payment for moving and related expenses of a business concern, nonprofit organization, or farm operation. (Unless otherwise indicated on this form, the term "claimant" includes business concerns, nonprofit organizations, and farm operations.) You may apply for *either* (1) a payment for actual moving and related expenses, or (2) a payment in lieu of actual moving and related expenses. The displacing agency relocation representative will explain the differences between the two types of payments and the eligibility requirements that apply. If you wish, the agency representative will help you complete this form and the applicable schedules. If your claim is not approved or an adjustment is made in the amount claimed, the local agency will provide you with a written explanation of the reason and the steps that you may take to have your claim reviewed in accordance with grievance procedures established under regulations of the displacing agency.

TO APPLY FOR A PAYMENT, complete Section I, and the applicable schedule(a).

**A. ALLOWABLE MOVING EXPENSES**

1. Packing and unpacking, crating and uncrating of property.
2. Advertising for packing, crating, and transportation when the displacing agency determines that is necessary.
3. Storage of personal property for a period generally not to exceed twelve months when determined necessary by displacing agency.
4. Insurance premiums for loss to and damage of personal property.
5. Removal and reinstallation of machinery, equipment, appliances, and other items, not acquired as real property. Prior to payment of any expenses for removal and reinstallation of such property, the displaced person shall be required to agree in writing that the property is personal and that the displacing agency is released from any payment for the property.
6. Property lost, stolen or damaged (not caused by the fault or negligence of the displaced person, his agent or employees), in the process of moving, where insurance to cover such loss or damage is not available.

**A. ALLOWABLE EXPENSES IN SEARCHING FOR REPLACEMENT BUSINESS OR FARM**

1. Actual travel costs.
2. Extra costs for meals and lodging.

3. Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed \$10 per hour.
4. Necessary broker, real estate or other professional fees to locate a replacement business or farm operation, subject to prior approval of displacing agency.

**C. NONALLOWABLE MOVING EXPENSES**

1. Additional expenses incurred because of living in a new location.
2. Cost of moving structures or other improvements in which the displaced person reserved ownership.
3. Improvements to the replacement site, except when required by law.
4. Interest on loans to cover moving expenses.
5. Loss of good will.
6. Loss of profits.
7. Loss of trained employees.
8. Personal injury.
9. Cost of preparing the claim for moving and related expenses.

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**SCHEDULE A-STATEMENT OF CLAIM FOR MOVING AND RELATED EXPENSES, INCLUDING STORAGE—BUSINESSES AND FARM OPERATIONS**

IDENTIFICATION NO.  
 (Parcel, tract, etc.)

**INSTRUCTIONS** -- Complete this Schedule if your claim includes an amount for moving expenses and/or storage costs. Attach receipt(s) or unpaid invoice(s) and/or other supporting documentation as applicable. If claim includes an amount for storage costs, complete the reverse side for description of property stored.

NAME(S) OF CLAIMANT(S)

**SECTION I—MOVING EXPENSES-SUPPORT DATA**

WORK AND/OR SERVICES PERFORMED	IDENTIFICATION OF MOVER AND/OR OTHER CONTRACTORS		AMOUNT CLAIMED (c)	FOR AGENCY USE ONLY AMOUNT APPROVED (d)
	NAME AND ADDRESS (Include ZIP code) (a)	TELEPHONE NO. (b)		
1. MOVING			\$	\$
2. ELECTRICAL				
3. MECHANICAL				
4. PLUMBING				
5. CARPENTRY				
6. OTHER (List)				
<b>7. TOTAL</b>			\$	\$

(Enter the amount shown in Line 7(c) in Line 11B of Section II of the claim form)

**SECTION II—STORAGE COSTS-SUPPORTING DATA**

8. TYPE OF CLAIM ("X" applicable boxes)  
 (A) INITIAL     (B) SUPPLEMENTARY  
 (C) FINAL

9. NAME AND ADDRESS OF STORAGE COMPANY (Include ZIP code)

9A. TELEPHONE NO.

10. STORAGE COSTS

10A. TOTAL PERIOD (Months)

10B. PERIOD ("X" one)  
 (1) ACTUAL  
 (2) ESTIMATED (If this is not a final claim)

10C. DATE PROPERTY WAS MOVED  
 (1) TO STORAGE    (2) FROM STORAGE

11. STORAGE COSTS	ITEM	11A. MONTHLY RATE	11B. TOTAL COSTS ACTUALLY INCURRED	11C. AMOUNT PREVIOUSLY RECEIVED	11D. AMOUNT CLAIMED (Item 11B minus 11C)
		AMOUNT CLAIMED	(1)	(1)	(1)
			\$	\$	\$
	For Agency Use Only AMT. APPROVED	(2)	(2)	(2)	(2)
		\$	\$	\$	\$

Enter the amount shown in 11D(1) in Line 11C of the claim form.

**SECTION III—METHOD OF PAYMENT** (Check and complete Item 12 and/or 13)

**12. DIRECT PAYMENT TO CONTRACTOR**  
 The claimant has not paid the costs of the following services:

(A) MOVING     (B) ELECTRICAL     (C) MECHANICAL     (D) PLUMBING  
 (E) CARPENTRY     (F) STORAGE     (G) OTHER (Identify)

The unpaid itemized invoices or bills are attached. In accordance with arrangements made (check one)  in advance,  at this time, between the claimant, the displacing agency, and the contractor(s), it is requested that the amounts due be paid directly to the appropriate contractor(s).

**13. DIRECT PAYMENT TO CLAIMANT**  
 The claimant has paid the costs of the following services:

(A) MOVING     (B) ELECTRICAL     (C) MECHANICAL     (D) PLUMBING  
 (E) CARPENTRY     (F) STORAGE     (G) OTHER (Identify)

Itemized receipts or paid bills in the proper amount are attached. Reimbursement is hereby requested.

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**SCHEDULE A—SECTION III—STORAGE COSTS—SUPPORTING DATA** *(Continued)*

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14. **DESCRIPTION OF PROPERTY STORED** *(List each major item separately or attach storage company invoice. If this is a supplementary or final claim for storage costs and there has been no change in the number of items stored, reference may be made to the description previously submitted. Attach additional sheets as necessary.)*

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SCHEDULE B—STATEMENT OF CLAIM FOR ACTUAL DIRECT LOSSES OF PERSONAL PROPERTY—BUSI- NESSES AND FARM OPERATIONS		IDENTIFICATION NO. (Parcel, tract, etc.)			
NAME(S) OF CLAIMANT(S)	JUSTIFICATION FOR AMOUNT CLAIMED (Explain fully, referring to any attached statements)	FAIR MARKET VALUE CONTINUED USE AT PRESENT LOCATION (c)	NET PROCEEDS FROM SALE (d)	VALUE NOT RECOVERED BY SALE (Col. f minus Col. d)	FOR AGENCY USE ONLY AMOUNT APPROVED* (f)
DESCRIPTION OF PROPERTY (List each item separately) (a)	(b)	(c)	(d)	(e)	(f)
<p><b>CLAIMANT'S RELEASE OF PERSONAL PROPERTY</b></p> <p>I (We) hereby release to the displacing agency ownership and title to all personal property remaining on the acquired site, for which the claimant has received or will receive a payment for direct loss of property.</p> <p>OWNER'S OR AUTHORIZED AGENT</p> <p>SIGNATURE _____ DATE _____</p> <p>SIGNATURE _____ DATE _____</p>					
<b>1. TOTAL</b>		\$	\$	\$	\$
<b>2. COST OF SALE</b>					
<b>3. ESTIMATED COST OF MOVING PROPERTY (To be entered by agent)</b>					
<b>4. AMOUNT CLAIMED (1(c) plus 2(e) not to exceed 3(f)) (Enter the amount shown in 4(f) in Line 11D of Section II of page 1)</b>					

\* This amount not to exceed the reasonable expense that would have been required to relocate such property.

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**SCHEDULE C-STATEMENT OF CLAIM FOR ACTUAL REASONABLE SEARCHING EXPENSES—BUSINESSES AND FARM OPERATIONS**

INSTRUCTIONS

Complete this Schedule if your claim includes an amount for expenses incurred in searching for a replacement location. Consult the displacing agency to ascertain maximum amounts that apply to the total allowable amount for searching expenses and to certain components listed in Section I.

**NOTE: Unless the agency determines that an additional amount is reasonable and necessary, reimbursement for search expense is limited to \$500.00**

NAME(S) OF CLAIMANT(S)	IDENTIFICATION NO. (Parcel, tract, etc.)
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**SECTION I-DETERMINATION OF AMOUNT OF SEARCHING EXPENSES**

			AMOUNT CLAIMED <small>(a)</small>	FOR AGENCY USE ONLY AMOUNT APPROVED <small>(b)</small>
1. SEARCHING TIME	▶ ( NUMBER OF HOURS )	X ( RATE PER HOUR )	= \$ _____	\$ _____
2. TRANSPORTATION	▶ ( NUMBER OF MILES )	X ( RATE PER MILE <sup>1</sup> )	= _____	_____
3. LODGING	▶ ( NUMBER OF NIGHTS )	X ( PER NIGHT )	= _____	_____
4. COST OF MEALS	▶ .....		_____	_____
5. FEES PAID TO REAL ESTATE BROKER OR AGENT <sup>3</sup>	.....		_____	_____
6. OTHER EXPENSES (Specify and attach receipts)	.....		_____	_____
7. TOTAL SEARCHING EXPENSES (Sum of lines 1 thru 6)			\$ _____ <sup>4</sup>	\$ _____

<sup>1</sup> Compensable at hourly rate of salary or earnings, but not to exceed \$10.00 per hour.  
<sup>2</sup> To be completed in advance by agency.  
<sup>3</sup> Attach contract or other evidence.  
<sup>4</sup> (Enter the amount shown in Line 7(a) in Line 11E, Section II of the claim form.)

**SECTION II—ITINERARY (Dates, places, mode of transportation, etc.)**



<b>SCHEDULE D—STATEMENT OF CLAIM FOR PAYMENT IN LIEU OF ACTUAL MOVING AND RELATED EXPENSE— BUSINESSES AND FARM OPERATIONS</b>	IDENTIFICATION NO. (Parcel, tracts, etc.)
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An eligible displaced business or farm operation may elect to apply for a fixed payment in lieu of all the payments described in Schedules A, B, and C, provided that in the case of a business, the agency determines that the business cannot be relocated without a substantial loss of existing patronage and that the business is not a part of a commercial enterprise having at least one other establishment not being acquired and engaged in a similar business.

1. NAME(S) OF CLAIMANT(S)

2. NAME(S) USED ON INCOME TAX RETURN(S) OR OTHER ACCEPTABLE PROOF OF INCOME

2A. EMPLOYER IDENTIFICATION NUMBER(S) SHOWN ON TAX RETURN(S) (1 returns used as proof of income)

2B. PRINCIPAL BUSINESS ACTIVITY

3. NAME AND ADDRESS OF OTHER ESTABLISHMENTS OPERATED BY OR AFFILIATED WITH THE BUSINESS

(Not applicable to farm operations) (If "None" state "NONE")

(A) NAME	(B) ADDRESS (Include ZIP code)	(C) TYPE OF BUSINESS OR ACTIVITY
(1)	(1)	(1)
(2)	(2)	(2)
(3)	(3)	(2)

4. TAX RETURNS FILED WITH DISTRICT DIRECTOR OF INTERNAL REVENUE IN (If applicable)

(A) YEAR	(B) CITY	(C) STATE	(D) YEAR	(E) CITY	(F) STATE
19			19		

5. LISTING OF ATTACHMENTS SUPPORTING THIS PAYMENT (Include statement as to why business cannot be relocated without substantial loss of patronage)

ER 405-1-12  
 Change 5  
 16 Oct 78

**SCHEDULE D—STATEMENT OF CLAIM FOR PAYMENT IN LIEU OF ACTUAL MOVING AND RELATED EXPENSES—BUSINESSES AND FARM OPERATIONS (Continued)**

NAME(S) OF CLAIMANT(S)	IDENTIFICATION NO. (Parcel, tract, etc.)
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ITEM	19 <small>(a)</small>	19 <small>(b)</small>	AVERAGE <small>(c)</small>	FOR AGENCY USE ONLY <small>(d)</small>	REMARKS <small>(e)</small>
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**TABLE I—INDIVIDUAL OR SOLE PROPRIETOR**

1. Gross Receipts, or Gross Sales, Less Returns and Allowances	\$	\$	\$	\$	
2. Gross Profit					
3. Not Profit (or Loss) <sup>1</sup>					
4. Salaries and Wages Paid to Members of Owner's Family Who Are Members of Owner's Household (List names below and amounts to each)					
5. Net Earnings (Sum of Lines 1 thru 4)	\$	\$	\$	\$	

**TABLE II—CORPORATION**

6. Gross Receipts or Gross Sales, Less Returns and Allowances	\$	\$	\$	\$	
7. Gross Profit					
8. Net Profit					
9. Salaries and Wages Paid to Members of Principal Stockholder's Family Who Are members of His Household (List names below and amounts to each) <sup>2</sup>					
10. Net Earnings (Sum of Lines 6 thru 9)	\$	\$	\$	\$	

**TABLE III—PARTNERSHIP**

11. Gross Receipts or Gross Sales, Loss Returns and Allowances	\$	\$	\$	\$	
12. Total Income					
13. Ordinary Income (or Loss)					
14. Compensation of Principal Partners <sup>3</sup>					
15. Salaries and Wages Paid to Members of Principal Partner's Family Who Are Members of Principal Partners Immediate Household (List names below and amounts to each)					
16. Net Earnings (Sum of Lines 11 thru 15)	\$	\$	\$	\$	

1 No deduction should be made for any compensation paid to owner.  
 2 Principal stockholder is one who owns 15% or more of the corporation.  
 3 A principal partner is one with a proprietary interest of 15% or more in the concern.

ER 405-1-12  
Change 5  
16 Oct 78

<b>CLAIM FOR REPLACEMENT HOUSING PAYMENT FOR HOMEOWNERS</b> <i>(Under Sec. 203, P.L. 91-646)</i>	<b>IMPORTANT</b> Read Privacy Act Statements and Instructions on reverse	OMB APPROVAL NO. 29-R0229
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**SECTION I—TO BE COMPLETED BY AGENCY**

1. AGENCY NAME AND ADDRESS <i>(Include ZIP code)</i>	2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. <i>(Parcel, tract, etc.)</i>
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**SECTION II—TO BE COMPLETED BY CLAIMANT(S)**

NAME(S) OF CLAIMANT(S)	PRESENT MAILING ADDRESS(ES) OF CLAIMANT(S) <i>(Include ZIP code)</i>	TELEPHONE NO.
4A.	4B.	4C.

5. Have All Members of the Household Moved Together to a Replacement Dwelling?  (A) YES  (B) NO *(If "NO" checked, complete item 10 below)*

DWELLING	ADDRESS <i>(Include ZIP code)</i>	DATE THAT YOU		
		FIRST OCCUPIED AS OWNER	RECEIVED AGENCY'S FIRST WRITTEN OFFER TO PURCHASE	MOVED FROM DWELLING
6. AGENCY ACQUIRED <i>(From which you moved)</i>	6A.	6B.	6C.	6D.
7. REPLACEMENT <i>(To which you moved)</i>	7A.	7B.		

8A. At the time you received the written offer to purchase the dwelling shown in item 6 above, was the dwelling owned and occupied by you for 180 consecutive days immediately prior thereto as your permanent residence?  (1) YES  (2) NO

8B. At the time of agency acquisition, was the dwelling shown in item 6 above occupied as your permanent residence?  (1) YES  (2) NO

**9. COMPUTATION OF AMOUNT OF PAYMENT**

ITEM	AMOUNT	FOR AGENCY USE ONLY	ITEM	AMOUNT	FOR AGENCY USE ONLY
9A. Price of a Comparable Dwelling			9F. Amount of Incidental Expenses <i>(See Item 9F on reverse)</i>	\$	\$
9B. Price Paid for Replacement Dwelling	\$		9G. Total Amount of Replacement Housing Payment		
9C. Price Agency Paid for Acquired Dwelling			9H. Amount of Rental Assistance Payment Previously Received		
9D. Dwelling Payment <i>(Line 9A minus 9C) or (Line 9B minus 9C) whichever amount is less</i>			9I. Amount Due Under This Claim <i>(Line 9G minus 9H)</i>		
9E. Mortgage Interest Cost <i>(See Item 9E on reverse)</i>	\$	\$			
10. Names and Addresses of Household Members Moved to Separate Replacement Dwellings <i>(Complete only if you have checked Item 5(B) above)</i>	10A.				
	10B.				
	10C.				
	10D.				
	10E.				
	10F.				

**11. CERTIFICATION BY CLAIMANT(S)**

I (We) CERTIFY under the penalties and provisions of U.S.C., Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any other claim for, or received, reimbursement or compensation from any other source for any item of this claim and that any receipts submitted herewith accurately reflect costs actually incurred.

11A. SIGNATURE	11B. DATE	11C. SIGNATURE	11D. DATE
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**PENALTY FOR FALSE OR FRAUDULENT STATEMENT, U.S.C. Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies . . . or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."**

**SECTION III—TO BE COMPLETED BY AGENCY**

PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE	NAME <i>(Type or print)</i>	DATE
12. RECOMMENDED	12A.	12B.	12C.	12D.
13. APPROVED	13A.	13B.	13C.	13D.

ER 405-1-12  
 Change 5  
 16 Oct 78

**SECTION II—CONTINUED** (To be completed by claimant(s))

**9E. INCREASED MORTGAGE INTEREST COSTS**

ITEM	AGENCY ACQUIRED DWELLING (From which you were displaced)			REPLACEMENT DWELLING
	MORTGAGE			
	FIRST	SECOND	THIRD	
(1) Issuance Date of Mortgage				
(2) Discharge Date of Mortgage (If applicable)				
(3) Outstanding Mortgage Balance (If any)		\$	\$	
(4) Amount of Monthly Mortgage Payment	\$	\$	\$	\$
(5) Annual Interest Rate of Mortgage	%	%	%	%
(6) Number of Monthly payments Remaining on Mortgage <sup>a</sup>				
(7) Cost of Points for Mortgage <sup>b</sup>	\$	\$	\$	\$

<sup>a</sup>If the mortgage or land contract on the replacement dwelling was assumed from a previous owner, a written statement from the lender showing date of assumption and remaining principal balance or a copy of the written assumption must be submitted in addition to the mortgage note or land contract.

<sup>b</sup>Mortgage closing statement required to obtain origination or service fees.

The agency will compute the amount of Increased Mortgage Interest Costs due and mail one of the following directly to the claimant(s).  
 1. A payment for the amount due; or  
 2. A letter of notification if the amount is zero.

**9F. INCIDENTAL EXPENSES**

ITEM	AMOUNT	FOR AGENCY USE ONLY	ITEM	AMOUNT	FOR AGENCY USE ONLY
(1) Legal Costs	\$	\$	(10) Escrow Fee	\$	\$
(2) Title Search Fee			(11) Transfer Taxes		
(3) Notary Fee			(12) Other (Explain)		
(4) Survey Costs					
(5) Recording Fees					
(6) Lender's Appraisal Fee					
(7) FHA Application Fee					
(8) Certification Fee					
(9) Credit Report Fee	\$	\$	(13) TOTAL (Sum of Lines 9F(1) thru 9F(12))	\$	\$

REMARKS

**IN COMPLIANCE WITH THE PRIVACY ACT OF 1974**, the following information is provided: Public Law 91-646, Stat. 1894 authorized the solicitation of the information on this form for the purposes of, determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the information except for audit use to ensure compliance with the law. Disclosure of the information is voluntary, however, the information is required to obtain benefits.

**INSTRUCTION** — Complete Section II of this form to apply for the replacement housing payment for homeowners. The displacing agency relocation representative will help you complete the form, if you wish. If your claim is not approved or if you have any questions regarding the amount of the payment, the agency will provide you with a written explanation of the basis for the disapproval or for the amount, and the steps that you may take to have your claim reviewed in accordance with grievance procedures established under regulations of the displacing agency.

You are eligible for increased mortgage interest costs only if there was a bona fide mortgage(s) on the dwelling from which you were displaced for at least 180 days immediately prior to the initiation of negotiations to acquire the property. Consult the displacing agency relocation representative for assistance in completing the detailed Item 9E above.

To receive payment for incidental expenses on the replacement dwelling, enter the amounts paid for each item of expense in Item 9F above. Attach a copy of the closing statement and/or other documentation in support of the amounts shown in Item 9F above.

ER 405-1-12  
Change 5  
16 Oct 78

**CLAIM FOR SUPPLEMENTAL RENTAL ASSISTANCE PAYMENT FOR REPLACEMENT HOUSING** (Under Sec. 204(1) P.L. 91-646) **IMPORTANT** Read Privacy Act Statement and Instructions on reverse. OMB APPROVAL NO. 29-R-0229

**SECTION I—TO BE COMPLETED BY AGENCY**

1. AGENCY NAME AND ADDRESS (Include ZIP code)	2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. (Parcel, tract, etc.)
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**SECTION II—TO BE COMPLETED BY CLAIMANT(S)**

4A. NAME(S) OF CLAIMANT(S)	4B. PRESENT MAILING ADDRESS OF CLAIMANT(S) (Include ZIP code)	4C. TELEPHONE NO.(S)
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5. Have All Members of the Household Moved Together to a Replacement Dwelling?  (A) YES  (B) NO (If "NO" checked, complete item 11)

DWELLING	ADDRESS (Include ZIP code)	DATE THAT YOU		
		FIRST OCCUPIED	MOVED FROM DWELLING	RECEIVED AGENCY'S FIRST WRITTEN OFFER TO PURCHASE
6. AGENCY ACQUIRED (From which you moved)	6A.	6B.	6C.	6D.
7. REPLACEMENT (To which you moved)	7A.	7B.	* For agency use only	

8. Type Of Occupancy Covered By This Claim ("X" one)  (A) DWELLING UNIT TENANT  (B) SLEEPING ROOM TENANT  (C) HOMEOWNER OCCUPANT

**9. COMPUTATION OF AMOUNT OF PAYMENT**

ITEM	AMOUNT	FOR AGENCY USE ONLY
9A. Monthly Rental Required to Obtain Comparable Replacement Dwelling		\$
9B. Monthly Rental Paid for Replacement Dwelling		
9C. Monthly Rental Rate of Dwelling Vacated by Claimant (Homeowner's use economic rent)		
9D. Monthly Replacement Rental Cost (Line 9A minus 9C) OR (Line 9B minus 9C) Whichever Amount is Less		
9E. Amount Due Under This Claim (Line 9D multiplied by 48)	\$	\$
10. REQUEST PAYMENT BE DISBURSED ("X" one) <input type="checkbox"/> (A) LUMP SUM <input type="checkbox"/> (B) INSTALLMENT (If Item "10B" checked, complete items 10C and 10D)	10C. FREQUENCY	10D. AMOUNT (Line 9E ÷ 10C)
Names and Addresses of Household Members Allowed to Separate Replacement Dwellings (Complete only if you have checked Item 5B above)		
11A.		
11B.		
11C.		
11D.		
11E.		
11F.		

**12. CERTIFICATION BY CLAIMANT(S)**

I (We) CERTIFY under the penalties and provisions of U.S. Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any claim for, or received, reimbursement or compensation from any other source for any item of this claim and that any receipts submitted herewith accurately reflect costs actually incurred.

I (We) further CERTIFY that my (our) choice of type of payment was made on the basis of a full explanation by the displacing agency relocater representative of the differences between the two types of payments available (rental assistance payment or down payment assistance), and the eligibility requirements for each. My (Our) selection of method of payment, indicated in item 10 above, was made with a full understanding of the purpose and intent of the rental assistance payment.

SIGNATURE	12B. DATE	12C. SIGNATURE	12D. DATE
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Penalty for False or Fraudulent Statement, U.S.C Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

**SECTION III—TO BE COMPLETED BY AGENCY**

PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE	NAME (Type or print)	OATS
13. RECOMMENDED	13A. \$	13B.	13C.	13D.
14. APPROVED	14A. \$	14B.	14C.	14D.

ER 405-1-12

Change 5

16 Oct 78

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**IN COMPLIANCE WITH THE PRIVACY ACT OF 1974**, the following information is provided: Public Law 91-646, Stat. 1894 authorized the solicitation of the information on this form for the purposes of determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the information except for audit use to ensure compliance with the law. Disclosure of the information is voluntary, however, the information is required to obtain benefits.

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**INSTRUCTIONS.** — Complete Section II of this form to apply for a rental assistance payment. The displacing agency relocation representative will help you complete the form, if you wish. If your claim is not approved or if you have any question regarding the amount of the payment, the agency will provide you with a written explanation of the basis for disapproval or for the amount, and the steps that you may take to have your claim reviewed in accordance with grievance procedures established under regulations of the displacing agency.

ER 405-1-12  
Change 5  
16 Oct 78

**CLAIM FOR DOWNPAYMENT AND INCIDENTAL EXPENSES FOR REPLACEMENT HOUSING** (Under Sec. 204(2), P.L. 91-646) **IMPORTANT** Read Privacy Act Statement and Instructions on reverse. OMB APPROVAL NO. **29-R0229**

**SECTION I—TO BE COMPLETED BY AGENCY**

1. AGENCY NAME AND ADDRESS (Include ZIP code)	2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. (Parcel, tract, etc.)
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**SECTION II—TO BE COMPLETED BY CLAIMANT(S)**

4A. NAME(S) OF CLAIMANT(S)	4B. PRESENT MAILING ADDRESS OF CLAIMANT(S) (Include ZIP code)	4C. TELEPHONE NO.
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5. Have all Members of the Household Moved Together to a Replacement Dwelling?  (A) YES  (B) NO (If "NO" checked, complete item 10)

6. AGENCY ACQUIRED (To which you moved)	6A. DWELLING	ADDRESS (Include ZIP code)	DATE THAT YOU		RECEIVED AGENCY'S FIRST WRITTEN OFFER TO PURCHASE
			6B. FIRST OCCUPIED AS OWNER	6C. MOVED FROM DWELLING	
7. REPLACEMENT (To which you moved)	7A.		7B.		* For agency use only

**8. COMPUTATION OF AMOUNT OF DOWNPAYMENT**

ITEM	AMOUNT	FOR AGENCY USE ONLY
8A. Price of Comparable Dwelling		
8B. Price Paid for Replacement Dwelling	\$	
8C. Downpayment Required for Conventional Mortgage on Comparable Dwelling		
8D. Downpayment Actually Paid on Replacement Dwelling		
8E. Amount of Incidental Costs (Furnish details in item 8E on reverse)		
8F. Total Downpayment (Line 8C + 8E or line 8D + 8E) (whichever amount is less)		
8G. One Hundred Percent (100% of line 8F, not to exceed \$2,000)		
8H. Fifty Percent (50%) of Difference Between Line 8F and 8G (not to exceed \$2,000)		
8I. Total of Lines 8G and 8H		\$
8J. Rental Assistance Payment Previously Received (If any)	\$	
8K. Amount Due Under This Claim (Line 8I minus 8J)		\$

9. Type of Occupancy Covered By This Claim ("X" one)  (A) DWELLING UNIT TENANT  (B) SLEEPING ROOM TENANT  (C) HOMEOWNER OCCUPANT

10. Names and Addresses of Household Members Moved to Separate Replacement Dwelling (Complete only if you have checked item 5 above)

10A.	
10B.	
10C.	
10D.	

**11. CERTIFICATION BY CLAIMANT(S)**

I (We) CERTIFY under the penalties and provisions of U.S.C. Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any other claim for, or received, reimbursement or compensation from any other source for any item of this claim, and that any receipts submitted herewith accurately reflect costs actually incurred.

I (We ) further certify that my (our) choice of type of payment was made on the basis of a full explanation by the displacing agency relocation representative of the differences between the two types of payment available (rental assistance payment or downpayment assistance) and the eligibility requirements for each.

11A. SIGNATURE	11B. DATE	11C. SIGNATURE	11D. DATE
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**WARRANTY FOR FALSE OR FRAUDULENT STATEMENT, U.S.C. Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement, or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."**

**SECTION III—TO BE COMPLETED BY AGENCY**

PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE	NAME (Type or print)	DATE
RECOMMENDED	12A. \$	12B.	12C.	12D.
APPROVED	13A. \$	13B.	13C.	13-D.

ER 405-1-12  
 Change 5  
 16 Oct 78

**SECTION II--CONTINUED (To be completed by claimant(s))**

**8E. EXPENSES INCIDENTAL TO PURCHASE**

ITEM	AMOUNT	FOR AGENCY USE ONLY
(1) Legal Costs	\$	\$
(2) Title Search Fee, Policy or Abstract		
(3) Notary Fee		
(4) Survey Costs		
(5) Recording Fees		
(6) Lender's Appraisal Fee		
(7) FHA Application Fee		
(8) Credit Report Fee		
(9) Certification Fee		
(10) Escrow Fee		
(11) Transfer Taxes		
(12) Costs—of Points for Mortgage		
(13) Loan Originator Fee		
(14) Other (Explain)		
(15) TOTAL (Sum of Lines 8E(1) thru 8E(14)) (Enter "total on amount" on line 8E on face of form)		\$

14. REMARKS

IN COMPLIANCE WITH THE PRIVACY ACT OF 1974, the following information is provided. Public Law 91-646, Stat. 1894 authorized the solicitation of the information on this form for the purposes of determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the information except for audit use to ensure compliance with the law. Disclosure of the information is voluntary, however, the information is required to obtain benefits.

**INSTRUCTIONS** — Complete Section II of this form to apply for downpayment and incidental expenses assistance. The displacing agency relocation representative will help you complete the form. If you wish If your claim is not approved or if you have any questions regarding the amount of the payment, the agency will provide you with a written explanation of the basis for the disapproval or for the amount, and the steps that you may take to have your claim reviewed in accordance with grievance procedures established under regulations of the displacing agency.

To receive payment for incidental expenses on the replacement dwelling, enter the amounts paid for each item of expense in Item 8E above. Attach a copy of the closing statement and/or other documentation in support of the amounts shown in Item 8E above.



<b>CLAIM FOR REIMBURSEMENT OF EXPENSES INCIDENTAL TO CONVEYANCE OF REAL PROPERTY</b> <i>(Under Sec. 303, P.L. 91-646)</i>	<b>IMPORTANT</b> Read Privacy Act Statement and Instructions below	<b>OMB APPROVAL NO.</b> 29-R0229
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**IN COMPLIANCE WITH THE PRIVACY ACT OF 1974**, the following information is provided: Public Law 91-646, Stat 1894 authorized the solicitation of the information on this form for the purposes of determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the information except for audit use to ensure compliance with the law. Disclosure of the Information is voluntary, however, the Information is required to obtain benefits.

**INSTRUCTION** — This form is to be used by former owners of real property acquired for a government agency to claim expenses incurred incidental to conveyance of the real property. In addition, taxes paid which are allowable to period subsequent to vesting of title in the government or the effective date of possession by the government, whichever is earlier, may be claimed.

Penalty costs for prepayment of preexisting recorded mortgages will be allowed on bona fide loans.

Attach a copy of the closing statement and/or other documentation in support of the amounts shown in Item 6 below.

SECTION I—TO BE COMPLETED BY AGENCY		
1. AGENCY NAME AND ADDRESS <i>(Include ZIP code)</i>	2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. <i>(Parcel, tract, etc.)</i>

SECTION II—TO BE COMPLETED BY CLAIMANT(S)		
NAME(S) OF CLAIMANT(S)	PRESENT MAILING ADDRESS(ES) OF CLAIMANT(S) <i>(Include ZIP code)</i>	TELEPHONE NO.(S)
4A.	4B.	4C.

5. LOCATION OF REAL PROPERTY ACQUIRED BY THE AGENCY

6. INCIDENTAL EXPENSES		
ITEM	AMOUNT	FOR AGENCY USE ONLY
6A. Recording Fees	\$	\$
6B. Transfer Taxes		
6C. Penalty Costs <i>(For prepayment of preexisting mortgage recorded)</i>		
6D. Proration of Taxes Paid Which Are Allowable to a Period Subsequent to Vesting of Title in the Agency or Effective Date of Possession by this Agency Whichever is Earlier.		
6E. Other <i>(Explain)</i>		
6F. TOTAL <i>(Sum of Lines 6A thru 6E)</i>	\$	\$

7. CERTIFICATION BY CLAIMANT(S)

I (We) CERTIFY under the penalties and provisions of U.S.C. Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any other claim for, or received, reimbursement or compensation from any other source for any item of this claim and that any receipts submitted herewith accurately reflect costs actually incurred.

7A. SIGNATURE	7B. DATE	7C. SIGNATURE	7D. DATE
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PENALTY FOR FALSE OR FRAUDULENT STATEMENT, U.S.C. Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies or makes any false, fictitious or fraudulent statements or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

SECTION III—TO BE COMPLETED BY AGENCY			
PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE	NAME <i>(Type or print)</i>
8. RECOMMENDED	8A.	8B.	8C.
	\$		
9. APPROVED	9A.	9B.	9C.
	\$		

**COMPUTATION WORKSHEET**  
(EP 405-1-2)

RCS: DAEN-RE-18

**PROJECT:**

Big Thicket  
National Preserve

**NAME & ADDRESS OF APPLICANT:**

Joe L. Sims  
Route 2, Box 22a  
Saratoga, Texas 77721

**DATE:**

4 Mar 81

**APPLICATION NUMBER:**

00029

**PART I – COMPUTATION OF REPLACEMENT HOUSING PAYMENT FOR ELIGIBLE HOMEOWNERS**

1. Average sales price for a comparable decent, safe and sanitary dwelling suitable for applicant .....	\$ 42,500
2. Actual purchase price paid by applicant for a decent, safe and sanitary dwelling .....	\$ 41,000
3. Actual purchase price paid for substandard housing, plus cost of bringing house up to decent, safe and sanitary standards .....	\$
4. Smallest amount entered under Items 1, 2 or 3, above .....	\$ 41,000
5. Amount paid by Government for acquired dwelling .....	\$ 31,000
6. Item 4 minus item 5 (Enter this total in Item 2a, ENG Form 4439) .....	\$ 10,000
7. Amount, if any, of increased interest cost which the applicant is required to pay for financing the replacement dwelling (see para 6-28, EP 405-1-2, for method of computation) (Enter this total in Item 2b, ENG Form 4439) .....	\$ 2,800
8. Amount of reasonable expenses for title evidence, recording fees, and other closing costs incurred in connection with the purchase of the replacement dwelling (attach itemized statement and paid receipts) (Enter this total in Item 2c, ENG Form 4439) .....	\$ 600
9. Amount of Replacement Housing Payment, Item 6 plus Item 7 plus Item 8 (if the total exceeds \$15,000, enter \$15,000 as this is the limitation imposed by PL 91-646, Section 203) (Enter this total in Item 2 (TOTAL) ENG Form 4439) .....	\$ 13,400

**COMPUTATIONS**

**PART II COMPUTATION OF SUPPLEMENTAL RENTAL PAYMENTS  
 FOR TENANTS AND CERTAIN OTHERS**

1. Average monthly rent paid by applicant ( <i>use the three-month period immediately prior to initiation of negotiations to determine monthly average figure</i> ) . . . . .	\$ 250
2. Amount of rent applicant would have paid for four years <i>48 x Item 1 above</i> ) . . . . .	\$ 12,000
3. Determination of average monthly rent for new dwelling:	
a. Schedule method per month . . . . .	\$ 270
b. Comparative method per month . . . . .	\$ 275
c. Actual rental, if known ( <i>this figure should be used if less than schedule method</i> ) . . . . .	\$ 265
4. Replacement rental required for four years ( <i>48 x 3a, b, or c, above, depending upon method of computation used</i> ). . . . .	\$ 12,720
5. Amount of supplemental rental payment due for the full four years ( <i>Item 4 less Item 2 not to exceed \$4,000</i> ) . . . . .	\$ 720

**PART III—COMPUTATION OF DOWN PAYMENT FOR TENANTS AND CERTAIN OTHERS**

1. Cost of a comparable decent, safe, and sanitary dwelling for the applicant . . . . .	\$ 42,500
2. Amount necessary for down payment for a conventional loan on dwelling of type referred to in Item 1 above . . . . .	\$ 4,250
3. Costs incidental to purchase - reasonable expenses for title evidence, recording fees, and other closing costs incurred in connection with purchase cost of replacement dwelling ( <i>See SF 266</i> ) . . . . .	\$ 600
4. Total amount required by applicant to complete purchase, Item 2 plus Item 3 . . . . .	\$ 4,850
5. Item 4 less \$2,000 . . . . .	\$ 2,850
6. Amount of Item 5 divided by 2 . . . . .	\$ 1,425
7. Amount to be paid by Government ( <i>Item 6 plus \$2,000</i> ) not to exceed \$4,000 ( <i>Enter this total in Item 3b, ENG Form 4439</i> ) . . . . .	\$ 3,425
8. Amount to be contributed by applicant ( <i>Enter amount from Item 6 above</i> ) . . . . .	\$ 1,425

**NOTE: The total amount of Items 7 and 8, above, must be applied toward down payment and incidental purchase costs of a replacement dwelling.**

\*

REPORT OF INVESTIGATION		Reports Control Symbol DAEN-RE-18
PROJECT	NAME AND ADDRESS OF APPLICANT	
APPLICATION NUMBER		
AMOUNT OF APPLICATION		
<p>1. Investigation by on authorized representative of the _____ District, Corps of Engineers, has established:</p> <p>a. Applicant was <input type="checkbox"/> owner <input type="checkbox"/> tenant <input type="checkbox"/> roomer of tract and/or dwelling (house, apartment, mobile home, condominium, etc.)</p> <p>b. If owner of acquired dwelling, did applicant occupy dwelling at least 180 days prior to initiation of negotiations? <input type="checkbox"/> Yes <input type="checkbox"/> No If not, did applicant occup, dwelling at least 90 days prior to initiation of negotiations? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>c. If owner of acquired dwelling, did the applicant purchase and occupy a decent, safe, and sanitar, house within one year after moving from the acquired property or one year after receiving final payment for the acquired property, whichever date is later? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>d. If tenant of acquired dwelling, did the applicant actually occupy an adequate, decent, safe, and sanitary dwelling within one year after he vacated the acquired dwelling? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>e. Date tract acquired by the Government, _____</p> <p>f. Date applicant moved: _____</p> <p>g. Date applicant purchased or leased replacement dwelling, business or farm: _____</p> <p>h. Date applicant occupied replacement-dwelling <input type="checkbox"/> business <input type="checkbox"/> farm: _____</p> <p>i. Address of replacement site:</p> <p>_____</p> <p>j. Amount paid by Government for business or form \$ _____ Did this amount include payment for dwelling unit <input type="checkbox"/> Yes <input type="checkbox"/> No?</p> <p>k. Amount paid by Government for dwelling, or estimated by Government to be fair value of dwelling where dwelling is part of business or farm acquired: \$ _____</p> <p>l. Amount of rental paid by applicant for dwelling acquired by Government: \$ _____ per trio.</p> <p>m. If annual replacement housing rental payment, is applicant still residing in a decent, safe, and sanitary dwelling? <input type="checkbox"/> Yes <input type="checkbox"/> No Date of inspection:</p> <p>n. Purchase price \$ _____ or rental \$ _____ per mo. paid by applicant for replacement dwelling.</p>		

\*

ENG FORM 4438  
1 NOV 72

Figure 6-6

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\*

o. Amount spent for rehabilitation, if necessary, on purchase of replacement dwelling to make it comparable, decent, safe, and sanitary: \$ \_\_\_\_\_

p. If dwelling reserved, moved and rehabilitated, state total cost, i.e., amount paid Government for dwelling plus rehabilitation cost after moving, to make dwelling comparable, decent, safe, and sanitary: \$ \_\_\_\_\_

q. Duplication  will or  will not result from allowance of application.

r. Applicant moved from tract as the result of acquisition of the tract by the Government for \_\_\_\_\_ project, or as a result of a written order from the Government to vacate said tract, dated \_\_\_\_\_

s. The following distance which applicant moved is considered reasonable: \_\_\_\_\_

2. Recommendations as to each item in the application and factual information to support the recommendations are contained in the Determination of Relocation Benefits attached hereto.

3. Remarks:

\*

Figure 6-6a

\*

<b>DETERMINATION OF RELOCATION BENEFITS DUE APPLICANT</b>		<i>Reports Control Symbol DAEN-RE-18</i>
<b>PROJECT</b>	<b>NAME AND ADDRESS OF APPLICANT</b>	
<b>IMPLICATION NUMBER</b>		
<b>TRACT NUMBER</b>		
<p><b>The following is a determination of relocation benefits due the above applicant under Public Law 91-646:</b>  <i>(In cases where all benefits due cannot be paid at one time, such as in the case of annual rental payments, a record of payments will be set forth in the payment record at the end of this form.)</i></p>		
<b>1. MOVING EXPENSES:</b>	a. Actual Residential . . . . . \$ _____ b. Fixed Residential . . . . . \$ _____ c. Actual Business Moving . . . . . \$ _____ d. Actual Business Storage . . . . . \$ _____ e. Business Direct Loss . . . . . \$ _____ f. Actual Business Searching . . . . . \$ _____ g. Fixed Business . . . . . \$ _____ h. Actual Farm Moving . . . . . \$ _____ i. Farm Direct Loss . . . . . \$ _____ i. Actual Farm Storage . . . . . \$ _____ k. Actual Farm Searching . . . . . \$ _____ l. Fixed Farm . . . . . \$ _____  TOTAL (Sum of a thru l, as they apply) . . . . . \$ _____	
<b>2. REPLACEMENT HOUSING, HOMEOWNERS:</b>	a. Additional Cost of House . . . . . \$ _____ b. Increased Interest . . . . . \$ _____ c. Closing Costs . . . . . \$ _____  TOTAL (Sum of a thru c, as they apply) . . . . . \$ _____	
<b>3. REPLACEMENT HOUSING, TENANTS:</b>	a. Supplemental Rental Payment . . . . . \$ _____ b. Down Payment . . . . . \$ _____  TOTAL (Sum of a thru b, as they apply) . . . . . \$ _____	
<b>4. INCIDENTAL EXPENSES:</b>	a. Recording Fee . . . . . \$ _____ b. Transfer Taxes . . . . . \$ _____ c. Prepayment Costs . . . . . \$ _____ d. Prorated Real Estate Taxes . . . . . \$ _____  TOTAL (Sum of a thru d, as they apply) . . . . . \$ _____	

FORM  
ENG 1 NOV 72 4439

\*

Figure 6-7

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\*

<b>5. Sum approved for immediate payment</b> (includes first rental installment) . . . . . \$ _____			
<b>6. Sum approved for deferred payment</b> (see note to Disbursing Officer below) . . . . . \$ _____			
<b>REMARKS:</b>                    			
<b>DATE</b>	<b>NAME AND TITLE</b>	<b>SIGNATURE</b>	
<b>NOTE TO DISBURSING OFFICER:</b>  The deferred payment under Item 6, above, covers a rental supplement to be paid in installments as follows: \$ _____ on _____, \$ _____ on _____, and \$ _____ on _____, upon receipt by Disbursing Officer on an annual certifica- tion that the applicant occupies a comparable decent, safe, and sanitary dwelling.			
<b>PAYMENT RECORD</b>			
<b>DATE PAID</b>	<b>ITEM PAID</b>	<b>AMOUNT CLAIMED</b>	<b>AMOUNT PAID</b>

\*

Figure 6-7a

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\*

TABLE 6-1

REGULATORY REFERENCES AND OTHER PERTINENT MATERIAL

AR 405-10

Uniform Relocation Assistance and Real Property Acquisition Policies  
Act of 1970 (Public Law 91-646; 84 Stat. 1894)

Title VI of the civil Rights Act of 1964 (Public Law 88-353)

Title VIII of the Civil Rights Act of 1968 (Public Law 90-284)

Uniform Appraisal Standards for Federal Land Acquisition, 1972  
(Interagency Land Acquisition Conference)

\*



\* Sample Format - Statement of Intention to Acquire  
Property and Proposal to Purchase  
(Prepare on appropriate letterhead)

(Office Symbol)

(Date)

Mr. and Mrs. John Doe  
Rural Road  
Anytown, Ohio 40360

Dear Mr. and Mrs. Doe:

It is necessary for the United States to acquire from you the following  
real property for use in connection with the \_\_\_\_\_ project:  
\_\_\_\_\_ acres of improved land, identified in Government records as  
Tract No. \_\_\_\_\_ This land is part of a \_\_\_\_\_ -acre tract located  
in \_\_\_\_\_ A legal description of the property is enclosed.

In compliance with the Uniform Relocation Assistance and Real Property  
Acquisition Policies Act of 1970, Public Law 91-646, we are advising  
you that the amount that has been established as just compensation for  
the \_\_\_\_\_ acres to be acquired from you is \$ \_\_\_\_\_ including \$  
severance damage to your remaining ownership, representing the cost of  
fencing the new property line. This amount is based upon and is not  
less than our approved appraisal of the fair market value of the land.  
Fair market value has been judicially defined as the price the property  
would bring in a sale between a willing seller and a willing buyer,  
neither being obligated to act. Our appraisal was made by a qualified  
real estate appraiser using standard, nationally accepted valuation  
techniques recognized by authorities in the appraisal field and taking  
into consideration the value of the land, its location and its highest  
and best use, as well as any improvements on the land. Any increase or  
decrease in the fair market value caused by the Governments project has  
been disregard. Furthermore, the amount does not reflect any considera-  
tion of or allowance for any location assistance and payments under  
Public Law 91-646 to which you may be entitled.

The appraiser found the acreage to be acquired is composed of pasture land,  
tillable bottom land, timber area and building area. The highest and best \*

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\*

(Office Symbol)

(Date)

Mr. John Doe

use of the land was considered to be a combination livestock and timber farm. The improvements to be acquired are a two-story frame dwelling, a detached garage, a barn, and a corn crib.

The basic approaches to value considered by appraisers may be classified under three heads: market data, income, and cost. In the appraisal covering your property, primary reliance was placed on market data, including the prices at which similar neighboring lands have sold recently. In making the appraisal, three farms similar to your farm, which were sold within the past 12 months, were used for comparison. These sales were adjusted on the basis of such factors as location, terms of sale, lapse of time, topography, productivity, and building utility. The income and cost approaches were then used as a check on the value as indicated by market data. After completion, the appraisal was reviewed by a qualified appraiser with many years of experience in evaluating real estate, who approved it as a well-documented conclusion of the market value of your property and a sound basis for the amount believed to be just compensation for the required acres.

We assure you that the Government will exert its best efforts to lessen the impact upon you arising from this acquisition.

Sincerely yours,

\*

DIRECTORY-REGIONAL AND AREA OFFICES  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
Effective July 1976

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REGION 1

---

Regional Administrator  
Maurice E. Frye, Jr.  
Rm. 800, John F. Kennedy  
Federal Building  
Boston, Massachusetts 02203  
FTS Tel. 223-4066  
Commercial, Number: (617) 223-4066

AREA OFFICES

NEW JERSEY, CAMDEN 08103  
The Parkade Building  
519 Federal Street  
FTS Tel. 488-5081  
Commercial Number: (609) 757-5081

AREA OFFICES

CONNECTICUT, HARTFORD 06103  
1 Financial Plaza  
FTS Tel. 244-3638  
Commercial Number: (203) 244-3638

NEW JERSEY, NEWARK 07102  
Gateway 1 Building  
Raymond Plaza  
FTS Tel. 341-3010  
Commercial Number: (201) 645-3010

MASSACHUSETTS, BOSTON 02114  
Bulfinch Building  
15 New Chardon Street  
FTS Tel. 223-4111  
Commercial Number: (617) 223-4111

NEW YORK, BUFFALO 14202  
Suite 800, Staller Building  
107 Delaware Avenue  
FTS Tel. 437-5735  
Commercial Number: (716) 842-3510

NEW HAMPSHIRE, MANCHESTER 03101  
Davison Building  
1230 Elm Street  
FTS Tel. 834-7681  
Commercial Number: (603) 669-7011  
Ext. 7681

NEW YORK, NEW YORK 10019  
666 Fifth Avenue  
FTS Tel. 662-5290  
Commercial Number: (212) 399-5290

CARIBBEAN AREA OFFICE

VIRGIN ISLANDS, ST. THOMAS 00801  
Federal Building  
Veterans Drive  
Commercial Number: (809) 774-1828 \*

---

REGION II

---

Regional Administrator  
S. William Green  
26 Federal Plaza, Room 3541  
New York, New York 10007  
FTS Tel. 264-8068  
Commercial Number: (212) 264-8068

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\*

REGION III

Regional Administrator  
 W. Russell G. Byers  
 Curtis Building  
 6th and Walnut Streets  
 Philadelphia, Pennsylvania 19106  
 FTS Tel. 597-2560  
 Commercial Number: (215) 597-2560

AREA OFFICES

DISTRICT OF COLUMBIA  
 WASHINGTON 20009  
 Universal North Building,  
 1875 Connecticut Ave., N.W.  
 FTS Tel. 382-4855  
 Commercial Number: (202) 673-5837

MARYLAND, BALTIMORE 21201  
 Two Hopkins Plaza  
 Mercantile Bank and Trust Building  
 FTS Tel. 922-2121  
 Commercial Number (301) 962-2121

PENNSYLVANIA, PHILADELPHIA 19106  
 Curtis Building  
 625 Walnut Street  
 FTS Tel. 597-2645  
 Commercial Number: (215) 597-2645

PENNSYLVANIA, PITTSBURGH 15212  
 Two Allegheny Center  
 FTS Tel. 722-2802  
 Commercial Number: (412) 644-2802

VIRGINIA, RICHMOND 23219  
 701 East Franklin Street  
 FTS Tel. 925-2721  
 Commercial Number: (804) 782-2721

REGION IV

Regional Administration  
 E. Lamar Seals  
 Room 211, Pershing Point Plaza  
 1371 Peachtree Street, N.E.  
 Atlanta, Georgia 30309  
 FTS Tel. 285-5585  
 Commercial Number: (404) 526-5585

AREA OFFICES

ALABAMA, BIRMINGHAM 35233  
 Daniel Building  
 15 South 20th Street  
 FTS Tel. 229-1617  
 Commercial Number: (205) 254-1617

FLORIDA, JACKSONVILLE 32204  
 Peninsular Plaza  
 661 Riverside Avenue  
 FTS Tel. 946-2626  
 Commercial Number: (904) 791-2626

GEORGIA, ATLANTA 30303  
 Peachtree Center Building  
 230 Peachtree Street, N.W.  
 FTS Tel. 285-4576  
 Commercial Number: (404) 526-4576

KENTUCKY, LOUISVILLE 40201  
 Children's Hospital Foundation Bldg.  
 601 South Floyd Street  
 Post Office Box 1044  
 FTS Tel. 352-5251  
 Commercial Number: (502) 582-5251

\*

25 Apr 78

\*

MISSISSIPPI, JACKSON 39213  
 101-C Third Floor, Jackson Mall  
 300 Woodrow Wilson Ave., W.  
 FTS Tel. 490-4703  
 Commercial Number: (601) 969-4703

NORTH CAROLINA, GREENSBORO 27401  
 415 N. Edgeworth Street  
 FTS Tel. 699-5361  
 Commercial Number: (919) 378-5361

SOUTH CAROLINA, COLUMBIA 29202  
 1801 Main Street  
 Jefferson Square  
 FTS Tel. 677-5591  
 Commercial Number: (803) 765-5591

TENNESSEE, KNOXVILLE 37919  
 One Northshore Building  
 1111 Northshore Drive  
 FTS Tel. 854-1222  
 Commercial Number: (615) 637-9300  
 Ext. 1222

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REGION V

Regional Administrator  
 Don Morrow  
 300 South Wacker Drive  
 Chicago, Illinois 60606  
 FTS Tel. 353-5680  
 Commercial Number: (312-353-5680)

AREA OFFICES

ILLINOIS, CHICAGO 60602  
 1 North Dearborn Street  
 FTS Tel. 353-7660  
 Commercial Number: (312) 353-7660

INDIANA, INDIANAPOLIS 46205  
 Willowbrook 5 Building  
 4720 Kingsway Drive  
 FTS Tel. 331-6303  
 Commercial Number: (317) 269-6303

MICHIGAN, DETROIT 48226  
 Patrick V. McNamara Federal Bldg.  
 477 Michigan Avenue  
 FTS Tel. 226-7900  
 Commercial Number: (313) 226-7900

MINNESOTA, MINNEAPOLIS-ST. PAUL  
 6400 France Ave., South  
 Minneapolis, Minnesota 55435  
 FTS Tel. 725-4701.  
 Commercial Number: (612) 725-4701

OHIO, COLUMBUS 43215  
 60 East Main Street  
 FTS Tel. 943-7345  
 Commercial Number: (614) 469-7345

WISCONSIN, MILWAUKEE 53203  
 744 North 4th Sreet  
 FTS TEL. 362-1493  
 Commercial Number: (414) 224-1493

---

REGION VI

Regional Administrator  
 Richard L. Morgan  
 Room 14C2, Earle Cabell Fed. Bldg.  
 U.S. Courthouse  
 1100 Commerce Street  
 Dallas, Texas 75242  
 FTS Tel. 749-7401  
 Commercial Number: (214) 749-7401

AREA OFFICES

ARKANSAS, LITTLE ROCK 72201  
 Room 1490, One Union Natl Plaza  
 FTS Tel. 740-5401  
 Commercial Number: (501) 378-5401

LOUISIANA, NEW ORLEANS 70113  
 Plaza Tower  
 1001 Howard Avenue  
 FTS Tel. 682-2063  
 Commercial Number: (504) 589-2063 \*

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\* OKLAHOMA, OKLAHOMA CITY 73102  
 200 North West 5th Street  
 FTS Tel. 736-4891  
 Commercial Number: (405) 231-4891

TEXAS, DALLAS 75201  
 2001 Bryan Tower, 4th Floor  
 FTS Tel. 749-1601  
 Commercial Number: (214) 749-1601

TEXAS, SAN ANTONIO 078285  
 Kallison Building  
 410 South Main Avenue  
 Post Office Box 9163  
 FTS Tel. 730-6800  
 Commercial Number: (512) 229-6800

REGION VII

Regional Administrator  
 Elmer E. Smith  
 Federal Office Bldg, Rm. 300  
 911 Walnut Street  
 Kansas City, Missouri 64106  
 FTS Tel. 758-2661  
 Commercial Number: (816) 374-2661

AREA OFFICES

KANSAS, KANSAS CITY 66101  
 Two Gateway Center  
 4th and State Streets  
 FTS Tel. 758-4355  
 Commercial Number: (816) 374-4355

MISSOURI, ST. LOUIS 63101  
 210 North 12th Street  
 FTS Tel. 279-4761  
 Commercial Number: (314) 425-4761

NEBRASKA, OMAHA 68106  
 Univac Building  
 7100 West Center Road  
 FTS Tel. 864-9301  
 Commercial Number: (402) 221-9301

REGION VIII

Regional Administrator  
 Robert C. Rosenheim  
 Executive Tower  
 1405 Curtis Street  
 Denver, Colorado 80202  
 FTS Tel. 327-4513  
 Commercial Number: (303) 837-4513

REGION IX

Regional Administrator  
 Robert H. Baida  
 450 Golden Gate Avenue  
 Post Office Box 36003  
 San Francisco, California 94102  
 FTS Tel. 556-4752  
 Commercial Number: (415) 556-4752

AREA OFFICES

CALIFORNIA, LOS ANGELES 90057  
 2500 Wilshire Boulevard  
 FTS Tel. 798-5973  
 Commercial Number: (213) 688-5973

CALIFORNIA, SAN FRANCISCO 94111  
 1 Embarcadero Center  
 Suite 1600  
 FTS Tel. 556-2238  
 Commercial Number: (415) 556-2238

HAWAII, HONOLULU 96813  
 1000 Bishop Street, 10th Floor  
 Post Office Box 3377  
 FTS Tel. (Dial 556-0220 and ask operator  
 for 546-2136)  
 Commercial Number: (808) 546-2136

REGION X

Regional Administrator  
 David W. Reyton (Acting)  
 Arcade Plaza Building  
 1321 Second Avenue  
 Seattle, Washington 98101  
 FTS Tel. 399-5414  
 Commercial Number: (206) 442-5414

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AREA OFFICES

---

OREGON, PORTLAND 97204  
520 Southwest 6th Avenue  
FTS Tel. 423-2561  
Commercial Number: (503) 221-2561

WASHINGTON, SEATTLE 98101  
Arcade Plaza Building  
1321 Second Avenue  
FTS Tel. 399-7456  
Commercial Number: (206) 442-7456

Figure 6-2d

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Change 2

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PRELIMINARY RELOCATION DATA FORM		REQUIREMENTS CONTROL SYMBOL DAEN-RE-18	
<p>The Privacy Act of 1974 requires each individual asked or required to furnish personal information to be advised of the following:</p> <p>Authority: Title II, Public Law 91-646 (84 Stat 1894) - The Uniform Relocation Assistance and Real Property Acquisition Poolicies Act of 1970.</p> <p>Principal Purpose(s): As soon as practicable after acquisition action is commenced, the Preliminary Relocation Data Form will be prepared for each owner, tenant, or other person living on the premises who is not a member of the owner's or tenant's family, for the purpose of (1) obtaining information relative to each prospective applicant for later use in processing his/her application at the time of his/her relocation, and (2) for the purpose of being informed on the scope of relocation assistance involved.</p> <p>Routine Uses: This form is an administrative tool used in processing a displaced person's application for assistance at the time of his/her relocation and for the purpose of determining what type of assistance will be provided (such as moving expenses, replacement housing payment for tenants and homeowners, and relocation advisory services.) Estimated costs are entered on the form. This form and any supporting documents relating to he application will be retained by the District Engineer for not less than three years; in appeal cases the record is permanent.</p> <p>Mandatory or Voluntary Disclosure and Effect on Individual Not Providing Information: The applicant discloses the data on a VOLUNTARY basis. The Corps of Engineers cannot, however, authorize a payment under the act unless the applicant demonstrates that he/she qualifies for the payment.</p>			
<b>PART I - PROSPECTIVE APPLICANT DATA</b>			
PROJECT			
RELOCATION ASSISTANCE REPRESENTATIVE		3. APPLICATION NO.	
4. PROSPECTIVE APPLICANT		5. SPOUSE AND OTHER DEPENDENTS	
		NAME	RELATIONSHIP
		AGE	AGE
NAME: <span style="float: right;">AGE:</span>			
ADDRESS:			
<b>PART II - PROPERTY ACQUISITION DATA</b>			
TRACT NOS.	7. BRIEF DESCRIPTION OF PROPERTY ACQUIRED		
DATE NEGOTIATIONS INITIATED		9. DATE POSSESSION REQUIRED	
10. APPLICANT FURNISHED INFORMATION BROCHURE <input type="checkbox"/> YES <input type="checkbox"/> NO		11. APPLICATION ANTICIPATED <input type="checkbox"/> YES <input type="checkbox"/> NO	
12. INTEREST HELD BY APPLICANT <input type="checkbox"/> OWNER <input type="checkbox"/> TENANT			
13. INTEREST ACQUIRED BY THE GOVERNMENT <input type="checkbox"/> EASEMENT <input type="checkbox"/> FEE <input type="checkbox"/> LEASE		14. DATE ACQUIRED	
15. APPLICANT RESIDES ON PROPERTY <input type="checkbox"/> YES <input type="checkbox"/> NO	16. EXPLAIN (ITEM 15)		
17. DWELLING OCCUPIED	DATE	18. NATURE OF BUSINESS ACQUIRED (DESCRIBE) <input type="checkbox"/> PROFIT <input type="checkbox"/> NON-PROFIT	
BUSINESS COMMENCED			
FARM OPERATION COMMENCED			

ENG FORM 1 APR 78 4436

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PART III - PROPERTY TO BE RELOCATED		
TITLE	BRIEF DESCRIPTION	
	QUANTITY	VALUE
19. HOUSEHOLD FURNISHINGS		
20. BUSINESS EQUIPMENT AND FIXTURES		
21. FARM EQUIPMENT		
22. LIVESTOCK		
23. MISCELLANEOUS (EXPLAIN)		
24. SITE OF PROPOSED RELOCATION		25. MILES FROM PRESENT SITE
PART IV - REMARKS		
<p>List of attachments (if any)</p>		
DATE	NAME AND TITLE	SIGNATURE

ER 405-1-12  
Change 5  
16 Oct 78

<b>CLAIM FOR MOVING COSTS AND RELATED EXPENSES-- FAMILIES AND INDIVIDUALS</b> (Under Sec. 202 of P.L. 91-646)		<b>IMPORTANT</b> Road Privacy Act Statement and Instructions on reverse.	OMB APPROVAL NO. <b>29-R0229</b>		
<b>SECTION I--TO BE COMPLETED BY AGENCY</b>					
1. AGENCY NAME AND ADDRESS (Include ZIP Code)		2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. (Parcel, tract, etc.)		
<b>SECTION II--TO BE COMPLETED BY CLAIMANT(S)</b>					
NAME(S) OF CLAIMANT(S)		PRESENT MAILING ADDRESS(ES) OF CLAIMANT(S) (Include ZIP code)	TELEPHONE NO(S)		
4A.	4B.		4C.		
5. Have all members of the household moved together to a replacement dwelling? <input type="checkbox"/> (A) YES <input type="checkbox"/> (B) NO (If "NO" checked, complete item 16 on reverse)					
DWELLING	ADDRESS (Include ZIP Code) <i>(a)</i>	APT., FLOOR OR ROOM NO. <i>(b)</i>	NO. OF ROOMS OCCUPIED <i>(c)</i>	WAS IT FURNISHED WITH YOUR OWN FURNITURE? <i>(d)</i>	DATE YOU MOVED <i>(e)</i>
6. AGENCY ACQUIRED <i>(From which you moved)</i>				<input type="checkbox"/> YES <input type="checkbox"/> NO	(1) INTO DWELLING  (2) FROM DWELLING
7. REPLACEMENT <i>(To which you moved)</i>					(1) INTO DWELLING  <i>*Excluding bathrooms, hallways and closes.</i>
8. TYPE OF PAYMENT	<input type="checkbox"/> (A) FIXED PAYMENT <i>(Including dislocation allowance)</i>		<input type="checkbox"/> (B) REIMBURSEMENT FOR ACTUAL MOVING EXPENSES <i>(Including storage costs, if applicable)</i>		<input type="checkbox"/> (C) SUPPLEMENTARY CLAIM FOR REIMBURSEMENT OF STORAGE COSTS <i>(Complete item 15 on reverse)</i>
<b>9. COMPUTATION OF AMOUNT OF PAYMENT (Complete item 9A or 9B)</b>					
ITEM	9A. FIXED PAYMENT CLAIM		9B. ACTUAL MOVING EXPENSES CLAIM		
	AMOUNT	FOR AGENCY USE ONLY	AMOUNT	FOR AGENCY USE ONLY	
(1) Moving Allowance <i>(Consult Agency for amount)</i>	\$	\$			
(2) Dislocation Allowance					
(3) Moving Cost			\$	\$	
(4) Transportation Costs—Families and Individuals <i>(If any)</i>					
(5) Cost of Insurance Covering Move and/or Storage					
(6) Storage Cost <i>(Complete item 15 on reverse)</i>					
(7) Other <i>(Explain on additional sheet)</i>					
	<i>(Line (1) plus (2))</i>		<i>(Sum of lines (3) thru (7))</i>		
(8) Total Amount of Claim					
(9) Amount of Advance Payment(s) Received <i>(If any)</i>					
(10) Amount Requested Herewith <i>(Line (8) minus (9))</i>	\$	\$	\$	\$	
10. NAME AND ADDRESS OF MOVING COMPANY (Include ZIP code)					
<b>11. CERTIFICATION BY CLAIMANT(S)</b>					
I (We) CERTIFY under the penalties and provisions of U.S.C. Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any other claim for, or received, reimbursement or compensation from any other source for any item of this claim, and that any receipts submitted herewith accurately reflect costs actually incurred.					
I (We) further certify that my (our) choice of type of payment was made on the basis of a full explanation by the displacing agency representative of the difference between the types of payments available.					
11A. SIGNATURE		11B. DATE	11C. SIGNATURE		11D. DATE
PENALTY FOR FALSE OR FRAUDULENT STATEMENT. U.S.C. Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."					
<b>SECTION III--TO BE COMPLETED BY AGENCY</b>					
PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE		NAME (type or print)	DATE
12. RECOMMENDED	12A. \$	12B.		12C.	12D.
	13A. \$	13B.		13C.	13D.

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**SECTION II--CONTINUED (To be completed by claimant(s))**

**14. METHOD OF PAYMENT** (Check one) (Complete only if claim is for actual moving expense)

A. I (We) have paid the moving expenses and/or moving and storage expenses as evidenced by the attached itemized receipt(s) or bill(s) from the mover and/or storage company or other contractors, and I (we) therefore request reimbursement.

B. I (We) have not paid the moving expenses and/or moving and storage expenses, and I (we) therefore request that the attached itemized moving and storage bill(s) be paid directly to the mover and/or storage company or other contractors, in accordance with arrangements made in advance, and with my (our) consent, between the agency and the mover and/or storage company or other contractors.

C. I (We) hereby request and authorize the moving and/or moving and storage expenses see, to be incurred by me (us), be paid directly to the mover and/or storage company or other contractors, in accordance with the arrangements made at this time, and with my (our) consent, between the agency and the mover and/or storage company or other contractors.

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**15. STATEMENT OF CLAIM FOR STORAGE COSTS** (Complete only if personal property was moved to or from storage)

<b>15A. TYPE OF CLAIM</b> (Check one)		<b>15B. NAME AND ADDRESS OF STORAGE COMPANY</b> (Include ZIP code)	
<input type="checkbox"/> (1) INITIAL <input type="checkbox"/> (2) SUPPLEMENTARY <input type="checkbox"/> (3) FINAL			
<b>15C. STORAGE</b>	(1) TOTAL PERIOD (Mos.)	(2) PERIOD IS <input type="checkbox"/> ACTUAL <input type="checkbox"/> ESTIMATED	(3) DATE PROPERTY WAS MOVED
			<input type="checkbox"/> To STORAGE <input type="checkbox"/> FROM STORAGE
<b>15D. STORAGE COSTS</b>	(1) MONTHLY RATE	(2) TOTAL COSTS ACTUALLY INCURRED	(4) AMOUNT CLAIMED HEREWITH (Item (2) minus item (3))
	\$	\$	\$

**15E. DESCRIPTION OF PROPERTY STORED**

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16. Names and addresses of household members moved to separate replacement dwelling (Complete only if you have checked item 5(b) above)	16A.
	16B.
	16C.
	16D.
	16E.
	16F.

**IN COMPLIANCE WITH THE PRIVACY ACT OF 1974**, the following information is provided: Public Law 91-646, Stat. 1894 authorized the solicitation of the information on this form for the purposes of determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the information except for audit use to ensure compliance with the law. Disclosure of the information is voluntary, however, the information is required to obtain benefits.

**INSTRUCTIONS.** This claim form is for the use of families and individuals in applying for payment of moving and related expenses. You may apply for either (1) a "fixed payment" which includes a "dislocation allowance," or (2) an amount to cover the actual moving and related expenses incurred. The displacing agency relocation representative will explain the differences between the of payments and, if you wish, will help you complete this form. If your claim is not approved or an adjustment is made in the amount claimed, the displacing agency will provide you with a written explanation of the reason and the steps that you may take to have your claim reviewed in accordance with grievance procedures established under regulations of the displacing agency.

TO APPLY FOR A FIXED PAYMENT: Complete items 4 through 8, 9A and 11.  
 TO APPLY FOR A PAYMENT OF ACTUAL EXPENSES: Complete items 4 through 8, 9B, 10, 11, 14, and if applicable, items 15 and 16.  
 A claim for actual expenses must be supported by receipts, vouchers, or similar evidence, attached hereto.

**MOVING AND RELATED EXPENSES**

- |   |   |
|---|---|
| <p style="text-align: center;"><b>ALLOWABLE MOVING EXPENSES</b></p> <ol style="list-style-type: none"> <li>1. Transportation of individuals, families, and personal property from the acquired site to the replacement site, not to exceed a distance of 50 miles, except where the displacing agency determines that relocation beyond this 50-mile area is justified.</li> <li>2. Packing and unpacking, crating and uncrating of personal property.</li> <li>3. Storage of personal property for a period generally not to exceed twelve months when determined necessary by displacing agency.</li> <li>4. Insurance premiums for loss to and damage of personal property.</li> <li>5. Property lost, stolen, or damaged (not caused by the fault or negligence of the displaced person, his agent or employees), in the process of moving, where insurance to cover such loss or damage is not available.</li> <li>6. Necessary charges for the removal and hookup of appliances, equipment and other items, not acquired as real property.</li> </ol> | <p style="text-align: center;"><b>NONALLOWABLE MOVING EXPENSES</b></p> <ol style="list-style-type: none"> <li>1. Additional expense incurred because of living in a new location.</li> <li>2. Cost of moving structures or other improvements in which the displaced person reserved ownership.</li> <li>3. Improvements to the replacement site, except when required by law.</li> <li>4. Interest on loans to cover moving expenses.</li> <li>5. Personal injury.</li> <li>6. Cost of preparing the claim for moving and related expenses.</li> <li>7. Payment for search cost in connection with locating a replacement dwelling.</li> </ol> |
|---|---|

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<b>CLAIM FOR MOVING COSTS AND RELATED EXPENSES-- BUSINESSES (Including nonprofit organizations) AND FARM OPERATIONS (Under Sec. 202, P.L.--91-646)</b>	<b>IMPORTANT</b> Read Privacy Act Statement and Instructions on reverse.	OMB APPROVAL NO. <b>29-R0229</b>
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**SECTION I--TO BE COMPLETED BY AGENCY**

1. AGENCY NAME AND ADDRESS (Include ZIP code)	2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. (Parcel, trace, etc.)
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**SECTION II--TO BE COMPLETED BY CLAIMANT(S)**

NAME(S) OF CLAIMANT(S)	PRESENT MAILING ADDRESS OF CLAIMANT(S) (Include ZIP code)	TELEPHONE NO.(S)
4B.		4C.

**5. PERSON FILING CLAIM FOR CONCERN**

5A. NAME AND TITLE (Type or print)	5B. PRESENT MAILING ADDRESS (Include ZIP code)	5C. TELEPHONE NO.
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5D. Type of Concern ("X" one)     (1) BUSINESS     (2) FARM OPERATION     (3) NONPROFIT ORGANIZATION

5E. Type Ownership ("X" one)     (1) SOLE PROPRIETORSHIP     (2) CORPORATION     (3) PARTNERSHIP     (4) NONPROFIT ORGANIZATION

PROPERTY	LOCATION OR ADDRESS (Include ZIP code)	DATE OCCUPIED	
6. AGENCY ACQUIRED <i>(From which you moved)</i>		6B. FROM	6C. TO
7. REPLACEMENT <i>(To which you moved)</i>		70. FROM	

8. STATUS ("X" one)     A. Did Concern Discontinue Operations?     YES     NO     B. Does Concern Plan to Reestablish?     YES     NO

9. TYPE OF PAYMENT     (A) ACTUAL EXPENSES     (B) IN LIEU OF PAYMENT     (C) FINAL

10. TYPE OF CLAIM     (A) INITIAL     (B) SUPPLEMENTARY     (C) FINAL

**11. MOVING AND RELATED EXPENSES-ACTUAL COST BASIS**

11A. Type of Move ("X" one) <input type="checkbox"/> (1) SELF <input type="checkbox"/> (2) COMMERCIAL <input type="checkbox"/> (3) SELF AND COMMERCIAL	ITEM	AMOUNT	FOR AGENCY USE ONLY
11B. Moving (Attach completed Schedule A)		\$	\$
11C. Storage (Must be approved in advance by agency) (Attach completed Schedule A)			
11D. Actual Direct Losses of Property (Attach completed Schedule B)			
11E. Reasonable Search (Attach completed Schedule C)			
11F. Total (Sum of lines 11B thru 11C)			
11G. Amount Previously Paid			
11H. Amount Due Under This Claim (Line 11F minus 11G)		\$	\$
12. CLAIM FOR PAYMENT IN LIEU OF ACTUAL MOVING AND RELATED EXPENSES		\$	

13. PERSON(S) TO WHOM PAYMENTS ARE TO BE MADE	13A. NAME AND ADDRESS (Include ZIP code)	
	13B. NAME AND ADDRESS (Include ZIP code)	

**14. CERTIFICATION BY CLAIMANT(S)**

I (We) CERTIFY under the penalties and provisions of U.S.C. Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any other claim for, or received, reimbursement or compensation from any other source for any item of this claim, and that any receipts submitted herewith accurately reflect costs actually incurred.

I (We) further certify that the choice of type of payment was made on the basis of a full explanation by the displacing agency relocation representative of the differences between the two types of payments available and the eligibility requirements for each.

SIGNATURE OF CLAIMANT OR CLAIMANT'S AGENT	NAME AND TITLE (Type or print)	DATE
14A.	14B.	14C.
14D.	14E.	14F.

**PENALTY FOR FALSE OR FRAUDULENT STATEMENT.** U.S.C. Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of my department or agency of the United States knowingly and willfully falsifies . . . or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing, or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

**SECTION III--TO BE COMPLETED BY AGENCY**

PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE	NAME (Type or print)	DATE
15. RECOMMENDED	15A. \$ \$	15B.	15C.	15D.
16. APPROVED	16A. \$ \$	16B.	16C.	16D.

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REMARKS

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**IN COMPLIANCE WITH THE PRIVACY ACT OF 1974**, the following information is provided: Public Law 91-646, Stat. 1894 authorized the solicitation of the information on this form for the purposes of determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the information except for audit use to ensure compliance with the law. Disclosure of the information is voluntary, however, the information is required to obtain benefits.

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**INSTRUCTIONS**-This claim form is for use in applying for a relocation payment for moving and related expenses of a business concern, nonprofit organization, or farm operation. (Unless otherwise indicated on this form, the term "claimant" includes business concerns, nonprofit organizations, and farm operations.) You may apply for *either* (1) a payment for actual moving and related expenses, or (2) a payment in lieu of actual moving and related expenses. The displacing agency relocation representative will explain the differences between the two types of payments and the eligibility requirements that apply. If you wish, the agency representative will help you complete this form and the applicable schedules. If your claim is not approved or an adjustment is made in the amount claimed, the local agency will provide you with a written explanation of the reason and the steps that you may take to have your claim reviewed in accordance with grievance procedures established under regulations of the displacing agency.

TO APPLY FOR A PAYMENT, complete Section I, and the applicable schedule(a).

**A. ALLOWABLE MOVING EXPENSES**

1. Packing and unpacking, crating and uncrating of property.
2. Advertising for packing, crating, and transportation when the displacing agency determines that is necessary.
3. Storage of personal property for a period generally not to exceed twelve months when determined necessary by displacing agency.
4. Insurance premiums for loss to and damage of personal property.
5. Removal and reinstallation of machinery, equipment, appliances, and other items, not acquired as real property. Prior to payment of any expenses for removal and reinstallation of such property, the displaced person shall be required to agree in writing that the property is personal and that the displacing agency is released from any payment for the property.
6. Property lost, stolen or damaged (not caused by the fault or negligence of the displaced person, his agent or employees), in the process of moving, where insurance to cover such loss or damage is not available.

**A. ALLOWABLE EXPENSES IN SEARCHING FOR REPLACEMENT BUSINESS OR FARM**

1. Actual travel costs.
2. Extra costs for meals and lodging.

3. Time spent in searching at the rate of the displaced person's salary or earnings, but not to exceed \$10 per hour.
4. Necessary broker, real estate or other professional fees to locate a replacement business or farm operation, subject to prior approval of displacing agency.

**C. NONALLOWABLE MOVING EXPENSES**

1. Additional expenses incurred because of living in a new location.
2. Cost of moving structures or other improvements in which the displaced person reserved ownership.
3. Improvements to the replacement site, except when required by law.
4. Interest on loans to cover moving expenses.
5. Loss of good will.
6. Loss of profits.
7. Loss of trained employees.
8. Personal injury.
9. Cost of preparing the claim for moving and related expenses.

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**SCHEDULE A-STATEMENT OF CLAIM FOR MOVING AND RELATED EXPENSES, INCLUDING STORAGE—BUSINESSES AND FARM OPERATIONS**

IDENTIFICATION NO.  
 (Parcel, tract, etc.)

**INSTRUCTIONS** -- Complete this Schedule if your claim includes an amount for moving expenses and/or storage costs. Attach receipt(s) or unpaid invoice(s) and/or other supporting documentation as applicable. If claim includes an amount for storage costs, complete the reverse side for description of property stored.

NAME(S) OF CLAIMANT(S)

**SECTION I—MOVING EXPENSES-SUPPORT DATA**

WORK AND/OR SERVICES PERFORMED	IDENTIFICATION OF MOVER AND/OR OTHER CONTRACTORS		AMOUNT CLAIMED (c)	FOR AGENCY USE ONLY AMOUNT APPROVED (d)
	NAME AND ADDRESS (Include ZIP code) (a)	TELEPHONE NO. (b)		
1. MOVING			\$	\$
2. ELECTRICAL				
3. MECHANICAL				
4. PLUMBING				
5. CARPENTRY				
6. OTHER (List)				
<b>7. TOTAL</b>			\$	\$

(Enter the amount shown in Line 7(c) in Line 11B of Section II of the claim form)

**SECTION II—STORAGE COSTS-SUPPORTING DATA**

8. TYPE OF CLAIM ("X" applicable boxes)  
 (A) INITIAL     (B) SUPPLEMENTARY  
 (C) FINAL

9. NAME AND ADDRESS OF STORAGE COMPANY (Include ZIP code)

9A. TELEPHONE NO.

10. STORAGE COSTS

10A. TOTAL PERIOD (Months)

10B. PERIOD ("X" one)  
 (1) ACTUAL  
 (2) ESTIMATED (If this is not a final claim)

10C. DATE PROPERTY WAS MOVED  
 (1) TO STORAGE    (2) FROM STORAGE

11. STORAGE COSTS

ITEM	11A. MONTHLY RATE	11B. TOTAL COSTS ACTUALLY INCURRED	11C. AMOUNT PREVIOUSLY RECEIVED	11D. AMOUNT CLAIMED (Item 11B minus 11C)
AMOUNT CLAIMED	(1)	(1)	(1)	(1)
		\$	\$	\$
For Agency Use Only AMT. APPROVED	(2)	(2)	(2)	(2)
		\$	\$	\$

Enter the amount shown in 11D(1) in Line 11C of the claim form.

**SECTION III—METHOD OF PAYMENT** (Check and complete Item 12 and/or 13)

**12. DIRECT PAYMENT TO CONTRACTOR**  
 The claimant has not paid the costs of the following services:

(A) MOVING     (B) ELECTRICAL     (C) MECHANICAL     (D) PLUMBING  
 (E) CARPENTRY     (F) STORAGE     (G) OTHER (Identify)

The unpaid itemized invoices or bills are attached. In accordance with arrangements made (check one)  in advance,  at this time, between the claimant, the displacing agency, and the contractor(s), it is requested that the amounts due be paid directly to the appropriate contractor(s).

**13. DIRECT PAYMENT TO CLAIMANT**  
 The claimant has paid the costs of the following services:

(A) MOVING     (B) ELECTRICAL     (C) MECHANICAL     (D) PLUMBING  
 (E) CARPENTRY     (F) STORAGE     (G) OTHER (Identify)

Itemized receipts or paid bills in the proper amount are attached. Reimbursement is hereby requested.

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**SCHEDULE A—SECTION III—STORAGE COSTS—SUPPORTING DATA** *(Continued)*

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14. **DESCRIPTION OF PROPERTY STORED** *(List each major item separately or attach storage company invoice. If this is a supplementary or final claim for storage costs and there has been no change in the number of items stored, reference may be made to the description previously submitted. Attach additional sheets as necessary.)*

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SCHEDULE B—STATEMENT OF CLAIM FOR ACTUAL DIRECT LOSSES OF PERSONAL PROPERTY—BUSINESSES AND FARM OPERATIONS		IDENTIFICATION NO. (Parcel, tract, etc.)			
NAME(S) OF CLAIMANT(S)	JUSTIFICATION FOR AMOUNT CLAIMED (Explain fully, referring to any attached statements)	FAIR MARKET VALUE CONTINUED USE AT PRESENT LOCATION	NET PROCEEDS FROM SALE	VALUE NOT RECOVERED BY SALE (Col. 4 minus Col. 3)	FOR AGENCY USE ONLY AMOUNT APPROVED*
(a)	(b)	(c)	(d)	(e)	(f)
DESCRIPTION OF PROPERTY (List each item separately)					
CLAIMANT'S RELEASE OF PERSONAL PROPERTY I (We) hereby release to the displacing agency ownership and title to all personal property remaining on the acquired site, for which the claimant has received or will receive a payment for direct loss of property.					
OWNER'S OR AUTHORIZED AGENT					
SIGNATURE					
DATE					
SIGNATURE					
DATE					
1. TOTAL		\$	\$	\$	\$
2. COST OF SALE					
3. ESTIMATED COST OF MOVING PROPERTY (To be entered by agent)					
4. AMOUNT CLAIMED (1(c) plus 2(e) not to exceed 3(f)) (Enter the amount shown in 4(f) in Line 11D of Section II of page 1)					

\* This amount not to exceed the reasonable expense that would have been required to relocate such property.

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**SCHEDULE C-STATEMENT OF CLAIM FOR ACTUAL REASONABLE SEARCHING EXPENSES—BUSINESSES AND FARM OPERATIONS**

INSTRUCTIONS

Complete this Schedule if your claim includes an amount for expenses incurred in searching for a replacement location. Consult the displacing agency to ascertain maximum amounts that apply to the total allowable amount for searching expenses and to certain components listed in Section I.

**NOTE: Unless the agency determines that an additional amount is reasonable and necessary, reimbursement for search expense is limited to \$500.00**

NAME(S) OF CLAIMANT(S)	IDENTIFICATION NO. (Parcel, tract, etc.)
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**SECTION I-DETERMINATION OF AMOUNT OF SEARCHING EXPENSES**

			AMOUNT CLAIMED <i>(a)</i>		FOR AGENCY USE ONLY AMOUNT APPROVED <i>(b)</i>
1. SEARCHING TIME	▶ (NUMBER OF HOURS)	X	( RATE PER HOUR )	= \$	\$
2. TRANSPORTATION	▶ (NUMBER OF MILES)	X	( RATE PER MILE <sup>1</sup> )	=	
3. LODGING	▶ (NUMBER OF NIGHTS)	X	( PER NIGHT )	=	
4. COST OF MEALS	▶ .....				
5. FEES PAID TO REAL ESTATE BROKER OR AGENT <sup>3</sup>	.....				
6. OTHER EXPENSES (Specify and attach receipts)	.....				
<b>7. TOTAL SEARCHING EXPENSES (Sum of lines 1 thru 6)</b>				<sup>4</sup> \$	\$

<sup>1</sup> Compensable at hourly rate of salary or earnings, but not to exceed \$10.00 per hour.  
<sup>2</sup> To be completed in advance by agency.  
<sup>3</sup> Attach contract or other evidence.  
<sup>4</sup> (Enter the amount shown in Line 7(a) in Line 11E, Section II of the claim form.)

**SECTION II—ITINERARY (Dates, places, mode of transportation, etc.)**

<b>SCHEDULE D—STATEMENT OF CLAIM FOR PAYMENT IN LIEU OF ACTUAL MOVING AND RELATED EXPENSE— BUSINESSES AND FARM OPERATIONS</b>	IDENTIFICATION NO. (Parcel, tracts, etc.)
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An eligible displaced business or farm operation may elect to apply for a fixed payment in lieu of all the payments described in Schedules A, B, and C, provided that in the case of a business, the agency determines that the business cannot be relocated without a substantial loss of existing patronage and that the business is not a part of a commercial enterprise having at least one other establishment not being acquired and engaged in a similar business.

1. NAME(S) OF CLAIMANT(S)

2. NAME(S) USED ON INCOME TAX RETURN(S) OR OTHER ACCEPTABLE PROOF OF INCOME

2A. EMPLOYER IDENTIFICATION NUMBER(S) SHOWN ON TAX RETURN(S) (1 returns used as proof of income)

2B. PRINCIPAL BUSINESS ACTIVITY

3. NAME AND ADDRESS OF OTHER ESTABLISHMENTS OPERATED BY OR AFFILIATED WITH THE BUSINESS

(Not applicable to farm operations) (If "None" state "NONE")

(A) NAME	(B) ADDRESS (Include ZIP code)	(C) TYPE OF BUSINESS OR ACTIVITY
(1)	(1)	(1)
(2)	(2)	(2)
(3)	(3)	(2)

4. TAX RETURNS FILED WITH DISTRICT DIRECTOR OF INTERNAL REVENUE IN (If applicable)

(A) YEAR	(B) CITY	(C) STATE	(D) YEAR	(E) CITY	(F) STATE
19			19		

5. LISTING OF ATTACHMENTS SUPPORTING THIS PAYMENT (Include statement as to why business cannot be relocated without substantial loss of patronage)

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**SCHEDULE D—STATEMENT OF CLAIM FOR PAYMENT IN LIEU OF ACTUAL MOVING AND RELATED EXPENSES—BUSINESSES AND FARM OPERATIONS (Continued)**

NAME(S) OF CLAIMANT(S)	IDENTIFICATION NO. (Parcel, tract, etc.)
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ITEM	19 <i>(a)</i>	19 <i>(b)</i>	AVERAGE <i>(c)</i>	FOR AGENCY USE ONLY <i>(d)</i>	REMARKS <i>(e)</i>
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**TABLE I—INDIVIDUAL OR SOLE PROPRIETOR**

1. Gross Receipts, or Gross Sales, Less Returns and Allowances	\$	\$	\$	\$	
2. Gross Profit					
3. Not Profit (or Loss) <sup>1</sup>					
4. Salaries and Wages Paid to Members of Owner's Family Who Are Members of Owner's Household (List names below and amounts to each)					
5. Net Earnings (Sum of Lines 1 thru 4)	\$	\$	\$	\$	

**TABLE II—CORPORATION**

6. Gross Receipts or Gross Sales, Less Returns and Allowances	\$	\$	\$	\$	
7. Gross Profit					
8. Net Profit					
9. Salaries and Wages Paid to Members of Principal Stockholder's Family Who Are members of His Household (List names below and amounts to each) <sup>2</sup>					
10. Net Earnings (Sum of Lines 6 thru 9)	\$	\$	\$	\$	

**TABLE III—PARTNERSHIP**

11. Gross Receipts or Gross Sales, Loss Returns and Allowances	\$	\$	\$	\$	
12. Total Income					
13. Ordinary Income (or Loss)					
14. Compensation of Principal Partners <sup>3</sup>					
15. Salaries and Wages Paid to Members of Principal Partner's Family Who Are Members of Principal Partners Immediate Household (List names below and amounts to each)					
16. Net Earnings (Sum of Lines 11 thru 15)	\$	\$	\$	\$	

<sup>1</sup>No deduction should be made for any compensation paid to owner.  
<sup>2</sup>Principal stockholder is one who owns 15% or more of the corporation.  
<sup>3</sup>A principal partner is one with a proprietary interest of 15% or more in the concern.

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<b>CLAIM FOR REPLACEMENT HOUSING PAYMENT FOR HOMEOWNERS</b> <i>(Under Sec. 203, P.L. 91-646)</i>	<b>IMPORTANT</b> Read Privacy Act Statements and Instructions on reverse	OMB APPROVAL NO. 29-R0229
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**SECTION I—TO BE COMPLETED BY AGENCY**

1. AGENCY NAME AND ADDRESS <i>(Include ZIP code)</i>	2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. <i>(Parcel, tract, etc.)</i>
--	-------------------------	--

**SECTION II—TO BE COMPLETED BY CLAIMANT(S)**

4A. NAME(S) OF CLAIMANT(S)	4B. PRESENT MAILING ADDRESS(ES) OF CLAIMANT(S) <i>(Include ZIP code)</i>	4C. TELEPHONE NO.
----------------------------	--	-------------------

5. Have All Members of the Household Moved Together to a Replacement Dwelling?  (A) YES  (B) NO *(If "NO" checked, complete item 10 below)*

DWELLING	ADDRESS <i>(Include ZIP code)</i>	DATE THAT YOU		
		FIRST OCCUPIED AS OWNER	RECEIVED AGENCY'S FIRST WRITTEN OFFER TO PURCHASE	MOVED FROM DWELLING
6A. AGENCY ACQUIRED <i>(From which you moved)</i>		6B.	6C.	6D.
7A. REPLACEMENT <i>(To which you moved)</i>		7B.		

8A. At the time you received the written offer to purchase the dwelling shown in item 6 above, was the dwelling owned and occupied by you for 180 consecutive days immediately prior thereto as your permanent residence?  (1) YES  (2) NO

8B. At the time of agency acquisition, was the dwelling shown in item 6 above occupied as your permanent residence?  (1) YES  (2) NO

**9. COMPUTATION OF AMOUNT OF PAYMENT**

ITEM	AMOUNT	FOR AGENCY USE ONLY	ITEM	AMOUNT	FOR AGENCY USE ONLY
9A. Price of a Comparable Dwelling			9F. Amount of Incidental Expenses <i>(See Item 9F on reverse)</i>	\$	\$
9B. Price Paid for Replacement Dwelling	\$		9G. Total Amount of Replacement Housing Payment		
9C. Price Agency Paid for Acquired Dwelling			9H. Amount of Rental Assistance Payment Previously Received		
9D. Dwelling Payment <i>(Line 9A minus 9C) or (Line 9B minus 9C) whichever amount is less</i>			9I. Amount Due Under This Claim <i>(Line 9G minus 9H)</i>		
9E. Mortgage Interest Cost <i>(See Item 9E on reverse)</i>	\$	\$			
10. Names and Addresses of Household Members Moved to Separate Replacement Dwellings <i>(Complete only if you have checked Item 5(B) above)</i>	10A.				
	10B.				
	10C.				
	10D.				
	10E.				
	10F.				

**11. CERTIFICATION BY CLAIMANT(S)**

I (We) CERTIFY under the penalties and provisions of U.S.C., Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any other claim for, or received, reimbursement or compensation from any other source for any item of this claim and that any receipts submitted herewith accurately reflect costs actually incurred.

11A. SIGNATURE	11B. DATE	11C. SIGNATURE	11D. DATE
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**PENALTY FOR FALSE OR FRAUDULENT STATEMENT, U.S.C. Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies . . . or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."**

**SECTION III—TO BE COMPLETED BY AGENCY**

PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE	NAME <i>(Type or print)</i>	DATE
12. RECOMMENDED	12A.	12B.	12C.	12D.
13. APPROVED	13A.	13B.	13C.	13D.

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 Change 5  
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**SECTION II—CONTINUED** (To be completed by claimant(s))

**9E. INCREASED MORTGAGE INTEREST COSTS**

ITEM	AGENCY ACQUIRED DWELLING (From which you were displaced)			REPLACEMENT DWELLING
	MORTGAGE			
	FIRST	SECOND	THIRD	
(1) Issuance Date of Mortgage				
(2) Discharge Date of Mortgage (If applicable)				
(3) Outstanding Mortgage Balance (If any)		\$	\$	
(4) Amount of Monthly Mortgage Payment	\$	\$	\$	\$
(5) Annual Interest Rate of Mortgage	%	%	%	%
(6) Number of Monthly payments Remaining on Mortgage <sup>a</sup>				
(7) Cost of Points for Mortgage <sup>b</sup>	\$	\$	\$	\$

<sup>a</sup>If the mortgage or land contract on the replacement dwelling was assumed from a previous owner, a written statement from the lender showing date of assumption and remaining principal balance or a copy of the written assumption must be submitted in addition to the mortgage note or land contract.

<sup>b</sup>Mortgage closing statement required to obtain origination or service fees.

The agency will compute the amount of Increased Mortgage Interest Costs due and mail one of the following directly to the claimant(s).  
 1. A payment for the amount due; or  
 2. A letter of notification if the amount is zero.

**9F. INCIDENTAL EXPENSES**

ITEM	AMOUNT	FOR AGENCY USE ONLY	ITEM	AMOUNT	FOR AGENCY USE ONLY
(1) Legal Costs	\$	\$	(10) Escrow Fee	\$	\$
(2) Title Search Fee			(11) Transfer Taxes		
(3) Notary Fee			(12) Other (Explain)		
(4) Survey Costs					
(5) Recording Fees					
(6) Lender's Appraisal Fee					
(7) FHA Application Fee					
(8) Certification Fee					
(9) Credit Report Fee	\$	\$	(13) TOTAL (Sum of Lines 9F(1) thru 9F(12))	\$	\$

REMARKS

**IN COMPLIANCE WITH THE PRIVACY ACT OF 1974**, the following information is provided: Public Law 91-646, Stat. 1894 authorized the solicitation of the information on this form for the purposes of, determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the information except for audit use to ensure compliance with the law. Disclosure of the information is voluntary, however, the information is required to obtain benefits.

**INSTRUCTION** — Complete Section II of this form to apply for the replacement housing payment for homeowners. The displacing agency relocation representative will help you complete the form, if you wish. If your claim is not approved or if you have any questions regarding the amount of the payment, the agency will provide you with a written explanation of the basis for the disapproval or for the amount, and the steps that you may take to have your claim reviewed in accordance with grievance procedures established under regulations of the displacing agency.

You are eligible for increased mortgage interest costs only if there was a bona fide mortgage(s) on the dwelling from which you were displaced for at least 180 days immediately prior to the initiation of negotiations to acquire the property. Consult the displacing agency relocation representative for assistance in completing the detailed Item 9E above.

To receive payment for incidental expenses on the replacement dwelling, enter the amounts paid for each item of expense in Item 9F above. Attach a copy of the closing statement and/or other documentation in support of the amounts shown in Item 9F above.

ER 405-1-12  
Change 5  
16 Oct 78

**CLAIM FOR SUPPLEMENTAL RENTAL ASSISTANCE PAYMENT FOR REPLACEMENT HOUSING** (Under Sec. 204(1) P.L. 91-646) **IMPORTANT** Read Privacy Act Statement and Instructions on reverse. OMB APPROVAL NO. 29-R-0229

**SECTION I—TO BE COMPLETED BY AGENCY**

1. AGENCY NAME AND ADDRESS (Include ZIP code)	2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. (Parcel, tract, etc.)
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**SECTION II—TO BE COMPLETED BY CLAIMANT(S)**

4A. NAME(S) OF CLAIMANT(S)	4B. PRESENT MAILING ADDRESS OF CLAIMANT(S) (Include ZIP code)	4C. TELEPHONE NO.(S)
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5. Have All Members of the Household Moved Together to a Replacement Dwelling?  (A) YES  (B) NO (If "NO" checked, complete item 11)

DWELLING	ADDRESS (Include ZIP code)	DATE THAT YOU		
		FIRST OCCUPIED	MOVED FROM DWELLING	RECEIVED AGENCY'S FIRST WRITTEN OFFER TO PURCHASE
6. AGENCY ACQUIRED (From which you moved)	6A.	6B.	6C.	6D.
7. REPLACEMENT (To which you moved)	7A.	7B.	* For agency use only	

8. Type Of Occupancy Covered By This Claim ("X" one)  (A) DWELLING UNIT TENANT  (B) SLEEPING ROOM TENANT  (C) HOMEOWNER OCCUPANT

**9. COMPUTATION OF AMOUNT OF PAYMENT**

ITEM	AMOUNT	FOR AGENCY USE ONLY
9A. Monthly Rental Required to Obtain Comparable Replacement Dwelling		\$
9B. Monthly Rental Paid for Replacement Dwelling		
9C. Monthly Rental Rate of Dwelling Vacated by Claimant (Homeowner's use economic rent)		
9D. Monthly Replacement Rental Cost (Line 9A minus 9C) OR (Line 9B minus 9C) Whichever Amount is Less		
9E. Amount Due Under This Claim (Line 9D multiplied by 48)	\$	\$
10. REQUEST PAYMENT BE DISBURSED ("X" one)	10C. FREQUENCY	10D. AMOUNT (Line 9E ÷ 10C)
<input type="checkbox"/> (A) LUMP SUM <input type="checkbox"/> (B) INSTALLMENT (If Item "10B" checked, complete items 10C and 10D)		\$
11A. Names and Addresses of Household Members Moved to Separate Replacement Dwellings (Complete only if you have checked Item 5B above)		
11B.		
11C.		
11D.		
11E.		
11F.		

**12. CERTIFICATION BY CLAIMANT(S)**

I (We) CERTIFY under the penalties and provisions of U.S. Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any claim for, or received, reimbursement or compensation from any other source for any item of this claim and that any receipts submitted herewith accurately reflect costs actually incurred.

I (We) further CERTIFY that my (our) choice of type of payment was made on the basis of a full explanation by the displacing agency relocater representative of the differences between the two types of payments available (rental assistance payment or down payment assistance), and the eligibility requirements for each. My (Our) selection of method of payment, indicated in item 10 above, was made with a full understanding of the purpose and intent of the rental assistance payment.

SIGNATURE	12B. DATE	12C. SIGNATURE	12D. DATE
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Penalty for False or Fraudulent Statement, U.S.C Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

**SECTION III—TO BE COMPLETED BY AGENCY**

PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE	NAME (Type or print)	OATS
13. RECOMMENDED	13A. \$	13B.	13C.	13D.
14. APPROVED	14A. \$	14B.	14C.	14D.

ER 405-1-12

Change 5

16 Oct 78

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**IN COMPLIANCE WITH THE PRIVACY ACT OF 1974**, the following information is provided: Public Law 91-646, Stat. 1894 authorized the solicitation of the information on this form for the purposes of determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the information except for audit use to ensure compliance with the law. Disclosure of the information is voluntary, however, the information is required to obtain benefits.

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**INSTRUCTIONS.** — Complete Section II of this form to apply for a rental assistance payment. The displacing agency relocation representative will help you complete the form, if you wish. If your claim is not approved or if you have any question regarding the amount of the payment, the agency will provide you with a written explanation of the basis for disapproval or for the amount, and the steps that you may take to have your claim reviewed in accordance with grievance procedures established under regulations of the displacing agency.

ER 405-1-12  
Change 5  
16 Oct 78

**CLAIM FOR DOWNPAYMENT AND INCIDENTAL EXPENSES FOR REPLACEMENT HOUSING** (Under Sec. 204(2), P.L. 91-646) **IMPORTANT** Read Privacy Act Statement and Instructions on reverse. OMB APPROVAL NO. **29-R0229**

**SECTION I—TO BE COMPLETED BY AGENCY**

1. AGENCY NAME AND ADDRESS (Include ZIP code)	2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. (Parcel, tract, etc.)
1		

**SECTION II—TO BE COMPLETED BY CLAIMANT(S)**

4A. NAME(S) OF CLAIMANT(S)	4B. PRESENT MAILING ADDRESS OF CLAIMANT(S) (Include ZIP code)	4C. TELEPHONE NO.
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5. Have all Members of the Household Moved Together to a Replacement Dwelling?  (A) YES  (B) NO (If "NO" checked, complete item 10)

6. AGENCY ACQUIRED (To which you moved)	6A. DWELLING	ADDRESS (Include ZIP code)	DATE THAT YOU		RECEIVED AGENCY'S FIRST WRITTEN OFFER TO PURCHASE
			6B. FIRST OCCUPIED AS OWNER	6C. MOVED FROM DWELLING	
7. REPLACEMENT (To which you moved)	7A.		7B.		* For agency use only

**8. COMPUTATION OF AMOUNT OF DOWNPAYMENT**

ITEM	AMOUNT	FOR AGENCY USE ONLY
8A. Price of Comparable Dwelling		
8B. Price Paid for Replacement Dwelling	\$	
8C. Downpayment Required for Conventional Mortgage on Comparable Dwelling		
8D. Downpayment Actually Paid on Replacement Dwelling		
8E. Amount of Incidental Costs (Furnish details in item 8E on reverse)		
8F. Total Downpayment (Line 8C + 8E or line 8D + 8E) (whichever amount is less)		
8G. One Hundred Percent (100% of line 8F, not to exceed \$2,000)		
8H. Fifty Percent (50%) of Difference Between Line 8F and 8G (not to exceed \$2,000)		
8I. Total of Lines 8G and 8H		\$
8J. Rental Assistance Payment Previously Received (If any)	\$	
8K. Amount Due Under This Claim (Line 8I minus 8J)		\$

9. Type of Occupancy Covered By This Claim ("X" one)  (A) DWELLING UNIT TENANT  (B) SLEEPING ROOM TENANT  (C) HOMEOWNER OCCUPANT

10. Names and Addresses of Household Members Moved to Separate Replacement Dwelling (Complete only if you have checked item 5 above)

10A.	
10B.	
10C.	
10D.	

**11. CERTIFICATION BY CLAIMANT(S)**

I (We) CERTIFY under the penalties and provisions of U.S.C. Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any other claim for, or received, reimbursement or compensation from any other source for any item of this claim, and that any receipts submitted herewith accurately reflect costs actually incurred.

I (We ) further certify that my (our) choice of type of payment was made on the basis of a full explanation by the displacing agency relocation representative of the differences between the two types of payment available (rental assistance payment or downpayment assistance) and the eligibility requirements for each.

11A. SIGNATURE	11B. DATE	11C. SIGNATURE	11D. DATE
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**WARRANTY FOR FALSE OR FRAUDULENT STATEMENT, U.S.C. Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document containing the same to contain any false, fictitious or fraudulent statement, or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."**

**SECTION III—TO BE COMPLETED BY AGENCY**

PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE	NAME (Type or print)	DATE
RECOMMENDED	12A. \$	12B.	12C.	12D.
APPROVED	13A. \$	13B.	13C.	13-D.



ER 405-1-12  
Change 5  
16 Oct 78

SECTION II--CONTINUED (To be completed by claimant(s))

8E. EXPENSES INCIDENTAL TO PURCHASE

ITEM	AMOUNT	FOR AGENCY USE ONLY
(1) Legal Costs	\$	\$
(2) Title Search Fee, Policy or Abstract		
(3) Notary Fee		
(4) Survey Costs		
(5) Recording Fees		
(6) Lender's Appraisal Fee		
(7) FHA Application Fee		
(8) Credit Report Fee		
(9) Certification Fee		
(10) Escrow Fee		
(11) Transfer Taxes		
(12) Costs—of Points for Mortgage		
(13) Loan Originator Fee		
(14) Other (Explain)		
<b>(15) TOTAL</b> (Sum of Lines 8E(1) thru 8E(14)) (Enter "total on amount" on line 8E on face of form)	\$	\$

14. REMARKS

**IN COMPLIANCE WITH THE PRIVACY ACT OF 1974**, the following information is provided. Public Law 91-646, Stat. 1894 authorized the solicitation of the information on this form for the purposes of determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the Information except for audit use to ensure compliance with the law. Disclosure of the information is voluntary, however, the information is required to obtain benefits.

**INSTRUCTIONS** — Complete Section II of this form to apply for downpayment and incidental expenses assistance. The displacing agency relocation representative will help you complete the form. If you wish If your claim is not approved or if you have any questions regarding the amount of the payment, the agency will provide you with a written explanation of the basis for the disapproval or for the amount, and the steps that you may take to have your claim reviewed in accordance with grievance procedures established under regulations of the displacing agency.

To receive payment for incidental expenses on the replacement dwelling, enter the amounts paid for each item of expense in Item 8E above. Attach a copy of the closing statement and/or other documentation in support of the amounts shown in Item 8E above.

<b>CLAIM FOR REIMBURSEMENT OF EXPENSES INCIDENTAL TO CONVEYANCE OF REAL PROPERTY</b> <i>(Under Sec. 303, P.L. 91-646)</i>	<b>IMPORTANT</b> Read Privacy Act Statement and Instructions below	<b>OMB APPROVAL NO.</b>  29-R0229
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**IN COMPLIANCE WITH THE PRIVACY ACT OF 1974**, the following information is provided: Public Law 91-646, Stat 1894 authorized the solicitation of the information on this form for the purposes of determining eligibility and entitlement of the claimant for relocation benefits. These are the only uses to be made of the information except for audit use to ensure compliance with the law. Disclosure of the Information is voluntary, however, the Information is required to obtain benefits.

**INSTRUCTION** — This form is to be used by former owners of real property acquired for a government agency to claim expenses incurred incidental to conveyance of the real property. In addition, taxes paid which are allowable to period subsequent to vesting of title in the government or the effective date of possession by the government, whichever is earlier, may be claimed.

Penalty costs for prepayment of preexisting recorded mortgages will be allowed on bona fide loans.

Attach a copy of the closing statement and/or other documentation in support of the amounts shown in Item 6 below.

SECTION I—TO BE COMPLETED BY AGENCY		
1. AGENCY NAME AND ADDRESS <i>(Include ZIP code)</i>	2. PROJECT NAME AND NO.	3. IDENTIFICATION NO. <i>(Parcel, tract, etc.)</i>

SECTION II—TO BE COMPLETED BY CLAIMANT(S)		
4A. NAME(S) OF CLAIMANT(S)	4B. PRESENT MAILING ADDRESS(ES) OF CLAIMANT(S) <i>(Include ZIP code)</i>	4C. TELEPHONE NO.(S)

5. LOCATION OF REAL PROPERTY ACQUIRED BY THE AGENCY

6. INCIDENTAL EXPENSES		
ITEM	AMOUNT	FOR AGENCY USE ONLY
6A. Recording Fees	\$	\$
6B. Transfer Taxes		
6C. Penalty Costs <i>(For prepayment of preexisting mortgage recorded)</i>		
6D. Proration of Taxes Paid Which Are Allowable to a Period Subsequent to Vesting of Title in the Agency or Effective Date of Possession by this Agency Whichever is Earlier.		
6E. Other <i>(Explain)</i>		
6F. TOTAL <i>(Sum of Lines 6A thru 6E)</i>	\$	\$

7. CERTIFICATION BY CLAIMANT(S)

I (We) CERTIFY under the penalties and provisions of U.S.C. Title 18, Sections 286, 287, and 1001, and any other applicable law, that this claim and information submitted herewith have been examined by me (us) and are true, correct, and complete. I (We) further certify that I (we) have not submitted any other claim for, or received, reimbursement or compensation from any other source for any item of this claim and that any receipts submitted herewith accurately reflect costs actually incurred.

7A. SIGNATURE	7B. DATE	7C. SIGNATURE	7D. DATE
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PENALTY FOR FALSE OR FRAUDULENT STATEMENT, U.S.C. Title 18, 1001, provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies or makes any false, fictitious or fraudulent statements or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

SECTION III—TO BE COMPLETED BY AGENCY			
PAYMENT ACTION	AMOUNT OF PAYMENT	SIGNATURE	NAME <i>(Type or print)</i>
8. RECOMMENDED	8A. \$	8B.	8C.
	9A. \$	9B.	9C.
9. APPROVED			9D.

**COMPUTATION WORKSHEET**  
(EP 405-1-2)

RCS: DAEN-RE-18

**PROJECT:**

Big Thicket  
National Preserve

**NAME & ADDRESS OF APPLICANT:**

Joe L. Sims  
Route 2, Box 22a  
Saratoga, Texas 77721

**DATE:**

4 Mar 81

**APPLICATION NUMBER:**

00029

**PART I – COMPUTATION OF REPLACEMENT HOUSING PAYMENT FOR ELIGIBLE HOMEOWNERS**

1. Average sales price for a comparable decent, safe and sanitary dwelling suitable for applicant .....	\$ 42,500
2. Actual purchase price paid by applicant for a decent, safe and sanitary dwelling .....	\$ 41,000
3. Actual purchase price paid for substandard housing, plus cost of bringing house up to decent, safe and sanitary standards .....	\$
4. Smallest amount entered under Items 1, 2 or 3, above .....	\$ 41,000
5. Amount paid by Government for acquired dwelling .....	\$ 31,000
6. Item 4 minus item 5 (Enter this total in Item 2a, ENG Form 4439) .....	\$ 10,000
7. Amount, if any, of increased interest cost which the applicant is required to pay for financing the replacement dwelling (see para 6-28, EP 405-1-2, for method of computation) (Enter this total in Item 2b, ENG Form 4439) .....	\$ 2,800
8. Amount of reasonable expenses for title evidence, recording fees, and other closing costs incurred in connection with the purchase of the replacement dwelling (attach itemized statement and paid receipts) (Enter this total in Item 2c, ENG Form 4439) .....	\$ 600
9. Amount of Replacement Housing Payment, Item 6 plus Item 7 plus Item 8 (if the total exceeds \$15,000, enter \$15,000 as this is the limitation imposed by PL 91-646, Section 203) (Enter this total in Item 2 (TOTAL) ENG Form 4439) .....	\$ 13,400

**COMPUTATIONS**

**PART II COMPUTATION OF SUPPLEMENTAL RENTAL PAYMENTS  
 FOR TENANTS AND CERTAIN OTHERS**

1. Average monthly rent paid by applicant ( <i>use the three-month period immediately prior to initiation of negotiations to determine monthly average figure</i> ) . . . . .	\$ 250
2. Amount of rent applicant would have paid for four years <i>48 x Item 1 above</i> ) . . . . .	\$ 12,000
3. Determination of average monthly rent for new dwelling:	
a. Schedule method per month . . . . .	\$ 270
b. Comparative method per month . . . . .	\$ 275
c. Actual rental, if known ( <i>this figure should be used if less than schedule method</i> ) . . . . .	\$ 265
4. Replacement rental required for four years ( <i>48 x 3a, b, or c, above, depending upon method of computation used</i> ). . . . .	\$ 12,720
5. Amount of supplemental rental payment due for the full four years ( <i>Item 4 less Item 2 not to exceed \$4,000</i> ) . . . . .	\$ 720

**PART III—COMPUTATION OF DOWN PAYMENT FOR TENANTS AND CERTAIN OTHERS**

1. Cost of a comparable decent, safe, and sanitary dwelling for the applicant . . . . .	\$ 42,500
2. Amount necessary for down payment for a conventional loan on dwelling of type referred to in Item 1 above . . . . .	\$ 4,250
3. Costs incidental to purchase - reasonable expenses for title evidence, recording fees, and other closing costs incurred in connection with purchase cost of replacement dwelling ( <i>See SF 266</i> ) . . . . .	\$ 600
4. Total amount required by applicant to complete purchase, Item 2 plus Item 3 . . . . .	\$ 4,850
5. Item 4 less \$2,000 . . . . .	\$ 2,850
6. Amount of Item 5 divided by 2 . . . . .	\$ 1,425
7. Amount to be paid by Government ( <i>Item 6 plus \$2,000</i> ) not to exceed \$4,000 ( <i>Enter this total in Item 3b, ENG Form 4439</i> ) . . . . .	\$ 3,425
8. Amount to be contributed by applicant ( <i>Enter amount from Item 6 above</i> ) . . . . .	\$ 1,425

**NOTE: The total amount of Items 7 and 8, above, must be applied toward down payment and incidental purchase costs of a replacement dwelling.**

\*

REPORT OF INVESTIGATION		Reports Control Symbol DAEN-RE-18
PROJECT	NAME AND ADDRESS OF APPLICANT	
APPLICATION NUMBER		
AMOUNT OF APPLICATION		
<p>1. Investigation by on authorized representative of the _____ District, Corps of Engineers, has established:</p> <p>a. Applicant was <input type="checkbox"/> owner <input type="checkbox"/> tenant <input type="checkbox"/> roomer of tract and/or dwelling (house, apartment, mobile home, condominium, etc.)</p> <p>b. If owner of acquired dwelling, did applicant occupy dwelling at least 180 days prior to initiation of negotiations? <input type="checkbox"/> Yes <input type="checkbox"/> No If not, did applicant occup, dwelling at least 90 days prior to initiation of negotiations? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>c. If owner of acquired dwelling, did the applicant purchase and occupy a decent, safe, and sanitar, house within one year after moving from the acquired property or one year after receiving final payment for the acquired property, whichever date is later? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>d. If tenant of acquired dwelling, did the applicant actually occupy an adequate, decent, safe, and sanitary dwelling within one year after he vacated the acquired dwelling? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>e. Date tract acquired by the Government, _____</p> <p>f. Date applicant moved: _____</p> <p>g. Date applicant purchased or leased replacement dwelling, business or farm: _____</p> <p>h. Date applicant occupied replacement-dwelling <input type="checkbox"/> business <input type="checkbox"/> farm: _____</p> <p>i. Address of replacement site:</p>  <p>j. Amount paid by Government for business or form \$ _____ Did this amount include payment for dwelling unit <input type="checkbox"/> Yes <input type="checkbox"/> No?</p> <p>k. Amount paid by Government for dwelling, or estimated by Government to be fair value of dwelling where dwelling is part of business or farm acquired: \$ _____</p> <p>l. Amount of rental paid by applicant for dwelling acquired by Government: \$ _____ per trio.</p> <p>m. If annual replacement housing rental payment, is applicant still residing in a decent, safe, and sanitary dwelling? <input type="checkbox"/> Yes <input type="checkbox"/> No Date of inspection:</p> <p>n. Purchase price \$ _____ or rental \$ _____ per mo. paid by applicant for replacement dwelling.</p>		

\*

ENG FORM 4438  
1 NOV 72

Figure 6-6

ER 405-1-12

Change 2

25 Apr 78

\*

o. Amount spent for rehabilitation, if necessary, on purchase of replacement dwelling to make it comparable, decent, safe, and sanitary: \$ \_\_\_\_\_

p. If dwelling reserved, moved and rehabilitated, state total cost, i.e., amount paid Government for dwelling plus rehabilitation cost after moving, to make dwelling comparable, decent, safe, and sanitary: \$ \_\_\_\_\_

q. Duplication  will or  will not result from allowance of application.

r. Applicant moved from tract as the result of acquisition of the tract by the Government for \_\_\_\_\_ project, or as a result of a written order from the Government to vacate said tract, dated \_\_\_\_\_

s. The following distance which applicant moved is considered reasonable: \_\_\_\_\_

2. Recommendations as to each item in the application and factual information to support the recommendations are contained in the Determination of Relocation Benefits attached hereto.

3. Remarks:

\*

Figure 6-6a

\*

<b>DETERMINATION OF RELOCATION BENEFITS DUE APPLICANT</b>		<i>Reports Control Symbol DAEN-RE-18</i>																																																																											
<b>PROJECT</b>	<b>NAME AND ADDRESS OF APPLICANT</b>																																																																												
<b>IMPLICATION NUMBER</b>																																																																													
<b>TRACT NUMBER</b>																																																																													
<p>The following is a determination of relocation benefits due the above applicant under Public Law 91-646:                      (In cases where all benefits due cannot be paid at one time, such as in the case of annual rental payments, a record of payments will be set forth in the payment record at the end of this form.)</p> <p><b>1. MOVING EXPENSES:</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 40%;">a. Actual Residential . . . . .</td><td style="width: 30%;">\$ _____</td><td style="width: 30%;"></td></tr> <tr><td>b. Fixed Residential . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>c. Actual Business Moving . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>d. Actual Business Storage . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>e. Business Direct Loss . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>f. Actual Business Searching . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>g. Fixed Business . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>h. Actual Farm Moving . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>i. Farm Direct Loss . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>i. Actual Farm Storage . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>k. Actual Farm Searching . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>l. Fixed Farm . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td colspan="2" style="text-align: right;">TOTAL (Sum of a thru l, as they apply) . . . . .</td><td>\$ _____</td></tr> </table> <p><b>2. REPLACEMENT HOUSING, HOMEOWNERS:</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 40%;">a. Additional Cost of House . . . . .</td><td style="width: 30%;">\$ _____</td><td style="width: 30%;"></td></tr> <tr><td>b. Increased Interest . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>c. Closing Costs . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td colspan="2" style="text-align: right;">TOTAL (Sum of a thru c, as they apply) . . . . .</td><td>\$ _____</td></tr> </table> <p><b>3. REPLACEMENT HOUSING, TENANTS:</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 40%;">a. Supplemental Rental Payment . . . . .</td><td style="width: 30%;">\$ _____</td><td style="width: 30%;"></td></tr> <tr><td>b. Down Payment . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td colspan="2" style="text-align: right;">TOTAL (Sum of a thru l, as they apply) . . . . .</td><td>\$ _____</td></tr> </table> <p><b>4. INCIDENTAL EXPENSES:</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr><td style="width: 40%;">a. Recording Fee . . . . .</td><td style="width: 30%;">\$ _____</td><td style="width: 30%;"></td></tr> <tr><td>b. Transfer Taxes . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>c. Prepayment Costs . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td>d. Prorated Real Estate Taxes . . . . .</td><td>\$ _____</td><td></td></tr> <tr><td colspan="2" style="text-align: right;">TOTAL (Sum of a thru d, as they apply) . . . . .</td><td>\$ _____</td></tr> </table>			a. Actual Residential . . . . .	\$ _____		b. Fixed Residential . . . . .	\$ _____		c. Actual Business Moving . . . . .	\$ _____		d. Actual Business Storage . . . . .	\$ _____		e. Business Direct Loss . . . . .	\$ _____		f. Actual Business Searching . . . . .	\$ _____		g. Fixed Business . . . . .	\$ _____		h. Actual Farm Moving . . . . .	\$ _____		i. Farm Direct Loss . . . . .	\$ _____		i. Actual Farm Storage . . . . .	\$ _____		k. Actual Farm Searching . . . . .	\$ _____		l. Fixed Farm . . . . .	\$ _____		TOTAL (Sum of a thru l, as they apply) . . . . .		\$ _____	a. Additional Cost of House . . . . .	\$ _____		b. Increased Interest . . . . .	\$ _____		c. Closing Costs . . . . .	\$ _____		TOTAL (Sum of a thru c, as they apply) . . . . .		\$ _____	a. Supplemental Rental Payment . . . . .	\$ _____		b. Down Payment . . . . .	\$ _____		TOTAL (Sum of a thru l, as they apply) . . . . .		\$ _____	a. Recording Fee . . . . .	\$ _____		b. Transfer Taxes . . . . .	\$ _____		c. Prepayment Costs . . . . .	\$ _____		d. Prorated Real Estate Taxes . . . . .	\$ _____		TOTAL (Sum of a thru d, as they apply) . . . . .		\$ _____
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Figure 6-7

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5. Sum approved for immediate payment (includes first rental installment) . . . . . \$ _____			
6. Sum approved for deferred payment (see note to Disbursing Officer below) . . . . . \$ _____			
<b>REMARKS:</b>               			
<b>DATE</b>	<b>NAME AND TITLE</b>	<b>SIGNATURE</b>	
<b>NOTE TO DISBURSING OFFICER:</b>  The deferred payment under Item 6, above, covers a rental supplement to be paid in installments as follows: \$ _____ on _____, \$ _____ on _____, and \$ _____ on _____, upon receipt by Disbursing Officer on an annual certifica- tion that the applicant occupies a comparable decent, safe, and sanitary dwelling.			
PAYMENT RECORD			
DATE PAID	ITEM PAID	AMOUNT CLAIMED	AMOUNT PAID

\*

Figure 6-7a



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CHAPTER 7  
HOMEOWNERS ASSISTANCE PROGRAM  
SECTION I. GENERAL

7-1. Purpose. This chapter sets forth the rules and procedures to be followed in the administration of the Department of Defense (DOD) Homeowners Assistance Program (HAP). The HAP is a special relief program available to eligible military and civilian employee homeowners. It provides some financial assistance to these homeowners when they are unable to sell their homes under reasonable terms and conditions because the closure, partial closure or reduction in scope of operations (hereafter referred to as closure) at a military installation so adversely affects the real estate market. HAP is neither a procurement program nor a land acquisition program. Although HAP does provide for acquisition of dwellings under certain circumstances, there is no governmental need for this property and the government must resell the property. HAP is not a claims program in an adversary sense and there is no provision for judicial review. Therefore, in order to carry out the intent of Congress, it is essential every effort be made to ensure that each applicant is treated fairly and receives the maximum benefit as quickly as practicable and with a minimum expenditure of time and money for administration. Reasonable doubts should be resolved in favor of the applicant.

7-2. Applicability. These procedures are applicable to Headquarters United States Army Corps of Engineers (HQUSACE), all major subordinate commanders and district commanders having military real estate responsibilities. This program has worldwide application; however, no properties in foreign countries may be acquired except certain property located on a base or installation. HAP applies to members of the Armed Forces of the United States, Federal civilian employees, other employees of a non-appropriated fund instrumentality who are U.S. citizens, and Coast Guard members, who meet the eligibility requirements. Temporary employees and independent contractors and their employees are not eligible.

7-3. Authority. Public law 89-754, Section 1013, (80 Stat. 1255, 1290), as amended, authorizes the Secretary of Defense, under specified conditions, to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one-/or two-family dwelling which is situated at or near a military base or installation which the Department of Defense has, subsequent to 1 November 1964, ordered to be closed in whole or in part. AR 405-16 delegates and authorizes the Chief of Engineers (COE) to administer, manage, and execute the HAP in accordance with applicable laws and regulations and further delegates authority to the COE to redelegate this authority to MSC and District Commanders and to their respective Chiefs of Real Estate. Such authority has been redelegated to the MSCs and Districts and their respective Chiefs of Real Estate.

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#### 7-4. Responsibilities.

a. ODCSRE. The Deputy Chief of Staff for Real Estate, (DCSRE), acting for the Chief of Engineers, has been delegated authority and responsibility for the administration of HAP. The Military Division, Office of the Deputy Chief of Staff for Real Estate (ODCSRE), as the central office for HAP, is responsible for supervision, interagency coordination, development of procedures, policy guidance, and acting as a congressional liaison. The Realty Services Division is responsible for development of policy and processing of appeals forwarded from the districts and Major Subordinate Commands (MSCs).

b. Major Subordinate Commands. MSCs have been delegated the authority to perform oversight and review of district program management, and based upon that review, or in response to specific requests, to provide local policy guidance to the districts and recommend program changes to ODCSRE. MSCs also are responsible for review of appeals that have not been resolved at district level, or forwarding those appeals to ODCSRE, if resolution cannot be reached at MSC level.

c. Districts. Districts designated by ODCSRE, and the Chiefs of their real estate divisions, have been delegated the authority to administer, manage and execute the HAP on behalf of all claimants in accordance with the provisions of this regulation. It is contemplated that the district will dispose of all cases, except appeal cases on which agreement cannot be reached with the applicant. Such appeal cases will be forwarded, in turn, to the MSC and ODCSRE for consideration, and if necessary, forwarded by ODCSRE to the Deputy Assistant Secretary of the Army for Installations and Housing (DASA(I&H)) for final decision.

#### 7-5. Funding.

a. Revolving Fund Account. The following special revolving fund accounts have been established: 97x4090 – Homeowners Assistance Fund, Defense, and 97x4090.0100 – Allocation to Army. Definitive instructions and requirements are contained within Finance and Accounting regulations.

b. Appropriation, Receipts and Allocation. This fund contains money appropriated in accordance with the Military Construction Act, and receipts from the management, rental, or sale of the properties acquired. Funds required for administration of the program will be made available by DOD to the Department of the Army (DA), for reallocation to ODCSRE. Funds provided will be used for purchase or reimbursement as provided herein, and to defray expenses connected with the acquisition, management, and

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disposal of acquired properties, including payment of principal, interest, and mortgages or other indebtedness thereon, as well as the cost of staff services, contract services, insurance, and other indemnities.

c. **Obligation of Funds.** The purpose of this paragraph is to briefly outline how the requirements for commitments and obligations of funds are fulfilled for HAP. Funds will be committed for a period not to exceed 45 days when the government's offer to purchase the applicant's property is conveyed to the applicant. The obligation will occur upon receipt of the accepted offer returned by the applicant. Commitments for government purchase are valid for only 45 days, the length of the offer. If the government purchase is not completed, funds are to be decommitted/deobligated under HAP and made available to fund other government acquisitions.

d. **Assumptions.** If the government is assuming a mortgage, the amount of the outstanding mortgage(s) must be processed for obligation through Resource Management Office (RMO) after the deed is executed, but before the deed is released for recording. However, prior to this stage, verify the current available balance for mortgage assumption authority with the Real Estate Program Office and RMO servicing the district. The total mortgage balance of homes assumed cannot exceed the ceiling on the district Fund Authorization Document (FAD). Mortgage assumption authority is a separate limitation on the district Finance and Accounting office and is not included in any other obligation authority. Any questions concerning mortgage assumption should be directed to HQUSACE (CERM-B). The obligation to complete the acquisition takes place at the time of settlement.

7-6. Provision of Information and Assistance.

a. **Secretaries of the Military Departments.** The Secretaries of the Military Departments and the Directors of Defense Agencies are responsible for disseminating information on the program, rendering assistance to applicants, receiving and verifying statements regarding employment, and forwarding applications to the appropriate district after the program is approved. The personnel officers of other Federal agencies having custody of an applicant's personnel records will verify statements regarding employment. If personnel files are not readily available, documentation such as PCS orders, discharge orders, SF50s, or other official documents may be used to establish eligibility.

b. **Applications.** Applications for Homeowners Assistance, DD Form 1607, have been distributed to DOD installations and activities. The application explains the objective of the program, eligibility requirements, benefits available, and procedures to be followed in seeking assistance. DD Form 1607 is used to submit essential data needed to obtain requested assistance.

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7-7. Overseas Bases. Personnel employed at or near overseas installations are eligible to receive HAP benefits. For property located off-post, one is eligible to receive private sale benefits after the property is sold. For housing located on-post, whether it is sold or not, one is entitled to receive financial compensation based on a specific statutory formula, even though government acquisition is not an option.

## SECTION II. DEFINITIONS

7-8. Definitions. Unless otherwise defined in this chapter, the following terms and phrases are defined:

a. The Act. The “Act” refers to Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89 754 (80 Stat. 1255, 1290), approved 3 November 1966, as amended.

b. Base Closure Action “In Part.” A base closure “in part” is defined as an action announced publicly by DOD or a component thereof, which involves one of the following: (1) termination of a separate and distinct mission or function at an installation, or (2) permanent relocation of a military unit from an installation, other than from an installation which includes in its basic mission the support or “homeporting” of various military units and has historically experienced repeated and sharp fluctuations in aggregate personnel strength.

c. Base Closure Action “In Whole.” A base closure “in whole” is defined as an action announced publicly by the DOD or a component thereof, which involves the complete closing of an military base or installation, or termination of all existing functions (other than caretaker functions) at an installation.

d. Closure or Reduction Action. A closure or reduction action, as contemplated by the Act, is defined as a publicly announced action by DOD, or a component thereof, which involves complete or partial closure of an installation, or reduction in the scope of operations.

e. District Commander. The term “district commander” means any district commander or his chief of real estate.

f. Employment Near the Installation. For otherwise eligible personnel whose place of duty is not on the installation, employment or assignment within a normal commuting distance of an installation will be considered to be “near” an installation.

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g. Equity. The remaining interest belonging to an applicant who has secured debt(s) with his/her dwelling, or the surplus of value which may remain after the dwelling has been disposed of for the satisfaction of such debt, or the amount or value of the dwelling above the total secured debt.

h. Housing Market Area. The housing market area is a geographic area in which the supply/demand of dwelling units is in competition based on available transportation facilities, local commuting habits, and the pattern of urban development. Location of the employees dwellings affected by the announced action should be considered in determining the market area.

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

j. Liquidation. Satisfaction of the applicant's primary mortgage and such other eligible debts secured by the applicant's dwelling so that title is passed to the government with no money encumbrances.

k. Location of Dwelling Property "at or near" the Installation. Dwellings located within the normal commuting distance of an installation will be considered to be "at or near" that installation.

l. Market Impact Zone. The market impact zone is defined as a residential district, neighborhood, or subdivision within the housing market area, or a category of dwellings by price, which is sufficiently impacted by an announced action to enable homeowners to qualify for assistance. The market impact zone should normally be a finite geographic area. Applicant dwellings which fall outside a predetermined market impact zone may be included depending on individual factors and circumstances, but may require an amendment to the original impact study. It is recognized that in many cases only a portion of a market area, or dwellings in a certain price bracket, will be adversely affected by an announced action. An approved market impact zone is identified in the program approval letter.

m. Normal Commuting Distance. Normal reasonable commuting distance is to be determined from all relevant factors including, but not limited to, geography, commute patterns, demographics and availability of local transportation and will be defined in each program approval letter.

n. Public Announcement Date. The public announcement date is the date the

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Secretary of Defense or the Secretary of the military department concerned notifies the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives of the proposed closing or realignment of an installation under 10 U.S.C. 2687. It is also the date that a partial closure, which includes a reduction in scope of operations, has been announced by DOD or a component thereof. In some instances, multiple announcement dates may be required due to multiple reductions in force, or DOD announcements and subsequent Base Realignment and Closure Commission recommendations. Any requests for multiple public announcement dates must be submitted to ODCSRE for determination.

o. Realignment. A realignment includes any action which both reduces and relocates functions and personnel positions, but does not include a reduction in force resulting from work-load adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

p. Reasonable Effort to Sell. Terms, such as “reasonable effort to sell,” or similar phrases, relate to the amount of time available to the applicant (by direction of the employer or by personal choice) to sell the dwelling. Applicants should not be encumbered by a requirement to market the property beyond a reasonable time. This permissive definition of “reasonable effort to sell” is not to be construed as encouragement for private sale below apparent market value. Evidence of the applicant’s efforts to sell should include a signed statement detailing his/her efforts to sell the house privately, along with a copy of receipts for advertisements placed in local newspapers or a copy of the listing agreement with a real estate broker. The applicant accepts the burden of demonstrating that when an offer is rejected it is because the offer was not reasonable.

q. Reduction in the Scope of Operations. A significant reduction in the scope of operations is defined as an action publicly announced by DOD, or a component thereof. This involves the permanent elimination of military or Federal civilian personnel from an installation, but does not necessarily involve, as in the case of a closure, termination of any mission or function, permanent relocation of any military unit, or permanent closing of all or part of the physical plant. A Reduction-In-Force, as defined in AR 5-10, Reduction and Realignment Actions, is a reduction in the scope of operations.

r. Sale. The term “sale” means an executed exchange of title and possession of real property for consideration of determinable value. A private sale is deemed to have occurred once legal title and equitable title have passed to the buyer.

s. Program approval letter. A program approval letter is prepared by ODCSRE and submitted for approval by the DASA (I&H). It will set forth the applicable closure

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date(s), market impact zone, and affected installations. Such letters will normally provide that amendments to the letter may be made by the Deputy Chief of Staff for Real Estate or his designated representative.

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### SECTION III. ECONOMIC IMPACT

#### 7-9. Announcement of Base Closure or Reduction.

a. Initial Actions. As soon as possible after a public announcement of a closure or realignment of an installation within its jurisdiction, the district will send a letter to the Commander of the installation briefly explaining HAP benefits, how a program is implemented, and information the district will need from the installation. A point of contact within the district should also be included. Follow up telephone calls to the installation's personnel officer (IPO), public affairs office (PAO) and directorate of engineering and housing (DEH) should be made.

b. Collection of Real Estate Market Data. The district should begin to gather and assemble real estate market data on pre-announcement market activity in the general geographic area of the potentially affected installation. Such data may be obtained from the installation housing office, local Board of Realtors' multiple listing service (MLS), real estate agents, real estate appraisers, mortgage brokers, local tax assessors, county courthouse records and utility companies. Individual appraisals will not be required until the district determines that an adverse market impact has begun or appears imminent.

c. Record of Potential Impact. Districts will maintain a file documenting potential impacts from the date of announcement to the date a HAP is approved or denied. The file must include documentation of the district's actions in monitoring the market. Newspaper articles or press releases from DOD and/or the installation should be requested from the PAO in order to establish a public announcement date.

d. Potential Impact Report (PIR). Within 30 days after the announcement, a PIR will be submitted to ODCSRE estimating the resulting impact on the real estate market. PIRs will include:

- (1) Total installation population and affected area population;
- (2) Estimated number of military and civilian personnel affected, listed by rank/grade level; including contractors and other personnel who will not be eligible applicants but would contribute to adverse market conditions;
- (3) Estimated number of homeowners in each category, military and civilian;
- (4) Estimated number of personnel involved in routine transfers each year;
- (5) Current and projected real estate market conditions;



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(6) Average price of houses in the affected area;

(7) Other proposed actions by private and/or Federal employers that might also affect the impact or increase the number of applications;

(8) The estimated impact; and

(9) If the installation has prepared an Economic Impact Study (EIS) or Environmental Assessment (EA), a copy should be included.

(10) The estimated cost. (See Addendum 1).

e. PIR Updates.

(1) If the district finds the announced action will probably not adversely impact the market, the district will continue monitoring the market with annual reports to ODCSRE until relieved of this requirement by ODCSRE.

(2) If it is determined the announced action may have an adverse impact in the area, the district will prepare a Market Impact Study (MIS) within 90 days in lieu of PIR updates.

f. Market Impact Study (MIS). See Addendum 2 for format. District will forward the report, along with a recommendation for approval or denial of a program, to ODCSRE within 90 days of identifying a potential program. If no impact has been shown for the installation, updates to the MIS will be furnished not later than every six months until an impact is evident, or ODCSRE directs otherwise. The report, must address the following:

(1) Element No. 1: The data gathered must support a conclusion that affected personnel will be unable to sell their homes upon reasonable terms and conditions. This conclusion will include part or all of the following information:

(a) A decline of at least 5 percent in the market value of houses in areas where personnel affected by the announcement reside as measured by one or more market indicators.

(b) Appraisals of at least six houses in market areas with a population under 50,000, and 12 houses in market areas over 50,000, in a cross section of prices and areas, will be necessary to gauge the effect on market value. The appraisals should estimate the

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fair market value (FMV) of each house before the announcement (six to twelve months prior), on or immediately before the public announcement date, and current appraisal date;

(c) A significant increase in inventory of unsold houses after the announcement as compared to the same months or quarters in the previous four years prior to the announcement;

(d) A significant increase in area foreclosures, particularly Department of Veterans Affairs (DVA) loans, as compared to four years prior to the announcement;

(e) A decrease in the number of home sales when compared to the same months or quarters in the previous four years prior to the announcement;

(f) An increase in the average number of days a house remained on the market after the announcement as compared to the same time in the previous four years;

(g) Number of building permits issued for new homes compared to same period in the previous four years prior to the announcement, and

(h) The inability of affected personnel to sell their homes for the amounts of existing mortgages. Complete a Multiple Regression Analysis for large metropolitan areas comparing the current data to same time periods in the four years prior to the announcement.

(2) Element No. 2: There must be a causal relationship between the announced closure or reduction and the adverse market conditions. Although the closure or reduction may not be the only reason for the current market conditions, the data collected must clearly reflect an incremental downward trend in the market as a direct result of the announced actual closure or reduction.

(3) The above two elements together should prove or disprove a market impact; however, there are other statistics and information that may support approval or denial of a HAP. The following should be addressed in the MIS:

(a) Number of affected personnel and homeowners in relation to area population;

(b) Rental occupancy rates; on the increase or decline;

(c) Unemployment rates;

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(d) Number or percent of new homes for sale;

(e) Whether a rise in interest rates or availability of mortgage money relates to the significant decline in the market;

(f) Any other factors affecting the real estate market, i.e., sales/resales; sales of dwellings that sold near the announcement date as compared to the resale of the same dwelling at the current date.

(4) In addition to a discussion of the factors demonstrating an adverse impact, charts should be furnished showing the timing of adverse market conditions as related to the public announcement date, and where appropriate, the effect of the actual closure or reduction on the market.

(5) Based on the data compiled for the MIS, the normal commuting distance for homeowners at the installation should be addressed and furnished as part of the report.

(6) Estimated cost of a program should accompany the MIS. This estimate should follow the budgeting format provided separately by CERM-B. This estimate should be based on factual information; i.e., number of estimated homeowners, as well as the average price of homes owned by affected personnel.

g. Market Impact Reports. A Market Impact Report (MIR) may be used to expand the area of eligibility for HAP applicants who reside outside the market impact zone of an approved MIS.

(1) Districts will make a determination regarding the normal commuting distance for each installation under their purview. The normal commute should be identified in miles or time from an installation. A normal commute may be dependent upon a number of factors. The factors include, but are not limited to, geography, commute patterns, demographics and availability of local transportation. The District Chief of Real Estate is authorized to approve the normal commuting distance for each affected installation. Each District must provide the normal commuting distance for each currently active program to CERE-A.

(2) For individuals assigned and commuting on a daily basis to the affected installation, whose dwellings are outside of the pre-approved market impact area, but within the normal commuting distance of the installation, eligibility should be considered if there has been at least a five percent decline between the prior fair market value and the current fair market value, and this decline was the result of the actual or pending closing of such base or installation. The decline in value will be determined by appraisals of the

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individual homes. The causal relationship must be shown by at least one of the criteria as identified in the MIS criteria. A MIR may be used to approve multiple units at one time. The District Chief of Real Estate has authority to approve eligibility for such individuals.

(3) A MIR establishing the causal relationship of a market decline must be completed for groups of individuals, (more than five); however, prior to completing the MIR, appraisals must establish that the dwellings declined in value at least five percent between the prior fair market value (PFMV) and the current fair market value (CFMV). The district must make a finding of the direct causal relationship between the announced closure or realignment (DOD action) and the adverse market conditions.

(4) A MIR must prove two factors:

(a) The causal relationship between the installation closure and realignment and the decline in real estate values in a specific area, and

(b) A decline of at least five percent in the market value of an applicant's dwelling.

(5) A MIR must include a statement that the DOD announcement of closure or realignment caused, or contributed substantially to the decline in market values in the area, and include the following:

(a) A description of the area and its boundaries;

(b) Distance from the installation;

(c) Number of affected homeowners in the area, if known, and

(d) A minimum of one of the criteria as found in Section III(1)(a) through (g) of the MIS criteria, and any other factors as found in Section III(3)(a) through (g) affecting the real estate market.

(6) A minimum of one property must be appraised in the area, and ordinarily that property will be the one owned by the applicant who initiated the MIR. The appraisal should estimate the prior fair market value of the dwelling on or immediately before the announcement date, and the current fair market value.

h. Announcement of Program Approval, Denial, Extension, or Termination. Announcement of such actions should be coordinated with the installation and the appropriate congressional delegation prior to release.

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#### SECTION IV. ELIGIBILITY

7-10. Requirements. An applicant must meet the requirements set forth below to be eligible for benefits under an approved HAP:

a. Type of Employment or Service. The applicant must be a member of the Armed Forces; a Federal employee; or an employee of a Non-appropriated Fund Instrumentality (NAFI) operated at, or in connection with, the affected installation, who is a U.S. citizen. Temporary employees serving under a time limitation, including reservists serving less than 180-consecutive day tours (10 U.S.C. section 101 (d)(6)(a)), and private contractors and employees of private contractors are not included.

b. Place of Employment. The applicant must have been:

- (1) a member of the Armed Forces assigned at or near the installation;
- (2) a Federal employee employed at, near, or in connection with the affected installation;
- (3) an employee of a Non-appropriated Fund Instrumentality (NAFI), operated at or in connection with the installation, or
- (4) a civilian employee, or NAFI employee who is a U.S. citizen, serving overseas at the time of the announcement, who is entitled to reemployment rights at the affected installation.

c. Time of Employment. The applicant must have been:

- (1) assigned to, or employed at, near, or in connection with the installation at the time of the announcement;
- (2) transferred, or terminated as a result of a Reduction-In-Force, within six months prior to the public announcement;
- (3) transferred from the installation or activity on an overseas tour within three years prior to public announcement of the closure action;
- (4) a member of the Armed Forces transferred from the installation within three years prior to the public announcement, and in connection with the transfer, informed of a future, programmed reassignment to the installation, or

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(5) serving overseas as a Federal employee, with existing reemployment rights to the affected installation at the time of the announcement.

d. Owner-Occupant.

(1) At the time of the public announcement, or at the time of transfer or termination giving rise to eligibility, the applicant must have been either: the owner and occupant of property improved with a one- or two-family dwelling, situated within a normal commute of the affected installation; or, have vacated the owned dwelling as a result of being ordered into on-post housing within six months prior to the announcement.

(2) Spousal ownership is allowed, where either the applicant or a spouse is the fee simple owner of the property. Applicant must have been married to spouse at the time of the announcement.

(3) Where the applicant has an ownership interest with someone other than a spouse, the remaining owners must deed their interest to the applicant prior to government acquisition.

(4) When the applicant has an ownership interest with someone other than a spouse, private sale benefits will be paid in accordance with the amount of interest the applicant has in the property.

(5) Applicants must hold fee simple title or have a contract to purchase in fee simple a qualifying residential dwelling, unless the dwelling is part of a cooperative association. Members of the Armed Forces or Federal civilian employees may be considered owners of property without regard to the technical form or description by which an ownership interest is evidenced: provided, that, consistent with local practices and procedures, the applicant can be shown substantially to have the rights and duties of a person with an ownership interest in the property, e.g., depending on relevant circumstances an applicant who holds title to a long-term ground lease rather than to the fee.

(6) Ownership interest in a cooperative home ownership association will be recognized under the cooperative home ownership laws of the State where the affected property is located. Ownership of a mobile home constitutes home ownership if the mobile home is affixed to the land in accordance with local and state laws and regulations, and the underlying realty is held in either fee simple, long-term lease (27.5 years or longer), or contract-to-purchase. The interest of a mere security holder, whether by mortgage, deed of trust, or other security instrument, does not constitute an ownership

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interest for purposes of HAP.

(7) An applicant who was the owner, but not the occupant at the time of announcement, due to temporary absence i.e., a valid governmental purpose such as temporary duty, is considered eligible if the applicant would have returned to the house after the temporary absence.

(8) An applicant may meet the owner-occupancy requirement for a dwelling in the market impact zone of an approved program, while meeting the employment requirement of a different approved program, provided that the applicant commutes from the dwelling for which compensation is sought on a daily basis to the affected installation. The prior fair market value is to be determined from the public announcement date of the HAP where the dwelling is located.

e. Relocation or Financial Hardship. As a consequence of the closure, an applicant must relocate because of military transfer or acceptance of employment, or be unemployed, not as a matter of personal choice, and able to demonstrate such financial hardship. Additionally, for reasons other than the closure action, one may be eligible for benefits if they relocate, due to transfer, reassignment or involuntary termination of employment.

(1) For purposes of satisfying the relocation requirement, the applicant must relocate because of military transfer or acceptance of employment beyond a normal commuting distance from the dwelling for which compensation is sought. The new place of residence must result in a decreased commute distance as identified in the Joint Travel Regulation (JTR). The distance from the new place of residence to the new place of employment must be a shorter distance than the distance from the dwelling for which compensation is sought to the new place of employment. However, districts have the discretion to determine distances based upon local commuting patterns. (See paragraph 7-8f.(5)).

(2) Financial Hardship. As a consequence of the closure or realignment, the applicant's employment or service must have been terminated. The applicant need not relocate in order to be eligible under this subparagraph, but must meet the following additional requirements:

(a) As a result of such termination, the applicant must be unemployed, not by personal choice, and be able to demonstrate financial hardship, and unable to meet the mortgage payments and related expenses. Financial hardship due to unemployment in the area of the affected installation is a determination that must be made by the district. The applicant may be considered unemployed even though he/she was offered a

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comparable position at another location beyond normal commuting distance. In support of the hardship allegation, the applicant is required to state why employment is not available or has not been accepted, the amount and frequency of all income, amount of debts, number and amount of all installment payments, including mortgage payments in arrears. Where current income for the 90-day period preceding the date of application is less than the current enforceable obligations against the applicant, including mortgage payments, it may be determined that unemployment and financial hardship, as required by the Act, have been established. Determination of hardship is to be based upon the relationship between income and obligations prior to and after termination of employment. Obligations incurred after termination of employment will not be included in the computations to establish hardship. The financial worth of the applicant need not be taken into account. In making the hardship determination, doubtful cases should be resolved in favor of the applicant.

(b) Applicants requested to furnish supporting information to establish financial hardship will be given sufficient notification of the provisions of the Privacy Act of 1974

f. Termination or Transfer. The definition of termination or transfer varies according to whether it is a consequence of the closure, or it is for reasons other than the closure. In either case, the applicant must relocate beyond a normal commuting distance from the dwelling for which compensation is sought.

(1) Personnel Affected by the Closure Action. If the installation is closing entirely, all personnel will be affected eventually as a consequence of the closure as all positions will be terminated. If there is less than an entire closure, only certain personnel will be affected. The issue is whether one's position has been or will be terminated because of the closure action. If this is the case, one may elect to retire or not to reenlist; voluntarily or involuntarily resign from a position; elect to accept other employment, i.e., through normal rotation, reassignment or transfer.

(2) Personnel Not Affected by the Closure Action. If one's position at an installation is not affected by the closure action, one may transfer, be reassigned or have their employment involuntarily terminated. This includes normal rotations and involuntary retirements, which are not a result of the announced action.

g. Employees who retire and relocate beyond a normal commuting distance will be presumed to have relocated in order to seek employment and, therefore, will be eligible for benefits.

## SECTION V. BENEFITS



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7-11. Types of Benefits.

a. Private Sale.

(1) For dwellings privately sold, eligible applicants may be compensated for the difference between 95 percent of the appraised fair market value (FMV) of the property prior to the announcement date, and the appraised FMV of property at the time of sale, or the sales price, whichever is greater. Closing costs are reimbursable for private sales occurring after 5 October 1994. Closing costs reimbursable under chapter 14 of the Joint Travel Regulation (JTR) are eligible for reimbursement under the HAP. Payment of closing costs may be made to individuals who elect to sell their homes privately, but do not receive a cash payment under the private sale option. However, if the program implementation letter advises that applicants must suffer a loss to receive benefits, this loss must occur to receive reimbursement for closing costs for private sale benefits.

(2) When the applicant has sold their property for less than the mortgage balance (a short sale), and the mortgagee forgives any remaining obligation, private sale benefits will be calculated in an amount not to exceed the difference between 95 percent of the appraised FMV prior to the date of the announcement date and the total of the short sale plus the amount of the forgiven obligation. Reimbursement for closing costs will be calculated under paragraph 7-29, below. If the difference between the sales price and the remaining obligation is covered by a promissory note, payment should be made directly to the mortgagee. If the benefit payment is not sufficient to satisfy the promissory note, the applicant must pay the difference. The mortgagee must be paid and a release of liability obtained prior to any benefit payment directly to the applicant. (See paragraph 7-29 a. and b.).

(3) Benefits available in connection with off-base overseas property are limited to private sale relief. In the case of private sale of property located on an overseas installation, the formula set forth in paragraph b(4) below is applicable, except that in computing benefits due, the sale price of the property will be added as a deduction under part (ii) of the formula.

(4) Where the district determines that improvements on the subject property have been destroyed or damaged by 75 percent or more by acts of God, theft or vandalism, fire, flood, and/or other like casualty, after the date of the public announcement, the applicant will be entitled only to private sale benefits. The government will not purchase the applicant's land. Benefits will be computed as follows:(a) Determine the prior fair market value (PFMV) of the land and improvements in an undamaged condition.(b) Determine the current value of the land and improvements in an undamaged condition.(c) Multiply the prior undamaged value, (a), by 95 percent and deduct the current value (b);

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this is the amount of benefits to be paid to the applicant. Applicants will also be reimbursed for closing costs in accordance with subparagraph a(1) above.

(5) Where the district determines that the improvements have been damaged after the announcement to the extent of 25 percent or less by acts of God, theft or vandalism, fire, flood, or other like casualty, the applicant will be notified that they may elect to receive benefits on the basis of a private sale, as computed above, or sell the property to the government on the following basis: Multiply the PFMV by 75 percent and deduct the amount or percent of damage calculated on the current value in the undamaged condition less the amount of insurance payments received by applicant for the loss. Applicant may sell to the government for the amount of the outstanding mortgages, provided that the damages are repaired, or if insured, assignment of any insurance recovery for repairs may be made to the government.

(6) Where the district determines that the improvements have been damaged after the announcement by acts of God, theft or vandalism, fire, flood, or other like casualty, more than 25 percent but less than 75 percent, the applicant will be notified that they may receive benefits on the basis of a private sale, as computed above. Purchase of this property by the government will require the approval of ODCSRE. If the applicant desires to sell their property to the government, the district will prepare a disposal plan for submission to ODCSRE.

b. Government Purchase.

(1) An eligible applicant may elect to sell the property to the government and receive, as the purchase price, an amount not to exceed 75 percent of the FMV prior to the date of the announcement, or the current total amount of outstanding mortgages, whichever is greater. Mortgages refinanced after the announcement date are accepted if, at the time of government acquisition, the balance does not exceed what it was at the time of refinancing. Eligible applicants may also be reimbursed for mortgage interest, property insurance and taxes, from the date of receipt of the application, or the date the dwelling is vacated, or the date of program approval, whichever is later through the date of acquisition. (See paragraph 7-29d.)

(2) Junior mortgages or equity loans secured by the premises which are existing and current at the time of the public announcement are subject to the same limitations as primary mortgages.

(3) When the improvements are damaged, whether undiscovered or undisclosed, after determination of benefits under a government purchase, but before the closing, the purchase will be recalculated using the formulas set out in paragraphs 7-11a(4)(5)(6).

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Applicant may repair, or assign any insurance proceeds sufficient to cover the cost of repairing the damage to the government prior to being entitled to government acquisition.

(4) Eligible owners of property located on an overseas installation who are unable to find a purchaser for the property may surrender their interest in the property to the government and be paid the following amount: 90 percent of the sum of the purchase price of the dwelling and improvements thereon, and all costs of ownership, including interest on notes, and cost of utilities, service, maintenance and insurance; less the amount equal to the total of all housing allowances received from the government during ownership and occupancy of the dwelling, plus rents or other benefits collected. However, the maximum compensation shall not exceed 90 percent of the unamortized portion of the cost of the property, including improvements, at the time ownership is terminated, as reflected in the amortization schedule, relating to such property. The government may not acquire overseas off-post property.

(5) For refinanced mortgages refer to paragraph 7-29g.

c. Foreclosure or Deeds in Lieu of Foreclosure.

(1) If foreclosure proceedings have commenced, an applicant may elect to receive either foreclosure benefits or private sale benefits. Foreclosure benefits may be paid directly to the applicant to reimburse for foreclosure costs paid by the applicant, or paid to third parties on the applicant's behalf. These costs may include direct costs of judicial foreclosure, expenses and enforceable liabilities according to the terms of the mortgage or promissory notes, and the amount of debts, if any, established against the applicant by a Federal agency for loans made, guaranteed, or insured by such agency following liquidation of the security for such loans. Any foreclosure entered into after the program approval date must have an enforceable liability in order for the applicant to receive benefits. Benefits may be paid to restore VA eligibility.

(2) Conveyance of a residence by deed in lieu of foreclosure is considered a private sale. However, if an applicant is required to execute a promissory note as a condition precedent to acceptance of a deed in lieu of foreclosure, and foreclosure proceedings have commenced, the applicant can elect between private sale and foreclosure benefits. Outstanding judgment liens, encumbrances of a personal nature, or junior mortgages acquired after the announcement date, will not be paid.

(3) Foreclosure benefits are not available in foreign countries; however, foreclosures or a procedure similar to a deed-in-lieu of foreclosure may be considered a private sale and computed as such.

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(4) In situations where the insuring agency indicates the foreclosure is a “No Bid,” the agency does not reacquire the dwelling, but makes a partial settlement with the lien holder. It is possible that the sale of the dwelling by the lien holder will not completely satisfy the balance on the mortgage. In “No Bid” situations, a settlement with the insuring agency and the lien holder may be necessary, with a release obtained from each.

(5) If private sale benefits have not been paid, an applicant may request foreclosure assistance. If the time period for filing has elapsed, the case will be forwarded to ODCSRE for approval to reopen the file. If private sale benefits were paid, the beneficiary may not later apply for foreclosure benefits in the event that he/she is liable upon the purchaser’s foreclosure.

(6) The foreclosure must have commenced on or after the public announcement date. The date of commencement of foreclosure is to be determined under applicable state law.

(7) VA Compromise sales, where the applicant signs a promissory note, will be treated as foreclosures for the purpose of paying benefits. The veteran and the VA agree to a sale of the property to another party at the current fair market value, as determined by a VA appraisal. VA will pay off the mortgagee to eliminate the veteran’s obligation to the mortgagee. The difference between the sale price and the remaining obligation is covered by a promissory note. The HAP benefit will be the pay off of this note. If VA waives payment of the promissory note, the applicant may elect to receive private sale benefits but the amount of the debt waived is added to the sale price of the property.

#### 7-12. Property Subject to Mortgages.

a. Grant of Release. If the applicant is due compensation for private sale losses, the district must obtain written documentation that the mortgagee has released the applicant from their liability. Applicants will be advised that private sale benefits or reimbursement for closing costs cannot be made until the mortgagee is paid off. Documentation, such as a full reconveyance or letter from the mortgagee, releasing the applicant from any liability under the mortgage is required. This is a statutory requirement for Federally insured mortgages and is a matter of policy for other mortgages.

b. VA Loans. For VA loans made prior to 1 March 1988, the Department of Veteran’s Affairs issues the release. For loans made on or after 1 March 1988, the mortgagee issues the release.

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## SECTION VI. APPLICATION PROCESSING PROCEDURES

7-13. Acceptance of Applications. The district will accept applications for HAP benefits. Application numbers may be assigned, but applications will not be processed until DASA (I&H) has approved a program. Potential applicants should be advised that in the early stages of a closure or realignment action, adverse housing market impact may not be immediate. Indicators such as sales prices, increased inventory and decreased sales, may initially be inconclusive as to whether the closure or realignment has caused a depressed or stagnant market. The applicant's experience in trying to sell his/her property may be the best early indication of the lack of a market. The applicant must be advised that the government cannot acquire the property or process any application for benefits until a determination of adverse economic impact has been made and a program has been approved. The applicant should further be informed that the public announcement date, not the date of the finding of applicability, will be used retroactively to set eligibility.

7-14. Application Form (DD Form 1607). If the DD Form 1607 does not provide all of the information required to process an application, the applicant may be requested to provide supplemental information. Addendum 3 is a Privacy Act Information Statement that should be furnished to the applicant whenever information is requested.

7-15. Filing Period. Applications for HAP benefits should be presented to the appropriate district within the time frame authorized by the directive approving the program at the installation. Districts may receive late applications submitted up to six months after the approved time period with appropriate justification. MSCs may receive late applications for six months after the district's extended approval period with appropriate justification. Any application filed after this time must be submitted to ODCSRE, WASH DC 20314-1000, with an explanation and justification for late filing. ODCSRE will make determinations, on an individual basis, as to whether late applications may be accepted. Only ODCSRE may disapprove late applications.

7-16. Review of Application. After a determination has been made that the applicant meets the appropriate eligibility requirements stated in Section IV of this chapter, the district will verify the applicant's employment. Incomplete applications will be returned in a timely manner for proper completion.

7-17. Ineligibility. When an applicant fails to meet any of the eligibility requirements (see Section IV), no further action will be taken on the application except to notify the applicant in writing of his/her ineligibility, and of the procedure for appeal.

7-18. Certified Mail. In sending official notifications to applicants, districts may use

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certified mail, return receipt requested, for delivery of decisions that may be disputed. Use of overnight mail is authorized for delivery of deeds, closing documents, and payments.

7-19. Withdrawn, Closed, and Reopened Applications.

a. Failure to Accept Benefit Amount. After the district advises the applicant of the benefit amount, the applicant will be given 45 days to either accept the benefit or appeal. If there is no action within the 45-day period, the application will be considered withdrawn.

b. Applicant's failure to respond to Requests for Information. Where an applicant has failed to respond after 45 days to requests for additional information, the district shall advise the applicant in writing that the application is considered withdrawn. Applicant will also be informed of the specific time limitation within which an application, or request to reopen a file, must be made.

c. Ineligibility. If it is determined that an applicant is ineligible for benefits, or that a private sale applicant is eligible under the program but is not entitled to benefits, and no appeal has been filed within 180 days from the date of delivery of written notice of such decision to the applicant's last known address, the case will be considered closed.

d. Private Sale after Application for Government Acquisition. If the applicant elects government acquisition and then sells the house privately before government acquisition occurs, the application may be processed as a private sale, regardless of the time limitations for filing. The applicant must notify the district in writing of this decision, and furnish necessary documentation of the sale.

e. Withdrawal of Application to Pursue Private Sale. An eligible applicant may decide to withdraw their application to pursue a private sale. They may later decide to sell the house to the government as long as the request to reopen the file is made before the program expires. Requests to reopen files will be processed in accordance with paragraph 7-13 above.

f. Action Taken Following Determination of Appeal. If an appeal has been filed, the case will be considered closed once action has been taken in conformity with the final decision made on appeal, as prescribed in the appeal procedures. See Section X.

g. Reopening of Settled Cases. Applications, which have been settled with benefits, in accordance with the Act and this regulation, will not be reopened or reviewed for the purpose of applying a different benefit formula, without the prior specific

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approval of ODCSRE. Closed cases settled without benefits may be reopened if the applicant is eligible for foreclosure benefits.

h. Reopening of Withdrawn Cases. Withdrawn applications may be reopened by written request from the applicant within the time period allowed for filing applications in accordance with paragraph 7-15, above. The date the file is reopened will be considered the date of the application.

i. Long-term Leases Entered After Application. Applicants should be advised to enter only into month-to-month leases, after submission of the application. Otherwise the application may be made inactive pending the end of the lease term. At that time, the application will be reactivated.

7-20. Records/HAPMIS. Each application received must be entered in HAPMIS, and reflect its current status as Active, Appeal, Complete, Withdrawn, Denied, or Suspended.

a. Active. Active cases are those in the process of being paid or denied, including foreclosure cases where the enforceable liabilities have not been established.

b. Appeal. Appeal cases are those that have been listed as any of the other categories, including, but not limited to, Active, Complete, or Denied, that have been appealed on any grounds. These cases will ultimately become Active, Suspended, Denied, or Complete, depending on the outcome of the appeal.

c. Complete. Completed applications are cases in which either payment or payments have been made to the applicant and/or third party or applicants for private sale benefits, or those for which the applicants have sold their homes for more than 95 percent of PFMV (therefore receiving a zero benefit).

d. Withdrawn. A withdrawn application is one that has been withdrawn by written request of the applicant, or if the applicant has failed to respond to a request for additional information. Those applications that have been withdrawn by written request of the applicant, or the applicant has failed to respond to a request for additional information. A written request from the applicant for reinstatement must be received before the end of the program date. After the program has ended, only an approved request to reopen a withdrawn file would necessitate changing the status code to Active. The date the file is reopened will be considered the date of the application.

e. Denied. Denied status is reserved only for those applicants who do not meet the program eligibility requirements.

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f. Suspended. Suspended cases are those cases which have been placed on the Suspended list due to an undue delay in processing caused by an action, or lack of an action, by the applicant. These cases include, but are not limited to, applicants whose permanent change of station orders have not been issued, applicants with tenants remaining in the property, applicants who have requested a delay to pursue a possible private sale, and applicants who wish to remain in the property until after the completion of a school year. Applicants for private sale benefits who are unable to furnish a release of liability are also placed in Suspended status. A written notification from the applicant is required to change the application status. An application may be suspended indefinitely. Any application still in Suspended status at the end of the program date will be changed to Withdrawn. Only an approved request to reopen the file would necessitate changing the status to Active.

7-21. Application Numbers.

a. Assignment of Application Numbers. When a district receives an application, they will assign the application a number and will develop and maintain an individual file for each property. Applications for programs located in another district will not be assigned a number but will be forwarded immediately to the district having jurisdiction. A number, once assigned, will not be reassigned, regardless of the disposition of the application. Reactivation or reopening of a withdrawn application does not require a new application or application number.

b. Method of Assignment. Applications will be numbered in the following manner:

(1) Agency code to indicate the Federal agency accountable for the installation being closed:

- 1 – Army
- 2 - Air Force
- 3 – Navy
- 4 - Marine Corps
- 5 - Defense Agencies
- 6 - Non-Defense Agencies

(2) District Code. Refer to ER 405-1-12, Figure 14-1.

(3) Military/Civilian Code: 1 for Civilian or 2 for Military.

(4) State/Country Code: Refer to ER 405-1-12, Figure 14-2 for numeric state code



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or alpha country code.

(5) Installation Number: The last three digits of the installation number reflected in the Army and Navy/USMC Real Property Inventory publication, preceded by a zero, will be used to identify Army, Navy, and USMC installations. The four-letter code in the USAF Installations Directory will be used to identify USAF installations. Installation numbers may be obtained from ODCSRE. Installation numbers for Coast Guard installations will be obtained from ODCSRE.

(6) Applicant Number: Sequential beginning with 0001.

EXAMPLE: 2 E 3 2 3 3 S Z D T 0 0 0 1

Air		Mil										
Force		N.H.										Applicant #
		Pease										AFB
		NY Dist										

## SECTION VII. PROPERTY VALUATION

### 7-22. Real Estate Appraisals.

a. Preparation of Individual Appraisals. Individual real property appraisals will be prepared by staff or contract appraisers as guides to the determinations of fair market values (FMV), except as set out in paragraph e.(2) below. An appraisal will be prepared by a staff or contract appraiser to determine the FMV of the property prior to the announcement, and at the time of the sale of the property. Appraisals may be waived where foreclosure benefits only are to be paid. (See Addendum 4 for a general information sheet on HAP appraisals). Care should be exercised to avoid the expense of appraisals that are elaborate or more detailed than necessary for HAP appraisals. Existing valid appraisals may be used in lieu of ordering new appraisals. As an exception to Chapter 4 of this regulation, FNMA Form 1004, with attachments as required by said form, or a reasonable variation, may be used. The purchase price and the selling price should be made available to the appraiser. Substantial differences between the “before” appraisal and the applicant’s purchase price should be fully explained, as well as substantial differences between the “after” appraisal and the applicant’s selling price, if an amount other than the selling price is used to determine benefits.

b. Provision of Appraisal Information to Applicant. Applicants will be notified of the determinations of value made for their property. Appraisals will not be provided to

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applicants beyond the same level provided in other proceedings (e.g., acquisitions under Chapter 5).

c. Contract Appraisers. District offices should acquire contract appraisers once a program has been approved for a location. Contracts, in accordance with the Federal Acquisition Regulation, or blanket purchase agreements with several contract appraisers, should be negotiated when circumstances warrant. The contract should establish a firm deadline for return of completed appraisals. The district will monitor contract performance under Corps guidelines and establish a tracking system to ensure appraisals are completed in a professional and timely manner.

d. References. See Chapter 4 of this regulation.

e. Determination of Fair Market Value (FMV). The district will make determinations of FMV using the real estate appraisal report, loan commitment documents, and any pertinent information contained in records on the value of this property.

(1) Date of Determination of Prior Fair Market Value, (PFMV). The PFMV will be determined as of the date of the announcement or immediately prior to the date of announcement. For programs with multiple announcement dates, the prior fair market value will be determined as of the purchase date for purchases between program dates.

(2) Fair Market Value Determined by Private Sale. If the applicant has made a reasonable effort to sell his/her property and there is no reason to believe that the transaction misrepresents the FMV of the applicant's property at the time of the transaction, then the sales price should be used as the "after" value. Reasonable doubts should be resolved in favor of the applicant. Although the sales price normally will be used as the "after" value, it must be recognized that some applicants may make poor bargains and sell their dwellings at prices well below the current market value for comparable properties. Individual appraisal of current FMV should be used as a guideline to ensure that private sale payments are reasonable. If the appraised value exceeds the sales price by ten percent or more, the reviewing appraiser will review the appraisal for completeness and accuracy. After the reviewing appraiser confirms the appraisal report, the appraised FMV may be substituted for the sales price in calculating the benefits. However, if the applicant has made a reasonable effort to obtain the highest value available, the benefit of the doubt should be accorded the applicant and the sales price may be used as the after value. All records should accurately and fully document the reasons supporting substitution of the appraised value.

7-23. Residential Property.

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a. **Property To Be Included.** A one- or two-family dwelling, which is located on a farm or on many acres, only includes land as would reasonably constitute a residential property within the area. Land owned by the applicant that does not adjoin his residence will not normally be considered a part of the property. Whether an adjoining lot should be included as part of the residential premises will depend on whether it is, a part of the residential premises and was used as such, and if it can be readily severed and disposed of economically without affecting the disposal of the residential premises. The method generally used in the market for selling and purchasing residential premises will be considered. Applicants should not be left with a lot which is less than the size required for a dwelling, similar to those in the area, or which would be considered unmarketable except as part of the residence. These are judgment factors to be determined and applied to individual cases by the district.

b. **Dwelling Unit.** The Act refers to “any property improved with a one- or two-family dwelling”. Therefore, the property must include a dwelling unit as of the date of the public announcement. The dwelling must be, or have been, an integral part of the property. Individual units in condominiums or cooperatives qualify. Mobile homes will qualify if the mobile home is affixed to the land in accordance with local and state laws and regulations, and the underlying realty is held in either fee simple, long-term lease (27.5 years or longer), or contract-to-purchase.

c. **Permanent Structures on Leased Land.** Buildings on leased land or on land not owned by the owner of the buildings will be considered real estate and are entitled to private sale benefits only.

## SECTION VIII. ACQUISITION - CLOSING PROCEDURES

7-24. **Acquisition Limitations.** The procedures set forth in Chapter 5, Section I of this regulation should be used for acquisition of HAP properties, except as otherwise provided herein, or where the procedure is clearly not necessary for HAP; i.e., Negotiator’s Report, Notification Letters required by Public Law 91-646, etc. The applicant should be made aware of the following:

a. **Procedures.** An eligible applicant should be advised of the acquisition procedures, conditions of a sale to the government, and the estimated time to complete the acquisition.

b. **Time Limitation.** Election to sell one’s dwelling to the government is voluntary. The decision must be made within 45 days after the applicant has been advised of the FMV or the application will be considered withdrawn. The government

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will take title only by a direct purchase transaction since condemnation is not authorized.

c. **Benefit Determination by Government.** The government will determine benefits. All efforts will be made to afford the full benefits authorized by the Act.

d. **Balance on Public Announcement Date.** HAP benefits paid by the government will be limited to the outstanding mortgage existing on the day of the public announcement. (See paragraph 7-8n.).

e. **Government Purchase is not Displacement.** Government purchase of the property is not considered displacement under Public Law 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) since the government does not require the property.

f. **Deteriorated Properties.** The district commander may decide not to acquire a home where the applicant has allowed the home to deteriorate beyond normal wear and tear. If the property has been abused, the applicant should be given an opportunity to rectify the deficiencies.

7-25. **Environmental Inspection.** The requirement to perform an Environmental Baseline Survey (EBS) has been waived. Inspections for defective paint and friable asbestos will no longer be a part of the acquisition process. Dwellings will be acquired “as-is”, unless there is something readily apparent which would make the properties difficult to market for disposal. In those cases, guidance from ODACSRE should be expeditiously obtained. Either the Corps or another agency will accomplish mitigation after acquisition. Routine inspections will identify any lead-based paint as defined in Addendum 5 and any friable asbestos. Although the Corps is not required to inspect or test for other contaminants, the inspector should document any observed or suspected contaminants or environmental hazards. (See Addendum 5).

a. **Method of Performance.** The inspection may be performed by qualified district personnel or by contractors.

b. **Format and Use.** No particular format is required for the reports, which become part of the application file.

c. **Other Environmental Inspections.** Any inspections or certifications required by state law or by local custom, such as radon screening or well water certification, will be obtained prior to government acquisition.

7-26. **Acquisition Procedures.**

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a. **Conditions of Sale.** The applicant will be advised in writing of the prior market value, his/her options under HAP, and the conditions under which the government will purchase his/her property. Applicant must then respond in writing within 45 days whether he/she wishes to withdraw his/her application, appeal the appraised value(s) or request that the government purchase his/her dwelling. Both applicant and spouse should sign the request and state that they understand the conditions of sale.

b. **Preparation and Processing of Deed and Closing Documents.** Upon receipt of the request from the applicant, the deed and other closing documents will be prepared and sent to the applicant with a cover letter explaining the financial details, including tax liabilities, and specific instructions on completing and returning the documents.

c. **Pre-Closing Inspection.** Prior to closing, a pre-closing inspection of a property being acquired will be made.

7-27. Outstanding Rights.

a. **Rights of Third Parties in Property.** Rights of third parties in the property, such as easements for public highways and utilities, will be left outstanding, provided that this is consistent with good real estate practices in the community and will not prejudice the marketability of the property. Mineral and water rights may also fall within this category. Restrictive covenants must be satisfied or removed by the owner unless they are of a nature which will not prejudice the marketability of the property.

b. **Waiver of Outstanding Rights.** District Commanders, and/or MSC Real Estate Chiefs, will determine whether any outstanding right or interest in the property should be administratively waived.

7-28. Assumption of Primary Mortgage. When the applicant's dwelling is purchased, the primary mortgage may be assumed by the government and other mortgages existing on the public announcement date will be paid off as part of the closing of the purchase transaction. Where the government has assumed the mortgage indebtedness, the benefits accorded by the Act are considered fulfilled, even though the primary mortgage is left outstanding. The Office of the Secretary of Defense has authorized liquidation of mortgages in those cases where the district considers it to be in the public interest. Each case will be considered on its individual merits. Loan assumption fees and any other costs incident to assumption of mortgages should also be considered in determining whether to liquidate.

7-29. Closing and Settlement Costs - Government Purchase.

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a. Release of Liability. When the government assumes a mortgage, it must release the applicant from liability in the event of a subsequent foreclosure.

b. Release of Mortgages. All mortgages, which the government has agreed to pay, will be released of record after delivery of the deed conveying the property to the United States. The applicant is ineligible for direct purchase unless unpaid judgments, liens, encumbrances, and pending public improvement assessments are satisfied and a release obtained.

c. Costs Paid by the Government. The government will pay closing and settlement costs. That portion of the sellers closing costs which represent the normal closing costs required to be paid by the seller at closing are a taxable benefit and must be separately identified as such.

d. Reimbursements. The government will reimburse the applicant for mortgage interest (not principal payments), taxes, and hazard insurance premiums that have been paid for the period from the date of receipt of the application for benefits, the date of vacation of the premises, or the date the program is approved, whichever is later through to the date the government acquires the property. A determination of the pro rata share of taxes and insurance premiums should be based on information received from the tax assessor and insurance company for the actual amounts payable or paid, without reference to payments to the escrow account, which will eventually be returned to the applicant. Districts should advise the applicant of the projected closing date, and that he/she will not be reimbursed for interest or other expenses incurred by delays in closing, if such delays were caused by, or at the request of, the applicant, and if such delays were unreasonable. If an applicant has previously withdrawn an application, settlement and closing costs will be prorated only from the date an applicant reapplies for benefits. The applicant must be fully informed that the consequence of withdrawal of a government acquisition application is loss of reimbursable expenses from the date of the application. The applicant is responsible for all mortgage payments, including interest, to the date of closing and the government will not assume any responsibility to avert a foreclosure.

e. Rental Income. Income received by the applicant for rental of the property during the period from the date of receipt of his/her application, the date of vacation of the premises, or the date the program is approved, whichever is later, will be deducted from the closing and settlement costs. HAPMIS will compute these payments when the necessary dates, interest, etc., are entered.

f. Amount of Outstanding Mortgages. The amount of the outstanding mortgages as contemplated by Section 1013(c) of the Act will be the total amount which the

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applicant, as the mortgagor, owes pursuant to the mortgage agreement(s). This will include taxes, hazard insurance, and interest and penalty charges which have accrued and have been added to the total indebtedness, adjusted to provide for the costs for which the applicant is responsible, as set forth in subparagraph c. above. Outstanding mortgages include equity loans and other open-line-of-credit loans that are secured by the subject dwelling. The assumption or payoff of the outstanding mortgage balance of equity loans is limited to the balance due and owing as of the public announcement date.

g. **Refinanced Mortgages.** Refinanced mortgages will be acceptable if, at the time of government acquisition, the principal balance does not exceed the mortgage balance of the superseded mortgage. Homeowners who incorporate the costs of refinancing into the mortgages will have to “buy-down” the principal balance before government acquisition.

h. **Property Taxes.** Property taxes are prorated at the time of acquisition. Sometimes the amount collected is greater than that owed. All property tax refunds belong to the government.

7-30. Title Evidence.

a. **Procurement of Title Evidence.** For purposes of this chapter, districts may contract with a title company to record the deed after making a title update. Districts are responsible for verifying that the deed is properly recorded. If a survey showing the location of the buildings on the property is available from the lender or other source at little or no cost, it should be included as part of the title evidence. Where reasonable grounds exist to believe that some irregularity in title might be disclosed by a survey, the district should obtain a survey.

b. **Use of Preliminary Title Evidence.** When a determination is made that an applicant is eligible for assistance by government acquisition, preliminary title evidence for the property may be obtained from the applicant or the mortgagee, and furnished to the title company in an effort to reduce the costs by requesting the re-issue rate.

7-31. Hazard Insurance.

a. **Prior to Closing.** Properties to be acquired by the United States will usually be covered by hazard insurance. Owners should be advised that improvements on the land remain their property until title has been vested in the United States. Loss or damage to the property caused by fire, acts of God, flood, theft, or vandalism, will be borne by the applicant, subject to verification by inspection of the property before vesting title.

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b. **After Closing.** After title has vested in the United States, losses to improvements not caused by the willful act or gross negligence of the former owner will be borne by the United States. The government will not carry insurance of any nature on the property except to the extent explained in paragraph 7-30c. The time and method of cancellation, and negotiation for refund of premiums paid, will be the responsibilities of the former owner.

c. **Insurance for Mortgagee's Benefit.** Upon assumption of a mortgage by the government, the mortgagee will be advised that the insurance coverage should be canceled and that the United States does not intend to carry insurance of any nature on the property. If the mortgagee will not agree, a property insurance policy in an amount equivalent to the unpaid balance of the mortgage assumed by the government will be purchased at DOD expense. The mortgagee may then cancel the existing property insurance policy or release it to the former owner for cancellation. Any unearned premiums will be the property of the former owner. Insurance claims arising after closing must be assigned to the government.

7-32. **Occupation of Property.** Generally, the applicant should arrange for tenants to vacate the property before the pre-closing inspection is made. Prior arrangements must be made if the District chooses to allow the tenants to stay after the government's acquisition. A lease authorizing the occupancy will be completed in accordance with the guidance in Chapter 8 of this regulation and will require the tenant to carry a personal and liability insurance policy for the term of the lease. If the property is acquired with the tenant in occupancy, the tenant must sign a "disclaimer" agreeing to vacate the premises upon demand.

## SECTION IX. MANAGEMENT AND RESALE

7-33. **Purpose.** This section governs the management and resale of properties that have been acquired by the Department of Defense under the Homeowner Assistance Program, and sets forth responsibilities, procedures, methods and guidance for the management and resale activities for these properties. The sale of HAP homes will be in accordance with accepted real estate practices and procedures within the State where said properties are located, unless where prohibited by Federal law. Districts may use this section to develop a management and resale program to provide for the required activities. The purpose of the property management and resale program is to reduce the inventory of acquired properties in a manner that maximizes the net return to the government while mitigating the adverse impact on the affected residential areas and communities.

7-34. **Basic Policies.** The following guidelines are the basic policies for the management and resale of HAP properties.



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a. Competition. Unless otherwise permitted herein, competition is required to provide an equal opportunity for all to purchase HAP properties through an open bidding process.

b. Contracting. All contracting will be accomplished in accordance with applicable laws and regulations.

c. Bidding. HAP properties will be sold to the general public through the open bidding process unless the District determines that advertising and open bidding will not serve a useful purpose. Then, direct sales may be negotiated. Sales authorized to other Federal, state and local governments may be directly negotiated, as provided in this section, without an open bidding process when determined appropriate by the district, when bidding would not serve any useful purpose, or when it is no longer in the best interests of the government.

d. Price. All initial list prices will be no less than the current fair market value as determined by the district. In establishing the price, consideration should be given to the necessity to expedite resale of the property. List prices may be periodically adjusted without appraisals, taking into consideration the necessity for rapid sales, based on the market where the property is located.

e. Distribution of Listings. Sales brokers approved to submit bids will be furnished copies of all listings concurrently to allow each broker an equal time allotment for selling the properties.

f. Advertising. All advertising will be accomplished through the local Multiple Listing Service (MLS) and/or news media to ensure the greatest practical readership and to provide as many buyers as possible in the market for such properties an equal opportunity to bid. Brokers may and are encouraged to advertise the listed properties at their own expense, but at no cost to the government. Properties may not be advertised for sale until they are officially listed for sale by the government.

g. Eligible Brokers. Brokers must sign a nondiscrimination certification and a participation agreement acknowledging that they are aware of and will adhere to the laws and regulations pertaining to the HAP. All participating brokers must be licensed real estate brokers in the state where the properties are located.

h. Ineligible Buyers. Government employees associated with the HAP, or those who would otherwise have an advantage over the general public, are prohibited from purchasing properties under this program. No member of or delegate to Congress is

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eligible to buy or benefit from a purchase of a government-owned property acquired under the HAP program. No sales will be approved that may show a conflict of interest.

i. For Sale Signs. No signs will be placed on the property except those supplied or authorized by the Corps of Engineers.

j. Warranty. All properties are sold “as is”, and no warranty whatsoever will be provided regardless of method of sale. The government does not make any guaranty or warranty, express or implied, with respect to the property as a quantity, quality, character, or condition, size or kind, or that the property is in condition or fit to be used for the purpose intended by the buyer. Properties having known environmental contamination, historical significance, located in flood plains, in an airport clear zone, or other significant matters or potential impediments or conditions to resale will be advertised to reflect these issues. The Corps will make no repairs to the property, except as identified in paragraph 7-35q., after execution of the contract unless stated in the contract and/or required by the lending institution as a condition of the loan.

k. Responsibility of Bidder.

(1) The failure of any bidder to inspect, or to be fully informed regarding the condition and location of all or any portion of the property, or negligence, or mistake on the part of the bidder in preparing the bid, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid. This and the following condition, or conditions that are substantially the same, will be a part of the sales contract submitted as a bid by the broker.

(2) It is the duty of each bidder and the broker to ensure that the bid is delivered by the time and at the place prescribed in the advertisement or announcement.

l. Financing. All properties are sold for cash. Certified checks, cashier’s checks, electronic funds transfer, or checks drawn upon the mortgage company’s escrow account are forms of acceptable payment. Loan financing is the responsibility of the broker and the buyer. Financing is open to all legally authorized loan institutions. Government insured loans are acceptable.

m. Conveyance Document. All conveyance documents will be by quitclaim deed, unless prohibited by state and/or local laws. Conveyance documents other than by quitclaim deed must be forwarded to ODCSRE for approval by the Department of Justice. The district Chiefs of Real Estate are authorized to execute both quitclaim deeds and leases of HAP properties on behalf of the government.

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n. Exemptions. The HAP resale and management program is exempt from the following programs:

(1) The law authorizing HAP grants an exception to the reporting requirements of Title 10, U.S.C., Section 2662, for properties acquired, managed, and sold under the HAP. This includes both sales and rentals of properties.

(2) Screening HAP properties by HUD for possible use by the homeless in accordance with provisions of the McKinney Act.

(3) Federal Property and Administrative Services Act of 1949.

(4) Real property accountability requirements of AR 735-5 and those of chapter 16 of this regulation.

o. Deposit and Expenditure of Funds. All receipts and expenditures in connection with the HAP management and resale program will be deposited and processed in the Homeowners Assistance Fund, Defense account in accordance with DA PAM 37-100-XX, as may be modified from time to time by the Corps of Engineers Resource Management element. This includes all receipts and expenditures from sales, rental collections, repairs, contract payments, earnest money deposits, etc. associated with this program. Funds may not be used for programs other than HAP.

p. Property Accountability. Properties will be accounted for through use of the Homeowners Assistance Program Management Information System (HAPMIS).

#### 7-35. General Requirements and Procedures for Administering All Management and Resale Methods.

a. Nondiscrimination Policy. All contracting, occupancy, rental, and sales activities referred to in this section must be conducted without regard to race, color, creed, religion, sex, national origin, age, familial status, or handicap. Contractors are required to agree to and execute a nondiscrimination certification.

b. Environmental Requirements and Standards. Sales, leasing and management of properties acquired under the HAP are not subject to Preliminary Assessment Screening requirements. However, actions will be taken to satisfy legal requirements for properties containing contamination by lead-based paint, friable asbestos and other contaminants. Radon testing will be appropriately performed and evaluated where it is customary for the specific program area. Properties known to be contaminated will be managed and remedial actions taken prior to resale in accordance with applicable laws

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and regulations.

c. Lead-based Paint Poisoning Prevention. Properties constructed before 1978 are subject to the lead-based paint poisoning prevention requirements contained in 24 CFR part 35 and 40 CFR part 745. Purchasers of properties with potential lead-based paint hazards will be required to complete an Addendum to Sales Contract which will assure the purchaser is notified of and the risks of potential hazards of lead-based paint and that all required disclosures to the purchasers have been made.

d. Net Offer Bid. The net offer is the amount of the bid minus all deductible expenses to be paid by the government. Such deductions may include, but are not limited to: customary closing costs; cash bonuses; sales commission; repairs to property; taxes; title insurance; attorney's fee; termite inspection fee; etc. If requested by the purchaser in the bid, the government may pay all or a portion of the financing and loan closing costs not to exceed the percentage as determined appropriate by the lender. The broker's sales commission will not exceed the percentage of the purchase price which is customary for the area, except for cash bonuses as described herein. The amount requested by the purchaser to be paid by the government will be deducted from the amount bid for the property to determine the net offer. Where the actual financing and loan closing costs exceed the amount determined appropriate by the lender, the amount in excess must be paid by the purchaser and is not included in the deduction from the bid in determining the net offer.

e. Cash Bonuses. Cash bonuses may be awarded to brokers as determined necessary for purposes of accomplishing sales in hard-to-sell market areas. Any cash bonus offered to brokers by the government for the sale of hard-to-sell properties is an amount in addition to the sales commission, and is included with the commission and deducted from the amount bid for the property to determine the net offer. Districts may award cash bonuses of \$1,000 and MSCs may approve those between \$1,000 and \$2,000. All cash bonus requirements over \$2,000 will be forwarded to ODSCSRE for prior approval.

f. Acceptable Bid. Criteria for determining an acceptable bid must be determined prior to the public opening of bids. Minimum amounts for accepting net offers should be established so bidders may be informed at the time of the bid opening whether their bid is acceptable. The definition of an acceptable bid will vary from program to program depending on the market conditions and other variables. The district will accept the most responsible bid producing the greatest acceptable net offer, as defined above, to the government and otherwise meeting the terms of the government's listing of the property. A net offer tie will be settled by a drawing.

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g. Bid Period. Bid periods are to be established by the districts to ensure fair and equal competition and to maximize execution of the HAP. Ten days after the property is publicly advertised is the recommended bid period in most cases and the bid opening should follow on the eleventh day or the next business day. After properties are initially advertised, bids are accepted for a specified period, with all offers received during that period considered to have been received simultaneously, except for “full list price offers” which may be accepted as described in the following paragraph. Offers received on a property before the specified bidding period begins will be returned for resubmission during the advertised bidding period. Offers received after the period will not be considered at the bid opening, but will be considered during the extended listing period if no acceptable bid was received during the specified period. If no acceptable bids are received after all reasonable efforts have been made to advertise, direct negotiated sales are authorized and, as last resort, leasing of properties may be necessary in the best interests of the government.

h. Full List Price Offers. The Corps district offices may operate under a “full list price offer” program by opening offers periodically at specified times, predetermined and publicly announced, during a specified bidding period. A full price offer is an offer for the full price listed minus the broker’s sales commission, the government’s customary closing costs, related fees that would be paid for any and all bidders and are customary for payment by the government in the program area, and, if applicable, minus the broker’s cash bonus. If an offer for the full list price or greater than list price offer and otherwise meeting the terms of the listing is received, it will be accepted at the time of the opening and the remainder of the bid period canceled. A backup offer representing the next highest offer may be accepted and held pending closing of a transaction. Districts utilizing this program will establish procedures to ensure fair and equitable treatment to all bidders and sales brokers. Brokers should be instructed to label the envelope containing the offer as a “Full List Price Offer” when applicable.

i. Extended Listing Period. Properties not sold during a specified time for bidding may remain available for an extended listing period. All bids received on each day of the extended listing period will be considered as being received simultaneously, and will be opened together at the next scheduled bid opening. If no acceptable bids are received after a reasonable period of time, the property will be reanalyzed and managed according to the determinations after the review. The list price and conditions of the property listing will be adjusted to obtain expeditious resale of the property while also maintaining the best interests of the government. If a property fails to generate an acceptable bid or offer during the specified bidding period, it may remain on the market as an extended listing until it is either sold or readvertised under different terms, or alternative management becomes necessary.

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j. Bid Requirements.

(1) All bids submitted, whether during the specified bid period or the extended listing period, must be in the form of a fully completed sales contract, in a form provided to all participating brokers as prescribed by the district, and be signed by both the submitting real estate broker or authorized agent and the prospective purchaser. The bid must be submitted with deductions from the offering price, resulting in a net offer to the government. If the purchase is to be financed by an insured mortgage, a district office may also require that supporting exhibits for mortgage credit analysis pre-qualified by the broker accompany the initial submission of the bid.

(2) Bids submitted during the scheduled bid period must be received in a sealed envelope and must properly indicate the property for which the bid is being submitted by being marked with the property number, address, and return address of the broker. The envelope may contain any other markings considered necessary by the district for absolute identification.

(3) Bids received during an extended bid period may be submitted and processed by facsimile.

(4) Noncomplying bids will be returned to the broker with an explanation as to why the bid was considered to be in noncompliance and information about whether the property is still available and, if still available, the terms for resubmitting an offer.

k. Earnest Money Deposits.

(1) The amount of earnest money deposit will be that amount which is customary for the area as determined by the district. In determining the amount of earnest money deposits, a district should consider comparable practice in the locality, area real estate market conditions, the type of offers generally received, and the ability of the area's typical buyers to secure financing. The district to each participating real estate broker will furnish information on the amount of the required earnest money deposit.

(2) All bids must be accompanied by earnest money deposits in the form of a cashier's or certified check or money order made payable to the appropriate Corps of Engineers finance and accounting office, or a certification from the real estate broker that the earnest money has been deposited in an escrow account. If a bid is accepted by the district, the earnest money deposit will be credited to the purchaser at closing; if the bid is rejected, the earnest money deposit will be returned.

(3) To the extent practicable, districts will establish an earnest money certification

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system with participating brokers. Such a system is to allow brokers to hold the earnest money until bid rejection or closing which will eliminate the cumbersome requirement for the Corps finance and accounting office to process these payments when received by the district.

l. Forfeiture of Earnest Money Deposits. Failure to Close Transaction. The failure by a purchaser to close on the sale of property within the allowable time period, including any extensions granted by the government, will result in the total or partial forfeiture of the earnest money deposit, except where the purchaser presents documentation to the government that one of the special circumstances described below:

(a) In those instances where, despite good faith efforts by the purchaser, there is an inability to obtain a mortgage loan from a recognized mortgage lender.

(b) For other good cause, as determined by the district office.

m. Multiple Bids by One Buyer. Real estate brokers may submit unlimited numbers of bids on an individual property provided each bid is from a different prospective buyer. If a buyer submits multiple bids on the same property, only the bid producing the best net offer to the government will be considered. A buyer may be asked to indicate a priority for properties when submitting multiple bids thus allowing the district to award the first acceptable net offer based on the bidder's priority list. If an offeror submits a bid on more than one property, the first of those bids that produces the best net offer to the government will be accepted and all other bids from that offeror will be eliminated from consideration. If the prospective owner-occupant purchaser submits the only acceptable bid on another property, without providing a priority list, then that bid must be accepted as if the bidder wishes to purchase all properties for which a bid was submitted. All participating brokers must be made aware of this policy.

n. Opening Bids.

(1) All sealed bids will remain sealed and safeguarded until the specified public opening date, which normally is the first business day following the specified listing period. The bids will be opened publicly at a time and place designated by the district office. A public bid opening is defined as a bid opening available for attendance by the general public and may be at a location within a district office or at other places deemed appropriate by the district.

(2) Each bid will be announced when opened, and acknowledgment made of the apparent highest net offer to the government. Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Official acceptance of a bid

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is final and effective only upon the government's execution of the sales contract and mailing of a copy of the executed contract to the successful bidder or the bidder's agent. Formal government bid acceptance and certified mail procedures should be established to ensure proper and effective notification to successful bidders.

(3) All bids not accepted will be promptly returned to the broker by mail. The earnest money deposit will also be returned, either by the district office or the broker, as applicable. Copies of all bids will be retained by the district for purposes of record keeping and to provide a means for communication with unsuccessful bidders should the successful bidder for any reason fail to close on a particular property or to notify bidders of additional properties available for HAP resale.

o. Counteroffer. In cases where all bids received on a property are unacceptable, a district office may, after rejecting and returning all bids and earnest money deposits, notify all bidders or their brokers, including any bidders who have submitted unacceptable bids during the listing period, that the government would be willing to accept an offer equaling a predetermined net acceptable price. Bidders must submit an acceptable offer before the newly established bid cut-off period, to be determined by the district office. The highest acceptable offer received within the specified period of time, including any offer received from a bidder who did not submit a bid during the original bid period, will be accepted, thus terminating the counteroffer negotiations. In case of identical bids, awarding a sales contract will be determined by a drawing. All drawings to determine the successful bidder will be open to the public during the bid opening. Written notification of the successful offer will be provided to all bidders.

p. Closing.

(1) Time Allowed for Closing the Sale. The number of days allowed to close the sale of a property generally will not exceed 60 days from the date of acceptance of the offer to purchase, and will be set by the district office depending on the amount of time necessary in the area to obtain financing.

(2) Extensions. In the event a scheduled closing cannot be met for reasons beyond the control of the purchaser, an extension period will be appropriately granted where the district has reason to believe the sale will close within a reasonable time. A request for an extension must be submitted in writing.

(3) Closing Agent.

(a) The government will provide a closing agent with qualifications as required by state and local laws to ensure the government's interests are protected. The closing agent



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may be a district employee or bonded representative as set forth in this section.

(b) Although it may be legally acceptable in some jurisdictions for the closing agent to represent both purchaser and seller, purchasers may, at their own costs, obtain representation if desired.

(c) If required by the district, the closing agent's functions may include reviewing and ordering title information; preparing and recording deeds and related documents; explaining all closing papers and documents to the purchaser; administering requests for closing extensions; providing an estimate of closing costs; and collecting and disbursing funds related to the sale.

(4) All assessments, including improvement assessments that are available for payment without interest or penalty for advance payment, taxes, rent, and ground rent, if any, will be prorated between the government and the purchaser as of the date of the closing. On assessments for which a payment plan has been approved, only assessment amounts required to be paid during the current tax year will be prorated, with the following years' payments to be the responsibility of the purchaser.

q. Property Damage After Sale, Before Closing. The government assumes the risk of any damage or loss to the property occurring after acceptance of the sales contract and before closing, provided the damage or loss is not the fault of the purchaser. Any substantial damage after the effective date of the sales contract but before closing may be authorized for immediate repair, at the government's option; or the government may reduce the sale price as a result of the damage. The purchaser has the option to cancel the sales contract, with all earnest money deposits refunded.

r. Occupancy Before Closing.

(1) General Policy. Occupancy of the property by the purchaser before closing is prohibited, except where authorized on a case-by-case basis under the following circumstances:

(a) When failure to permit occupancy would create an extreme hardship on the purchaser;

(b) Where permission to occupy is necessary to meet competition; or

(c) Where occupancy would protect against vandalism and theft.

(2) Occupy Under Lease Agreement.

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(a) If occupancy before closing is permitted because it would protect the property against vandalism and theft, occupancy will be rent-free or at a nominal rate in exchange for caretaker services that the purchaser agrees to perform.

(b) If occupancy before closing is permitted solely to meet the needs of the purchaser, full market rent will be required, and the purchaser will be required to assume the risk of loss in the event there is damage to the property before closing.

s. Rental of Acquired Property.

(1) General Policy - Leases. Leasing of acquired property will be as a last resort in determining management of HAP resales. However, it is an authorized management option when the district determines that it is in the best interest of the government or as local market conditions warrant. Leases may include an option to purchase in appropriate circumstances. Situations where the government will lease property include, but are not limited to, the following:

(a) A sales closing is delayed at length;

(b) Occupancy is essential to prevent vandalism or rapid deterioration of the property;

(c) The inventory in an area exceeds sales market absorption capability for an extended period of time;

(d) The property is a one or two family dwelling and occupancy would improve marketability;

(e) The property is leased as temporary housing for disaster victims;

(f) The property is leased by other government agencies for defense, law enforcement, or other purposes, or

(g) The property is leased by a nonprofit organization or governmental entity, including a public housing authority.

(2) Tenant Selection. In selecting tenants for any lease program, discrimination by race, color, religion, sex, national origin, age, familial status, or handicap is prohibited.

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(3) Preparation of Leases. Leases will be prepared in accordance with local requirements as well as applicable Federal laws and regulations. Rental will be appropriately charged and clearly cited in the lease document and receipts will be deposited in the HAP account. Public Law 89-754 is the leasing authority.

(4) Conditions of Occupancy.

(a) Lease Term and Rent. The lease term and the amount of the rent is dependent on the circumstances under which the property is leased. The fair market rental value will be the basis for charge. Appropriate other forms of compensation in lieu of the fair market value are also authorized on a case-by-case basis when it will prove beneficial to the government. Terms will generally be on a month-to-month basis and revocable at will by providing a 30-day notice.

(b) Continued Occupancy.

- Occupancy of acquired property is temporary in all cases and is subject to termination when necessary to facilitate preparing the property for sale and completing the sale.

- The government will notify the occupant to vacate the property and, if necessary, will take appropriate eviction action, in any of the following situations:

- Failure of the tenant to execute a lease, or to comply with the lease;
- Failure of the tenant to allow reasonable access to the property upon proper notice;
- Necessity to prepare the property for sale; or
- Assignment of the property by the government to a different use or program.

t. Competitive Sales Procedure.

(1) General. Properties are sold to the general public on a competitive bid offer basis through local real estate brokers. Properties are advertised in the area in which they are located through appropriate media. If a property fails to generate an acceptable bid or offer, during the specified bidding period, it will remain on the market for an extended listing period, as described in this section.

(2) Qualified Purchaser.

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(a) Anyone, regardless of race, creed, color, religion, sex, national origin, familial status, age, or handicap may offer to buy a government-owned property acquired under the HAP program; and

(b) Except as provided below, tenants in occupancy will not be offered the right of first refusal to purchase the property. They may submit an offer, or bid, to purchase the property when it is publicly listed, which will be treated in the same manner as other offers received from other prospective purchasers during the listing period.

(c) Tenants in occupancy will be offered the right of first refusal to purchase the property where:

- The tenant has a recognized ability to acquire financing and a good rent-paying history, and has made a request to Corps to be offered the right of first refusal; or
- State or local law requires that tenants be offered the right of first refusal.

(3) List Price.

(a) All initial list prices will be no less than the current fair market value as determined by the district. In establishing the price, consideration should be given to the necessity to expedite resale of the property. List prices may be periodically adjusted without appraisals, taking into consideration the necessity for rapid sales, based on the market in the market impact zone.

(b) Properties that fail to sell within a reasonable market period as determined by the district, should be reanalyzed and the price may be reduced by the district.

(4) Financing. The purchaser is entirely responsible for obtaining financing for purchasing a property.

(5) Open Listings. Properties may be sold on an open listing basis with participating real estate brokers. Any real estate broker who has agreed to comply with DOD regulations and requirements may participate in the sales program. Purchasers participating in the competitive sales program must submit bids/offers through a participating broker. Offers for groups of properties available for bulk sales may be submitted directly to the district.

u. Closing Agent Contract. District offices may contract for the services of a closing agent. This contract must include the following elements:

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(1) Liquidated Damages. A provision calling for an established daily amount of liquidated damages for each day the sales closing package is delivered beyond the date specified in the sales contract. There must also be a damages provision involving the late delivery of the sales proceeds due the government. If either or both of the liquidated damages provisions become effective for a specific case, the closing agent shall attach to that closing package their check for the full amount(s) due.

(2) Bonding. The closing agent is required to obtain bonding in an amount equal to the value of the cases assigned by the government during a normal two-month period. The bond may be surety or fidelity, provided the government is fully protected against acts involving misappropriation of funds by the principal, employees of the contractor, and any subcontractor the closing agent may be utilizing. The bonding is required to be in place prior to contract award.

(3) Closing Date. The district office or closing agent shall establish a firm closing date within the time specified in the sales contract. For extensions of closing date see paragraph 7-35p. 2.

(4) Preparing the Closing Package.

(a) District offices should provide the closing agents with all necessary documents and information needed to close a sale, including the following, in sufficient time to permit preparation for closing:

- Title evidence.
- Executed deed from the government.
- Tax Information.
- Copy of lease, if applicable.
- Rental status, if applicable.
- Utility bills, if applicable.

(b) Closing documents should, whenever possible, be picked up personally by the closing agent. If closing documents must be mailed, the appropriate government procedures must be followed. Method of transmittal must be used that provides positive proof of receipt.

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(5) Closing Agent Responsibilities.

(a) Completion of Documents by Closing Agent. The closing agent shall complete all documents in accordance with the contract requirements. These documents may include but are not limited to:

- Settlement Statement
- Promissory Note
- Trust deed or mortgage

(b) Establishment of Escrow Account. The closing agent shall establish a separate escrow account for all proceeds in the name of the closing agent, with the restriction "As Trustee for the United States of America". The escrow account must be established in a Federally insured bank that gives credit for the deposited check immediately upon clearance. Exceptions to this requirement are:

- Infrequent closing in remote areas
- Closing being handled by district staff
- Where formal contracts for closing services are not required.

(c) Accounting Records. The closing agent shall maintain complete and accurate accounting records which, as a minimum, include a cash receipts and disbursement register. This register will be reconciled monthly to the bank account. For each receipt and disbursement, the register must identify, by address and case number, each property to which the receipt or disbursement applies and the purpose for each disbursement. Review of the register will be performed by the district office during each on-site review.

(d) Status Report of Cases Assigned to Closing Agent. The closing agent is required to provide a status report as required by the district.

(e) Purchaser's Inspection. The completed Settlement Statement must be made available to the purchaser for inspection, upon request, on the business day preceding settlement.

(f) Receipt of Deposits of Payments. The closing agent is responsible for obtaining from the purchaser the amount due to close the sale at the time of closing. All

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funds paid by the purchaser must be in cash, certified funds, cashier's check, or check drawn upon a mortgage lender or attorney's escrow account made payable to the closing agent. The closing agent shall deposit these funds in the escrow account on the day of closing or the next banking day.

(g) Authorized Payments from Proceeds. Payments for the following expenses are to be made from the closing agent's escrow account. If funds are not available from the proceeds to pay any of the authorized expenses, the closing agent is to submit an invoice for each individual expense to the district office along with the closing documents.

- Sales commissions in the amount specified in the Sales Contract and any authorized bonus to the sales broker. Reflect this payment on the Settlement Statement.

- Accrued utility bills of former owners or tenants if the bills are or will become liens against the property or if restored and continued service is contingent on payment.

- Refunds. Payments made by purchasers for closing extensions may be refunded in accordance with the terms specified by the district.

- Credits. Credits given to the purchaser for services, repairs, or other items negotiated between the district and the purchaser.

- Miscellaneous closing expenses such as closing agent's fee, unless paid under other arrangements and any other such expense agreed to or approved by the district office.

(h) Transfer of Sales Proceeds. No later than the next banking day after sales closing, the closing agent must send all funds to the district office, either by hand delivery, express mail, or electronic transfer. Closing agents must obtain confirmation.

(i) Forwarding Closing Documents. A facsimile of the executed closing documents must be received in the district on the day of closing. All original closing documents must be forwarded to the district office within the time frames stated in the closing agent's contract. Such time frames must conform to the overall requirement that the certified closing documents be received by the district office within 14 calendar days from the date of closing.

(j) Recording Sales Documents. The closing agent must ensure that the deed, note, deed of trust (mortgage), and all other documents that require recording are recorded immediately following closing.

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(k) **Monitoring of Closing Agents' Contracts.** The district office must carefully monitor closing agents to ensure that closing occurs within the proper time frames; that all documents are completed accurately; that sales proceeds are sent to the district office in an accurate and timely manner and that closing documents are forwarded to the district office within the time required by the contract.

- **Review of Assigned Closing Status Report.** Review the report to ensure that closing agents are properly closing sales and whether any delay or failure to close is the responsibility of the closing agent.

- **Delayed Deposit of Proceeds.** When the district office learns that funds for a closed case were not sent promptly, the closing agent should be contacted immediately. Determine the cause for the delay, verify that the mailing has taken place, remind the closing agent of the contractual requirements and, where appropriate, demand the applicable liquidated damages. If the situation is not resolved satisfactorily within a short time, do not assign additional closings to the agent until the problem has been resolved. Where appropriate, contact the district office counsel, Inspector General and bonding company, advising them of the situation.

- **Delayed Transmission of Closing Documents.** When the district office does not receive the closing documents within the time specified by the contract, contact the closing agent to determine the cause of the delay.

- **Corrective Action.** Appropriate corrective action and measures must be taken to ensure closing agent compliance with all contractual responsibilities.

- **Periodic Reviews.** Periodic on site reviews of each closing agent's records and procedures will be conducted. A checklist for monitoring closing agents during each review will be completed. The review findings will be maintained in the district office file.

- **Retain Review Records.** The district office responsible for audit and litigation must retain copies of all documents pertaining to performance by the closing agent, including periodic status reports, reviews and correspondence.

(l) **Review and Approval of Closing Documents.** All closing documents are to be reviewed, corrected and certified by the district office as soon as possible after their receipt. In conducting the review the district office shall assure that:

- All applicable closing documents show the correct HAP case number.



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- The sales price, earnest money deposit, sales commission, settlement costs, and any additional costs authorized by the government sales contract are accurately recorded on the settlement statement.

- If the earnest money was deposited in the district office, the full amount of such deposit was shown on the settlement statement.

- The full amount of any extension fee and the amount of any refund are to be shown on the settlement statement.

7-36. Management and Resale Options. The specific procedures for management and resale of acquired properties should be tailored to the particular requirements of individual projects and the resources available to the district to accomplish the mission. The Corps of Engineers will manage and sell acquired properties or contract for such services in a manner consistent with, but not limited to, the following: transfer to other government agencies and direct sales; management and resale by Corps of Engineers; and management and resale by private contractors.

7-37. Transfer to Other Government Agencies or Direct Sales. Transfers to other government agencies may be necessary for certain projects as required by law or special legislation and to provide relief to or in cooperation with other government projects. Direct sales may be pursued, at discounts, to other entities listed below for purposes of providing assistance to local communities or to expedite sales of hard-to-sell properties.

a. Transfer. Transfer of acquired properties to Federal agencies will be in accordance with agreements, if any, between the Department of Defense and the respective Federal agency. Transfer of acquired properties will not be made to governmental agencies without prior approval from ODCSRE. Full justification and plans for transfers will be submitted for approval.

b. Direct Sales. At the discretion of the district, direct sales may be authorized for the following:

(1) Direct sales to Federal agencies, private nonprofit organizations, state and local governments, and public agencies, may be accomplished for use in HUD and local housing or homeless programs. Sale discounts will be determined on a case by case basis in accordance with the particular program authorizing the conveyance. The amount of the discount will be that amount necessary to expedite sales in depressed markets and to reduce the governments inventory of HAP properties.

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(2) Direct sales to displaced persons.

(a) At the discretion of the district office, properties may be offered for direct sale, at a discount, to displaced persons that will occupy the properties. Properties offered will be only those in the general area in which the displacement is occurring.

(b) For purposes of this section, “displaced person” means any household (family or individual) that moves permanently and involuntarily as a direct result of:

- Acquisition, rehabilitation, demolition or code enforcement for a government (Federal, state or local) project or government-assisted project;
- A determination that the income of the household exceeds the limitations for the government-assisted housing that the household occupies; or
- A major disaster, as declared by a state or Federal Government.

7-38. Management and Resale by Corps of Engineers.

a. Management by the Corps of Engineers. Management of acquired properties may be performed by contract. Districts have been delegated the authority to utilize Corps of Engineers or installation personnel to perform maintenance and management functions if, in the opinion of the District Engineer, such utilization is in the best interests of the mission. Such management functions may include, but are not limited to:

- (1) Participation in joint inspections,
- (2) Security and winterizing of properties,
- (3) Installation of signs and warning notices,
- (4) Coordination with local utilities, homeowners associations, local law enforcement authorities, and other agencies as required by law or regulation,
- (5) Care, maintenance, and repair of the property,
- (6) Rental of properties prior to resale,
- (7) Periodic inspection of property, at least monthly,
- (8) Other management functions as determined by the District Engineer.

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b. Rental of Acquired Property.

(1) Leases. The authority for leasing is Public Law 89-754, 42 U.S.C. 3374 (d). See paragraph 7-35s.

(2) Management of Rental Properties. Management of rental properties, unless in small quantities or otherwise infeasible, may be by property management contractors obtained through an invitation for bids/proposals process. No contract will be awarded to businesses otherwise associated with the resale of HAP properties because of the conflicts it will present in selling versus rental by the same contractor. A contractor wishing to slow the resale program to continue receiving funds under a rental management contract may impede the government's goal of a fast resale.

c. Resale by Corps of Engineers.

(1) Sales through Real Estate Brokers. The Corps of Engineers is charged with the responsibility of obtaining the maximum recovery of its investment in all properties. HAP properties may be sold to the general public on a competitive basis through participating real estate brokers. All licensed real estate brokers in the program area will be notified that they may, by directing a letter to the district office, with a photocopy of their broker's license, and by signing a nondiscrimination agreement, be placed on the district mailing list for sales of all properties in their area of interest. Brokers will be furnished keys or other method of access upon their approval and execution of a participation agreement. Brokers will be required to sign a participation agreement detailing whom they represent and the requirements and obligations of all parties. A home sales guide will be developed by the district for each project and furnished to each participating broker to be used as a reference in implementing the resale program.

(2) Open Listings. Properties sold through an open listing program will be available to all brokers approved for participation.

(3) Notification of Listing. A complete listing of all properties available for sale is mailed simultaneously to all participating brokers on a nonexclusive listing basis as the properties are acquired. All brokers have an equal opportunity to inspect, show, and submit offers to purchase. The district will notify all participating brokers of the dates the properties will be advertised, dates for accepting bids, the bid opening dates and locations of bid openings.

(4) Advertising. The Corps will solicit bids by actively and publicly advertising all available properties to ensure the broadest practicable coverage via newsprint, posting

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of notices in public places and/or other media the district deems appropriate. Participating brokers may advertise HAP properties at their expense without cost to the government. Any broker advertising in newspapers or elsewhere shall not use wording that would tend to indicate distressed sales or foreclosed loans. The phrase "Equal Housing Opportunity" must be inserted in every advertisement of HAP properties for sale. If a property fails to generate an acceptable bid or offer, during the specified bidding period, it may remain on the market for an extended listing period. The length and conditions of the extended listing period will be as determined appropriate by the district for accomplishing the HAP resale mission.

7-39. Management and Resale by Private Contractor. This paragraph sets forth responsibilities, procedures, methods and guidance for the contracting of management and resale services for acquired HAP properties. Districts may use this paragraph to develop a management and resale program to provide for contracting for part or all of the required services to accomplish the HAP mission.

a. Property Management by Contract.

(1) Policy. The Corps of Engineers may contract for the management of all acquired HAP properties. The terms Property Manager (PM) and Management Broker (MB), as used herein, are synonymous. Instructions in this chapter regarding either the PM or MB apply equally.

(2) Determination of Need and Area. The district office must recognize situations which dictate the need for contracting management/broker services and comply with the Federal Acquisition Regulations (FAR) and this chapter in obtaining these services.

(3) Training of Management Brokers. Within 30 days of contract award, the MB must be trained and/or provided instructions on at least the following:

- (a) Contract services the MB is to perform or obtain.
- (b) Preparation and submission of all required forms.
- (c) Policies and methods of disposition.
- (d) Procurement of supplies, materials, repairs, and services.
- (e) Policies and requirements of repair programs.
- (f) Determination of property values.

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- (g) Determination of property condition.
- (h) Accounting procedures and requirements.
- (i) Causes for contract termination.

(4) Property Manager's Responsibilities. The property manager will be required to perform services which include managing one-/or two-family homes (including condominiums) and all improvements located on the property assigned by the district, including maintenance, repairs, and reporting. Management objective is to maintain the acquired properties, keeping them clean and ready for sale in the local real estate market.

(5) Supervision and Monitoring of MBs. The overriding responsibility of the district is to supervise and monitor the activities of the MB. To properly fulfill this responsibility and to ensure that the government is receiving proper return for its management contract expenditure, the following must be performed on a continual basis:

(a) Review Documents Submitted by the MBs. Determine that each form required of the MB is submitted on a timely basis, contains essential and accurate information, and that recommended prices and methods of sale are reasonable and in keeping with current policy.

(b) Inspection of Properties. Conduct field inspections, as warranted, of properties assigned to the contractor. It is recommended that a minimum of ten percent of the properties receive these inspections. Increase inspection, up to 100 percent, if necessary, where it is found that the contractor's performance is deficient.

(c) Review of MB.

- Quarterly. The MB's office records and procedures must be reviewed on a quarterly basis. Each review must include individual property files, and fiscal documentation and records. Based on performance, the review may include adequacy of staff, supplies, facilities, inventory controls, status records, follow-up systems, comparable data, and general office conditions. Problem areas/deficiencies are discussed with the MB and a follow-up on previous deficiencies is conducted.

- Annually. The district is to perform an in-depth evaluation of each MB annually.

- As Warranted. As the district is directly responsible for ensuring proper and

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adequate MB performance, the district must visit and work with the MB when inadequate or deteriorating performance is noted. It is extremely important that each such visit be documented.

- Review Monthly Accounting Reports:

- Determine that broker's figures agree with totals of collections and disbursements.
- Check cash reconciliation for accuracy and correctness.
- Verify correctness of voucher.
- Forward payment request within four days.

- Document Unsatisfactory Performance.

- Document inadequate performance, including incorrect or incomplete forms. Place documentation in the District's MB's file.
- Compare MB's performance to other MB's working for the district at other locations.
- Discuss deficiencies personally with MB. District file should contain documentation of any instruction, guidance or monitoring provided each MB.
- Provide written documentation to MB regarding unsatisfactory performance items and corrective measures to be taken by the MB. Retain copy for MB's file.
- Follow-up on previously noted deficiencies.
- Provide additional training as necessary.

- Termination of MB Contract. When the MB, after reasonable time and assistance, fails to correct unsatisfactory performance, it will be necessary to terminate the contract. It is vital to any termination effort that the documentation highlighted above is maintained and that it reflects the efforts put forth to achieve a turnaround of the MB's performance. Documentation should reflect that the MB received proper notice by personal discussion and by letter detailing performance deficiencies and prescribing a schedule for correction. Unacceptable performance must be reflected in inspection

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reports, letters to the MB, documentation of discussions, and work sheets measuring performance. It is the responsibility of the district to bring to the attention of the contracting officer those instances of continued or repeated non-compliance by the MB and to recommend actions to be taken, including termination where deemed appropriate. The decision to terminate will be made in accordance with the terms of the contract. Appropriate use will be made of administrative sanctions in the property disposition program in strict accord with 24 CFR Part 24. Areas of concern for irregularities include any procurement contract for goods and services between the government and MBs, repair contractors, selling brokers and purchasers.

b. Management and/or Resale by Contractor.

(1) A district office may invite firms experienced in property sales and management to compete for contracts that provide for an exclusive right to manage and/or list specified properties in a given area. This procedure is in lieu of management and resale by the Corps of Engineers as it will provide for administration of property management and resale by contract. In determining whether to enter into an exclusive contract, the district office will consider its staff resources, local market conditions, and location of properties.

(2) The contractor will provide a variety of management and/or resale services to assist the government in managing the properties prior to sale. The duties of the contractor may include: selling the properties, advertising the properties in a manner approved by the government, showing the properties to prospective purchasers, helping purchasers prepare and submit purchase offers and qualify for mortgages, explaining to purchasers the steps required to close the sale, providing the district office with a report on the reasons the properties have not sold after a reasonable period on the market, submitting bids/offers to the government on behalf of prospective purchasers for acceptance or rejection, coordinating closings, and managing rental properties. A competitive process is required as in other resale methods to offer the general public the right to make offers in a fair and equitable manner.

(3) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his or her choice. At the District's option the purchaser's broker must submit the bid/offer to the government directly or through the exclusive broker.

7-40. Other Sale Procedures.

a. Razing for Lot Sales. The government will raze property and sell the vacant lot if required by local ordinance or agreement, or if it is determined to be in the best interest of the government. As an alternative, the government may sell the property with

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a requirement that the purchaser raze the property after the sale. Specific requirements for demolition of improvements will be included in the sales contract in such cases. Properties may be razed for sale of the vacant lots if one or more of the following conditions exist:

- (1) The property has already been unsuccessfully offered for sale in its “as is” condition.
- (2) A local ordinance or agreement prohibits “as is” sales of such properties.
- (3) The property must immediately be razed to remove a health or safety hazard.
- (4) Damage beyond repair or the cost of repairs exceeds the value.
- (5) It is determined by the district to be in the best interest of the government to raze the property for a sale of the property.

b. Bulk Sales. The government may occasionally make groups of properties available for bulk sales in “as is” condition. Bulk sales of properties may be limited to governmental entities and private nonprofit organizations for a specific purpose. The terms and conditions for a particular bulk sale will be described fully in any public notice of the sale.

(1) General Features. Designed to boost sales in weak markets, the all cash, “as is”, bulk sales program features:

- (a) The option to publish or not to publish the listing price.
- (b) The requirement for purchasers to provide their own financing.
- (c) Offers may be submitted directly to the district.

(2) Property Selection. Eligible properties include “as is” properties and vacant lots. Generally, properties should be marketed individually prior to being offered in bulk. However, this is not always practical. A bulk offering containing properties that have proven to be hard-to-sell could logically include new acquisitions which are comparable with regard to location and physical characteristics, but which have not been offered individually. This rationale may reasonably be extended to broader areas; e.g., to specific neighborhoods. In addition, better properties may be included in a bulk package of predominantly less attractive properties, if doing so would enhance the properties overall marketability.



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c. Auctions. Districts may sell properties at public auction in lieu of other resale methods. In determining whether to hold an auction, consideration should be given to: the type and number of properties to be sold; property value; location; anticipated public interests; and administrative costs. Terms and conditions of the auction sales will be announced in the public notices of the sales. Auction sales may be accomplished by a contractor licensed in accordance with laws and regulation in the state and local community in which the property is located, or by qualified Corps of Engineers employees. Procedures for holding public auctions by Corps personnel will be in the spirit of fair competition and within applicable guidelines for the open bidding process. Auctions by contractors will be governed by the following:

(1) General. A professional auctioneer may be contracted by the government to hold an auction for resale of HAP properties. If the auctioneer is a licensed broker in the jurisdiction of the properties to be sold, he/she may function in that capacity. If the auctioneer is not a licensed broker, he/she must enter into an agreement with a licensed broker who will act in the auctioneer's behalf to show properties prior to the date of the auction and perform such other functions only a licensed broker may perform. To the extent that other selling brokers are used, it is the responsibility of the auctioneer to compensate them.

(2) Contract with Auctioneer. All services performed by the auctioneer must be set forth in a contract.

(3) Soliciting Auctioneers. Auctioneers must be solicited in accordance with the FAR.

(4) Bid Basis. If bid basis is percentage of sales, inform all prospective auctioneers the approximate total value of the offering. Where competitive negotiation is permitted, the fee should not exceed eight percent of the total received. It must be clear in the solicitation whether the auctioneer must pay advertising costs out of his commission or whether the government will provide an allowance for that and other expenses.

(5) Broker Compensation. The sales commission will be paid under the provisions of the contract. If the auctioneer permits the participation of other brokers, it is his/her responsibility to establish the terms for this participation and to compensate the brokers.

(6) Advertisement. Auctioneers may arrange for, procure and/or place all forms of advertising, subject to government approval. Advertisements should have all essential

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information, such as, how the property may be shown, time, date and location of auction, list of properties, earnest money requirements, a statement as to whether properties are being offered individually or in bulk, the terms and conditions of sale and essential rules of the auction, a statement that the property must be viewed through a local broker, and a statement that the government reserves the right to reject any offer unless the auction is absolute.

(7) Costs. All costs, including advertising and fees for auction personnel should be included in the price ultimately arrived at in the contract. However, the district office may elect to extract the advertising costs, providing a separate allowance for it. A cost or price analysis will be made prior to execution of the contract along with a determination that the contract price is reasonable.

(8) Competition at Auctions. The contract must provide that the auctioneer cannot use unduly restrictive procedures or standards that tend to limit competition at the auctions. The auctioneer, as part of the contract agreement, must sign a nondiscrimination certification.

## SECTION X. APPEALS

7-41. Appeals Policy. Section 1013(f) of the Act provides that the provisions of the Act will be administered in conformity with the requirements contained therein and under such conditions and regulations as the Secretary of Defense may prescribe, and that all determinations and decisions made pursuant to such regulations shall be final and conclusive and will not be subject to judicial review. The Administrative Procedure Act does not apply.

7-42. Authority. The Secretary of Defense delegated to the Secretary of Army the authority to establish an appeals procedure, with responsibility for final action assigned to a designated component of the Department of the Army. Accordingly, the appeal procedure in this section has been established. Authority to take final action on appeals has been vested in the DASA(I&H).

7-43. Notification to Applicant.

a. Notification of Decision. Each applicant will be notified of the decision made on his/her application and the reasons for such action.

b. Information to Be Included. The letter to the applicant providing notice of the decision should contain the following minimum information:

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(1) References to the appropriate sections of the Act and the regulation under which the decision has been reached and the rationale for the decision.

(2) Notification of the applicant's right to question the district's decision, to then object to the decision, to have the MSC review the district's decision, and then file an appeal of the MSC decision. Applicants must be advised that an objection must be written and state the basis for the objection. Applicants should further be informed that if the issue is one of value they may submit a professional appraisal paid for by the applicant.

7-44. Objection Procedure.

(a) A written question regarding the applicant's case will not be considered an appeal. The district will reply to the applicant and explain the government's decision and the basis for that. [Note the restriction on appraisals in 7-22b above.] This reply will explain that the Applicant has a right to object to the district's decision and have it reviewed by the MSC or accept the district's decision. A second appraisal will not be obtained unless an objection is received, forwarded to the MSC and the MSC decides to request a second appraisal.

(b) The applicant may request that the MSC review the district's decision. The MSC will review the objection with supporting documentation and reply to the applicant. The reply will explain that the applicant may file an appeal from the MSC's decision(s) regarding (1) benefits payable and/or (2) eligibility. Applicants should be advised that an appeal will be considered by the district commander, the MSC commander, and ODCSRE. If favorable action cannot be taken by one of those, the appeal will be submitted to the DASA(I&H) for final decision.

7-45. Appeal Process.

(a) An appeal must be submitted in writing to the district within 180 days from the date of notice of the MSC's decision. The appeal must state the decision the applicant is objecting to and the basis for the objection with supporting documentation. The applicant may be represented by an attorney or other person if applicant so chooses.

(b) The district will review the applicant's appeal, and prepare an appeals package with recommendation to be submitted to the MSC.

(c) Appeals will be considered at the district level, and will be reviewed at MSC level. A determination will be made at each level as to whether or not favorable action can be taken. An appeal which has been forwarded to a higher level of review may not

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be settled at a lower level without the concurrence of the highest level to which the appeal has been transmitted.

(d) If favorable action cannot be taken, the appeal will be forwarded by ODACSRE to the DASA(I&H) for further review and for final decision.

7-46. Appeals Procedure.

a. Investigation. Any decision objected to by the applicant will be investigated by the district.

(1) The investigation will be as extensive as necessary to clearly define the basis for the objection/appeal and to produce information required for its consideration.

(2) Upon completion of the investigation, the information submitted with the application will be reconsidered, together with the information obtained as a result of the investigation, and a determination will be made as to whether favorable action can be taken.

(3) For appeals, a signed report of the investigation and consideration will be prepared which will include the following tabbed headings:

(a) Applicant's Claim: A brief outline of the basis of the application for assistance, the initial decision by the district, the applicant's objection, and the MSC's decision from which the applicant has appealed, and the basis for the applicant's appeal. Copies of the benefit sheet and settlement sheet should be included, if applicable.

(b) Issue: A brief statement of the matter to be resolved;

(c) Findings and Decision: The scope of the investigation and consideration of the appeal; pertinent information necessary to determine the merits of the appeal; an Attorney's Opinion for eligibility appeals, the decision on the appeal;

(d) Besides review and certification of the appraisals for the appeal, an analysis of the applicant's appraisal issues should be included in the review; and

(e) Recommendations.

(4) Applicants will be notified by the district when an appeal has been forwarded to higher authority for review.

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b. Forwarding of Appeals. If favorable action on an appeal cannot be taken by the district, a tabbed appeal assembly will be prepared in sufficient copies to provide one copy for the next higher level of review and two copies (including original papers where available) for submission to ODCSRE. A copy of the appeal containing the original papers will be returned to the district after a decision on the appeal has been reached. The appeal assembly will have a jacket cover of heavy paper backing with a suitable fastener at the top. It will consist of the following items, assembled in the order shown below, with such variations or additions as circumstances require:

- (1) Investigation and consideration report;
- (2) Written appeal and amendments;
- (3) Application with attachments;
- (4) Appraisal reports, if appropriate;
- (5) Settlement sheet for appraisal issues;
- (6) Pertinent correspondence in chronological order;
- (7) the District's Attorney's Opinion; and

(8) Any other documents or information which have a significant bearing on applicant's claim for assistance.

7-47. Review of Appeal by MSC. This review is to ensure the following:

a. Compliance. The initial decision is in accord with the facts, the provisions of the Act, and existing regulations;

b. Notification. The applicant was properly notified as to the reason that favorable action could not be taken on his/her application; that he/she has filed an appeal from this decision and has submitted all of the information he/she intends to submit in support thereof;

c. Decision. The district engineer's decision on the appeal is supported by the record; and

d. Necessary Information. The appeal assembly contains the necessary information in support of the decision and has been assembled as stated in this section.

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7-48. Action on Appeal by the MSC. Action by the MSC will be taken as expeditiously as possible. If the MSC concurs with the recommendation, additional comments and recommendations together with the reasons, and supporting documents if appropriate, will be forwarded to ODCSRE. If the MSC does not concur with the district engineer's recommendation, the matter will be returned to the district engineer for further consideration or with a directed solution. If the appeal is forwarded to ODCSRE for further review, the MSC will notify the District.

7-49. Action on Appeal by ODCSRE. ODCSRE may either:

(a) return the appeal for further consideration or with a directed solution or

(b) forward the package, and a proposed letter to the applicant denying the appeal, to the DASA(I&H) with the recommendation that it be signed and sent to the applicant.

7-50. Action by the DASA(I&H). Final decision on an appeal will be made by the DASA(I&H) based on recommendation from ODCSRE. In the event the recommendation is not approved, the appeal will be returned to ODCSRE for further consideration. If the recommendations are approved, the letter to the applicant will be signed by the DASA(I&H) and sent to the applicant.

7-51. Final Action by ODCSRE. If the DASA(I&H) has not approved ODCSRE recommendations on the appeal, the matter will be reconsidered and, if possible, objections will be resolved at ODCSRE level. Otherwise, the appeal will be returned to the MSC with appropriate instructions for further action. If the DASA(I&H) has approved the recommendations, copies of the letter to the appellant and the memorandum opinion, including a copy of the appeal assembly with original papers, will be sent to the MSC and the case will be closed.

7-52. Dissemination of Decisions. Copies of HAP appeal decisions by the DASA(I&H) are not disseminated by ODCSRE Corps-wide. A digest of decisions may be made available to any district. The district may refer to such decisions but may not disclose them to applicants.

## SECTION XI. INCOME TAX

7-53. Tax Consequences. HAP benefits are considered to be payments attributable to employment and are, therefore, taxable as gross income. All HAP benefits are taxable including benefit options in which payments are made to a third party on the beneficiary's behalf. No taxes will be withheld the calendar year following death of an

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applicant.

7-54. FICA Withholding - Applicability and Exemptions. HAP benefits are subject to Federal Insurance Contribution Act (FICA) withholding. The amount of withholding, if any, is determined by the applicant's employment status when they became eligible to receive benefits. FICA is not withheld from members of the armed forces since they pay taxes only on their basic pay. Civilian employees who belong to the Civil Service Retirement System are subject only to Medicare withholding, and are not subject to the OASDI portion of FICA taxes. Civilian employees who belong to the Federal Employee Retirement System are subject to withholding for both the OASDI and Medicare elements of FICA. If a member of the armed forces is eligible for HAP benefits because of active duty status, no FICA is withheld even if the benefit is received after the member retires. Any outstanding employee contributions for FICA must be paid prior to the time of closing of a government purchase or prior to a benefit payment on a foreclosure. This may be done by withholding reimbursable funds or direct payment by the employee prior to closing or prior to foreclosure payment. FICA withheld should not exceed the maximum annual limit.

7-55. Disclosure. Applicants should be informed that there are tax consequences of HAP benefits. Districts are responsible for providing complete disclosure to applicants on the taxability of HAP benefits, commencing with town hall meetings and continuing throughout the processing of applications or appeals.

7-56. Calculation of Taxable Benefit.

a. Private Sales. For private sales, the taxable benefit is the amount actually disbursed to the applicant.

b. Foreclosures and VA Compromises. For foreclosures, the taxable benefit is the amount actually disbursed, whether to the applicant or to third parties, to discharge the applicant's foreclosure related liabilities.

c. Mortgage Assumptions. Mortgage assumptions are taxed in the same manner as government acquisitions.

d. Acquisitions. The difference between the purchase price and the current fair market value is taxable as income to the applicant at the appropriate tax rate. Reimbursements for taxes, interest, and insurance premiums paid by the applicant, as well as closing costs paid by the government, are also taxed as income to the applicant at the appropriate tax rate. If the current fair market value is more than the purchase price, this will not be considered a negative benefit and only the reimbursements paid the

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applicant will be taxed.

e. **Taxable Liability.** For mortgage assumptions and government acquisitions, the applicant should be notified of the taxable liability for the transaction.

7-57. **Payment of Tax Obligation.** Federal income tax and FICA (when applicable) will be withheld or collected in the following manner:

a. **Withholding from Benefit Payment.** Taxes due must be deducted from any benefit payment made to the applicant. When the payment to the applicant is insufficient to meet the overall tax and FICA liability, the amount of the FICA will be withheld first from the payment. The applicant must pay the entire FICA portion of the taxes due prior to closing or paying off enforceable liabilities.

b. **Reporting of Taxable Benefit.** The amount of the taxable benefit will be reported to the IRS and to the applicant.

7-58. **Reporting.** HAP entitlement received directly or indirectly by the applicant will be included in gross income on a W-2, Wage and Tax Statement. The total value of benefits will be shown in boxes 10 and 16 of the W-2. A separate W-2 reflecting only HAP benefits may be provided in lieu of including HAP benefits on the beneficiary's regular W-2. A Form 1099-S must be provided to the applicant and the IRS.

## SECTION XII. FILES AND REPORTS

7-59. **Policy.** District offices will use a standard filing procedure that can be easily audited. The procedure must facilitate up-to-date records for district office actions based on thorough documentation, retrieval of specific information in the event of a dispute or complaint, or review by MSC and Headquarters' staff. All HAP personnel must be knowledgeable of the filing system.

7-60. **Manual Property Records and Files.**

a. **Individual Property File.** Correspondence, forms and related material must be filed in chronological order. A strict sign-out control system must be maintained for property case files.

b. **File Maintenance.** Active files must be maintained by property address, name, or by application number. Once completed the acquisition and Management & Resale files will be merged and filed by application number.



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c. File Disposition. Files will be maintained with the Modern Army Record Keeping System (MARKS). The MARKS number for HAP is 405.

d. Files on Contractors. Contract files will contain the contracts, amendments, payments and related correspondence.

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## ADDENDUM 1

## PRELIMINARY COST ESTIMATE

BASIC INFORMATION	
Installation Population	7,043
Expected Applicants (Instl Pop X 20% X 50%)	704
Average home value (Avg home val near instl)	\$55,000
PROGRAM COST ESTIMATE	
Pvt Sale Est (Dif between 95% of PFMV & sales price)	
Est # of Pvt Sales (19% X expected applicants)	134
Est cost of Pvt Sales (8% X avg home value) X (Est # Pvt Sales)	\$589,600
Govt Acq Estimate (Higher of existing mort. or 75% PFMV)	
Est # of Govt Acq (80% X expected applicants)	563
Est cost of Govt Acq (# acq X avg home value)	\$30,989,200
Est cost of reimb (e.g., tax, interest, etc.) (Avg monthly mort pmt X 3 months X # govt acq) + (1% avg home value X 25% X # govt acq)	\$774,730
Foreclosure Estimate (Amount of indebtedness)	
Est # foreclosures (1% of expected applicants)	7
Est cost of forecl. (Avg indebt. X # of forecl)	\$19,368
Administrative Estimate (Travel, Salaries, Title, Travel, etc.) (\$3,500 per applicant)	\$2,465,050
Property Management & Disposal Estimate (Interest, Taxes, Insurance, Sales, Maintenance) (15% of Acquisition Cost)	\$4,465,050
Total Cost Prior to Resale	\$39,302,998
Recovered from Resale (75% of Acq Costs)	\$23,241,900
<b>Total Estimated Program Cost</b>	<b>\$16,061,098</b>

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## ADDENDUM 2

### MARKET IMPACT STUDY (SAMPLE)

1. **PURPOSE:** A description of the announced closure/reduction; the date of the announcement or study; the recommended "public announcement date"; the effective date of the closure/reduction; and the installation functions affected.
2. **INSPECTION:** The date of neighborhood inspections and source of information; e.g., realtors, appraisers, Chamber of Commerce, local government planning agencies, and installation personnel.
3. **SCOPE OF STUDY:** A description of the types and locations of properties included in the study with an attached area map.
4. **DESCRIPTION OF AREA:** An overall discussion of the environmental, economic and location factors of the area, including cities and communities affected by the announcement. Economic factors such as plant closings and other adverse economic impacts must be addressed.
5. **REDUCTION OR REALIGNMENT:**
  - a. The total number of installation personnel, and the number of personnel affected by the reduction segregated by officers, enlisted personnel, and civilian personnel;
  - b. The estimated number of homeowners affected by the reduction;
  - c. A discussion of the future of the installation population and housing, including new assignments which may offset the reduction;
  - d. Installation payroll, before and after the reduction, along with the effect on the services provided by or to the community.
6. **OVERALL ECONOMIC CONDITIONS:** Use the economic data to measure the effect, both actual and potential, of the closure on the labor force, population, and payroll of the communities around the base. This section describes the adverse conditions which have impacted the area prior to and as a result of the installation closure or reduction. Interest rates, available mortgage funds, and their effect on the market should be discussed.

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7. REAL ESTATE MARKET CONDITIONS: See paragraph 7-8f of ER 405-1-12 for the criteria that must be included.

a. Discuss the appraisals provided with the report and their significance. (See paragraph 7-21 for instructions on appraisals.) Normally the appraisals of individual houses should be obtained by contract with a local certified appraiser, who is a member of the local multiple listing service and one who has considerable experience appraising local residential properties.

b. Discuss local real estate listings, sales, average prices and whether they are increasing or declining, average days on the market, and building permits issued during the last four years. Include charts tracking these changes, where appropriate.

c. Include a discussion of the effect of the closure/reduction on the rental market. Indicate whether foreclosures are increasing or declining, efforts by agencies to avoid defaults, and efforts to market foreclosure houses.

d. Comments from brokers and/or applicants.

8. CONCLUSIONS: A summary of the data supporting your recommendation.

NOTE: Confidentiality: Market impact studies prepared as pre-decision documentation for potential HAP implementation must be treated as privileged information, and should not be routinely released to the press or the public until the HAP decision is made. Release of HAP information is sensitive and should be coordinated with the Public Affairs Staff.

Date of report                      Name and title of preparer

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### ADDENDUM 3

#### PRIVACY ACT INFORMATION FOR HOMEOWNERS ASSISTANCE PROGRAM APPLICANTS

The Homeowners Assistance program was authorized by Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89-754 (80 Stat. 1255, 1290), as amended. The Corps of Engineers administers the Homeowners Assistance Program. Individuals seeking benefits under the Act must file an application form (DD Form 1607) and, in addition, may be requested to furnish supplemental information to support their applications. The information requested will be used to identify the number of homeowners affected by the announced closure/realignment, and to determine the impact on the market, eligibility, and entitlement to specific program benefits. The application and supporting information will be retained for three years, except in appeal cases where the record is considered permanent. Information disclosed by applicants will be treated on a confidential basis and will not be disclosed except to personnel in the Department of Defense who have a need for the information. Sale of the property to the government and the amount thereof is also reported to the Internal Revenue Service (IRS). Deeds of conveyance to the government, which may contain data on mortgages assumed, and other documents relating to sufficiency of title, are furnished to the Department of Justice for review. Information contained in the application form and supporting documents is furnished voluntarily; however, if all required information is not furnished, eligibility for benefits may be affected and benefits

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may be denied. Benefits under this program are considered "wages" for tax purposes.

The Social Security Number on the application is for identification purposes and is used to report to IRS the sale of the property to the government and to report withholding for Federal income tax, FICA and Medicare purposes. Its non-disclosure may or may not affect payment of benefits.

Date:

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#### ADDENDUM 4

### INFORMATION TO APPRAISERS REGARDING THE HOMEOWNERS ASSISTANCE PROGRAM

1. The Homeowners Assistance Program (HAP) is authorized by an Act of Congress which provides that federal employee homeowners may be entitled to reimbursement for some of the real estate losses they incur when their job is transferred or terminated and they have to relocate due to an installation being closed or realigned.
2. If the homeowner is unable to sell his/her home, the government will acquire it. However, this is not an acquisition in the usual sense as there is no Federal requirement for the houses and the acquisition is solely for the benefit of the homeowners. There is no condemnation in this program, nor is there any judicial review of the determinations made.
3. In this program, fair market value appraisals of houses, one to two-family residences and condominiums will be needed to determine benefits to be paid to the applicant or to a third party on his/her behalf. For instance, where an applicant has sold his/her home, we take an amount equal to 95 percent of the FMV prior to the public announcement date that the installation is being closed, subtract the FMV at the time of the sale from the 95 percent figure, and pay the difference to the applicant. Where an applicant is unable to sell the house himself/herself, he/she may sell the house to the government for the amount of the outstanding mortgages or for 75 percent of the FMV prior to the public announcement date.
4. Although the government purchases the house at 75 percent of the prior FMV or the amount of the outstanding mortgages, we must also know the after value of the house for determining the applicant's tax liability.
5. The appraiser will invite the owner or his/her representative to accompany him in the detailed inspection of the property and give careful attention to all information and comments given by the owner. During owner contact, no commitments will be made as to valuation estimates.
6. Each appraisal report will contain, as a minimum, the following:
  - a. A completed residential appraisal report, FNMA Form 1004.
  - b. A floor plan sketch of each subject property.

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c. Photographs of each subject property; front view, rear view, and street scene. Photographs of other major improvements and significant deferred maintenance or damage; front view of each comparable sale used.

d. For condominiums or two family residences, the appraisal will use FNMA Form 1073 or FNMA Form 1025, as appropriate.

e. For the prior FMV, include a brief discussion of the value in relation to original acquisition costs.

f. For after value appraisals, include a brief discussion of value in relation to the subject property's sale price or the foreclosure sales prices.

g. The contributory value of all improvements added by the owner/applicant will be considered and included in both the prior and after value appraisals. Capital improvements existing at the time of the property inspection must be utilized in both the prior and after value appraisals even if they did not exist at the time of the prior value appraisal or public announcement date. Any improvements made by a subsequent purchaser/owner, after a private sale or foreclosure, must be omitted in each the prior and after appraisal.

h. A general sales map showing the location of the subject and each comparable will be included in each report.

i. Other items as appropriate, particularly a narrative discussion of any item or factor that cannot be adequately covered or explained in a form report.

7. Each report shall be typed and submitted with an original and the number of copies needed depending on the dollar amount of the appraisal.

8. Delivery of the appraisals by a contractor should take no more than 21 days and the contract shall provide for liquidated damages for each day of delay, except when the delay arises from causes beyond the control or without fault or negligence on the part of the contractor.



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## ADDENDUM 5

### SCREENING FOR ENVIRONMENTAL HAZARDS IN DWELLINGS ACQUIRED

1. Required Screening/Inspections. Two screening inspections must be performed after acquisition of a dwelling:
  - a. Lead-Based Paint (LBP) screening required by the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821 et seq.;
  - b. Asbestos screening.
2. Methods of Performance. The method of performance of the screenings, i.e. whether performed by Crops personnel or by contractor, is at the district's discretion. If warranted by the volume of the program, the district may choose to have a contractor perform both screenings. However, LBP screening and asbestos screening should not be contracted for separately as LBP screening requires no special training or expertise and can be performed by any individual performing the asbestos screening.
3. Format of Reports. No particular form is required for reporting the results of LBP or asbestos screening.
4. Lead-Based paint Screening. The most recent law pertaining to the abatement of LBP in housing units is Public Law 102-550, Title X; commonly known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. This Act broadly regulates LBP in housing units. Additionally, the Department of housing and Urban Development has not yet promulgated the requisite guidance and regulations called for by the Act.
  - a. Until the provisions of the 1992 Act take effect, the sale of Army-controlled houses which contain LBP will continue to be governed by the 1978 Lead-Based Paint Poisoning Prevention Act, Public Law 91-965.
  - b. The current Army policy for the elimination of LBP hazards in properties covered by BRAC actions is based substantially on the 1978 Act. Although directed at BRAC properties, it is prudent to apply the same policies to HAP acquired houses even though HAP properties are not acquired for an Army mission, but only for the convenience of the HAP applicants.
  - c. Accordingly, the Army has committed itself to ensure properties sold for residential habitation are free of immediate LBP hazards. A visual inspection of all

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applicable surfaces in houses constructed prior to 1978 is required. All surfaces where the paint is cracking, scaling, chipping peeling, or loose, are termed a “defective paint surface”, are assumed to be immediate LBP hazards and must be covered or removed.

d. Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns), chemicals, or replacement of the painted building component. Machine sanding, dry hand sanding, and use of propane or gasoline torches are not permitted. Washing and repainting without thorough removal or covering is not considered adequate treatment.

e. If no immediate LBP hazard exists, a prospective purchaser must be notified prior to the purchase (1) that the property was constructed prior to 1978 and that it may contain LBP; (2) of the hazards of LBP; (3) of the symptoms and treatment of LBP poisoning; (4) of the precautions to be taken to avoid LBP poisoning; and (5) of all results of inspection, assessment, or testing for LBP and LBP hazards.

5. Asbestos Screening. Asbestos screening will initially be accomplished by a determination of whether or not friable asbestos is suspected. If there is no crumbling or pulverized insulation, tiles, roofing, shingles or other construction materials which may contain asbestos, it may be assumed no friable asbestos is present. If, however, there is reason to suspect friable asbestos is present, an inspection will be performed by a qualified inspector, either Corps or contractor, proficient in asbestos detection and DA/DOD asbestos policy.

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## ADDENDUM 1

## PRELIMINARY COST ESTIMATE

BASIC INFORMATION	
Installation Population	7,043
Expected Applicants (Instl Pop X 20% X 50%)	704
Average home value (Avg home val near instl)	\$55,000
PROGRAM COST ESTIMATE	
Pvt Sale Est (Dif between 95% of PFMV & sales price)	
Est # of Pvt Sales (19% X expected applicants)	134
Est cost of Pvt Sales (8% X avg home value) X (Est # Pvt Sales)	\$589,600
Govt Acq Estimate (Higher of existing mort. or 75% PFMV)	
Est # of Govt Acq (80% X expected applicants)	563
Est cost of Govt Acq (# acq X avg home value)	\$30,989,200
Est cost of reimb (e.g., tax, interest, etc.) (Avg monthly mort pmt X 3 months X # govt acq) + (1% avg home value X 25% X # govt acq)	\$774,730
Foreclosure Estimate (Amount of indebtedness)	
Est # foreclosures (1% of expected applicants)	7
Est cost of forecl. (Avg indebt. X # of forecl)	\$19,368
Administrative Estimate (Travel, Salaries, Title, Travel, etc.) (\$3,500 per applicant)	\$2,465,050
Property Management & Disposal Estimate (Interest, Taxes, Insurance, Sales, Maintenance) (15% of Acquisition Cost)	\$4,465,050
Total Cost Prior to Resale	\$39,302,998
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<b>Total Estimated Program Cost</b>	<b>\$16,061,098</b>

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## ADDENDUM 2

### MARKET IMPACT STUDY (SAMPLE)

1. **PURPOSE:** A description of the announced closure/reduction; the date of the announcement or study; the recommended "public announcement date"; the effective date of the closure/reduction; and the installation functions affected.
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3. **SCOPE OF STUDY:** A description of the types and locations of properties included in the study with an attached area map.
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5. **REDUCTION OR REALIGNMENT:**
  - a. The total number of installation personnel, and the number of personnel affected by the reduction segregated by officers, enlisted personnel, and civilian personnel;
  - b. The estimated number of homeowners affected by the reduction;
  - c. A discussion of the future of the installation population and housing, including new assignments which may offset the reduction;
  - d. Installation payroll, before and after the reduction, along with the effect on the services provided by or to the community.
6. **OVERALL ECONOMIC CONDITIONS:** Use the economic data to measure the effect, both actual and potential, of the closure on the labor force, population, and payroll of the communities around the base. This section describes the adverse conditions which have impacted the area prior to and as a result of the installation closure or reduction. Interest rates, available mortgage funds, and their effect on the market should be discussed.

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7. REAL ESTATE MARKET CONDITIONS: See paragraph 7-8f of ER 405-1-12 for the criteria that must be included.

a. Discuss the appraisals provided with the report and their significance. (See paragraph 7-21 for instructions on appraisals.) Normally the appraisals of individual houses should be obtained by contract with a local certified appraiser, who is a member of the local multiple listing service and one who has considerable experience appraising local residential properties.

b. Discuss local real estate listings, sales, average prices and whether they are increasing or declining, average days on the market, and building permits issued during the last four years. Include charts tracking these changes, where appropriate.

c. Include a discussion of the effect of the closure/reduction on the rental market. Indicate whether foreclosures are increasing or declining, efforts by agencies to avoid defaults, and efforts to market foreclosure houses.

d. Comments from brokers and/or applicants.

8. CONCLUSIONS: A summary of the data supporting your recommendation.

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Date of report                      Name and title of preparer

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### ADDENDUM 3

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The Social Security Number on the application is for identification purposes and is used to report to IRS the sale of the property to the government and to report withholding for Federal income tax, FICA and Medicare purposes. Its non-disclosure may or may not affect payment of benefits.

Date:

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#### ADDENDUM 4

### INFORMATION TO APPRAISERS REGARDING THE HOMEOWNERS ASSISTANCE PROGRAM

1. The Homeowners Assistance Program (HAP) is authorized by an Act of Congress which provides that federal employee homeowners may be entitled to reimbursement for some of the real estate losses they incur when their job is transferred or terminated and they have to relocate due to an installation being closed or realigned.
2. If the homeowner is unable to sell his/her home, the government will acquire it. However, this is not an acquisition in the usual sense as there is no Federal requirement for the houses and the acquisition is solely for the benefit of the homeowners. There is no condemnation in this program, nor is there any judicial review of the determinations made.
3. In this program, fair market value appraisals of houses, one to two-family residences and condominiums will be needed to determine benefits to be paid to the applicant or to a third party on his/her behalf. For instance, where an applicant has sold his/her home, we take an amount equal to 95 percent of the FMV prior to the public announcement date that the installation is being closed, subtract the FMV at the time of the sale from the 95 percent figure, and pay the difference to the applicant. Where an applicant is unable to sell the house himself/herself, he/she may sell the house to the government for the amount of the outstanding mortgages or for 75 percent of the FMV prior to the public announcement date.
4. Although the government purchases the house at 75 percent of the prior FMV or the amount of the outstanding mortgages, we must also know the after value of the house for determining the applicant's tax liability.
5. The appraiser will invite the owner or his/her representative to accompany him in the detailed inspection of the property and give careful attention to all information and comments given by the owner. During owner contact, no commitments will be made as to valuation estimates.
6. Each appraisal report will contain, as a minimum, the following:
  - a. A completed residential appraisal report, FNMA Form 1004.
  - b. A floor plan sketch of each subject property.



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c. Photographs of each subject property; front view, rear view, and street scene. Photographs of other major improvements and significant deferred maintenance or damage; front view of each comparable sale used.

d. For condominiums or two family residences, the appraisal will use FNMA Form 1073 or FNMA Form 1025, as appropriate.

e. For the prior FMV, include a brief discussion of the value in relation to original acquisition costs.

f. For after value appraisals, include a brief discussion of value in relation to the subject property's sale price or the foreclosure sales prices.

g. The contributory value of all improvements added by the owner/applicant will be considered and included in both the prior and after value appraisals. Capital improvements existing at the time of the property inspection must be utilized in both the prior and after value appraisals even if they did not exist at the time of the prior value appraisal or public announcement date. Any improvements made by a subsequent purchaser/owner, after a private sale or foreclosure, must be omitted in each the prior and after appraisal.

h. A general sales map showing the location of the subject and each comparable will be included in each report.

i. Other items as appropriate, particularly a narrative discussion of any item or factor that cannot be adequately covered or explained in a form report.

7. Each report shall be typed and submitted with an original and the number of copies needed depending on the dollar amount of the appraisal.

8. Delivery of the appraisals by a contractor should take no more than 21 days and the contract shall provide for liquidated damages for each day of delay, except when the delay arises from causes beyond the control or without fault or negligence on the part of the contractor.

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## ADDENDUM 5

### SCREENING FOR ENVIRONMENTAL HAZARDS IN DWELLINGS ACQUIRED

1. Required Screening/Inspections. Two screening inspections must be performed after acquisition of a dwelling:
  - a. Lead-Based Paint (LBP) screening required by the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821 et seq.;
  - b. Asbestos screening.
2. Methods of Performance. The method of performance of the screenings, i.e. whether performed by Crops personnel or by contractor, is at the district's discretion. If warranted by the volume of the program, the district may choose to have a contractor perform both screenings. However, LBP screening and asbestos screening should not be contracted for separately as LBP screening requires no special training or expertise and can be performed by any individual performing the asbestos screening.
3. Format of Reports. No particular form is required for reporting the results of LBP or asbestos screening.
4. Lead-Based paint Screening. The most recent law pertaining to the abatement of LBP in housing units is Public Law 102-550, Title X; commonly known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. This Act broadly regulates LBP in housing units. Additionally, the Department of housing and Urban Development has not yet promulgated the requisite guidance and regulations called for by the Act.
  - a. Until the provisions of the 1992 Act take effect, the sale of Army-controlled houses which contain LBP will continue to be governed by the 1978 Lead-Based Paint Poisoning Prevention Act, Public Law 91-965.
  - b. The current Army policy for the elimination of LBP hazards in properties covered by BRAC actions is based substantially on the 1978 Act. Although directed at BRAC properties, it is prudent to apply the same policies to HAP acquired houses even though HAP properties are not acquired for an Army mission, but only for the convenience of the HAP applicants.
  - c. Accordingly, the Army has committed itself to ensure properties sold for residential habitation are free of immediate LBP hazards. A visual inspection of all

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applicable surfaces in houses constructed prior to 1978 is required. All surfaces where the paint is cracking, scaling, chipping peeling, or loose, are termed a “defective paint surface”, are assumed to be immediate LBP hazards and must be covered or removed.

d. Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns), chemicals, or replacement of the painted building component. Machine sanding, dry hand sanding, and use of propane or gasoline torches are not permitted. Washing and repainting without thorough removal or covering is not considered adequate treatment.

e. If no immediate LBP hazard exists, a prospective purchaser must be notified prior to the purchase (1) that the property was constructed prior to 1978 and that it may contain LBP; (2) of the hazards of LBP; (3) of the symptoms and treatment of LBP poisoning; (4) of the precautions to be taken to avoid LBP poisoning; and (5) of all results of inspection, assessment, or testing for LBP and LBP hazards.

5. Asbestos Screening. Asbestos screening will initially be accomplished by a determination of whether or not friable asbestos is suspected. If there is no crumbling or pulverized insulation, tiles, roofing, shingles or other construction materials which may contain asbestos, it may be assumed no friable asbestos is present. If, however, there is reason to suspect friable asbestos is present, an inspection will be performed by a qualified inspector, either Corps or contractor, proficient in asbestos detection and DA/DOD asbestos policy.

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CHAPTER 8  
REAL PROPERTY MANAGEMENT  
SECTION I. GENERAL INTRODUCTION

8-1. Purpose. This chapter describes the general procedures for management of title to and interests in Army (civil and military) controlled real property and for issuing, managing, and administering outgrants authorizing the use of this real property. Air Force policy for AF controlled real property is established by AF regulations, however, these procedures will apply, as applicable, to real estate work performed for Air Force by the Corps of Engineers.

8-2. Applicability. This chapter applies to all division and District Engineers having real estate responsibility, and to the President of the Mississippi River Commission. The term “District Engineer” as used in this chapter means any District Engineer or district Chief of Real Estate, or other authorized representative of the Real Estate element; and the term “Division Engineer” means the Division Engineer, or if applicable, the President of the Mississippi River Commission, or division Director of Real Estate, or other authorized representative of the Real Estate element, unless the text expressly indicates otherwise. Actions related to property controlled by military elements shall be made by Division or District Engineers in their capacity as Division or District Commanders.

8-3. Division Supplementation. Since federal real estate is covered by many local and state laws, the division interprets state legislation and local laws affecting the real property within the division and issues regional policy. Some state requirements may be unique to the division. HQUSACE does not issue policy directives on state or local legislation or regulations. Division Engineer are authorized to issue division policy for districts within the division geographic area amplifying the nationwide policy set out in this chapter only where required to comply with regional, state or local requirements.

8-4. Organizational Responsibility for Civil Works Real Property. Within the Corps, administration of Civil Works real property will involve consultation and coordination among field elements. The references to Operations and Readiness Division are intended to include both the district and project elements.

a. The Real Estate Division will manage all lands acquired at the inception of a project for the purpose of phasing out interests of former owners or tenants, to provide for any interim use of the property before the project is completed, and to phase-in the completed project uses.

b. Operations and Readiness Division is responsible for preparation of master plans, updates, and supplements and operational management plans (OMP). In some districts this work is performed by the Planning element. The Operations elements will insure coordination of these documents with the Real Estate element, and any up-dates or revisions which affect outgrants or disposals of real property.

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c. Operations and Readiness Division is responsible for on-site physical management and stewardship of all project lands and renewable natural resources. However, when project real property is leased to non-Army users, the exclusive use of the property is transferred to the non-Army users through lease instruments which are administered by the Real Estate element. Operations and Readiness' on-site oversight is limited by the terms of the agreement. See Section VIII, Outgrant and Outgrant Management-Administration and Compliance. Licenses and easements allow joint on-site management by the grantee and Operations and Readiness Division, with only specified use rights given to the non-Army user through instruments which are administered by the Real Estate element.

d. Operations and Readiness Division, in coordination with Real Estate Division, determines whether a proposed non-Army use is in conformance with the master plan and will not interfere with project operations. Operations and Readiness Division is responsible for identifying site specific environmental, cultural, historical, and operational requirements for non-Army use. In some districts, separate elements perform environmental and cultural technical work. Operations and Readiness Division and Real Estate Division will agree on any site specific conditions for the proposed outgrant document before the outgrant is consummated.

e. The Operations and Readiness Division will prepare and process the General Plan required by the Fish and Wildlife Coordination Act of 1958. (Also see ER 1130-2-400 for fish and wildlife coordination between state and Federal agencies.)

f. The Real Estate Division is responsible for negotiating, issuing, administering and managing all outgrants. Shoreline use permits, Section 10 and Section 404 permits are not considered outgrants. Project representatives, incidental to their usual activities, observing any instance of potential outgrant violation will report the circumstances immediately to the district Real Estate element. Certain delegations to Operations and Readiness elements for compliance inspections are set out in Section VIII of this chapter.

g. The Planning Division, Programs and Project Management, or Operations and Readiness Division, as applicable, and the Real Estate Division will jointly negotiate Project Cooperation Agreements (PCA) and Cooperative Association Agreements which involve leases of project lands to local sponsors. These leases will be maintained in the realty records.

h. The Real Estate Division is responsible for resolving all land title disputes, claims involving damage to real estate or arising under outgrants, boundary disputes and actions involving encroachments; and for coordination of such action with the Operations element and other district elements as necessary.

i. The Real Estate Division, with coordination and assistance by Planning Division and Operations and Readiness Division, is responsible for surveys and reviews conducted in compliance with Executive Order 12512, the Federal Property Management Regulations and the Federal Property and Administrative Services Act of 1949, as amended.

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j. Budget - Input into Operational Management Plan. Real Estate must work closely with the Operations and Readiness Division (and with the project staff) to develop priorities and provide cost estimates and work items for the Civil O&M budget and the Operational Management Plan, which sets out the five-year work plan for each project. Open communication is essential to developing budgets which take into consideration the work items which will be funded by the projects.

8-5. Organizational Responsibility for Military Real Property. Responsibilities and policy for determining availability of Army real property for outgranting are found in AR 405-80 and in the supporting Army Technical Manual (TM). The procedures of this chapter are to be used for issuing, managing, and administering outgrants authorizing the use of Army real property. Air Force real property will be determined available in accordance with appropriate Air Force regulations.

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## SECTION II. REAL ESTATE MANAGEMENT PROGRAMS - UTILIZATION REVIEWS FOR CIVIL WORKS PROJECTS

8-6. Background. Since the early 1940's, the Department of the Army has recognized the importance of our real property resources through a utilization inspection program for Army real property, both military and civil. The Real Estate elements have performed comprehensive surveys and periodic reviews to determine the current use of property, the degree of utilization, management improvement recommendations, and properties excess to Army needs. The success of the program has depended in large degree upon the coordination of the acquisition, management and disposal phases of the real property program. To achieve this, the real estate organization was directed from the beginning by the Under Secretary of War to maintain a high standard of supervision and to continue the application of sound policies. Beginning in 1970, various executive orders have directed all executive agencies to improve their real property asset management. These executive orders have, as a common theme, the identification of property not utilized, underutilized or not being put to optimum use. The most recent, Executive Order 12512, has placed increased emphasis on improved asset management and sets out several requirements to ensure that Federal real property resources are treated in accordance with their value as National assets and in the best interests of the Nation's taxpayers.

8-7. Authorities, Laws, Regulations and Requirements. The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. § 471, et seq), requires surveys of property holdings to identify excess property. Under Executive Order 12512, Section 1. (b), all executive agencies are required to periodically review their real property holdings and conduct surveys of such property in accordance with standards and procedures determined by the Administrator of General Services and develop annual real property management improvement plans. (See Paragraph 8-18) The implementing Federal Property Management Regulations (FPMR), 41 CFR, Subparts 101-47.2 and 101-47.8, require an annual survey and review of real property holdings to identify property not needed or not utilized, underutilized, or not being put to optimum use. The policy of the Administrator of General Services, stated at 41 CFR 101-47.201-1, is for executive agencies to identify and report excess real property, to achieve the maximum utilization of property, to minimize purchase of real property, and to transfer excess real property among agencies. Real property is defined at 41 CFR 101-47.103-12.

### 8-8. Utilization Goals.

a. In accordance with the above cited, Real Estate will annually evaluate all Civil Works real property holdings to ensure that they are used efficiently, economically, and for Congressionally authorized and approved project purposes and programs, and to identify any interest not needed, underutilized, or not being put to optimum use.

b. Department of the Army goals are to ensure proper management and use of real property authorized for mission purposes; promote multiple use of project lands, if authorized; minimize additional real estate acquisition; reduce maintenance and custody costs; determine

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interim or collateral use which could improve management of project resources; and dispose of real property interests where there is no authorized project requirement.

c. The annual evaluation will generally be performed in a six-year cycle with a detailed on-site survey no less than every three years, and a survey under Executive Order 12512 in the GSA format every six years, with written reviews without on-site survey in all other years. An example of a complete cycle of reports would be: 1993, report on ENG Form 3871 based upon an on-site survey; 1994 and 1995, evaluation documented as a written supplement to ENG Form 3871 without on-site survey; 1996, GSA format report based upon an on-site survey; 1997 and 1998, evaluation documented as a written supplement to ENG Form 3871 without on-site survey; 1999, repeat cycle with ENG Form 3871 based upon an on-site survey, and so forth.

#### 8-9. Scope.

a. It is our policy to evaluate current civil real property holdings in accordance with the current acquisition standards, as shown in Chapter 2 of this regulation, including the 1971 implementation of the 22 February 1962 Departments of the Army and Interior Joint Policy, 32 CFR 644.4, 43 CFR 8. Real estate interests that would not be acquired under current standards interests that would be authorized for acquisition under current standards but were not acquired; and areas outside of the government boundary line now being utilized for operation of the project, should be noted. The acquisition criteria in effect at the time of acquisition for the project does not alter the requirement to re-evaluate. When reviewing real estate interests encompassed by the Joint Policy, the type of estate held should also be reviewed. The Joint Policy provides some latitude in selecting fee or easement estates. If the Government's interest can be fully protected through the use of easements, disposal of the underlying fee should be considered. (Note that the guide acquisition line is not solely a specific elevation or contour line, but may begin with a contour, using the most current meteorological or other data, and then include lands required for project purposes, such as recreation areas, wildlife mitigation, project structures, roads, etc., which are above that elevation). In other words, ask "If we were acquiring this project today, including all Congressionally authorized purposes, and making use of approved planning and operational documents for the project, what would we acquire?"

b. All real property holdings in the civil inventory (including buildings) for which the District Engineer is accountable will be evaluated annually, as set out in subparagraph 8-8.c. Minor land holdings, such as stream gauge stations or radio repeater sites, should be grouped as a system or with projects they support. Capital improvements, cultural and historical resources and forest, grass cover, wildlife habitat and other natural resources are an integral part of the real property and contribute to the utilization of the real property. Outgranted areas must be evaluated for land allocation and use. Real property utilization evaluations are not to be confused with compliance inspections. Compliance inspections are to determine that specific grantees are complying with the terms of their outgrant.



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c. The evaluation of civil real property will be broad enough to determine the extent of use, changing trends in use, and to identify unauthorized uses. Data and recommendations will be used in the preparation of the appropriate report. A physical on-site survey will be done in accordance with Paragraph 8-13.

d. Operational structures, such as locks, dams, spillways, powerhouses, switchyards, overflow dikes, saddle dikes, retaining walls, stilling basins, and similarly related structures forming an integral part of the operation of the project, will be noted in the listing of improvements. Lands held for the disposal of dredged materials and navigation channels will also be noted. The Operations element is responsible for the annual evaluation of these structures. Any instances of underutilization, nonutilization or encroachment of these properties will be reported to Real Estate for notation in the annual report and corrective action. Other structures, such as recreation, housing, Government quarters, etc., will be evaluated by Real Estate. Detailed building space utilization surveys under EO 12411, Government Work Space Management Reforms, are described in Paragraph 8-19.

8-10. The Basic Premise for Real Property Utilization Evaluations. Real property utilization evaluations provide the internal control system that ensures effective, economical use of real property in support of mission-related activities, consistent with Federal policies regarding the acquisition, management and disposal of such assets. The evaluation protects the integrity of our land management programs by providing a system of checks and balances.

8-11. Advance Preparation for Real Property Utilization Evaluation. The evaluator must prepare by using various background documents and data about the project. "Authorized and Operating Purposes of Corps of Engineers Reservoirs," dated July 1992, or more recent versions, should be used for those projects listed. Appropriate information should be gathered from the last report and on-site survey; master plans, operational management plans, and other approved project documents; interviews of project staff members; real estate acquisition instruments; REMIS listings of outgrants and the outgrant documents; the annual inventory report, GSA Form 1166, "Annual Report of Real Property Owned by the U. S." (See Chapter 14 of this regulation); and other applicable sources. This information should show accurately the estates held and outgranted by the Government, use of this property, and changes in use as they affect real estate and utilization of property. Appendix 8-A, Figure 8-A-1 sets out suggested steps.

8-12. Scheduling On-site Survey. Real Estate will schedule on-site surveys at new projects one year after the calendar year in which the project becomes operational. Other real property holdings will be surveyed on-site every three years. (The three year on-site survey also complies with Chapter 16 of this regulation covering accountability of civil and military property under AR 735-5). An on-site survey is not required for other annual reviews, however, the Division Engineer may establish a more frequent schedule for major projects or projects in a state of change. The project manager will be advised before the survey and should accompany the real estate person on the survey, if at all possible. The date of the survey will be provided at least 1 month in advance so that project team members, lessees, representatives of lessees, and any

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others knowledgeable about the property can be available for interview. Other reasonable notice can be given, if agreed to by the project manager and the district real estate evaluator.

8-13. Conduct of On-Site Survey.

a. Appropriate transportation by automobile or boat will be used, with walks around the property where necessary. Aircraft or boats may be used to inspect significant remote areas or otherwise inaccessible shorelines where necessary. For land holdings where no significant change in use has occurred, the property may be viewed by using recent aerial photographs or other reliable methods.

b. The person conducting the survey should consider the questions on ENG Form 3871, Report on Utilization of Civil Works Lands and Facilities, those set out in the General Services Administration (GSA) Federal Property Management Regulations (41 C.F.R. 101-47.801(b)), and those in the most recent GSA Executive Order survey format. In addition, the questions set out in Appendix 8-A, Figure 8-A-2b should be considered.

c. Exit Interview. The person conducting the survey should discuss findings and tentative recommendations with the project manager. It is particularly critical to discuss any problems or deficiencies. See para 8-15.c. for coordination of report.

8-14. Unauthorized Use of Property. Evaluations will note any property used without authorization. See Section III, "Real Estate Management Programs - Encroachment and Trespass," of this chapter.

8-15. Real Property Utilization Reports (On-site Survey).

a. Reports based upon an on-site survey shall be prepared on ENG Form 3871, Report on Utilization of Civil Works Lands and Facilities. Detailed instructions for preparing this form is contained within the form. If this is the year for submittal in the GSA format, prepare the report in accordance with Paragraph 8-18 for Executive Order surveys.

b. The report will note any conflicts or significant deviations between actual land use and the approved master plan, supplements, operational management plans, and appendixes.

c. As soon as possible after the on-site survey, the person who performed the survey will prepare ENG Form 3871 and coordinate it with Operations, Planning, and other interested district elements, so that they may take notice of or action on recommendations or notations within their area. A copy of the report will be forwarded to the project manager for comment. Written comments and recommendations received during this coordination should be attached as an appendix to the final report. If no comments are received, the appendix will note coordination. This report is not a district product which requires an agreed upon district position, but an evaluation for the command performed by Real Estate. The final report will be signed by the preparer and approved by the district Chief, Real Estate Division. A copy will be

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provided to the District Engineer and to the coordinating elements. All ENG Form 3871 reports will be submitted to the Division Engineer for review and approval.

d. Any potentially excess property identified in a report will be reviewed to determine if it is, in fact, excess to district requirements. Any property excluded during the EO 12512 evaluation under the criteria of ER 1130-2-400, Appendix 8-F, should be reviewed. The requirement for the property will be evaluated without regard to the existence of outgrants. Outgranted property which is identified as potentially excess requires special sensitivity to the rights of the grantee. The outgrant will not be terminated, however, any outgrant renewal action will take into account the status of any excessing process. The district should allow enough time to give proper notice to a grantee if the decision is not to renew, or to renew for short terms, due to excessing actions. Operational impact, environmental assessments and impact, cultural, historic, wetlands, and endangered species reviews are a part of the determination of excess process. If the property is recommended as excess by the district, a Report of Excess will be forwarded to the Division Engineer for submission to HQUSACE for completion of a Determination of Excess.

e. The identification of additional acquisition requirements using the current Joint Policy does not mean that these interests will be acquired. However, areas outside of the government boundary line now being utilized for operation of the project must be acquired since that constitutes a taking of private property without compensation. In some older projects, property was not acquired to the design elevations due to decisions made to wait for the design event and pay claims rather than acquire. However, under the Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970, Title 42, United States Code, Section 4600, as amended, and implementing uniform regulations by the DOT (sometimes referred to as PL 91-646), the government now has an obligation to proceed with acquisition of property interest required for a Federal action and must not wait for a private entity to file a claim or litigation. The potential for taking and/or tort claims and the need to pursue acquisition should be evaluated in the report.

#### 8-16. Real Property Utilization Reports (No On-site Survey).

a. The annual evaluation for those years where no on-site survey is performed will be documented in writing as a supplement to the previous years report.

b. If this written document shows any changes or recommendations, it will be coordinated with Operations, Planning, and other interested district elements, so that they may take notice or action on recommendations or notations within their area. A copy will be forwarded to the project manager. Written comments and recommendations received during this coordination will be attached. The division may require submittal for review and approval.

8-17. Screening for Suitability for Use by Homeless. Property identified as not utilized, underutilized, or not put to optimum use must be reported quarterly to HQUSACE (CERE-M)

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for the quarterly reports to Housing and Urban Development (HUD) for determination of suitability to assist the homeless under the Stuart B. McKinney Homeless Assistance Act.

8-18. Executive Order 12512, Federal Real Property Management.

a. As set out in Paragraph 8-7 above, we are required to periodically review our real property holdings and conduct surveys of such property to identify property that is not utilized, underutilized, and not being put to optimum use. The principles set out in Paragraphs 8-8 through 8-13 above should also be applied in those years when the survey is prepared in the GSA format. Districts and divisions will be notified in advance of any special evaluation requirements to be performed by Real Estate based upon standards and procedures issued by GSA.

b. The FPMR, 41 CFR Subpart 101-47.8, covers the implementation of the Executive Order surveys, and limits application to fee-owned real property and supporting leaseholds or lesser interests. As defined in FPMR Subpart 101-47.103-12, real property excludes lands withdrawn from the public domain. Withdrawn lands, facilities that are leasehold interests not directly supporting a fee-owned project, and projects authorized by a Memorandum of Understanding from another installation or agency, are exempt from the requirement for an Executive Order survey, however, they are covered by the annual evaluation requirements set out in Paragraph 8-6 through 8-17. Public domain lands are also evaluated under the Withdrawal Review Program, covered in Section IV of this chapter.

c. Every sixth year, following an on-site survey, the reports for real property covered by FPMR Subpart 101-47.8, to be surveyed under this program, will be prepared in the format required by GSA for Real Property Survey Reports rather than on ENG Form 3871. The report is submitted as our agency survey under Executive Order 12512 and should present a fully coordinated and agreed upon agency position. There will be no duplication of effort. Each District should program one-sixth of the qualifying properties for preparation in the GSA format each year.

d. GSA provides approved formats for these reports to all executive agencies. The format has been shortened and standardized over the years. The person performing the survey should follow the current format without including additional information. Each topic should be listed and addressed. There has been increased emphasis on maps attached to the report. Pay particular attention to the instructions given for the type of map needed. The maps are not intended to add bulk to the report but rather follow the principle that a picture can be worth a thousand words and a good map can be worth a million.

e. GSA Form 1166, Annual Report of Real Property Owned by the U. S., can be included if it would serve a useful purpose.

f. Real estate interests not encompassed by the current acquisition criteria will be reviewed for excessing, however, those areas covered by the guidance set out in ER 1130-2-400,

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Appendix 8-F, may not be available for excessing. Retention of property interests outside of the acquisition criteria and not covered by said Appendix 8-F must be fully justified in writing.

g. If no property is identified as excess, then the division will forward the report to GSA as our agency survey, with two copies to GSA Central and one copy to the applicable GSA regional office. If property is identified as excess, then four copies will be forwarded to CEREMC, in lieu of a separate report of excess. After appropriate action to declare the property excess to DA requirements, CEREMC will process the survey to GSA. For all reports which must be forwarded to CEREMC, the person who performed the survey and each coordinated element will be shown on a separate sheet of paper attached to the report. After 60 days or the receipt of comments from GSA, whichever comes first, the report will be returned to the district for any necessary action.

h. Annual Real Property Management Improvement Plan. Executive Order 12512 requires overall real property management plans and productivity and excess property targets. Until further guidance is received from GSA on format and content, the GSA-format reports and the annual reports with supporting comments and recommendations will be considered the district Executive Order 12512 Real Property Management Improvement Plan.

i. The Office of Management and Budget (OMB) reviews, through the management and budget process, the efforts of agencies in achieving its policies. Each agency is required by GSA to provide information on real property in the OMB Annual Data Call for submittal by GSA to OMB. The data for this report is currently submitted on a GSA form, Real Property Inventory Analysis, to GSA. The report requires a listing of the GSA-format, Executive Order Survey reports performed during the year and a list of those projected for the next FY. A separate form is provided for property identified in a survey/review as not utilized, underutilized, or not put to optimum use, as defined in 41 CFR 101-47.801 (a). In addition, separate lists are required for Army, civil and military. The lists include properties reported excess to GSA during the current FY and properties which will have an executed Determination of Excess and are projected to be submitted on an SF 118, Report of Excess, to GSA in the next FY. (Keep your projections realistic). Each district will furnish this report through their respective division to CEREM no later than 1 August of each year. Appraisals are not required for any informal value conclusions included on the form.

j. Surveys by General Services Administration. The General Services Administration will continue to survey certain projects through their National Survey Teams (NST) to review the utilization of multiple Federal facilities and installations. Also, pursuant to Executive Order 12512, Section 2, GSA may conduct separate surveys. Upon receipt of notice of such a survey, the District Engineer will immediately notify the Division Engineer and HQUSACE (CEREM), alert appropriate district and project team members, and provide GSA with appropriate information: names and phone number of persons who will represent the District Engineer during the survey; level of any security clearance required of GSA inspectors; and any other information requested by GSA. (41 CFR 101-47.802 (b)) Representatives of the District Engineer will meet the GSA survey team as appointed, accompany them throughout the survey, and furnish additional information as requested.

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k. As part of the OMB Data Call, a schedule of those real property management surveys programmed to be prepared in the GSA format will be completed and submitted to CERE-M by 1 Aug of each year to allow GSA the option of assigning qualified observers/advisors to participate in as many of the surveys as feasible.

8-19. Space Utilization Inspection of USACE Installations. Logistics personnel will inspect USACE Installations to determine space utilization and insure compliance with AR 405-70 and Executive Order 12411, Government Work Space Management Reforms. Reference ER 420-1-3.

8-20. Utilization Inspections of Military Real Property. The installation or activity which controls Army space performs utilization inspections and must actively supervise space use and periodically survey space occupied to insure efficiency and economy. See AR 405-70.

8-21. Reserved.

8-22. Reserved.

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### SECTION III. REAL ESTATE MANAGEMENT PROGRAMS- ENCROACHMENT AND TRESPASS

8-23. General. Encroachments at Civil Works projects and military installations exist both on land over which the United States holds an easement interest where the deed of transfer prohibits structures or other improvements and on land owned in fee by the United States. Encroachments usually occur because the boundaries of the Government's property interests are not clearly marked and, therefore, adjacent landowners inadvertently construct prohibited permanent or semi-permanent structures on land in which the Government has an interest.

8-24. Definitions.

a. The term "encroachment" as used in this section pertains to a structure or improvement built, installed or established which interferes with a real estate interest of the United States, either a fee interest or an easement if such is prohibited in the deed. An encroachment has occurred where the structure or improvement extends over, across, in or upon lands in which the Government owns a real estate interest which would prohibit such, and the structure or improvement has not been approved. Note that easement estates only acquire those rights set out in the deed, e.g. the right to flood, to deposit dredge, to cut away for channels, height restrictions. There are numerous easement estates which have been acquired over the years and not all easements prohibit the underlying fee holder from building, installing or establishing structures or improvements. Some grandfather in existing structures. If the easement estate does not prohibit structures or improvements, then there is no encroachment.

b. Structure or improvement as used in this section, mean a permanent or semi-permanent facility, such as a habitable dwelling, building, fence, deck, porch, barn, outhouse, permanent storage building, road, pond, leach field and septic tank, utility line, levee, excavation, placement of fill material, oil and gas well, mine entrance and tunnel. Attempts to circumvent the restrictions of a Civil Works flowage easement by the use of landfill or by removal of earthen material which alters the contour may violate the terms of the easement. The landfill would be considered an encroachment. In U.S. v. Fisher-Otis Co., Inc., 496 F.2d. 1146 (10th Cir; 1974) the court held that the use of landfill in the flowage easement area materially interfered with the Government's rights to occasionally flood the land.

c. The term "trespass" as used in this section pertains to unauthorized transient use and occupancy, such as livestock grazing, mowing, planting, cultivation and harvesting of crops, timber cutting and removal. Trespasses fall into two categories: those at civil works projects for which Title 36 is an appropriate remedy; and those for which the Government has another legal remedy, i.e. state law on timber cutting and removal, or for which a short term outgrant may be appropriate, such as crops until harvest.

8-25. Policy. The general policy is to require removal of encroachments, restoration of the premises and collection of appropriate administrative costs and fair market value for the term of the unauthorized use.

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8-26. Exceptions to Removal. Exceptions to this general policy may be considered for unintentional encroachments after a determination that the area involved is no longer required, either temporarily or permanently, for mission or operational purposes. Easements differ in the type of rights acquired and restrictions imposed, so that exceptions to removal will consider the ability of the Government to exercise the easement interest acquired and non-removal may often only be allowable through disposal of the easement interest.

a. In making the determination that the encroachment was unintentional, the following factors may be considered:

(1) The encroaching party acted on the basis of a private survey which was performed before the Government boundary line was surveyed and marked on the ground.

(2) The encroaching party acted on the basis of an erroneous Government survey.

(3) The encroaching party acted on erroneous information provided by the Government for which official documentation is available, and granting an exception to removal will not result in an unacceptable adverse impact.

(4) The encroaching party can establish by affidavit or other credible evidence that the bounds of the land upon which the encroachment is located was reasonably thought to be a part of that party's ownership by historically accepted monumentation, e.g. old fences, hedgerow, roads. See the Paragraph 8-29 on boundary line agreements.

(5) The encroaching party can establish by court decree, affidavit, or other credible evidence that the land was claimed by adverse possession, which ripened into title prior to the Government's acquisition or that title is in dispute. However, see Paragraph 8-39 on Land Title Disputes.

b. Removal action will be pursued for those encroachments which are intentional in nature. In making the determination that the encroachment is intentional, the following criteria may be considered:

(1) The encroaching party constructed without obtaining the proper surveys or title evidence.

(2) The encroaching party continued to build with knowledge or actual notice of the easement restrictions or Government boundary line.

(3) The Government boundary was surveyed and marked prior to the construction date, even if no marker is at this particular spot.

8-27. Special Considerations for Structures at Civil Works Projects.



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a. Residences. Human habitation below the flood control or controlled navigation pool elevation is presumed to place an undue limitation on the Congressionally authorized operation of the project. Whether the encroachment is intentional or unintentional, non-removal may be approved under certain conditions, if it can be demonstrated that the continued occupation of the site will not result in a significant threat to human life, health, or safety, and will not place or suggest any restriction on the operation of the project. As with other structures, such developments must meet the requirements of national policies on floodplain management as set forth in Executive Order 11988 and its implementing regulations. Executive Order 11988 requires consideration of alternatives which avoid the floodplain wherever practical. Therefore, any request for non-removal of a human habitation structure in a floodplain or project pool must also demonstrate that there is no practical alternative to removal of the habitable structure. In addition, if there is any threat to human life, the proposal will not be recommended for approval unless it can be demonstrated that there would be adequate warning time to evacuate the structure in the event of a flood event projected to flood the site, and that non-flooded access out of the area would be available for evacuation including non-flooded egress out of the project area (offsite). The release of the human habitation restriction in the flowage easement estate must be by deed. See Paragraph 8-28c.

b. Non-dwelling structure. For easement areas, the encroaching structure or improvement must be of the type for which consent would have been given if consent had been requested. For fee lands, the encroachment must be a substantial structure which would create undue hardship if removal were required. Flag poles are allowed at Civil Works projects but may only fly the American flag.

8-28. Procedures for Resolving Encroachments. There are four basic methods of curing an encroachment: removal, disposal, exchange, and outgrant or consent (for easements).

a. Removal.

(1) An effort should be made to have the encroaching party voluntarily remove the encroachment. When the party demonstrates a willingness to cooperate, a reasonable period of time should be allowed for voluntary removal. The time period should be documented in writing to the encroaching party.

(2) Cases to be referred to the U.S. Attorney for civil action will be reported to Real Estate Division for preparation and submission of a Litigation Report, in accordance with ER 1180-1-1. Investigation and processing of these cases will be given the highest priority possible. Projects or installations will be provided with periodic status reports. By letter dated 15 October 1979, the Chief Counsel has delegated to the districts the authority to directly refer to the local U.S. Attorney cases involving encroachments, trespass and removal of holdover tenants. The case must not contain new or unusual questions of law or disputes relative to title or boundary; the case must have already been the subject of a formal demand on the individual(s) involved; and copies of the request must be furnished to CECC-K and CERE-M.

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b. Outgrant. If the encroachment is eligible for resolution by other than removal, an outgrant in accordance with the procedures of this chapter may be considered. A lease, easement or license may be appropriate depending on the nature of the encroachment. In easements areas, a consent to structure, if applicable under the easement estate, may be issued after the fact.

c. Disposal or exchange. A disposal by negotiated sale or exchange is processed under the procedures of ER 405-1-12, Chapter 11. Generally, disposal of fee or release of easement restriction on human habitation will not be recommended. The release of the human habitation restriction in a Civil Works flowage easement is a property right that must be disposed of by deed.

#### 8-29. Boundary-line Agreements.

a. At the time of acquisition of property for many of the older Civil Works projects, the property was described and later mapped by interpolation of a contour line onto aerial photographs. Some military installations may have similar acquisition issues. This has resulted in the description in the deeds being erroneous when applied to the property on the ground. These uncertain boundaries have resulted in technical encroachments by adjoining private owners and possible encroachment by the United States which could lead to a taking claim. Resolution by written boundary line agreements between the adjacent landowner and the United States may be appropriate.

b. Some state laws provide that boundary lines between adjoining owners may be established or changed by mutual agreement between them; that these agreements may be recorded and that such agreements are binding upon all successors in interests and privities to the parties. Under the laws of those states, the boundary line agreement is not a conveyance, but merely an agreement between the District Engineer and the affected landowner to make certain a line which has been disputed or uncertain.

c. In the laws of states where a boundary line agreement must be in the form of a conveyance deed to bind future parties, the agreement/quitclaim deed must be done in accordance with negotiated disposal procedures or an exchange. See ER 405-1-12, Chapter 11.

d. No standard format has been prepared due to variations in state law, however, samples may be obtained from HQUSACE (CERE-M) of both a "Boundary Line Agreement" and a "Boundary Line Agreement and Quitclaim Deed".

8-30. Ongoing Litigation. Litigation filed under previous policies are not intended to be adversely impacted by any changes in criteria for resolution of encroachments set forth herein.

8-31. Reserved.

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SECTION IV. REAL ESTATE MANAGEMENT PROGRAMS -  
PUBLIC LAND WITHDRAWAL REVIEW

8-32. General. Section 204(1) of the Federal Land Policy and Management Act of 1976 (FLPMA), Title 43, United States Code, Section 1714(1), directs the Secretary of the Interior to review certain classes of public domain land withdrawals in eleven western states: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. The review will determine whether continued withdrawal of these lands will be granted, and for how long. FLPMA, section 204(f) also sets out that every withdrawal will be reviewed towards the end of the withdrawal period. Therefore, once the initial review is completed, the process will continue.

8-33. Schedule of Withdrawal Reviews. The District Engineer will prepare a list of the withdrawals to be reviewed, grouped by military installation and Civil Works project within the district, if located in any of the specified eleven states. For Civil Works projects, the schedule will be developed to review the project's withdrawals at the same time that the project is scheduled for an on-site utilization survey. The District Engineer should work with the MACOMS to set installation schedules. The schedule will be submitted to the state Bureau of Land Management (BLM) office.

8-34. Review Coordination. The District Engineer will coordinate with the district BLM office to review all Army (military and civil) withdrawals within the specified eleven states. The review will be a team effort with the installation commander for a military withdrawal or with the Operations and Readiness Division for a Civil Works withdrawal. The review will be prepared in a report or Rejustification Statement.

8-35. Rejustification Statement. The report should contain the following elements:

a. General information on location and acreage (use most recent Real Property Utilization Survey). BLM has indicated that a field survey should be a part of the review whenever possible.

b. The present and future uses of the land and justification for continuing military or civil works use of the land.

c. Narrative on how the present use serves the original purpose of the withdrawal. The review is an opportunity to correct use statements, add areas, or terminate areas.

d. The period of time the withdrawal will be needed to fulfill the authorized purposes and future mission of the installation or Civil Works project. A definite number of years must be specified, normally to coincide with the duration of the intended use. The estimated life of the facilities and improvements located on the land may provide supporting justification. For civil works, the life of the project up to 100 years will be used.

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e. Whether the land, if previously closed to operation of mining and mineral leasing, can be opened to mining or to mineral leasing. Army policy on mineral leasing is set out in AR 405-30. The operation of the mining acts for locatable minerals (generally metallic and hardrock minerals) could open the land to claims for title from private parties and should be reviewed carefully. Recommendation for "exclusive military use" which closes the land to multiple use must show that co-use is incompatible with mission. Areas previously open may be justified for segregation.

f. Whether a lesser interest in land, such as a permit, right-of-way or Cooperative Agreement, can meet mission or project requirements, in lieu of withdrawal.

g. Maps, photos, plans, etc.

8-36. Procedure.

a. Neither the MACOM nor the Division Engineer has the delegated authority to present the final Army position. When the District Engineer, with concurrence by the Installation Commander, reaches agreement on the terms of the proposed modification with the District BLM, the District Engineer will submit a withdrawal review transmittal assembly through the Division Engineer to HQUSACE (CERE-M) for review and approval by the Secretary of the Army. The assembly will include the Rejustification Statement; the draft PLO; a draft letter for the signature of the Secretary of the Army, notifying the Secretary of the Interior of the Secretary's consent to the proposed withdrawal modification; any disputed or unusual circumstances; and a brief summary of the negotiations and coordination with BLM.

b. A copy of the signed letter by the Secretary of the Army will be sent to the District Engineer, and the MACOMs if military. The Department of Interior will handle its own internal review procedures with its state and district offices.

c. The Rejustification Statement will be the basis for negotiation with BLM for the terms and conditions of the withdrawal order. This will result in either a reaffirmation of the existing Public Land Order (PLO), (or for older cases the Executive Order or legislative withdrawal), or a modification of the withdrawal. In some cases overlapping orders or unneeded orders may be found so that either whole orders or parts of orders can be terminated. BLM will, by draft (PLO), recommend a withdrawal modification at least to establish a review period, for further action by the Secretary of Interior. A modification to the existing order to establish a review period is preferred, since this does not call into question the current status of mining and mineral issues. A new order will only be used in extreme circumstances or if the intent is to change the status.

8-37. Reserved.

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8-38. Reserved.

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SECTION V. REAL ESTATE WAGEMENT PROGRAMS - MISCELLANEOUS

8-39. Land title disputes. The specific case must be evaluated as to whether or not it is an encroachment or a disputed title action. Direct referral of cases under the Federal Quiet Title Act has not been delegated. Close review of the acquisition files is necessary. See Paragraph 8-29 for a discussion on boundary line agreements.

8-40. Claims involving damage to real estate or arising under outgrants.

a. Claims involving takings of private property by the Army or damages to real estate arising from an inlease, right-of-entry, maneuver permits or other contracts are covered by ER 405-1-12, Chapter 10, and AR 405-15.

b. Claims as defined by the disputes clause in the outlease document are discussed in the section in this chapter on leases.

8-41. Development of Hydropower by Non-Federal Interests.

a. Under Title 16, United States Code, Section 791a, et seq., the Federal Energy Regulatory Commission (FERC) issues permits to non-federal interests to investigate and prepare feasibility studies on development of hydropower projects on Federal property. FERC is authorized to issue licenses to construct and operate such projects on Federal property. Under a Memorandum of Understanding between FERC and the Department of the Army, regarding non-federal hydropower development, dated November 1981, applications by non-federal interests for licenses to construct on Corps projects must be coordinated by FERC with the Corps. Upon referral by FERC of applications for permits or licenses, investigation of applications should be coordinated with all interested Corps elements and must report a discussion of Corps interests which could result in recommendations for provisions to be included in subsequent licenses. (See ER 1110-2-1454).

b. Real Estate should determine the adequacy of the Federal interest in the real property proposed for inclusion in the hydropower project, and whether the project would interfere with existing or proposed outgrants. Real Estate will also determine the value of Federal resources which will be damaged or destroyed as a result of the construction or operation of the project, and recommend provision for relocation, restoration or reimbursement by the prospective licensee. Affected outgrants to other parties will be modified or terminated in accordance with this regulation.

8-42. Reserved.

8-43. Reserved.

8-44. Reserved.

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8-45. Reserved.

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## SECTION VI. OUTGRANTS AND OUTGRANT MANAGEMENT - PRELIMINARY PROCEDURES

8-46. Purpose. This section describes the general procedures for the clearance process prior to issuance of the instruments, generally called outgrants, which authorize Federal agencies, state or local governments, private organizations, or individuals to use Army (military or civil) controlled real property, and administering those interests in real property.

8-47. Authorities. These preliminary procedures involve various legal, policy or regulatory procedures required, regardless of the type of outgrant.

8-48. Outgrants on Withdrawn Public Domain Lands. Under the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. § 1701 et seq.), the Secretary of Interior is authorized to issue certain outgrants on public domain lands. Outgrants on withdrawn public domain lands are generally issued by the surface management agency under existing authorities. However, the withdrawal document should be reviewed to determine if any such authority was reserved by BLM. Outgrants on withdrawn public domain lands will be informally coordinated by the district with the appropriate Bureau of Land Management (BLM) state or district office, which will be furnished copies of the executed outgrants upon request.

8-49. Compliance with Applicable Laws and Regulations. The outgrant instrument may specifically require compliance with particular state and local laws, ordinances, and regulations; however, all outgrant instruments will include a general provision as shown in each approved outgrant format. Site specific environmental, cultural, and historical requirements may be added. The standard condition shown in the applicable format for a specific outgrant type may include additional language tailored to the type of outgrant and shall not be deleted or modified.

8-50. Energy Conservation. Districts and divisions will give highest priority, as appropriate, to energy conservation in management actions. Federal energy conservation goals described in DOD Directive 4170.10, Energy Conservation, are to be met and exceeded where possible, but such energy conservation measures will not impair training, readiness, combat capability, or health and safety requirements.

8-51. Environmental and Cultural Considerations in Real Estate Management Actions. Environmental and cultural considerations in real estate management actions are constantly becoming more important, receiving greater scrutiny, and are the subject of rapidly changing guidance. It is extremely important that the most current versions of all applicable laws and regulations be consulted and complied with before taking any action that will have an effect on the environment or on cultural resources. These regulations include, but are not limited to:

a. "Reporting Hazardous Substance Activity When Selling or Transferring Federal Real Property", found at 40 CFR Part 373, for additional background see Federal Register Volume 55, Number 73, page 14208, published 16 April 1990;



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- b. AR 200-1, "Environmental Protection and Enhancement", as revised;
- c. AR 200-2, "Environmental Effects of Army Actions";
- d. 41 CFR 101-47, Utilization and Disposal of Real Property;
- e. ER 200-2-2, "Procedures for Implementing NEPA", 33 CFR 230, 40 CFR 1500;

8-52. Real Estate Files.

a. The regulations discussed in Section 8-51. were sometimes written before the full impact of the environmental laws on real estate transactions was realized. Accordingly, these other regulations lack uniform consideration of environmental factors in the outgranting of Army real property. These variations present a potential source of problems in assuring Corps compliance with the various environmental laws.

b. To correct this situation the Report of Availability (Paragraphs 8-68 and 8-69) will be included in the Real Estate file for any outgrant action and in the transmittal assembly if the action must be forwarded to higher headquarters, to show the environmental review that was conducted, when it was done, and by whom it was reviewed. The environmental requirements with which we must comply fall into three general groups; they are to be addressed separately and specifically: (i) NEPA; (ii) Other environmental laws, compliance with which is required notwithstanding NEPA; and, (iii) CERCLA, especially 42 U.S.C. § 9620 (h).

8-53. Compliance with NEPA.

a. Depending on the impacts of the proposed action, the environmental review required by NEPA will result in either: (i) A Record of Environmental Consideration (REC); (ii) An Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI); or (iii) an Environmental Impact Statement (EIS). There may also be cases where both an EA and an EIS are prepared.

b. When an action qualifies as a Categorical Exclusion (CX), a REC, following the format discussed in AR 200-2, shall be included, along with a citation to the section of ER 200-2-2 or AR 200-2 that provides for this type of action to be a CX. The REC is not required by NEPA, but, rather is Army procedure to document the files as to the environmental action. The REC may be executed by the District Engineer for Civil Works property.

8-54. Other Environmental Laws. To show compliance with environmental laws whose requirements are not subsumed in NEPA, the Report of Availability and/or the Real Estate file and the transmittal assembly should indicate if there has been compliance with any of the following statutes and Executive Orders which are applicable. Permits, such as Section 404 or Section 10, will be obtained, where applicable, before the outgrant is issued. However, to increase efficiency, outgrants may be executed with the stipulation that use and occupancy may

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not commence until issuance of any required permits. It should be noted, some of the following are applicable in most cases while others may not be applicable.

- a. The National Historic Preservation Act, 16 U.S.C. § 470 et seq.;
- b. The Coastal Zone Management Act, 16 U.S.C. § 1451 et seq.;
- c. The Endangered Species Act, 16 U.S.C. § 1536 et seq.;
- d. The Clean Water Act, 33 U.S.C. § 1251 et seq., including the Section 404 wetlands permitting process and Section 311;
- e. The Wild and Scenic Rivers Act, 16 U.S.C. § 1271 et seq.;
- f. The Clean Air Act, 42 U.S.C. § 7401, et seq.;
- g. The Antiquities Act, 16 U.S.C. § 431, et seq.;
- h. Archaeological and Historical Preservation Act, 16 U.S.C. § 469;
- i. American Indian Religious Freedom Act, 42 U.S.C. § 1996;
- j. Archaeological Resources Protection Act, 16 U.S.C. § 470aa-11;
- k. Native American Grave Protection Act;
- l. Toxic Substances Control Act, 15 U.S.C. § 2601;
- m. The Solid Waste Disposal Act, 42 U.S.C. § 6901, this is also known as RCRA the Resource Conservation and Recovery Act);
- n. Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 135;
- o. Executive Order 11990, Protection of Wetlands; and,
- p. Executive Order 11988 as amended by Executive Order 12148, Floodplain Management.

8-55. Compliance with CERCLA.

a. Compliance with CERCLA will be documented by including in each file and transmittal assembly, a Environmental Baseline Study (EBS) as that procedure is described in AR 200-1. The Report of Availability is to be combined with the EBS and included in each file

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and assembly. The EBS bridges between CERCLA and NEPA and is integrated into a REC or the affected environment portion of the EA or EIS, as appropriate.

b. An EBS is prepared for a specific action (e.g. the leasing of a particular parcel of land) and should not be confused with environmental inventories of a generalized nature such as the Environmental Review Guide for Operations (ERGO) for Civil Works projects or Environmental Compliance Assessment System (ECAS) for military installations.

c. An EBS may be prepared for any outgrant, if desired, to document the environmental condition of the property.

d. Keep in mind, when considering compliance with CERCLA and RCRA, that federal agencies are legally obligated to follow state law and procedure implementing these laws, and that state law under an EPA approved RCRA program may determine the definition of, for example, “hazardous substances”.

e. CERCLA requires that all “transfers” of real property from the Federal Government to another party, including another federal agency, must contain in the “contract” for the transfer a notice indicating if the property had been the site of a release, storage, or disposal of hazardous substances. Army policy is to apply this notice requirement broadly. There is to be a “complete search of agency files” to determine if a notice is needed. Additionally, if there was a release, storage, or disposal, the notice is to identify the nature of the substance involved, when the substance was on the property, and a description of the remedial action taken. For the purpose of this guidance, all applicable documents will contain CERCLA notices, if the threshold hazardous substances are found as set out in the Finding of Suitability. The standard EBS Condition, will be renumbered as “a.” and the following “b.” added:

b. CERCLA Notice. The information contained in this notice is required under the authority of regulations promulgated under Title 42, United States Code, Section 9620(h). The (Lessor/Grantor) has made a complete search of its records concerning the property subject to this (outgrant). Those records indicate that the following hazardous substances have been stored for one year or more (S), released (R), or disposed of (D) on the premises:

(List each incident, giving the substance as defined under CERCLA, Section 101(14) and appearing at 40 CFR 302.4; the quantity; the Chemical Abstracts Services Registry Number, where applicable; the regulatory synonym for the hazardous substance, as listed in 40 CFR 302.4, where applicable; the date(s) that the storage, release, or disposal took place. If information is either not available, is incomplete or requires further explanation as set out in the EBS, so state.)

The (lessee/grantee) should consult the EBS described in sub-paragraph a. above for more details.

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not commence until issuance of any required permits. It should be noted, some of the following are applicable in most cases while others may not be applicable.

- a. The National Historic Preservation Act, 16 U.S.C. § 470 et seq.;
- b. The Coastal Zone Management Act, 16 U.S.C. § 1451 et seq.;
- c. The Endangered Species Act, 16 U.S.C. § 1536 et seq.;
- d. The Clean Water Act, 33 U.S.C. § 1251 et seq., including the Section 404 wetlands permitting process and Section 311;
- e. The Wild and Scenic Rivers Act, 16 U.S.C. § 1271 et seq.;
- f. The Clean Air Act, 42 U.S.C. § 7401, et seq.;
- g. The Antiquities Act, 16 U.S.C. § 431, et seq.;
- h. Archaeological and Historical Preservation Act, 16 U.S.C. § 469;
- i. American Indian Religious Freedom Act, 42 U.S.C. § 1996;
- j. Archaeological Resources Protection Act, 16 U.S.C. § 470aa-11;
- k. Native American Grave Protection Act;
- l. Toxic Substances Control Act, 15 U.S.C. § 2601;
- m. The Solid Waste Disposal Act, 42 U.S.C. § 6901, this is also known as RCRA the Resource Conservation and Recovery Act);
- n. Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 135;
- o. Executive Order 11990, Protection of Wetlands; and,
- p. Executive Order 11988 as amended by Executive Order 12148, Floodplain Management.

8-55. Compliance with CERCLA.

a. Compliance with CERCLA will be documented by including in each file and transmittal assembly, a Preliminary Assessment Screening (PAS) as that procedure is described in AR 200-1. The Report of Availability is to be combined with the PAS and included in each

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file and assembly. The PAS bridges between CERCLA and NEPA and is integrated into a REC or the affected environment portion of the EA or EIS, as appropriate.

b. The PAS is prepared for a specific action (e.g. the leasing of a particular parcel of land) and should not be confused with environmental inventories of a generalized nature such as the Environmental Review Guide for Operations (ERGO) for Civil Works projects or Environmental Compliance Assessment System (ECAS) for military installations.

c. A PAS may be prepared for any outgrant, if desired, to document the environmental condition of the property.

d. Keep in mind, when considering compliance with CERCLA and RCRA, that federal agencies are legally obligated to follow state law and procedure implementing these laws, and that state law under an EPA approved RCRA program may determine the definition of, for example, "hazardous substances".

e. CERCLA requires that all "transfers" of real property from the Federal Government to another party, including another federal agency, must contain in the "contract" for the transfer a notice indicating if the property had been the site of a release, storage, or disposal of hazardous substances. Army policy is to apply this notice requirement broadly. There is to be a "complete search of agency files" to determine if a notice is needed. Additionally, if there was a release, storage, or disposal, the notice is to identify the nature of the substance involved, when the substance was on the property, and a description of the remedial action taken. For the purpose of this guidance, all applicable documents will contain CERCLA notices, if the threshold hazardous substances are found as set out in the Finding of Suitability. The standard PAS Condition, will be renumbered as "a." and the following "b." added:

b. CERCLA Notice. The information contained in this notice is required under the authority of regulations promulgated under Title 42, United States Code, Section 9620(h). The (Lessor/Grantor) has made a complete search of its records concerning the property subject to this (outgrant). Those records indicate that the following hazardous substances have been stored for one year or more (S), released (R), or disposed of (D) on the premises:

(List each incident, giving the substance as defined under CERCLA, Section 101(14) and appearing at 40 CFR 302.4; the quantity; the Chemical Abstracts Services Registry Number, where applicable; the regulatory synonym for the hazardous substance, as listed in 40 CFR 302.4, where applicable; the date(s) that the storage, release, or disposal took place. If information is either not available, is incomplete, or requires further explanation as set out in the PAS, so state.)

The (lessee/grantee) should consult the PAS described in sub-paragraph a. above for more details.

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f. The Environmental Protection Agency has issued regulations implementing Section 9620, see reference 8-55.b. The regulations do not diminish the all inclusive nature of the language of the act.

g. The records search required by CERCLA is to be a complete search of the agency records. Therefore, the District should have in its files, written confirmation of such a search, from all elements of the District (or division) e.g. operations, construction, safety, logistics, planning, etc. that might have records indicating if the CERCLA “threshold” on the quantity of hazardous substances has been exceeded.

h. If the records check indicates that the “threshold” for reporting the storage, release, or disposal of hazardous substances has not been exceeded, and there is no other actual or constructive notice indicating that it has, the outgrant of such property from the Federal Government need not contain language referencing CERCLA i.e., 42 U.S.C. § 9620. A site inspection is only required if the records search indicates the need for further investigation.

i. AR 200-1 is being revised. The PAS may also be called an Environmental Baseline Study (EBS). These are synonymous.

j. When a PAS is completed pursuant to an outgrant it should be attached to the outgrant as an exhibit. The initial PAS form will then form the baseline in determining responsibility for any future restoration work. At the conclusion of the outgrant, a PAS and such other investigations as are warranted should be completed to determine what if any environmental restoration work is needed.

8-56. Documentation and Liability. Care should be taken to ensure that compliance with the environmental statutes is adequately documented both to prevent potential financial liability to the Government, and because several of the laws (e.g. RCRA and CERCLA) have provisions whereby individual employees of industry and government may be held personally liable for their acts or omissions that violate the laws. Such liability may be both civil and criminal depending on the facts of the case. Federal Facilities Compliance Act, (\*\*cite)

8-57. Protection and Enhancement.

a. AR 405-80, “Real Estate, Granting Use of Real Estate,” which applies to both military and civil properties, states that the Department of Army will not authorize use of real estate, water or natural resources when the use conflicts with the goals and intent of Federal policy and legislation on overall environmental quality.

b. All outgrants will be drafted and administered to conform with this policy. Environmental factors of grants covering Civil Works projects will be coordinated with Operations and Engineering elements. This Chapter specifies outgrant formats which contain general environmental protection conditions. However, the general conditions may not be adequate in specific cases; therefore, the District Engineer will carefully consider the proposed

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use of the property by the grantee and the report of availability conditions and will supplement the general conditions to assure adequate protection of the environment.

c. Formats for specific outgrants may include additional language tailored to the type of outgrant. If this condition is in the standard format, it shall not be deleted or modified except to add site specific requirements.

8-58. Protection of Wetlands.

a. Executive Order 11990, Protection of Wetlands (1977), applies to all Federal agencies which acquire, manage, and dispose of Federal lands and facilities; provide federally sponsored construction and improvements; and conduct Federal activities and programs affecting land use.

b. Section 4 of the Executive Order requires that “when federally owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way, or disposal to nonfederal public or private parties, the Federal agency shall reference in the conveyance those uses that are restricted under identified Federal, state or local wetlands regulations, and attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or withhold such properties from disposal.” To comply with this requirement, site specific requirements may be added, as necessary, to protect wetlands adequately.

c. To implement this policy, all areas considered for outgrants should be evaluated for the presence of wetlands.

8-59. Floodplain Management. Executive Order 11988, Floodplain Management (1977), as amended by Executive Order 12148 (1979), establishes a Federal policy to “avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.” See ER 1165-2-26.

8-60. Coastal Zone Management. The Coastal Zone Management Act of 1972, as amended, requires a “Consistency Certification” in all applications for outgrants to use Federal real property for a purpose which is subject to review by a state coastal zone management agency.

8-61. Waste Disposal. The Solid Waste Disposal Act, as amended (42 U.S.C. § 6901, et seq., also known as RCRA), and Executive Order 12088, Federal Compliance with Pollution Control Standards (1978) make Federal agencies responsible for all waste disposal on federally controlled property. Solid Waste Management Units may also require a state or Federal RCRA permit to construct or operate.

8-62. Storage of Toxic or Hazardous Materials. Army policy generally prohibits the storage or disposal of non-DOD owned toxic or hazardous materials on Army installations or projects. (See AR 75-15.) If such use is authorized, environmentally sound procedures will be followed.

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8-63. Real Property Contaminated with Ammunition, Explosives or Chemicals. It is Army policy to remediate real property known to contain hazards from ammunition, explosives, or chemical agents using the most appropriate technology consistent with the proposed use of the property. Limited use land transfers may be arranged with other Federal agencies for the compatible use of surface remediated real property. Such use may include wildlife refuges, safety zones for federal power facilities, or for other purposes not requiring entry except by authorized personnel. The land transfer documents shall detail the extent of residual hazard and shall include all restrictions and prohibitions concerning the use of the property, to ensure personnel and environmental protection. Access rights should also be reserved to implement any monitoring plan. Reports of Availability should show coordination with HQDA, DACS-SF and DAMO-SWS and have attached the Land Disposal Site Plan (LDSP). Reference AR 385-64, "U.S. Army Explosives Safety Program."

8-64. Outgrant Applications. Whether in response to a Notice of Availability, discussed in the section on leases, or unsolicited and initiated by the non-Army party, a written outgrant application will be prepared providing material to identify the proposed use, the site requested, and other information which the applicant has readily available. In addition, the application will include an agreement to provide non-discrimination and Civil Rights assurances, as applicable. No standard format is required and a letter or other written document may be considered the application, as long as appropriate information is contained. See the section on leases for information required for lease applications.

8-65. Non-discrimination and Civil Rights Assurance.

a. Existing provisions of federal law combine to prohibit discrimination on the basis of race, color, national origin, handicap, or age under any program or activity receiving federal financial assistance. In addition, public accommodations must not discriminate on the basis of sex and religion.

b. All non-federal grantees under outgrants issued for less than full fair market consideration are considered to be receiving federal financial assistance and the outgrant must contain the condition which includes the Civil Rights Act of 1964 and the Rehabilitation Act, as shown in the format on Park and Recreation Leases. Execution of the outgrant by the grantee is sufficient to signify assurance of compliance with the law. A separate assurance instrument is not required.

c. Outgrants issued for full consideration, such as the Agricultural and Grazing or Commercial Concession leases, contain a general non-discrimination clause, which includes the Americans with Disabilities Act. Refer to those formats.

d. If the grantee is a non-profit club or non-federal, quasi-public entity, use whichever condition is appropriate for the consideration paid. However, if the premises will not be used as a public accommodations, then "sex" and "religion" may be deleted from the list in the first



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sentence of the standard clause and the following added at the end of that sentence: “; and will not unlawfully discriminate on the basis of sex or religion”.

8-66. Access by the Disabled.

a. Public accommodations for full fair market consideration. Grantees who pay full consideration, including commercial lessees who pay rent under the Revised Graduated Rental System are not recipients of federal financial assistance, and, therefore, are not subject to the Rehabilitation Act or the Uniform Federal Accessibility Standards (UFAS). These grantees are, however, subject to the requirements of Title III, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, of the Americans with Disabilities Act (ADA) and the implementing regulations by the Office on the Americans with Disabilities Act, Civil Rights Division, Department of Justice (36 CFR subparts 1 to 6) and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board. Compliance with the ADA, as with all other applicable federal laws and regulations, is an enforceable lease term. However, compliance is the responsibility of the grantee - not the Corps. While ADA compliance must be an element of outgrant compliance inspections, and grantees must be informed of perceived compliance violations in order to enforce outgrant terms, the Corps is not an ADA enforcement entity. The grantee must be made aware, therefore, that an outgrant compliance inspection is not a federal endorsement of compliance which will preclude liability from federal or private enforcement actions, but is merely a determination of compliance with outgrant terms.

b. Public Accommodation for less than full fair market consideration. State and political subdivision entities and non-profit organizations which hold Corps public park and recreation leases or fish and wildlife licenses, for which they are paying less than fair market value, are subject to the Rehabilitation Act and UFAS. Any such grantee paying fair market value for its lease and not receiving federal financial assistance as defined by the Rehabilitation Act and attendant regulations is subject to the ADA.

8-67. Alaska Lands. The Alaska National Interest Lands Conservation Act of 1980 (Public Law 96-487) provides that a special application forms for proposals on transportation and utility systems in any conservation system unit, national recreation area, or national conservation area in Alaska. Applicants should contact the District Engineer, ATTN: CENPA-RE-MD, PO Box 7002, Anchorage, Alaska 95510-0898.

8-68. Determination of Availability--Military. The availability of military property for outgrant will be determined according to AR 405-80 and supporting TM for outgrants. The Report of Availability (ROA) and Determination of Availability (DOA) format are shown in the TM. If a District Engineer receives outgrant applications when no determination of availability for the property has been made, the District Engineer will forward the applications to the appropriate installation commander. Where an entire installation is permitted to a DOD agency, availability will be determined by the Defense Agency concerned, with concurrence of the MACOM or using service of the military department with primary jurisdiction. For part of an installation

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permitted to a DOD agency, the MACOM will make the determination of availability with concurrences of the DOD agency. Where a Title 10 Report is required, be sure the information required to complete a Disposal Report, is provided (reference Paragraph 8-110).

8-69. Determination of Availability--Civil Works.

a. During the construction phase of a project, the Construction Division will decide whether the proposed use will interfere with construction of the project. The District Engineer may determine availability of lands and improvements during the construction period without further approval; these outgrants for interim uses may not exceed 5 years or the end of construction, if less.

b. Operations and Readiness Division, in cooperation with Real Estate Division, determines whether a proposed non-Army use is in conformance with the master plan and will not interfere with project operations. If the proposed use is found not to be in conformance with the Master Plan but is otherwise in furtherance of project purposes or is in the public interest, amendment of the Master Plan may be recommended. If the initial determination is positive and/or further processing is in order, a Report of Availability (ROA) will be prepared and Operations and Readiness Division will identify site specific environmental, cultural, historical, or operational requirements for non-Army use. The ROA will be included in the outgrant file. The Determination of Availability (DOA) will be made by the approving official at the level delegated authority to execute the outgrant, e.g. the Division Engineer for those actions to be executed at that level. A recommended draft DOA with attached ROA will accompany all outgrants to be executed at division, HQUSACE or Army Secretariat level.

c. Priority leasing commitments to former owners and tenants will continue to be honored as in Section X, this chapter.

d. The Report of Availability format has been set up so that different sections can be prepared and staffed separately and signed by different Army elements, if required. Flexibility is essential, yet still yielding a final product which can be staffed and finally put in the outgrant file. It is becoming more and more important to have a document that contains all the pieces to the process and that provides written confirmation of what issues were considered. The Report of Availability (ROA) will contain, substantially in the form of Appendix 8-A, Figure 8-A-3, the following:

- (1) Project designation.
- (2) The proposed use and term.
- (3) United States property interest (fee simple title, easement, in-lease, or Army jurisdiction (primary jurisdiction, permit from a Federal Agency, withdrawn from the public domain)).

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(4) Description of property, including any improvements. If the land is not included in the grant, explain why the improvement is not excess.

(5) Estimate of consideration, giving the source of the estimate. If outgrant is issued under Title 10, United States Code, 2667, list any in-kind offsets to case consideration.

(6) Is a waiver of competition recommended/not recommended, giving full justification and proposed grantee, if negotiated.

(7) Describe or enclose relevant technical specification for the proposed area or facility.

(8) A finding that the grant will not interfere with operation of the project, or with contemplated development and other activities as shown in an approved Master Plan; if the use will further the project purpose or the public interest or national defense, so state.

(9) Documentation of environmental and cultural considerations described in this section.

(10) Other pertinent information or recommendations and any additional restrictions or site specific limitations.

(11) Attach maps showing the nearest project boundary; acreage, character of land, and the number and type of improvements, if both land and improvements are included. If only building space is involved, attach a floor plan. Existing maps and drawings should be utilized to the greatest extent possible to minimize costs.

(12) Attach environmental reports and assessments.

e. After coordination and approval of the ROA, the property will be determined to be available for the proposed use by approval and execution of a Determination of Availability by the approving official at the level delegated authority to execute the outgrant. The DOA will contain, substantially in the format of Appendix 8-A, Figure 8-A-4:

(1) A finding that the proposed use is in the public interest or in the interest of national defense and is consistent with delegated authorities and Government regulations.

(2) A finding that the property is not excess.

(3) Coordination.

(4) A determination that the property is available for the proposed use with the restrictions as stated in the ROA and as added, if any, and may be outgranted in accordance with applicable laws, rules and regulations.

(5) A finding that the consideration is no less than the fair market value, if applicable.

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(6) Signature of approving official.

f. Renewals do not have to have a ROA, but will require a DOA to reaffirm the continued availability.

8-70. Prior Approval of Assistant Secretary of the Army. The Assistant Secretary of the Army (Installation, Logistics & Environment) (SAILE) must give prior approval to certain types of outgrants of military real property as set out in supporting TM for outgrants. Those involving value may not become evident until after the appraisal or opinion of value. In such cases, if prior approval was not obtained during the installation/MACOM approval process, the District Engineer, in coordination with the installation commander, will forward a report with supporting justification to HQUSACE (CERE-M) for transmittal to SAILE. A draft Title 10 report should be included, if appropriate.

8-71. Provision of Certain Reports by Non-Army Party.

a. For outgrants initiated by non-Army parties, the initiating non-Army party may be requested to provide appraisals, surveys, mapping, legal descriptions suitable for recording in the local land records, and environmental, cultural and historical assessments, and other non-internal work products which result in a report or written document. Outgrant which are to be recorded in the local land records should be recorded at the expense of the non-Army grantee. The Army proponent will assure completion of the required supporting documentation and should ensure that the products supplied by the non-Army party are in accordance with our requirements.

b. If the outgrant benefits the Army proponent or the initiating non-Army party is unable to provide these products, then the Army proponent may do the work, if funds are available or on a reimbursable basis. Refer to AR 200-1 for policy on environmental assessments.

c. The Army must do those inherent governmental functions, such as internal review, policy reviews, decision making and the processing of the documents through Army channels, as required.

d. The selection of an administrative costs category for determination of consideration will be based on the work effort performed by the district for the grantee. If significant work products are provided by the grantee, then a lesser category may be selected than the type of action would usually rank. See Paragraph 8-81, Consideration.

8-72. Rights-of-entry. Rights-of-entry are not technically an outgrant, but are merely a short-term permission to enter the property. They are similar to licenses. A right-of-entry will not be granted unless it is authorized by the office in which the final outgrant will be executed. The availability process must be substantially complete. Rights-of-entry will be conditioned to clearly show that the grantee is agreeable to all terms and conditions of the follow-on formal outgrant instrument.

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8-73. Reserved.

8-74. Reserved.

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## SECTION VII. OUTGRANTS AND OUTGRANT MANAGEMENT - PROCEDURES FOR DRAFTING AND ISSUANCE

8-75. Purpose. This section describes the general procedures for the drafting, executions and issuance of the instruments, generally called outgrants, which authorize Federal agencies, state or local governments, private organizations, or individuals to use Army (military or civil) controlled real property and administering those interests in real property.

### 8-76. Formats For Outgrant Instruments.

a. Formats containing the conditions that have been approved for use in the various outgrant instruments issued by the Corps of Engineers are shown in formats at the end of this chapter (or as numbered forms until replaced). These formats are available in electronic form for use with computers. The formats may be copied from the distribution disks and District specific data filled in appropriate blanks to create templates for local use. Under no circumstances should the files on the distribution disks be altered because they may be needed later to restore a template to its original condition. Updated disks will be furnished periodically when changes to the formats are approved by HQUSACE (CERE-M).

b. The template for each type of outgrant should always be the starting point for any outgrant. Site specific conditions for environmental, cultural, historical or operational protection may be added for individual outgrants as appropriate, however, other deviations will not be made to the conditions shown in the formats, except as indicated in the format, without approval of HQUSACE (CERE-M). Site specific conditions must be truly site specific and will not be used by the district as a subterfuge for district unique templates, unless approved by HQUSACE (CERE-M).

8-77. Legal Review. Any site specific conditions to be added to a proposed outgrant will be reviewed. All outgrant instrument required to be submitted to the Secretariat will be reviewed for legal sufficiency by an attorney-advisor (real property). This review will be documented in writing with the file (a stamp "Reviewed for legal sufficiency by:" may be used) and will be stated in the transmittal of any action to HQUSACE (CERE-M), including the name and telephone number of the attorney. If this review can not be performed, the transmittal must so state, giving justification for the omission. The purpose of a review for legal sufficiency is not to validate standard format provisions, which have already received extensive review prior to issuance of the format, but rather the selection of conditions where alternatives are provided, deviations, if any, and added conditions or requirements by the district. District Engineers and their Chiefs of Real Estate are encouraged to require involvement by an attorney from the beginning of negotiations in cases involving large transactions, difficult, or unusual situations, especially if the negotiations can be expected to develop deviations to the standard formats or numerous site-specific additions.

8-78. Designation of Grantees. Individuals, and individuals trading as a firm, a partnership, a corporation, or an association can be designated as a grantee. A corporation will be designated:

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The \_\_\_\_\_ Company/Corporation, duly organized and existing under and by virtue of the laws of the state of \_\_\_\_\_, with its principal office at \_\_\_\_\_.

Grants will not be made to unincorporated associations unless they are legal entities that can hold property, sue, and be sued under the laws of the state where the property is located.

8-79. Term.

a. Grants of Fee-Owned Land. The term of an outgrant on fee-owned land of the United States will accord with the provisions of this chapter for each type of outgrant, unless different instructions are given in individual cases.

b. Grants of Property In-Leased to the United States. If all or part of the land or improvements in an outgrant is inleased to the United States, the term of the outgrant will not be longer than the term of such inlease. If there are no instructions to the contrary, outgrants of inleased land and improvements will be submitted to HQUSACE (CERE-M), since delegations of authority to execute outgrants are generally limited to fee-owned land. Outgrants may be issued where the ingrant is less than a lease, such as an easement. The outgrant may only be for an equal or lesser interest. If the inlease to the United States must be renewed annually, the basic term of the outgrant will be the same as term of the current inlease. If the ultimate term is to extend beyond that time, the granting clause should provide for "renewal as hereinafter provided" and adding one of the following conditions:

(1) If all or part of the premises is leased to the United States, subject to renewal upon notice, add the following condition:

That (a portion of) the land (and improvements) covered hereby is (are) occupied by the United States under Lease No. \_\_\_\_\_, from \_\_\_\_\_ for the period beginning \_\_\_\_\_ and ending \_\_\_\_\_, subject to renewal annually to \_\_\_\_\_, and in the event the United States elects to exercise its option of renewal, this lease (license) (permit) shall automatically be renewed to cover such annual renewal periods, but not to extend beyond \_\_\_\_\_ years from the commencement date hereof, and this lease (license) (permit), together with any renewals thereof, shall be subject to all provisions and conditions of said Lease No. \_\_\_\_\_.

(2) If all or part of the premises is leased to the United States from year to year, unless and until the Government shall give notice of termination, add the following condition:

That (a portion of) the land (and improvements) covered hereby is (are) occupied by the United States under Lease No. \_\_\_\_\_, from \_\_\_\_\_ for the period beginning \_\_\_\_\_ and ending \_\_\_\_\_, which provides that, unless and until the Government shall give notice of termination in accordance with the terms

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thereof, the said lease shall remain in force thereafter from year to year without further notice but in any event it shall expire automatically on \_\_\_\_\_. That for such yearly periods that the United States shall allow said lease to remain in effect, this lease (license) (permit) shall be automatically renewed, but not to extend beyond \_\_\_\_\_ years from the commencement date hereof, and this lease (license) (permit), together with any renewals thereof, shall be subject to all provisions and conditions of said Lease No. \_\_\_\_\_ .

8-80. Description. The description must be sufficient to locate the premises and should clearly identify the property to be outgranted. An already-prepared metes and bounds, or other legal description, if available, plus a marked map or aerial photograph are the best and most effective description. A map or photograph should be marked or delineated with cross-hatch or other marks so as to be reproducible by mechanical means available to the district so as to minimize costs. Use existing maps, legal descriptions, aerials, etc. to the greatest extent possible. Water and land area to be included in the outgrant should both be described as part of the outgranted premises.

8-81. Consideration.

a. General.

(1) Title 31, U.S.C. § 9701 (Independent Offices Appropriation Act of 1952) expresses that sense of Congress that “each service or thing provided by an agency...is to be self sustaining to the extent possible,” and states specifically that regulations establish the charge for a service or thing of value provided by the agency. Each charge shall be fair and based upon the costs to the government; the value of the service or thing to the recipient; the public policy or interest served; and other relevant facts.”

(2) Office of Management and Budget Circular A-25 which implements the act, states that where a federal activity provides special benefits to a recipient above and beyond those accruing to the public at large, a charge should be imposed to recover the cost to the federal government. When federally-owned property is leased or sold, the fair market value should be obtained. The fair market value is determined in accordance with commercial rates and prices for similar property in the geographical area and is not limited to recovery of costs. Fees to recover costs should cover direct and indirect costs of providing the special benefit.

(3) DODI 7230.1, “User Charges” implements this act, and states that real estate leases shall recover the higher of the fair market value of the asset being leased or the administrative costs of issuing and processing the outgrant. Charges may be reduced or waived for certain exceptions.

b. Determination of Consideration. The consideration for all outgrants shall be either the fair market value or the estimated administrative costs, based upon the full term of the outgrant, whichever is greater, unless excepted in sub-paragraph c. below.



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(1) Fair Market Value. Appraisals are not required when the estimated fair market rental for the full term is less than \$2,500. Other simple evaluations and per annum rental values that do not exceed \$10,000 for the term of the instrument are authorized to use a brief narrative style report. Refer to ER 405-1-12, Chapter 4, and various Real Estate Policy Guidance Letters on appraisal requirements. Appraisal questions should be referred to HQUSACE (CERE-E). The district Chief Appraiser may periodically estimate values for types of outgrants issued for identical purposes in order to establish a schedule of charges.

(2) Administrative Costs.

(a) For the purpose of determining basic administrative costs, outgrants have been separated into categories which reflect the work effort involved in issuing and managing the outgrant. An estimated cost schedule will be sent out periodically by CERE-M, using cost data from the districts. The costs reflect a range of categories established for civil and military outgrants and the basic administrative costs for each category. Additional charges may be added for monitoring/ compliance costs and extraordinary or unusual incidental costs, excluding any expenses incurred to serve independent public interest. Costs do not have to be exact but must bear a reasonable relationship to the cost of services rendered by the agency to the grantee. Renewals will be based upon the effort involved and not the original category.

(b) In New England Power Company, et al, v. NEC, 683 F.2d 12 (1982) citing Mississippi Power & Light Co., et al v. NRC, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102, 100 S. Ct. 1066, 62 L. Ed.2d 787 (1980), the court upheld fees for the cost of environmental reviews of specific applications which are a prerequisite to the issuance of a license. Since the reviews were a necessary part of the cost of providing a special benefit. Cost of programmatic, project/installation-wide or project/installation master plan environmental reviews are not included.

(c) When the non-Army party provides reports or other work products, a lesser category in the cost schedule may be selected. See Paragraph 8-71.

c. Exceptions. Only the fair market value of an outgrant will be charged when required by law or the consideration is determined by competition, such as agricultural and grazing leases. A cottage site lease issued under the authority of Title 16, United States Code, Section 460d, as amended by section 1134 of the Water Resources Development Act of 1986, must by law be issued for fair market rental. Certain oil and gas pipeline rights-of-way require both fair market value and an administrative charge, as set out in the section on Easements. Because of public policy or interest served, all monetary consideration for outgrants may be waived or reduced when:

(1) The recipient of the benefits is engaged in a nonprofit or public activity designed for the public safety, health and welfare.

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(2) Payment of the full fee by a state and local governments or nonprofit group would not be in the interest of the program or payment may be waived or reduced because of specific authority.

(3) Furnishing the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis.

8-82. Statement of Payments. All outgrants shall clearly state the consideration reserved.

a. If monetary consideration for an outgrant is waived for a non-profit, public activity or governmental entity, as set out above, the outgrant shall state that the consideration is the operation, maintenance, and repair of the property for the public purpose served. The remaining portions of this paragraph do not apply.

b. If monetary consideration is reserved, the outgrant shall specify the amount due, payment due date, and a requirement that payments be received no later than the due date. Monetary consideration will be stated using words and numerals (e.g., one hundred ninety-two and 50/100 dollars (\$192.50)). Indicate the frequency of periodic payments after the word "payable" in the payment clause (e.g., annually, semi-annually, quarterly). Payments are payable, in advance, to Finance and Accounting Officer, U.S. Army Corps of Engineers. Insert the words "in full for the term" after the word "payable" in the payment clause if there is one payment for the entire term. If consideration is based on gross receipts or other special calculations, indicate this clearly in the payment clause; show also the method of calculation, period covered, and when payments are due. Rental offsets or abatements are discussed in the Section on outgrants under 10 U.S.C. § 2667.

c. Collection Costs. To minimize collection costs and avoid the sanction of an interest charge, rentals should be paid in advance in the largest practicable increments. Monthly payments are discouraged, but may be permitted in cases of hardship or where the annual rent is substantial.

d. Charges for Late Payments. Public Law 96-304 and the Department of the Treasury Fiscal Requirements Manual require Federal agencies to impose and collect late payment penalties for overdue payment obligations under outgrants with parties outside the Federal Government. Penalties must be imposed for each month or part of a month payment is not received.

e. Existing outgrants will not be amended solely to incorporate a late penalty provision; rather when delinquent rentals or other payments require a follow-up letter, the grantee will be informed that a late charge, as prescribed above, will be assessed if the due amount is not paid in 30 days. The Department of Treasury determines the applicable percentage rate for late charges for each quarter and informs all District Finance and Accounting Offices before the first day of each calendar quarter. The District Engineer may waive collection upon a determination that administrative cost of collection is more than the late charge.

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8-83. Changes, Additions, or Deletions: Merger Clause.

a. Elements preparing outgrant instruments are encouraged to use word processing equipment so that approved modifications of prescribed formats can be made in a professional manner. In such cases, the document will stand on its own and no merger clause is necessary.

b. If preprinted forms are used, any changes should be noted at the end in a merger clause as follows:

Prior to execution of this (instrument) Condition No(s).\_\_\_\_\_ were modified, Condition No(s).\_\_\_\_\_ were deleted,\_\_\_\_\_ Condition No(s).\_\_\_\_\_ were added on page\_\_\_\_\_ which is hereby made a part of this (instrument).

c. Where conditions have been added by rider, all parties executing the instrument should also initial the rider.

8-84. Termination. An outgrant cannot be simultaneously revocable at will by the United States and revocable with a specified number of days' notice by the United States. If the format includes a revocable at will condition, the following notice provision may be substituted, if the ROA or the grantee object to the standard condition: "The Government may terminate this lease at any time in the event of national emergency as declared by the President or the Congress of the United States, base closure, deactivation or substantial realignment, or in the interest of national defense. "

8-85. Execution. Delegations of authority to execute real estate instruments are derived from the authority granted by the Secretary of Defense or the Secretary of the Army to the Assistant Secretary of the Army (IL&E). These delegations, with applicable limitations, requirements and conditions, are delegated down through the Commander, USACE and the Director of Real Estate, to Division Engineers and division Director of Real Estate, with redelegation authority to the District Engineer and district Chief of Real Estate. After complying with preleasing clearances, specific delegations should be consulted for determining execution authority in individual outgrant actions. The form of the execution will then be selected as follows:

a. By District, Division, or HQUSACE. For outgrants to be executed in the office of the District or Division Engineer or the HQUSACE, the testimonium clause should read: "IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_."

b., By Secretariat. For execution at the Secretarial level, the testimonium clause for Army (Military and Civil Works) should read: "IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ by direction of the Assistant Secretary of the Army (I,L & E). "



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duly certified by the custodian of such records, under the corporate seal (if there is one), which properly vest the signer with authority to bind the corporation. In lieu of this evidence the grantee may furnish a certificate signed by an appropriate corporate officer, other than the person executing the outgrant, as follows:

CORPORATE CERTIFICATE

I \_\_\_\_\_ (Name)\_\_\_\_\_ certify that I am the (Secretary) of \_\_\_\_\_, Inc., that \_\_\_\_\_ who signed the foregoing instrument on behalf of the corporation was then \_\_\_\_\_ of the corporation. I further certify that the said officer was acting within the scope of powers delegated to this officer by the governing body of the corporation in executing said instrument.

Date \_\_\_\_\_

Corporate Secretary or  
Appropriate Officer  
(AFFIX CORPORATE SEAL)

(5) State or local governmental entities. The name of the entity and the name of the officer with official capacity signing on its behalf; for example:

VILLAGE OF ZOAR, OHIO  
By Thomas R. Jones  
Mayor

The signer will furnish, for filing with the outgrant, an extract from the minutes of the entity indicating that the outgrant was approved by the governing body of the of the entity and authorizing a named individual to execute the outgrant on its behalf. In lieu of the minutes, the grantee may furnish a certificate signed by an appropriate official, other than the person executing the outgrant, as follows:

CERTIFICATE OF AUTHORITY

I \_\_\_\_\_ (Name)\_\_\_\_\_ certify that I am the \_\_\_\_\_(Clerk) of \_\_\_\_\_, that \_\_\_\_\_ who signed the foregoing instrument on behalf of the grantee was then \_\_\_\_\_ of \_\_\_\_\_. I further certify that the said officer was acting within the scope of powers delegated to this officer by the governing body of the grantee in executing said instrument.

Date \_\_\_\_\_

Clerk or  
Appropriate Official

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8-86. Acknowledgments and Witnesses.

a. Easements will contain an acknowledgment or provisions for witness as necessary to comply with local recordation statutes. For other outgrants, the grantee may request such provisions, or the law of the state in which the property lies may require one. The outgrant should then include such provisions, written according to local recordation statutes.

b. Use the following formats for instruments to be executed by the designated individual, unless local recordation statutes dictate otherwise. If a different format is used to comply with local statutes, the transmittal assembly must state the reason for the deviation.

c. Use the following format for instruments executed by the Secretary of the Army:

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA )

: ss

COUNTY OF ARLINGTON )

BEFORE ME, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, personally appeared \_\_\_\_\_ to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that (he) (she) executed the said instrument in the capacity therein stated for the purposes therein expressed as the act and deed of the United States of America.

GIVEN under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19.

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

My Commission Expires:

d. Use the following format for instruments executed in SAILE:

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA )

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: ss

COUNTY OF ARLINGTON )

BEFORE ME, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, personally appeared \_\_\_\_\_, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that (he) (she) executed the said instrument by direction of the Assistant Secretary of the Army (I,L&E) for the purposes therein expressed as the act and deed of the United States of America.

GIVEN under my hand and seal, this day of \_\_\_\_\_ 19\_\_\_\_ .

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

My Commission Expires:

e. Use the following format for instruments executed by the Director of Real Estate:

ACKNOWLEDGMENT

CITY OF WASHINGTON )

: ss

DISTRICT OF COLUMBIA )

BEFORE ME, a Notary Public in and for the District of Columbia, personally appeared \_\_\_\_\_, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that (he) (she) executed the said instrument by authority of the Secretary of the Army for the purposes therein expressed as the act and deed of the United States of America.

GIVEN under my hand and seal, this day of \_\_\_\_\_, 19 \_\_\_\_\_,

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

My Commission Expires:

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f. Use the following format for instruments executed by the Secretary of the Air Force or his designee:

ACKNOWLEDGMENT

\_\_\_\_\_ of \_\_\_\_\_ )

: ss

\_\_\_\_\_ of \_\_\_\_\_ )

BEFORE ME, a Notary Public in and for the jurisdiction above shown, personally appeared \_\_\_\_\_ to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that (he) (she) executed the said instrument by authority of the Secretary of the Air Force for the purposes therein expressed as the act and deed of the United States of America.

GIVEN under my hand and seal, this day of \_\_\_\_\_, 19\_\_ .

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)

My Commission Expires:

8-87. Numbering. All outgrants and consents will be numbered. Place the number in the space provided on the form or in the upper right corner of instruments not prepared on forms. A separate series of numbers will be maintained for military, NASA, and Civil Works outgrants. Begin with "1" at the start of each fiscal year, except for NASA outgrants which begin with "9000".

a. Outgrants and Consents Involving Military Army and NASA Property. The complete instrument number will consist of the capital letters "DACA" and fiscal station number of the activity issuing the outgrant, a dash, the instrument identification code (1 for outlease, 2 for easement, 3 for license, 4 for permit, or 9 for other type instruments), a dash, the fiscal year, and a dash followed by the instrument serial number, e.g., DACA03-1-79-1.

b. Outgrants and Consents Involving Civil Works Property. "DACW" will precede the fiscal station number, e.g., DACW03-1-79-1.

c. Modifications or Supplemental Agreements. Changes to outgrant instruments will be consecutively numbered and attached to the basic instruments. Supplemental agreements will not be used to renew an outgrant, rather, the latest version of the outgrant form will be used. A supplemental agreement may extend the term, but not in lieu of or to avoid a renewal action. A



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Supplemental Agreement may be used to modify the outgrant document for any item which was supplied by the district in the original outgrant, e.g. the description, the names and addresses of the parties, but may not be used to modify standard outgrant clauses.

8-88. Transmittal of Outgrant Instruments. Correspondence which transmits outgrants to HQ USACE (CERE-M) for execution or approval will include one complete copy of the outgrant assembly for the files of each higher reviewing office. The division may waive this requirement for division file copies. The assembly, with required copies, must include the following:

- a. The original instrument and amendments, or proposed amendments or renewal.
- b. One duplicate copy of a. above.
- c. Draft Determination of Availability with the Report of Availability and supporting environmental and cultural documentation. See Section VI.
- d. Statements on the following:
  - (1) Cite authority for outgrant with citations to the appropriate sections of this regulation.
  - (2) Administrative findings required by the legislative authority for the outgrant, if not covered by the DOA.
  - (3) Amount of consideration deemed adequate, data to support the recommended compensation, and date of any appraisal. If consideration was not reserved, explain.
  - (4) If competition is required, describe competition in selecting grantee; if waiver of competition is being requested, or if competition was impractical, give reasons why and justifications. No explanation is required for outgrants authorized by this regulations to be granted without competition.
  - (5) Explanation of any deviation in forms.
  - (6) Information whether the grantee has concurred in the terms, when the grantee has not yet executed the outgrant. Outgrants which contain assurances or conditions to be met by the grantee must be signed by the grantee prior to submittal to the Secretary.
  - (7) Information for grants under authority of 10 U.S.C. § 2668, 10 U.S.C. § 2669, and 43 U.S.C. § 961, whether the grantee is an American citizen, and whether public domain land is involved.
  - (8) Any other desirable information.

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e. Correspondence on approval or execution of outgrants for oil and gas pipelines will include information required in the Section on Easements.

f. Instruments which are forwarded for execution at Secretariat or HQUSACE level shall be protected from damage in transit.

8-89. Distribution of Outgrant Instruments.

a. General Distribution. The districts will distribute all outgrants, supplemental agreements, notices of revocation, notices of termination, etc., as follows:

- (1) One fully executed copy to the grantee.
- (2) One fully executed copy in the district realty records.
- (3) One conformed copy to the installation commander or the civil works project manager.
- (4) One conformed copy to F&A, if required.

b. Special Distribution. Additions to the general distribution above are:

(1) One conformed copy of road easements and licenses to take borrow material: to the Federal Highway Administration, ATTN: General Counsel, Washington, D.C. 20591-0001. Such documents will not be sent unless the Federal Highway Administration has formally requested the grant under 23 U.S.C. § 107 or 23 U.S.C. § 317.

(2) One conformed copy of 10 U.S.C. § 2668 easements for right-of-way over withdrawn public domain lands to the Secretary of the Interior, through the state office of the Bureau of Land Management.

(3) A conformed copy of grants for National Guard activities to the Chief, National Guard Bureau, Washington, D.C. 20310-2500.

8-90. Reserved.

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SECTION VIII. OUTGRANTS AND OUTGRANT MANAGEMENT - ADMINISTRATION  
AND COMPLIANCE

8-91. Purpose. This section describes the general procedures for the management and administration of the instruments, generally called outgrants, which authorize Federal agencies, state or local governments, private organizations, or individuals to use Army (military or civil) controlled real property and administering those interests in real property.

8-92. Administration of Outgrants. District and Division Engineers real estate elements will manage and administer the terms and conditions of outgrants. In discharging this responsibility, they will coordinate closely with representatives of the using service or, for civil works projects, the Operations and Readiness Division, maintain records submit periodic reports, inspect for compliance with terms and conditions of grants and proper utilization and development of granted premises, collect payments, and terminate or revoke outgrants.

8-93. Collection of Monetary Consideration.

a. The District Engineer will collect payments according to the terms of the outgrant. Leases for trailer sites granted by installation commanders or, if delegated in accordance with supporting TM for outgrants, outgrants issued by the installation will be collected by the installation. Grantees will pay in cash, check, money order, or other negotiable sight instrument payable to the F & A Officer, \_\_\_\_\_ District. The first at payment will be collected when the executed outgrant is delivered to the grantee. Any payments required after the first payment will be billed and collected by fiscal representatives of the District Engineer. If an outgrant is terminated between rent days, advance rent payments may not be refunded unless the outgrant instrument provides for such a refund; a refund may, however, be made under a supplemental agreement to the outgrant if such a refund is in the Government's interest. If termination of an outgrant is considered, rent should be collected only to the effective date of termination.

b. Prompt enforcement of conditions is essential to proper outgrant administration, particularly conditions related to payment of rent. The District Engineer should ensure coordination between Finance and Accounting and Real Estate to achieve certain goals:

- (1) grantees will be notified shortly after they are delinquent in payment;
- (2) the Real Estate Division will be notified promptly of rent delinquency so that immediate collection efforts may begin; and
- (3) when appropriate, termination action will be initiated within delegated authority after the rent payment becomes delinquent, usually within 60 days.

c. The case record should include documentation and justification of any extensions of time to pay rent granted by the District Engineer; however, the imposition of late charges will not be affected by extension of time to pay.

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d. The rent owed to the government is a claim. Appropriate Finance and Accounting procedures for processing, collecting or litigating a claim owed to the government will be followed.

8-94. Forgiveness or Modification of Compensation. Where compensation has accrued and is due, the Secretary of the military department may not relieve the grantee of obligation to pay: vested contractual rights of the Government cannot be forgiven. Future consideration may be modified if there is consideration to the United States for the change (consideration does not have to be money but must be valuable). The poor financial condition of a grantee is not sufficient justification to reduce the consideration or otherwise modify the contract. 16 U.S.C. § 460d-1 does specifically authorize the amendment of leases for commercial recreational facilities at Civil Works projects to provide for the adjustment of future rental or other consideration when it is deemed to be necessary or advisable in the public interest. Adjustments may be made only to future payments and this section may not be used as authority for adjustments for any period prior to the date of the amendment of the concession lease. Past examples justifying modification have included drought conditions or extreme flooding.

8-95. Disposition of Funds.

a. General. Payments from outgrants will normally be deposited to the credit of Miscellaneous Receipts.

b. Rental payments for outgrants under authority of 10 U.S.C. § 2667, which provides for abatement of any payment contingent upon a particular event, should be held in a special deposit account until possibility of abatement has passed; the Finance and Accounting Officer will then be advised on the final disposition of the money and action to be taken according to fiscal regulations. Also, receipts from military agricultural and grazing leases will be deposited into a special account of the appropriate military department to cover the administrative expenses of such leasing and to finance multiple land use management programs at installations. Receipts from other military leases issued under 10 U.S.C. § 2667, will be deposited into the special Treasury account for the 50/50 return to the installation and Army.

c. According to an Act of Congress, approval 20 October 1976 (31 U.S.C. §§ 6901-6903) the Secretary of the Interior pays money to local governments on account of the amount of "entitlement lands" in each jurisdiction. As defined by the law (31 U.S.C. § 6901), entitlement lands include the following: Federally owned water resource development project land; Federally-owned areas under Corps of Engineers jurisdiction used for dredge material disposal; inactive or semi-active installations, excluding Army industrial installations retained for mobilization and for reserve training. Send all information on entitlement lands to the Department of the Interior for administration and payment. All public inquiries on entitlement lands payments should be referred to the U.S. Department of Interior, Bureau of Land Management (520), Washington, D.C. 20240-0001.

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d. Payments for Utilities or Services. If utilities or services are furnished to the lessee in connection with a lease, Title 10 U.S.C. § 2667 provides that payment for such utilities or services may be covered into the Treasury to the credit of the appropriations from which the costs of such utilities or services were paid.

8-96. Existing Grants on Acquired Lands. Whenever the Army acquires lands subject to grants made by the Government's predecessor in title (including public road and utility easements), the District Engineer administers such outstanding grants. If rents, royalties, or other rights pass to the United States under the terms of the option or pursuant to condemnation proceedings, the District Engineer will inform the grantee by letter that the United States has acquired title, and that payments will be made to the United States. Copies of this letter, the grantee's reply, the outstanding grant, and the deed or other title document will be placed in a file and a Contract Number will be assigned following the procedures used for other outgrants. Copies and distribution will be the same as for the outgrant, except that the grantee will not be given a copy. See Paragraph 8-119 a (9) for a discussion of acquired oil and gas leases.

8-97. Termination, Revocation, Relinquishment and Expiration.

a. By the Government. Refer to the specific paragraph for each type of outgrant for the authority to terminate. A general distinction should be made between termination for cause referred to as revocation, which usually follows a violation of outgrant conditions, and termination at will or for other governmental purpose, when the Government has an overriding need to use the granted property and termination is in accordance with the outgrant. If an outgrant is revoked, document the basis in case the action is appealed or litigated. Care should be taken to follow exactly the provisions of the outgrant condition and the disputes clause of the particular outgrant involved. If revocation or termination of an outgrant is in the interest of the United States but the Division Engineer, District Engineer or Chief of Real Estate do not have authority to revoke, a recommendation and other pertinent information will be submitted to HQ USACE (CERE-M), along with a notice of revocation prepared for execution by direction of the Assistant Secretary of the Army. ENG Form 931, Notice of Revocation, for Army property, or a substantially similar notice will be used.

b. By the Grantee. Certain grants contain provisions for termination by the grantee, or relinquishment, upon notice in writing. Such notice must be unequivocal and must be submitted within the period specified in the grant instrument. If in the best interest of the Government to accept the relinquishment, strict adherence to the time limitations may be waived.

c. Report of Termination. When an outgrant expires by limitation or term, or is revoked, relinquished, or terminated pursuant to the provisions of the instrument, a report will be made on ENG Form 1368, Report of Termination of Instrument, with distribution as provided for outgrants, except that the grantee shall not receive a copy. The District Engineer will determine that restoration obligations have been properly discharged in accordance with the terms of the outgrant.

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8-98. Renewal. The District Engineer should initiate renewal action in sufficient time to complete action before the termination date to preclude occupancy without formal authorization. The grantee, in the absence of a written agreement otherwise, has neither a legal nor equitable right to a renewal of the outgrant. Any agreement to renew must be supported by new consideration. A renewal allows the grantee the privilege of a new outgrant for an additional term. An option to extend the term, on the other hand, continues the original outgrant for the additional term. Waivers of competition to continue the current use with the same grantee may be made by the District Engineer if within delegated authority. Use the most recent version of the outgrant format rather than a supplemental agreement to renew the use.

8-99. Compliance Inspection.

a. Purpose. The Compliance inspection is the vehicle for enforcing the grantee's obligations and responsibilities as set out in the outgrant document. The outgrant document establishes a legal relationship with the grantee. No other inspection is authorized to determine compliance. Non-compliance must be enforced through the remedies and procedures set out in the outgrant document.

b. Responsibility.

(1) The Department of the Air Force will inspect all outgrants on its installations for compliance. For those outgrants executed by the Corps, a record of all violations will be sent to the District Engineer for corrective action.

(2) District Engineers having real estate responsibility are responsible through their Real Estate element for periodic compliance inspections and management of outgrants of Army military real property. Compliance inspections will determine whether grantees are complying with the terms of the outgrants. Installation commanders and his/her representatives provide general supervision over real property at the installation, and, in connection with their usual administrative activities will report any observed instances of outgrant violation immediately to the District Engineer. Installation representatives may be delegated authority by the District Engineer to perform compliance inspection of lands outgranted by easement for roads, streets, powerlines, pipelines, underground communication lines, and by minor licenses. They may also be delegated authority to perform compliance inspections of selected agricultural and grazing outgrants. The Real Estate Division will perform compliance inspections of all other outgranted lands, including non-delegated agricultural and grazing leases and port or industrial use, commercial concession, bank and credit union, and fish and wildlife purposes, without the power to redelegate their accomplishment. When the Commander reports instances of noncompliance, district Real Estate personnel will make inspections of such cases and take corrective action as appropriate. All determinations as to questions of outgrant compliance will rest in the Real Estate Division, subject to the District Engineer's final approval.

(3) District Engineers having real estate responsibility are likewise responsible through their Real Estate element for all compliance inspections and management of outgrants of real

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property on Civil Works projects and activities. The Project Manager or his/her representatives provide general supervision over all real property at the project, and, in connection with their usual administrative activities, will report any observed instances of outgrant violation immediately to the district Real Estate element. Project representatives may be delegated authority by the Real Estate Division to perform compliance inspection of lands outgranted by easement for roads, streets, powerlines, pipelines, underground communication lines, and by minor licenses. They may also be delegated authority by the Real Estate Division to perform compliance inspections of selected agricultural and grazing outgrants. The Real Estate Division will perform compliance inspections of all other outgranted lands, including non-delegated agricultural and grazing leases and port or industrial use, commercial concession, public park and recreation, and fish and wildlife purposes, without the power to redelegate their accomplishment. When the project manager reports instances of noncompliance, district Real Estate will make inspections of such cases and take corrective action as appropriate. All determinations as to questions of outgrant compliance will rest in the Real Estate Division, subject to the District Engineer's final approval.

c. Frequency, Scheduling and Coordination.

(1) The District Engineer will inspect all Army military and civil outgrants annually for compliance. As an exception, state park and recreation leases as well as leases and licenses to states for wildlife management purposes will be inspected no more than once every three years. Inspections delegated for performance by project/installation representatives will be accomplished on a once-every-5-year basis, unless non-compliance is suspected.

(2) Successful compliance inspections and outgrant management require effective communication and cooperation between Real Estate Division and Operations/Civil Works project offices or MACOM/installation representatives, the Safety and Occupational Health office and the grantees. We encourage a partnering approach to compliance inspections, with representatives from all appropriate district elements participating. Real Estate will notify the project manager or installation commander in advance of an inspection so that a project/installation representatives may attend. Efficiency, protection of the Government's assets and service to the public are primary goals.

(3) When requested to conduct compliance inspections, the project manager/installation commander will be furnished a list of outgrants to inspect and a schedule for inspections, If prescribed mission assignments will not allow this, the district Real Estate Division will make required inspections. The Real Estate Division will provide the project manager/installation commander with criteria and procedures for inspections and will provide training. Requested inspection reports will be forwarded directly to the District Real Estate element upon completion.

(4) The Real Estate Division will furnish the installation commander or project manager copies of all outgrants, supplemental agreements, inspection records, and correspondence relating to outgrants. Real Estate Division will also provide copies of any correspondence to or

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from the project concerning inspection of outgrants to the District Operations and Readiness Division. The Real Estate Division will be the office of record for outgrants and associated actions and will be responsible for preparation of all correspondence in connection therewith.

(5) The unit cost of making compliance inspections will be kept to a minimum; therefore, project representatives will charge the Real Estate Compliance Inspection Cost Account only with the time onsite specifically devoted to the requested compliance inspection. Time spent on the overall supervision of project lands will be charged to other appropriate accounts.

(6) Work units reported by Real Estate on ENG Form 4564, Real Estate Schedule/Cost and Performance, will include the requested efforts of project personnel. These units may not be included under the requirement for contracting out.

d. Inspection Records.

(1) ENG Form 3131, Report of Compliance Inspection of Army and Air Force Property Occupied Under Lease, License, Easement, or Permit, or its companion form ENG Form 3560, Report of Compliance Inspection - Outgrants, is used to record inspections. Use ENG Form 3560 if several outgrants are inspected at the same installation or project and no violations are found. However, if corrective action is recommended on ENG Form 3560, record details of the violation on ENG Form 3131 and attach documentation, such as maps, video tapes or photographs.

(2) Where authority is delegated to do so, the District Engineer may revoke outgrants if compliance violations continue after notice is served and after specified time for correction has elapsed. Unless specified otherwise, forms of revocation are Notice for Revocation, ENG Form 931 for Army property. If revocation would be controversial or the District Engineer lacks authority to revoke, a recommendation, full documentation on the violation, and a partially completed revocation form will be submitted to CEREM. The District Engineer will notify the grantee by certified mail, with return receipt requested, of the action recommended to higher authority and the basis for that action.

(3) Compliance inspection checklists are valuable for reminder purposes especially with regard to environmental and safety requirements, but preoccupation with lists should not obscure the primary purpose of compliance inspections, which is good management of the land under our jurisdiction and compliance by the grantee with the terms of the use.

e. Special Procedure and Requirements for Compliance

(1) Compliance with either the ADA or the Rehabilitation Act is a required element of outgrant compliance inspections. However, effective immediately, the District will use a grantee self-certification process. CECW-ON is developing an internal checklist to be included in their ER 1130 series which may be provided to the grantee for use in the self-certification process. Outgrantees subject to the ADA and ADAAG will provide a statement of compliance noting any



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deficiencies and providing a schedule for correction. Outgrantees subject to the Rehabilitation Act and UFAS may self-certify both. Again, deficiencies and planned corrective action must be noted. The statement of compliance will be maintained as a part of the outgrant documentation. Continued failure to comply with the ADA or the Rehabilitation Act, following adequate notice of lease violation and opportunity to remedy, may be cause to terminate or not renew an outgrant .

(2) Health and Safety.

(a) Upon discovery of any condition that presents an imminent danger to the safety/health of the public, the installation commander/project manager or the district Real Estate element, may require that any appropriate part or all of the outgranted premises be closed to the public until such condition is corrected and the danger to the public eliminated. Imminent danger is defined as a condition or practice which poses a danger that reasonably could be expected to cause death or severe physical injury before the imminence of such danger could be eliminated through normal procedures. Special care should be taken to comply with rights of the grantee under the outgrant. The district Real Estate element should be consulted prior to any closure action. The discoverer of a dangerous threat should not unilaterally shut down operations, unless consultation with the district Real Estate element is not possible or the threat is so severe as to preclude such consultation. If approved during consultation with the district Real Estate element or due to the circumstances as set out above, the installation or project staff will immediately take appropriate action. A written report of any closure action will be forwarded to the Chief of Real Estate.

(b) Grants will not reference, and grantees will not be required to comply with, EM 385-1-1, Safety Manual. Typically safety inspections performed using this Manual are general in nature and focus on protection of the Corps employee under OSHA requirements, hazards related to fire prevention and protection, electrical safety, safe transportation and access, sanitation, caution and warning signs, and pressurized systems. Compliance inspectors should be trained to recognize such hazards and shall be familiar with pertinent provisions of EM 385-1-1, as a guide. Our compliance inspections are not intended to ensure safe working conditions for the grantees employees nor do we wish to expose Army to liability for giving the appearance that we have assumed this duty.

(c) Since many of our outgrants provide public accommodations and facilities, we have a duty to the public to see that the grantee provides a safe facility. The compliance inspectors should be generally familiar with Federal, state and local health and safety laws and regulations for the outgranted purposes. The current commercial concession lease format also requires compliance with the National Fire Protection Association (NFPA) handbooks: NFPA 303, Marinas and Boat Yards, and NFPA 70, National Electrical Code (Article 555 on Marinas and Boat Yards); and other applicable codes and standards. The concessionaire is required to certify compliance. Should a substantial change occur in the standards from one year to the next, we should work with the concessionaire on a written schedule for bringing the facility into compliance similar to that provided for under ADA. Although detailed inspection are not

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required by the compliance inspector, he/she should be generally familiar with the industry standards and aware when the standard has changed.

(d) If inspections of outgrant areas reveal conditions that potentially endanger public health and safety or that damage Government property interests, division and District Engineers will request that the appropriate USACE Safety and Occupational Health Office participate in a follow-up compliance inspection. Other Federal, state or local agency experts may also be requested to make technical inspections of such outgrants and to obtain sufficient data to determine whether grantees are actually in noncompliance. Division and District Engineers are responsible to notify grantees of required corrective action. If grantees fail to act promptly, the matter may be referred to Federal enforcement agencies or to state agencies with jurisdiction.

(3) Environmental Aspects.

(a) Within the last several years, Army has placed increased emphasis on environmental stewardship with a strategy based on compliance, prevention, restoration and conservation. While environmental compliance has been required of grantees since the 1970's, the environmental portion of the compliance inspection has become increasingly more important.

(b) Environmental assessment systems have been developed for both military and Civil Works properties, using protocols developed by the Construction Engineering Research Lab (CERL). The Environmental Review Guide for Operations (ERGO) applies to Civil Works and the Environmental Compliance Assessment System (ECAS) applies to military. Neither of these assessments replaces the outgrant compliance inspection. The purpose of ERGO/ECAS is to freeze a moment in time and self-audit our projects or installations for compliance with numerous environmental statutes. The results are factored into the budget process for restoration or remedial action. Although not to replace outgrant compliance inspections, the protocols may be used as a tool when performing the compliance inspection. As a minimum, the District Engineer should consider incorporating the ERGO/ECAS preassessment screening checklist into the inspection. Items noted in the ERGO/ECAS assessment must be reported to the district Real Estate element for corrective action through the compliance process.

(c) In cases involving discharge of waste or effluent, specific compliance inspection comments are required on whether or not the outgrant area contains waste or effluent treatment facilities and whether the grantee has constructed adequate treatment facilities and complied with outgrant instrument provisions, including NPDES and RCRA permits. If discharge of waste or effluent is observed or if sufficient evidence of discharge exists, or where improper discharge of waste or effluent or sufficient evidence of violation is observed, the grantee will immediately be informed of the Government's concern and will be asked for a prompt corrective plan, including a firm time schedule with milestones. The grantee should further be informed that prompt corrective action is required; otherwise the matter may be brought to the attention of the local or state regulatory authorities and the regional office of the Environmental Protection Agency and may warrant revocation of the outgrant.

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(d) When doing an outgrant compliance inspection, a distinction must be made between a finding of noncompliance with a specific outgrant condition and a finding of a potential violation of a Federal, state or local law or regulation administered by another agency. Once an item of potential regulatory violation is identified, whether environmental, health or otherwise, then the grantee must be notified, in writing, and be given an opportunity to work with the appropriate regulatory agency to achieve compliance. We must be very careful not to usurp the regulatory agency's authority to "find violations" and to determine when compliance is achieved. Potentially severe violations can be reported to the appropriate regulatory agency directly, but their finding of compliance is binding. We must work with the granted and the regulatory agencies to develop reasonable milestones for achieving compliance, especially if significant monetary investments are required to correct the problem.

(e) Each grantee operating a commercial concession or public park or recreation area will annually submit certification that water and sanitary systems meet Federal, state, and local standards.

f. Non-compliance corrective action.

(1) Compliance inspections often discover significant compliance violations, which, if not corrected, are significant enough to warrant revocation. However, prompt district follow-up usually ensures corrective actions are taken by the grantee. The districts should, however, be aware that under a recent Engineer Board appeal, once corrective actions are accepted, especially if negotiated to less than originally designated, the grantee will be considered to be in compliance for that year. Patterns of repeated violations, even if for the same compliance issues, can not be cumulated to a greater non-compliance status than that warranted by that year's report. In fact, patterns of repeated negotiation of less than the action requested in the compliance report can establish an expectation of compliance status at less than the original request. To preserve the non-compliance status, the district should document in writing that the proffered actions do not bring the grantee into compliance and set out a new timeline for full corrective action. Reasonableness and a partnership attitude in working with the grantees is still expected and encouraged, however, we must preserve the Government's rights if litigation results.

(2) A informational copy of the compliance inspection report will be forwarded to HQUSACE (CERE-M), through the Division Engineer, whenever substantial non-compliance is reported, follow-up correction action has not corrected the situation, and the district expects litigation, formal dispute, Congressional interest or controversy.

8-100. Audits. The District Engineer shall have the right to perform audits of the grantee's records and accounts, and to require the grantee to audit its records and accounts and those of third party concessionaires and furnish the District Engineer with a copy of the audit, in any grants that requires maintenance of records and accounts or the sending of periodic financial statements to the District Engineer. Leasing of real estate is considered a "commercial function" under the Financial Managers' Financial Integrity Act (FMFIA), as amended, Title 31,

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United States Code, Section 3515, and verification of monies owed to the United States and charges for real estate is necessary to fulfill our reporting requirements.

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## SECTION IX. OUTLEASES - GENERAL

8-101. Purpose and Scope. This section defines responsibilities and procedures for executing, renewing, amending, revoking and terminating leases on Army and Air Force controlled real property. General procedures in preceding sections for processing applications, determining availability, drafting outgrants, execution, management and administration apply here, except as provided. The Bureau of Land Management has the responsibility for leasing Federally owned mineral interests.

### 8-102. Leasing Objectives.

a. A lease is a written agreement which conveys a possessory interest in real property, usually exclusive, for a period of time for a specified consideration. A lease carries a present interest and estate in the land for the period specified. The estate of the lessee, or tenant, is called the term and the estate of the lessor, or landlord, is the reversion. Generally, the lessee may occupy and use the premises for any lawful purpose not injurious to the reversion. However, the lease may contain express provisions or conditions restricting the use of the property, i.e. park and recreation use, no timber harvesting, prior approval of assignment.

b. Real property available for non-Army use may be leased for commercial or private use not inconsistent with its authorized purposes and the policies of the department concerned. Principal objectives are: promotion of the national defense or economy; maintenance and protection of property by lessees to minimize expenses from appropriated funds; mission support; service to the public at Civil Works projects; maximum return to the United States consistent with these objectives.

### 8-103. Authority.

a. Article IV, section 3, clause 2 of the Constitution grants to Congress alone the ultimate authority to determine under what terms and conditions property of the Federal Government may be disposed. Included in the power of disposition is the power to authorize leasing of real property, as well as its sale. US v. Gratiot, 14 Pet. 526 (1840). The United States has all rights of proprietorship as well as the power of a sovereign over its property and can prohibit absolutely or fix the terms on which its property may be used. Light v. US, 220 US 523, 536-538 (1911); US v. Midwest Oil Co., 236 US 459 (1914). The two leasing authorities used by the Army are Title 16, United States Code, Section 460d (civil) and Title 10, United States Code, Section 2667 (civil and military). There is no statutory requirement that leases of Government real property be issued after formal hearings or public comments.

b. Title 10, United States Code, Section 2667 authorizes the Secretaries of the military departments to lease property under their control. Title 16, United States Code, Section 460d authorizes the Secretary of the Army to lease property at water resource development projects.

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Holding agencies may lease excess or surplus properties on an interim basis, providing consent of GSA is first obtained (41 CFR 101-47.203-9).

8-104. Competition.

a. General. Competition is not generally required for leases to governmental entities. Real property determined available for leasing will be authorized for use by non-governmental parties only after reasonable efforts have been made to obtain competition through advertising. Request for use initiated by a non-governmental party must have a waiver of competition prior to granting the use. Exceptions will be made only where general instructions applicable to the type of outgrant or express instructions in individual cases provide otherwise. Based on long-standing principles of fairness, advertising is intended to give all qualified persons equal opportunity to compete for use of the property, to secure for the Government the benefits which flow from competition, and to prevent charges that Government employees have shown favoritism, collusion or fraud in authorizing use of public property. The District Engineer will determine the method of obtaining competition and will consider all pertinent facts such as type of property, prospective uses, and probable public interest in the property. Competition for use of public property by non-governmental parties is the general rule; waivers are the exception.

b. Notices of Availability.

(1) General. Competition may be stimulated in several ways, i.e., circulation of notices to interested parties, posting notices in public places, and publication of notices in newspapers, magazines, or trade journals. Appendix 8-A, Figure 8-A-5, Notice of Availability for Leasing Real Property of the United States, is a guide for requesting applications for standard leases of lands or improvements, pursuant to existing delegations of authority. Paid advertisements will be placed whenever the rental value of the proposed use justifies the expense. A proposed notice will be devised to meet requirements of leasing conducted pursuant to a special delegation of authority or of circumstances in which this Notice format is inappropriate; the proposed advertisement will be forwarded to HQUSACE (CERE-M) for approval, when it contains unusual terms and conditions, involves special circumstances or requires advance approval of policy deviations.

(2) Special Situations. If paid advertising of the notice of availability is not warranted because of low property value or some other reason, the Notice of Availability will be circulated as widely as possible. When a conceptual ROA is used, the Notice may also be used to obtain expressions of interest to determine feasibility of leasing.

(3) The Notice will include information which enables submission of applications on a uniform basis; proper identification of the property; the Government use (unless classified); availability for inspection; address, telephone, date, and time for contacting the Government representative; suitable uses for the property; conditions for use; and term of the proposed grant.

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c. Selection.

(1) The District Engineer will determine the responsibility of applicants by evaluating information in the application, reviewing supplementary information required for proper consideration of the applications, and reasonable investigation. The District Engineer may award the grant to the best responsible applicant whose application responds fully to the advertisement.

(2) For leases issued under Title 10, United States Code, Section 2667, where monetary consideration is a primary selection factor, such as agricultural and grazing leases, and the estimated annual rent is less than \$200,000 (military property only), the District Engineer may enter into a lease for the highest rental offer even if less than the estimated rental value, if the lease offerings were well publicized and where it is considered that the rental would be in the best interest of the United States since the competitive rental is evidence of the true fair market rental. The District Engineer should fully document such actions in the file.

(3) If all applications are rejected or if no applications are received, within a reasonable time after advertising, the District Engineer may negotiate with any qualified party. Unsuccessful applicants must first be informed and given the opportunity to submit new applications at no less than the appraised market value. Otherwise the property may be readvertised.

8-105. Waiver of Competition.

a. Division and District Engineers, are authorized to grant waivers of competition for the renewal or extension of existing commercial leases, priority leases previously approved as such, grants to public agencies and public utilities, and transportation licenses. Authority has been delegated to the districts to waive competition where an adjoining landowner has the only means of access to land that is to be leased. Such waivers will be fully justified in the files.

b. Forward other requests for a waiver of competition to HQUSACE (CERE-M) for approval or transmittal to the Office of the Secretary of the military department concerned, as appropriate. Waivers of competition will be limited to certain cases, i.e., where forgoing competition will be in the public interest or promote national defense, installation or project mission. Information included in or with the correspondence must fully support the recommendations. Ordinarily it is not sufficient justification to negotiate or renew an outgrant only if the fair market rental value does not justify advertising, if similar property is available or if there are no other known interested parties. These considerations may limit the scope of the advertising proposed but not preclude advertising.

8-106. Format. Outgrants will be prepared using applicable formats attached as figures to this Chapter or applicable numbered Engineer Forms. Conditions may only be deleted if so indicated in the format or in this Chapter. Conditions necessary for site specific environmental, cultural, and operational requirements may be added, provided that such additions are

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consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified by the District Engineer and forwarded to HQUSACE (CERE-M) for approval before the lease is executed.

8-107. Revocation of Leases. Except as provided in succeeding parts of this section or in separate authorizations, the same person authorized to execute a lease may revoke that lease using ENG Form 931, Notice of Revocation, for nonpayment of rental, breach of any lease conditions, or need for the property in the public interest or for national defense. Leases may not be revoked or terminated retroactively.

8-108. Priority of Other Federal Agencies. Before leasing any space more than 2,500 square feet suitable for office or storage purposes, the District Engineer will inform the GSA regional office by letter. The letter should include a description of the property, terms and conditions of availability, and a statement that the lease will be withheld for 30 days pending GSA determination whether any other Federal agency requires the property. Appropriate representatives of the Navy, Army, or Air Force will be sent a copy of the letter. If clearances for leasing are required, as in Paragraphs 8-109 or 8-110 below, a copy of the letter to GSA will be included with the assembly sent to HQUSACE (CERE-M), if execution authority is not otherwise delegated.

8-109. Secretariat Approval. Real property will be offered for use according to AR 405-80. Prior Secretariat approval is required for any leases which require a Title 10 Report as set out in Paragraph 8-110 below, and as set out in AR 405-80 and this regulation.

8-110. Report to Committees on Armed Services (Military Property only).

a. Title 10, United States Code, Section 2662, requires that a report of the proposed transaction be made to the Armed Services Committees of the Senate and House of Representatives (SASC, HASC) before leasing property with an estimated annual fair market rental of more than \$200,000 (including maintenance, protection, repair, improvement and restoration performed by the lessee) located in the United States, Puerto Rico, Guam, U.S. Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. The threshold is based upon the estimated value and not the amount of cash to be collected. Before advertising availability or negotiating leases covered by this paragraph, the District Engineer will submit to HQUSACE (CERE-M) a draft report following Appendix 8-A, Figure 8-A-7, Real Estate Disposal Report. The estimated fair market rental must be based either upon an appraisal or an opinion of value approved by the district Chief, Appraisal Division.

b. If the committees should request a hearing, the District Engineer may be requested to support Army witnesses before the committees with the installation site plan showing the property clearly and a real estate map, color-coded with legend, showing the area and acreage to be leased. Maps and plans furnished must be of excellent quality, current, accurate, and visible at 30 feet or more.



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c. HQUSACE (CERE-L) will send a copy of the report to the SASC and HASC for the 30 day review period. Final action will not be taken by the District Engineer without further instructions that approval has been given. The lease will state: The requirements of Title 10, United States Code, Section 2662, have been met. If no such report is required, the lease will state: This transaction is not subject to Title 10, United States Code, Section 2662. Reports are not required for leases of property for agriculture or grazing, or for excess properties, except properties exsessed as a result of a defense installation realignment or closure and leased under 10 U.S.C. § 2667f. Civil river and harbor projects or flood control projects are not subject to these reporting requirements and no report or statement is required for leases at these projects.

8-111. Consideration. Except as otherwise specifically provided in succeeding paragraphs of this section, or by express instructions in individual cases, all leases will reserve, as a consideration, no less than the fair market rental value of the property leased or the established estimated administrative cost, whichever is greater, as set forth in Paragraph 8-81 of this regulation.

8-112. Valuable Improvements. In general, there is no obligation on the part of the lessor to pay the lessee for improvements that the lessee elects to erect on the premises, though the improvements are such that by reason of their annexation to the land they become a part of the realty and cannot be removed by the lessee. On the other hand, if the lessor requires the construction of the improvements, the lessee may be entitled to compensation. Therefore, the lessee will not be required to construct any valuable improvements unless offset from the rent or commensurate with the term of the outgrant, so that the term allows the lessee to amortize the value of the improvements. To allow otherwise could open the United States to a taking claim or claim for reimbursement when the lease terminates or is revoked. If the value of the improvement is an offset to rent, then title to the improvement should vest in the United States at the end of the lease term.

8-113. Insurance. If a lease authorizes the lessee to possess and use Government-owned improvements, the lessee must insure such improvements for full insurable value, where practicable, to assure future Government use. The insurance provision is not required where the lessee has use of improvements acquired incidentally with land and serving no present or foreseeable Government need; however, at the District Engineers' discretion, the provision may be included.

8-114. Lease Assignments and Subleasing. No lease or sublease may be assigned without written approval of the District Engineer. Assignments or subleases may be authorized after coordination with the installation commander or project manager. The District Engineer must determine that the assignee or sublessee is a responsible party. In making that determination, the same criteria should be applied as that used in the original lease. All rental payments for the lease being assigned and for any other Government lease of the assignor, assignee, or sublessee must be current. Lessee must be in compliance. Lease assignments may be accomplished by executing a new lease or by supplemental agreement.

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8-115. Leasing to Employees of the Federal Government. Federal employees are not prohibited from leasing Government property, but extreme care must be taken to avoid appearance of impropriety. Accordingly, all employees, including military personnel, whose access to special knowledge would give them an advantage over the general public may not lease Army or Air Force properties. This includes all civilian and military employees of division, district, and project offices. Leases may be granted to other Federal employees only after advertising using sealed application procedures. The Provisions of this paragraph do not affect the authority in AR 210-10 for furnishing quarters to civilian employees of the Army.

8-116. Payments to States - Leasing on Civil Works Projects. Section 7 of the Act approved 18 August 1941, as amended (33 U.S.C. § 701c-3), provides that 75 percent of all monies:

received and deposited in the Treasury of the United States during any fiscal year on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes, including the development of hydroelectric power, shall be paid at the end of such year by the Secretary of the Treasury to the state in which such property is situated.

When the leased land is situated in more than one state or county, the share to each from the proceeds shall be proportional to the leased area in each. This provision of the law applies only to receipts from leases on lands acquired by the United States for the above purposes, but not to receipts from easements or licenses. Each district office will maintain accounts in accordance with existing fiscal procedures to carry out this law.

8-117. Choice of Instrument Type. Since a license is a lesser interest than a lease, a license may be issued under the authority of either leasing authority when use is for the grantee personally without right to assign or non-Army use will be concurrent with Army use. The distinguishing characteristic of a lease is that it conveys a present interest and estate in the land for the period specified. While a license to do an act upon land involves the exclusive occupation of the land by the licensee, so far as is necessary to do the act, and no further, a lease does more; it gives the right of possession of the land, and the exclusive occupation of it for all purposes not prohibited by the terms of the lease agreement.

8-118. Disclosure of Lease Provisions. AR 340-17 regulates release of lease instruments or information to third parties. Proprietary data, business secrets, and financial information are considered confidential and are not generally released.

8-119. Minerals Exploration and Exploitation. It is the Department of Defense policy to make as much land as possible available for mineral exploration and extraction, consistent with military operations, national defense activities, and civil works activities.

a. Mineral Leases on Army Controlled Lands. Guidance is provided in AR 405-30, Mineral Exploration and Extraction.

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(1) Civil Works Lands. Interested parties apply to the Bureau of Land Management (BLM) which reviews applications and forwards them to the District Engineer. On approval of the Report of Availability, Figure 8-A-3, and development of title information by the District Engineer, consent to leasing may be granted to BLM by letter from the District Engineer. Determinations of non-availability require approval by CEREM, and withholding of consent to lease requires Army Secretariat approval before the Division Engineer or delegate advises BLM.

(2) Military Lands. Interested parties apply to BLM which reviews applications and forwards them to the Installation Commander. The Installation Commander reviews the request as to availability, conditions of availability, and the presence of unusual environmental conditions (e.g. endangered species). Meanwhile, the installation will forward a copy of the application to the Division and District Engineers for preliminary action on title information and for advice on mineral leasing. The request is then forwarded through channels to the MACOM for approval and then to CEREM for a final determination of availability. Withholding consent to lease requires Army Secretariat approval. On determination of availability or approval for withholding consent to lease, OCE will forward the action to the Division Engineer who grants BLM consent to lease, or advises BLM of the Army decision to withhold consent. A copy of the consent letter with all enclosures will be forwarded to the installation commander and the MACOM.

(3) Stipulations. Required stipulations are stated in AR 405-30. All notices required in the mandatory stipulations will be furnished to CEREM, the affected MACOM, the District Engineer, BLM, the lessee and the operator. Other reasonable stipulations may be added to protect Army interests without duplicating lease conditions or other existing regulations. The District Engineer will require the BLM in the consent letter to advise of any changed or added lease terms or stipulations prior to execution by BLM. Leases issued by the BLM without stipulations provided in the District Engineer's consent may be cancelled based on administrative error. Once a lease is properly issued, stipulations may be added only by mutual agreement of the United States and the lessee.

(4) Title Information. District Engineers will furnish data to BLM from the District's realty records showing the basis of the Government's claim of title to land that is being evaluated for mineral leasing. This data may consist of audit reports, pertinent abstracts, title papers, or other documents. District Engineers are authorized to negotiate with BLM concerning the extent of the title evidence to be furnished and for reimbursement of the costs associated with compiling the title information.

(5) Notice to Third Party Grantees. Third party grantees should be notified when a lease is issued.

(6) Conditions of Approval for Drilling. These conditions are furnished by the installation or District Engineer to the BLM District Manager, after the lessee proposes drilling plans for specific sites (usually about 1 acre each) in the leased area. The BLM District Manager incorporates the conditions in the approved APD. See BLM Oil and Gas Order No. 1 (48

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Federal Register 48916 (1983) as amended by 48 Federal Register 56226 (1983)). The conditions of approval should address detailed concerns about activity at the proposed site. For example, the lessee should be required to stack any merchantable timber cut in accordance with the approved drilling plan for disposal by the District Engineer or designee.

(7) Monitoring. BLM has primary responsibility for monitoring mineral leasing activities. However, if a condition is observed which appears to be in violation of lease terms or approved drilling plans, the District Engineer should notify the appropriate BLM office.

(8) Drainage. If it appears that oil or gas is being drained from acquired lands by wells outside the installation or project boundary, the Army may request the BLM to investigate the situation and determine whether to issue a protective lease.

(9) Acquired Leases. When a mineral lease is acquired and rents and royalties are to be paid to the United States, furnish a copy of the lease with the first lease payment to the appropriate BLM office. Any subsequent payments should be sent, with MMS Form 2014, to the Minerals Management Service, Royalty Management Program, Post Office Box 25165, Denver, Colorado 80225-0165, which is also the source for MMS Form 2014.

b. Mineral Leases on Air Force Controlled Lands. Guidance is provided in AFR 87-9, Mineral Exploration and Extraction on Air Force Lands. The real estate role is limited to furnishing available title information to the Air Force on request.

c. Licenses and Permits for Mineral Exploration on Army-Controlled Lands. See Paragraph 8-208.

8-120. Reserved.

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SECTION X. OUTLEASES - TITLE 10 U.S.C. § 2667

8-121. General. This law is the general leasing authority of the military departments and is used for all Army leasing not specifically authorized by other statutes. Leases can be granted under this authority for any legitimate purpose except as otherwise provided herein. Title 10 U.S.C. § 2667 is applicable to military and civil works project lands.

8-122. Mandatory Statutory Provisions. Leases granted under this authority must satisfy the requirements of the statute, generally:

- a. the lease has been determined to promote the national defense or be in the public interest;
- b. the property is under the control of Army;
- c. the property is not for the time needed for public use;
- d. the property is not excess property, as defined by Section 3 of the Federal Property and Administrative Services Act of 1949, as amended;
- e. the lease will not be for more than 5 years, unless the Secretary determines that a longer period will promote the national defense or the public interest;
- f. the interest of the lessee of property leased under this section may be taxed by State or local governments. All leases shall provide that, if and to the extent that leased property is later made taxable by state or local governments under an act of Congress, the lease shall be renegotiated; and
- g. the total consideration, in cash or in kind, is not less than the estimated fair market rental of the leased interest. The fair market value of the leased interest should take into account the property, the restrictions on use and access to the property, the terms and degree of Government control in the lease document, the termination rights, and any other specifics of the type of use.

8-123. First Right to Buy. The statute provides discretionary authority to include a provision in such leases giving the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law. This right is not routinely provided and is only considered in long term leases, such as industrial, where the lessee will make significant improvements and repairs.

8-124. Offset of Rental for Maintenance, Protection, Improvement, Repair, or Restoration. Title 10, United States Code, Section 2667 authorizes the consideration to be offset for maintenance, protection, repair, improvement, or restoration. To the fullest extent practicable, lessees may be required to maintain, protect, repair, improve and restore government facilities

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on leased properties, exteriors as well as interiors, as well as the leased premises, as all or part of the rental. These obligations may extend to an entire lease unit or installation if a substantial part thereof is being leased pursuant to Title 10, United States Code, Section 2667. However the Comptroller General of the United States has ruled that offset of rental income for an entire or major portion of an installation or building by a lessee leasing only a minor part or portion of the facility may be considered a subterfuge to obtain maintenance of the facility without charges to appropriations and thus be violative of 10 U.S.C. § 2667. In any case, the value of the rental offset for maintenance, protection, restoration, improvement or repair and/or any cash rent reserved to the Government must be equal to or exceed the fair market value of the leased interest granted. The District Engineer should coordinate with the using service whenever any question exists as to the amount of such responsibilities which a lessee should be required to assume. Environmental, cultural and historical activities can be included in rental offsets, including restoration. See Paragraph 8-112. Offset for improvements will not include the value of the grantee's structure, but should be viewed more broadly as improvement to the premises, e.g. upgrade of roads, landscaping, or capital improvements, beyond repair or maintenance. Environmental remediation must be accomplished in consonance with applicable environmental laws and regulations.

8-125. Execution and Revocation.

a. The Division Engineer and the Division Director of Real Estate are hereby delegated the authority to execute leases for Army controlled real property in accordance with the guidance, policy and procedures set forth in this chapter, provided that:

(1) fee simple title is vested in the United States or included in a condemnation proceeding and the court has granted the United States immediate possession.

(2) the property is available for lease.

(3) preleasing clearances are obtained.

(4) prescribed lease format is used without deviation, except as shown in the format or in this regulation. Site specific environmental, cultural and operational requirements may be added.

(5) the conditions of the statute have been met.

(6) the term does not exceed 5 years (unless a longer term is shown in this regulation, having been determined that the longer period is in the national defense or public interest for the leased purpose).

(7) the lease is revocable at will or the substitute condition shown in Paragraph 8-84 is used.

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(8) the estimated fair market rental does not exceed \$200,000, except for Agricultural and Grazing leases. (military property only)

b. This authority may be redelegated to the division Chief/Assistant Director, Management and Disposal, to the District Engineer and the district Chief, Real Estate and to the district Chief, Management and Disposal. Any significant deviations from these requirements will be submitted to HQUSACE (CERE-M) with fully substantiated recommendations.

c. The persons delegated the authority to execute above may also revoke leases for the following reasons:

(1) Non-payment of rent;

(2) Breach of any condition or conditions of the lease;

(3) The need for the property by the United States in the public interest or in the interest of national defense.

#### 8-126. Agricultural and Grazing Purposes.

a. General. Military or civil works lands may be leased concurrently or exclusively for agricultural and grazing (A&G) purposes. Civil Works project lands may be leased during acquisition or after a project becomes operational. In accordance with the concept of multiple use, areas which are required to support mission may also be leased for A&G purposes. This use is a beneficial management tool as a means of wildlife habitat development, prevention of undesirable vegetation or prevention of wildfire danger. For military lands, reference AR 420-74, "Natural Resources--Land, Forest, and Wildlife Management."

#### b. Land Use Regulations.

(1) All A&G leases will have land use regulations attached. These regulations translate the project/installation management objectives into specific requirements and schedules for conducting the agricultural and/or grazing activities. It is critical for these regulations to be developed in a timely manner prior to advertising or negotiations in order to recognize local farming customs and seasonal limitations. The following provision should appear first in the land use regulations where the lease authorizes crops:

"The lessee agrees to conduct all farming operations in accordance with the land use practices set forth herein and in accordance with the crop rotation plan attached hereto and made a part hereof; provided, however, that the crop rotation plan may be modified by the District Engineer upon application of the lessee, in the event of crop failure, or other unusual circumstances warranting such modification".

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(2) The regulations should specify any government materials, supplies or equipment to be furnished to the lessee; safety and security regulations the lessee must observe as to entry, egress, use and occupancy; any necessary crop rotation plans where the lease term will exceed 2 years. Since the lessee must return the land in a condition that is as good as when initially leased, routine maintenance, protection, or repair will be performed at the lessee's expense. The requirements to accomplish this will also be set forth in the land use regulations.

c. Rental Offsets

(1) Leases granted under 10 U.S.C. § 2667 may provide for the value of maintenance, protection, improvement, repair or restoration of the leased property, or of the entire unit or installation where a substantial part is leased, as all or part of the consideration. This is applicable only to those activities which are in addition to the routine maintenance, protection and repair requirements shown in Paragraph b.(2) above.

(2) the value of certain required activities which exceed the routine standards maybe used as rental offsets. All activities to be required of the lessee as rental offsets must be specifically described in the Notice of Availability For Leasing, as well as the land use regulations. The value of each required activity to be offset against the cash rental must also be shown. Prospective lessees must know in advance what is expected of them as well as how much their cash rental may be offset. Monitoring the timely completion of rental offset activities is a matter which must involve installation/project and district staff and a mutually agreed upon procedure for this is essential.

(3) The value of a required activity maybe offset against cash rental if:

(a) it is performed on the leased premises, or on the entire installation/project where a substantial portion of the installation/project is included in the lease.

(b) it is of direct benefit to the installation/project purposes, or it promotes the leasing program.

(c) it is related to the lessee's use of the land.

(4) When all of the above criteria are met, cash rental may be offset by activities to conserve land, wildlife and other resources and accomplish soil erosion control, conservation of natural resources, reforestation, revegetation, and wildlife food plots. Activities for maintenance or improvement of the land for continued leasing, such as mowing, weed control, seeding, fertilizing, construction of wells, springs, ponds, fences, firebreaks, roads, etc are also allowable rental offsets.

(5) Under Title 10, United States Code, 2667 (d)(4) rental receipts from A&G leases of military property may be used for administrative expenses for leasing and to cover the financing of multiple-land use management programs. The Report of Availability should indicate whether



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the installation requires offsets or full cash rental. Reference supporting TM for outgrants for additional guidance on rental offsets on military installations.

d. Competition. See Paragraph 8-104. Any waiver of that policy requires prior approval by CERE-M, except that negotiated A&G leases may be granted at the District level in the following situations:

(1) If a commitment was made prior to 21 July 1956 to a former owner or to the tenant on the land when it was acquired, the District Engineer may negotiate successive leases with that person or the surviving spouse of either, without limitation, for periods not exceeding 5 years, for not less than the fair market rental. Priority rights are lost if the lease is assigned or the lease expires without exercise of the priority right.

(2) Under the provisions of Public Law 91-646, the former owner, or the tenant in possession at the time of acquisition, may continue occupancy for a period of time specified in the acquisition agreement, to harvest crops and effect orderly relocation. The District Engineer may negotiate an A&G lease with a former owner or with the tenant on the land when it was acquired, for not less than the fair market rental value, for up to 1 year, and in certain cases for one additional year, to offset difficulties encountered in relocating. As this is an exception to the policy to vacate the land and remove all improvements at the earliest practicable date, the circumstances justifying the lease must be documented and made a part of the file.

(3) In determining whether to negotiate with the former owner or tenant, the District Engineer will lease to former owner if the owner intends to manage the property with the tenant in possession; or lease to the tenant, if the owner does not intend to continue their arrangement and if the tenant will suffer a greater dislocation impact than the owner because of the project.

e. Consideration. Reference Paragraph 8-81.b.(1) and c. for fair market value estimates used to evaluate bids. Competitive leases do not require imposition of administrative fees. The rental is the fair market value as determined through the competition. Many soil conservation practices eligible for cost sharing under Department of Agriculture programs may also be in land use regulations as rental offsets. To prevent duplicate payment to lessees for soil conservation practices, all leases will provide that the lessee will not accept any Federal cost sharing payments for such practices, nor will the lessee accept any other Federal or state subsidy for lease activities without the written approval of the Division or District Engineer. The Division or District Engineer may approve acreage diversion payments under programs administered by the Agricultural Stabilization and Conservation Service, Department of Agriculture. CERE-M must approve all others.

f. Term. In accordance with Paragraph 8-122 above, the Secretary has determined that it is in the public interest to allow A&G leases for a five year term with the right of renewal for a second five year term without competition. If this option is selected, such leases will provide for a review and update of the annual rental at the end of the first five years.

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g. Format. The approved format for an A&G lease is shown in Appendix 8-B, Figure 8-B-1. This is intended to be a generic format for use at civil works projects as well as Army and Air Force Installations. Completion of wording in the title block, granting clause, Condition 5 and the witness clause will be necessary to identify the proponent of the lease. All leases negotiated without competition as set out in 8-126.d. above will require the lessee to personally conduct or supervise the operation (e.g., employ a manager, tenant farmer, or sharecropper)

h. Execution and Revocation.

(1) See Paragraph 8-125.

(2) To accommodate the condition of the A&G lease format on rental adjustment, when the lessee has been prevented from harvesting crops because of a Federal requirement for the property which results in lease revocation or material reductions of the leased area, the following procedures should be followed:

(a) Deliver a notice to the lessee, following ENG Form 931, DA Notice of Intention to Revoke, giving the lessee sufficient time to appear at the designated place to negotiate a supplemental agreement.

(b) Secure an appraisal for crops to be taken on the premises; the appraisal will accompany the supplemental agreement.

(c) In case of revocation, negotiate a supplemental agreement providing a rental adjustment for prepaid rent, compensation for the value of crops on the premises at the time of taking, and an unconditional release of the United States from any further claim arising from the lease revocation.

(d) In cases of reduction of the leased area, negotiate a supplemental agreement providing a rental adjustment for prepaid rent, compensation for the value of crops on the premises at the time of taking, rental reduction for the diminution of the leased area, and an unconditional release of the United States from any further claim for taking the crops and reducing the leased area.

(e) If the lessee fails to appear in accordance with notice given or an agreement cannot be reached, the notice revokes the lease effective on the date given in the notice. Where the leased area is reduced, the lessee will also be given written notice affirming his right to harvest, gather and remove crops from land not required. A supplemental agreement may be negotiated at a later date providing for rental adjustment for prepaid rentals, compensation for crops taken and unconditional release.

(f) Obtain CERE-M approval for proposed settlements which exceed appraised values.

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(g) Rental adjustments will be paid from rentals collected and placed in a special deposit account. Compensation for crops on military lands will be paid from the military appropriation causing the revocation. Compensation for crops on civil lands will be paid from the District Engineer's acquisition or construction funds causing the revocation. If no funds are available, forward a request and explanation to HQUSACE (CERE-M).

(h) The supplemental agreement should be distributed in the same manner as the original lease. When the lessee fails to appear, a notice of intention to revoke should also be distributed in the same manner. If a supplemental agreement has been executed, the notice of intention to revoke is not distributed. These documents support payment on Standard Form 1034, Public Voucher for Purchases and Services Other than Personal, and will be distributed according to existing instructions for preparation and payment of such vouchers.

8-127 Civil Defense Purposes. Issue a lease or license depending upon use requested, using standard formats for each. Competition not required to state or local governmental entities. Consideration for a lease will be fair market value.

8-128 Quarters for State Paid Employees of the National Guard.

a. General. National guard personnel may not be quartered on areas licensed to states for national guard purposes, except when they are in Federal service. However, caretaker and maintenance personnel who are paid by Army or Air Force disbursing officers from appropriated National Guard Bureau funds are considered Federal employees and may be assigned quarters. Leases for quarters which are not required for regular military personnel, may be granted to states as quarters for state-paid national guard personnel when they are employed at the installation under license to the state.

b. Determination of Availability. If the quarters to be leased are in an area licensed to the state for National Guard purposes, no further determination of availability is necessary. However, the license should be amended to exclude the building or buildings to be leased. If the buildings are on a portion of the installation not under license to the state, a lease request should be forwarded by the state Adjutant General through the Army or Air Force MACOM to the Chief, National Guard Bureau. That request will be forwarded to CERE-M for distribution to the appropriate Division office for action.

c. Competition. Not required.

d. Consideration. No less than the fair market rental of the property leased or the established estimated administrative cost, whichever is greater, will be charged. See Paragraphs 8-81 and 8-111.

e. Term. The lease term will not exceed 5 years.

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f. Format. The approved format for these leases is shown in Appendix 8-B, Figure 8-B-2. This is intended as a generic format for use at both Army and Air Force installations.

g. Execution and revocation. See Paragraph 8-125.

8-129. Public Schools on Military Installations.

a. General. Leases may be granted to states or political subdivisions thereof, and the Commonwealth of Puerto Rico for public school purposes specifically limited to school facilities, classroom and closely related academic uses at the high school level or below. Where bare land is leased for school construction, the acreage will not exceed criteria established by the appropriate state authority or the Department of Education for the particular type of school. Real property may also be leased to public educational institutions for other educational purposes after first consulting the Department of Education. Any benefits accrued through the use of such property go to the US. Permits may also be issued to the Department of Education for school purposes.

b. Competition. Not required.

c. Consideration. The consideration will be based upon the estimated fair market value of the lease interest and take into account the condition of the land granted, restrictions on use, oversight and degree of Army control, termination rights, and limited commercial value or market of the school-use granted. The value may be offset by the maintenance, protection, repair, improvement or restoration of the property by the lessee as a public school.

d. Term. Leases of land will be for 25 years with an option to renew for another 25 years. Leases for buildings and space will not exceed 5 years, unless CERE-M approves a longer term.

e. Format. The approved format for these leases is shown in Appendix 8-B, Figure 8-B-2. This is intended as a generic format for use at both Army and Air Force installation.

f. Execution and revocation. See Paragraph 8-125.

8-130. Leases for Banks and Credit Unions on Military Installations.

a. General. Outgrants for banks and credit unions are extensively regulated, primarily by DOD Instructions 1000.10, 1000.12, and DOD Directive 1000.11. AR 210-24 and AR 210-135 are predicated on these Directives and Instruction and prescribe policies and procedures for banks and credit unions on military installations. General guidance on outgrants for these purposes is also shown in AR 405-80 and TM 405-80. All outgrants for banks and credit unions must comply with these regulations in selection of grantees, consideration, term of lease, and other conditions.

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b. Competition. Competition for selection of the bank or credit union is performed by ASA(FM). Execution of the license or lease does not require additional competition.

c. Consideration and term. Banking facilities are classified as either self-sustaining or non-self-sustaining by the Assistant Comptroller of the Army(Finance & Accounting). Credit unions are classified as either 95 percent membership or less than 95 percent membership. Each is discussed by type below.

d. Automated Teller Machine (ATM) Service. Leases are not required when the ATM is sited within an existing bank or credit union office. However, the existing outgrant should be amended to provide for the use of ATM. Banks or credit unions requesting up to 100 s.f. of additional space in an existing structure and agreeing to bear all expenses for modifying the structure or requesting up to 200 s.f. of land to construct at its expense a kiosk or other structure for the ATM shall be issued a lease using the criteria and authority for the type as set out above. The cost of utilities and services shall be borne by the bank or credit union.

e. Format. The format for these leases or licenses are shown in Appendix 8-B, Figures B-3 and Appendix 8-E, Figure 8-EI. These are intended to be generic formats. The license or lease will include a standard restoration clause requiring restoration by the grantee or at the option of the Government, restoration at the grantees expense or title to the improvements will vest in the Government without compensation. Title to the improvements will not pass to the Government while the grantee occupies the premises. Leases will include a provision whereby at the option of the Government, the Government may terminate the lease in the event of national emergency, base closure, deactivation or substantial realignment, default by the lessee or in the interest of national defense.

f. Execution or Revocation. Authority to execute or revoke leases over 5 years has not been delegated and all such instruments will be forwarded for execution in OASA(IL&E). See Paragraph 8-125. See Section XVI, Licenses. Existing leases may be extended before expiration of the term, if determined to be in the Government's interest. Extensions shall be for periods not to exceed 5 years. The bank or credit union will continue to maintain the facility and pay for utilities and services provided. Request for leases extensions for more than 5 years should be submitted through channels to HQUSACE (CERE-M) for approval by the Secretariat with justification as to why a longer term will promote the national defense or be in the public interest.

(1) Domestic Banks.

(a) Nonself-sustaining (as determined by the Director of Finance and Accounting, ASA(FM)). Building space may be provided by a no-cost license for a term of up to 5 years. In exceptional cases, a no-cost license may be issued for land when a bank is authorized to construct its own building or to expand, modify or renovate Government space. Duration of the license will be commensurate with the extent of improvements or until the bank is determined to be self-sustaining by ASA(FM). Upon determination by ASA(FM) that a bank has become self-

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sustaining, the no-cost license shall be terminated and a lease shall be issued in accordance with the guidance for self-sustaining banks below.

(b) Self-sustaining (as determined by the Director of Finance and Accounting, ASA(M). Building space may be provided by lease at appraised fair market value (FMV) rent for up to 5 years subject to renewal by mutual agreement. If the bank uses its own funds to modify or renovate Government building space or to construct a separate facility, a lease at FMV rent for a term not to exceed 25 years may be issued. The lease term should be commensurate with the extent of the improvements.

(c) FMV rental maybe paid in cash or with appropriate rental offsets. Rental charges for any existing lease granted at FMV rent is applicable for the term of the lease, however, an extension of any such lease may provide for the FMV rent to be paid in cash or with appropriate rental offsets for the term of the lease extension.

(2) Credit Unions.

(a) 95 percent membership. Credit unions must provide written certification, prepared in credit union letterhead, that it has membership of at least 95 percent of individuals who are or were at the time of admission, military personnel, Federal employees, retired military personnel, or members of their families. Before each renewal, the credit union must provide written certification that it continues to meet the 95 percent criteria. Building space may be provided by a no-cost license for a term of up to 5 years under authority of Section 124 of the Federal Credit Union Act of 1934, as amended, (12 U.S.C. § 1770). A no-cost license may be issued for a term up to 25 years when a credit union, at its own expense, expands, modifies or renovates Government space. Duration of the license will be commensurate with the extent of improvements. Land for construction of credit union facilities will be issued at FMV rent to be paid in cash or with appropriate offsets.

(b) The no-cost license or FMV rent with offsets lease shall be canceled and a lease negotiated at FMV rent when the credit union ceases to meet the 95 percent criteria.

(c) Less than 95 percent membership. Building space may be provided by lease at appraised fair market value (FMV) rent for up to 5 years subject to renewal by mutual agreement. If the credit union uses its own funds to modify or renovate Government building space or to construct a separate facility, a lease at FMV rent for a term not to exceed 25 years may be issued. The lease term should be commensurate with the extent of the improvements.

(d) FMV rental may be paid in cash or with appropriate rental offsets. Rental charges for any existing lease granted at FMV rent is applicable for the term of the lease, however, an extension of any such lease may provide for the FMV rent to be paid in cash or with appropriate rental offsets for the term of the lease extension.

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8-131. Trailer Site Leases. Installation commanders may lease trailer sites to certain military and civilian personnel (AR 405-80). Rent is collected locally and turned over to the nearest Army finance and accounting officer for deposit. The Division or District Engineer receives a copy of DD Form 1131, Cash Collection Voucher.

8-132. Industrial Facilities for Private Manufacturing and Commercial Purposes.

a. Industrial leases are specialized and usually unique.

b. Competition. Refer to Paragraph 8-104. Negotiation without competition is authorized when converting from Government Owned Contractor Operated (GOCO) facility to an industrial lease arrangement with the current contractor.

c. Consideration. Refer to Paragraph 8-81 and 8-124

d. Term. Leases for industrial facilities will be for a term up to 25 years.

e. Format. Use the standard lease format,

8-133. Reserved.

8-134. Reserved.

8-135. Reserved.

SECTION XI - OUTLEASES - EXCESS, SURPLUS, AND BASE CLOSURE

8-136. Base Closure Property.

a. General. Pursuant to the Base Realignment and Closure legislation, as amended, authority has been delegated from the General Services Administration to the Secretary of Army to determine availability for leasing and to execute such leases of land on installations identified in the legislation for realignment or closure. Reports of availability will be approved by the MACOM having accountability for the property, and will be forwarded to the district for preparation of the lease document.

b. Competition. Not required.

c. Consideration. An amount less than the fair market value may be charged if the Secretary determines that:

(1) a public interest will be served as a result of the lease,

(2) and the fair market value of the lease is either not obtainable or is not compatible with such public interest.

d. Term. Interim leasing will be for short periods, usually not to exceed five (5) years. Leases to the Local Redevelopment Authority, or in furtherance of the disposal plan, may be for longer terms.

e. Format. The approved format for these leases is shown in Appendix 8-B, Figure 8-B-3. There is no longer a separate format for interim leases and leases in furtherance of conveyance. The title of the lease can be revised to reflect whether it is an Interim Lease, a Master Lease, or a Lease in Furtherance of Conveyance. If the lease format is being used for a lease in furtherance of conveyance, several modification should be made to the format, as follows:

(1) WHEREAS clauses may be added to reflect the circumstances, for example:

WHEREAS, the United States, acting through the SECRETARY OF THE ARMY, hereinafter referred to as "the Secretary", has made a final disposal decision with regard to property located at \_\_\_\_\_ Installation, dated \_\_\_\_\_; and

WHEREAS, due to the ongoing environmental cleanup (and unexploded ordnance (UXO) clearance) being undertaken by the Secretary, in order to implement the intentions of the Secretary and the Buyer/Lessee as set forth in the



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Contract to Purchase/Sell, hereinafter referred to as the "Contract"; (to further the public benefit of \_\_\_\_\_ (briefly describe)) (to facilitate economic recovery and reuse of the property) (to provide for the homeless); and to relieve the Secretary of the expense of continued care, custody, control, operation, and maintenance of the property, the Secretary and the Buyer/Lessee have agreed to a lease pending conveyance(s) so as to provide immediate possession of certain parcels to the Buyer/Lessee, said parcels being more particularly described in Exhibit A, and hereinafter referred to as the Leased Premises.

WHEREAS, as soon as the Finding of Suitability to Transfer (FOST) is executed by the Secretary for the Leased Premises, or a portion of said Leased Premises, and said Leased Premises may be conveyed consistent with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9620(h), as amended, and other legal and policy requirements, the Secretary intends to (assign or transfer to the Secretary of \_\_\_\_\_ for conveyance) (convey) to the Buyer/Lessee by one or more quitclaim deeds, (in a format determined by the Secretary of \_\_\_\_\_) (substantially in the format shown in the Contract) for said property or portions of said property, subject to any necessary restrictions, reservations, conditions and exceptions, and the Buyer/Lessee hereby agrees to accept such conveyance(s) as soon as the above-referenced conditions are met; and

[Include the following finding if the lease is for less than fair market value:]  
WHEREAS, the Secretary has determined in accordance with the authority contained in 10 U.S.C. 2667(f) that the surplus property hereby leased would facilitate state or local economic adjustment efforts and that the lease would be advantageous to the United States and be in the public interest; (and that the fair market value of the lease is unobtainable or obtaining fair market value is not compatible with the public benefit.)

(2) The **TERMINATION, REVOCATION, DEFAULT, AND RELINQUISHMENT** condition should be revised to reflect that the agreement to sell has been reached. Subcondition a., Termination, should be revised. Sample substitutions are:

Termination. In the event the Buyer/Lessee dissolves; is terminated as the approved LRA; or if either party exercises their termination rights under the Contract or should the Contract become void, this lease will be terminated. If the Buyer/Lessee is unable or unwilling to take title to all or a portion of the Leased Premises at the time the Secretary is able to convey in fee, as agreed to in the Contract, then the lease shall terminate on the date of execution of a Finding of Suitability to Transfer (FOST) by the Secretary with respect to that portion of the

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Leased Premises covered by the FOST. Reasonable time to vacate the Leased Premises will be negotiated as part of the termination and restoration of the Leased Premises shall be in accordance with the condition on **RESTORATION**. This lease will terminate upon delivery by the Secretary of a quitclaim deed conveying the Leased Premises to the Buyer/Lessee. If only a portion of the Leased Premises is being conveyed, a revised description of the Leased Premises will be prepared and the lease will be supplemented to revise the Leased Premises and the lease will terminate as to that portion conveyed.

(3) Since an agreement on sales price and other reuse has been reached, the condition on **PROTECTION OF PROPERTY** can be modified to state that the Buyer/Lessee shall keep the Leased Premises in good order and in a clean, safe condition by and at the expense of the Buyer/Lessee, and that the Buyer/Lessee shall exercise due diligence in the protection of all property located on the Leased Premises against fire or damage from any and all other causes.

(4) The condition on **INSURANCE** also may be revised to reflect that the values used in the Contract to Purchase/Sell for the conveyance of the Leased Premises included value for the improvements and structures on the Leased Premises constructed by or owned by the United States, and that it is the Buyer/Lessee's obligation to obtain insurance on those structures and improvements, for such periods as the Buyer/Lessee is in possession of the Leased Premises pursuant to this lease, to protect its interest. It should be clear that nothing in the lease shall be construed as an obligation upon the United States to repair, restore, or replace the Leased Premises or any part thereof should it be diminished in value, damaged, or destroyed nor will the purchase price be altered should such damage occur and the Lessee has failed to obtain insurance. Any proceeds paid to the United States shall be applied to the purchase price.

(5) The condition on **NO COMMITMENTS FOR FUTURE USE** may be deleted or revised to show the agreement to convey.

f. Execution and Revocation. See latest guidance from HQUSACE (CERE-M).

#### 8-137. Other Excess Property

a. General. Pursuant to the Federal Property and Administrative Services Act, 40 U.S.C. § 471, GSA has delegated authority to disposal agencies and holding agencies, with disposal agency approval, to lease excess and surplus property, provided that such leasing will not interfere or delay disposal of the property. This authority does not apply to any Base Realignment and Closure Act property.

b. Approval and Clearance. Prior to any such leasing of excess or surplus property, coordination and approval by the appropriate GSA regional office is required.

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c. Competition. The property will be advertised as available for lease unless the disposal agency authorizes a negotiated lease.

d. Consideration. No less than the fair market rental value of the property leased or the established estimated administrative cost, whichever is greater, will be charged. See paragraphs 8-81 and 8-111.

e. Term. The lease term will not exceed one year.

f. Format. The approved format for these leases is shown in Appendix 8-B, Figure 8-B-2. This is intended as a generic format for use for both Army and Air Force installations. The following changes in the approved format will be made for leasing excess property:

(1) The granting authority will be deleted and the following words will be substituted: "conferred upon him by law".

(2) In condition 1 on TERM, after the word "Secretary", the following words will be added: "or the officer of the Government having jurisdiction over the property."

(3) In Condition 5 on SUPERVISION, the same wording as mentioned above will be added after the name of the district or installation.

g. Execution and Revocation. See paragraph 8-125.

8-138. Reserved.

8-139. Reserved.

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SECTION XII. OUTLEASES - TITLE 16 U.S.C. § 460d.

8-140. Background.

a. The 1944 Flood Control Act (16 U.S.C. § 460d) authorized the Secretary of the Army to enter into licenses at water resource development projects for recreational development and other public uses. This law created a new authority which allowed longer term uses with nominal consideration and preferences to other Federal, state or local governmental agencies. Civil lands had been leased until that time under the general Army leasing authority of 40 U.S.C. § 303 (replaced in 1947 by 10 U.S.C. § 1270, now 10 U.S.C. § 2667).

b. The 1954 Flood Control Act amended the 1944 Act. It added the authority to grant leases, as well as licenses, to Federal, state or local governmental agencies where appropriate to facilitate the construction of substantial improvements and to permit the expenditure of non-Federal governmental appropriated funds. It also added the authority for the grantee to cut timber and harvest crops, where the lease or license involved lands utilized for fish and wildlife, forests, or other natural resources purposes, to further such beneficial uses and to collect and utilize the proceeds from sales of timber and crops in the development, conservation, maintenance and utilization of such lands with the balance of any proceeds not utilized paid back to the United States at such times as the Secretary determined appropriate.

c. The legislative history of this 1954 amendment to 16 U.S.C. § 460d (House Report No. 2247 on H.R. 9859) discusses that existing law did not permit licensees “to undertake certain conservation practices such as the felling and disposal of timber on a sustained yield basis or otherwise, since this is considered to be property of the United States. ” It goes on to state that the “receipts from the sale of timber under a sound management program would normally be much less than the cost to the licensee of carrying out the entire land and forest management program for park or recreational purposes and therefore it is only equitable that these receipts be used for furthering the basic development program.” The provision to have the balance of these proceeds return to the United States was a safeguard against unjust enrichment or profit from the sale of Government real property. Until this amendment, the Corps took the position that it lacked the authority to authorize the States to dispose of these items of real property.

8-141. Water Resource Projects Only. Title 16, United States Code, Section 460d authorizes leases or licenses only at water resource development projects. Other real property on the civil inventory or jurisdiction must use the general leasing authority of Title 10, United States Code, Section 2667.

8-142. Use of Lease or License. Leases, or licenses where appropriate, may be granted for the use of all or any portion of a water resource development project upon such terms and for such purposes that the Secretary determines is in the public interest. The distinction has been made that fish and wildlife activities only need a license, which grants a non-exclusive use to perform only specified acts, while park and recreation activities, which requires construction of improvements, needs a lease which grants an interest in land. However, in many instances the

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grantee's use of the lands for fish and wildlife management is substantially more than a non-exclusive license, especially where mitigation and other improvements are present, and, therefore, a lease is appropriate.

8-143. Timber and Crops. The Corps will as a general rule, manage forest and woodlands on all Civil Works projects, including outgranted areas. However, if the District Engineer determines and documents that such action is in the best interest of the federal government, forest management may be available for assumption by a Federal, state or local governmental agency. In any such lease or license to a non-Federal governmental agency which authorizes fish and wildlife, forests or other natural resources purposes, the licensee or lessee may be authorized to cut timber and harvest crops and to use the proceeds of any sales of timber and crops in the development, conservation, maintenance, and utilization of such lands. Funds received from the sale of timber and crops and not utilized are required by law to be paid back to the United States. The Secretary has determined that the reasonable period is five years. Separation of the funds between uses is not required. If both recreational use and fish and wildlife use is authorized under one instrument, see Paragraph 8-145. The heading of the outgrant will show the purposes covered. If the outgrant authorizes forest management, forest management and timber sales shall follow a forest management plan approved by the District Engineer.

8-144. Grazing. The District Engineer will lease lands available for grazing under conditions which he deems compatible with the Government's use of the property. The grantee is not authorized to enter into grazing leases or agreements under a lease issued under this authority. (This position is based On a Chief Counsel Opinion that grazing leases were Primarily for generating money and were not used as a land management tool. Since there is extensive evidence that this has changed and grazing is now used extensively as a land management tool both by Army and by state agencies, we have requested the opinion be revisited.)

8-145. Separate or Consolidated Purposes. Only if the outgrant document includes fish and wildlife activities may the lessee or licensee be authorized to cut timber and harvest crops; if the instrument does not include these purposes, such as the standard park and recreation lease, the grantee may not be authorized to do these particular revenue producing activities, even though the United States may do so itself. Leases which consolidate fish and wildlife and park and recreation purposes into one instrument will only work in those states where the park and recreation and fish and wildlife activities are also consolidated under one department or agency so that there is one lessee. The Park and Recreation form will be used, adding "Fish and Wildlife, and Forest Management Purposes" in the title and the purposes section and Paragraph 5 and 6 from Appendix 8-C, Figure 8-C-3, Department of the Army Lease for Fish and Wildlife Management Purposes, with the land and water areas for each purpose clearly shown. The Fish and Wildlife Service should be consulted if state is receiving money under one of their programs to ensure that F&WS requirements for separation of monies are met.

8-146. Separate or Consolidated Areas. Leases and licenses have in the past been issued by project. However, language of Title 16, United States Code, Section 460d authorizes the

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Secretary of the Army to lease lands, not projects, upon such terms and for such purposes in the public interest. Therefore, if the state wishes to operate projects or areas as a unit so that funds generated at one may be used at another, a single lease or license will be issued to cover all areas to be included in the unit. Operation of separate projects as a unit for forestry management purposes does not mean that separate instruments can not be used for park and recreation areas, or vis versa. Use the standard form, deleting the site from the title and listing the project/projects; identify each project or areas in an Exhibit, so that the premises refers to all areas; if more than one district is involved, modify the condition on notices to state if x project notice to x district and y project to y district; and add a Development Plan for each project covered. The lease may be signed by the Division Engineer if more than one district is involved.

8-147. Public Interest. This Act authorizes leasing of lands at water resources development projects if those leases are in the public interest. The real estate element will determine that any proposed leasing action is in the public interest.

8-148. Sale or Storage of Alcoholic Beverages. In accordance with state and local laws and regulations, lessees may sell, dispense or store, or permit the sale, dispensing or storage of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of any alcoholic beverages outside of any buildings is not permitted. Carry out package sales of hard liquor is prohibited. Any proposed deviation from the above policy must be forwarded to HQUSACE (CERE-M) for submission to the Office of the Assistant Secretary of Army for prior approval.

8-149. Transient Use. The current Corps policy prohibits camping, to include transient trailers and other recreational vehicles, at one or more campsites for a period longer than 30 days in any 60 consecutive days. Any proposed exception in this length of stay policy must be forwarded for approval by the Division Engineer. This approval authority cannot be delegated to a District Engineer. Lessees are required to maintain a ledger or reservation system in order that compliance with this requirement can be verified. The rationale for this policy is to insure a reasonable degree of availability to camping facilities by the general public within the capacity of the facilities. Hotels, motels, and similar structures are not covered by this policy.

8-150. Residential Use. The use of land or facilities of any kind within the leased premises for the purpose of a full or part-time residence is prohibited. As an exception, the District Engineer may approve residential use by the lessee or an employee(s) of the lessee for the purpose of providing security to the leased premises.

8-151. Timeshare.

a. General. Timeshare can be broadly divided into two basic components, ownership and right-to-use. Both programs typically sell increments of time in a specific unit. Many programs, however, use a "floating" or "open use" system where the purchaser buys annual time

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or seasonal time for a certain type of unit. Timeshare ownership in real estate is an arrangement where the purchaser acquires a fee simple interest and receives the protection of a deed, legal title, and title insurance. Timeshare ownership in personal property is similar with a bill of sale and legal title. In right-to-use programs the purchaser does not acquire any form of legal title but merely a possessory or use right. There are three basic types of right-to-use timeshare arrangements: Lease, where the purchaser receives a lease for a specified period of time; Vacation license, where the purchaser obtains a right of occupancy for a specified annual period, sometimes for a specified unit; and Club Membership, where the purchaser buys a membership for a period of years in an association or group which owns, leases, or operates the timeshared premises for use by club members.

b. Timeshare activities are not permitted. Timesharing is defined, for purposes of this policy, as providing a possessor or use right of a specific facility or piece of personal property for a specified period of time each year for a number of years. Timeshare ownership is not possible since legal title is held by the United States. This definition would prohibit lease or license right-to-use timeshare programs for improvements, such as cabins, cottages, and campsites, or for personal property, such as mobile homes, RV's, houseboats, docks, and boats.

c. Membership plans, where the public is also given equal access, will not be prohibited since this is a type of prepaid fee. For membership programs, any implementing agreements will allow for district review of signs, advertising, and brochures to insure that no representations are made that would imply use exclusively by the member or which imply any claims of title to Government property.

d. Timeshare sales of personal property, where title to the property is not retained by the lessee, are not prohibited. The sale of such property must be an approved activity under the lease. The key to approval of sale to multiple owners is the divestiture of control and title by the lessee. A separate owners association or group should be the governing body which makes assessments, regulates and manages the property. Any approvals must delineate between the sale of the personal property by the lessee and the use of the property by the timeshare holders so that there is no appearance of a private group having exclusive use of lessee property. Once the property is sold, it becomes like any other property held by the public and is subject to applicable rules and regulations. The lessee involvement should be no greater than provided to any other member of the public.

8-152. Financing by Private Investor. The financing of recreational overnight lodging facilities by individual private investors is approved so long as the ownership of the units is subject to a "lease-back" provision to the lessee who will then operate the facilities as overnight accommodations available to the general public. The owner may be allowed to stay up to 30 days in the unit annually and must not give the appearance of private exclusive use. Any implementing agreements will allow for district review of signs, advertising, and brochures to

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insure that no representations are made that would imply use exclusively by the investors or which imply any claims of title to Government real property. This is considered a type of condominium in some states, so that the district should review state law for any restrictions on the control of the units use by the Government.

8-153. Execution of Leases.

a. The Division Engineer and the Division Director of Real Estate are hereby delegated the authority to execute leases for Army controlled real property in accordance with the guidance, policy and procedures set forth in this chapter, provided that:

(1) fee simple title is vested in the United States or included in a condemnation proceeding, and the court has granted the United States immediate possession.

(2) the property is available for lease.

(3) preleasing clearances are obtained.

(4) prescribed lease form is used without deviation, except as shown in the form. Site specific environmental, cultural and operational requirements may be added.

(5) the conditions of the statute have been met.

b. This authority may be redelegate to the District Engineer and the District Chief, Real Estate. Any significant deviations from these requirements will be submitted to HQUSACE (CERE-M) with fully substantiated recommendations.

c. The persons delegated the authority to execute above may also revoke leases for the following reasons:

(1) Non-payment of rent;

(2) Breach of any condition or conditions of the lease;

8-154. State and Local Government Agencies for Public Park and Recreational Purposes.

a. General.

(1) State and local governments serve the needs of state and local residents. They manage regionally significant resources and impact regional economies. As public agencies, state and local governments have an inherent stewardship responsibility to manage the recreation resource under their jurisdiction. The availability of natural resources, funding and professional expertise needed to carry out this responsibility, varies widely among regional



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providers, depending on the fiscal health and political nature of the particular government entity.

(2) States and political subdivisions will be encouraged to develop and administer project lands allocated for public park and recreational purposes in approved master plans through lease agreements. The size of areas leased must be commensurate with public demand and the experience and financial capabilities of the lessee (with the assistance of concessionaires) to furnish facilities and services required to serve the general public.

b. Reinvestment of Revenue. For sites leased only for park and recreation purposes, it is policy to require receipts generated on the leased premises to be used for the development, operation and maintenance of the leased premises. Funds generated from timber and crops on fish and wildlife outgranted areas are discussed in the Paragraph 8-143. As discussed in Paragraph 8-146, to realize the most flexibility and public benefit, operation of the park and recreation sites as a unit using revenue generated at each separate leased sites to support all sites may be desirable. As a good management and auditing practice, funds generated on the unit should be used on that unit, whether the unit is a portion of a project, a whole project or several projects. The development of individual operational management plans by project would still be required. The revenue generated at all sites in the same lease may then be shared for development, operation and maintenance purposes as the lessee sees fit on this site.

c. Competition. Competition is not required; applications will be used instead, following the format of Appendix 8-A, Figure 8-A-6, Application.

d. Consideration. The consideration is the lessee's assumption of obligations as defined in the lease to operate and maintain the leased premises for the benefit of the United States and the general public. No administrative fee will be charged.

e. Approval of third party activities. Public Park lessees may provide facilities either directly or through concession agreements or sub-leases. All third party documents must state that they are subject to the prime lease and that third party activities must be approved by the district engineer. In carrying out this approval of the third party activities, care must be exercised to avoid assumption of any liability through formal approval of the third party document itself. Review should consist of such points as: is the rental to be paid by the third party reasonable when compared to rent paid by our direct concession rents; does the third party agreement contain appropriate provisions from the prime lease, such as insurance requirements; are the activities in furtherance of the development, and is the third party agreement subject to the prime lease. Third party agreements may include the procedures under which third party activities may be continued in the event of termination of the prime lease through either expiration, relinquishment or revocation. These procedures must include (1) approval of a waiver of competition, (2) a determination that the service being provided by the third party is satisfactory and remains needed, (3) the site remaining available for the activities being provided and (4) the lessee accepting a direct commercial concession lease.

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f. Term. Leases and renewals will be limited to a term commensurate with the extent of an approved development plan. Nebulous plans for future development are not adequate for this purpose. A term of 25 years is permitted under the current delegation of authority and is considered adequate and should be encouraged. Any proposal for a term between 25 and 50 years requires prior approval at the Secretariat level. These requests will receive favorable consideration with proper justification. Terms in excess of 50 years also requires prior approval at the Secretariat level and must be strongly supported. Where the lessee seeks a termination notice of less than 1 year, prior approval by the Division Engineer is required.

g. Fish and wildlife activities may not be performed under a Park and Recreation lease. Normally, a separate instrument is issued for fish and wildlife management. However, see discussion in Paragraph 8-145 above.

h. Lease Provisions. Separate formats are approved for leases to states (see Appendix 8-C, Figure 8-C-1) and those to political subdivisions of states (see Appendix 8-C, Figure 8-C-2). These formats will be used without deviation, except as shown in the form. Site specific environmental, cultural and operational requirements may be added. Other changes must be approved by HQUSACE (CERE-M). Sub-paragraphs (1), (2) and (3) below provide guidance on the conditions that are applicable to both.

(1) An inventory and condition report is to be used only when federally owned improvements or personal property are included in the leased premises.

(2) Fees. Lessees are free to establish the amount and to impose entrance or user fees, except that no fees may be charged for the use of facilities developed in whole, or in part, with Federal funds, if such charge is prohibited by 16 U.S.C. § 460d-3, as amended. The fact that a lessee is required to provide operation, maintenance or replacement of facilities developed with Federal funds does not authorize charging of fees if such charge is otherwise prohibited. The lessee may charge for any facilities or service provided without federal assistance or funding.

(3) CERCLA notice. If the EBS shows threshold quantities of hazardous substances are been stored, disposed or released, a sub-paragraph (b) needs to be added to the EBS Condition in the form as set out in Paragraph 8-55.e.

i. Format for use in leases to states. The approved format shown in Appendix 8-C, Figure 8-C-1, Lease to States for Public Park and Recreational Purposes will be used. (This format is intended for use in leases to states only. The lease format for use in leases to other public bodies for public park purposes is discussed in sub-paragraph j. below.) The following sub-paragraphs (1) through (5) provide guidance on certain conditions included in the state lease format.

(1) Development Plan. The Implementing Plan of Recreation Development and Management (Development Plan) may be conceptual, general or narrative. Detailed plans and site layouts will not be required. The Development Plan is a guide for future activities not a detailed

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construction plan. The same plan as that included in the lease application should be used if possible. An annual management plan shall not be required. A copy of any amendment to the Development Plan will be provided by the lessee before implementing such change. We do not assume the liability for engineering review, therefore, our engineers will not review plans and specifications.

(2) Accounts, Records and Receipts. Even if no monetary consideration is paid, receipts generated on the premises are to be reinvested in the premises or, if not, paid back to the United States. The following may be inserted after the first sentence, where state law requires receipts from operations on the premises to be deposited in a general fund of the state:

“The lessee agrees that its expenditures in the administration, maintenance, operation and development of the leased premises will not be less than the income obtained from operations on the premises”.

(3) Right to Enter and Flood. In addition to other rights, this condition reserves the right for the Government to conduct compliance inspections. As an exception to the general policy, scheduled compliance inspections on park leases to states are required no more than once every three years. However, the annual certifications pertaining to water and sanitary systems and Rehabilitation Act/Americans with Disabilities Act set out in the condition on Applicable Laws and Regulations remain as annual requirements.

(4) Insurance. States are not required to obtain liability insurance. Any concessionaire or sublessee is required to obtain liability insurance protection commensurate with the risk involved in the services and facilities provided. Insurance policies should be examined to assure compliance with the requirement, however minimum coverage amounts will not be prescribed.

(5) Transient Use. Full or part-time residential use of the leased premises is not permitted (except for security purposes as shown in Paragraph 8-150 above). Should a state propose development for such use in an application for leasing, the District Engineer should (1) advise the state this is not permitted on leased premises and (2) offer to work with the state to develop legislation that would authorize the transfer of project lands, lying above the base flood pool/plain, to the state for such residential development.

j. Form for use in leases to political subdivisions of states.

(1) The approved lease format shown in Appendix 8-C, Figure 8-C-2 is to be used when granting leases to political subdivisions of states. This format recognizes that, when compared to states, local entities do not normally have the financial resources to employ a full time professional resource management staff. There are instances where we have had excellent experience with local governmental entities, however the bulk of lease management problems result from their limited capabilities. The lease administration responsibility of the district Chief of Real Estate creates a contractual obligation for overseeing proper use of leased recreation

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areas. For this reason alone, a common lease document for both state lessees and local lessees is inappropriate.

(2) In those instances where a smaller entity does have the financial and staffing resources which permit reduced oversight responsibilities as are in the state lease format, the District Engineer may determine that the lessee's capability for planning, constructing and managing a public park and the attendant facilities qualifies the lessee for use of the state format. The following is a list of questions to be addressed in making this determination.

(a) Does the entity have an established full time park and recreation staff responsible to operate and maintain the leased premises?

(b) Does the entity have qualified planners and engineers to design, review and approve construction plans?

(c) Does the entity have adequate financial resources to operate and maintain the leased premises independent of any proposed fee collection?

(d) Does the entity have appropriate equipment or contracting expertise to adequately operate and maintain the leased premises?

(e) Does the entity have the ability to insure compliance with federal, state and municipal building, health and safety codes?

(f) Does the entity have established building, health and safety codes in addition to state codes?

(3) The guidance shown below provides information on differences between conditions used in the state political subdivision lease format and that used for leases to states.

(a) The Condition on development plans corresponds to the same condition in the state lease, however it calls for a much more complete plan of development, operation and maintenance plan and operating budget information.

(b) Prior district approval is required for any structures to be erected or altered, however, we will not provide engineer review of the plans and specs. This requirement is not included in the state lease.

(c) Accounts, records and receipts contains a requirement for establishing and maintaining records on receipts and expenditures which is not required in the state lease.

(d) Proof of self insurance or a liability insurance policy on the lessee as well as any concessionaires is required. It also provides the minimum amount of coverage to be obtained. These requirements are not included in the state lease.

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(e) Although not discussed in either of the lease formats, the administration of the state lease and the state lease format is intended to reflect a reduced amount of oversight than leases to political subdivisions of states. This is also reflected in the compliance inspection program which continues to require annual inspection on all leases except those to states, which are conducted every three years.

k. Execution. Leases are executed in accordance with 8-153.

8-155. Leases for Fish and Wildlife, Forests and Other Natural Resources Management.

a. Purpose. This section prescribes procedures and responsibilities for authorizing states or local governmental agencies to use lands at water resource development projects for fish and wildlife management not subject to cost-sharing arrangements, and other fish and wildlife, forest, and other natural resource management purposes. Where joint use by the grantee and the district is proposed see Paragraph 8-202, Licenses for Fish and Wildlife Management purposes for public park and recreation purposes are covered above.

b. Authority. Title 16, United States Code, Section 460d and, if applicable, Title 16, United States Code, Section 663, Section 3, Fish and Wildlife Coordination Act of 1934, as amended.

c. Application of Authority.

(1) Based on an approved General Plan, leases or licenses are granted under authority of the Fish and Wildlife Coordination Act to a state for fish and wildlife management purposes only. The procedure for developing such plans is found in ER 1105-2-100.

(2) Since it is occasionally in the public interest to do so, Title 16, U. S. C., Section 460d, authorizes granting of a lease or license to a state to manage fish and wildlife at a project before a General Plan is approved, or if the natural resource management is not covered by Title 16, U.S.C. Section 663.

(3) Both Title 16, U. S. C., Section 663 and Title 16, U.S. C., Section 460d, as amended, may apply to leases or licenses which authorize use of a reservoir area for natural resource purposes other than fish and wildlife management, for example, forest management. Use of a portion of the same area for public parks and recreation requires a separate lease or a consolidated lease as discussed in Paragraph 8-145. above.

(4) The Forest Cover Act, Title 16, United States Code, Section 580m, et seq., provides a statutory mandate for multiple use forest or other vegetative cover management and authorizes the Corps to harvest timber for these purposes. The management of natural resources, timber and crops by the states or other governmental agencies is authorized by Title 16, United States Code, Section 460d. Refer to Paragraph 8-143 and 8-144.

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(5) Title 16, U. S. C., Section 663 does not authorize timber management nor cultivation of crops for food or habitat for wildlife. An outgrant for fish and wildlife management under Title 16, U. S. C., Section 460d may authorize state or other governmental agencies to cultivate food or habitat for wildlife on project lands directly, by service contract, or by sharecrop agreements. An outgrant which authorizes use of project lands to produce food or habitat for wildlife and forest management should cite both Title 16, U. S. C., Section 460d and Title 16, U. S. C., Section 663. All standard fish and wildlife outgrants will contain Condition 5 as shown in Appendix 8-E, Figure 8-E-2. License For Fish and Wildlife Management, without deviation, except that licenses containing old Condition 5 will continue to be administered under that condition.

d. Consideration. The consideration is the lessee's assumption of obligations as defined in the lease to operate and maintain the leased premises for the benefit of the United States and the general public. No administrative fee is charged.

e. Term. Neither of the above statutes limits the term of the outgrant; it is considered desirable that the term not exceed 25 years. Longer terms may be submitted to HQUSACE (CERE-M) for approval. These licenses are not revocable at will.

f. Format. Format for preparation of a lease or license is shown at Appendix 8-C, Figure 8-C-3 or Appendix 8-E, Figure 8-E-2. Recommendations for deviations will be sent to HQUSACE (CERE-M) and explained in the transmittal correspondence.

(1) Annual Management Plan. Outgrants to other federal agencies or to states will not require an annual management plan. Outgrants to state political subdivisions will include a requirement for an annual management plan mutually agreed on by the grantee and District Engineer. This plan may be an annual increment of a management plan of 5 years or longer. The District Engineer will review the plan for: activities planned; areas for propagation of fish and wildlife; areas for outgrant by agricultural agreement or sharecrop; crops and rotation of crops; areas for wildlife cover and types of cultivated cover; all structures and improvements. The plan should estimate annual revenues and expenditure of these funds. Activities of third parties which will generate income for the grantee and expenditures by the grantee should be carefully scrutinized for conformance with the outgrant conditions and with the approved plan. A proposed management plan will be considered in light of the grantee's operations of the preceding year, conformance with approved plans, and assurance that the previous year's expenditures were authorized in the plan. Expenditures should be authorized in advance, not after the fact. If a management plan is prepared for the Fish and Wildlife Service, then the grantee will not be required to develop a separate plan, but will provide the district with a copy of the F&WS plan.

(2) Authorized Expenditures. The grantee may pay reasonable expenses directly related to the particular outgrant out of income generated by the operation. The expenses must be for such purposes as: planning and developing wildlife habitats, including wildlife food plots; incidental timber cutting; erosion control, fire breaks and fencing; farming and construction equipment; patrol or work boats; road and parking lot construction equipment; enforcement

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check stations; shelters for habitat improvement; restocking of fish or wildlife; and protection of endangered species. The grantee may pay salaries of employees immediately involved in carrying out the activities of the management plan at the project. Other general administrative costs, including planning activities away from the premises, may not be paid. Outgrants which preclude payments for the above purposes must be administered individually. If a grantee requests modification of pre-1985 Condition No. 5, the amendment is subject to the condition: funds which the grantee accumulates will be paid to the District Engineer or escrowed for uses authorized in the outgrant; the grantee must account separately for such funds annually. Funds remaining after the 5-year accounting period or after the term of the outgrant, whichever occurs first, will be administered according to paragraph (3) below.

(3) Payment of Proceeds to the Government. Grantee's monetary proceeds which are not required to further activities as in paragraph (2) above are required by law to be paid directly to the Government at the end of a reasonable period, determined by the Secretary to be each 5-year period; monies committed for authorized, approved expenditures in the 5th year may be withheld for up to 1 year. State laws may require that monies from operations on the premises be deposited in miscellaneous receipts or similar state funds; in such cases, an amount from the state equal to the monies generated must have been expended on or committed to the project which generated the funds and a clause as in the state park and recreation lease format Paragraph 8-154.i.(2) above should be added.

(4) Sharecrop Agreements. Sharecrop agreements with farmers are expected to provide crops as food or habitat and for compensation to the farmer. Certain services may also be required of the farmer toward development and conservation of fish and wildlife, land, water, forests, and other natural resources. The District Engineer should have copies of each sharecrop agreement to monitor the grantee's compliance with the approved management plan.

(5) Agricultural Agreements. Agricultural agreements may provide for planting and harvesting crops, including hay. Rental paid to grantee may be in cash and/or services to further lease/license purposes. Where possible, these agreements will be granted by competitive bid. The District Engineer should have copies of each agricultural agreement to monitor the grantee's compliance with the approved management plan.

g. Administration. The district real estate element will obtain current management plans from grantees and coordinate them with the Operations Division and other interested district elements. Real estate personnel will perform outgrant administration including the required annual compliance inspection.

h. Execution. Leases are executed in accordance with Paragraph 8-153.

8-156. Leases for Recreation Cost Sharing Purposes.

a. Authority.

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(1) According to Public Law 89-72 approved 29 July 1965 (16 U.S.C. § 4601-13), non-federal public bodies must cooperate in projects authorized during and after 1965 and must share in the separable costs of recreation or fish and wildlife development. Where non-federal public bodies indicated in writing an interest in cost-sharing this development, lands were authorized to be acquired for this purpose. Land was provided to the non-federal public body by a lease. The cost sharing provisions of § 103 of Public Law 99-662 (33 U.S.C. § 2213) apply to any recreation project or separable element thereof on which physical construction is initiated after April 30, 1986. Project Cooperation Agreements (PCA's) with non-federal public bodies will be developed in accordance with WRDA 86, ER 1165-2-131, and Chapter 12 of this regulation.

(2) New projects envision that real property generally will be acquired by the non-federal public agency (non-federal sponsors). There are instances where the Federal government, at the request of the non-federal public agency, acquires the land and ultimately quitclaims title to the land to the non-federal public agency. The authority for the conveyance to the non-federal sponsor is the project authority. During the time that the United States holds title to the land, the non-federal public agency should be granted a license if entry onto the lands by the non-federal public agency is necessary. No lease is required.

(3) At older projects where, pursuant to 16 U.S.C. 460d, additional recreational development will be cost-shared on land owned by the United States and partially developed, a cost-share lease under authority of 16 U.S.C. 460d is appropriate.

(4) Where the separable recreation land was acquired pursuant to Public Law 89-72 and recreation facilities are being developed, a cost-sharing lease under authority of both 16 U.S.C. 460d and 16 U.S.C. 4601-13 is appropriate.

(5) For the purposes of PL 89-72 and 16 U.S.C. 460d projects, a separable element exists when allocable costs and benefits are attributable to additional recreational facilities being built. To illustrate, if lands on a PL 89-72 projects are allocated for flood control and these lands are reallocated to recreation, the lands and recreation facilities are to be treated as a separable element. Similarly, in a 16 U.S.C. 460d situation, separable recreation development is undertaken whenever new cost-shared recreational development is constructed. In both cases, the lease must cite 33 U.S.C. 2213, in addition to 16 U.S.C. 460d and/or 16 U.S.C. 4601-13.

(6) The PCA will state that the property will be made available by lease substantially in the format shown in Appendix 8-C, Figure 8-C-8, which will be attached as an exhibit to the PCA. In this way, the provisions of the lease can be negotiated as part of the overall agreement. Because of the obligations required by the PCA, a lease is the preferred outgrant, even for fish and wildlife purposes.

b. Consideration. The consideration for a cost-share lease under PL 89-72 and 16 U.S.C. 460d is operation and maintenance of the premises and the operation, maintenance, and replacement of the facilities and improvements during the term of the lease. Consideration for a



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lease that cites 33 U.S.C. 702a - 702m is operation and maintenance of the premises and operation, maintenance, repair, rehabilitation and replacement of the facilities and improvements during the term of the lease. An administrative fee will not be charged.

c. Term. Leases will usually be not less than 50 years or as agreed in the PCA. The term will be provided for in the PCA.

d. Competition. Not required.

e. Format. The lease will follow the format of Appendix 8-C, Figure 8-C-8 and will be an exhibit to the PCA or the format in the approved model PCA for the use proposed. The lease and the PCA provisions and conditions should conform to each other. The lease will be maintained in the realty records of the district following completion of construction provided for therein. Fish and wildlife provisions will be added if fish and wildlife is a purpose. Under 33 U.S.C. 702a-702m, a hold harmless provision is required in the lease.

f. Execution. District Chiefs of Real Estate are authorized to execute leases submitted as exhibits to approved PCAs. Otherwise, the lease must be submitted through normal channels for execution at the Secretariat level.

g. Administration. Where all or a major portion of a lake project is the subject of a lease and PCA, the administration of such a lease will require intensive coordination between Real Estate and the lessee. The master plan shall be mutually agreed upon between the lessee and the appropriate district elements prior to inception of the lease.

h. Third Party Agreements. District Engineers may authorize third party concession agreements, provided that the proposed third party concessioner meets qualifications necessary to the type of services to be provided and the term thereof does not exceed maximum terms approved for Corps direct concessionaires at the same lake, if any. Likewise, rental rates offered to such a third party and prices for the services to be offered to the public should not be approved if such would give the third party concessioner an undue economic advantage over Corps concessionaires at the same lake. This policy applies only in those cases where the lessee does not manage all the recreational facilities at a lake.

i. Rates and Prices. Rates and prices prevailing in the general area should provide the basis for charges imposed for supplies and goods offered for sale to the general public by the lessee or any third party concessioner.

#### 8-157. Lease for Commercial Concession Purposes.

a. General. The primary objective in leasing lands for commercial concession purposes is to obtain recreational services and facilities to meet the public demand at reasonable charges without federal expenditure to provide such facilities and services. This purpose will be achieved

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only when the concessionaire has an opportunity to make a fair profit. The private entity operating a commercial concession situated entirely on project land is referred to as a concessionaire.

b. New Leases.

(1) Site Selection. Any proposal for initial development of new sites should be based on a thorough investigation of all factors (i.e., recent or updated market analysis or feasibility study) that shows the site will generate sufficient business for the proposed concession.

(2) Type of Concession. After determining that public visitation and use of facilities and services at the proposed site has potential for a viable concession, the District Engineer will determine the minimum facilities and services required for the site to supply present and future public demand adequately during given periods of the planned life of the project.

c. Competition.

(1) Notice of Availability. A Notice of Availability for Leasing for a concession sites will be advertised extensively in trade publications and other media. Where additional areas for concession development are shown in the Master Plan, all interested parties should be advised of the Government's tentative plans for these sites. The notice will present salient facts about concession sites and invite interested parties to contact a designated office for further information on applying. Advertise each site as a separate unit, though all available project sites may be included in one advertisement.

(2) The Notice will set out the minimum and initial development determined by the Government to be necessary to adequately serve the public. The District should not include specific site layouts or development plans in the notice. The intent is to allow the maximum flexibility to the potential lessee to determine the method for meeting the identified minimum requirements and any additional public needs identified by the potential lessee during any independent market analysis. The Notice will request applicants to provide the development stated in the notice, state additional facilities which will be furnished if public demand warrants, and furnish information as to financial arrangements and experience of the applicant.

(3) District Engineers are authorized to advertise available sites if the terms of resulting leases meet the criteria of this section, are not unusual or controversial. The Notice will not substantially deviate from Appendix 8-A, Figure 8-A-5. All others must be approved in advance by HQUSACE (CERE-M).

(4) District Engineers will select the responsive and responsible Applicant who submits the best acceptable application. In determining whether or not applicants are responsible, the District Engineers will consider which applicants are qualified financially, in experience, in character, and otherwise to provide the needed facilities and services. The application of a prospective lessee who is not determined to be fully qualified will be rejected. The applicant

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must provide a schedule for furnishing required facilities and services and may propose additional facilities and services. The District Engineer may extend time limits when a delay in furnishing facilities and services is beyond the lessee's control, and may waive requirements for provision of facilities and services after the first year as public demand warrants.

(5) The District Engineer will determine that the applicant's conceptual development plan with its architectural is consistent with the minimum facilities required and verify the data furnished by the applicant. Full documentation on the selection will be retained for a reasonable period of time. It is recommended that a point system be established for evaluating the applications when there are more than one application. For example, list the facilities and services stated as the minimum; assign a range of points for each according to the importance of the facility or service relative to the public's anticipated need for such; add a range of points for additional facilities and services; consider such factors as dollars to be invested, beneficial use by the public, long term needs (permanency of facility), and overall concept and consistency of theme (including compatibility with surrounding area). Then rate each application, facility by facility and service by service.

d. Unsolicited applications. Waivers of competition are the exception for new sites. Unsolicited applications may be submitted to HQUSACE (CERE-M) with justification for a waiver of competition. Entrepreneurs requesting that an additional lease site be made available at an operational project may be required to perform the market analysis, the environmental assessments, surveys, mapping or other justification to support their request. Waivers will be considered favorably for applications that offer unusual or unique recreation opportunities or that support major development on adjoining private property. Waivers will not be granted for routine uses, i.e. marinas, bait shops, restaurants, which are only unsolicited because no sites have been made available recently at that project.

e. Development Plan. For new sites, the prospective lessees will provide a conceptual development plan with its architectural theme and sign plan in the minimum amount of detail necessary to provide the information requested in the Notice. Detailed operation and management plans and site plans will not be required. The Development Plan is a guide for future activities not a detailed construction plan. Corps engineers will not review plans and specifications so as to avoid the assumption of liability for engineering review. The District Engineer has the option of requesting "as built" site plans and construction plans of facilities with certification by a Professional Engineer that the construction meets all applicable codes and standards. The size and cost of the facilities should be factored into the decision to request such plans. Hours of operation, rates and prices and other details of daily management will not be included in the Development Plan, nor required of the concessionaire. For existing concessionaires, see subparagraph n. below.

f. Insurance.

(1) Policy. To protect the using public, the lessee's assets, and the government, it is the policy of the Corps to require commercial concession lessees to maintain the maximum available

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level of liability insurance coverage consistent with sound business practices and industry norms. In no case shall liability insurance coverage be less than which is prudent and reasonable considering the risk factors present in the operation of the particular concession.

(2) Guidance. Concessionaires will be expected to obtain insurance coverage in an amount not less than the limits dictated by sound business practices, given the risk factors present at the particular concession, or \$1,000,000, whichever is greater. However, District Engineers are authorized to approve lesser insurance minimums as set out below if there is no activity identified by the insurance industry to be of a high risk nature, e.g. horseback riding, waterslides, diving, rentals of boats with greater than 25 horsepower or pontoon boats with greater than 50 horsepower:

(a) Concessions with both assets and gross receipts of or less than \$150,000 will maintain liability coverage of no less than \$250,000.

(b) Concessionaires with both assets and gross receipts of between \$150,000 and \$500,000 will maintain liability coverage of no less than \$500,000.

(3) Where \$1,000,000 liability coverage or greater is warranted but not available, the coverage may be reduced on a year to year basis, to the maximum available coverage but no less than \$500,000. District Engineers must also determine that coverage is indeed not available and should reaffirm nonavailability annually.

(4) Amounts of insurance coverage required consist of aggregate liability coverage (combined bodily injury and property damage) per occurrence (i.e., \$500,000 aggregate coverage per occurrence)

(5) Requests for exceptions to the above should be sent to CERE-M for approval.

g. Consideration.

(1) Concession leases executed prior to 1993, unless amended to use a newer system, will calculate consideration using the rental method as shown in the lease. Districts should retain copies of appropriate guidance in effect at the time the lease was executed to support the old rental method.

(2) Consideration will be calculated using the Revised Graduated Rental System (RGRS). The RGRS is based upon a percentage of gross receipts. No administrative fee is charged for these leases. Gross receipts are defined in the lease format as the total of the concessionaire's receipts from business operations conducted on the premises, including receipts of sublessees and licensees. No reductions are permitted except the costs of hunting and fishing licenses, license fees and taxes collected for direct remittance to a taxing authority, and the exact amount collected from customers for electrical service which is metered to the customer and collected by the lessee as the servicing agent and paid to the power company. Sales receipts from boats and

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motors may, at the lessee's option, be excluded and assessed a straight one-percent rent, since they are high cost, low profit items.

(3) Calculations. The percentage is selected from the chart, based upon the total gross receipts of the ending rental year. If this is a new concession, then the past receipts would be zero and the minimum rate would be used for the first year. The selected percentage rate is then multiplied each rental payment period by the gross receipts for that period. A year end report is still prepared in accordance with the Condition on Accounts and Records.

h. Mixed Concessions. Where an insignificant portion of the gross receipts are generated on project land and use of the RGRS will not result in a fair return to the government, the rental may be freed at the appraised fair rental value for the leased project land.

i. The District Engineer has the authority to negotiate the frequency of rental payments of commercial concessions so that each payment is a reasonable amount. In no event will the frequency be more often than on a monthly basis, and may be monthly, annually, semi-annually, or quarterly.

j. Renegotiated Rental. Renegotiation of rentals under authority of 16 U.S.C. § 460d-1 will only be for future rent. Renegotiation of rental should only be considered in unusual circumstances, i.e. drought, record floods, earthquake.

k. Notice to Known Secured Parties. If the lessee falls behind in rental payments or is otherwise in substantial noncompliance, the District Engineer must notify all known secured lenders, since their security will be endangered by default. In some instances the District Engineer may have executed a pre-assignment agreement with the lender in case of default by the lessee so that the lender may step in immediately and operate the premises. No standard form is used since local practice varies.

1. Management of existing leases. Compliance inspections will be performed no less than once per year. See Paragraph 8-99, Compliance Inspections.

m. Term.

(1) Leases may be granted for terms of 25 years or less, with an option for renewal, conditioned upon the lessee being in compliance and satisfactorily performing at the time the option is exercised. The term should be given as necessary for the lessee to obtain a return on the investment and make a reasonable profit. The maximum permissible term should not automatically be granted. Options should not routinely be placed in leases, but should be based on the development proposed and rehabilitation and replacement cycles for the facilities and improvements. If an option is desired, add the following to the term:

The Lessee shall have the right to extend the original term of the lease for two (2) successive periods ("extension terms") of fifteen (15) and ten (10) years each, provided

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that, as to each option, Lessee shall give notice to the Government of its election to extend such term at lease eighteen (18) months prior to the time when the term then in force would otherwise expire; that, at the time when such notice is given, there shall not be any uncured event of default on the part of Lessee; and that the term of this lease shall have been extended for the prior extension term, if any.

(2) Request for terms over the above must be forwarded to HQUSACE (CERE-M) for approval. Total terms of over 50 years (25 years, 25 year option) will be approved only for the most extensive development. Submissions to HQUSACE (CERE-M) must include supporting justification.

n. Renewal and extension.

(1) District Engineers may waive competition for the extension and renewal of commercial concession leases when it has been determined that the waiver is in the public interest, or competition would be impracticable, and, when a waiver is otherwise appropriate. That the lessee has been providing satisfactory service, in and of itself, does not necessarily permit the lease to be extended or renewed without competition. The lessee must be willing and able to provide facilities and services necessary to service the public, to furnish additional facilities and services needed during the renewal period, and to perform in accordance with lease terms.

(2) If the District Engineers extends the term or negotiates a renewal/new lease when public use requires additional development which cannot be financed or amortized during the remaining term of the lease, the District Engineer and the lessee must agree on development proposed. The existing development plan, if any, may be supplemented, or a new development plan established, using the guidance in e. above for new concessions. No development plan is required where new development is minimal or the concession size does not warrant the creation of such a plan. Limit such new term to the period required to secure adequate financing and amortization of development costs up to 25 years, with an option to renew, using the general guidance set out in m. above.

(4) If the District Engineer determines that a renewal of the lease to continue the current facilities and services is in the public interest, without any additional development, no development plan is required. The renewal term should not generally exceed 5 years, however, longer terms may be appropriate considering the extent and condition of existing improvements and the amount of current investment.

(5) The extension and renewal granted must conform to existing laws, rules and regulations and the approved lease format in effect at the time of the renewal or extension.

(6) Unless an option is provided in the lease, the lessee has no right, as such, to a renewal or extension of the lease and should prepare to amortize its investment over the initial term of the lease. Lessees may be advised of the Army policy to renew leases with existing concessionaires who are satisfactorily meeting public needs, but the District will be careful not to

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appear to promise a renewal since satisfactory performance is not, in and of itself, grounds for a waiver of competition.

o. Format.

(1) Use Appendix 8-C, Figure 8-C-4 in preparing leases without deviation, except as shown in the form. Site specific environmental, cultural and operational requirements may be added. Other changes must be approved by HQUSACE (CERE-M).

(2) The description of the leased premises will include both land and sufficient water areas around the facilities for the approved use and development as a commercial concession.

(3) The Performance of Contract condition is to be used to ensure that the Government is not damaged by the failure of the lessee to complete promised development as identified in the development plan attached as an exhibit to the lease. It is not intended to be a punitive condition, nor is it intended for these cash, bond or letter of credit to be used by the Government to complete the proposed development. This condition may be used for developments at new concessions or for new development at existing concessions where the development is related to an extension of the lease term and/or remedial repairs to prevent termination or revocation of the lease. In general, the amount of the bond should be based on the following criteria:

- Cost of readvertising the site
- Cost of restoration
- Cost of closing-down a site to prevent public access until restored
- Administrative costs
- Other costs to be incurred by the Government

In any event, the minimum amount of cash, bond, or letter of credit shall be \$5,000. Each leasing action should be evaluated for the need of this condition, i.e., delete for a very small concession with low risk of cost to the Government. This condition may be omitted if not required to ensure development or remedy. Renewals without significant additional development will not require this condition.

(4) The requirement to post rates and prices as stated in the Condition on Rates and Prices is considered met when the prices of individual items are labelled on the items, on the shelf or space they occupy, or on a listing of prices. Although we have retained the right to review rates and prices, this review should be limited to egregious departures from reasonable rates and prices in the area, e.g. in response to complaints from the public.

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(5) Consideration, Development Plan and insurance amounts will be as set out above.

(6) CERCLA notice. If the EBS shows threshold quantities of hazardous substances are or have been stored, disposed or released, a sub-paragraph (b) needs to be added to the EBS Condition in the form as set out in Paragraph 8-55.e. above.

p. Execution. Leases are executed in accordance with 8-153.

q. Revocation. The District Engineer is authorized to execute revocation notices only when the lessee violates lease terms and conditions and persists in such violations for the period provided in writing as set out in the lease form. Revocation is an extreme action and every effort should be made to secure compliance. If the lessee fails or neglects to remove improvements, then the option selected by the District Engineer to either remove the property or to have it forfeit to the Government must be documented in writing to the lessee. In order to avoid possible taking or contract claims and to promote good community relations, the grantee will be allowed a reasonable time to vacate the premises, remove property, and restore the property. In controversial cases, or when a claim for damages or litigation is anticipated, CERE-M will be advised of the situation before revocation notices are issued.

8-158. Leases to Nonprofit Organizations for Park or Recreation Areas.

a. General. Non-profit organizations may lease lands and improvements at water resource development projects for park and recreational purposes. Groups should be encouraged to reserve existing group use areas for day use, camping and educational purposes. Organizations requesting a lease of project lands should demonstrate that the group requirement cannot be satisfied by use of existing facilities available through reservation. The organization's program requirements should warrant the use of public land or facilities and provide service not otherwise available to a large segment of the using public. The organization should provide evidence of their financial and management capability to develop, operate and maintain the proposed facilities. Leases issued to non-profit organizations under this paragraph do not constitute private exclusive use as defined in Title 36, Code of Federal Regulations, Part 327 and ER 1130-2-406, Lakeshore Management at Civil Works Projects.

b. Competition. Although competition is not required, such lease will be available only to responsible organizations which will serve the public through use of the leased premises. An Application for Leasing will be required using Appendix 8-A, Figure 8-A-6.

c. Consideration. Non-profit organizations may be granted leases for park and recreation purposes at reduced or nominal rental in recognition of the public services provided by the lessee. Services provided only to members of the non-profit organization do not justify a reduced or nominal rental. Such organizations now operating as private clubs will be charged fair market rental. Appropriate rental rates for non-profit organizations will be determined based



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on the services to be provided to the public as well as organization members. The following criteria will be applied.

(1) The organization must be non-profit and functioning in the public interest to provide recreational or educational services of a charitable nature.

(2) The facilities and services will be available for group use only. The use of such facilities must rotate freely among members and guests.

(3) The organization shall make the site and facilities available to other non-profit organizations on a first come, first served reservation basis when not scheduled for use by its own members.

d. Term. The term of the lease will be commensurate with the extent of development proposed by the lessee and will not exceed 25 years.

e. Format. Use Appendix 8-C, Figure 8-C-5 without deviation in preparing leases. Site specific environmental, cultural and operational requirements may be added. Other changes must be approved by HQUSACE(CERE-M).

f. Execution. Leases will be executed in accordance with Paragraph 8-153.

8-159. Lease for Private Recreation Purposes. Private recreational use includes club sites, yacht club sites, cottage sites, nonprofit organizations operating as private clubs, and other such uses in accordance with the project Master Plan and approved regional plans as set out in ER 1130-2-400 and ER 1130-2-406.

a. Cottage/Cabin Site Leases. A cottage site lease issued under the authority of Title 16, United States Code, Section 460d, as amended by section 1134 of the Water Resources Development Act of 1986, which states that such leases will be issued for the fair market value, will only reserve fair market rental as consideration regardless of the estimated administrative costs. No new lands will be allocated for cottage sites. Existing cottage site leases may only be terminated if the site is needed for a higher public purpose or the lessee is in default.

b. Other private recreation leases. Sites determined available for such purposes will be leased and developed only in accordance with approved regional plans.

c. Competition. See Paragraph 8-104. Any waiver of that policy requires prior approval by CERE-M.

d. Consideration. No less than the fair market rental value of the property leased or the established estimated administrative cost, whichever is greater, will be charged. See Paragraphs 8-81 and 8-111 above.

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e. Term. The term should be in accordance with regional plan and/or commensurate with the development planned. A term of up to 10 years is considered adequate in most cases with terms up to 25 years granted only when a high degree of development is anticipated. Terms in excess of 25 years require prior approval by CERE-M and will require substantial justification.

f. Format. Use Appendix 8-C, Figure 8-C-5 without deviation in preparing leases. Site specific environmental, cultural and operational requirements may be added. Other changes must be approved by HQUSACE(CERE-M)

g. Execution. Leases are executed in accordance with Paragraph 8-153.

8-160. Leases to Cooperating Associations.

a. General. The National Park Service has a long history of association usage, including special authorities on funds, personnel and donations. The Forest Service has developed a program within their authorities which has been very successful. These associations aid operations related natural resources management, educational, interpretative and visitor services activities, often through volunteers and sales of books and souvenirs. After extensive coordination between CECW-ON, CERE-MC, and CECC-J, ER 1130-2-441, "Cooperating Associations Program" was published. It sets out the authority, definitions and policy for these associations at Civil Works water resource development projects.

b. Cooperative Agreement. A sample agreement is shown in Appendix 8-A, ER 1130-2-441. This agreement sets out the authority for entering into these agreements. Although 31 U.S.C. § 6305 is referenced in the regulation, it is not the authority to enter into the agreement. Public Law 95-224, the Federal Grant and Cooperative Agreement Act of 1977, which is codified in Title 31, United States Code, 6301 (formerly Title 41, United States Code, 501) sets out criteria for selecting appropriate legal instruments to achieve uniformity in their use, a clear definition of the relationship they reflect, and a better understanding of the responsibilities of the parties. The cooperative agreement will be used when the principle purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law instead of acquiring property or service for the Government and substantial involvement is expected between the recipient and the agency when carrying out the activity. The authority to enter into the relationship must already exist.

c. If the Association will use government facilities, the necessary real estate instruments will be a separate document from the cooperative agreement and will not merge. The sample Agreement states in several places to delete certain sections if covered in the real estate document. The association will be granted a license, easement or lease, as appropriate in accordance with this chapter for the proposed use of government owned property. For example, if the association provides volunteers tour guides without any fixed space, no outgrant is required. A short term "Festival" could be covered by a Special Event Permit. A lease would be required for exclusive use of a fixed area for a gift shop or book store in the visitor center, for a specified area such as a historic interpretative site where entrance or user fees will be

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charged, or a museum area housing association artifacts. A license would be appropriate where the association will hold seminars every third Monday night or for display cases if the contents belong to the association.

d. Consideration. The consideration is the operation and maintenance of the facilities for the benefit of the United States and the general public in accordance with the conditions set for the in the outgrant and pursuant to the Cooperative Agreement. No administrative fee is collected.

e. Format. If a lease is appropriate, see Appendix 8-C, Figure 8-C-7.

f. Execution. Leases are executed in accordance with Paragraph 8-153.

8-161. Leases or Licenses for Other Public Use. Leases or licenses, if appropriate, may be issued to Federal, state or local governmental agencies for other public use. Use the lease format most appropriate for the proposed use. Since this is not a standard application, these must be submitted to HQUSACE (CERE-M) for approval, at the Secretariat, if necessary.

8-162. Reserved.

8-163. Reserved.

8-164. Reserved.

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## SECTION XIII. OUTLEASE APPEALS

8-165. Background.

a. The disputes clause in leases issued between 1954 and 1993 was based on the Wunderlich Act (Title 41, United States Code, Section 321, 322). This act was passed in response to the Supreme Court in Wunderlich v. U.S., 342 U.S. 98 (1951) which limited judicial review of agency decisions. The Act provided finality of agency decisions but specified the “substantial evidence” standard for judicial review of findings of fact. SAILE was the designated representative of the Secretary of the Army to hear disputes under the lease disputes clause. In 1989, SAILE decided that it was no longer staffed to perform this function and requested CERE-M to develop a delegation. On June 14, 1990, the Secretary of the Army designated the Chief of Engineers the duly authorized representative of the Secretary of the Army as provided in the lease disputes clause, with the power to redelegate to the Corps of Engineers Board of Contract Appeals (ENG BCA), to hear, consider, and decide all appeals arising under or related to outleases of civil and military real property as fully and finally as the Secretary of the Army might do.

b. Although the Contract Disputes Act is often thought of as being a part of the procurement rules, it is unique in that it was specifically applied by Congress to “disposals of personal property”, such as GSA surplus sales, and to any agreement which by its terms is expressly made subject to its provisions. Several recent court and board cases have tried to split the “in persona” and the “in rem” aspects of leases to say that they are a type of disposal of personal property. In order to eliminate the confusion caused by the conflicting decisions, new leases will contain the CDA provision used by GSA in its personal property disputes clause. This differs slightly from the standard procurement clause in that the lessee will usually owe the Government money rather than the other way around.

8-166. Appeals under Existing Leases.

a. Existing leases will not be amended just to change the disputes clause. Any dispute concerning a question of fact or lease provision arising under such leases which is not disposed of by agreement shall be decided by the District Engineer, in writing. Although the district may explain its position in the reply to the lessee, the lessee will be advised that a written objection to the final decision will be considered an appeal and that it will be processed as such.

b. The final decision will contain, at a minimum, a reference to the appropriate lease provision; the reasons for the decision; and notice to the lessee of the right to file an appeal; and that the District Engineer’s decision shall be final unless a written appeal is received addressed to the Secretary of the Army within 30 days from the date the lessee receives the District Engineer’s decision. The lessee should be advised to identify the errors, state the reasons for the appeal, and include any additional information that the lessee desires to submit in support of the appeal.

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c. When the original notice of appeal is received, it and a copy of the related final decision of the District Engineer will be forwarded to the Corps of Engineers Board of Contract Appeals (ENG BCA), through the Division Engineer and Chief Trial Attorney (CECC-F), within ten days of receipt, with copies for each higher level of Counsel and Real Estate, and two copies for HQUSACE (CECC-F), and one copy for CERE-M. Reference Section 71, ER 1180-1-1, part 1, B-201.

8-167. Appeals Under New Leases. The CDA procedures set out in ER 1180-1-1 will be followed. When the original notice of appeal is received, it and a copy of the related final decision of the District Engineer will be forwarded to the Corps of Engineers Board of Contract Appeals (ENG BCA), through the Division Engineer and Chief Trial Attorney (CECC-F), within ten days of receipt, with copies for each higher level of Counsel and Real Estate, and two copies for HQUSACE (CECC-F), and one copy for CERE-M. Reference Section 71, ER 1180-1-1, part 1, B-201.

8-168. Pre-acceptance Protests for Competitive Lease Applicants.

a. Who May Protest. Only a qualified applicant may protest. A qualified applicant for the purpose of this protest are those next in line if the awardee is disqualified because the protest is approved, or qualified because the protested issue will revise the terms of notice.

b. Types of Protests

(1) A qualified lease applicant may file a protest from a decision denying the lease application, or when the qualified lease applicant believes there is an error contrary to fact or not in conformity with the provisions of the notice of availability to lease.

(2) Persons may also file a protest if they believe that the Terms of Notice are improper. Improper Terms of Notice can include creating restrictions that are not necessary.

c. Applicability. This protest process applies to competitive leases.

d. Time Line for Filing Protest.

(1) Errors in the notice to lease must be protested before lease applications are due.

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(2) Protest from a decision denying the lease application must be filed after a written decision has been made.

e. Notification to Lease Applicant.

(1) Notification of Decision. Each lease applicant will be notified of the decision made on the lease application and the reasons for such action (i.e., lease issued to applicant making a higher offer). Information need not be provided about the protest process in this initial denial letter.

(2) If a lease applicant requests how to make a protest, the applicant must be notified of the protest procedures. Lease applicants should be informed: that they may protest any decision they feel may be in error because the government's action is not in accord with the facts or the provisions of the notice of availability to lease; that a written protest must be filed with the district Chief of Real Estate within 30 days from the date of the initial denial letter; that a protest shall clearly identify the errors and state the reasons for the protest; that they may submit whatever information they desire in support of the protest and that such additional information, including a professional appraisal paid for by the lease applicant, will be investigated and considered. Lease applicants shall be advised of the name of the district Chief of Real Estate who will consider the protest.

(3) A protester will be informed within 60 days of receiving all materials necessary for review when the protest will be decided.

f. Processing Protests.

(1) A lease applicant may protest an unfavorable determination on the lease application. If all matters protested by the lease applicant are resolved to the lease applicant's satisfaction, no further action on the protest is necessary.

(2) Investigation Procedures. Any errors cited by the lease applicant or additional information furnished by the lease applicant in support of the protest shall be reviewed promptly by the district Chief of Real Estate.

(a) The investigation shall be as extensive as necessary to clearly define the basis for the protest and to produce information required for consideration of the protest.

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(b) Upon completion of the investigation, the information submitted with the lease application shall be considered, together with the information obtained as a result of the investigation, and a determination shall be made as to whether favorable action should be taken.

(c) A report of the investigation and consideration shall be prepared and will include the following headings:

(i) Lease Applicant's Disagreement With the Government: A brief outline of the basis of the disagreement.

(ii) Summary of Findings on Protest: The scope of the investigation and consideration of the protest, and pertinent information necessary to determine the merits of the protest.

(iii) Conclusions and Reasons: The decision on the protest and the reasons in support thereof.

(d) Appraisals. If the protest relates to value, the appraisal branch should review the value and submit findings to the Chief of Real Estate.

(3) A protest will be considered closed once action has been taken in conformity with the final decision made on the protest.

(4) Protests should be reviewed and decided within 60 days.

g. Staying of Lease.

(1) The district Chief of Real Estate shall determine whether a lease should be stayed during the protest process. There should be a presumption that a lease should be awarded contingent on the outcome of the protest process.

(2) Factors to be considered are:

(a) Time sensitivity of the lease.

(b) The impact if the protest is granted and the lease is stayed or not stayed until protest is over. Impact should include loss/damage suffered to the government as well as the lease applicants.

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(c) The probability that the protestor might win based on the facts as known by the Chief of Real Estate.

h. Paragraphs to be Added to the Lease Application Package. The six paragraphs below should be inserted into lease solicitations.

DISPUTES: Persons may protest the Terms of the Notice to Lease before lease applications are due to (insert name of the district Chief of Real Estate) who shall mail or otherwise furnish a written copy of the decision to the protestor. ~~(insert name of the district Chief of Real Estate)~~ should consider such protest within 60 days of delivery, but may continue the leasing process.

Except as otherwise provided in this proposal, any protest, by a qualified lease applicant, concerning a question of fact or law arising under this application which is not disposed of by agreement may, within 30 days of the date of the government rejection letter to that applicant, be protested to (insert name of the district Chief of Real Estate) who shall mail or otherwise furnish a written copy of the decision to the lease applicant.

In connection with any written protest proceedings under this provision, protestor should clearly

- (1) identify the lease in question;
- (2) identify contact parties;
- (3) state the reasons for the protest;
- (4) provide documentation in support of the protest, and;
- (5) state what is the desired result.

The decision of the district Chief of Real Estate, or duly authorized representative for the determination of such protests, shall be final and conclusive.

The Chief of Real Estate reserves the right to establish management objectives and requirements designed to achieve these objectives. These objectives are not subject to this disputes process. [Examples of management requirements in agriculture and grazing leases are stocking rates, grazing seasons, lease plot configuration, work in lieu of cash rent, rotation schedules, etc (the last sentence to be changed to fit the type of lease being advertised).]



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The district Chief of Real Estate will determine whether a lease should be stayed during the protest process. There is a presumption that a lease should be awarded contingent on the outcome of the protest process. Therefore, pending final decision of a dispute, a lessee awarded the lease shall proceed diligently with the performance of the lease and in accordance with the Chief of Real Estate's decision.

8-169. Reserved.

8-102d

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#### SECTION XIV. EASEMENTS

8-170. General. This section covers the procedures and responsibilities for granting, managing, amending, and terminating easements involving real property controlled by the Department of the Army (military and civil works). Instructions in Section VI for processing applications and determining availability apply, except as otherwise provided in this section. Easement instruments should not include temporary work areas. These areas should be authorized by a license in accordance with Section XVI. Generally, Army and Air Force real property should not be made available for non-governmental facilities such as powerlines, pipelines or roads if suitable privately owned land is available.

8-171. Service Contracts. Utility facilities which serve only an installation or project do not require easements and such facilities should be provided for by service contract. However, in those instances where utility companies insist on a separate easement, or when installations request an easement be granted for documentation purposes, one may be granted without a Determination of Availability. In those instances, some conditions shown in Appendix 8-D, Figures D-1 or D-2 may require revision to reflect the specific circumstances. Easements granted solely in support of a service contract do not require monetary consideration. Requests for such easements on military installations may be forwarded by the installation directly to the district without further approval of Reports of Availability. Similarly, public park and recreation lessees may contract for necessary utilities without granting an easement for that purpose, subject to prior approval of the District Engineer. However, rights-of-way for utilities which also serve other grantees or members of the public require an easement.

8-172. Prior Approval of Assistant Secretary of the Army (I,L&E). Certain easements involving military real estate in the United States, Guam, Puerto Rico, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands require prior approval of the Assistant Secretary of Army (I,L&E) in accordance with AR 405-80 if they will significantly reduce or redirect an installation mission, are controversial, or have an estimated annual fair market value in excess of \$200,000. Also, transportation and utility systems in Alaska under the Alaska National Lands Conservation Act, 16 U.S.C. § 3161 et seq., Section 1104(b)(2), requires approval of all appropriate Federal agencies for transportation or utility outgrants on land in any conservation system unit, national recreation area, or national conservation area in Alaska. See Paragraph 8-67.

8-173. Competition. Competition is not applicable in granting easements to public entities. Competition on other easements may be considered if applicable.

8-174. Consideration.

a. Except as otherwise specifically provided in succeeding paragraphs of this section, or by express instruction in individual cases, all easements will reserve as consideration the greater of the fair market value or the established administrative charge, as set forth in Paragraph 8-81. b.(2) above.

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b. Monetary consideration may be waived for easements issued to Federal, State or local governments, political subdivisions or nonprofit organizations for purposes benefiting the general public. However, if the grantee's principal source of revenue is generated through charges made to its customers (similar to those rendered by a profit-making corporation or business), consideration shall be reserved.

c. When monetary consideration is waived, the consideration condition should be revised to read as follows: "The consideration for this easement shall be the construction, operation and maintenance of the \_\_\_\_\_ for the benefit of the general public in accordance with the terms and conditions hereinafter set forth".

d. As an exception, in addition to fair market value, charges for surveys, legal descriptions, environmental monitoring, and other identified costs, are mandatory for processing and monitoring construction, operation and maintenance of fuel-carrying pipelines. (See Paragraph 8-181 below.)

8-175. Statutory Findings. In accordance with the statutes cited in this section as authority for various types of easements, the District Engineer should make specific findings in the exact words of the applicable statute before granting an easement under delegated authority. If no authority is delegated, transmittal correspondence must give the specific findings in the exact words of the applicable statute.

8-176. Format. Easements will be prepared using applicable formats attached as figures to this chapter or applicable numbered Engineer Forms. Conditions may only be deleted if so indicated in the format or in this Chapter. Conditions necessary for site specific environmental, cultural and operational requirements may be added, provided that such additions are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified by the District Engineer and forwarded to HQUSACE (CERE-M) for approval before the easement is executed.

8-177. Execution. Except as provided in succeeding parts of this section, Division Engineers and their delegates (Division Directors, Real Estate, District Engineers and District Chiefs, Real Estate, without authority to redelegate below the District Chief, Real Estate) are authorized to execute, amend, and renew easements on Army-controlled real property. Such instruments will be executed "by authority of the Secretary of the Army." Proposed easements of major importance, unusual character, or controversial nature which deviate from instructions in this chapter will be sent with full explanation to HQUSACE (CERE-M).

8-178. Revocation and Termination. Division Engineers and their delegates (Division Directors, Real Estate, District Engineers and District Chiefs, Real Estate, without authority to redelegate below the District Chief, Real Estate) are authorized to revoke and terminate those Army easements which they have authority to execute, in accordance with the terms of the easement and Paragraph 8-84 of this chapter. Upon request by the grantee, the 30 day notice of termination may be extended up to a one year period when the easement involves substantial

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improvements or constructions costs. A grantee may terminate an easement by reconveyance or release to the United States. Unrecorded instruments may be released by returning the executed instrument endorsed with a surrender and release to the United States; recorded easements require a separate recordable reconveyance to the United States. Termination of an easement does not relieve the grantee of obligations to restore the premises or to pay monies due the United States.

8-179. Easements for Electric Power and Communication Lines, and Structures and Facilities for Radio, Television, and Other Communication Services.

a. Authority. Title 43, United States Code, Section 961.

b. Applicability. This authority applies to acquired land and withdrawn public domain lands unless the terms of withdrawal provide that the Department of the Interior will issue rights-of-way over withdrawn lands. If the term of the proposed easement over withdrawn public domain land exceeds the remaining term of the withdrawal, the easement shall be coordinated with BLM for concurrence before execution or the term will be limited to the remaining term of the withdrawal.

c. Administrative Finding. A finding by the District Engineer that the grant is not “incompatible with the public interest” must precede the grant.

d. Term. The term cannot exceed 50 years and shorter periods of time should be granted if user requirements allow. All easements must allow termination, in whole or in part, by the Secretary for failure to comply with the terms, for non-use for a two year period, or for abandonment.

e. Width of Rights-of-Way. Rights-of-way should be the minimum width for the particular use: for electric power or communication lines a maximum of 200 feet on each side of the center line; for radio, television, and other transmitting, receiving and relay structures, a maximum of 400 feet by 400 feet.

f. Format. The approved format for a Right-of-Way for Electric Power Transmission or Communication Facilities easement is shown in Appendix 8-D, Figure 8-D-1. This is intended as a generic format for use at Civil Works Projects as well as Army and Air Force installations. Completion of wording in the title block, granting clause, Condition 5 and the witness clause will be necessary to identify the proponent of the easement. The following changes may be made by District Engineers.

(1) Condition 2.a. shall be revised when no monetary consideration will be charged (see Paragraph 8-174.c. above). In that situation Condition 2.b. will be deleted. In the event the consideration is a lump sum payment for the entire term, Condition 2.b. may be deleted.

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(2) Condition 12 should be deleted in easements granted to non-federal governmental entities.

(3) Condition 14 requiring services to the Government may be deleted.

(4) In unusual cases or when consideration is substantial, the words “or disposal” may be deleted in Condition 16.

(5) When the easement is granted without monetary consideration, Condition 21 on non-discrimination will be deleted and Condition 18 of the public road easement shown in Appendix 8-D, Figure 8-D-3 will be used instead.

(6) Site specific environmental, cultural and operational requirements may be added.

g. Execution. Easements are executed in accordance with Paragraph 8-177 above.

#### 8-180. Easements for Gas, Water and Sewer Pipelines.

a. Authority. Title 10, United States Code, Section 2669, except for those gas pipelines covered by Paragraph 8-181 of this chapter.

b. Applicability. This authority applies to acquired land and withdrawn public domain lands unless the terms of withdrawal provide that the Department of the Interior will issue rights-of-way over withdrawn lands. If the terms of the proposed easement over withdrawn public domain land exceeds the remaining term of the withdrawal, the easement shall be coordinated with BLM for concurrence before execution or the term will be limited to the remaining term of the withdrawal. Easements granted under this authority may include a pump as an appurtenance to the pipeline when it is a relatively minor appendage. When a pumping facility becomes a major structure, the easement will also cite Title 10 U.S.C. § 2668 as the granting authority.

c. Administrative Finding. A finding by the District Engineer that the grant “will be in the public interest and will not substantially injure the interest of the United States in the property affected” must precede the grant.

d. Term. The statute does not specifically limit the term. Easements should normally not exceed 50 years and shorter periods of time should be granted if user requirements allow. All easements must allow termination, in whole or in part, by the Secretary for failure to comply with terms, for non-use for a two year period, or for abandonment.

e. Width of Rights-of-Way. The statute provides that no easement may include more land than is necessary for the purpose of the grant. If the right-of-way width is inadvertently not specified in the easement, the width will be limited to the area actually occupied by the pipeline with rights of ingress and egress for installation, operation, and maintenance.

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f. Format. The approved format for a pipeline right-of-way easement is shown in Appendix 8-D, Figure 8-D-2. This is intended as a generic format for use at Civil Works projects as well as Army and Air Force installations. Completion of wording in the title block, granting clause, Condition 5 and the witness clause will be necessary to identify the proponent of the easement. The following changes may be made by the District Engineer.

(1) Condition 2.a. shall be revised when no monetary consideration will be charged (see Paragraph 8-174.c. above). In that situation Condition 2.b. will be deleted. In the event the consideration is a lump sum payment for the entire term, Condition 2.b. may be deleted.

(2) Condition 14 requiring services to the government may be deleted.

(3) In unusual cases or where substantial consideration is paid, the words "or disposal" may be deleted in Condition 16.

(4) When the easement is granted without monetary consideration, Condition 21 on non-discrimination will be deleted and Condition 18 of the public road easement shown in Appendix 8-D, Figure 8-D-3 will be used instead.

(5) Easements for irrigation pipelines to holders of established water rights from states will contain the following added conditions:

(a) This easement is granted for the exercise of water rights granted by the State of \_\_\_\_\_ and does not create any right to use water from the \_\_\_\_\_ Project. Granting of this easement does not preclude the Secretary of the Army from requiring the grantee to enter into an appropriate water service contract in consideration of such irrigation benefits as may, in the opinion of the Secretary of the Army, be derived from the withdrawal of irrigation water from the \_\_\_\_\_ Project.

(b) All electrical equipment will be installed, operated and maintained in compliance with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located, including, but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB's).

(c) Electrical service to submerged motors or those located above water shall be by means of a sealed, water-proof, multiple conductor cable with controls and switches located on land. The location of such motors and the electrical feeders shall be clearly marked to be visible to boaters and swimmers. Additionally, signs warning "DANGER-HIGH VOLTAGE -Unauthorized Access Prohibited" shall be erected to be visible from the land and water approaches to the equipment.

(6) Site specific environmental, cultural and operational requirements may be added.

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g. Execution. Easements are executed in accordance with Paragraph 8-177 above.

8-181. Easements for Various Rights-of-Way.

a. Authority. Title 10, United States Code, Section 2668 provides authority for the following types of easements: roads and streets; railroad tracks; oil pipelines; substations for electric power transmission lines, telephone lines and telegraph lines; and pumping stations for gas, water, sewer, and oil pipelines; canals; ditches; flumes; tunnels; dams and reservoirs in connection with fish and wildlife programs, fish hatcheries and other improvements relating to fish culture; and for certain other purposes.

b. Applicability. This authority applies to acquired land and withdrawn public domain land unless the terms of withdrawal provide that the Department of the Interior will issue rights-of-way over withdrawn land. If the term of the proposed easement over withdrawn public domain land exceeds the remaining term of the withdrawal, the easement shall be coordinated with BLM for concurrence before execution or the term will be limited to the remaining term of the withdrawal. The words "and for certain other purposes" authorize granting an easement normally considered a right-of-way for any purpose not enumerated above and which is not included in other parts of this section, including, but not limited to, 10 U.S.C. § 2669 and 40 U.S.C. § 319.

c. Administrative Finding. A finding by the District Engineer that the grant "will not be against the public interest" must precede the grant.

d. Term. The statute does not specifically limit the term. Rights-of-way for public roads, streets, and main line railroad tracks are for permanent use and should be granted in perpetuity. Normally, terms of other easements under this statute should not exceed 50 years, and shorter periods of time should be granted if user requirements allow. All easements must allow termination, in whole or in part, by the Secretary for failure to comply with terms, for nonuse for a 2-year period, or for abandonment.

e. Width of Rights-of-Way. The statute provides that no easement may include more land than is necessary: rights-of-way should be limited to the minimum width that the use requires.

f. Format.

(1) Roads and Streets. The approved format for an easement for a public road or street is shown in Appendix 8-D, Figure 8-D-3, with the exception in subparagraph (2) below. Where a road easement granted is not a public road, delete the word "public" in the title block, delete Condition 2 --Consideration and Condition 18 --Non-Discrimination and substitute therefor, Condition 2--Consideration and Condition 21 --Non-Discrimination as shown in the easement for electric powerline, Appendix 8-D, Figure 8-D-1.

(2) Limited Access Roads.

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(a) The Army, Air Force, and Federal Highway Administration, Department of Transportation, have accepted Appendix 8-D, Figure 8-D-4: Easement and Relinquishment of Access Rights to a Section of... Interstate and Defense Highways as the format for easements for limited access roads. Such easements must, above all, explicitly and carefully delineate the proposed access roads (Army, military or civil works, and Air Force). The easements and attached exhibits must carefully and adequately define the grantee's obligations in limited access easements. The granting clause of the easement releases all the Government's rights of abutment between the highway and the installation or project lands, including lands abutting on the parts of the highway not specifically covered by the easement.

(b) Present Army and Air Force policies permit the grant of such easements to states without monetary consideration; however, grantees should be required to restore the installations or projects to as efficient an operating condition as that which existed prior to road construction, at the grantee's own expense. Agreement should be reached with the state on such restoration, to the satisfaction of the using service, before the easement is processed.

(3) Easements for Other Purposes. Although there is no prescribed form, the approved easement formats shown in Appendix 8-D, Figures D-1, D-2 and D-3 may be used as guides. Additional guidance is as follows:

(a) Insure that the authority shown in the granting clause reads 10 U.S.C. § 2668.

(b) Paragraphs 8-179.f and 8-180.f also apply to this category of easements.

(4) Site specific environmental, cultural and operational requirements may be added.

g. Execution. Easements are executed in accordance with Paragraph 8-177 above.

#### 8-182. Easements for Fuel Pipelines and Related Facilities.

a. Authority. Section 28, Mineral Leasing Act of 1920, as amended (30 U.S.C. § 185) provides authority to grant easements for pipelines and related facilities for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

b. Applicability.

(1) The Secretaries of the Army and Air Force are authorized to grant easements for rights-of-way for above purposes over, in, and upon lands they control.

(2) The Secretary of the Interior is authorized to grant an easement which traverses lands administered by two or more Federal agencies after consulting with them, in accordance with Bureau of Land Management regulations published in 43 C.F.R. 2880.



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(3) Pipelines for the above purposes are not subject to requirements and limitations of this statute if they have been relocated on Government owned lands at Government initiative and for Government benefit, as authorized by a relocation contract.

(4) In this section and the applicable statute, "pipeline" means a line traversing Federal lands for transport of oil or gas. The term includes feeder lines, trunk lines and related facilities, but does not include a lessee's or lease operator's production facilities located on his lease. It also does not include distribution lines supplying gas or oil fuel to residential or commercial customers. Easements for those service lines are granted under authority of 10 U.S.C. § 2668 and 10 U.S.C. § 2669 and as provided for in Paragraphs 8-172 and 8-173. Production facilities will be approved by a consent consistent with the interest the Government acquired from the mineral owner or his lessee and applicable State and Federal laws and regulation. Usually the Government acquired the right to approve the type and location of mineral development structures where the oil and gas minerals were not acquired in fee.

c. Statutory Requirements. The District Engineer will make initial findings, determinations, and recommendations and will include information in the transmittal correspondence so that the Secretaries of the Army or Air Force, or their representatives, may make findings and determinations required by law. The following statutory requirements are keyed to relevant sections of the statute in parentheses after the subheadings:

(1) Administrative Finding, (b)(1). It must be determined that the proposed easement will not be inconsistent with the authorized purposes of the Federal installation or project.

(2) Width Limitations, (d). The width of a right-of-way shall not exceed 50 feet plus the ground occupied by the pipeline and related facilities, unless it is determined that a wider right-of-way is necessary for operation and maintenance after construction, for protection of the environment, or for public safety. Related facilities include but are not limited to the following: valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips, and campsites. They need not necessarily be connected to or contiguous to the pipe and may be subjects of separate rights-of-way. The District Engineer must fully justify a right-of-way wider than 50 feet.

(3) Temporary Licenses, (e). Temporary licenses may be issued to supplement easements for fuel-carrying pipelines, for purposes of construction, operation, maintenance, protection of the natural environment or public safety. District Engineers are authorized to issue such licenses in connection with easements for pipelines of less than 24 inches in diameter. Temporary licenses for pipelines 24 inches in diameter or larger will be forwarded to HQUSACE (CERE-M) for execution simultaneously with the easement itself. Refer to Section IV of this chapter for instructions on preparation of licenses.

(4) Pipeline Safety, (g). Any special requirements for safe operation of the pipeline or related facilities should be imposed.

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(5) Costs of Environmental Documentation, (h). The applicant will pay all costs for environmental assessment and monitoring. The agency head shall impose necessary stipulations to prevent or control damage to the environment, including fish and wildlife habitat, damage to public or private property, and hazards to public health and safety; and require restoration, revegetation, and curtailment of erosion of the surface of the land when deemed appropriate.

(6) Disclosure of Ownership, (i). If a partnership, corporation, association, or other business entity applies for an easement, the application shall disclose, where applicable:

(a) Name and address of each partner.

(b) Name and address of each shareholder owning 3 percent or more of the shares; the number and percentage of any class of voting shares of the entity.

(c) Name and address of each affiliate of the entity. If the entity controls an affiliate, include the number of shares and percentage of any class of voting stock of that affiliate; if, however, the affiliate controls the entity, include the number of shares and percentage of any class of voting stock of the entity.

(d) If this information is already on file, and current, in the District Engineer's office, or in local BLM or Federal Energy Regulatory Commission offices, references may be made to it; the applicant need not file repetitious disclosure documents with successive applications.

(7) Technical and Financial Capability, (j). The District Engineer will make a determination and finding of the applicant's technical and financial capability to construct, operate, maintain, and terminate the project for which the permit or right-of-way is requested, in accordance with this law.

(8) Public Notice and Hearing, (k). The District Engineer shall give notice, including a public hearing when appropriate, to Federal, state, and local governmental agencies and the general public, and provide them an opportunity to comment on right-of-way applications. Notice may be given by publication of notice of application in the Federal Register and local newspapers; copies of the notice should be sent to the state governor, local government heads, and Federal agency heads in the locale of the proposed easement. Publication of the notice may be waived if the pipeline will have a minor impact. In considering whether to provide a hearing, certain factors should be considered: the magnitude of the undertaking, probable environmental and public impact, risks and dangers involved. No further hearings are necessary; however, if the pipeline proposal and related aspects have previously been scrutinized through NEPA procedures or other hearings held by Federal or state agencies. The law does not intend that public hearings be duplicated.

(9) Reimbursement of Costs and Payment of Consideration, (l). An applicant for a license or right-of-way shall pay the United States for administrative and other costs incurred in processing an application, including cost of environmental studies. Likewise, the holder of a

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license or right-of-way shall reimburse the United States for costs of monitoring construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or license area; the holder shall pay in advance the fair market value of the interest granted as determined by the District Engineer. Amounts will be separately identified in the correspondence and in the easement instrument; a condition requiring the grantee to pay consideration in advance and to pay monitoring costs will be included.

(10) Bonding, (m). The District Engineer may require the holder of a license or right-of-way to furnish a satisfactory bond or other security for all or any of the obligations imposed by terms and conditions of the license, right-of-way, or regulations.

(11) Term, (n). Each grant or renewal of a right-of-way shall be limited to a reasonable term, but in no event more than 30 years, in view of all circumstances concerning the project. Duration of the grant shall consider the cost of the facility, its useful life, and public purpose it serves. Renewals must be authorized if the project is operating commercially and is operated and maintained according to existing law.

(12) Suspension or Termination of Right-of-Way, (o). The easement instrument shall provide that:

(a) Abandonment of a right-of-way or failure to comply with provisions of this instrument or with applicable provisions of the law may be grounds for suspension or termination of the right-of-way. After due notice to the holder of the right-of-way, reasonable opportunity to comply, and appropriate administrative proceeding according to 5 U.S.C. § 554, the Secretary of the Army or Air Force may determine that such grounds exist and that suspension or termination is justified. Administrative proceeding is not required if the terms of the right-of-way provide that it terminates on occurrence of a certain condition, event, or time.

(b) The Secretary may temporarily suspend activities within a right-of-way or license area without administrative proceeding if immediate suspension is necessary to protect public health, safety, or the environment.

(c) If the holder deliberately fails to use the right-of-way for the purpose for which it was granted or renewed for any continuous 2-year period, this shall constitute a rebuttable presumption of abandonment of the right-of-way; however, if the failure to use the right-of-way is caused by circumstances not subject to the holder's control, the Secretary is not required to begin proceedings to suspend or terminate. Division Engineers or their representatives may suspend or terminate an easement for a pipeline up to 24 inches in diameter.

(13) Joint Use of Rights-of-Way, (p). The easement instrument will contain a condition reserving to the Secretary of the Army or Air Force the right to grant additional rights-of-way or licenses for compatible uses in outgranted areas.

(14) Common Carrier Requirements, (r). The easement instrument will require:

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(a) Pipelines and related facilities to be constructed, operated, and maintained as common carriers.

(b) Owners or operators of pipelines to accept, convey, transport, or purchase all oil or gas delivered to the pipeline whether such oil or gas was purchased on Federal or on nonfederal lands.

(c) Common carrier provisions of this statute shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act, 15 U.S.C. § 717 et seq., or by any public utility subject to a state or municipal agency having jurisdiction to regulate rates and charges for natural gas sold to consumers. If applicable, an added condition will require that such carriers shall purchase without discrimination any natural gas produced in the vicinity which is not subject to state regulatory or conservation laws.

(d) If the holder of an easement pursuant to this statute is not a purchaser of oil or gas, references to "purchase" of oil and gas in (a)(1) and (a)(2) and the condition in (b) may be deleted; however, the holder must agree to reinstatement of those references in case the grantee later becomes a purchaser within the meaning of the statute.

(15) State Standards, (v). The District Engineer will carefully consider state standards for pipeline construction where the right-of-way crosses Federal and nonfederal lands and where the state standards for pipeline construction are more stringent than Federal standards, they will be required.

(16) Liability, (x). Conditions 5, 6, 7, and 8 of Appendix 8-D, Figure 8-D-5; Easement for Right-of-Way for Fuel Carrying Pipeline are required.

(17) Report to Congress of Application for Large Pipeline, (w)(2). All applications for an easement for a fuel carrying pipeline 24 inches or larger in diameter will be forwarded to HQUSACE (CERE-M) for notification to the Congress and for execution at the Secretariat level. Along with a draft of the proposed instrument, furnish complete details and supporting information, including maps in quadruplicate. The Secretary of the Army will notify the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate of the proposed easement.

d. Format. The approved format for fuel carrying pipeline easements is shown in Appendix 8-D, Figure 8-D-5 and will include all conditions and provisions previously listed and required by the statute. Site specific environmental, cultural and operational requirements may be added. Other deviations from the format must be approved by HQUSACE (CERE-M).

e. Execution. See Paragraph 8-177 for execution of easements for pipelines less than 24 inches in diameter. All easements for pipelines 24 inches in diameter or larger will be executed in the office of the Assistant Secretary of the Army (IL&E).

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f. Consents. Consents for fuel-carrying pipelines will be authorized pursuant to the administrative power of the Secretary of the Army or Air Force and will be prepared according to Paragraph 8-188

8-183. Easements for Ferry Landings, Bridges, and Livestock Crossings.

a. Authority. Title 10, United States Code, Section 4777 (Army) and Title 10, United States code, Section 9777 (Air Force).

b. Applicability. These authorities authorize the granting of easements for the (1) landing of ferries at a military reservation, (2) erection of bridges on a military reservation and (3) driving of livestock across a military reservation. It applies to acquired land and withdrawn public domain lands, unless the terms of the withdrawal provide that the Department of the Interior will issue rights-of-way over withdrawn lands. If the term of the easement over withdrawn public domain land exceeds the remaining term of the withdrawal, the easement shall be coordinated with BLM for concurrence before execution or the term will be limited to the remaining term of the withdrawal.

c. Administrative Finding. The Secretary must find that the grant will not injure the installation or inconvenience the military forces stationed there. The District Engineer will provide this information in the transmittal correspondence.

d. Term. The statute does not specifically limit the term, however it is usually appropriate to grant perpetual easements for bridges. Rights-of-way for ferry landings or for driving livestock should be limited to a maximum term of five years, or less, as appropriate, using a revocable license. If longer terms are justified, the right-of-way should be granted by an easement of the appropriate term.

e. Width of Rights-of-Way. Although the statute does not limit the width of rights-of-way, no more land than is necessary should be included.

f. Format. There is no prescribed instrument format, however those shown in Appendix 8-D, Figures D-1, D-2, and D-3 may be used as a guide. When a license is used, the format shown in Appendix 8-E, Figure 8-E-3 should be used. Advice and assistance may also be requested from HQUSACE (CERE-M) on instrument preparation.

g. Execution. Execution authority of the Secretaries has not been delegated. Instruments will be prepared for execution in the office of the Secretary and sent to HQUSACE (CERE-M) for processing.

8-184. Easements Granted Pursuant to Statutory Exchange Authorities.

a. Authority.

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(1) Civil Works Lands. Privately owned lands required for river and harbor or for flood control purposes may be acquired by exchange for lands excess to project purposes, under provisions of the Act of Congress approved 20 June 1938 (33 U.S.C. § 558b), as amended by the Act of Congress approved 11 August 1939 (33 U.S.C. § 558b-1).

(2) Military Lands. The exchange of an easement over military kinds for a similar easement is a very infrequent action, since there is no general exchange authority for military lands as there is for civil. The annual Military Construction Authorization Act (MCA) usually authorizes acquisition by donation, purchase, or exchange of Government-owned lands at specific installations or for specified purposes. If exchange of easements is contemplated, the current MCA Act or previous Acts should be examined for specific authority.

(a) The Minor Land Acquisition Act, as amended (10 U.S.C. § 2672) authorizes acquisition of any land rights needed for national defense that do not cost more than \$200,000. The Judge Advocate General has held that this law is authority for exchanges.

(b) Title 10, U.S.C., Section 2672a, authorizes acquisition by exchange of any land rights that are (1) needed for national defense, (2) essential for the operational integrity of an installation, and (3) urgently needed and there is insufficient time for inclusion in an MCA Act. Since the Armed Services Committees must be advised at least 30 days in advance of such actions wherein the value of the property rights to be acquired exceeds \$200,000, HQUSACE (CERE-M) should be notified 60 days in advance.

(3) Since an exchange involves both acquisition and disposal, pertinent provision of Chapters 5 and 11 should be consulted.

b. Applicability. Outgrants under the authority shown in paragraph a.(1) above are often in fulfillment of a Government relocation contract. Relocations contracts may provide for both an outgrant of an easement over Government land and a conveyance of an easement interest outside project or installation boundaries. Conveyances will be prepared in accordance with Chapter 11. The exchange provisions of the relocation contract must provide that the Government will grant an easement over project land, in the agreed upon form, subject to the Secretary's approval. Parcels proposed for exchange should be of approximately equal value.

c. Term. Statutes authorizing exchanges at civil works projects do not limit terms of the grants and normally these are issued in perpetuity, however at military reservations there may be limitations. Generally, the term granted should be the same as the term of the easement to be acquired.

d. Width of Rights-of-Way. Although the statutes do not impose limitations, the width of rights-of-way will be determined by the need to provide a reasonable exchange facility.

e. Format. There is no approved instrument format, but those referenced in other parts of this section will be used as guides in negotiation and in instrument preparation as far as

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practicable, recognizing that some standard provisions may not be acceptable to grantees. The general rule is to convey no greater interest than the grantee currently holds, but the circumstances of a particular case will determine whether specific provisions in the instrument should be modified or deleted.

f. Consideration. The total interest acquired, in cash or in kind, in the exchange represents the consideration to the Government.

g. Execution. The authority of the Secretaries has not been delegated and all easements will be forwarded to HQUSACE (CERE-M) for processing and execution in the office of the appropriate Secretary.

8-185. Easements for Rights-of-Way or Other Purposes: Relinquishment of Legislative Jurisdiction.

a. Authority. Title 40, United States Code, Section 319 authorizes grants of easements for rights-of-way or other purposes and authorizes relinquishment of legislative jurisdiction as necessary or desirable in connection with such easements.

b. Applicability. The purposes for which these easements may be granted are not limited, but, under existing policy, this statute will not be cited as authority for any easement specifically covered by other statutes in this section or where a lease should properly be used instead of an easement. Exceptions to that policy are:

(1) Where it is desirable to relinquish all or any legislative jurisdiction in the area covered by the proposed easement; and

(2) Where no other authority exists for an exchange of easements.

c. Procedure. Before an easement is processed in connection with a relinquishment of jurisdiction under authority of this statute, the District Engineer should consider and apply provisions of AR 405-20, Federal Legislative Jurisdiction and chapter 9, Federal Legislative Jurisdiction and Annexation, of this regulation. Since the Secretary of the Army must approve all easements under this statute, as well as all relinquishment of any degree of legislative jurisdiction, it is desirable to submit both matters as one action. The easement assembly will therefore contain the necessary proposed letters and documents which together make up a retrocession assembly in accordance with state law. The Secretary of the Army may then approve both actions on the same submission. This same procedure of one submission would also apply in the case of an exchange of easements using this authority.

d. Administrative Finding. The District Engineer must find that an easement granted under this authority "will not be adverse to the interests of the United States".

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e. Term. The statute does not specifically limit the easement term, but rights-of-way contemplated for permanent public use will be granted in perpetuity. Other kinds of easements granted under this statute should be limited to 50 years or less, as the particular use requires.

f. Width of Rights-of-way. While the statute does not limit the width of an easement, it should be no wider than necessary for the purposes of the easement.

g. Format. There is no prescribed instrument format, however the format shown in Appendix 8-D, Figures D-1, D-2 or D-3 may be used as a guide. Advice and assistance may also be requested from HQUSACE (CERE-M) on instrument preparation. The following provisions may be included, if applicable:

(1) Where a termination provision is required, the following wording should be added, "Termination shall be by written notice given the grantee, its successors or assigns. Termination shall be effective as of the date of such notice."

(2) Air Force easements will provide in the granting clause that the Secretary of Air Force has "determined that the granting of this easement will not be adverse to the interests of the United States."

(3) If any legislative jurisdiction is relinquished to the state, the following wording should be added; "In connection with this grant of easement, the Secretary of the Army (or Air Force), by separate instrument, is relinquishing such jurisdiction as he considers desirable over the easement area, to take effect upon acceptance thereof by the State of \_\_\_\_\_, in such manner as its laws may provide."

h. Execution. Authority for execution of these easements, as well as retrocession assemblies, has not been delegated and all such instruments should be forwarded to HQUSACE (CERE-M) for approval and execution.

#### 8-186. Easements on Excess and Surplus Lands.

a. Authority. Pursuant to the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C 471), the General Services Administration (GSA) has authorized the disposal agency, or the holding agency with approval of the disposal agency, to permit the temporary use of excess and surplus real property for productive use; provided that "the use and occupancy will not interfere with, delay or retard disposal." (41 C.F.R. 101-47.203-9 and 101-47.312) This authority does not apply to base realignments or closings under 10 U.S.C. § 2667f.

b. Applicability. When the Department of Army or Air Force is the disposal agency, easements may be granted subsequent to a finding that the easement will not interfere with, delay or retard disposal. When the Department of Army or Air Force is the holding agency, prior approval of the appropriate regional office of GSA is required.



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c. Term. The easement term will not exceed one year unless otherwise authorized by GSA.

d. Format. There is no prescribed instrument format, however the format shown in Appendix 8-D, Figures D-1, D-2 or D-3 may be used as a guide. Advice and assistance may also be requested from HQUSACE (CERE-M) on instrument preparation. All such easement instruments shall be revised as follows:

(1) The words “conferred upon the Secretary by law” should be substituted for the authority cited in the granting clause.

(2) The words “but revocable at will by the Secretary of the \_\_\_\_\_, or the officer of the Government having jurisdiction over the property” should be added to the end of Condition 1, TERM.

(3) Other changes may be made as necessary to conform to the particular requirements of the easement.

e. Execution. See Paragraph 8-177.

8-187. Reserved.

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## SECTION XV. CONSENTS

### 8-188. Consent To Easement Agreements.

a. General. The serviant estate holder may grant additional easements or other lesser interest over land where the United States owns an easement interest or other lesser interest. The United States may consent to use of a subsequent easement, subject to any conditions required to protect the Government's interest.

b. Authority. Authority to grant an easement includes authority to consent to a subsequent easement. A consent agreement may be executed under administrative power of the Secretary of the Army.

c. Determination of Availability. No determination of availability is required for a consent. However, the proposed action will be thoroughly coordinated with the primary using element and the documentation thus obtained will be made a part of the official file. As a general rule, activities or construction and use of structures or facilities which would injure or defeat the purposes for which the property interest was acquired will not be approved.

d. Consideration. Since no right or interest in real property is granted by consents, consideration or charges for administrative expenses are not applicable.

e. Format. The format for Consents to Cross Government Easement is shown in Appendix 8-D, Figures D-6.

f. Section 10/404 Permits. During the Section 10 or 404 permits process, if a consent is determined to be appropriate by the Chief of Real Estate, consent conditions, using the approved formats as a guide, may be incorporated under "special conditions" of the permit in lieu of executing a separate consent instrument. A copy of the completed permit will be provided for the realty files.

g. Execution. District Engineers and District Chiefs, Real Estate, without authority to redelegate below the District Chief, Real Estate are authorized to execute consents on Army-controlled real property. Such instruments will be executed "by authority of the Secretary of the Army."

### 8-189. Consent to Structures within an Easement.

a. General. Certain easements owned by the United States contain restrictions on construction of structures within the easement. This right to approve construction was acquired with the easement and should be exercised with caution. The restrictions in the easements can vary significantly from instrument to instrument, even at the same project, so it is important to review each document individually and enforce the restrictions in a manner that is consistent with the rights acquired for each tract.

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b. Civil Works Flowage Easements. Careful management of flowage easement areas is necessary because experience has demonstrated that these areas are difficult to control and are subject to constant encroachment pressures. Construction in flowage easement areas almost always interferes, at least to some extent, with the purpose for which the easement were acquired. Construction should only be approved in cases where there is no reasonable alternative location for the proposed structures and the construction will not adversely impact the project. Consents are most appropriate in situations where the construction will benefit a significant segment of the public. Requests for the construction of private structures such as barns and sheds in flowage easement areas should generally be denied. Improvements that will not be damaged by temporary flooding and that will not significantly interfere with the project, such as driveways and oil and gas well heads (but not oil storage tanks) generally acceptable.

c. Consideration. Since no right or interest in real property is granted by consents, consideration or charges for administrative expenses are not applicable.

d. Format. The format for Consents to Easement Structures is shown in Appendix 8-D, Figures D-7.

e. Section 10/404 Permits. During the Section 10 or 404 permits process, if a consent is determined to be appropriate by the Chief of Real Estate, consent conditions, using the approved formats as a guide, may be incorporated under "special conditions" of the permit in lieu of executing a separate consent instrument. A copy of the completed permit will be provided for the realty files.

f. Execution. District Engineers and District Chiefs, Real Estate, without authority to redelegate below the District Chief, Real Estate are authorized to execute consents on Army-controlled real property. Such instruments will be executed "by authority of the Secretary of the Army."

8-190. Consent to Oil and Gas Exploration and Development. In some instances the mineral estate was not acquired but was subordinated to the Government's prior right to use the land for operation of the civil works project or military installation. Subordination agreements differ in the restrictions imposed on the mineral estate. Each agreement must be reviewed carefully to determine the extent to which the Government may regulate the development of the minerals. A consent instrument will be used to grant the permission of the Government for mineral development that does not interfere with the operation of the project or installation. The instrument should include any restrictions on the development activities that are reasonably necessary to protect the property rights of the Government and are within the scope of the restrictions permitted by the subordination agreement. Subordinations are not to be confused with oil and gas leases issued by the Bureau of Land Management. See Paragraph 8-119. In cases where the mineral estate has been severed but where no subordination agreement was obtained by the Government, the District Engineer must issue a license to the owner of the mineral estate before the minerals can be developed. See Paragraph 8-208.

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## SECTION XVI - LICENSES

8-192. General. This section prescribes procedures and responsibilities for granting, amending, and terminating licenses for the use of real property controlled by the Departments of the Army.

8-193. Definition. A license is a bare authority to an individual, an organization, a corporation, a state or local governmental entity, or another federal agency, to do a specified act or series of acts on the licensor's property without acquiring any estate therein, and authorizes an act which would otherwise constitute a trespass. Use is not exclusive and there is no alienation of title, ownership, or control of Government property. The license instrument provides evidence of the permission granted and of the obligations, responsibilities, and liabilities imposed on the licensee. A license authorizes only the specified use of the property by the licensee. The standard approved format for a license is shown in Appendix 8-E, Figure 8-EI.

8-194. Competition. Unless otherwise stated, competition is not required.

8-195. Consideration. Except as specifically provided in succeeding paragraphs of this section, or by express instruction in individual cases, licenses will reserve as consideration the greater of the fair market value or the established administrative charge, as set forth in Paragraph 8-81. When monetary consideration is waived, the consideration condition should be revised to read as follows: "The consideration for this license shall be the construction, operation and maintenance of the premises for the benefit of the general public in accordance with the terms and conditions hereinafter set forth".

8-196. Prelicensing Clearances. Licenses are subject to the clearances shown in Section VI of this chapter. Licenses granted for the use of military property are also subject to the requirements of Title 10, United States Code, Section 2662. See Paragraph 8-110, Report to Committees on Armed Services. The requirements and criteria in that paragraph are also applicable to licenses.

8-197. Non-assignability. A license grants permission personally to the licensee, is not assignable, and is voided by attempted transfer. However, where a licensee has transferred its interest or allowed third parties to use the property, such successors or third parties may be granted a new license, if the situation warrants. Such successor license should include a provision expressly stating that it is not transferable or assignable and that any use by others than the licensee is not permitted.

8-198. Execution. Except as provided in succeeding parts of this section, Division Engineers, Division Directors of Real Estate, District Engineers and District Chiefs of Real Estate, without authority to redelegate, are authorized to execute, amend, and renew licenses on Army-controlled real property. Such instruments will be executed "by authority of the Secretary of the Army." Proposed licenses of major importance, unusual character, or controversial nature which deviate from instructions in this chapter will be sent with full explanation to HQUSACE

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(CERE-M). If the property is leased to the United States, note in the transmittal to HQUSACE (CERE-M) whether the Government's lessor consents to the license.

8-199. Revocation and Termination. A license may be revoked at any time, unless the instrument states otherwise. Division Engineers, Division Directors of Real Estate, District Engineers and District Chiefs of Real Estate, without authority to redelegate, are authorized to revoke licenses. The licensee may also terminate the license by relinquishment, by giving the proper notice provided in the license, or by abandonment. Termination of a license by any of these methods does not relieve the licensee of obligation to restore the premises or to pay charges due under the terms of the license.

8-200. Licenses Under the General Administrative Power of the Secretary of the Army.

a. Authority. Pursuant to general administrative powers, the Secretary of the Army may authorize use of real property by a license, revocable at will, provided that the property is not, for the time, required for public use and that the proposed use will directly benefit the United States.

b. Competition. Competition is not required in granting licenses, but it may be sought when considered beneficial.

c. Consideration. Granting a license must directly benefit the project, installation, or the United States in some respect. Except as shown below, consideration will be reserved as shown in Paragraph 8-195 above. No charge will be made for a license granted to a nonprofit corporation or association, a state, county, city, or other government agency if the property will be used for a public purpose.

d. Term. The term for each license will not exceed the period necessary for accomplishing the purposes of the license. Except as permitted in succeeding paragraphs, the term will in no event exceed five years.

e. Format. The approved format for a license is shown in Appendix 8-E, Figure 8-E-1. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval. The following changes may be made by the District Engineer:

(1) Condition 2 on Consideration shall be revised under the following circumstances: when no monetary consideration will be charged Condition 2.a. and 2.b. will be replaced with the statement shown in Paragraph 8-195 above. In the event the consideration is a lump sum payment for the entire term, Condition 2.b. shall be deleted.

(2) The Condition on Indemnity shall be deleted in licenses granted to non-federal governmental entities.

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(3) When the license is granted without monetary consideration, the Condition on Non-Discrimination will be replaced with the wording shown in the Condition on Non-Discrimination in the Public Road Easement (Appendix 8-D, Figure 8-D-3).

f. Special Licenses Granted Under General Administrative Powers of the Secretary.

(1) Blanket License to Western Union. Western Union has a blanket license to use Government-owned equipment and facilities at Army installations and civil works projects. Supplementary equipment and facilities owned by the licensee may be installed, operated and maintained as necessary to satisfy all reasonable requirements for transmitting official Government messages. The licensee may use the equipment and facilities for private, unofficial messages, only to the extent that this use does not interfere with transmission of official Government messages.

(2) Licenses to Use Materials from Borrow Pits. States or political subdivisions may be granted licenses to take materials from borrow pits on Government lands, without charge, for construction or maintenance of roads on Government property. Although use of materials off Government property cannot normally be permitted, as such use would be an act of waste, The Judge Advocate General has held that a license for the use of materials on roads or highways off Government property may be granted without charge if the use is primarily for the benefit of the Government and only incidentally for the benefit of the general public. Such licenses will be for a term up to 5 years, commensurate with the amount of work to be done and the schedule for the planned construction or maintenance.

(3) Use of Army property by the Civil Air Patrol. Whenever the Civil Air Patrol is authorized to use Army real property, a Department of the Army permit to the Air Force will first be processed in accordance with this chapter; then the Department of the Air Force must issue a license to allow use of the property under permit by the Civil Air Patrol. The commencement dates of each related permit and license being the same. A condition of the license will make it expressly subject to the terms and conditions of the underlying permit. Since the use of such facilities by the Civil Air Patrol shall be at no cost to the Air Force, the license shall provide that the grantee will pay the Department of the Army directly for all expenses incurred by the Army for utilities and services. The license form may be written to meet particular administrative requirements consistent with policies and procedures in this chapter.

(4) Licenses for Mineral Exploration on Army-Controlled Lands.

(a) State laws on the rights of the mineral estate owners vary significantly from state to state. Prior to granting any mineral exploration licenses state law should be consulted to determine the rights of both the surface and mineral owners. If the exploration or development activity proposed involves subordinated mineral interests, see Section XV on Consents.

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(b) If parties propose to explore for minerals or to perform geophysical tests, an Army license is required following the availability procedures set out in AR 405-30 and TM 405-80. District Engineers or their designees may delegate license authority to installations when time does not permit normal processing. If a Federal mineral lease has been executed for the property, availability of lands for exploration will not be denied, although it may be conditioned.

(c) The written request for a mineral exploration license should include the following: a map identifying the lands to be surveyed, date and method of survey, and the contact person. The method should give the location of the survey line, the energy source to be used (e.g. explosive charge, vibrator truck), the arrangement of energy source points, and access routes. To accommodate mission requirements and protect resources, the survey line may be realigned and energy source points may be skipped or offset. Consideration should be given to licensing at times when survey will result in minimal damage because of ground conditions (e.g. wet, frozen).

(d) Under the Secretary's general administrative powers, the license grants non-exclusive right to explore and conduct geophysical tests. Consideration may be waived, if the applicant already has a mineral lease, otherwise fair market value should be required. All licenses should contain a restoration provision which may be supported by a bonding requirement. Restoration provisions should be of long duration because subsidence may not appear until several months after underground explosions carried out by the licensee.

g. Execution. See Paragraph 8-198.

h. Revocation. See Paragraph 8-199.

#### 8-201. Licenses Granted Under Easement Statutes.

a. Statutory Authority. The same statutes which authorize the granting of easements for rights-of-way for various purposes (Section XIV) may also be used for granting temporary use of Army property by means of a revocable license.

b. Administrative Finding. The same findings relative to the authorizing easement statutes in Section XIV are required for granting a license.

c. Widths of Rights-of-Way. The right-of-way should occupy only the land reasonably necessary for the particular purpose and will not, in any case, exceed any maximum width contained in the authorizing statute.

d. Competition. Competition is not required because of the nature of the use. Should competition be determined to be beneficial, availability of the property for the proposed use will be advertised.



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e. Consideration. Except as provided below, consideration will be reserved for licenses in accordance with Paragraph 8-195 above. A license without monetary consideration may be granted to a state, local governmental agency, a nonprofit corporation or association, or when exercise of the privileges provides sufficient consideration to the United States.

f. Term. Each license or renewal thereof shall be for a term not exceeding 5 years and revocable at will by the Secretary of the Army. An easement should be issued if a longer term is required.

g. Format. There is no prescribed form for licenses issued under easement statutes, however, the format shown in Appendix 8-E, Figure 8-E-1 should be used as a guide. Conditions from the appropriate easement format may be added to meet requirements specific to the type of easement right-of-way granted and those formats should be reviewed to insure that all such conditions are identified and included in the license. Conditions may also be added for site specific environmental, cultural, historical, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. Proposed easements of major importance, unusual character, or controversial nature which deviate from instructions in this chapter will be sent with full explanation to HQUSACE (CERE-M). The following changes may be made by the District Engineer:

(1) Condition 2 on Consideration shall be revised under the following circumstance when no monetary consideration will be charged Condition 2 A and 2 B will be replaced with the statement shown in Paragraph 8-195 above. In the event the consideration is a lump sum payment for the entire term, Condition 2 B shall be deleted.

(2) The Condition on Indemnity shall be deleted in easements granted to non-federal governmental entities.

(3) When the license is granted without monetary consideration, the Condition on Non-Discrimination will be replaced with the wording shown in the Condition on Non-Discrimination in the Public Road Easement (appendix D, Figure 8-D-3).

h. Execution. See Paragraph 8-198.

i. Revocation. See Paragraph 8-199.

8-202. License for Fish and Wildlife Management Purposes.

a. Purpose. This section prescribes procedures and responsibilities for authorizing states or local governmental agencies to use lands at water resource development projects for certain purposes; i.e., fish and wildlife management not subject to cost-sharing arrangements and for public purposes other than parks and recreation. A license is appropriate where the grantee needs only non-exclusive use to perform specific management activities or when some management activities will be jointly performed by project personnel. However, in many

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instances the grantee's use of the land requires more than non-exclusive use, especially where mitigation and improvements are present, and therefore a lease will be appropriate. See Paragraph 8-155. of this chapter.

b. Reference. ER 1105-2-100, Environmental Resources.

c. Authority.

(1) Section 4, Act of Congress, 22 December 1944, as amended 16 U.S.C. § 460d).

(2) Section 3, Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. § 663).

d. Application of Authority.

(1) Based on an approved plan, licenses are granted to a state for fish and wildlife management under authority of the Fish and Wildlife Coordination Act. The procedure for developing such plans is found in ER 1105-2-100.

(2) Since it is occasionally in the public interest to do so, Section 4, 16 U.S.C. § 460d authorizes granting of a license to a state to manage fish and wildlife at a project before a general plan is approved.

(3) Both Section 3, 16 U.S.C. § 663 and Section 4 of 16 U.S.C. § 460d, as amended, apply to licenses which authorize use of a reservoir area for public purposes other than fish and wildlife management, for example, forest management. Use Or a portion of the same area for public parks and recreation requires a separate lease as prescribed in Section XII, this chapter.

(4) Section 3, 16 U.S.C. § 663 does not authorize cultivation of crops for food or habitat for wildlife. A license for fish and wildlife management under 16 U.S.C. § 460d may authorize state or other governmental agencies to cultivate food or habitat for wildlife on project lands directly, by service contract, or by sharecrop agreements. A license which authorizes use of project lands to produce food or habitat for wildlife and forest management should cite both 16 U.S.C. § 460d and 16 U.S.C. § 663. All standard fish and wildlife licenses will contain Condition 9 as shown in Appendix 8-E, Figure 8-E-2: License For Fish and Wildlife Management, without deviation, except that existing licenses containing the same provision in Condition 5 will continue to be administered under that condition.

e. Consideration. Not required.

f. Term. Neither of the above statutes limits the-term of a license; it is considered desirable that the term not exceed 25 years, except that cost-sharing contracts usually have 50-year terms. These licenses are not revocable at will.

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g. Licenses for Development and Conservation of Fish and Wildlife, Forests and Other Natural Resources.

(1) Annual Management Plan. The licensed property will be used according to an annual management plan mutually agreed on by the licensee and District Engineer. This plan may be an annual increment of a management plan of 5 years or longer. The District Engineer must determine that the plan is sufficiently explicit and that it authorizes activities which further the objectives of the master plan. The District Engineer will review the plan for: activities planned; areas for propagation of fish and wildlife; areas for outgrant by agricultural agreement or sharecrop; crops and rotation of crops; areas for wildlife cover and types of cultivated cover; all structures and improvements. The plan should estimate annual revenues and detail expenditure of these funds. Activities of third parties which will generate income for the licensee and expenditures by the licensee should be carefully scrutinized for conformance with the license conditions and with the approved plan. A proposed management plan will be considered in light of the licensee's operations of the preceding year, conformance with approved plans, and assurance that the previous year's expenditures were authorized in the plan. Expenditures should be authorized in advance, not after the fact.

(2) Authorized Expenditures. The licensee may pay reasonable expenses directly related to the particular license out of income generated by the operation. The expenses must be for such purposes as: planning and developing wildlife habitats, including wildlife food plots; incidental timber cutting; erosion control, fire breaks and fencing; farming and construction equipment; patrol or work boats; road and parking lot construction equipment; enforcement check stations; shelters for habitat improvement; restocking of fish or wildlife; and protection of endangered species. The licensee may pay salaries of employees immediately involved in carrying out the activities of the management plan at the project. Other general administrative costs, including planning activities away from the license location, may not be paid. Licenses which preclude payments for the above purposes must be administered individually. If a licensee requests modification of old Condition No. 5, the amendment is subject to condition: funds which the licensee accumulates will be paid to the District Engineer or escrowed for uses authorized in the license; the licensee must account separately for such funds annually. Funds remaining after the 5-year accounting period or after the term of the license, whichever occurs first, will be administered according to paragraph (3) below.

(3) Payment of Proceeds to the Government. Licensee's monetary proceeds which are not required to further activities as in paragraph (2) above will be paid directly to the Government at the end of each 5-year period; monies committed for authorized, approved expenditures in the 5th year may be withheld for up to 1 year. State laws may require that monies from operations on licensed land be deposited in miscellaneous receipts or similar state funds; in such cases, an amount from the state equal to the monies generated must have been expended on or committed to the project which generated the funds. If the amount paid into state funds exceeds the amount expended or committed by the state over the 5 years, the District Engineer should reduce the authority of the state to generate funds to insure that the state expends such excess

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funds within 12 months. While it is desirable that the terms of the license and the 5-year accounting periods coincide, it is recognized that transition accounting periods may be shorter.

(4) Grazing. The District Engineer will lease lands available for grazing under conditions which he deems compatible with the licensee's use of the property. The licensee is not authorized to enter into grazing leases or agreements.

(5) Sharecrop Agreements. Sharecrop agreements with farmers are expected to provide crops as food or habitat and for compensation to the farmer. Certain services may also be required of the farmer toward development and conservation of fish and wildlife, land, water, forests, and other natural resources. The District Engineer should have copies of each sharecrop agreement to monitor the licensee's compliance with the approved management plan.

(6) Agricultural Agreements. Agricultural agreements may provide for planting and harvesting crops, including hay. Rental paid to licensee may be in cash and/or services to further license purposes. Where possible, these agreements will be granted by competitive bid. The District Engineer should have copies of each agricultural agreement to monitor the licensee's compliance with the approved management plan.

(7) Administration. The District Engineer will obtain current management plans from licensees and coordinate them with the Operations Division and other interested district elements. Real estate personnel will perform outgrant administration including the required annual compliance inspection.

h. Timber and Crops. If lands intended for development and conservation of forest or other natural resources are licensed, as in 16 U.S.C. § 460d, the licensee "may be authorized to cut timber and harvest crops as may be necessary to further such beneficial uses and to collect and utilize the proceeds of any sales of timber and crops in the development, conservation, maintenance, and utilization of such lands. Any balance of proceeds not so utilized shall be paid to the United States" no later than the end of each 5 years of the license term. If the license authorizes forest management, timber sales shall follow an approved forest management plan, and the proceeds expended to further the timber management program.

i. Format. Format for preparation of a license is shown at Appendix 8-E, Figure 8-E-2. Conditions 7 and 8 will be omitted if the purpose of the license is not fish and wildlife management. Recommendations for deviations will be sent to HQUSACE (CERE-M) WASH DC 20314-1000 and explained in the transmittal correspondence.

j. Execution. See Paragraph 8-198.

8-203. Licenses to States for National Guard Purposes.

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a. Authority. Title 32, U.S.C., Section 503, authorizes the Secretary of the Army to provide for the National Guard to participate in encampments, maneuvers, or outdoor target practice. The Secretary is also authorized to grant revocable licenses to the states for temporary use and occupancy of Army property by the National Guard. States may not assign or sublet the property or use it for other purposes. Specific congressional authority is required to erect a permanent National Guard armory on a military reservation and to donate property of the Federal Government to states, counties, or municipalities.

b. Quartering of Employees. Licenses for use and occupancy of military reservations for the National Guard prohibit quartering of personnel for National Guard activities, except for personnel in the Federal service. National Guard caretaker maintenance personnel paid by Army or Air Force disbursing officers from National Guard Bureau funds are considered employees and may be furnished quarters for fair rental according to AR 210-12. Paragraph 8-128 of this chapter gives instructions for leasing quarters to state-paid employees of the National Guard.

c. Determination of Availability. The state Adjutant General will submit requests for licenses or modification of existing licenses for use of facilities for National Guard purposes, along with the report of availability, through the appropriate MACOM to the National Guard Bureau.

d. Consideration. No monetary consideration required.

e. Term. Unless otherwise provided in the availability report, licenses to states for National Guard purposes will be granted for an indefinite term, revocable at will by the Government. Where the Government has acquired a lease of real property, specifically to license it to a state for National Guard purposes, the term of the license should be concurrent with the term of the lease.

f. Format. The approved format for a license for National Guard purposes is shown in Appendix 8-E, Figure 8-E-3. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval.

g. Execution. See Paragraph 8-198.

h. Revocation. See Paragraph 8-199.

8-204. Licenses to the American Red Cross.

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a. Authority. Licenses may be granted to the American Red Cross for use of Government real property in accordance with the following:

(1) Storage Buildings. Title 10 U.S.C., Section 2670 authorizes the Secretary of Army to grant revocable licenses to the American Red Cross for the construction and maintenance of buildings or the use of Government owned buildings for the storage of supplies to aid the civilian population in time of a national disaster.

(2) Licenses for administration and office space and other purposes are issued under the general administrative authority of the Secretary.

b. Consideration. No monetary consideration will be charged.

c. Term. Licenses under either of the above statutes will be limited to a maximum term of five years.

d. Format. The approved format for a license is shown in Appendix 8-E, Figure 8-E-1. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval. The following changes may be made by the District Engineer:

(1) Condition 2.a. and 2.b. will be replaced with the statement shown in see Paragraph 8-195 above.

(2) The Condition on Non-Discrimination will be replaced with the wording shown in the Condition on Non-Discrimination in the Public Road Easement (Appendix 8-D, Figure 8-D-3).

e. Execution. See Paragraph 8-198.

f. Revocation. See Paragraph 8-199.

8-205. Licenses to the Young Mens Christian Association (YMCA).

a. Authority. Title 10, U.S.C., Sections 4778 and 9778, respectively, authorize the Secretaries of the Army and Air Force to grant revocable licenses to the Young Men's Christian Association to erect and maintain buildings on military reservations for the promotion of social, physical, intellectual, and moral welfare of the members of such reservations.

b. Consideration. No monetary consideration is required, but the installation must be reimbursed for utilities.

c. Term. Licenses to the YMCA will be granted for a maximum term of five years.

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d. Format. The approved format for a license is shown in Appendix 8-E, Figure 8-E-1. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval. The following changes may be made by the District Engineer:

(1) Condition 2.a. and 2.b. will be replaced with the statement shown in see Paragraph 8-195 above.

(2) The Condition on Non-Discrimination will be replaced with the wording shown in the Condition on Non-Discrimination in the Public Road Easement (Appendix 8-D, Figure 8-D-3).

e. Execution. See Paragraph 8-198.

f. Revocation. See Paragraph 8-199.

8-206. Rental Boat Licenses to Adjacent Private Resort Owners.

a. Authority. Title 10 U.S.C., Section 460d

b. Policy. Rental boat licenses may be granted to owners of resorts contiguous to water resource development projects to rent boats and motors, except houseboats or other floating facilities with overnight accommodations, to bona fide overnight resort guests. Such licenses may be issued to resort owners without regard to the location of commercial concessions, provided that:

(1) All interested parties are informed prior to issuance of any such license.

(2) Only one boat is allowed for each unit of the resort which accommodates bona fide overnight guests, and the boats are rented only for the use of such guests.

(3) No other commercial activity e.g. as gas sales, bait sales or repair service is permitted on Government property, except for guide service for persons renting boats and motors while guests at such private resort. Such guide service will only be permitted where needed because of distance or accessibility and when the income of commercial concessions will not be diminished.

c. Consideration. Consideration will be reserved in accordance with Paragraph 8-195 above.

d. Term. The term of each license will not exceed 5 years.

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e. Format. The approved format for a license as shown in Appendix 8-E, Figure 8-E-1 will be used. A condition may be added to the license to authorize guide service, if appropriate. The Condition on Cost of Utilities may be deleted, if not applicable. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval. The following modifications will be made:

1. The authority of 16 U.S.C. § 460d will be cited.

2. The purpose for the license will be stated as “to place \_\_\_\_\_ boats upon the waters of the \_\_\_\_\_ Project near the grantee’s place of business for the purpose of renting said boats to persons who are bona fide overnight guests at the grantee’s place of business.”

3. A conditions will be added “That the boats placed and rented under this license shall not exceed \_\_\_\_\_ feet in length each.”

f. Execution. See Paragraph 8-198

g. Revocation. See Paragraph 8-199

#### 8-207. Licenses to Use Army Reserve Facilities.

a. Authority. Title 10, U.S.C., Section 2235.

b. General. The local USAR Commander may grant short-term licenses in accordance with Chapter 9, AR 140-483. A short term license is one which authorizes use of facilities for a maximum of four days. Short term licenses are normally executed by the USAR Commander and will be issued by Districts only upon specific request. All other licenses require the same availability considerations and determinations as other military outgrants and are prepared and executed at the support District.

c. Consideration. No charge is required for a short term license issued by the USARC Commander. All other licenses require consideration as shown in Paragraph 8-195 except that licenses granted to nonprofit corporations or associations, states, counties, cities or other government agencies will be without monetary consideration if the facilities will be used for a public purpose.

d. Term. Licenses will not exceed five (5) years.

e. Format. DA Form 833-R will be used for short term licenses issued by the USAR Commander. Licenses granted by Districts will be prepared using the Format shown in Appendix 8-E, Figure 8-E-1 as a guide. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are



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consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval. If the request is for a right-of-way which should more properly be covered by a license under an easement statute or an easement refer to the appropriate section of this chapter for guidance.

f. Execution. See Paragraph 8-198.

g. Revocation. See Paragraph 8-199.

8-208. Licenses for Mineral Exploration on Army Controlled Lands.

a. If parties propose to explore for minerals without a mineral lease (Paragraph 8-119) or to perform geophysical tests under a mineral lease, an Army license is required. See AR 405-30. District Engineers or their designees may delegate license authority to installations when time does not permit normal processing. If a mineral lease has been executed for the property, availability of lands for exploration should not be denied, although it may be conditioned.

b. The written request for a mineral exploration license should include the following: a map identifying the lands to be surveyed, date and method of survey, and the contact person. The method should give the location of the survey line, the energy source to be used (e.g. explosive charge, vibroseis truck), the arrangement of energy source points, and access routes. To accommodate mission requirements and protect resources, the survey line may be realigned and energy source points may be skipped or offset. Consideration should be given to licensing at times when survey will result in minimal damage because of ground conditions (e.g. wet, frozen).

c. Under the Secretary's general administrative powers, the license grants non-exclusive right to explore and conduct geophysical tests. Consideration may be waived, if the applicant already has a mineral lease, otherwise fair market value should be required. All licenses should contain a restoration provision which may be supported by a bonding requirement. Restoration provisions should be of long duration because subsidence may not appear until several months after underground explosions carried out by the licensee.

d. In unusual circumstances, including exploration by means of complex technology which requires BLM expertise, and which could result in litigation, the District Engineer may elect to ask BLM to issue permits for mineral exploration. See AR 405-30.

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## SECTION XVII - PERMITS TO OTHER GOVERNMENT AGENCIES

### 8-209. General.

a. This section explains the procedures and responsibilities for granting, amending, and terminating permits over lands controlled by the Department of the Army.

b. A permit is a bare authority to an individual, an organization, a corporation, a state or local governmental entity, or another federal agency, to do a specified act or series of acts on the permitor's property without acquiring any estate therein, and authorizes an act which would otherwise constitute a trespass. Use is not exclusive and there is no alienation of title, ownership, or control of Government property. The permit instrument provides evidence of the permission granted and of the obligations, responsibilities, and liabilities imposed on the permittee. A permit authorizes only the specified use of the property by the permittee. For real estate purposes, the terms permit and license are considered identical and interchangeable. Wherever a permit is used, a license could properly be used.

c. A real estate permit is generally used to authorize use of DA real property by another Federal agency. A license usually would be used for other types of grantees. See also the cooperative agreements between the Army and the U.S. Fish and Wildlife Service, as discussed in Paragraph 8-222 below. ARPA Permits are addressed in Section XVIII below.

d. General procedures and guidance on processing instruments as shown in Section VII of this chapter, are applicable to processing permits, except as otherwise provided.

e. Space or facilities on an Army installation which are assigned for use by other Army users do not require a permit unless required by the using command. Permits are not subject to the requirements and provisions of Title 10 U.S.C. § 2662.

8-210. Authority. Although no general statute authorizes permits, Federal agencies and Secretaries of military departments have long issued permits granting use of real property under their control to other Federal agencies, with the tacit approval of Congress, where such use would not interfere with the purpose for which the property was originally acquired or is being retained.

8-211. Consideration. Fair market value will be charged for land and building space permitted to non-DOD agencies, in their official capacity; except as follows:

a. Permits for the use of real property and related services provided to an organization that solely supports or substantially benefits a project or installation mission (e.g., to FAA for air control operations on an air base, to the Department of Agriculture for timber or research and development programs, to Department of Commerce, National Weather Service, for the NEXRAD network or National Oceanic and Atmospheric Administration for seismograph

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stations, or to the Federal Communications Commission (FCC) for a communication tower). The Coast Guard is an Armed Service (see Title 10 U.S.C. § 101) and will be treated like a DOD agency.

b. Existing permits. Agencies should only be charged entering into new permits or renewal of existing permits.

c. Permits for land or facilities if the activity being conducted on the property benefits or enhances the national defense.

d. Permits for which the income produced by a charge is less than the expense of administering the charge.

e. Permits in the nature of easements granting a right-of-way for roads, pipelines, cables, or similar purposes.

8-212. Reimbursement and Other Charges.

a. Collection of costs for utilities and services furnished to the grantee is the responsibility of the officer having immediate jurisdiction over the real property. DOD 4000.19-R governs interservice support agreements which cover utilities, maintenance, and other services furnished by the host department to a tenant activity of another military department.

b. When real property is leased to or used by the Army and rent or a charge is paid, any use of the real property for non-Army use will provide for reimbursement of a proportionate part of the rental or charge in lieu of consideration. HQUSACE (CERE-M) must approve otherwise.

8-213. Prior Approval. Prior approval of SAILE is required for the following permitting actions:

a. Where there are significant deviations from established policy; or the proposed permit is of major importance, unusual character, or controversial issue.

b. Cases not covered by this regulation and such other specific cases as directed by HQUSACE (CERE-M).

c. Permits for which no charge is proposed solely on the basis that the activity being conducted on the property benefits or enhances the national defense,

d. When the use of military or civil works real property, regardless of value, may significantly reduce, redirect, add to or affect missions at a military installation or civil works project.

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8-214. Term. There are no limitations on the length of term, however it should be limited to the actual time required by the grantee. A termination date should always be specified on the permit. If an extension of the term is required, a new permit should be processed in the same manner as an original application. Permits which are not limited to a specified term and/or which cannot be revoked at will are tantamount to a transfer and normally should not be granted. As an exception, permits may be granted for indefinite terms to Federal agencies which use Army property at water resources development projects and market power generated at such projects.

8-215. Format. The approved format for permits to Federal agencies is shown in Appendix 8-F, Figure 8-F-1. This is intended as a generic format for use at Civil Works projects as well as Army Installations.

a. Condition 10 of the approved format contains a requirement for restoration of the permitted property by the grantee. Some agencies have specific or continuing authority which allows for a restoration obligation. It is the Army policy that a restoration requirement will be included in those permits for which a monetary charge will be made. Those permits which do not impose a monetary charge will be revised to delete the restoration requirement. The approved format for permits includes specific guidance on the wording change to be made in Condition 10 when no restoration provision is required.

b. Some Federal agencies cannot comply with the requirement of Condition 10 because of a lack of statutory authority to obligate the agency to a restoration obligation. If an agency paying fair market value objects to the restoration condition after reviewing the standard language in Condition 10 of the approved format, the following Condition 10 may be substituted:

10. On or before the date of the expiration of this permit or its relinquishment by the grantee, the grantee shall vacate the premises, remove its property therefrom and SHALL MAKE A GOOD FAITH EFFORT TO OBTAIN THE NECESSARY FUNDS in order to restore the premises to a condition satisfactory to said officer, ordinary wear and tear and damage beyond the control of the grantee excepted. If, however, this permit is revoked, the grantee shall vacate the premises, remove its property therefrom, and shall MAKE A GOOD FAITH EFFORT TO OBTAIN THE NECESSARY FUNDS in order to restore the premises as aforesaid.

c. Site specific environmental, cultural, historic, or operational requirements may be added.

8-216. Execution. Except as provided in succeeding parts of this section, Division Engineers, Division Directors of Real Estate, District Engineers and District Chiefs of Real Estate, without authority to redelegate, are authorized to execute, amend, and renew permits on Army-controlled real property. Such instruments will be executed "by authority of the Secretary of the Army." Proposed permits of major importance, unusual character, or controversial nature

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which deviate from instructions in this chapter will be sent with full explanation to HQUSACE (CERE-M).

8-217. Revocation and Termination. Permits are revocable at will by the grantor. The grantee may terminate a permit at any time by a written notice of relinquishment. When permitted property is needed, the District Engineer should immediately advise local representatives of the grantee and request them to release the property within a specified time. If the grantee does not agree to relinquish the permit within the time limit, HQUSACE (CERE-M) will be notified. Authority to revoke permits has not been delegated and all proposals for revocation will be forwarded to HQUSACE (CERE-M) with a complete explanation.

8-218. Excess and Surplus Property.

Requests for use of excess property reported to GSA or surplus property should be referred to that agency.

8-219. Stream Gaging Stations. The U.S. Geological Survey, Department of the Interior, maintains a primary network of stream gaging stations and must sometimes install and operate such stations on rivers, harbors, and flood control projects; these stations provide streamflow records for planning, design, and operation of Army Civil Works projects. To avoid the need for numerous permits for each station on such lands, the Secretary of the Army granted general permission to the Secretary of the Interior, U.S. Geological Survey, in a letter of 6 April 1951: USGS may enter lands as the District Engineer designates, and must abide by regulations that the District Engineer may prescribe, to construct, operate and maintain stream gaging stations. In each specific instance, the District Engineer or Chief of Real Estate may grant permission in a letter to the local representative of the U.S. Geological Survey.

8-220. Construction and Operation of Schools. Permits may be granted to the U.S. Department of Education for construction and use of education facilities on military installations. The approved format for such permits is shown in Appendix 8-f, Figure 8-F-2. Authority for execution of such permits has not been delegated and will be forwarded to CERE-M for execution in SAILE.

8-221. Department of Defense Agencies (Non-Military Department). Title 10, U.S.C., Section 2682, provides that certain real property activities for an activity or agency of the Department of Defense (other than a military department) will be accomplished by or through a military department designated by the Secretary of Defense. A real property facility under the jurisdiction of the Department of Defense which is used by an activity or agency of the Department of Defense (other than a military department) shall be under the jurisdiction of a military department designated by the Secretary of Defense. Pursuant to this law, all or part of an installation may be permitted to DOD agencies for activities which are not part of a military department, e.g. Defense Mapping Agency, Defense Logistics Agency, etc. The approved permit format shown in Appendix 8-F, Figure 8-F-1 will be used. This authority shall be cited in the

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permit. The military department will retain accountability for the entire installation. The grantee will reimburse the military department for services furnished and other incurred costs.

8-222. Cooperative Agreements with the U.S. Fish and Wildlife Service.

a. The Fish and Wildlife Coordination Act, amended (16 U.S.C. § 663, et seq.) generally governs the management of wildlife resources at water resource development projects; a General Plan Agreement is entered into and executed by the Secretaries of the Army and Interior and by the head of the state agency responsible for wildlife conservation. According to the agreement, either the state, under a fish and wildlife outgrant as outlined in Section IV, or the U.S. Fish and Wildlife Service (USF&WS) will manage wildlife resources.

b. If the USF&WS manages project resources, the District or Division Engineer and the regional officer of the USF&WS will determine terms and conditions of a Cooperative Agreement. The agreement will be forwarded to HQUSACE (CERE-M) for execution by the Secretary of Army and Interior or their designees.

8-223. Reserved.

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SECTION XVIII. OUTGRANTS FOR TREASURE TROVE, ANTIQUITY, OR  
ARCHAEOLOGICAL PURPOSES

8-224. Requests to Search for Treasure Trove.

a. Any request to search for treasure will be sent to HQUSACE (CERE-M) with the names and addresses of all parties to the proposed contract or license and with a local map showing the general search area. The military command or HQUSACE for civil works determines whether the search may be authorized and any terms, limitations, and conditions as necessary.

b. GSA issues contracts to protect the interest of the Government in searches for and sales of treasure trove, which has been wrecked, abandoned, or become derelict, and which should be returned to the Government, under Section 3755 of the Revised Statutes (40 U.S.C. § 310). These contracts allow for just and reasonable compensation to be paid to the persons who salvage the property. This statute has been determined to cover salvage of shipwrecks. GSA should not issue the contract until the Army consent is obtained. The GSA contract will state the terms, limitations and conditions of the land availability. By law, the requested search may not cause any costs or claims to the Government.

c. Request to search for treasure trove may also be authorized under a license, especially if the Government's asserts no right to the treasure. The format for a general license will be used with the terms, limitations and conditions of the availability added.

8-225. The Antiquity Act. The Antiquity Act, Title 16, U.S.C., Section 432, et seq, applies to certain historic and prehistoric ruins and objects of antiquity on Federal lands, and authorizes scientific investigation of these antiquities, subject to permits and other regulatory requirements. This act may apply in situations not covered by ARPA, below, such as paeoleontological remains. 43 CFR 3 implements the Antiquity Act. If in doubt as to which act applies, refer request to HQUSACE (CERE-M).

8-226. Archaeological Resources Protection Act Uniform Regulations.

a. Authority. Section 10(b) of the Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. § 470) requires issuance of appropriate rules and regulation for carrying out Public Law 96-95. ARPA was enacted to protect archaeological resources on public and Indian lands, and to increase communication among governmental authorities, professionals, and private individuals. On 6 January 1984, Final Uniform Regulations were issued by the Departments of Interior, Agriculture, Defense (32 CFR Part 229), and the Tennessee Valley Authority. These regulations establish basic government-wide standards for the issuance of ARPA permits, responsibilities of ARPA permittees, procedures for filing appeals and implementation of civil penalty provisions should ARPA violations occur. The Corps of

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Engineers assumed responsibility for the issuance of permits for ARPA related work on Army-controlled military and civil lands on 1 October 1985. Division and District Engineers having real estate responsibilities are responsible for these permit requirements.

b. ARPA Permit Application. Applicants proposing to excavate and/or remove archaeological resources from Army military and civil lands must apply for an ARPA permit from the appropriate District office. Applicants must submit an application form, including a written proposal that clearly documents the information required in 32 CFR Parts 229.6 and 229.8. An incomplete application will be promptly returned to applicant for any additional information required. An ARPA permit is not required for purposes other than the excavation and/or removal of archaeological resources even though those activities might incidentally result in the disturbance of archaeological resources as stated by Section 229.5 (b) (I) of the Uniform Regulation. Federal land managers are not relieved of responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses and entitlements for use.

c. Application Processing Procedures. Processing should be completed within 90 days to include the following unless otherwise noted:

(1) Coordination. The District Real Estate office will coordinate with other elements of the District office as to the availability of civil lands for the permit activity. Coordination should be concurrent with technical review except as follows. Determination of availability for military land will be made in accordance with AR 405-80, Granting Use of Real Estate, and applicable provisions of AR 405-70, Utilization of Real Estate, and will be made prior to the District's technical review. Military land permits require approval by the Installation Commander and the MACOM which may result in additional processing time beyond 90 days.

(2) Notification of Indian Tribes. It is incumbent on the District to identify and notify Indian tribes which may be affected by the proposed permit activity in accordance with 32 CFR 229.7. This notification is to be performed as part of the Technical Review.

(3) Technical Review. Technical review requires a specialist in the field of archaeological resources qualified to determine that the application meets all the requirements of the provisions of 32 CFR 229.6 and 229.8. Such specialist will be designated by the District and Division Engineers for each office. In the event the District or Division office lacks the services of a qualified archaeologist, coordination with another Division or District may be sought. When reviewing applications, particular attention should be paid to professional and institutional qualifications, research design, the applicant's technical and financial ability to complete the work and produce a final report in a timely manner, certification of adequate curation of material remains, original field notes, photographs, special collections, and other research materials. In addition, the review of the proposal should be consistent with state cultural resource preservation plans and relevant Corps plans for the project or installation.



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(4) Division Technical Review Approval. Applications meeting technical approval of the District will be sent to the appropriate Division office for technical review approval by the Division cultural resource specialist. After review the application will state the reasons denied and returned to the District. Any denial will state the reasons therefor. In the event the Division office lacks the services of a qualified archaeologist, a qualified person at the District level or coordination with another Division or District may be sought.

(c) Denial of Permit. A permit may be denied for reasons of technical inadequacy, inability to demonstrate research relevance, or for incompatibility with District, military or State programs. the applicant should be notified in writing by the District Engineer of the reason(s) reusability if denied is for technical reasons.

(d) Issuance of Permit. On receipt of applications approved by the Division office, the permit, containing the terms and conditions set forth in 32 CFR Part 229.9 and such other special conditions and stipulations as appropriate requested by the using agency, will be issued by the District Real Estate Office. In instances where the District has been requested to provide technical review of applications for civil lands not managed by the Corps, the permit must be cosigned by the appropriate land manager.

(e) Monitoring of Permit Activity.

(1) District personnel will monitor work conducted on civil lands to assure compliance with the terms of the permit.

(2) On military lands, the Installation Commander's staff will monitor work conducted to assure compliance with the terms of the permit.

(3) Civil Penalties. Civil penalties will be enforced in accordance with 32 CFR Part 229.15 and implementing instructions.

(4) Revocation. A permit may be revoked if it is determined that the applicant has not complied with conditions of the permit, has misrepresented the work to be accomplished, or if continuance of the activity will impair any District or military function or public health and safety.

(5) Appeals. Any appeal of a permit denied or revoked for technical insufficiency will be forwarded to the appropriate Division Engineer for review by the Division cultural resource specialist. The Determination on Appeal will be signed by the Division Engineer.

(6) Surface Collection. In accordance with the ARPA, the intent of Congress, and implementing regulations, no permit shall be required for any persons collecting coins, minerals, arrowheads or bullets located on the surface of the ground (except in known archaeological sites or as required by 42 U.S.C. § 1996, American Indian Religious Freedom Act). The use of metal

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or density detectors, for the purpose of undersurface discovery, or the use of any means of ground or underwater disturbance without proper permit is prohibited.

c. Format. The approved format for an Archaeological Resources Protection Act Permit is shown in ENG Form 4923-R. The application is ENG Form 4922-R. Master forms are available from the local Forms office.

8-227. Reserved.

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SECTION XIX. MISCELLANEOUS

8-228. Reserved.

8-229. Reserved.

8-230. Reserved.

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APPENDIX 8-A  
MISCELLANEOUS FORMATS

8-A-1

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FIGURE A-1 REGULATORY REFERENCES

<u>Regulation</u>	<u>Chapter 8 References</u>
Executive Order 11988 . . . . .	.8-27a, 8-54p, 8-59
Executive Order 11990 . . . . .	.8-54o, 8-58a
Executive Order 12088 . . . . .	.8-61
Executive Order 12411 . . . . .	.8-19
Executive Order 12512 . . . . .	.8-4i, 8-6, 8-7, 8-8e, 8-18
32 CFR 229 . . . . .	.8-226a
32 CFR 229.5 . . . . .	.8-226b (1)
32 CFR 229.6 . . . . .	.8-226b (1)
32 CFR 229.7 . . . . .	.8-226b (2) (b)
32 CFR 229.8 . . . . .	.8-226b (1)
32 CFR 229.9 . . . . .	.8-226b (2) (b) (4)
32 CFR 229.15 . . . . .	.8-226b (2) (b) (5) (c)
32 CFR 664.4 . . . . .	.8-9
33 CFR 230 . . . . .	.8-51e
33 CFR Subparts 1-6 . . . . .	.8-66a
36 CFR 327 . . . . .	.8-158
40 CFR 302.4 . . . . .	.8-55e
40 CFR 373 . . . . .	.8-51
40 CFR 1500 . . . . .	.8-51e
41 CFR 101-42 . . . . .	.8-51d
41 CFR 101-47.2 . . . . .	.8-7
41 CFR 101-47.8 . . . . .	.8-7, 8-18b, 8-18c
41 CFR 101-47.103-12 . . . . .	.8-7
41 CFR 101-47.201-1 . . . . .	.8-7
41 CFR 101-47.202-2 . . . . .	.8-55b
41 CFR 101-47-203.9 . . . . .	.8-103b, 8-186a
41 CFR 101-47.801(a) . . . . .	.8-18i
41 CFR 101-47.801(b) . . . . .	.8-13b
41 CFR 101-47.802(b) . . . . .	.8-18j
43 CFR 8 . . . . .	.8-9
43 CFR 2880 . . . . .	.8-182b (2)
DOD Directive 1000.11 . . . . .	.8-130a
DOD Directive 4000.19R . . . . .	.8-212a
DOD Directive 4170.10 . . . . .	.8-50
DOD Instructions 1000.10 . . . . .	.8-130a
DOD Instructions 1000.12 . . . . .	.8-130a
DOD Instructions 7230.1 . . . . .	.8-81a (3)
AR 75-15 . . . . .	.8-62
AR 140-483 . . . . .	.8-207b

Figure 8-A-1

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AR 200-1 . . . . . 8-51a, 8-55, 8-71b  
AR 200-2 . . . . . 8-51b, 8-53b  
AR 210-10 . . . . . 8-116  
AR 210-12 . . . . . 8-203b  
AR 210-24 . . . . . 8-130a  
AR 210-135 . . . . . 8-130a  
AR 340-17 . . . . . 8-118  
AR 385-64 . . . . . 8-63  
AR 405-15 . . . . . 8-40  
AR 405-20 . . . . . 8-185c  
AR 405-30 . . . . . 8-35e, 8-200f (4) (b)  
AR 405-70 . . . . . 8-19, 8-20, 8-226b (2) (a)  
AR 405-80 . . . . . 8-5, 8-57, 8-68, 8-109  
AR 405-80 (cont.) . . . . . 8-130, 8-131, 8-172  
AR 405-80 (cont.) . . . . . 8-226b (2) (a)  
AR 420-74 . . . . . 8-126  
AR 735-5 . . . . . 8-12

ER 200-2-2 . . . . . 8-51e, 8-53b  
ER 405-1-12 Chapter 10 . . . . . 8-40a  
ER 405-1-12 Chapter 11 . . . . . 8-28c, 8-29d  
ER 420-1-3 . . . . . 8-19  
ER 1105-2-100 . . . . . 8-155c (1)  
ER 1105-2-100 (cont.) . . . . . 8-202b, 8-202d (1)  
ER 1110-2-1454 . . . . . 8-41a  
ER 1130-2-400 . . . . . 8-4e, 8-15e, 8-18f, 8-159  
ER 1130-2-406 . . . . . 8-158, 8-159  
ER 1130-2-441 . . . . . 8-160a, 8-160b  
ER 1165-2-26 . . . . . 8-59  
ER 1165-2-131 . . . . . 8-156a (2)

Figure 8-A-1 (Continued)

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Utilization Evaluation Questions  
Part B

B-1. The standards and definition set out in 41 CFR 101-47.801 should be used in the evaluation and are not repeated here. The following are also suggested for consideration in developing the narrative portion of the report. This is not intended to be a complete list of all possible questions and should not be used as a checklist. Some items may not be applicable while others not on the list may be essential. It is intended only as a guide to aid in the preparation of the report:

(a) Are all lands and facilities thereon being used for Congressionally authorized purposes and programs?

(b) Based on (a) above, is utilization consistent with the master plan, operational master plans, appendices, supplement or other approved documents? Are there significant deviations?

(c) What are the public use trends and how do they affect project visitation?

(d) Do services and facilities meet public use adequately? Do private facilities interfere with public use?

(e) Have land or facilities been significantly developed since the previous survey? How?

(f) Are there natural resources inventories available for this project? Is there an OMP containing resource use objectives and site specific prescriptions for the management of the resources? Is there multiple use forest and woodland management?

(g) Are adequate boundary monuments maintained? Have funding constraints prevented boundary survey or maintenance?

(h) If the land is not utilized, would any interim use be appropriate, such as Agricultural & Grazing leasing?

(i) Is there evidence of unauthorized use? Is there evidence of trends of unauthorized use or certain areas where the problem is more prevalent? Is there a lack of public awareness that could be overcome with a public affairs effort? Is legal action needed?

(j) Is there evidence of unauthorized Government use of adjoining property? Is this of a recurring nature that would necessitate acquisition of the private party or that has already resulted in a taking? Is a legal opinion of the possible taking needed?

(k) Are Government quarters furnished to employees with the proper rental arrangement and documentation? What is the status of the phase-out actions required by the Housing Management Plan?

Figure 8-A-2 (Continued)

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(l) What is the status of previously reported utilization problems? Did the necessary follow-up action take place?

(m) What percent of project buildings is occupied? Has a space management survey been performed?

(n) Has all property identified as underutilized, not utilized or not put to optimum use been reported to HUD for determination of suitability for use by the homeless under the McKinney Act?

(o) Is the property over-utilized? Is the visitation excessive in relation to the current design carrying capacity? Should acquisition of additional property be considered? Is the property inadequate for reasonable near-term future development? Is plant growth deterioration beyond natural capability to regenerate? Are facilities overcrowded on days of normal (not peak) use? Are maintenance requirements above those required for routine wear?

(p) Is maintenance being deferred due to funding constraints?

(q) You should be sensitive to instances where District and Division rankings of O&M money may have caused deficiencies beyond the control of the project personnel. However, the management evaluation report is not the place for crusades. Where funding is a factor, it should be noted in a neutral manner.

Figure 8-A-2 (Continued)



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REPORT OF AVAILABILITY

A. GENERAL:

1. Project: (Use official name from Chief of Engineer report)
2. Tract No(s) and Name, if any: (Segment maps, Master Plan designations)
3. Type of Outgrant:  lease  license  easement  permit
4. Proposed use:  Commercial Concession  Park and Recreation  Fish and Wildlife  Agricultural and Grazing  Road  Pipeline  Other \_\_\_\_\_ (list may be varied to name outgrants commonly issued)
5. Recommended Term of outgrant: Proposed for \_\_\_\_\_ years. Start date, if applicable: \_\_\_\_\_
6. Use requested by:  Army element  private party  adjoining grantee  State, local government  other Federal agency  Other \_\_\_\_\_
7. General property description/characteristics of the property:  
Acreage \_\_\_\_\_; Land character \_\_\_\_\_.
8. Are Government buildings and improvements included in the area:  No  Yes. If yes, give details on buildings and improvements and attach copy of floor plan, if applicable:  
  
Building Identification No. \_\_\_\_\_; Square footage outgranted/percentage of building \_\_\_\_\_; Condition of the facilities \_\_\_\_\_.
9. If building space only and land is not included in grant, explain why the improvement is not excess: \_\_\_\_\_
10. United States property interest:  fee simple title  easement  in-lease; or  other.
11. Army jurisdiction:  primary jurisdiction,  permit from a Federal Agency,  withdrawn from the public domain.
12. If land is being made available for a public road, show type of access, governmental entity, any restrictions: \_\_\_\_\_ Is jurisdiction to be relinquished?  Yes  No
13. Are Utilities available?  Yes  No. Will utilities or other support services be provided by Army on reimbursable basis?  Yes  No
14. Destruction, relocation, and replacement of Government facilities:  
  
 I Certify the proposed use will not require the destruction, relocation, or replacement of any Government facilities.  
  
 The following information is provided with regard to the destruction, relocation, or replacement of any Government facilities:  
\_\_\_\_\_  
\_\_\_\_\_
15. I certify that the grant of the proposed use will not interfere with operation of the project, or with contemplated development and other

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16. The following site specific recommendations are made as to limitations, restrictions, or conditions to be included in the grant to make the proposed use compatible with the operation of the project:

---

17. Safety issues and concerns, if any: \_\_\_\_\_

18. REMARKS - include any legal, policy, or mission factors you are aware of that may affect the proposed use of the property: \_\_\_\_\_

19. BASED ON THE INFORMATION PROVIDED ABOVE, I RECOMMEND THE OUTGRANT BE [ ] APPROVED [ ] DENIED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
SIGNATURE  
Title

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REPORT OF AVAILABILITY

B. ENVIRONMENTAL and CULTURAL CONSIDERATION:

1. COASTAL ZONE MANAGEMENT (CZM) (if applicable):

CZM is not applicable.

CZM is applicable and the proposed use is/will be consistent with the approved state CZM Plan.

2. CLEAN WATER ACT (FEDERAL WATER POLLUTION CONTROL ACT):

This action will not involve the discharge of any pollutants into the waters of the United States or less than one million gallons of discharge per day will be made.

This action will entail the discharge of more than one million gallons of pollutants into the waters of the United States per day.

The applicant has applied for and received a NPDES Permit from the EPA/appropriate state agency. If not received, state circumstances:

The Grantee is complying with the requirements of a NPDES Permit and the Grantee has a monitoring and reporting procedure.

Subsequent requests for expansion or additional construction should be reviewed to assure the Grantee is in compliance with the five acre rule.

3. FLOODPLAIN:

This property is not located within the 100 year floodplain and does not fall under the purview of Executive Order 11988.

This property is located within the 100 year floodplain and does fall under the purview of Executive Order 11988 and (circle the appropriate):

a. The proposed occupancy or modification will not adversely impact the floodplain.

b. There is no other practicable alternative available for this intended use.

c. The proposed occupancy or modification may be allowed subject to the following restrictions being incorporated in the outgrant document:

4. WETLANDS:

This property is not located within a wetlands area and, therefore, does not fall under the purview of Executive Order 11990.

This property is located within a wetlands area and does fall under the purview of Executive Order 11990, accordingly, the following restrictions must be incorporated in the outgrant document:

(Status of 404 Permit process

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5. ENDANGERED SPECIES:

This action will not jeopardize the habitat of any endangered species of fish, wildlife, or plants pursuant to the Endangered Species Act.

This action jeopardizes the habitat of endangered species of fish, wildlife, and/or plants identified on an attached map. Accordingly, the following restrictions must be incorporated in the outgrant document to protect the habitat: \_\_\_\_\_

6. FISH AND WILDLIFE COORDINATION ACT:

This action will not jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans, or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA.

This action will jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans, or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA. Impact description: \_\_\_\_\_  
RECOMMENDED ACTIONS PRIOR TO AVAILABILITY: \_\_\_\_\_

7. HISTORICAL AND CULTURAL RESOURCES:

The area has been surveyed for historical and cultural resources and there have been none identified on this property, and this action is in compliance with the National Historic Preservation Act and other relevant laws; Executive order 11593, Protection and Enhancement of the Cultural Environment; or any MOA's related thereto.

A survey has identified historical and/or cultural resources on this property. This action has been coordinated with the State Historic Preservation Officer and the Advisory Council on Historic Preservation in accordance with 36 CFR 800. The following restrictions must be incorporated into the outgrant document to protect the resource:  
\_\_\_\_\_

Native American graves or artifacts have been identified on this property. Refer to requirements of the American Indian Religious Freedom Act and Native American's Graves Protection and Repatriation Act.

Archaeological sites or resources have been identified on this property. Refer to the Antiquities Act; Archaeological and Historical Preservation Act; and Archaeological Resources Protection Act.

8. MISCELLANEOUS PROVISIONS.

The proposed outgrant activity will involve the use of pesticides, e.g. Agricultural, golf courses, restaurants. Refer to the Federal Insecticide, Fungicide, and Rodenticide Act and state pesticide regulations, as necessary.

The proposed outgrant activity will impact an area designated under the Wild and Scenic Rivers Act. Attach any site specific restrictions necessary to protect the area.

The proposed outgrant activity will include fuel burners, incinerators, gas pumps, solvent or other volatile compounds. Refer to the

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Clean Air Act and state and local regulations. Give status of state and local permits.

The proposed outgrant activity will include substances covered by the Toxic Substances Control Act.

Other special purpose environmental laws, as follows:

---

9. NEPA REQUIREMENTS:

This action falls under one of the Categorical Exclusions (CX) contained in AR 200-2 or ER 200-2-2 (Procedures for Implementing NEPA). The environmental affect of the action has been considered. A Record of Environmental Consideration (REC) is attached.

The impact of this action is considered to be minimal or insignificant. An Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI) is attached/is being prepared.

The impact of this action is considered to be significant. An Environmental Impact Statement (EIS), or supplement thereto, is attached/is being prepared.

10. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Environmental Baseline Study (EBS) or Preliminary Assessment Screening (PAS):

An EBS/PAS has been conducted and no HTRW substances were identified as released, stored, or disposed on the property in the threshold quantities. Copy is attached.

released, stored, or disposed on the property in the threshold quantities. The CERCLA notice should be included in the outgrant document. Copy is attached containing the details. Choose one:

a. Remedial actions have been taken so that the property is considered safe for the proposed use.

b. Remedial actions have not been taken. Provide details and justification for outgranting in the current condition.

11. Real Property Contaminated with Ammunition, Explosives or Chemicals.

The property has been decontaminated using the most appropriate technology consistent with the proposed use of the property.

Transfers is to another Federal agencies for compatible use of surface de-contaminated real property, subject to the following limitations, restrictions and prohibitions concerning the use of the property, to ensure personnel and environmental protection: \_\_\_\_\_

Access rights are reserved to implement any monitoring plan.

Coordination with HQDA, DACS-SF and DAMO-SWS attached with the Land Disposal Site Plan (LDSP). Reference AR 385-64, "U.S. Army Explosives Safety Program."

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12. WASTE DISPOSAL (The Solid Waste Recovery Act, as amended; Resource Conservation and Recovery Act (RCRA).

[ ] The applicant will not generate hazardous waste or will not treat, dispose or store waste defined by EPA as having the following characteristics - corrosivity, ignitability, reactivity, or toxicity.

[ ] The applicant will generate hazardous waste or will produce waste defined by EPA as having the following characteristics - corrosivity, ignitability, reactivity, or toxicity. Choose the appropriate:

The applicant has obtained a hazardous waste identification number from EPA and, if applicable, the state.

b. The applicant has established records, waste management requirements, and a Spill Prevention Plan.

13. Underground/Other Storage Tanks.

[ ] There are no UST on the property and the applicant will not be installing tanks.

[ ] There are no above ground storage tanks for fuel or other regulated substances and the applicant will not be installing tanks.

[ ] There are UST on the property and/or the applicant will be installing tanks. Existing tanks are in compliance with current laws and regulations: \_\_\_\_\_ Yes \_\_\_\_\_ No. Construction of proposed tanks have been certified for such compliance: \_\_\_\_\_ Yes \_\_\_\_\_ No.

[ ] There are above ground storage tanks for fuel or other regulated substances on the property and/or the applicant will be installing tanks. Existing tanks are in compliance with current laws and regulations: \_\_\_\_\_ Yes \_\_\_\_\_ No. Construction of proposed tanks have been certified for such compliance: \_\_\_\_\_ Yes \_\_\_\_\_ No.

14. ADDITIONAL COMMENTS: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
SIGNATURE  
Title

REPORT OF AVAILABILITY

c. PRELIMINARY PROCEDURES:

1. STEWART B. MCKINNEY HOMELESS REQUIREMENTS:

McKinney Act requirements do not apply to this action.

McKinney Act requirements apply, necessary screening has been completed, and no interest was expressed.

2. INVENTORY AND CONDITION REPORTS:

No Government improvements are included in the proposed outgrant, so an inventory and condition report is not required.

Government improvements are included and an inventory and condition report is required/attached.

3. CONSIDERATION:

There is no monetary consideration required for this action.

Consideration is the greater of the administrative costs of \$ \_\_\_\_\_ or the FAIR MARKET RENTAL value for the property of \$ \_\_\_\_\_. Give source of value (i.e. appraisal, estimate).

offsets (In kind amounts) for the improvement, maintenance, protection, repair or restoration of the property leased will be provided in lieu of rent in the amount of \$ \_\_\_\_\_. Offsets to be provided are attached.

Consideration is less than fair market value and the outgrant document must contain assurances for Civil Rights Act non-discrimination and the Rehabilitation Act.

4. WAIVER OF COMPETITION:

A waiver of competition is not required.

A waiver of competition is recommended/not recommended. Provide full justification and proposed grantee, if waiver is recommended.

5. Other applicable laws, regulations, MOA'S, etc. requiring consideration for processing this action:

---

6. TECHNICAL SPECIFICATIONS: (Attach a copy here or indicate where a copy is available.) (Conservation plan for A&G leasing; Project technical information (e.g. flood control, hydroelectric, navigation; any water level fluctuations; environmental data, etc.); Safety requirements; Master plan data, if necessary to potential outgrantee. Where additional areas for similar development are shown in the Master Plan, all interested parties should be advised of the Government's tentative plans for these sites.)

7. Additional information that will assist in processing this application/action: \_\_\_\_\_

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8. BASED ON THE INFORMATION PROVIDED ABOVE, I RECOMMEND THE OUTGRANT BE [ ]  
APPROVED [ ] DENIED. If the outgrant is recommended for denial, state the  
reasons: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
SIGNATURE  
Title

Encl 1. Maps showing the nearest project boundary; acreage, character  
of land, and the number and type of improvements, if both land and  
improvements are included. If only building space is involved, give total  
square feet and describe the type of construction. Use existing maps whenever  
feasible.

Encl 2. Attach environmental reports and data (REC, CX, EA, EIS, PAS)  
and any other documentation of compliance with environmental and cultural  
considerations.

Encls: any other attachments listed.



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#### INSTRUCTIONS

The Determination of Availability would be signed by the official with the delegated authority to approve the outgrant, whether the District, the Division, or SAILE.

Section A. of the ROA would usually be the starting of the outgrant process. If the outgrant is the culmination of the Master Plan process, then this section would pull information from the Master Plan and project data. If a private party has requested the outgrant or outgrant expansion, then the office which takes the request would fill in as much information as is available and submit it for further processing. This section would usually be done by the operation element.

Section B. would be completed by the appropriate environmental office or offices with expertise in the various areas. This section could be divided into more than one subpart if the district/project organization involves several offices which each need to sign a portion.

Section C. contains general preliminary information. This section would usually be done by the Real Estate element.

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DETERMINATION OF AVAILABILITY  
CIVIL WORKS PROJECTS

---

1. The attached Report of Availability and its findings has been reviewed.

2. I have determined that the intended use of this property as set out in the attached Report of Availability is in the public interest or will further project purposes is consistent with delegated authorities and Government regulations.

3. I have determined that the proposed use is not a potential embarrassment to the Army.

4. I have determined that the property is not excess to the overall project purpose and has not been identified as not utilized in a Real Property Management Report. (PROVIDE JUSTIFICATION WHERE NECESSARY).

5. I have determined (for 10 USC 2667 leases) that the rental consideration is not less than the fair market value of the lease interest, taking into account the benefit to the United States, to the public and to the Department of Army and that the amount stated in the Report of Availability is appropriate and includes cash or in kind amounts for the improvement, maintenance, protection, repair or restoration of the property leased.

(For other outgrants) I have determined that the rental consideration is appropriate for the use proposed.

6. The proposed use as \_\_\_\_\_ is approved subject to (state any modifications to the restrictions stated in the Report of Availability which must be placed in the outgrant document).

7. Coordination:  
(list)

8. It has been determined that the property is available for the proposed use with the restrictions as stated in the Report of Availability (and as added above) and may be outgranted in accordance with applicable laws, rules and regulations.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Approving Official)

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US ARMY CORPS OF ENGINEERS

NOTICE OF AVAILABILITY FOR LEASING  
(RECREATIONAL)/(INDUSTRIAL) SITES  
(DISTRICT/ADDRESS)

SITE SELECTED: (Site name, project/installation, city, county, state)

CONSISTING OF (Acreage, type of real property; nature of Government improvements, if any; zoning, if applicable)

FOR (Park and Recreation/ Commercial Concession/ Industrial Leasing purpose)

The site will be leased on a competitive basis to the individual or corporation presenting the best plan for development.

Applications will be evaluated by: (1) quality of proposed development, (2) compatibility with overall project/installation mission; (3) expertise of potential Lessee, (4) return to the United States, and (5) return to the potential Lessee.

Potential Lessees may request Applications for Leasing describing the sites and giving details of the lease requirements through (Date). To obtain a copy, send a check for \$ \_\_\_\_\_ to:  
(District/address)

Checks should be made payable to the F&A Officer, ( ) District, Corps of Engineers.

Applications will be submitted in sealed envelopes which will be opened and evaluated on:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TIME (Local time at place of Opening)

\_\_\_\_\_  
LOCATION

\_\_\_\_\_  
U.S. Army Corps  
of Engineers

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APPLICATION INFORMATION PACKAGE  
FOR  
(RECREATION DEVELOPMENT) / (INDUSTRIAL DEVELOPMENT)  
AT  
(SITE/SITES)

The information below must appear in the lower left corner of Lease Application envelope.

Sealed Application for Lease of Real Property

To be opened:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

Notice No. \_\_\_\_\_

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The application package should include:

1. A description of the site/sites. Use project brochures and other available information, if possible. Include technical specifications.
2. Purpose of leasing (Marina, resort, industrial, etc.)
3. The minimum development required; types of development not allowed, i.e. residential, timeshare, condominiums
4. The maximum development allowed, if applicable.
5. Note restrictions on storage of solid waste and storage of toxic or hazardous materials.
6. Description of the government's ownership.
7. Copy of the lease with known information completed
8. Rent provisions.
9. If the considerations is less than fair market value, then state that this is considered a type of federal financial assistance and a Civil Rights assurance is required. Otherwise, point out the non-discrimination condition in the lease.
10. Arrangements for inspection of the site, POC, etc.
11. Schedule, if any, between Notice and execution of lease
12. Selection criteria
13. Submission Instructions

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I. SUBMISSION INSTRUCTIONS

A. Sealed, written Applications should be submitted: (District/address) Give number of copies and any special requirements, i.e. 3-ring binders, drawing no larger than 11x14.

B. Applications will not be accepted after (time) and (date). Modifications of applications may be made in sealed envelopes, as for original application, up to that time.

C. REJECTION of Application. The right is reserved, as the interests of the Government may require, to reject at any time any and all applications, to waive any informality in applications received, and to accept or reject any items of any applications unless such application is qualified by specific limitation.

D. DEFAULT. In the event that the successful applicant fails to enter into a lease within ten (10) days after receipt of Government notification that his application has been accepted and receipt of a draft lease for execution, or in the event that the successful applicant fails to otherwise comply with the terms of this Notice, the Government may declare the applicant in default in writing giving the applicant 10 days to respond or correct the default. The Government may then select the next highest rated applicant.

E. ADDITIONAL INFORMATION. Any additional information may be obtained from \_\_\_\_\_ (fill in District POC).

F. AWARD OF LEASE. Leases will be granted to the applicant with the best application, who is responsive to this Notice, provided that the applicant is responsible, the application is reasonable, and it is in the interest of the Government to issue the lease.

G. DEPOSIT. Applicant will submit a (non)refundable application fee/deposit of \$ \_\_\_\_\_. Amount will apply to initial rental for successful bidder.

II. APPLICATION INFORMATION: The following information must be provided to assist the Government in selecting the successful lease applicant:

A. General Information: Provide name, address, and telephone number of the applicant and, if applicable, the name, address, and telephone number of a representative authorized to act on behalf of the applicant during the course of the project.

B. Experience and Background: (Not required for federal, state or local governmental entities)

1. List any/all previous business endeavors with a description of the business operations and status.

2. Provide a description of any management qualifications and experience.

3. Provide third party personal and business references.

4. If applicant is a corporation it must provide:

a. Articles of Incorporation and by-laws.

b. Names, addresses, dates of birth, and Social Security numbers

of officers and participating principals and all addresses they have used for the last ten (10) years.

- c. Corporate resolution authorizing the proposed transaction.
- d. Summary of Corporate Activity.

5. If applicant is a partnership it must provide:

- a. The partnership agreement.
- b. Names, addresses, dates of birth, and Social Security numbers of the partners and all addresses they have used for the last ten (10) years.

6. If applicant is a sole proprietor he/she must provide Social Security number, date of birth, current address, and all addresses used for the last ten (10) years.

c. Financial Capability (Note: All financial data will be held in confidence).

1. If applicant is a corporation or limited partnership it must provide a current financial statement prepared by an independent Certified Public Accountant or by an independent licensed public accountant. It must also include a personal financial statement of the key owners/principals.

2. If applicant is an individual or partnership he/she/they must provide a complete and current personal financial statement.

3. Except for governmental agencies, provide the names, addresses, and telephone numbers of at least two commercial or institutional credit references from which the applicant has previously obtained financing. Attach a letter authorizing each credit reference to respond to inquiries from the Government.

4. Provide a preliminary budget, projected cash flow, estimated operating costs, and detailed plans of financing including identity of proposed lenders. Identify all interim and permanent sources of funds and include copies of loan documents used to implement the assignment.

D. Plan of Operation and Development.

1. Provide a five-year plan for operation and development of the leased premises. The plan must show goals and objectives for each year showing the estimated cost of any development.

2. Identify key positions and their duties and responsibilities as they relate to the business.

3. Depending on the scope of development and individual circumstances of the applicants, a performance bond, letter of credit, or performance deposit may be required to defray Government expenses of going through the lease selection process should applicant default.

4. If the property is subject to Coastal Zone Management, provide a consistency certification.

5. Other information may be requested as required by the District Engineer or his authorized representative.

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III. APPLICATION CONDITIONS.

A. It is the responsibility of the applicant to make sure that all lease provisions are understood and the condition of the premises proposed for lease are known. Prior to selection of the successful applicant, the Corps will conduct a pre-lease conference with the applicants. At this conference the lease will be reviewed, Corps policies will be discussed, and, at the conclusion, the applicants will be required to sign an acknowledgement attesting to the conference and the information provided therein.

B. By submittal of an application, the applicant agrees to provide non-discrimination and Civil Rights assurances, if applicable.

C. The information provided by the applicant may be used by the Corps to conduct a comprehensive background and credit check.

D. All questions may be directed to the Corps' \_\_\_\_\_ District Real Estate Division at \_\_\_\_\_, telephone number \_\_\_\_\_.

IV. GENERAL SUBMITTAL INFORMATION

A. SELECTION CRITERIA: The following will be considered to assist the Government in selecting the successful lease applicant:

1. Diversity of Recreation Opportunities/Operation Proposed
  - a. Proposed operation and development
  - b. Design
  - c. Quality and nature of development
  - d. Consistency with the lake setting/mobilization or installation mission
  - e. Proposed construction sequencing/phasing
1. Experience and background
  - a. Business experience and training
  - b. Comparable experience
  - c. Current or previous work with Federal Government
  - d. Business and personal references
2. Financial capability
  - a. Bank references
  - b. Financial Statement
  - c. Financial Plan for first three years
3. Credit and Criminal Background Check



V. TECHNICAL SPECIFICATIONS

Attach a copy here or indicate where a copy is available for inspection.

- Conservation plan for A&G leasing
- Project technical information (e.g. flood control, hydroelectric, navigation; any water level fluctuations; environmental data, etc.)
- Note wetland or floodplain areas, if any, and any restrictions.
- List any environmental, cultural or historical restrictions, if any. If environmental reports are too bulky to provide with the application package, state where they may be inspected. The cost of providing copies to applicant may be calculated as part of the cost to receive application package or as an extra costs.
- Industrial lease technical guidance (e.g., environmental data, safety requirements, etc.)
- If there is residual contamination from ammunition, explosives, or chemicals, detail extent and include any restrictions and prohibitions concerning use.
- Master plan data, if necessary to applicant. Where additional areas for similar development are shown in the Master Plan, all interested parties should be advised of the Government's tentative plans for these sites.
- Topographic site maps
- Etc.

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DEPARTMENT OF THE ARMY  
SUBMITTED BY OFFICE, CHIEF OF ENGINEERS  
REAL ESTATE  
DISPOSAL REPORT NO. \_\_\_\_\_

Submitted pursuant to Title 10, United State Code, Section 2662.

Name of Installation/Agency: (Use the official Blue Book inventory name, not common variations, with location of the proposed space by city and state);

Using Service: (MACOM, e.g. U.S. Forces Command; DOD agency, e.g. Defense Contract Audit Agency);

Present Use: (e.g. administrative, storage, housing, office, special purpose);

Interest: (fee, easement, etc.)

Area: (Space in acres, square feet, etc.);

Original Cost: (give land:, improvements: , total:);

Acquisition Date: (give land and improvements separate, round to nearest decade if more than one year);

Proposed Action: (outgrant, disposal, outgrant renewal);

Authority: cite the authority for the action, e.g. Title 10, United States Code, Section 2667; Federal Property and Administrative Services Act of 1949, as amended;

(a) three or four numbered paragraphs: [It has been reasonably said that a T-10 report should be clear and convincing to the man-on-the-street. Remember, the report is reviewed by several people, who will have only your submittal to review the action(s) by.]

1. The Department of the Army proposes to lease/dispose (# of acres/square feet) of Government owned real property/(type) space at (installation) in (city, state).

2. Brief narrative of the installation/unit, giving MACOM/Agency, its mission, and the number of personnel (actual and authorized).

3. Describe the present situation (e.g. brief description by categories of improvements and current total costs of construction, if applicable, interest owned, with separate breakdown of troop and family housing data; summary of any related outleaping history and current total annual rental received;) Explain why the action is necessary.

4. Describe: (a) property which is available for leasing with brief reason therefor; (b) specific property, of only a portion of an installation is involved, including acreages or square feet, cost of land and date of acquisition, description and cost of improvements, and description of other outgrants; (c) any property to be retained in 4.(b) detailed and including

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family and troop housing data; (d) other information or circumstances peculiar or essential to the proposed action such as production capacity of Army Ammunition Plants; and (e) estimated savings for operations and maintenance or care and maintenance that would result from leasing.

5. (Brief concluding statement of proposal including information on advertising, period of lease, termination privileges, consideration, and other significant provisions.)

Note: See recent guidance from HQUSACE (CERE-L) on acquisition reports for further comments.

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APPENDIX 8-B

LEASE FORMATS UNDER 10 U.S.C. § 2667

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AGRICULTURAL AND GRAZING LEASE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. TRANSFERS AND ASSIGNMENTS
9. COST OF UTILITIES
10. PROTECTION OF PROPERTY
11. RENTAL ADJUSTMENT
12. RIGHT TO ENTER
13. INDEMNITY
14. RESTORATION
15. NON-DISCRIMINATION
16. SUBJECT TO EASEMENTS
17. SUBJECT TO MINERAL INTERESTS
18. TERMINATION
19. PROHIBITED USES
20. PROTECTION OF NATURAL RESOURCES
21. DISPUTES CLAUSE
22. ENVIRONMENTAL PROTECTION
23. HISTORIC PRESERVATION
24. SOIL AND WATER CONSERVATION
25. TAXES
26. COVENANT AGAINST CONTINGENT FEES
27. OFFICIALS NOT TO BENEFIT
28. SEVERAL LESSEES
29. MODIFICATIONS
30. DISCLAIMER

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_ LEASE

FOR AGRICULTURAL OR GRAZING PURPOSES

LOCATED ON

\_\_\_\_\_  
(PROJECT, INSTALLATION)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE** \_\_\_\_\_, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 10, United States Code, Section 2667, and for the consideration set forth herein, hereby leases to the Lessee the property hereinafter identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for \_\_\_\_\_ purposes, and in accordance with the land use regulations identified in Exhibit(s) \_\_\_\_\_, which is attached hereto and made a part hereof.

**THIS LEASE** is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ (months) (years), beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_, \_\_\_\_\_, but revocable at will by the Secretary.

2. **CONSIDERATION**

a. (Use if there will be no rental offsets) The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_.

a. (Alternate Condition) (Use if there will be rental offsets) As consideration for this lease, the Lessee shall pay cash rental in advance to the United States in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_. Such cash rental shall be offset by the value of work items which shall be accomplished by the Lessee for the maintenance, protection, repair, restoration, and improvement

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of the leased premises as described in the Land Use Regulations attached as Exhibit \_\_\_\_\_.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717) . This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### 3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the lessee, to \_\_\_\_\_

\_\_\_\_\_ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division \_\_\_\_\_

\_\_\_\_\_, 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", or "said officer", include their duly authorized representatives. Any reference to "Lessee" shall include any sublessees, assignees, transferees, successors and their duly authorized representatives.

### 5. SUPERVISION BY THE (DISTRICT ENGINEER (INSTALLATION COMMANDER)

The use and occupation of the premises shall be subject to the general supervision and approval of the (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (Installation) hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. **APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representation or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached as Exhibit \_\_\_\_\_ and made a part hereof. Upon expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. The reports will constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY.**

8. **TRANSFERS AND ASSIGNMENTS**

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the District Engineer.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

9. **COST OF UTILITIES**

The Lessee shall pay the cost, as determined by the officer having immediate jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. **PROTECTION OF PROPERTY**

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



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11. **RENTAL ADJUSTMENT**

In the event the United States revokes this lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this lease. Where the said premises are being used for farming purposes, the Lessee shall have the right to harvest, gather and remove such crops as may have been planted or grown on said premises, or the District Engineer may require the Lessee to vacate immediately and, if funds are available, compensation will be made to the Lessee for the value of the remaining crops. Any adjustment of rent or the right to harvest, gather and remove crops shall be evidenced by a written supplemental agreement, executed by the District Engineer; PROVIDED, however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this lease and in that event any remaining crops shall become property of the United States upon such revocation.

12. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents and employees to enter upon the premises at any time and for any purposes necessary or convenient in connection with government purposes; to make inspections; to remove timber or other materials, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever, and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claims for damages on account thereof against the United States or any officer, agent or employee thereof.

13. **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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

14. **RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate or as otherwise specified by the provisions of the condition on **RENTAL ADJUSTMENT**. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages

against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

**15. NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap or national origin.

**16. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the premises by the Lessee.

**17. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development of Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessees operations or would be contrary to local law.

**18. TERMINATION**

This lease may be terminated by the Lessee at any time by giving at least sixty (60) days notice thereof, in writing, to the District Engineer. In the case of such termination, no refund by the United States of any rental previously paid shall be made and payment in full of all rent becoming due during the period of notice will be required. In the event the effective date of termination occurs after the start of the grazing, planting or harvesting season as specified in the Land Use Regulations, any rent due for the balance of the annual term, or the rental due for the remaining term if the lease is for less than one year, shall be due and payable on or before the date of such termination.

**19. PROHIBITED USES**

a. Certain soil conservation practices may be required by the land use regulations which are identified as rental offsets. By acceptance of such offsets, the Lessee agrees that he will not accept any Federal or State cost-sharing payments or subsidies for the same soil conservation practices.

b. The Lessee shall not construct or place any structure, improvement or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

**20. PROTECTION OF NATURAL RESOURCES**

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The Lessee shall use the premises in accordance with the attached Land Use Regulations and shall at all times: (a) maintain the premises in good condition and free from weeds, brush, washes, gullies and other erosion which is detrimental to the value of the premises for agricultural purposes; (b) cut no timber, conduct no mining operations, remove no sand, gravel or kindred substances from the premises; (c) commit no waste of any kind nor in any manner substantially change the contour or condition of the premises except changes required to accomplish soil and water conservation measures as may be authorized by said officer.

21. **DISPUTES**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer

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must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the Condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

## 22. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground and water. The Lessee shall 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 disposal of any toxic or hazardous materials within the premises is specifically 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 lease. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from activities of the Lessee, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

## 23. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or 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 Lessee shall immediately notify said

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officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

**24. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon the premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed in writing by the District Engineer.

**25. TAXES**

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the premises shall be promptly paid by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

**26. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fees, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

**27. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

**28. SEVERAL LESSEES**

If more than one Lessee is named in this lease, the obligation of said Lessees herein named shall be joint and several obligations.

**29. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modifications of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

**30. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned. The Lessee shall obtain any permit or license which may be required by Federal, state or local statute in connection with

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the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

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

**IN WITNESS WHEREOF** I have hereunto set my hand by direction of he Secretary of the \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

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GENERAL PURPOSE LEASE

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2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
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17. SUBJECT TO MINERAL INTERESTS
18. TERMINATION
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20. PROHIBITED USES
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24. PRELIMINARY ASSESSMENT SCREENING
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30. SEVERAL LESSEES
31. MODIFICATIONS
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NO \_\_\_\_\_  
DEPARTMENT OF THE \_\_\_\_\_ LEASE

\_\_\_\_\_  
(PROJECT/ INSTALLATION)

\_\_\_\_\_  
COUNTY, STATE

THIS LEASE, made on behalf of the United States, between the SECRETARY OF THE \_\_\_\_\_, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee.

**WITNESSETH:**

That the Secretary, by the authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the Lessee the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for \_\_\_\_\_ purposes.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_, but revocable at will by the Secretary.

2. **CONSIDERATION**

a. The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee) . An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or



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portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division \_\_\_\_\_

\_\_\_\_\_, 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", or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include any sublessees, assignees, transferees, successors and their duly authorized representatives.

**5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)**

The use and occupation of the premises shall be subject to the general supervision and approval of the (District Engineer) (Installation Commander) \_\_\_\_\_ (District) (Installation) hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

**6. APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

**7. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property

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must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY**.

8. **TRANSFERS AND ASSIGNMENTS**

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the District Engineer.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

9. **COST OF UTILITIES**

The Lessee shall pay the cost, as determined by the officer having jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the government or through government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. The government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. **PROTECTION OF PROPERTY**

The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. **INSURANCE (DELETE CONDITIONS A&B IF LIABILITY INSURANCE IS NOT APPLICABLE)**

a. At the commencement of this lease, the Lessee shall obtain, from a reputable insurance company, or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit of \$ \_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer every three years or upon renewal or modification of this lease.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types

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of facilities, services and activities involved. The lessee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

**12. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**13. 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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**14. RESTORATION**

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On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate or as otherwise specified by the provisions of the condition on **RENTAL ADJUSTMENT**. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the said officer, the property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

15. **NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

16. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the premises by the Lessee,

17. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the lessee's operations or would be contrary to local law.

18. **TERMINATION**

This lease may be terminated by the Lessee at any time by giving the District Engineer at least thirty (30) days notice in writing provided that no refund by the United States of any rental previously paid shall be made, and provided further, that in the event that said notice is not given at least thirty (30) days prior to the rental due date, the Lessee shall be required to pay the rental for the period shown in the condition on **CONSIDERATION**.

19. **RENTAL ADJUSTMENT**

In the event the United States revokes this lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee

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prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this lease. Such adjustment of rental shall be evidenced by a supplemental agreement in writing; PROVIDED however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this lease.

20. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance. The Lessee shall not sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the premises.

b. The Lessee shall not construct or place any structure, improvement or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

21. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises except as authorized in writing by the District Engineer.

22. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that--

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief;

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(iii) and the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest or the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the District Engineer.

### 23. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground, and water. The Lessee shall 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, State, interstate or local governmental agency are hereby made a condition of this lease. The Lessee shall not discharge waste or effluent from the premises

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in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the lessee, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**24. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

**25. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or 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 Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

**26. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

**27. TAXES**

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the premises shall be paid promptly by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

**28. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to

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the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

29. **OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

30. **SEVERAL LESSEES**

If more than one Lessee is named in this lease the obligations of said Lessees herein contained shall be joint and several obligations.

31. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as all other conditions of this lease.

32. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**NOTE:** The following condition should be deleted only on leases of military property when the annual rental value exceeds \$200,000.

**THIS LEASE** 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_



## **BRAC LEASE - INDEX OF CONDITIONS**

1. Authorized Representatives
2. Use of the Leased Premises and Personal Property
3. Term
4. Termination, Revocation, Default, and Relinquishment
5. Consideration
6. Notices
7. Supervision of the Leased Premises
8. Applicable Laws and Regulations
9. Condition of the Leased Premises
10. Transfers, Assignments, and Subleasing
11. Cost of Utilities
12. Protection of Property
13. Insurance
14. Right to Enter
15. Indemnity and Hold Harmless
16. Restoration
17. Non-Discrimination
18. Subject to Easements
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20. Rental Adjustment
21. Prohibited Uses
22. Waste of Natural Resources
23. Disputes Clause
24. Environmental Protection
25. Hazardous Substances Notice
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27. Notice of the Presence of Asbestos and Covenant
28. Other Environmental Restrictions
29. Site Specific Restrictions
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31. Soil and Water Conservation
32. Taxes
33. Covenant Against Contingent Fees
34. Officials Not To Benefit
35. Several Lessees
36. Modifications
37. No Commitments For Future Use
38. Disclaimer
39. Availability of Funds

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Exhibits to BRAC Lease

- A Leased Premises (Map and/or description)
- B Reuse Plan
- C Development/Use of Premises (Description, if any)
- D Condition Survey Report (with Environmental Baseline Survey)
- E Personal Property
- F UXO Parcels

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**DEPARTMENT OF THE ARMY  
LEASE  
  
UNDER  
  
BASE REALIGNMENT AND CLOSURE (BRAC)**

\_\_\_\_\_  
(Name of Installation)

\_\_\_\_\_  
(County, State)

Lease Number \_\_\_\_\_

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY** (“Lessor”), and \_\_\_\_\_ (“Lessee”).

**WITNESSETH:**

That the Secretary of the Army, by the authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the Lessee the property identified in Exhibit A, attached hereto and made a part hereof, hereinafter referred to as the “Leased Premises”.

**THIS LEASE** is granted subject to the following conditions:

**1. AUTHORIZED REPRESENTATIVES**

The Secretary of the Army, the “Lessor”, may act by and through the [the same DA official designated in Condition 7] or the District Engineer, \_\_\_\_\_ District, or through other duly authorized representatives. The (designated DA official) or the District Engineer may also act by and through their duly authorized representatives. Except as otherwise specifically provided, any reference herein to "Lessor", "[Installation Commander or DA official]", “District Engineer”, or "said officer" shall include their duly authorized representatives. The Lessee also may act by and through duly authorized representatives. Any reference to "Lessee" shall include any assignees, or successors and their duly authorized representatives.

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[Note: If there is no reuse plan, delete reference to it.]

## **2. USE OF THE LEASED PREMISES AND PERSONAL PROPERTY.**

a. The sole purpose(s) for which the Leased Premises and any improvements thereon may be used, in the absence of prior written approval of the Lessor for any other use, is for the use designated in or consistent with the approved Reuse Plan covering the Leased Premises, attached hereto as Exhibit B, [In the absence of a Reuse Plan or if the Reuse Plan fails to adequately identify uses that will be permitted under the Lease, permissible use of the Leased Premises must be specifically described by building or area, showing any building modification, demolition, new construction, and improvements.] which use of the Leased Premises has been properly evaluated by the Lessor under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 to 4370d (NEPA).

b. The Lessor, in the Lessor's sole discretion, must approve any change in the use of the Leased Premises as set forth in subcondition a. above. Prior to approval of any changes in use requested by the Lessee, the Lessee shall furnish, at the Lessee's expense, any additional environmental analyses and documentation deemed necessary by the Lessor to comply with the National Environmental Policy Act of 1969, as amended, and implementing regulations, and other applicable environmental laws and regulations. In granting approval for the change in use, the Lessor reserves the right to impose such additional environmental protection provisions and restrictions as the Lessor deems appropriate.

c. During the term of this Lease, the Lessee shall have the use of the personal property described in Exhibit E hereto in accordance with the terms of this Lease, which personal property shall be deemed to be a part of the Leased Premises.

## **3. TERM**

a. The Leased Premises are leased for a term of \_\_\_\_\_ [The term of the Lease should be the shortest term that will meet the needs of the parties, generally five (5) years] years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_, or until terminated under the condition on **TERMINATION, REVOCATION, DEFAULT AND, RELINQUISHMENT**, whichever is sooner.

[Alternate Language for use in Master Leases]

a. The Leased Premises are leased for a term of \_\_\_\_\_ [The term of the Lease should be the shortest term that will meet the needs of the parties, generally five (5) years] years, commencing as provided for herein and ending \_\_\_\_\_ years thereafter or until terminated under the condition on **TERMINATION, REVOCATION, DEFAULT, AND RELINQUISHMENT**, whichever is sooner. The term of this Lease

shall commence, and the provisions of this Lease shall become effective, in accordance with the schedules and procedures set forth below:

(1) The Original Lease Term for the Leased Premises, as described in Exhibit A-1, shall commence on \_\_\_\_\_.

(2) With regard to expansion of the Leased Premises, the Lessee may request additional land and/or buildings (“Additional Leased Premises”) be added to the Leased Premises hereunder by written notice to the Lessor, acting by and through the District Engineer and the Installation Commander (“Expansion Request”), which Expansion Request shall include a plan of the Additional Leased Premises requested, any recommended site or use specific lease terms related thereto, a brief description of the intended use for the Additional Leased Premises, the commencement date of the Original Lease Term for said Additional Leased Premises, and copies of any subleases or licenses that will commence on the date of the Original Lease Term.

(3) Upon receipt of an Expansion Request by the Lessee, the Lessor shall promptly prepare an amendment to this Lease (“Amendment”), which Amendment shall incorporate a plan of the Additional Leased Premises into Exhibit A, as Exhibit A-2; establish the commencement date of the Original Lease Term for the Additional Leased Premises; incorporate site or use specific terms into the Lease as may be agreed by the parties; and amend the Environmental Protection Provisions below by incorporating site specific restrictions regarding the Additional Leased Premises contained in the Finding of Suitability to Lease (FOSL) for the Additional Leased Premises. As of the date the Lessor and the Lessee sign the Amendment, the Lease shall be deemed modified and amended thereby, without the need for additional action by either party.

b. [Include the following only if an option to extend the term has been approved and may be needed to coincide with the estimated dates for environmental completion:] The Lessee shall have the right to extend the original term of the Lease for one (1) successive period of \_\_\_\_\_ [Not to exceed five (5)] years (“Option Term”), provided that, as to this option, Lessee shall give written notice to the Lessor of its election to extend the Lease term at least eighteen (18) months prior to the time when the term expires; provided that, at the time when such notice is given, there shall not be any uncured event of default on the part of Lessee and the lease term has not been terminated or revoked by the Lessor under the Condition on **TERMINATION, REVOCATION, DEFAULT, AND RELINQUISHMENT**. If the Lessee exercises the option under this subcondition b., the terms and conditions of this Lease shall remain in effect, except that the annual base rental shall increase to \_\_\_\_\_ [Set out increased consideration] during the Option Term.

#### **4. TERMINATION, REVOCATION, DEFAULT, AND RELINQUISHMENT**

a. Termination.

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(1) In the event of the Lessor's decision to convey the Leased Premises or a portion thereof to the Lessee, the Lease shall terminate upon conveyance of the Leased Premises or a portion thereof to the Lessee with respect to that portion so conveyed.

(2) In the event the Lessor decides to convey the Leased Premises or a portion thereof to a third party and the Lessor executes a Finding of Suitability to Transfer (FOST), the Lessor may terminate this Lease with respect to any portion of the Leased Premises to be so conveyed, upon giving the Lessee sixty (60) days written notice of termination.

(3) The Lessor may terminate this Lease and remove the Lessee, and any sublessees, in the event of a national emergency as declared by the President or the Congress of the United States.

b. Default. The following events shall be deemed to be events of default by the Lessee under this Lease:

(1) Lessee shall fail to pay any rental payment hereunder within thirty (30) days after written notice thereof from Lessor. (Delete this default event if this is a public benefit discounted rental.)

(2) Lessee shall fail to comply with any condition, provision, covenant, or warranty made under this Lease by Lessee (other than the payment of rent) and shall not cure such failure within ninety (90) days after written notice thereof to Lessee, unless said non-compliance is the subject of a shorter notice given by a federal, state, or local governmental agency, in which case the shorter notice shall apply.

(3) Lessee shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(4) Lessee shall file a petition under any Section or Chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or there shall be filed against the Lessee a petition for reorganization for an insolvency or a similar proceeding filed against Lessee.

(5) A receiver or trustee shall be appointed for the Leased Premises or for all or substantially all of the assets of the Lessee.

(6) Lessee shall do or permit to be done anything which creates a lien upon the Leased Premises.

c. Revocation. The Lessee is charged at all times with full knowledge of all the conditions and requirements of this Lease, and the necessity for correction of defaults and

non-compliance. Upon the occurrence of any of the aforesaid events of default, Lessor shall have the option to revoke this Lease, in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying said Leased Premises or any part thereof, without being liable for any claim of damages therefor; Lessee hereby agreeing to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of such termination. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided, including closure of the Leased Premises or temporary suspension of activities under the Lease, or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein provided constitute an election of remedies, thereby excluding the later election of an alternate remedy. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. Lessee agrees to pay to Lessor all costs and expenses incurred by Lessor in the enforcement of this Lease, including, without limitation, the reasonable fees of Lessor's attorneys when such attorneys are employed by Lessor to effect collection of any sums due hereunder or to enforce any right or remedy of Lessor.

d. Sublessees. In accordance with the Condition on **TRANSFERS, ASSIGNMENTS, AND SUBLEASING**, any sublease is to be subject to the conditions and terms of this Lease. Nevertheless, should default and non-compliance described in subcondition b. above stem from the activities of a sublessee, the Lessee is responsible for ensuring compliance, either by corrective action itself or through the sublessee. If the Lessee is making diligent, good faith efforts to obtain corrective action and compliance by the sublessee, to the satisfaction of the Lessor, then the Lessor's exercise of rights under subcondition c. will only be for that part of the Leased Premises under the control of the sublessee.

e. Relinquishment. This Lease may be terminated or relinquished by the Lessee by giving thirty (30) days prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES** [Delete the following proviso if the lease is for a public benefit discounted rental], and provided further, that in the event that said notice is not given at least thirty (30) days prior to the rental due date, the Lessee shall be required to pay the rental for the period shown in the condition on **CONSIDERATION**.

[Select the appropriate condition on Consideration – either fair market rental or public benefit discounted rental, as applicable]

**5. CONSIDERATION** [Cash payment/fair market rental]

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a. [Use if there will be no rental offsets] The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_

a. [Alternate Condition a. Use if there will be rental offsets] As consideration for this Lease, the Lessee shall pay fair market rental in the amount of \_\_\_\_\_, (\$ \_\_\_\_\_) payable in cash in advance to the United States in the amount of \_\_\_\_\_, (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_. In addition, such cash rental may be offset by the value of work items which shall be accomplished by the Lessee for the maintenance, protection, repair, restoration, and improvement of the Leased Premises as described in the Re-Use Plan attached as Exhibit \_\_\_\_.

b. All rent and other payments due under the terms of this Lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative, and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

**5. CONSIDERATION** [Public Benefit Discounted Rental - less than Fair Market Value - Generally only allowed if the lessee is the LRA]



a. The consideration for this Lease is the operation and maintenance of the Leased Premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

b. All monies received by the Lessee from operations conducted on the Leased Premises, including, but not limited to, use fees and rental or other consideration received from its sublessees or licensees, shall be utilized by the Lessee for the protection, operation, maintenance, repair, improvement, and costs related to the Leased Premises and the installation, to include marketing and management activities of the Lessee. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. The Lessor shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, sublessees or licensees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the Lessor with the results of such an audit.

## 6. NOTICES

All correspondence and notices to be given pursuant to this Lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and, if to the United States, to [insert mailing location for legal notice] the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_ District, \_\_\_\_\_, or as may from time to time otherwise be directed by the parties. [Copies of correspondence and notices will also be furnished to \_\_ (Installation Commander or DA official), \_\_\_\_\_.] Notices must be given in a properly sealed envelope, addressed as aforesaid, and deposited postage prepaid by either registered mail, return receipt requested, or by certified mail, return receipt requested, in a post office regularly maintained by the United States Postal Service. The service of the notice shall be deemed complete upon the receipt of said notice, or the refusal thereof, by the applicable party.

## 7. SUPERVISION OF THE LEASED PREMISES

The use and occupation of the Leased Premises shall be subject to the general supervision and approval of the Installation Commander [If not the IC, then designate the DA officer who will have day-to-day supervision] for \_(insert name)\_\_\_\_\_ Installation, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

## 8. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal, state, and local laws, ordinances, regulations, and standards that are or may become applicable to their activities

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on the Leased Premises, including, but not limited to, those regarding the environment, construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. Additional compliance conditions are included in the condition on **ENVIRONMENTAL PROTECTION**.

## **9. CONDITION OF THE LEASED PREMISES**

a. The Lessee acknowledges that it has inspected the Leased Premises, knows its condition, and understands that the same is leased in an "as is," and "where is" condition, without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto, except as may be specifically provided herein.

b. The Lessor and the Lessee have jointly conducted an inventory and condition survey of the Leased Premises, to include the environmental condition, prior to lease execution by either party. The inventory and condition survey is documented in a Condition Survey report prepared by the Lessor, signed by the duly authorized representatives of both parties, and attached as Exhibit D to this Lease. The Condition Survey will refer to and incorporate by reference the Environmental Baseline Survey (EBS) prepared by the Lessor, as well as any other environmental conditions that may not be specifically identified in the EBS. Preceding expiration, revocation, or termination of this Lease, the Lessor and the Lessee will jointly conduct a close-out survey. The Lessor will prepare a close-out report. The Lessee shall fully fund the Lessor's preparation of an updated EBS that will document the environmental condition of the property at that time as part of the close-out survey. The close-out survey and report will refer to, and incorporate by reference, the updated EBS. All significant variances from the initial Condition Survey shall be clearly documented in the close-out report. This close-out report will constitute the basis for settlement by the parties for any leased property shown to be lost, damaged, contaminated, or destroyed during the lease term, in determining any environmental restoration requirements to be completed by the Lessee, and restoration of the property as required in the condition on **RESTORATION**.

## **10. TRANSFERS, ASSIGNMENTS, AND SUBLEASING**

a. Successors. This Lease and the covenants and conditions herein contained shall be binding upon Lessee, its successors and assignees; and shall inure to the benefit of Lessee and only such successors or assignees of the Lessee to whom the transfer or assignment by Lessee has been consented to by Lessor in writing. No transfers or assignments shall be valid unless the successor or assignees shall, by an instrument in a form sufficient for recording and acceptable to the Lessor, enter into an assumption

agreement and assume all of the Lessee's obligations under this Lease. A duplicate original of that assumption agreement will be delivered to the Lessor, and the assignment shall not take effect until delivery is made.

b. Sublease. The Lessee may sublease the Leased Premises, so long as the Lessee remains primarily liable for performance of all the obligations of Lessee hereunder. The Lessee shall neither sublease, license, nor grant any interest in the Leased Premises or any part thereof or any property thereon, nor grant any other interest, privilege, or license whatsoever in connection with this Lease, without prior written notice to the Lessor, as set out in the condition on **NOTICES**. The Lessee shall provide the Lessor a copy of every executed sublease hereunder. No sublease shall be valid unless and until the Lessee shall have delivered to the Lessor a copy of the executed sublease. Every sublease shall contain the Environmental Protection provisions set out in this Lease and shall state that it is subject to the conditions and terms of this Lease and that, in case of any conflict between the instruments, this Lease will control. The Lessee shall provide each approved sublessee or licensee with a copy of this Lease.

c. Notice to EPA and State. The Lessee further agrees that in the event of an assignment or sublease of the Leased Premises, it shall provide to the EPA and [state agency] by certified mail a copy of the agreement or sublease of the Leased Premises within 14 days after the effective date of such transaction. The Lessee may delete the financial terms and any other proprietary information from the copy of any agreement or assignment or sublease furnished pursuant to this condition.

[If DA is to provide utilities, do not execute lease until a utility contract is signed. Delete the following condition if not applicable, or modify it to state the situation.]

## **11. COST OF UTILITIES**

a. As set out in the Utility Contract, executed by the Lessee and said officer having jurisdiction over the Leased Premises, dated \_\_\_\_\_, the Lessee shall pay the cost of producing and/or supplying any utilities and other services furnished by the Lessor or through government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. Payment shall be made in the manner prescribed in said Utility Contract.

b. The United States shall be under no obligation to furnish utilities or services. The supplying of utilities or other services by the Lessor is not a commitment to provide utilities after Lessor's activities at the installation cease. The Lessee should develop plans for assumption of the utilities by a local utility provider or other qualified entity.

## **12. PROTECTION OF PROPERTY**

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The Lessee shall keep the Leased Premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee and/or its sublessees or licensees under this Lease, and shall exercise due diligence in the protection of all property located on the Leased Premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property, except personal property, to a condition satisfactory to said officer.

### 13. INSURANCE

a. At the commencement of this Lease, the Lessee shall obtain, from a reputable insurance company, or companies, comprehensive liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable, and consistent with sound business practices or an amount not less than a combined single limit of \$\_\_\_[insert amount based upon risk of activities, but no less than \$1,500,000] \_\_\_ DOLLARS (\$\_\_\_\_\_), whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons upon the Leased Premises or arising from activities conducted under this Lease.

b. The liability insurance policy shall insure the hazards of the Leased Premises and operations conducted in and on the Leased Premises, independent contractors, contractual liability (covering the indemnity included in this Lease agreement), and shall name the United States as an insured party. Each policy will provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee or the United States or any other person; provide that the insurer will have no right of subrogation against the United States; and be reasonably satisfactory to the Lessor in all respects. Under no circumstances will the Lessee be entitled to assign to any third party rights of action that it may have against the United States arising out of this Lease.

c. The Lessee shall require that the insurance company give said officer and the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. Said officer or the District Engineer may require closure of any or all of the Leased Premises during any period for which the Lessee does not have the required insurance coverage. The Lessee shall require its insurance company to furnish to said officer and to the District Engineer a copy of the policy or policies, or if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer every two (2) years or upon renewal or modification of this Lease.

[Delete the following condition if no government structures or improvements are within the leased premises, or if structures and improvements are included but the determination of availability waives the requirement for fire insurance.]

d. As to those structures and improvements on the Leased Premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the Leased Premises pursuant to the terms and conditions of this Lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the Leased Premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used for the repair, restoration, or replacement of the property damaged or destroyed or of the Leased Premises, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the District Engineer does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore, or replace the Leased Premises or any part thereof should it be diminished in value, damaged, or destroyed.

e. The Lessee may require any sublessees, assignees, transferees, or successors, as joint and several responsible parties with the Lessee for those portions of the Leased Premises under their control, to maintain and carry at their expense portions of the insurance requirement.

f. [Include if there is an insurance policy.] Notwithstanding anything herein to the contrary, each party hereto hereby releases the other party, its agents, sublessees and employees, to the full extent recoverable under the insurance policies of the releasing party, from any and all liability for any loss or damage which may be inflicted upon the property of such party, notwithstanding that such loss or damage shall have arisen out of the negligent or the tortious act or omission of the other party, its agents, sublessees or employees; provided, however, that this release shall be effective only with respect to loss or damage occurring during such time as the appropriate policy of insurance of the party so releasing shall contain a clause to the effect that such release shall not affect the said policy or the right of the insured to recover thereunder, and each party at the request of the other shall use reasonable efforts to have such a clause included in its said policies. Each party hereto shall notify the other in the event such a clause is not included in its said policies, or is withdrawn therefrom, in which event the release herein of the other party shall be null and void.

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f. [Use for self-insured municipal governments only] Notwithstanding anything contained herein to the contrary, Lessee may self-insure against the risks provided for in this Condition under a plan of self-insurance maintained in accordance with sound accounting practices and the state laws, which Lessee may from time to time have in force and effect. The Lessee's insurance status shall not eliminate the requirement for its sub-lessees to have insurance from a reputable insurance carrier as set out above or to also be self-insured, if applicable.

#### **14. RIGHT TO ENTER**

a. The right is reserved to the United States, its officers, agents, and employees to enter upon the Leased Premises at any time and for any purpose necessary or convenient in connection with government purposes; to make inspections, to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

b. Additional rights to enter are reserved in the condition on **ENVIRONMENTAL PROTECTION**.

#### **15. INDEMNITY AND HOLD HARMLESS**

a. The Lessee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident attributable or incident to the condition or state of repair of the Leased Premises or to its possession and/or use of the Leased Premises or the activities conducted under this Lease. The Lessee expressly waives all claims against the United States of America for any such loss, damage, personal injury, or death caused by or occurring as a consequence of such condition, possession and/or use of the Leased Premises by the Lessee, or the conduct of activities or the performance of responsibilities under this lease by the Lessee. The Lessee further agrees to indemnify and hold harmless the United States of America, the Lessor, its officers, agents, and employees from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of the Leased Premises by the Lessee. The Lessor will give the Lessee notice of any claim against it covered by this indemnity as soon after learning of such claim as practicable.

b. The Lessee shall indemnify and hold harmless the United States of America from any costs, expenses, liabilities, fines, or penalties resulting from discharges, releases, emissions, spills, storage, disposal, or any other action by the Lessee giving rise to United States of America liability, civil or criminal, or responsibility under Federal, state, or local environmental laws.

c. Subconditions a. and b. of this Condition and the obligations of the Lessee hereunder shall survive the expiration or termination of the Lease and the conveyance of the Leased Premises. The Lessee's obligation hereunder shall apply whenever the United States incurs costs or liabilities for the Lessee's actions giving rise to liability under this condition.

d. In leasing the Leased Premises, the United States recognizes its obligation to hold harmless, defend, and indemnify the Lessee and any successor, assignee, transferee, lender, or sublessee of the Lessee as provided for in Section 330 of the Department of Defense Authorization Act of 1993, as amended, and to otherwise meet its obligations under the law.

e. Any sublessees, assignees, transferees, or successors shall be jointly and severally responsible with the Buyer/Lessee for those portions of the Leased Premises under their control.

## **16. RESTORATION**

On or before the expiration of this Lease or its termination by the Lessee, the Lessee shall vacate the Leased Premises, remove the property of the Lessee, and restore the Leased Premises to a condition satisfactory to said officer. If, however, this Lease is revoked, the Lessee shall vacate the Leased Premises, remove said property and restore the Leased Premises to the aforesaid condition within such time as the said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the Leased Premises, then, at the option of the said officer, the property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this Lease in restoring the Leased Premises.

[Select one of the following conditions on non-discrimination, as appropriate, based upon the consideration.]

## **17. NON-DISCRIMINATION** [Use if lease is for fair market value]

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs, or activities conducted on the Leased Premises because of race, color, religion, sex, age, handicap, or national origin.

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**17. NON-DISCRIMINATION** [Alternate if lease is for public benefit discounted rental]

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs, or activities conducted on the Leased Premises because of race, color, religion, sex, age, handicap, or national origin.

b. The Lessee, by acceptance of this Lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees, and assignees.

**18. SUBJECT TO EASEMENTS**

This Lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the Leased Premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the Leased Premises by the Lessee.

**19. SUBJECT TO MINERAL INTERESTS**

This Lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Lessor will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the Leased Premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

[Delete the following condition if there is no rental]

**20. RENTAL ADJUSTMENT**

In the event the United States revokes this Lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this Lease. Such adjustment of rental shall be evidenced by a supplemental agreement in writing; provided, however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this Lease.



## **21. PROHIBITED USES**

a. The Lessee shall not permit gambling, except for state lottery tickets in accordance with applicable state and local laws and regulations, on the Leased Premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the Leased Premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the Leased Premises any activity which would constitute a nuisance.

b. The Lessee shall not construct or place any structure, improvement, or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

c. The Lessee shall not sell, store, or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the Leased Premises.

[If the proposed use by the lessee will allow hotel, restaurant, or other similar facilities the following paragraph may be used instead of the above c.]

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines, or other intoxicating beverages on the Leased Premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

## **22. WASTE OF NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the Leased Premises except as authorized in writing by the District Engineer.

## **23. DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee.

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However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c(2) below. [Delete the following sentence if there is no rent.] The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the  (designate Lessee's official or named individual) .

(2) For Lessee claims exceeding \$100,000, the Lessee shall submit with the claim a certification that—

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief and;

(iii) the amount requested accurately reflects the Lease adjustment for which the Lessee believes the Lessor is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For lessee-certified claims over \$100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in subparagraph c(2) of this condition, and be executed in accordance with subparagraph c(3) of this condition.

g. The Government shall pay interest or the amount found due and unpaid by the Lessor from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each six-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the Lease, pending final resolution of any request for relief, claim, or action arising under the Lease, and comply with any decision of the District Engineer.

#### **24. ENVIRONMENTAL PROTECTION**

a. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the Lessee, the Lessee shall be liable to restore the damaged resources. [Add, if applicable: The Lessee shall not discharge waste or effluent from the Leased Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.] The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the Leased Premises.

[The following provisions are based on the model EPA language. The district should closely compare the actual language in the FOSL for deviations. Use the language in the FOSL.]

b. The Lessee shall be responsible for obtaining and paying for any environmental or other permits required for its operations under the Lease, independent of any existing permits.

c. The Government's rights under this Lease specifically include the right for Government officials to inspect, upon reasonable notice, the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Government normally will give the Lessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof.

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[Note: Use the following provision, if the leased premises is part of a NPL site; Adapt to cleanup agreements under state regulatory authorities; e.g., non-NPL sites.]

d. The Government acknowledges that (insert the name of the military installation) has been identified as a National Priorities List Site under CERCLA. The Lessee acknowledges that the Government has provided it with a copy of the (military installation) Federal Facility Agreement (FFA) entered into by the United States EPA Region ( ), the State of ( ), and the Lessor and effective on \_\_\_\_\_ date, and will provide the Lessee with a copy of any amendments thereto. The Lessee agrees that should any conflict arise between the terms of the FFA, as it presently exists or may be amended, and the provisions of this Lease, the terms of the FFA will take precedence. The Lessee further agrees that notwithstanding any other provision of the Lease, the Government assumes no liability to the Lessee should implementation of the FFA interfere with the Lessee's use of the Leased Premises. The Lessee shall have no claim on account of any such interference against the United States or any officer, agent, employee, or contractor thereof, other than for abatement of rent.

[Note: Use the following provision if a Federal Facilities Agreement (FFA) or Interagency Agreement (IAG) applies to the leased premises; e.g., an NPL site.]

e. The Lessor, EPA, and the (insert State agency), their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee, and to parties in possession, to enter upon the Leased Premises for purposes consistent with the applicable provisions of the FFA, and for the following purposes:

(1) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, soil boring tests, and other activities related to the (Installation name) Installation Restoration Program, FFA, or IAG;

(2) to inspect field activities of the Lessor and its employees, agents, contractors, and subcontractors in implementing that IRP, FFA, or IAG;

(3) to conduct any test or survey required by EPA or (state agency) relating to the implementation of the FFA or environmental conditions at the Leased Premises, or to verify any data submitted to the EPA or (state agency) by the Lessor relating to such conditions; and

(4) to construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the IRP, FFA, or IAG, including, but not limited to, monitoring wells, soil removal, pumping wells, and treatment facilities.

[Note: Use the following alternative provision if the Installation Restoration Program (IRP) or other environmental investigation applies to the leased premises; e.g., a non-NPL site.]

e. The Lessor and its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee, and to parties in possession, to enter upon the Leased Premises for purposes enumerated in this subparagraph:

(1) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, soil boring tests, and other activities related to the (Installation name) Installation Restoration Program (IRP);

(2) to inspect field activities of the Lessor and its employees, agents, contractors, and subcontractors in implementing the IRP;

(3) to conduct any test or survey related to the implementation of the IRP or environmental conditions at the Leased Premises, or to verify any data submitted to the EPA or (state agency) by the Lessor relating to such conditions; and

(4) to construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the (insert name of installation) IRP, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

f. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of the above-described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee. The Lessee shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee shall comply with all applicable Federal, state, and local occupational safety and health regulations.

g. The Lessee shall comply with the requirements of 10 U.S.C. 2692(b)(9) to obtain the Lessor's approval for the storage, treatment, or disposal of toxic or hazardous materials not owned by the Department of Defense on the Leased Premises.

h. The Lessee shall comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its (state) equivalent, and any other applicable laws, rules, or regulations. Except as specifically authorized by the Lessor in writing, the Lessee must provide, at its own expense, such hazardous waste management facilities, including storage, treatment, or disposal facilities, complying with all applicable laws and regulations. Hazardous waste management facilities of the Lessor will not be available to the Lessee. Any violation of the requirements of this provision shall be deemed a material breach of this Lease.

i. Any of Lessor's accumulation points for hazardous and other wastes will not be used by the Lessee. The Lessee will not permit its hazardous waste to be commingled with hazardous waste of the Lessor.

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j. The Lessee shall have a plan approved by the Lessor for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the Leased Premises, which approval shall not be unreasonably withheld or delayed. Such plan shall be independent of (installation name) and, except for initial fire response and/or spill containment, shall not rely on use of installation personnel or equipment. Should the Lessor provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on the request of the Lessee, or because the Lessee was not, in the opinion of the Lessor, conducting timely cleanup actions, the Lessee agrees to reimburse the Lessor for its costs. The plan may be developed in phases as sublease activities are identified. Sublessees shall provide to the Lessee a plan to cover their activities and portion of the Leased Premises prior to commencement of operations on the subleased portion, which will be incorporated by the Lessee into the overall plan.

k. The Lessee shall not construct or make or permit its sublessees or assigns to construct or make any substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the Leased Premises in any way which may adversely affect the cleanup, human health, or the environment without the prior written consent of the Lessor. Such consent may include a requirement to provide the Lessor with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the United States. For construction or alterations, additions, modifications, improvements, or installations in the proximity of operable units that are part of a National Priorities List (NPL) site, such consent may include a requirement for written approval by the Lessor's Remedial Project Manager.

l. The Lessee shall not conduct or permit its sublessees to conduct any subsurface excavation, digging, drilling, or other disturbance of the surface without the prior written approval of the Lessor.

## **25. HAZARDOUS SUBSTANCES NOTICE**

To the extent such information is available on the basis of a complete search of Lessor's files, notice regarding hazardous substances stored for one year or more, known to have been released or disposed of on the Leased Premises, is provided in Exhibit G. The Lessee should consult the Condition Survey and the EBS for more detailed information.

[Include the following conditions if required by the FOSL. The FOSL is not attached as an exhibit to the lease. It is an internal decision document. Modifications of these conditions may be made to comply with the FOSL.]

[Select the appropriate condition below on lead-based paint, as applicable.]

[Alternate Condition 26 where the leased premises do not include residential housing]

**26. LEAD-BASED PAINT WARNING AND COVENANT**

a. The Leased Premises do not contain residential housing and are not being leased for residential purposes. The Lessee is notified that the Leased Premises contain buildings built prior to 1978 that contain lead-based paint. Exposure to lead from lead-based paint may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to lease.

b. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the EBS, referenced in the Condition Survey attached as Exhibit D, which has been provided to the Lessee. [If applicable: Additionally, the following reports pertaining to lead-based paint and/or lead-based paint hazards have been provided to the Lessee: \_\_\_\_\_.] Additionally, the Lessee has been provided with a copy of the federally-approved pamphlet on lead poisoning prevention. The Lessee hereby acknowledges receipt of all the information described in this subcondition.

c. The Lessee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Lease.

d. The Lessee shall not permit use of any buildings or structures on the Leased Premises for residential habitation without first obtaining the written consent of the Lessor. As a condition of its consent, the Lessor may require the Lessee to:

(1) inspect for the presence of lead-based paint and/or lead-based paint hazards;

(2) abate and eliminate lead-based paint hazards by treating any defective lead-based paint surface in accordance with all applicable laws and regulations; and

(3) comply with the notice and disclosure requirements under applicable Federal and state law. The Lessee agrees to be responsible for any future remediation of lead-based paint found to be necessary on the Leased Premises.

[Alternative Condition 26 where the leased premises contains residential housing]

**26. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT AND COVENANT**

a. The Lessee is hereby informed and does acknowledge that all buildings on the Leased Premises, which were constructed or rehabilitated prior to 1978, are presumed to

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contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 residential housing, lessors must disclose to lessees and sublessees the presence of lead-based paint and/or lead-based paint hazards therein. "Residential housing" means any housing constructed prior to 1978, except housing for the elderly (households reserved for and composed of one or more persons 62 years of age or more at the time of initial occupancy) or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. A risk assessment or inspection for possible lead-based paint hazards by the Lessee is recommended prior to lease.

b. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the EBS, referenced in the Condition Survey attached as Exhibit D, which have been provided to the Lessee. [If applicable: Additionally, the following reports pertaining to lead-based paint and/or lead-based paint hazards have been provided to the Lessee: \_\_\_\_\_.] Additionally, the Lessee has been provided with a copy of the federally-approved pamphlet on lead poisoning prevention, and acknowledges that all sublessees must also receive this pamphlet. The Lessee hereby acknowledges receipt of all of the information described in this subparagraph.

c. The Lessee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Lease.

d. The Lessee shall not permit the occupancy or use of any buildings or structures as residential housing without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of residential housing, if required by law or regulation, the Lessee, at its sole expense, will abate and eliminate lead-based paint hazards by treating any defective lead-based paint surface in accordance with all applicable laws and regulations.

e. The United States assumes no liability for remediation or damages for personal injury, illness, disability, or death to the Lessee, its successors or assigns, sublessees, or to any other person, including members of the general public, arising from or incident to possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. The Lessee further agrees to indemnify and hold harmless the United States, its officers, agents, and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. This Condition and



the obligations of the Lessee hereunder shall survive the expiration or termination of this Lease and any conveyance of the Leased Premises to the Lessee. The Lessee's obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section.

(Include the following if required by the FOSL. Modification may be made to comply with the terms of the FOSL. In particular, an alternate provision, as set forth in the FOSL, will be needed where the leased premises contain asbestos that poses an unacceptable risk to human health and the lessee is required to remediate prior to use or occupancy.)

## **27. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT**

a. The Lessee is hereby informed and does acknowledge that (friable and) non-friable asbestos or asbestos-containing materials (ACM) has been found on the Leased Premises, as described in the Condition Survey attached as Exhibit D. To the best of the Lessor's knowledge, the ACM on the Leased Premises does not currently pose a threat to human health or the environment.

b. In addition to the Lessee's general indemnity contained in the condition on **INDEMNITY AND HOLD HARMLESS**, with regard specifically to ACM, the Lessee covenants and agrees that its use and occupancy of the Leased Premises will be in compliance with all applicable laws relating to asbestos; and that the Lessor assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death to the Lessee, its successors or assigns, sublessees, or to any other person, including members of the general public, arising from, or incident to, the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Leased Premises described in this Lease, whether the Lessee, its successors or assigns have properly warned or failed to properly to warn the individual(s) injured. The Lessee agrees to be responsible for any future remediation of asbestos found to be necessary on the Leased Premises.

## **28. OTHER ENVIRONMENTAL RESTRICTION**

[Insert from the FOSL any site specific environmental restrictions or provisions, such as endangered species, underground storage tanks. The FOSL is not attached to the lease as an exhibit. It is an internal decision document.]

## **29. SITE SPECIFIC RESTRICTIONS**

[Insert from the FOSL/Report of Availability any site specific restrictions or provisions, such as UXOs, restrict use of wetlands, support coastal zone management plans, limit flood plain activities.]

[Note: Additional numbered conditions may be inserted for clarity or due to length.]

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### **30. HISTORIC PRESERVATION**

a. The Lessee shall not remove or disturb, or cause or 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 Leased Premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

b. [Include any provision required by a Memorandum of Agreement or Programmatic Agreement with the State Historic Preservation Officer and Advisory Council on Historic Preservation.]

### **31. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said Leased Premises at the beginning of or that may be constructed by the Lessee during the term of this Lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the Leased Premises. Any soil erosion occurring outside the Leased Premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

### **32. TAXES**

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the Leased Premises shall be paid promptly by the Lessee. If and to the extent that the property owned by the United States is later made taxable by state or local governments under an Act of Congress, the Lease shall be renegotiated.

### **33. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this Lease without liability or, in its discretion, to require the Lessee to pay, in addition to the Lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **34. OFFICIALS NOT TO BENEFIT**

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this Lease is for the general benefit of such corporation or company.

#### **35. SEVERAL LESSEES**

If more than one Lessee is named in this Lease the obligations of said Lessees herein contained shall be joint and several obligations.

#### **36. MODIFICATIONS**

This Lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative, and this provision shall apply to this condition as well as all other conditions of this Lease.

#### **37. NO COMMITMENTS FOR FUTURE USE**

This Lease does not commit the United States to any renewals of the use authorized herein [delete if no option to extend: beyond the extension of the term provided for in the Condition on **TERM**] or to any future reuse or disposal and does not create any right or expectation for the Lessee or its sublessees or tenants to acquire the leased property.

#### **38. DISCLAIMER**

This Lease is effective only insofar as the rights of the United States in the Leased Premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the Leased Premises. It is understood that the granting of this Lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

#### **39. AVAILABILITY OF FUNDS**

The Lessor's obligation to pay or reimburse any money under this Lease is subject to the availability of appropriated funds, and nothing in this Lease shall be interpreted to require obligations or payments by the United States in violation of the

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Anti-Deficiency Act; provided that the Lessor shall otherwise comply with applicable statutory requirements and its obligations under the terms of this lease.

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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APPENDIX 8-C

LEASE FORMATS UNDER 16 U.S.C. § 460d

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PUBLIC PARK LEASE TO  
STATES

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
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17. RESTORATION
18. NON-DISCRIMINATE ON
19. SUBJECT TO EASEMENTS
20. SUBJECT TO MINERAL INTERESTS
21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
22. HEALTH AND SAFETY
23. PUBLIC USE
24. PROHIBITED USES
25. NATURAL RESOURCES
26. DISPUTES CLAUSE
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28. PRELIMINARY ASSESSMENT SCREENING
29. HISTORIC PRESERVATION
30. SOIL AND WATER CONSERVATION
31. TRANSIENT USE
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33. OFFICIALS NOT TO BENEFIT
34. MODIFICATIONS
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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY  
LEASE TO STATES  
FOR PUBLIC PARK AND RECREATIONAL PURPOSES**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

**THIS LEASE** is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

2. **CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_;  
and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_,  
\_\_\_\_\_, 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 of the Army," "District Engineer," "said officer or "Lessor" shall

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include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

**5. DEVELOPMENT PLANS**

a. The Lessee shall be guided by an implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit \_\_\_\_\_ which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

**6. STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**.

**7. APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

**8. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and said improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the



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expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY**.

#### 9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

#### 10. **TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

#### 11. **FEEES**

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

#### 12. **ACCOUNTS, RECORDS AND RECEIPTS**

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of

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Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

**13. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**14. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**15. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**16. INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sub-lessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

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b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance,

c. The District Engineer may require closure of any or all of the premises during any period for which the sub-lessees and concessionaires do not have the required insurance coverage.

#### 17. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

#### 18. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. S 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees and assignees.

#### 19. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

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**20. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM4), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

**21. COMPLIANCE, CLOSURE, REVOICATION AND RELINQUISHMENT**

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on NOTICES.

**22. HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

**23. PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

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**24. PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

**25. NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

**26. DISPUTES CLAUSE**

Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

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(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

## 27. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby

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made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Service for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

**28. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

**29. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

**30. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

**31. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

**32. COVENANT AGAINST CONTINENT FEES**

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The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**33. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

**34. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

**35. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_



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PUBLIC PARK LEASE TO  
POLITICAL SUBDIVISIONS OF STATES

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
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28. PRELIMINARY ASSESSMENT SCREENING
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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY  
LEASE TO NON-STATE GOVERNMENTAL AGENCIES  
FOR PUBLIC PARK AND RECREATIONAL PURPOSES**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_;

and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_;

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**

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Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

#### 5. DEVELOPMENT PLANS

The Lessee shall be guided by an annual Plan of Operation and Maintenance in furtherance of the Lessee's implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit \_\_\_\_\_ which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. No later than \_\_\_\_\_ of each year the Lessee will submit the annual Plan to be mutually agreed on between the Lessee and the District Engineer. Such annual Plan shall include but is not limited to the following:

a. Plans for management, maintenance and development activities to be undertaken by the Lessee and any sublessees.

b. Report of the management, maintenance and development accomplishments of the Lessee for the preceding year.

c. Report on any significant modification of policies or procedures which are planned for the following year as well as those implemented in the preceding year.

d. Minor modifications to the Development Plan. Major modifications are to be accomplished by amendment to the Plan before proceeding to implement any changes in the development or management of the leased premises.

e. Budget of the Lessee for carrying out all activities for the upcoming year.

f. Personnel to be used in the management of the leased premises.

g. Annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

#### 6. STRUCTURE AND EQUIPMENT

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**. However, not structures may be erected or altered upon the premises unless and until the type of use, design, and proposed location or alteration thereof shall have been approved in writing by the District Engineer. The District Engineer may require the

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Lessee, upon the completion of each of the proposed developments to furnish complete "as built" construction plans for all facilities.

#### 7. **APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disability Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

#### 8. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

##### **(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY**.

#### 9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

**10. TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

**11. FEES**

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

**12. ACCOUNTS, RECORDS AND RECEIPTS**

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall establish and maintain accurate records and accounts and provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

**13. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**14. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner

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whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**15. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**16. INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum Combined Single Limit of \$ \_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee, sub-lessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

c. In the event the Lessee is self-insured, the Lessee shall certify such self-insurance in writing in the minimum amount specified above to the District Engineer. The Lessee's insurance status shall not eliminate the requirement for its sub-lessees and concessionaires to have insurance from a reputable insurance carrier as set out above.

d. The District Engineer may require closure of any or all of the premises during any period for which the Lessee and/or its sub-lessees and concessionaires do not have the required insurance coverage.

**17. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the

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premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

#### 18. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is rec Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

#### 19. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The lessee will not close any established access routes without written permission of the District Engineer.

#### 20. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

#### 21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and

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continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sub-lessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES**.

## 22. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

## 23. **PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

## 24. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the



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premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

## 25. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

## 26. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

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d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

## 27. ENVIRONMENT PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

**28. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal substances thereon is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. my such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

**29. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

**30. SOIL AND WATER CONSERVATION**

The Lessee shall maintain in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any spoil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

**31. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

**32. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full ammount of such commision, percentage, brokerage, or contingent fee.

**33. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However nothing herein contained shall be construed to extend to

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any incorporated company if the lease be for the general benefit of such corporation or company.

**34. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

**35. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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FISH AND WILDLIFE MANAGEMENT LEASE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
8. CONDITION OF PREMISES
9. FISH AND WILDLIFE ACTIVITIES
10. TRANSFERS, ASSIGNMENTS, SUBLEASES
11. ACCOUNTS, RECORDS AND RECEIPTS
12. PROTECTION OF PROPERTY
13. RIGHT TO ENTER AND FLOOD
14. LIGHTS, SIGNALS AND NAVIGATION
15. RESTORATION
16. NON-DISCRIMINATION
17. SUBJECT TO EASEMENTS
18. SUBJECT TO MINERAL INTERESTS
19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
20. HEALTH AND SAFETY
21. PUBLIC USE
22. NATURAL RESOURCES
23. DISPUTES CLAUSE
24. ENVIRONMENTAL PROTECTION
25. PRELIMINARY ASSESSMENT SCREENING
26. HISTORIC PRESERVATION
27. SOIL AND WATER CONSERVATION
28. TRANSIENT USE
29. COVENANT AGAINST CONTINGENT FEES
30. OFFICIALS NOT TO BENEFIT
31. MODIFICATIONS
32. DISCLAIMER

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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**  
**LEASE FOR**  
**FISH AND WILDLIFE MANAGEMENT PURPOSES**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section(s) \_\_\_\_\_, and for the consideration hereinafter set forth, hereby grants to the Lessee: the land and/or water areas under the primary jurisdiction of the Department of the Army as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for fish and wildlife management purposes.

THIS LEASE is granted subject to the following conditions:

**1. TERM**

Said premises are hereby granted for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_, 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

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deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

**4. AUTHORIZE REPRESENTATIVES INCLUDED**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include its successors, employees and duly authorized representatives.

**5. DEVELOPMENT PLANS**

a. The Lessee shall be guided by a Fish and Wildlife Development and Management Plan (Development Plan), attached as Exhibit \_\_\_\_\_, which shows the facilities and management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

**6. STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to accomplish the purposes of this lease. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the condition on **RESTORATION**.

**7. APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, and use of pesticides. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises, if any, have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

**8. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

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b. An inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY**.

**9. FISH AND WILDLIFE ACTIVITIES**

a. The lessee may plant or harvest crops, either directly, by service contract, by sharecrop agreements with local farmers, or by agricultural agreements to provide food and/or habitat for wildlife and for the development and conservation of land, fish and wildlife, forests, and other natural resources. Where feasible, contracts and agreements with third parties shall be by competitive bid procedures.

b. Any lands not being managed by the lessee for wildlife habitat will be made available for lease by the District Engineer for agricultural or grazing purposes under conditions which would not be incompatible with the lessee's use of the premises.

c. The Lessee may take, trap, remove, stock or otherwise control all forms of fish and wildlife on the premises, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use shall be consistent with the state laws for the protection of fish and wildlife.

**10. TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the demised premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. Agreements covered by the condition on **FISH AND WILDLIFE ACTIVITIES** are not subject to this condition.

**11. ACCOUNTS, RECORDS AND RECEIPTS**

a. All monies received by the Lessee from operations conducted on the premises may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. The District Engineer shall have the right to perform audits of the Lessee's records and accounts.

b. Payment of direct expenses is authorized for planning and development of optimum wildlife habitat including planting of wildlife food plots, necessary timber clearing, erosion control or habitat improvements such as shelter, restocking of fish and wildlife, and protection of endangered species. Payment of Lessee's employees who are directly engaged in such activities at the project is also authorized. However, proceeds will not be used for the payment of general administrative expenses.



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c. Proceeds derived from the sale of fishing and hunting leases are not subject to this condition.

**12. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**13. RIGHT TO ENTER AND FLOOD**

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 work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee.

**14. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**15. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

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**16. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7.

**17. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

**18. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

**19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to the United States in the manner prescribed in the condition on **NOTICES**.

20. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean and safe condition.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

21. **PUBLIC USE**

No attempt shall be made by the Lessee to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee under this lease to manage the premises and provide safety and security to the visiting public.

22. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the condition on **DEVELOPMENT PLANS**. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

23. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer,

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

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(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

#### 24. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the

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premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease.

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

c. The Lessee must obtain approval in writing from the District Engineer before any pesticide or herbicides are applied to the premises.

#### 25. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

#### 26. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

#### 27. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

#### 28. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

#### 29. COVENANT AGAINST CONTINGENT FEES

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The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**30. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

**31. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

**32. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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COMMERCIAL CONCESSION LEASE

1. TERM
2. CONSIDERTION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. USE AND DEVELOPMENT OF THE PREMISES
6. PERFORMANCE OF CONTRACT
7. CONDITION OF PREMISES
8. RATES AND PRICES
9. PROTECTION OF PROPERTY
10. RIGHT TO ENTER AND FLOOD
11. INDEMNITY
12. INSURANCE
13. RESTORATION
14. NON-DISCRIMINATION
15. APPLICABLE LAWS AND REGULATIONS
16. TAXES
17. SUBJECT TO EASEMENTS
18. SUBJECT TO MINERAL INTERESTS
19. TRANSFERS, ASSIGNMENTS, SUBLEASES
20. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
21. HEALTH AND SAFETY
22. PUBLIC USE
23. PROHIBITED USES
24. NATURAL RESOURCES
25. ACCOUNTS AND RECORDS
26. ENVIRONMENTAL PROTECTION
27. PRELIMINARY ASSESSMENT SCREENING
28. HISTORIC PRESERVATION
29. SOIL AND WATER CONSERVATION
30. LIGHTS, SIGNALS AND NAVIGATION
31. HUNTING AND TRAPPING
32. TRANSIENT USE
33. DISPUTES CLAUSE
34. COVENANT AGAINST CONTINGENT FEES
35. OFFICIALS NOT TO BENEFIT
36. SEVERAL LESSEES
37. MODIFICATIONS
38. DISCLAIMER

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No. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**  
**LEASE**  
**FOR COMMERCIAL CONCESSION PURPOSES**

\_\_\_\_\_  
 SITE

\_\_\_\_\_  
 PROJECT NAME

\_\_\_\_\_  
 COUNTY, STATE

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_ hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for commercial concession purposes.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_.

**2. CONSIDERATION**

a. The rent due to the United States in consideration of this lease shall be calculated using the Revised Graduated Rental System (RGRS). The total gross receipts for each rental payment period will be multiplied by the applicable percentage rate and the resulting total due payable within ten days to \_\_\_\_\_

The percentage rate for the upcoming rental year will be selected from the following RGRS rental rate chart, using the line for the total gross receipts of the ending rental year:

GROSS RECEIPTS (GR)	% RENT
Under \$50,000	2.0%
\$50,000-\$200,000	2.1%
\$200,000-\$400,000	2.2%
\$400,000-\$600,000	2.3%
\$600,000-\$800,000	2.4%
\$800,000-\$1,000,000	2.5%



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\$1,000,000-\$1,200,000	2.6%
\$1,200,000-\$1,400,000	2.7%
\$1,400,000-\$1,600,000	2.8%
\$1,600,000-\$1,800,000	2.9%
\$1,800,000-\$2,000,000	3.0%
\$2,000,000-\$2,200,000	3.1%
\$2,200,000-\$2,400,000	3.2%
\$2,400,000-\$2,600,000	3.3%
\$2,600,000-\$2,800,000	3.4%
\$2,800,000-\$3,000,000	3.5%
\$3,000,000-\$3,200,000	3.6%
\$3,200,000-\$3,400,000	3.7%
\$3,400,000-\$3,600,000	3.8%
\$3,600,000-\$3,800,000	3.9%
\$3,800,000-\$4,000,000	4.0%
\$4,000,000-\$4,200,000	4.1%
\$4,200,000-\$4,400,000	4.2%
\$4,400,000-\$4,600,000	4.3%
\$4,600,000-\$4,800,000	4.4%
\$4,800,000-\$5,000,000	4.5%
\$5,000,001 and above	4.6%

(1) Gross receipts are defined as the total of the concessionaire's receipts from business operations conducted on the premises, including receipts of sub-lessees and licensees. No reductions are permitted except the costs of hunting and fishing licenses, and license fees and taxes collected for direct remittance to a taxing authority, and the exact amount collected from customers for electrical service which is metered to the customer and collected by the Lessee as the servicing agent and paid to the power company. (OPTIONAL: Sale receipts from boats and motors are excluded and assessed a straight one-percent rent.)

(2) The rental payment shall be (monthly) (quarterly) (semi-annually) (annually) with the first payment due \_\_\_\_\_. The rental year (will begin on the beginning date of this lease, and each anniversary date thereafter) (will be a partial year the first year, beginning on the date of this lease and ending on 31 December\_\_\_\_; for each rental year thereafter, the year will begin on 1 January and end on 31 December.)

(3) RENT PAYMENT CALCULATION FORM

Reporting period \_\_\_\_\_

a) Gross receipts for this period: \$ \_\_\_\_\_

b) Rent rate: x \_\_\_\_\_

c) Amount due (a x b) \$ \_\_\_\_\_

IF OPTIONAL BOAT RATE SELECTED:

d) Boat and motor sales: \$ \_\_\_\_\_

e) Rate: x 0.01

f) Amount due (d x e) \$ \_\_\_\_\_

TOTAL DUE (C+f) \$ \_\_\_\_\_

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. § 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an

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additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charges.

### 3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_, and, if to the United States, to the District Engineer, Attn: Chief, Real Estate Division, \_\_\_\_\_, 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 of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sub-lessees, assignees, transferees, concessionaires, and its duly authorized representatives.

### 5. USE AND DEVELOPMENT OF THE PREMISES

a. The premises may be occupied and used by the Lessee or duly authorized agents, sublessees, assignees, or transferees solely for the conduct of business in connection with the recreational development of the premises for the general use of the public. Lessee shall provide facilities and activities in accordance with the Use and Development Plan and its architectural theme and sign plan, as supplemented or amended, (Development Plan) and attached hereto as Exhibit\_\_\_\_\_. **(FOR RENEWALS WITHOUT SIGNIFICANT PROPOSED NEW DEVELOPMENT, REPLACE PRECEDING SENTENCE WITH THE FOLLOWING):** Lessee shall continue to provide current facilities and activities in accordance with a Use Plan showing location of existing facilities and current activities, attached exhibit \_\_\_\_\_, and will place and maintain signs in accordance with the sign plan, attached as exhibit\_\_\_\_\_.) The sign plan will be in accordance with the Sign Standards Manual, EP 310-1-6A, Chapter 17.

b. No structure may be erected or altered upon the premises unless and until said Development Plan **(FOR RENEWALS WITHOUT A DEVELOPMENT PLAN, REPLACE "said Development Plan" with "such Structure)** has been approved in writing by the District Engineer. The District Engineer may require the Lessee, upon

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completion of each of the proposed developments, to furnish a complete "as built" site plan and "as built" construction plans for all facilities with certification by a Professional Engineer that the construction meets all codes and standards.

**(DELETE THE FOLLOWING CONDITION FOR RENEWAL WITHOUT DEVELOPMENT PLANS)**

c. The District Engineer may agree in writing to an extension of time for providing the facilities and activities designated in said Development Plan or may waive the providing thereof for other than those specified for the first lease year as designated in said development Plan, whenever, in the opinion of the District Engineer, the public demand does not reach the anticipated level at the time stated, or when a delay in providing the facilities and services is beyond the control of the Lessee; provided, however, that at the discretion of the District Engineer, such undeveloped areas may be withdrawn from the leased premises.

d. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. Modifications to said Development Plan must be approved in writing by the District Engineer prior to implementation of the change.

e. All structures and equipment furnished by the Lessee shall be and remain the property of the Lessee, except as otherwise provided in the Condition on RESTORATION.

**(DELETE THE FOLLOWING CONDITION FOR LEASE RENEWALS)**

**6. PERFORMANCE OF CONTRACT**

The Lessee agrees to obtain and deliver to the District Engineer, within thirty (30) days, either a valid surety bond issued by a surety corporation licensed by a state regulatory entity, a performance deposit, or an irrevocable letter of credit issued by a Federally insured financial institution in a form satisfactory to the District Engineer. Said surety bond, performance deposit, or letter of credit shall be in the sum of \$\_\_\_\_\_, payable to the United States, and conditioned upon full and satisfactory performance of the obligations of the Lessee herein set forth in this lease. To insure favorable performance by the Lessee of all the covenants, terms and conditions of this lease, said deposit shall be retained or said bond or letter of credit shall be kept in full force and effect by the Lessee until released in writing by the District Engineer upon completion of the development set out in said Development Plan, attached as Exhibit \_\_\_\_\_, as supplemented or amended, is completed.

**7. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and of the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be

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either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY.**

**8. RATES AND PRICES**

a. The rates and prices charged by the Lessee or its sub-lessees shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The District Engineer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. The Lessee shall keep such rates and prices posted at all times in an appropriate and conspicuous place on the premises. The District Engineer may require submission of a schedule of the rates and prices at any time.

b. However, no user fees may be charged by the Lessee or its sublessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

**9. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**10. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**11. 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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**12. INSURANCE**

a. At the commencement of this lease, the Lessee will obtain from a reputable insurance company, or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and

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consistent with sound business practices or a minimum Combined Single Limit of \$\_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee under the terms and conditions of this lease, and the Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, a certificate of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance coverage required. The policy shall provide that the insurance company give the District Engineer thirty (30) days written notice of any cancellation, non-renewal or change in such insurance.

b. The lessee's sublessees and licensees, at the commencement of operating under the terms of this lease, shall obtain from a reputable insurance company or companies liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sublessees and licensees under the terms of this lease. The lessee shall require any insurance carrier or carriers to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

c. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

d. As to those structures and improvements on the premises constructed by or at the expense of the United States, for such periods the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration, or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration, or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however, that the insurer, after payment of any proceeds to the Lessee in accordance with the provisions of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore, or replace the leased premises or any part thereof.

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**13. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

**14. NON-DISCRIMINATION**

The Lessee 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 leased premises. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

**15. APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable codes.

**16. TAXES**

Payment of any and all taxes imposed by the state or its political subdivisions upon the property or business of the Lessee on the premises is the responsibility of the Lessee.

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17. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easments subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The lessee will not close any established access routes without written permission of the District Engineer.

18. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to Federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

19. **TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease or a controlling interest therein (including, without limitation, mergers, consolidations, reorganizations, or other business combinations), nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease, nor shall this lease be assignable or transferable by process or operation of law including, but not limited to, insolvency proceedings, bankruptcy, or intestacy, or in any other manner whatever.

(1) Failure to comply with this condition or the procedures described herein shall constitute a material breach of this lease for which this lease may be revoked immediately by the District Engineer, and, the secretary shall not be obligated to recognize any right of any person or entity to an interest in this lease or to own or operate the facilities authorized hereunder acquired in violation hereof.

(2) The Lessee shall advise the person(s) or entity proposing to enter into a transaction described in Subsection a. above that the District Engineer shall be notified and that the proposed transaction is subject to review and approval by the District Engineer. The Lessee shall request in writing the District Engineer's approval of the proposed transaction and shall promptly provide the District Engineer all relevant documents related to the transaction, and the name(s) and qualifications of the person(s) or entity involved in the proposed transaction.

b. The District Engineer, in exercising discretion to approve or disapprove transfer, assignments, or subleases, shall among other matters, take into consideration the management qualifications of the individuals or entities that would thereby obtain a controlling interest in the facilities or services authorized hereunder, the experience of such individuals or entities with similar operations, and the ability of such individuals or entities to operate the operations authorized hereunder in the public interest.

c. The term "controlling interest" in a Lessee's ownership shall mean, in the instance of a corporate Lessee, an interest beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of substantial managerial influence over the operations of the

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Lessee, and, in the instance of a partnership, joint venture, or individual Lessee, any beneficial ownership of the capital assets of the Lessee sufficient to permit substantial managerial influence over the operations of the Lessee. The District Engineer will determine at the request of interested parties whether or not an interest in a lease constitutes a controlling interest within the meaning hereof.

d. The Lessee may not enter into any agreement with any entity or person, except employees of the Lessee, to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without the prior written approval of the District Engineer.

e. No mortgage shall be executed, and no bonds, shares of stock, or other evidence of interest in, or indebtedness upon the assets of the Lessee located on the premises, including this lease, shall be issued, except for the purposes of installing, enlarging, refinancing or improving concession plant, equipment and facilities, provided that, such assets, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of other assignment, transfer, or encumbrance, the creditor or any assignee thereof shall succeed to the interest of the Lessee in such assets but shall not thereby acquire operating rights or privileges. Such rights or privileges shall be subject to disposition by the District Engineer.

f. The lessee may allow independent private service companies to enter and conduct business on the premises for the benefit of the Lessee's customers on an as-called basis without a formal sublease or license agreement, provided that the service is occasional and incidental to the Lessee's operation and that any compensation paid to the Lessee is included in gross receipts.

g. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The lessee will not subdivide nor develop the premises into private residential development.

## 20. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of its terms and conditions and continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving six months prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES**.



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c. In addition to the above right of revocation, if the rent or other payments provided to be paid by the Lessee or any part thereof shall be in arrears and unpaid for thirty (30) days after the same shall become due, then, and in such case, the District Engineer may elect to revoke this lease by notification in writing to the Lessee.

#### 21. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sublessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to the health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee will be obligated to pay rental, notwithstanding any interruption or suspension of activities. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

#### 22. PUBLIC USE

No attempt shall be made by the Lessee, nor any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

#### 23. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

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24. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Condition on **USE AND DEVELOPMENT OF THE PREMISES** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber.

25. **ACCOUNTS AND RECORDS**

a. The Lessee shall maintain complete and accurate records and no later than 120 days following the end of the Lessee's fiscal year shall submit to the District Engineer reports and data for the preceding year to include a financial statement for the activity covered by the lease and compiled by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state.

b. The District Engineer shall have the right at any time (1) to verify all financial reports and copy the books, correspondence, memoranda, income tax returns and other records of the Lessee and sublessees, if any, and of the records of proprietary or affiliated companies, if any, related to this lease during the period of the lease (This right shall extend for such time thereafter as may be necessary to accomplish such verification, but in no event more than five (5) years after the close of the business year of the Lessee); (2) to require the Lessee to furnish an audited financial statement; or (3) to require the Lessee to furnish an audited statement of gross receipts for the concession operation, including the gross income of any sublease operation, and certification of the accuracy of the reported income.

c. Statements will be prepared by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state. Audits will be in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountant. Financial statements requiring audits and accompanied by remarks such as "prepared from client records without audit" are unacceptable. Audited and reviewed financial statements shall contain appropriate footnotes. The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial report are consistent with those included in the Federal tax returns. If the amounts are not consistent, then a statement showing differences shall be included. An audit of Lessees tax returns is not required.

26. **ENVIRONMENT PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation

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facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the property in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

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

c. The lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

#### **27. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

#### **28. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

#### **29. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected as directed by the District Engineer.

#### **30. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

#### **31. HUNTING AND TRAPPING**

The Lessee shall not hunt or trap or allow hunting or trapping on the premises.

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32. **TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites, said system to be acceptable to the District Engineer.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees, residing on the premises, for security purposes, if authorized by the District Engineer.

33. **DISPUTES CLAUSE**

Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-6113) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

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d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the Condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

#### 34. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

#### 35. **OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

#### 36. **SEVERAL LESSEES**

If more than one Lessee is named in this lease the obligations of said Lessees herein contained shall be joint and several obligations.

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37. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

38. **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 lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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PARK LEASE TO NONPROFIT ORGANIZATIONS

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No. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**

**LEASE TO NONPROFIT ORGANIZATION  
FOR PARK AND RECREATIONAL PURPOSES**

\_\_\_\_\_  
SITE

\_\_\_\_\_  
PROJECT NAME

\_\_\_\_\_  
COUNTY, STATE

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration set forth herein, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises for

\_\_\_\_\_

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

a. The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 USC Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue



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from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

**2. CONSIDERATION (ALTERNATE) (USE ONLY WITH THE ALTERNATE CONDITION ON NON-DISCRIMINATION)**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_, 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 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 of the Army", "District Engineer" or "said officer" shall include their duly authorized representatives. Any reference to "lessee" shall include, assignees, transferees, successors and their duly authorized representatives.

**5. SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

**6. APPLICABLE LAWS AND REGULATIONS**

a. The lessee shall comply with all applicable federal laws and regulations and with all applicable laws, ordinances and regulations of the state, county and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

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b. The lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the Lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the Lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable codes.

#### 7. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by said officer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. The report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY**.

#### 8. **DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises for park or recreation purposes only and in accordance with a development and management plan as approved in writing by said officer. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. The Lessee also agrees to prohibit any exclusive or private use of all or any part of the premises by any individual or group of individuals. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the Condition on **RESTORATION**, and shall be maintained by the Lessee to the satisfaction of said officer.

#### 9. **AVAILABILITY OF THE PREMISES**

The Lessee agrees that the premises are leased for organized group recreational use only and that the premises and the facilities thereon must be made available on a rotational basis among any various groups within the lessee organization, and their guests. The Lessee further agrees to make the site and facilities available to other nonprofit organizations on a first come, first served reservation basis when not scheduled for use by members of the Lessee organization. The Lessee will not unreasonably withhold availability to such organizations.

#### 10. **TRANSFERS AND ASSIGNMENTS**

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a. Without prior written approval of said officer the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by said officer.

b. The Lessee will not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

**11. FEES**

Fees may be charged by the Lessee for use of the premises or facilities constructed thereon. The said officer shall have the right to review such fees and require an increase or reduction when it is determined that the objectives of this lease have been violated. However, no user fees may be charged by the Lessee for use of facilities developed in whole or in part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law. All monies received by the Lessee from operations conducted on the premises must be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Any such monies not so utilized or programmed for use within a reasonable time shall be paid to said officer at the end of each 5 year period. The Lessee shall furnish annual statements of receipts and expenditures to said officer.

**12. PROTECTION OF PROPERTY**

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

**13. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

**14. INSURANCE**

a. At the commencement of this, the Lessee shall obtain from a reputable insurance company or companies, liability insurance. The insurance

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shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit in the amount of \$ \_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the lessee under the terms of this lease. The Lessee shall require its insurance company to furnish to said officer a copy of the policy or policies, or if acceptable to said officer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give said officer thirty (30) days written notice of any cancellation or change in such insurance. Said officer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain, at the Lessees cost, a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purpose hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

**15. 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 of the lessee, or for damages to the property or injuries to the person of the lessee'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 lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**16. RESTORATION**

On or before the expiration of this lease or its termination by the lessee, the Lessee shall vacate the premises, remove the property of the

lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, said property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

**17. NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

**17. NON-DISCRIMINATION (ALTERNATE) (USE ONLY WITH THE ALTERNATE CONDITION ON CONSIDERATION)**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

**18. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the Lessee.

**19. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said

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mineral leases that are designed to protect the premises from activities that would interfere with the lessee's operations or would be contrary to local law.

**20. COMPLIANCE, CLOSURE, REVOCATION, AND RELINQUISHMENT**

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by said officer. This lease may be revoked in the event the Lessee violates any of its terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Decisions by the said officer concerning future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall reflect the lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to said officer in the manner prescribed in the condition on NOTICES.

**21. HEALTH AND SAFETY**

a. The lessee shall keep the premises in good order and in a clean, sanitary and safe condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed until such condition is corrected and the danger eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

**22. PUBLIC USE**

The lessee shall not forbid the full use by the public of the water areas of the project, subject however, to the authority and responsibility of the Lessee to carry out its responsibilities under this lease to manage the premises and provide safety and security to the facility users.

**23. PROHIBITED USES**

a. The lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

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b. In accordance with state and local laws and regulations, the Lessee may store, or dispense, or permit the storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises for members of the lessee organization and their guests. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

#### 24. NATURAL RESOURCES

The lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT PLANS**. The lessee may salvage fallen or dead timber on the leased premises for use as firewood only. All sales of timber or forest products will be conducted by the United States and the proceeds therefrom shall not be available to the lessee under the provisions of this lease.

#### 25. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) (i) If the Lessee is an individual, the certificate shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by:

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(A) A senior company official in charge at the Lessee's location involved; or

(B) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim or action arising under the lease, and comply with any decision of said officer.

## 26. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The lessee shall require all sanitation facilities on boats moored at the lessee's facilities to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The lessee 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 lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising



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from the lessee's activities, the lessee shall be liable to restore the damaged resources.

c. The lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**27. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit         . Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

**28. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbances until said officer gives clearance to proceed.

**29. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by said officer.

**30. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes if authorized by said officer.

**31. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

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**32. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

**33. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

**34. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_

THIS LEASE is also executed by the lessee this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_

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PRIVATE RECREATION LEASE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE DISTRICT ENGINEER
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. DEVELOPMENT AND MANAGEMENT PLANS
9. TRANSFERS AND ASSIGNMENTS
10. PROTECTION OF PROPERTY
11. RIGHT TO ENTER AND FLOOD
12. INDEMNITY
13. RESTORATION
14. NON-DISCRIMINATION
15. SUBJECT TO EASEMENTS
16. SUBJECT TO MINERAL INTERESTS
17. COMPLIANCE, CLOSURE, REVOCATION, RELINQUISHMENT
18. HEALTH AND SAFETY
19. PROHIBITED USES
20. NATURAL RESOURCES
21. DISPUTES CLAUSE
22. ENVIRONMENTAL PROTECTION
23. PRELIMINARY ASSESSMENT SCREENING
24. HISTORIC PRESERVATION
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27. OFFICIALS NOT TO BENEFIT
28. MODIFICATIONS
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NO \_\_\_\_\_  
DEPARTMENT OF THE ARMY  
LEASE FOR  
PRIVATE RECREATION PURPOSES

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
PROJECT

\_\_\_\_\_  
COUNTY, STATE

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_ hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises for private recreation purposes consisting of \_\_\_\_\_

\_\_\_\_\_.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

A. The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$\_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 USC Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

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(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### 3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_, 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 of the Army", "District Engineer" or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include, assignees, transferees, successors and their duly authorized representatives.

### 5. SUPERVISION BY THE DISTRICT ENGINEER

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

### 6. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable federal, laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

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c. In addition to other applicable codes, the Lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the Lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable NFPA codes.

**7. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by said officer and the Lessee to reflect the condition of said property and improvements. A copy of said report is to be attached as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. The report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY**.

**8. DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises for private recreation purposes only and in accordance with a development and management plan as approved in writing by said officer. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the condition on RESTORATION, and shall be maintained by the Lessee to the satisfaction of said officer.

**9. TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of said officer the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by said officer.

b. The Lessee shall not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee shall not subdivide nor develop the premises into private residential development.

**10. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property

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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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

**11. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

**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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**13. RESTORATION**

On or before the expiration of this lease or its termination by the lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, said property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

**14. NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

**15. SUBJECT TO EASEMENTS**

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This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the Lessee.

#### **16. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

#### **17. COMPLIANCE, CLOSURE, REVOCATION, AND RELINQUISHMENT**

a. The Lessee is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by said officer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to said officer in the manner prescribed in the condition on **NOTICES**.

c. In addition to the above right of revocation, if the rent or other payments provided to be paid by the Lessee or any part thereof shall be in arrears and unpaid for thirty (30) days after the same shall become due, then, and in such case, the said officer may elect to revoke this lease by notification in writing to the Lessee.

#### **18. HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, safe and sanitary condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed until such condition is corrected and the danger eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.



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19. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the Lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

b. In accordance with state and local laws and regulations, the Lessee may store, or dispense, or permit the storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises for members of the Lessee organization and their guests only.

c. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees, residing on the premises, for security purposes, if authorized by said officer.

20. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT PLANS**. The Lessee may salvage fallen or dead timber, however, no commercial use shall be made of such timber. All sales of timber or forest products will be conducted by the United States and the proceeds therefrom shall not be available to the lessee under the provisions of this lease.

21. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

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- (i) The claim is made in good faith;
  - (ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and
  - (iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.
- (3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:
- (i) A senior company official in charge at the Lessee's location involved; or
  - (ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.
- d. For Lessee claims of \$50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.
- e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.
- f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c.(3) of this clause.
- g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.
- h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim or action arising under the lease, and comply with any decision of said officer.

## 22. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or

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instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The lessee 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 lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the lessee's activities, the lessee shall be liable to restore the damaged resources.

c. The lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

#### 23. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirement of the Lessee. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

#### 24. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbances until said officer gives clearance to proceed.

#### 25. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by said officer.

#### 26. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

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27. **OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

28. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

29. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_

THIS LEASE is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

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COOPERATIVE ASSOCIATION LEASE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE DISTRICT ENGINEER
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. TRANSFERS AND ASSIGNMENTS
9. FEES, RATES AND PRICES
10. DEVELOPMENT AND MANAGEMENT PLANS
11. PROTECTION OF PROPERTY
12. RIGHT TO ENTER AND FLOOD
13. INSURANCE
14. INDEMNITY
15. RESTORATION
16. NON-DISCRIMINATION
17. SUBJECT TO EASEMENTS
18. SUBJECT TO MINERAL INTERESTS
19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
20. HEALTH AND SAFETY
21. PUBLIC USE
22. PROHIBITED USES
23. NATURAL RESOURCES
24. DISPUTES CLAUSE
25. ENVIRONMENTAL PROTECTION
26. PRELIMINARY ASSESSMENT SCREENING
27. HISTORIC PRESERVATION
28. SOIL AND WATER CONSERVATION
29. TRANSIENT USE
30. COVENANT AGAINST CONTINGENT FEES
31. OFFICIALS NOT TO BENEFIT
32. MODIFICATION
33. DISCLAIMER

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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**

**LEASE TO NONPROFIT ORGANIZATION  
FOR COOPERATIVE MANAGEMENT OF**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, a non-profit corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and pursuant to a Cooperative Agreement dated \_\_\_\_\_, hereinafter referred to as the Agreement, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_ attached hereto and made a part hereof, hereinafter referred to as the premises, for the development and management, in cooperation with the Secretary.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee, in cooperation with the Secretary, for the benefit of the United States and the general public in accordance with the terms of this lease and those of the Agreement. It is understood and agreed that this lease will be controlling if there are any conflicts between the two documents.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_

and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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

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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 of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, successors, and its duly authorized representatives.

**5. SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision of the District Engineer, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer, including any special provisions that may be established due to the cooperative joint management of the premises by the Lessee and the United States as contemplated by the Agreement.

**6. APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county, and municipal laws, ordinances and regulations wherein the premises are located.

**7. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, Repairs to additions thereto except as may be required to carry out its responsibilities pursuant to the terms of the Agreement.

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the said officer and the Lessee to reflect the condition of the said property and improvements. A copy of the said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such settlement will take into account the cooperative relationship of the parties, and will reflect an equitable apportionment of damages.

**8. TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of the said officer the lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the said officer.

b. The Lessee shall not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

**9. FEES, RATES AND PRICES**

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The Lessee may charge a general admission fee and/or fees for visitor/interpretative services or special events. The said officer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. However, no user fees may be charged by the Lessee for use of facilities developed in whole or in part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law. Monies received by the Lessee from operations conducted on the premises shall be utilized by the Lessee to fulfill its obligations under the Agreement. The Lessee shall furnish an annual report of itemized receipts and expenditures to said officer.

**10. DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises in accordance with the Agreement. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. The Lessee also agrees to prohibit any exclusive or private use of all or any part of the premises by any individual or group of individuals. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the Condition on **RESTORATION**, and shall be maintained by the Lessee to the satisfaction of said officer.

**11. PROTECTION OF PROPERTY**

The lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the lessee under this lease, 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 lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the lessee to a condition satisfactory to the said officer, or at the election of the said officer, reimbursement made therefor by the lessee in an amount necessary to restore or replace the property to a condition satisfactory to the said officer.

**12. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

**13. INSURANCE**

a. At the commencement of this lease, the lessee shall obtain, from a reputable insurance company or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit in the amount of \$\_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall require the insurance company or companies to furnish the said officer a copy



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of the policy or policies, or if acceptable to the said officer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the said officer thirty (30) days written notice of any cancellation or change in such insurance. The said officer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain, at the Lessee's cost, a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purpose hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

**14. 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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**15. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and

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restore the premises, then, at the option of the said officer, said property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

**16. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation. 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

**17. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of the said officer, interfere with the use of the premises by the Lessee.

**18. SUBJECT TO MINERAL INTEREST**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

**19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee and/or any sublessees or licenses are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the said officer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance.

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Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving Ninety (90) days prior written notice to the said officer in the manner prescribed in the Condition on NOTICES.

#### 20. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, the said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

#### 21. PUBLIC USE

The Lessee shall not forbid the full use by the public of the water areas of the project, subject however, to the authority and responsibility of the Lessee to carry out its responsibilities under this lease to manage the premises and provide safety and security to the facility users.

#### 22. PROHIBITED USES

The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the Lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

#### 23. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT**. The Lessee may salvage fallen or dead timber on the premises for use as firewood. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

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#### 24. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. § 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph C. (2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A Claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that--

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

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g. The Government shall pay interest or the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the said officer.

#### 25. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. Services for waste disposal shall be provided by the Lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

#### 26. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit         . Upon expiration, revocation, or relinquishment of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining the environmental restoration requirements of the Lessee. Appropriate consideration will be given to the cooperative relationship between the parties.

#### 27. **HISTORIC PRESERVATION**

Except as may be otherwise provided in the Agreement, the Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the said officer and protect

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the site and the material from further disturbance until the said officer gives clearance to proceed.

**28. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. My soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

**29. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes if authorized by said officer.

**30. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

**31. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

**32. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

**33. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of

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this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. § 403), and Section 404 of the Clean Waters Act (33 U.S.C. § 1344) .

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_

THIS LEASE is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

(ADD THE CORPORATE CERTIFICATE FORMAT)

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RECREATION COST SHARE LEASE TO STATES

1. TERM
2. CONSIDERATION AND OBLIGATIONS
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
8. CONDITION OF PREMISES
9. FACILITIES AND SERVICES
10. TRANSFERS AND ASSIGNMENTS
11. FEES
12. ACCOUNTS, RECORDS AND RECEIPTS
13. PROTECTION OF PROPERTY
14. RIGHT TO ENTER AND FLOOD
15. LIGHTS, SIGNAL AND NAVIGATION
16. INSURANCE
17. RESTORATION
18. NON-DISCRIMINATION
19. SUBJECT TO EASEMENTS
20. SUBJECT TO MINERAL INTERESTS
21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
22. HEALTH AND SAFETY
23. PUBLIC USE
24. PROHIBITED USES
25. NATURAL RESOURCES
26. DISPUTES CLAUSE
27. ENVIRONMENTAL PROTECTION
28. PRELIMINARY ASSESSMENT SCREENING
29. HISTORIC PRESERVATION
30. SOIL AND WATER CONSERVATION
31. TRANSIENT USE
32. HOLD HARMLESS
33. COVENANT AGAINST CONTINGENT FEES
34. OFFICIALS NOT TO BENEFIT
35. MODIFICATIONS
36. DISCLAIMER



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NO. \_\_\_\_\_

DEPARTMENT OF THE ARMY  
LEASE TO STATES  
FOR COST-SHARED PUBLIC PARK AND RECREATIONAL PURPOSES

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

THIS LEASE is made on behalf of the United States, between the SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Sections 460d and 4601-13, and Title 33, United States Code, Section 2213, and pursuant to a Project Cooperation Agreement entered into on \_\_\_\_\_ (hereinafter referred to as the PCA), and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_ attached hereto and made a part hereof, hereinafter referred to as the praires, for public park and recreational purposes.

THIS LEASE is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of fifty (50) years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_.

**2. CONSIDERATION AND OBLIGATIONS**

The consideration for this lease is the operation and maintenance of the premises and the operation, maintenance, replacement and rehabilitation of the facilities and improvements shown on the inventory prepared under the condition on CONDITION OF THE PREMISES, by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth. As used in this lease the term "replacement" shall be construed to mean the replacement in whole or in part of any structure or improvement so worn or damaged by any cause as to no longer adequately serve its designed function with normal maintenance. As used in this lease the term "rehabilitation" shall mean to restore in whole or in part any structure or improvement to a good and useable condition.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee to \_\_\_\_\_

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\_\_\_\_\_ and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_

\_\_\_\_\_, 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 of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives: Any reference to "Lessee" shall include sublessees, transferees, concessionaires, and its duly authorized representatives.

#### 5. DEVELOPMENT PLANS

a. The Lessee shall be guided by an implementing Plan of Recreation Development and Management (Development Plan) \*\* NOTE adopted pursuant to Article I of the PCA and by this reference made a part hereof and the management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

**\*\*NOTE** The PCA, Art. I, attaches project technical documents, i.e. feasibility studies, GDM. If Federal land will be provided for recreational development, then the documents need to have the same details that would be in a non-cost shared park lease Development Plan.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

#### 6. STRUCTURES AND EQUIPMENT

The Lessee shall have the right, during the term of the lease at its own expense, to erect additional structures and to provide such equipment upon the premises as may be necessary to furnish additional facilities and services in accordance with an approved amendment to the Plan as provided in the condition on **DEVELOPMENT PLANS**. Those additional structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**, and shall not be added to the inventory described in the Condition on **CONDITION OF THE PREMISES**.

#### 7. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of law cited in the granting clause.

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b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitation Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

#### 8. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises and all structures and improvements, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

b. As of the date of this lease an inventory and condition report of all personal property and improvements constructed in whole or in part with Federal funds under the terms of the PCA included in this lease shall be made by a representative of the District Engineer and a representative of the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement.

#### 9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sublessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

#### 10. **TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease or any property constructed in whole or in part with Federal funds on the premises. The lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodation, or personal property on the premises. The lessee will not subdivide nor develop the premises into private residential development.

b. The Lessee shall neither sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without prior written permission from the District Engineer.

**(ALTERNATE b.) USE IF THE ENTIRE WATER RESOURCE DEVELOPMENT PROJECT IS LEASED SO THAT THE STATE IS THE PRIMARY LAND MANAGER**

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b. The Lessee may grant permits and licenses to adjacent private property owners for use of a portion of the premises if the use is conditioned on:

- (1) Unrestricted use by the general public,
- (2) Free and unimpeded passage along the shore,
- (3) Compatibility with the Plan and the Environmental Impact Statement adopted for the project,
- (4) Signs being posted to the effect that "This is public property open to the general public."

#### 11. FEES

Fees may be charged by the lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sublessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

#### 12. ACCOUNTS, RECORDS AND RECEIPTS

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee to fulfill its obligations under the PCA. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sublessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

#### 13. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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.

#### 14. RIGHT TO ENTER AND FLOOD

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 work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee.

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**15. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**16. INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sublessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

c. The District Engineer may require closure of any or all of the premises during any period for which the sublessees and concessionaires do not have the required insurance coverage.

**17. RESTORATION**

On or before the expiration of this lease, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and so restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

**18. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102);

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the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

#### **19. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

#### **20. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Department of the Army will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

#### **21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

The Lessee and/or any sublessees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such violation. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent.

#### **22. HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sublessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions within the area covered by the lease that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its concessionaires or sublessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

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**23. PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sublessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee under this lease to manage the premises and provide safety and security to the visiting public.

**24. PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

**25. NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

**26. DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613)(the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim

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under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that--

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.



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## 27. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The disposal of any toxic or hazardous materials within the premises is specifically **PROHIBITED**. The Lessee shall comply promptly 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. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

## 28. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

## 29. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

## 30. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

## 31. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60)

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consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

**32. HOLD HARMLESS**

The Lessee shall hold and save the Government free from damages arising from the operation, maintenance, replacement and rehabilitation of the premises and the facilities and improvement, except for damages due to the fault or negligence of the Government or the Government's contractors.

**33. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**34. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

**35. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

**36. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ .

\_\_\_\_\_

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**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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CONTRACT NO. \_\_\_\_\_

DEPARTMENT OF THE ARMY  
LEASE  
FOR COTTAGE SITE PURPOSES

\_\_\_\_\_  
SITE  
\_\_\_\_\_  
PROJECT NAME  
\_\_\_\_\_  
COUNTY, STATE

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and of Section 1134 of the Act of Congress approved 17 November 1986 (P.L. 99-662) and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for recreational cottage site purposes and purposes incidental thereto.

That this lease grants no vested property rights but affords only a limited right to occupy the land pending termination as set out in Condition 14.

**THIS LEASE** is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term beginning \_\_\_\_\_, 19\_\_, and ending on \_\_\_\_\_ 20\_\_, or until such time as the lease is terminated by the lessee, or by the secretary, as set out in Condition 14 on Termination.

2. **CONSIDERATION**

a. The consideration for this lease is the fair market rental, reviewed and adjusted every 5 years for compliance with fair market value, of the initial sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), payable as shown in the attached Exhibit A in advance to the order of the Finance and Accounting Officer (FAO), \_\_\_\_\_, and delivered in the same manner as set out in condition 3 on Notices.

b. All rent and other payments due under the terms of this instrument must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, Title 31, United

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States Code, Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from the due date. An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

### **3. NOTICES**

All notices to be given pursuant to this lease shall be addressed, if to the Lessee, to if to the United States, to the District Engineer, \_\_\_\_\_ hereinafter referred to as the District Engineer, 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 or branch post office regularly maintained by the United States Postal Service.

### **4. AUTHORIZED REPRESENTATIVES INCLUDED**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, and their duly authorized representatives.

### **5. APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, use of pesticides, licenses or permits. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer and to such rules and regulations as may be prescribed from time to time.

### **6. USE OF THE PREMISES**

a. The leased premises may be used by the lessee, lessee's family, agents, and guests, for recreational cottage site purposes and purposes incidental thereto and for no other different object or purpose. The lessee may maintain an existing private recreational dwelling, and may maintain existing accessory improvements, but agrees not to unreasonably expand these existing improvements. These existing improvements erected by the lessee or a predecessor under a previous lease shall remain the property of lessee, subject, however, to the provisions of Condition 15 hereof, and shall be maintained by the lessee in a usable and safe condition. Failure to maintain may be grounds for termination under Condition 14.

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b. No improvement may be erected, expanded or altered upon the premises unless and until the type of use, design, and proposed location or alterations thereof shall have been approved in writing by the District Engineer.

**7. CONDITION OF PREMISES**

The Lessee acknowledges that he has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**8. TRANSFERS, ASSIGNMENTS, SUBLEASES**

The Lessee shall neither transfer nor assign this lease or any property on the demised premises, nor sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, in license whatsoever in connection with this lease without permission in writing from the District Engineer. The provisions and conditions of this instrument shall extend to and be binding upon and shall inure to the benefit of the lessee's heirs, representatives, successors and assigns.

**9. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all improvements, trees or timber, and other 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer or at the election of the District Engineer, reimbursement may be made at the current market value.

**10. RIGHT TO ENTER AND FLOOD**

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 work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

b. This property is located within the 100-year floodplain and is subject to periodic flooding. This lease is subject to floodplain management requirements unless inconsistent with the approved cottage site use.

**11. HOLD HARMLESS**

The lessee agrees to hold the United States harmless from any claim for damages or injury to persons or property arising from the occupancy of or through the use of the premises.

**12. LIGHTS, SIGNALS AND NAVIGATION**

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There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**13. PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which, in the opinion of the District Engineer, is contrary to good morals or is otherwise objectionable; or use the premises or permit them to be used for any illegal or immoral business or purpose. There shall not be carried on or permitted upon the premises any activity which would constitute a nuisance and the Lessee will use the premises in a quiet and inoffensive manner.

b. The Lessee will not conduct any commercial or business activities on the premises.

**14. TERMINATION**

a. This lease may be terminated by the lessee, any successors or assigns of the lessee, at any time by giving ten-days' notice in writing to the District Engineer. Provided that, in case of such termination, no remission shall be made by the United States of any rental theretofore paid, and provided further that, in the event that the notice is not given at least ten days prior to the next rental due date, the lessee shall be required to pay that rental payment. Abandonment or nonuse of the premises for one year or nonpayment of the rent for 90-days past the due date will be considered notice of termination of the lease by the lessee.

b. The Secretary may terminate this lease only if the premises are needed for immediate use for public park purposes or other higher public use or for a navigation or flood control project; or if lessee substantially violates a provision of the lease. The lessee is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies and with compliance with reasonable requests by the District Engineer. The lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. A termination notice will be given in writing to the lessee at least 30 days prior to the termination date and designating the time for compliance with Condition 15.

c. In the event of termination by the lessee or the Secretary, the District Engineer may re-enter the premises andg from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

d. This lease does not exclude lessee from being required to obtain a Department of the Army permit under 33 U.S.C 403 or Section 404.

**22. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

**23. SOIL AND WATER CONSERVATION**

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The Lessee shall maintain, in a manner satisfactory to the District Engineer, all terraces, retaining walls, drop structures, revetments and other soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the use and maintenance of the premises by the Lessee shall be in accordance with good soil and water conservation practices.

**24. SEVERAL LESSEES**

If more than one lessee is named in this lease the obligations of said lessees shall be joint and several obligations.

**25. HUNTING AND TRAPPING**

The Lessee shall not hunt or trap or allow hunting or trapping on the premises.

**26. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, id States in the premises are concerned. The lessee shall obtain any further permission necessary on account of any other existing rights.

Before the execution of this lease, conditions were deleted, revised and added in the following manner:

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_

THIS LEASE is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_



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APPENDIX 8-D  
EASEMENT AND CONSENT FORMATS

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ELECTRIC POWER OR COMMUNICATION EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. INSPECTION AND REPAIRS
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. TRANSFERS AND ASSIGNMENTS
12. INDEMNITY
13. SUBJECT TO EASEMENTS
14. REQUIRED SERVICES
15. RELOCATION OF FACILITIES
16. TERMINATION
17. SOIL AND WATER CONSERVATION
18. ENVIRONMENTAL PROTECTION
19. PRELIMINARY ASSESSMENT SCREENING
20. HISTORIC PRESERVATION
21. NON-DISCRIMINATION
22. RESTORATION
23. DISCLAIMER

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_  
EASEMENT FOR ELECTRIC POWER OR  
COMMUNICATION FACILITY  
LOCATED ON

\_\_\_\_\_  
(Project, Installation)

\_\_\_\_\_  
County, State

**THE SECRETARY OF THE** \_\_\_\_\_, under and by virtue of the authority vested in the Secretary by Title 43, United States Code, Section 961, having found that the granting of this easement is not incompatible with the public interest, hereby grants to:

\_\_\_\_\_  
hereinafter referred to as the grantee, an easement for

\_\_\_\_\_  
hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibit(s) \_\_\_\_\_, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

**THIS EASEMENT** is granted subject to the following conditions.

**1. TERM**

This easement is hereby granted for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_.

**2. CONSIDERATION**

a. The grantee shall pay in advance to the United States the amount of (\$ \_\_\_\_\_) (in full for the term hereof) (payable \_\_\_\_\_) to the order of the Finance and Accounting Officer, \_\_\_\_\_ District and delivered to \_\_\_\_\_.

b. All consideration and other payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States, an administrative charge to cover the costs of processing and handling delinquent debts, and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the

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amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### 3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to \_\_\_\_\_

and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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 assignees, transferees and their duly authorized representatives.

### 5. SUPERVISION BY THE (DISTRICT ENGINEER) (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 (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (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 but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB'S).

### 7. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, 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.

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**8. INSPECTION AND REPAIRS**

The grantee shall inspect the facilities at reasonable intervals and immediately 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 remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, 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. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the 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 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, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

**14. REQUIRED SERVICES**

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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 governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises 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 the sole expense of the grantee.

**16. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

**17. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or 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. 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. ENVIRONMENT PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. 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 disposal of any toxic or hazardous materials within the premises 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 the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising

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from the grantee's activities, the grantee shall be liable to restore the damaged resources.

**19. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit\_\_\_\_. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION**.

**20. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

**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 time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. 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 property 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.

**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

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of the \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, -  
\_\_\_\_\_.

\_\_\_\_\_

**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of

\_\_\_\_\_

\_\_\_\_\_

(Add Acknowledgments)



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GAS, WATER AND SEWER PIPELINE EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. INSPECTION OF PREMISES
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. TRANSFERS AND ASSIGNMENTS
12. INDEMNITY
13. SUBJECT TO EASEMENTS
14. REQUIRED SERVICES
15. RELOCATION OF FACILITIES
16. TERMINATION
17. SOIL AND WATER CONSERVATION
18. ENVIRONMENTAL PROTECTION
19. PRELIMINARY ASSESSMENT SCREENING
20. HISTORIC PRESERVATION
21. NON-DISCRIMINATION
22. RESTORATION
23. DISCLAIMER

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_

EASEMENT FOR PIPELINE RIGHT-OF-WAY

LOCATED ON

\_\_\_\_\_  
(Project, Installation)

\_\_\_\_\_  
(County, State)

**THE SECRETARY OF THE** \_\_\_\_\_ under and by virtue of the authority vested in the Secretary by Title 10 United States Code, Section 2669, 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,

\_\_\_\_\_  
hereinafter referred to as the grantee, an easement for \_\_\_\_\_, hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibit(s) \_\_\_\_\_, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

**THIS EASEMENT** is granted subject to the following conditions.

**1. TERM**

This easement is hereby granted for a term of \_\_\_\_\_ years beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_.

**2. CONSIDERATION**

a. The grantee shall pay in advance to the United States the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) (in full for the term hereof) (payable \_\_\_\_\_) to the order of the Finance and Accounting officer, \_\_\_\_\_ District and delivered to \_\_\_\_\_.

b. All consideration and other payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States, an administrative charge to cover the costs of processing and handling delinquent debts, and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

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(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

**3. NOTICES**

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to \_\_\_\_\_

and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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 assignees, transferees and their duly authorized representatives.

**5. SUPERVISION BY THE (DISTRICT ENGINEER) (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 (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (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.

**7. CONDITION OF PREMISES**

The grantee acknowledges that it has inspected the premises, 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 REPAIRS**

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

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**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 remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account there 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. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the 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 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, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, 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.

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**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 governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises 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 the sole expense of the grantee.

**16. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

**17. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or 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. 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. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. 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 disposal of any toxic or hazardous materials within the premises 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 the premises.

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.

**19. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous

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substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION**.

**20. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

**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 time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. 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 property 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.

**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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

(Add Acknowledgments)

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PUBLIC ROAD OR STREET EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. INSPECTION AND REPAIRS
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. RIGHT TO CONNECT
12. OTHER AGENCY AGREEMENTS
13. TERMINATION
14. SOIL AND WATER CONSERVATION
15. ENVIRONMENTAL PROTECTION
16. PRELIMINARY ASSESSMENT SCREENING
17. HISTORIC PRESERVATION
18. NON-DISCRIMINATION
19. RESTORATION
20. DISCLAIMER

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_

EASEMENT FOR PUBLIC ROAD OR STREET

LOCATED ON

\_\_\_\_\_  
(Project, Installation)

\_\_\_\_\_  
(County, State)

**THE SECRETARY OF THE** \_\_\_\_\_ under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement will not be against the public interest, hereby grants to \_\_\_\_\_

\_\_\_\_\_  
hereinafter referred to as the grantee, an easement for a road or street, hereinafter referred to as the facilities, over, across, in and upon the lands of the United States as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises.

**THIS EASEMENT** is granted subject to the following conditions:

**1. TERM**

This easement is granted in perpetuity.

**2. CONSIDERATION**

The consideration for this easement shall be the construction, operation and maintenance of a public road for the benefit of the United States and the general public 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 \_\_\_\_\_

and if to the United States, to the District, Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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 assignees, transferees and their duly authorized representatives.



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**5. SUPERVISION BY THE (DISTRICT ENGINEER)(INSTALATION 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 (District Engineer) (Instalation Commander), \_\_\_\_\_(District)(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.

**7. CONDITION OF PREMISES**

The grantee acknowledges that it has inspected the premises, 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 REPAIRS**

The grantee shall inspect the facilities at reasonable intervals and immediately 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 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 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 remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**11. RIGHT TO CONNECT**

The United States reserves the right to make such connections between the road or street herein authorized and roads and streets on other government lands as said officer may from time consider necessary, and also reserves to

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itself rights-of-way for all purposes across, over or under the right-of-way hereby granted; provided that such rights shall be used in a manner that will not create unnecessary interference with the use and enjoyment by the grantee of the right-of-way herein granted.

**12. OTHER AGENCY AGREEMENTS**

It is understood that the provisions of the conditions on **SUPERVISION BY THE (DISTRICT ENGINEER)(INSTALATION COMMANDER)** and **RIGHT TO ENTER** above shall not abrogate or interfere with any agreements or commitments made or entered into between the grantee and any other agency of the United States with regard to financial aid to the grantee in connection with the construction, maintenance, or repair of the facilities herein authorized.

**13. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

**14. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or 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. 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.

**15. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground and water. The grantee shall 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 disposal of any toxic or hazardous materials within the premises is specifically 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, interstate, and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

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.

**16. PRELIMINARY ASSESSMENT SCREENING**

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A Preliminary Assessment Screening (PAS), documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION**.

#### **17. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

#### **18. NON-DISCRIMINATION**

a. The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national, origin or religion.

b. The grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defence Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the grantee, its agents, successors, transferees, and assignees.

#### **19. RESTORATION**

On or before the termination or revocation of this easement, the grantee shall, without expense to the United States and within such time as said officer may indicate, restore the premises to the satisfaction of said officer. In the event the grantee shall fail to restore the premises, at the option of said officer, said improvements shall either become the property of the United States without compensation therefore, or said officer shall have the option to 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.

#### **20. 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 for 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, interstate or local laws in connection with the use of the premises.

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**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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Add Acknowledgments)

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DEPARTMENT OF \_\_\_\_\_

EASEMENT AND RELINQUISHMENT OF ACCESS RIGHTS FOR A SECTION OF  
THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

(Indicate reservations)

The United States of America, acting by and through the SECRETARY OF THE \_\_\_\_\_, under and by virtue of the authority of Title 10, U.S.C., Section 2668, and in furtherance of Title 23, U.S.C., Section 107(d), hereby grants to the State of \_\_\_\_\_ (appropriate title of the highway department), hereinafter designated as the grantee, an easement for a right-of-way for a controlled-access highway, as part of the National System of Interstate and Defense Highways, on, over, across, in and upon lands of the United States which are a portion of \_\_\_\_\_ the (indicate reservation), as shown on the map marked Exhibit \_\_\_\_\_, and more particularly described on Exhibit \_\_\_\_\_, which exhibits are attached hereto and made a part hereof, together with all abutters' existing, future or potential rights of access to, from and between the right-of-way of the public way known as \_\_\_\_\_ and the remaining lands of said reservation, except for such rights as may be hereinafter specifically reserved in this instrument.

THIS EASEMENT is granted subject to the following provisions and conditions:

1. That the grantee shall, at all times, maintain said highway in good condition and shall promptly make all repairs thereto needed to preserve a smooth-surface highway.
2. That any property of the United States damaged or destroyed by the grantee incident to the use and occupation of the said premises shall be promptly repaired, replaced or relocated by the grantee, to the satisfaction of the local representative of the DEPARTMENT OF \_\_\_\_\_, and in accordance with plans and specifications approved, in advance, by the said officer, or, in lieu of such repair, replacement or relocation, the grantee shall, if so required by said representative, pay to the United States, money in an amount sufficient to compensate for the loss sustained by the United States by reason of damages to, or destruction of, United States property.
3. a. That the United States reserves the right to construct, from time to time, grade separation crossing structures or pedestrian crossing structures over or under the controlled-access highway, at such points as it may deem necessary; provided, that such structures shall be constructed in accordance with standards for the National System of Interstate and Defense Highways, approved by the Department of Transportation, Bureau of Public Roads. The United States also reserves the right to cross over and/or under the right-of-way hereby granted with utility lines and related facilities; provided, however, that such rights shall be exercised in accordance with regulations issued by the Secretary of Transportation and policies adopted by the Federal Highway Administrator.
- b. That, during any emergency declared by the President or Congress of the United States, the United States shall have the right to enter and exit directly to and from said right-of-way from the abutting Government-owned land, including the right to construct temporary direct entrances and exits, crossings at grade, or substandard grade-separation structures, including acceleration and deceleration lanes; provided, that all such temporary facilities shall, subject to availability of appropriations, be removed within a reasonable time after official termination of the emergency.

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4. That it is to be understood that this instrument is effective only insofar as the rights of the United States in the property over which the said highway is to be extended are concerned, and that the grantee shall obtain such permission as may be necessary because of any other existing rights.

5. That all, or any part, of such right-of-way herein granted may be terminated by the Secretary of the \_\_\_\_\_ for failure to comply with any or all of the terms or conditions of this grant, or for nonuse for a two-year period, or abandonment of rights granted herein.

6. Additional special provisions as may be necessary to meet particular circumstances of each case, such as the following:

a. Provision for construction and maintenance at the expense of grantee of necessary controlled-access facilities to, over, under and across the highway to meet the requirements of the military installation affected, pursuant to plans, specifications and maps approved by the installation commanders and attached as exhibits to the grant.

b. Provision of construction and maintenance of special signs, signals, markers, etc.

c. Relocation of facilities adjacent to and adversely affected by the highway construction, etc.

7. That the grantee, within the limits of its respective legal powers, shall comply with all Federal, interstate, state and/or local governmental regulations, conditions, or instructions for the protection of the environment and all other matters as they relate to real property interests granted herein.

8. That the grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, \_\_\_\_\_ District, and the site and the material shall be protected by the grantee from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the District Commander.

9. That 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 easement premises.

10. Merger Clause. Prior to the execution of this easement, the following conditions were deleted: \_\_\_\_\_; changed: \_\_\_\_\_; added:

\_\_\_\_\_

This easement is not subject to Title 10, U.S.C., Section 2662.

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the \_\_\_\_\_, this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

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(Add Acknowledgments)

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DEPARTMENT OF THE ARMY  
EASEMENT FOR  
FUEL CARRYING PIPELINE

THE SECRETARY OF THE ARMY, under and by virtue of the eauthority vested in him by 30 U.S.C. 185, hereby grants to \_\_\_\_\_ hereinafter designated as the grantee, for a period of \_\_\_\_\_ years from \_\_\_\_\_, an easement for a right-of-way for the installation, construction, operation, maintenance, and repair of a \_\_\_\_\_-inch underground gas pipeline for the purpose of \_\_\_\_\_ over, across, in, and upon land the Army at the location shown in red on Exhibit \_\_\_\_\_ attached hereto and made a part hereof, and described on Exhibit \_\_\_\_\_ attached hereto and made a part hereof.

THE EASEMENT is granted subject to the following conditions:

1. The grantee shall pay to the United States in advance upon delivery of this easement the sum of \_\_\_\_\_ per annum for the easement, the sum of \_\_\_\_\_ as reimbursement for the costs incurred by the United States in processing the application, and the sum of \_\_\_\_\_ as reimbursement for the cost of monitoring construction, operation and maintenance of said pipeline for the entire term of the easement. In the event of termination of this easement, the grantee further agrees to reimburse the United States for any and all costs incurred by the United States in monitoring the termination. All payments shall be made to the Finance and Accounting Office, U.S. Army Corps of Engineers and forwarded by the grantee to the District Commander, U.S. Army Engineer District, \_\_\_\_\_ no later than \_\_\_\_\_. The U.S. will impose a charge, the amount to be determined by law or regulation on late payment of rent or other payments due under this agreement for each 30 day period that the payment is overdue. The full late charge will also be applicable to periods of less than 30 days.
2. The grantee shall construct, operate, maintain, and terminate the said pipeline in all accordance Federal, state, county, and municipal laws, regulations, and ordinances.
3. The installation and/or operation and maintenance of said line shall be accomplished without cost or expense to the United States under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter designated as "said officer," and in such manner as not to endanger personnel or property of the United States on the said United States land or obstruct travel on any road thereon. The grantee shall have the right of ingress and egress for such purposes, subject to approval of access by said officer.
4. The use and occupation of said land incident to the exercise of the privileges hereby granted shall be subject to such rules and regulations as the said officer may from time to time prescribe.
5. Upon completion of the installation of said line and the making of any repairs thereto, the premises shall be restored immediately by the grantee, at the grantee's own expense, to the same condition in which they existed prior to the commencement of such work, to the satisfaction of the said officer. The grantee shall supervise the said line and cause it to be inspected at reasonable intervals, and shall immediately repair any leaks found therein as a result of such inspection, or when requested by said officer to repair any defects.



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6. The grantee shall be strictly liable to the United States for damage or injury which may arise from or be incident to the construction, maintenance or removal of said line and the use or occupation of the right-of-way herein granted. Damages to property of the United States shall be promptly repaired or replaced by the grantee to the satisfaction of the said officer, or in lieu of such repair or replacement the grantee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States. All owners of any interest in, and all affiliates or subsidiaries of the grantee, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim for damage or injury is not satisfied by the grantee. Liability without fault hereunder shall be limited to (insert maximum amount commensurate with the foreseeable risks or hazards presented) for any one incident. Liability of such grantee for damages in excess (insert figure above) shall be in accord with ordinary rules of negligence. However, this condition shall not impose strict liability on the grantee for damage or injury resulting from (a) an act of war, or (b) negligence of the United States. In any case where liability without fault is imposed pursuant to this condition and the damage or injuries involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage or injury occurred.

7. The United States shall not be responsible for damages or injuries which may arise from or be incident to the construction, maintenance, and use of said line, nor for damages to the property of the grantee, nor for damages to the property or injuries to the person of the grantee's officers, agents, servants, or employees, or others who may be on said premises at the grantee's invitation or any one of them. The grantee does hereby accept liability, if any, imposed by Federal and state statutes to third parties for injuries incurred in connection with the use and occupancy of the right-of-way. The grantee shall hold the United States harmless from any and all such claims.

8. The United States reserves to itself and its grantees or licensees the right to construct, use, and maintain on or adjacent to the right-of-way hereby granted, electric transmission, telephone, telegraph, water, gas, gasoline, oil and sewer lines, roads and permits for other compatible uses in such manner as not to create any unreasonable interference with the use of the right-of-way herein granted.

9. That the grantee shall furnish through said line such service as may be required from time to time for governmental purposes on said land, 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 charged by the grantee for similar service.

10. In the event all or any portion of said land occupied by said line shall be needed by the United States, or in the event the existence of said line shall be considered detrimental to governmental activities, the grantee shall, from time to time, upon notice to do so, and as often as so notified, remove said line and related facilities to such other location or locations on said land as may be designated by said officer. And in the event said line shall not be removed or relocated within ninety (90) days after any aforesaid notice, the United States may cause the same to be done at the expense of the grantee.

11a. Abandonment of a right of way herein granted or noncompliance with any provisions of this easement or applicable provisions of 30 U.S.C. 185 may be grounds for suspension or termination of the right of way if ta) after due notice to the holder of the right of way, (b) a reasonable opportunity to comply with this section, and (c) an appropriate administrative proceeding

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pursuant to Title 5, U.S.C., Section 554, the Secretary determines that any such ground exists that suspension or termination is justified.

b. If the Secretary of the Army determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

c. Deliberate failure of the grantee to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: Provided, that where the failure to use the right-of-way is due to circumstances not within the holder's control, the Secretary is not required to commence proceedings to suspend or terminate the right-of-way.

12. Upon the expiration or termination of this grant, the grantee shall, without expense to the United States, and within such time as the Secretary of the Army may indicate, remove the said line from said land and restore the premises hereby authorized to be used and occupied to a condition satisfactory to the said officer. In the event the grantee shall fail, neglect, or refuse to remove the said line and so restore the premises, the United States shall have the option either to take over the said line as the property of the United States, without compensation therefor, or to remove the said line and perform the restoration work as aforesaid at the expense of the grantee, and in no event shall the grantee have any claim for damages against the United States or its officers or agents, on account of the taking over of said line or on account of its removal.

13. The conditions of this instrument shall extend to and be binding upon and shall inure to the benefit of the representatives, successors, and assigns of the grantee.

14. That it is understood that this instrument is effective only insofar as the rights of the United States in the said property are concerned, and that the grantee shall obtain such permission as may be necessary on account of any other existing rights.

15. The pipeline and related facilities herein authorized shall be constructed, operated, and maintained as common carriers. The owners or operators of the pipeline herein authorized shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or nonfederal lands. (Delete this clause if inapplicable)

16. It is understood that the provision of Condition No. 3, above, shall not abrogate or interfere with any agreements or commitments made or entered into between the grantee and any other agency of the United States with regard to financial aid to the grantee in connection with the installation, operation, or maintenance of said line.

17. That the pipeline will be buried at a depth of not less than \_\_\_\_\_ feet below the surface and such installation will be in accordance with applicable Federal and state standards.

18. That the grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, \_\_\_\_\_ District, and the site and the material shall be protected by the grantee from further disturbance until

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a professional examination of them can be made or until clearance to proceed is authorized by the District Commander.

This easement is not subject to Title 10, U.S.C., Section 2662.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_  
day \_\_\_\_\_ of 19 \_\_\_\_ by authority of the Secretary of the Army.

\_\_\_\_\_

The above easement is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by authority of the Secretary of the Army.

BY \_\_\_\_\_

\_\_\_\_\_

(TITLE)

C O R P O R A T E C E R T I F I C A T E

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as grantee herein; that \_\_\_\_\_, who signed this easement on behalf of the grantee was then \_\_\_\_\_ of the corporation, and that said easement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(SEAL)

\_\_\_\_\_

(ACKNOWLEDGMENT)

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DEPARTMENT OF THE \_\_\_\_\_  
CONSENT TO CROSS U. S. GOVERNMENT EASEMENT  
AT  
\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That the consent of the United States is hereby granted to \_\_\_\_\_ hereinafter designated as grantee, to construct, use, maintain, control, operate and repair a \_\_\_\_\_, herein referred to as "structure", across, over and under the lands where the United States has acquired a perpetual \_\_\_\_\_ easement identified as Tract(s) No(s) \_\_\_\_\_, \_\_\_\_\_ (Project/Installation) and which is recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in the records of \_\_\_\_\_ county, (State). The right-of-way for said structure for the purpose of this consent is specifically identified-as Parcel(s) \_\_\_\_\_, located as shown on Exhibit "A" attached hereto and made a part hereof and described as follows:

This consent is granted subject to the following conditions:

1. That it is understood that this consent is effective only insofar as the pxproperty rights of the United States in the land to be occupied are concerned, and that it does not relieve the grantee from the necessity of obtaining grants from the owners of the fee and/or other interests therein.
2. That the proposed construction authorized herein shall not be commenced until appropriate rights shall have been obtained by the grantee from the record owners and encumbrances of the fee title to the lands involved.
3. That the exercise of the privileges hereby consented to shall be without cost or expense to the Department of the \_\_\_\_\_, under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter referred to as "said officer," and subject to such regulations as may be prescribed by the District Commander, \_\_\_\_\_, District, from time to time, including, but not limited to, the specific conditions, requirements and specifications set forth in Exhibit "B" attached hereto and made a part hereof.
4. That the grantee shall supervise and maintain the said structure and cause it to be inspected at reasonable intervals, and shall immediately repair any damage found therein as a result of such inspection, or when requested by said officer to repair any defects. Upon completion of the installation of said structure or the making of any repairs thereto, the premises shall be restored immediately by the grantee, at the grantee's own expense, to the same condition as that in which they existed prior to the commencement of such work, to the satisfaction of said officer.
5. That any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges hereby granted shall be promptly repaired or replaced by the grantee to the satisfaction of the said officer or in lieu of such repair or replacement, the grantee shall, if so required by the said officer and at his option, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damage to or destruction of Government property.
6. That 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

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privileges herein granted, or for damages to the property of the grantee, or for damages to the property or injuries to the person of the grantee, or the persons of grantee's officers, agents, servants, or employees or others who may be on said premises at their invitation or the invitation of one of them arising from governmental activities on or in the vicinity of the said premises, and the grantee shall hold the United States harmless from any and all such claims.

7. That this consent is effective only as to the following rights of the United States in the lands hereinabove described.

8. That the United States shall in no case be liable for any damage or injury to the construction herein authorized which may be caused by any action of the Government, under the rights obtained in its easements, either hidden or known, or that may result from future operations under taken by the Government, and no claim or right to compensation shall accrue from such damage or injury, and if further operations of the United States require the alteration or removal of the structure herein authorized, the grantee shall, upon due notice from the Chief of Engineers, Department of Army, alter or remove said structure without expense to the Government and subject to the supervision and approval of the officer having jurisdiction over the property and no claim for damages shall be made against the United States on account of such alterations or removal.

9. That construction and/or operation maintenance and use of said structure incident to the exercise of the privileges hereby granted shall be in such a manner as not to conflict with the rights of the Government, nor to interfere with the operations by the Government under such rights, nor to endanger lives and safety of the public.

10. That this consent may be terminated by the Secretary of the \_\_\_\_\_ upon reasonable notice to the grantee if the Secretary of the \_\_\_\_\_ shall determine that installation to which consent is hereby granted interferes with the use of said land or any part thereof by the United States, and this consent may be annulled and forfeited by the declaration of the Secretary of the \_\_\_\_\_ for failure to comply with any and all of the provisions and conditions of this consent, or for nonuse for a period of two years, or for abandonment.

11. That upon the relinquishment, termination, revocation, forfeiture or annulment of the consent herein granted, the grantee shall vacate the premises, remove all property of the grantee therefrom, and restore the premises to a condition satisfactory to the officers having immediate jurisdiction over the property. If the grantee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Secretary of the \_\_\_\_\_, the said property shall either become the property of the United States without compensation therefor, or the Secretary of the \_\_\_\_\_ may cause it to be removed and the premises to be so restored at the expense of the grantee, and no claim for damages against the United States, or its officers or agents, shall be created by or made on account of such removal and restoration.

12. That the terms and conditions of this consent shall extend to and be binding upon the heirs, successors and assigns of the grantee.

13. That the grantee within the limits of his respective legal powers shall comply with all Federal, interstate, state and/or local governmental regulations, conditions or instructions for the protection of the environment and all other matters as they relate to real property interests granted herein.

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14. That the grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, \_\_\_\_\_ District, and the site and the material shall be protected by the grantee from further disturbance until a Professional examination of them can be made or until clearance to proceed is authorized by the District Commander.

15. 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 assignees, transferees and their duly authorized representatives.

16. Merger clause. Prior to the execution of this consent, the following conditions were deleted: \_\_\_\_\_; changed: \_\_\_\_\_; or added: \_\_\_\_\_.

This consent is not subject to Title 10, U.S.C., Section 2662.

In Witness Whereof, I have hereunto set my hand, by authority of the Secretary of the \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_

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APPLICATION FOR CONSENT TO CROSS U. S. GOV'T EASEMENT

Date \_\_\_\_\_

APPLICATION IS MADE for the consent of the Department of \_\_\_\_\_ to construct, maintain, control, operate and repair a (state type of structure) located as shown on the attached print, over, under or across the Easement vested in the United States of America, and identified as Acquisition Tract No. \_\_\_\_\_ and situated in Section \_\_\_\_\_, Township North, Range \_\_\_\_\_, Montana Principal Meridian \_\_\_\_\_, County \_\_\_\_\_.

Names and addresses of Record Owners are \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Names and addresses of Record Encumbrances are \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Fill in as applicable)

1. Width of right-of-way desired \_\_\_\_\_.
2. Diameter of pipe \_\_\_\_\_.
3. Kind of pipe \_\_\_\_\_.
4. Substance pipe to carry \_\_\_\_\_.
5. Type of service if electrical (Power, feeder, light feeder, telephone) \_\_\_\_\_.
6. A.C. or D.C. \_\_\_\_\_, Voltage \_\_\_\_\_ Phase \_\_\_\_\_  
Cycle \_\_\_\_\_
7. No. wires or cables \_\_\_\_\_, ultimate number wires or cable conductors \_\_\_\_\_, guage \_\_\_\_\_, diameter of cable \_\_\_\_\_, kind of wire (copper, iron, etc.) \_\_\_\_\_. Is wire bare or insulated \_\_\_\_\_, solid or strand \_\_\_\_\_?

The undersigned agrees that construction of the facility or structure involved in this application shall not begin until the Consent to Cross U.S. Government Easement, herein applied for, shall have been granted and appropriate rights shall have been acquired from the record owners and encumbrances of the underlying fee in the land involved.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS  
\_\_\_\_\_ DISTRICT

Consent No. \_\_\_\_\_  
Project: \_\_\_\_\_  
Tract No. \_\_\_\_\_

CONSENT TO EASEMENT STRUCTURES

WHEREAS, the United States has acquired a perpetual \_\_\_\_\_ easement over Tract(s) No(s) \_\_\_\_\_, \_\_\_\_\_, (Project/Installation) and which is recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in the records of \_\_\_\_\_ County, \_\_\_\_\_ (State).

(DELETE THE FOLLOWING WHEREAS, IF NOT APPLICABLE)

WHEREAS, said easement grants to the United States the right of prior approval for any structure to be located within the easement area, which area is under the administrative control of the District, Corps of Engineers;

WHEREAS, the United States has been requested to give consent for ( the construction / placement / location of \_\_\_\_\_ ) on the above identified tract (s).

NOW THEREFORE, the United States hereby gives consents to \_\_\_\_\_ for (the construction / placement / location of \_\_\_\_\_) at the location shown on Exhibit "A" attached hereto;

PROVIDED HOWEVER, that this consent is subject to the following conditions:

1. All activities conducted on the premises shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.
2. The giving of this consent does not in any way subordinate the United States prior easement rights. The United States shall in no case be liable for any damage or injury to the structures herein consented to, which may be caused by any action of the United States under its easement, or that may result from future operations undertaken by the United States, and no claim or right to compensation shall accrue from such exercise of the United States' easement rights.
3. 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 consented activity.
4. This instrument is effective only insofar as the rights of the United States in the premises are concerned; and the consentee shall obtain such permission as may be required on account of any other existing rights. It is understood that this consent does not eliminate the necessity for 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, interstate or local laws in connection with the use of the premises.



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5. \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the  
Secretary of the \_\_\_\_\_, this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

THIS CONSENT is also executed by the grantee this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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APPENDIX 8-E  
LICENSE FORMATS

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GENERAL PURPOSE LICENSE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITIONAL USE BY GRANTEE
8. CONDITION OF PREMISES
9. COST OF UTILITIES
10. PROTECTION OF PROPERTY
11. INDEMNITY
12. RESTORATION
13. NON-DISCRIMINATION
14. TERMINATION
15. ENVIRONMENTAL PROTECTION
16. HISTORIC PRESERVATION
17. DISCLAIMER

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No. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_ LICENSE

\_\_\_\_\_  
PROJECT/INSTALLATION

\_\_\_\_\_  
COUNTY, STATE

THE SECRETARY OF THE \_\_\_\_\_, hereinafter referred to as the Secretary, under authority of \_\_\_\_\_, hereby grants to

\_\_\_\_\_  
hereinafter referred to as the grantee, a license for \_\_\_\_\_

over, across, in and upon lands of the United States, as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS LICENSE is granted subject to the following conditions.

**1. TERM**

This license is granted for a term of \_\_\_\_\_, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_, but revocable at will by the Secretary.

**2. CONSIDERATION**

a. The grantee shall pay in advance to the United States the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), (in full for the term hereof) (payable \_\_\_\_\_) to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_

b. All consideration and other payments due under the terms of this license must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall

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accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### 3. NOTICES

All notices and correspondence to be given pursuant to this license shall be addressed, if to the grantee, to \_\_\_\_\_; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_;

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 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 any duly authorized representatives.

### 5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)

The use and occupation of the premises shall be subject to the general supervision and approval of the (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (Installation hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

### 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.

### 7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises.
- c. subject to other outgrants of the United States on the premises.
- d. personal to the grantee, and this license, or any interest therein, may not be transferred or assigned.

### 8. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any

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representations or warranties whatsoever and without any obligation on the part of the United States.

#### **9. COST OF UTILITIES**

The grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

#### **10. PROTECTION OF PROPERTY**

The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, 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.

#### **11. 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 of the grantee, 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 due to the fault or negligence of the United States or its contractors.

#### **12. RESTORATION**

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

#### **13. NON-DISCRIMINATION**

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The grantee shall not discriminate against any person or persons or exclude them from participation in the grantee's operations, programs or activities because of race, color, religion, sex, age, handicap or national origin in the conduct of operations on the premises. The grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

#### **14. TERMINATION**

This license may be terminated by the grantee at any time by giving the District Engineer at least ten (10) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made and provided further, that in the event that said notice is not given at least ten (10) days prior to the rental due date, the grantee shall be required to pay the consideration for the period shown in the Condition on CONSIDERATION.

#### **15. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. 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 grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

#### **16. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

#### **17. DISCLAIMER**

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army

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permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**THIS LICENSE** 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

THIS LICENSE is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_



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**FISH AND WILDLIFE LICENSE**

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE DISTRICT ENGINEER
6. STRUCTURES AND EQUIPMENT
7. ANNUAL MANAGEMENT PLANS
8. FISH AND WILDLIFE ACTIVITIES
9. ACCOUNTS, RECORDS AND RECEIPTS
10. APPLICABLE LAWS AND REGULATIONS
11. CONDITIONAL USE BY GRANTEE
12. CONDITION OF PREMISES
13. PROTECTION OF PROPERTY
14. RESTORATION
15. NON-DISCRIMINATION
16. TERMINATION
17. NATURAL RESOURCES
18. ENVIRONMENTAL PROTECTION
19. HISTORIC PRESERVATION
20. DISCLAIMER

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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY LICENCE  
FOR FISH AND WILDLIFE ACTIVITIES ON**

\_\_\_\_\_  
PROJECT/INSTALLATION

\_\_\_\_\_  
COUNTY, STATE

**THE SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, under authority of \_\_\_\_\_ hereby grants to \_\_\_\_\_ hereinafter referred to as the grantee, a license for fish and wildlife activities over, across, in and upon lands of the United States, as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises.

**THIS LICENSE** is granted subject to the following conditions.

**1. TERM**

This license is granted for a term of \_\_\_\_\_, beginning \_\_\_\_\_ and ending \_\_\_\_\_, but revocable at will by the Secretary.

**2. CONSIDERATION**

The consideration for this license is the operation and maintenance of the premises by the grantee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this license shall be addressed, if to the grantee to \_\_\_\_\_; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_; 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", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include any duly authorized representatives.

**5. SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

**6. STRUCTURES AND EQUIPMENT**

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The grantee shall have the right, during the term of the license, to erect such structures and to provide such equipment upon the premises to accomplish the purposes of the license and as provided for in the Annual Management Plan. Those structures and equipment shall be and remain the property of the grantee, except as otherwise provided in the condition on **RESTORATION**.

#### **7. ANNUAL MANAGEMENT PLANS**

The grantee shall administer the premises in accordance with an Annual Management Plan which shows the management and development activities to be undertaken by the grantee. No later than \_\_\_\_\_ of each year, the grantee will submit the Annual Management Plan to be mutually agreed upon between the grantee and the said officer. Such Annual Management Plan shall include but is not limited to the following:

- a. Plans for management, maintenance, and development activities to be undertaken by the grantee or jointly by the Corps of Engineers and the grantee which shall include plans for any proposed structures and improvements.
- b. The areas to be utilized for agricultural purposes.
- c. The variety and scope of crops to be planted, as well as any rotations.
- d. The type of wildlife cover to be cultivated, if any.
- e. The areas designated for various species of fish and wildlife propagation.

#### **8. FISH AND WILDLIFE ACTIVITIES**

a. The grantee may plant or harvest crops, either directly, by service contract, by sharecrop agreements with local farmers, or by agricultural agreements to provide food and/or habitat for wildlife and for the development and conservation of land, fish and wildlife, forests, and other natural resources. Where feasible, contracts and agreements with third parties shall be by competitive bid procedures.

b. Any lands not being managed by the grantee for wildlife habitat will be made available for lease by the said officer for agricultural or grazing purposes under conditions which would not be incompatible with the grantee's use of the premises.

c. The grantee may take, trap, remove, stock or otherwise control all forms of fish and wildlife on the premises, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use shall be consistent with the state laws for the protection of fish and wildlife.

#### **9. ACCOUNTS, RECORDS AND RECEIPTS**

a. All monies received by the grantee from operations conducted on the premises may be utilized by the grantee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this license and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid

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to said officer. The grantee shall provide an annual statement of receipts and expenditures to the said officer. The said officer shall have the right to perform audits of the grantee's records and accounts.

b. Payment of direct expenses is authorized for planning and development of optimum wildlife habitat including planting of wildlife food plots, necessary timber clearing, erosion control or habitat improvements such as shelter, restocking of fish and wildlife, and protection of endangered species. Payment of grantee's employees who are directly engaged in such activities at the project is also authorized. However, proceeds will not be used for the payment of general administrative expenses.

c. Proceeds derived from the sale of fishing and hunting leases are not

#### **10. 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.

#### **11. CONDITIONAL USE BY GRANTEE**

The exercise of the privileges herein granted shall be:

a. without cost or expense to the United States;

b. subject to the right of the United States to improve, use or maintain the premises.

c. subject to other outgrants of the United States on the premises.

d. personal to the grantee, and this license, or any interest therein, may not be transferred or assigned.

#### **12. CONDITION OF PREMISES**

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

#### **13. PROTECTION OF PROPERTY**

The premises shall at all times be protected and maintained in good order and condition by and at the expense of the grantee. 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 license, 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.

#### **14. RESTORATION**

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On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

#### **15. NON-DISCRIMINATION**

a. The grantee shall not discriminate against any person or exclude them from participation in the grantee's operations, programs or activities conducted on the licensed premises, because of race, color, religion, sex, age, handicap or national origin. The grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

b. The grantee, by acceptance of this license, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7.

#### **16. TERMINATION**

This license may be terminated by the grantee at any time by giving the said officer at least thirty (30) days notice in writing.

#### **17. NATURAL RESOURCES**

The grantee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the approved Annual Management Plan. The grantee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the grantee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the grantee under the provisions of this license.

#### **18. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall 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

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local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. 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 grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**19. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

**20. DISCLAIMER**

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be require by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**THIS LICENSE** 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LICENSE** is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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NATIONAL GUARD LICENSE

1. TERM
2. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
3. APPLICABLE LAWS AND REGULATIONS
4. FACILITY MAINTENANCE
5. RIGHT TO USE
6. COST OF UTILITIES
7. USE RESTRICTIONS
8. IMPROVEMENTS AND ALTERATIONS
9. CONDITION OF PREMISES
10. TERMINATION
11. EXPIRATION AND RESTORATION
12. USE BY OTHERS
13. PROTECTION OF PREMISES
14. ENVIRONMENTAL PROTECTION
15. PRELIMINARY ASSESSMENT SCREENING
16. HISTORICAL PRESERVATION
17. NON-DISCRIMINATION

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_  
LICENSE FOR  
NATIONAL GUARD PURPOSES

\_\_\_\_\_  
PROJECT/INSTALLATION

\_\_\_\_\_  
COUNTY, STATE

THE SECRETARY OF THE \_\_\_\_\_, hereinafter referred to as the Secretary, under the authority of Title 32, United States Code, Section 503, hereby grants to the State of \_\_\_\_\_, hereinafter referred to as the grantee, a license to use and occupy for training and support of the \_\_\_\_\_ National Guard certain land and improvements, hereinafter referred to as the premises, as shown identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof.

THIS LICENSE is granted subject to the following conditions:

**1. TERM**

This license is granted for (an indefinite term,) (a term of \_\_\_\_\_ years, beginning \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_,) but revocable at will by the Secretary.

**\*NOTE:** See chapter 8 for additional wording when licensed area is not owned in fee by the United States.

**2. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)**

The use and occupancy of the premises shall be without cost to the regular establishment of the military departments of the Department of Defense and shall be under the general supervision of the (District Engineer) (Active Army Installation Commander) (U.S. Property and Fiscal Officer), \_\_\_\_\_, (District) (Installation) hereinafter referred to as said officer, and subject' to such rules and regulations as may be prescribed from time to time by said officer.

**3. 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

**4. FACILITY MAINTENANCE**

The grantee shall maintain and keep the premises in good repair and condition and all costs of operation, maintenance, and restoration shall be paid for from funds available to the grantee, or from funds other than those appropriated for the regular establishment of the military departments.

**5. RIGHT TO USE**

The United States, hereinafter referred to as the Government, reserves the right to use the premises, or any part thereof, including all buildings



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and improvements situated thereon, for such purposes as said officer deems necessary in the interest of national defense.

**6. COST OF UTILITIES**

The grantee shall pay the cost, as determined by the officer having immediate jurisdiction over the premises, of producing and/or supplying any utilities or other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced and supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

**7. USE RESTRICTIONS**

The buildings and improvements included in this license shall not be used for the quartering of personnel engaged in the national guard activities except when such personnel are in the federal service or are participating in authorized training.

**8. IMPROVEMENTS AND ALTERATIONS**

Additions to or alteration or improvement of the premises shall not be made without prior written approval of the District Engineer. All such additions, alterations or improvements shall be maintained by the grantee in good repair and condition. All such work designated as permanent by said officer shall, upon completion, become property of the Government.

**9. CONDITION OF PREMISES**

a. The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the Government.

**DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this license, an inventory and condition report of all personal property and improvements of the Government included in this license shall be made by the District Engineer and the grantee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this license, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored as provided for in the condition on **RESTORATION.**

**10. TERMINATION**

This license may be terminated by the grantee at any time by giving the District Engineer at least thirty (30) days notice in writing.

**11. RESTORATION**

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove its property (except those permanent additions, alterations, and improvements which have become

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property of the Government under provision of the condition on **IMPROVEMENTS AND ALTERATIONS**) and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises within such time as the said officer may designate. In either event, if the grantee fails to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the Government without compensation therefor, or said officer may cause the property to be removed at the expense of the grantee, and no claim for damages against the Government shall be created on account of such action.

## **12. USE BY OTHERS**

The grantee shall not transfer or assign this license, or any interest in the premises, however, upon concurrence of the Director, (Army) (Air force) National Guard, National Guard Bureau, the grantee may (1) permit the temporary or intermittent use of the premises by elements of the Department of Defense for joint use or individual training purposes, provided such use will not interfere with the National Guard use; or (2) issue licenses for nonprofit, community service-type activities under the same conditions as those allowed by active installation commanders by existing (Army) (Air Force) regulations.

## **13. PROTECTION OF PROPERTY**

a. The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, 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.

b. Upon termination of the grantee's requirement for the premises, the grantee shall remain responsible to protect and maintain the premises until transfer to and acceptance by another accountability officer is accomplished or in accordance with applicable laws, rules and regulations.

## **14. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. 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.

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

**15. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or relinquishment of this license, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee to the satisfaction of the said officer.

**16. HISTORICAL PRESERVATION**

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until the said officer gives clearance to proceed.

**17. NON-DISCRIMINATION**

The grantee shall not discriminate against any person or persons or exclude them from participation in the grantee's operations, programs or activities conducted on the licensed premises because of race, color, religion, sex, age, handicap or national origin. The grantee by acceptance of this license, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C 6102); the Rehabilitation Act of 1973 as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Department of Defense Directive 5500.11 (32 CFR Part 300) issued on December 28, 1964.

**THIS LICENSE** 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_

This license is executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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APPENDIX 8-F  
PERMIT FORMATS

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_

PERMIT TO OTHER FEDERAL GOVERNMENT DEPARTMENT OR AGENCY

TO USE PROPERTY LOCATED ON

\_\_\_\_\_  
(project, installation)

THE SECRETARY OF THE \_\_\_\_\_, hereinafter referred to as the Secretary hereby grants to \_\_\_\_\_, hereinafter referred to as the grantee, a permit for \_\_\_\_\_, over, access, in and upon the lands identified in Exhibit(s) \_\_\_\_\_ attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS PERMIT is granted subject to the following conditions.

1. This permit is hereby granted for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_, \_\_\_\_\_, but revocable at will by the Secretary.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

2. The grantee shall pay rental to the Department of the \_\_\_\_\_ in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District and delivered to \_\_\_\_\_.

3. All correspondence and notices to be given pursuant to this permit shall be addressed, if to the grantee, to \_\_\_\_\_ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division \_\_\_\_\_, 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. The use and occupation of the premises shall be without cost or expense to the Department of the \_\_\_\_\_, and under the general supervision and subject to the approval of the (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (Installation), or his duly authorized representative, hereinafter referred to as said officer and to such rules and regulations as may be prescribed from time to time by said officer.

5. The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the Department of the \_\_\_\_\_.

6. The grantee shall, at its own expense and without cost or expense to the Department of the \_\_\_\_\_, maintain and keep the premises-in good repair and condition.

7. Any interference with the use of or damage to property under control of the Department of the \_\_\_\_\_ incident to the exercise of the

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APPENDIX 8-A  
MISCELLANEOUS FORMATS

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FIGURE A-1 REGULATORY REFERENCES

<u>Regulation</u>	<u>Chapter 8 References</u>
Executive Order 11988 . . . . .	.8-27a, 8-54p, 8-59
Executive Order 11990 . . . . .	.8-54o, 8-58a
Executive Order 12088 . . . . .	.8-61
Executive Order 12411 . . . . .	.8-19
Executive Order 12512 . . . . .	.8-4i, 8-6, 8-7, 8-8e, 8-18
32 CFR 229 . . . . .	.8-226a
32 CFR 229.5 . . . . .	.8-226b (1)
32 CFR 229.6 . . . . .	.8-226b (1)
32 CFR 229.7 . . . . .	.8-226b (2) (b)
32 CFR 229.8 . . . . .	.8-226b (1)
32 CFR 229.9 . . . . .	.8-226b (2) (b) (4)
32 CFR 229.15 . . . . .	.8-226b (2) (b) (5) (c)
32 CFR 664.4 . . . . .	.8-9
33 CFR 230 . . . . .	.8-51e
33 CFR Subparts 1-6 . . . . .	.8-66a
36 CFR 327 . . . . .	.8-158
40 CFR 302.4 . . . . .	.8-55e
40 CFR 373 . . . . .	.8-51
40 CFR 1500 . . . . .	.8-51e
41 CFR 101-42 . . . . .	.8-51d
41 CFR 101-47.2 . . . . .	.8-7
41 CFR 101-47.8 . . . . .	.8-7, 8-18b, 8-18c
41 CFR 101-47.103-12 . . . . .	.8-7
41 CFR 101-47.201-1 . . . . .	.8-7
41 CFR 101-47.202-2 . . . . .	.8-55b
41 CFR 101-47-203.9 . . . . .	.8-103b, 8-186a
41 CFR 101-47.801(a) . . . . .	.8-18i
41 CFR 101-47.801(b) . . . . .	.8-13b
41 CFR 101-47.802(b) . . . . .	.8-18j
43 CFR 8 . . . . .	.8-9
43 CFR 2880 . . . . .	.8-182b (2)
DOD Directive 1000.11 . . . . .	.8-130a
DOD Directive 4000.19R . . . . .	.8-212a
DOD Directive 4170.10 . . . . .	.8-50
DOD Instructions 1000.10 . . . . .	.8-130a
DOD Instructions 1000.12 . . . . .	.8-130a
DOD Instructions 7230.1 . . . . .	.8-81a (3)
AR 75-15 . . . . .	.8-62
AR 140-483 . . . . .	.8-207b

Figure 8-A-1

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AR 200-1 . . . . . 8-51a, 8-55, 8-71b  
 AR 200-2 . . . . . 8-51b, 8-53b  
 AR 210-10 . . . . . 8-116  
 AR 210-12 . . . . . 8-203b  
 AR 210-24 . . . . . 8-130a  
 AR 210-135 . . . . . 8-130a  
 AR 340-17 . . . . . 8-118  
 AR 385-64 . . . . . 8-63  
 AR 405-15 . . . . . 8-40  
 AR 405-20 . . . . . 8-185c  
 AR 405-30 . . . . . 8-35e, 8-200f (4) (b)  
 AR 405-70 . . . . . 8-19, 8-20, 8-226b (2) (a)  
 AR 405-80 . . . . . 8-5, 8-57, 8-68, 8-109  
 AR 405-80 (cont.) . . . . . 8-130, 8-131, 8-172  
 AR 405-80 (cont.) . . . . . 8-226b (2) (a)  
 AR 420-74 . . . . . 8-126  
 AR 735-5 . . . . . 8-12

ER 200-2-2 . . . . . 8-51e, 8-53b  
 ER 405-1-12 Chapter 10 . . . . . 8-40a  
 ER 405-1-12 Chapter 11 . . . . . 8-28c, 8-29d  
 ER 420-1-3 . . . . . 8-19  
 ER 1105-2-100 . . . . . 8-155c (1)  
 ER 1105-2-100 (cont.) . . . . . 8-202b, 8-202d (1)  
 ER 1110-2-1454 . . . . . 8-41a  
 ER 1130-2-400 . . . . . 8-4e, 8-15e, 8-18f, 8-159  
 ER 1130-2-406 . . . . . 8-158, 8-159  
 ER 1130-2-441 . . . . . 8-160a, 8-160b  
 ER 1165-2-26 . . . . . 8-59  
 ER 1165-2-131 . . . . . 8-156a (2)

Figure 8-A-1 (Continued)



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Utilization Evaluation Questions  
Part B

B-1. The standards and definition set out in 41 CFR 101-47.801 should be used in the evaluation and are not repeated here. The following are also suggested for consideration in developing the narrative portion of the report. This is not intended to be a complete list of all possible questions and should not be used as a checklist. Some items may not be applicable while others not on the list may be essential. It is intended only as a guide to aid in the preparation of the report:

(a) Are all lands and facilities thereon being used for Congressionally authorized purposes and programs?

(b) Based on (a) above, is utilization consistent with the master plan, operational master plans, appendices, supplement or other approved documents? Are there significant deviations?

(c) What are the public use trends and how do they affect project visitation?

(d) Do services and facilities meet public use adequately? Do private facilities interfere with public use?

(e) Have land or facilities been significantly developed since the previous survey? How?

(f) Are there natural resources inventories available for this project? Is there an OMP containing resource use objectives and site specific prescriptions for the management of the resources? Is there multiple use forest and woodland management?

(g) Are adequate boundary monuments maintained? Have funding constraints prevented boundary survey or maintenance?

(h) If the land is not utilized, would any interim use be appropriate, such as Agricultural & Grazing leasing?

(i) Is there evidence of unauthorized use? Is there evidence of trends of unauthorized use or certain areas where the problem is more prevalent? Is there a lack of public awareness that could be overcome with a public affairs effort? Is legal action needed?

(j) Is there evidence of unauthorized Government use of adjoining property? Is this of a recurring nature that would necessitate acquisition of the private party or that has already resulted in a taking? Is a legal opinion of the possible taking needed?

(k) Are Government quarters furnished to employees with the proper rental arrangement and documentation? What is the status of the phase-out actions required by the Housing Management Plan?

Figure 8-A-2 (Continued)

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(l) What is the status of previously reported utilization problems? Did the necessary follow-up action take place?

(m) What percent of project buildings is occupied? Has a space management survey been performed?

(n) Has all property identified as underutilized, not utilized or not put to optimum use been reported to HUD for determination of suitability for use by the homeless under the McKinney Act?

(o) Is the property over-utilized? Is the visitation excessive in relation to the current design carrying capacity? Should acquisition of additional property be considered? Is the property inadequate for reasonable near-term future development? Is plant growth deterioration beyond natural capability to regenerate? Are facilities overcrowded on days of normal (not peak) use? Are maintenance requirements above those required for routine wear?

(p) Is maintenance being deferred due to funding constraints?

(q) You should be sensitive to instances where District and Division rankings of O&M money may have caused deficiencies beyond the control of the project personnel. However, the management evaluation report is not the place for crusades. Where funding is a factor, it should be noted in a neutral manner.

Figure 8-A-2 (Continued)

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REPORT OF AVAILABILITY

A. GENERAL:

1. Project: (Use official name from Chief of Engineer report)
2. Tract No(s) and Name, if any: (Segment maps, Master Plan designations)
3. Type of Outgrant:  lease  license  easement  permit
4. Proposed use:  Commercial Concession  Park and Recreation  Fish and Wildlife  Agricultural and Grazing  Road  Pipeline  Other \_\_\_\_\_ (list may be varied to name outgrants commonly issued)
5. Recommended Term of outgrant: Proposed for \_\_\_\_\_ years. Start date, if applicable: \_\_\_\_\_
6. Use requested by:  Army element  private party  adjoining grantee  State, local government  other Federal agency  Other \_\_\_\_\_
7. General property description/characteristics of the property:  
Acreage \_\_\_\_\_; Land character \_\_\_\_\_.
8. Are Government buildings and improvements included in the area:  No  Yes. If yes, give details on buildings and improvements and attach copy of floor plan, if applicable:  
  
Building Identification No. \_\_\_\_\_; Square footage outgranted/percentage of building \_\_\_\_\_; Condition of the facilities \_\_\_\_\_.
9. If building space only and land is not included in grant, explain why the improvement is not excess: \_\_\_\_\_
10. United States property interest:  fee simple title  easement  in-lease; or  other.
11. Army jurisdiction:  primary jurisdiction,  permit from a Federal Agency,  withdrawn from the public domain.
12. If land is being made available for a public road, show type of access, governmental entity, any restrictions: \_\_\_\_\_ Is jurisdiction to be relinquished?  Yes  No
13. Are Utilities available?  Yes  No. Will utilities or other support services be provided by Army on reimbursable basis?  Yes  No
14. Destruction, relocation, and replacement of Government facilities:  
  
 I Certify the proposed use will not require the destruction, relocation, or replacement of any Government facilities.  
  
 The following information is provided with regard to the destruction, relocation, or replacement of any Government facilities:  
\_\_\_\_\_  
\_\_\_\_\_
15. I certify that the grant of the proposed use will not interfere with operation of the project, or with contemplated development and other

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16. The following site specific recommendations are made as to limitations, restrictions, or conditions to be included in the grant to make the proposed use compatible with the operation of the project:

---

17. Safety issues and concerns, if any: \_\_\_\_\_

18. REMARKS - include any legal, policy, or mission factors you are aware of that may affect the proposed use of the property: \_\_\_\_\_

19. BASED ON THE INFORMATION PROVIDED ABOVE, I RECOMMEND THE OUTGRANT BE [ ] APPROVED [ ] DENIED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
SIGNATURE  
Title

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REPORT OF AVAILABILITY

B. ENVIRONMENTAL and CULTURAL CONSIDERATION:

1. COASTAL ZONE MANAGEMENT (CZM) (if applicable):

CZM is not applicable.

CZM is applicable and the proposed use is/will be consistent with the approved state CZM Plan.

2. CLEAN WATER ACT (FEDERAL WATER POLLUTION CONTROL ACT):

This action will not involve the discharge of any pollutants into the waters of the United States or less than one million gallons of discharge per day will be made.

This action will entail the discharge of more than one million gallons of pollutants into the waters of the United States per day.

The applicant has applied for and received a NPDES Permit from the EPA/appropriate state agency. If not received, state circumstances:

The Grantee is complying with the requirements of a NPDES Permit and the Grantee has a monitoring and reporting procedure.

Subsequent requests for expansion or additional construction should be reviewed to assure the Grantee is in compliance with the five acre rule.

3. FLOODPLAIN:

This property is not located within the 100 year floodplain and does not fall under the purview of Executive Order 11988.

This property is located within the 100 year floodplain and does fall under the purview of Executive Order 11988 and (circle the appropriate):

a. The proposed occupancy or modification will not adversely impact the floodplain.

b. There is no other practicable alternative available for this intended use.

c. The proposed occupancy or modification may be allowed subject to the following restrictions being incorporated in the outgrant document:

4. WETLANDS:

This property is not located within a wetlands area and, therefore, does not fall under the purview of Executive Order 11990.

This property is located within a wetlands area and does fall under the purview of Executive Order 11990, accordingly, the following restrictions must be incorporated in the outgrant document:

(Status of 404 Permit process

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5. ENDANGERED SPECIES:

This action will not jeopardize the habitat of any endangered species of fish, wildlife, or plants pursuant to the Endangered Species Act.

This action jeopardizes the habitat of endangered species of fish, wildlife, and/or plants identified on an attached map. Accordingly, the following restrictions must be incorporated in the outgrant document to protect the habitat: \_\_\_\_\_

6. FISH AND WILDLIFE COORDINATION ACT:

This action will not jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans, or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA.

This action will jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans, or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA. Impact description: \_\_\_\_\_  
RECOMMENDED ACTIONS PRIOR TO AVAILABILITY: \_\_\_\_\_

7. HISTORICAL AND CULTURAL RESOURCES:

The area has been surveyed for historical and cultural resources and there have been none identified on this property, and this action is in compliance with the National Historic Preservation Act and other relevant laws; Executive order 11593, Protection and Enhancement of the Cultural Environment; or any MOA's related thereto.

A survey has identified historical and/or cultural resources on this property. This action has been coordinated with the State Historic Preservation Officer and the Advisory Council on Historic Preservation in accordance with 36 CFR 800. The following restrictions must be incorporated into the outgrant document to protect the resource:  
\_\_\_\_\_

Native American graves or artifacts have been identified on this property. Refer to requirements of the American Indian Religious Freedom Act and Native American's Graves Protection and Repatriation Act.

Archaeological sites or resources have been identified on this property. Refer to the Antiquities Act; Archaeological and Historical Preservation Act; and Archaeological Resources Protection Act.

8. MISCELLANEOUS PROVISIONS.

The proposed outgrant activity will involve the use of pesticides, e.g. Agricultural, golf courses, restaurants. Refer to the Federal Insecticide, Fungicide, and Rodenticide Act and state pesticide regulations, as necessary.

The proposed outgrant activity will impact an area designated under the Wild and Scenic Rivers Act. Attach any site specific restrictions necessary to protect the area.

The proposed outgrant activity will include fuel burners, incinerators, gas pumps, solvent or other volatile compounds. Refer to the

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Clean Air Act and state and local regulations. Give status of state and local permits.

The proposed outgrant activity will include substances covered by the Toxic Substances Control Act.

Other special purpose environmental laws, as follows:

---

9. NEPA REQUIREMENTS:

This action falls under one of the Categorical Exclusions (CX) contained in AR 200-2 or ER 200-2-2 (Procedures for Implementing NEPA). The environmental affect of the action has been considered. A Record of Environmental Consideration (REC) is attached.

The impact of this action is considered to be minimal or insignificant. An Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI) is attached/is being prepared.

The impact of this action is considered to be significant. An Environmental Impact Statement (EIS), or supplement thereto, is attached/is being prepared.

10. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Environmental Baseline Study (EBS) or Preliminary Assessment Screening (PAS):

An EBS/PAS has been conducted and no HTRW substances were identified as released, stored, or disposed on the property in the threshold quantities. Copy is attached.

released, stored, or disposed on the property in the threshold quantities. The CERCLA notice should be included in the outgrant document. Copy is attached containing the details. Choose one:

a. Remedial actions have been taken so that the property is considered safe for the proposed use.

b. Remedial actions have not been taken. Provide details and justification for outgranting in the current condition.

11. Real Property Contaminated with Ammunition, Explosives or Chemicals.

The property has been decontaminated using the most appropriate technology consistent with the proposed use of the property.

Transfers is to another Federal agencies for compatible use of surface de-contaminated real property, subject to the following limitations, restrictions and prohibitions concerning the use of the property, to ensure personnel and environmental protection: \_\_\_\_\_

Access rights are reserved to implement any monitoring plan.

Coordination with HQDA, DACS-SF and DAMO-SWS attached with the Land Disposal Site Plan (LDSP). Reference AR 385-64, "U.S. Army Explosives Safety Program."

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12. WASTE DISPOSAL (The Solid Waste Recovery Act, as amended; Resource Conservation and Recovery Act (RCRA)).

[ ] The applicant will not generate hazardous waste or will not treat, dispose or store waste defined by EPA as having the following characteristics - corrosivity, ignitability, reactivity, or toxicity.

[ ] The applicant will generate hazardous waste or will produce waste defined by EPA as having the following characteristics - corrosivity, ignitability, reactivity, or toxicity. Choose the appropriate:

The applicant has obtained a hazardous waste identification number from EPA and, if applicable, the state.

b. The applicant has established records, waste management requirements, and a Spill Prevention Plan.

13. Underground/Other Storage Tanks.

[ ] There are no UST on the property and the applicant will not be installing tanks.

[ ] There are no above ground storage tanks for fuel or other regulated substances and the applicant will not be installing tanks.

[ ] There are UST on the property and/or the applicant will be installing tanks. Existing tanks are in compliance with current laws and regulations: \_\_\_\_\_ Yes \_\_\_\_\_ No. Construction of proposed tanks have been certified for such compliance: \_\_\_\_\_ Yes \_\_\_\_\_ No.

[ ] There are above ground storage tanks for fuel or other regulated substances on the property and/or the applicant will be installing tanks. Existing tanks are in compliance with current laws and regulations: \_\_\_\_\_ Yes \_\_\_\_\_ No. Construction of proposed tanks have been certified for such compliance: \_\_\_\_\_ Yes \_\_\_\_\_ No.

14. ADDITIONAL COMMENTS: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
SIGNATURE  
Title



REPORT OF AVAILABILITY

c. PRELIMINARY PROCEDURES:

1. STEWART B. MCKINNEY HOMELESS REQUIREMENTS:

McKinney Act requirements do not apply to this action.

McKinney Act requirements apply, necessary screening has been completed, and no interest was expressed.

2. INVENTORY AND CONDITION REPORTS:

No Government improvements are included in the proposed outgrant, so an inventory and condition report is not required.

Government improvements are included and an inventory and condition report is required/attached.

3. CONSIDERATION:

There is no monetary consideration required for this action.

Consideration is the greater of the administrative costs of \$ \_\_\_\_\_ or the FAIR MARKET RENTAL value for the property of \$ \_\_\_\_\_. Give source of value (i.e. appraisal, estimate).

offsets (In kind amounts) for the improvement, maintenance, protection, repair or restoration of the property leased will be provided in lieu of rent in the amount of \$ \_\_\_\_\_. Offsets to be provided are attached.

Consideration is less than fair market value and the outgrant document must contain assurances for Civil Rights Act non-discrimination and the Rehabilitation Act.

4. WAIVER OF COMPETITION:

A waiver of competition is not required.

A waiver of competition is recommended/not recommended. Provide full justification and proposed grantee, if waiver is recommended.

5. Other applicable laws, regulations, MOA'S, etc. requiring consideration for processing this action:

---

6. TECHNICAL SPECIFICATIONS: (Attach a copy here or indicate where a copy is available.) (Conservation plan for A&G leasing; Project technical information (e.g. flood control, hydroelectric, navigation; any water level fluctuations; environmental data, etc.); Safety requirements; Master plan data, if necessary to potential outgrantee. Where additional areas for similar development are shown in the Master Plan, all interested parties should be advised of the Government's tentative plans for these sites.)

7. Additional information that will assist in processing this application/action: \_\_\_\_\_

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8. BASED ON THE INFORMATION PROVIDED ABOVE, I RECOMMEND THE OUTGRANT BE [ ]  
APPROVED [ ] DENIED. If the outgrant is recommended for denial, state the  
reasons: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
SIGNATURE  
Title

Encl 1. Maps showing the nearest project boundary; acreage, character of land, and the number and type of improvements, if both land and improvements are included. If only building space is involved, give total square feet and describe the type of construction. Use existing maps whenever feasible.

Encl 2. Attach environmental reports and data (REC, CX, EA, EIS, PAS) and any other documentation of compliance with environmental and cultural considerations.

Encls: any other attachments listed.

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#### INSTRUCTIONS

The Determination of Availability would be signed by the official with the delegated authority to approve the outgrant, whether the District, the Division, or SAILE.

Section A. of the ROA would usually be the starting of the outgrant process. If the outgrant is the culmination of the Master Plan process, then this section would pull information from the Master Plan and project data. If a private party has requested the outgrant or outgrant expansion, then the office which takes the request would fill in as much information as is available and submit it for further processing. This section would usually be done by the operation element.

Section B. would be completed by the appropriate environmental office or offices with expertise in the various areas. This section could be divided into more than one subpart if the district/project organization involves several offices which each need to sign a portion.

Section C. contains general preliminary information. This section would usually be done by the Real Estate element.

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DETERMINATION OF AVAILABILITY  
CIVIL WORKS PROJECTS

---

1. The attached Report of Availability and its findings has been reviewed.

2. I have determined that the intended use of this property as set out in the attached Report of Availability is in the public interest or will further project purposes is consistent with delegated authorities and Government regulations.

3. I have determined that the proposed use is not a potential embarrassment to the Army.

4. I have determined that the property is not excess to the overall project purpose and has not been identified as not utilized in a Real Property Management Report. (PROVIDE JUSTIFICATION WHERE NECESSARY).

5. I have determined (for 10 USC 2667 leases) that the rental consideration is not less than the fair market value of the lease interest, taking into account the benefit to the United States, to the public and to the Department of Army and that the amount stated in the Report of Availability is appropriate and includes cash or in kind amounts for the improvement, maintenance, protection, repair or restoration of the property leased.

(For other outgrants) I have determined that the rental consideration is appropriate for the use proposed.

6. The proposed use as \_\_\_\_\_ is approved subject to (state any modifications to the restrictions stated in the Report of Availability which must be placed in the outgrant document).

7. Coordination:  
(list)

8. It has been determined that the property is available for the proposed use with the restrictions as stated in the Report of Availability (and as added above) and may be outgranted in accordance with applicable laws, rules and regulations.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Approving Official)

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US ARMY CORPS OF ENGINEERS

NOTICE OF AVAILABILITY FOR LEASING  
(RECREATIONAL)/(INDUSTRIAL) SITES  
(DISTRICT/ADDRESS)

SITE SELECTED: (Site name, project/installation, city, county, state)

CONSISTING OF (Acreage, type of real property; nature of Government improvements, if any; zoning, if applicable)

FOR (Park and Recreation/ Commercial Concession/ Industrial Leasing purpose)

The site will be leased on a competitive basis to the individual or corporation presenting the best plan for development.

Applications will be evaluated by: (1) quality of proposed development, (2) compatibility with overall project/installation mission; (3) expertise of potential Lessee, (4) return to the United States, and (5) return to the potential Lessee.

Potential Lessees may request Applications for Leasing describing the sites and giving details of the lease requirements through (Date). To obtain a copy, send a check for \$ \_\_\_\_\_ to:  
(District/address)

Checks should be made payable to the F&A Officer, ( ) District, Corps of Engineers.

Applications will be submitted in sealed envelopes which will be opened and evaluated on:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TIME (Local time at place of Opening)

\_\_\_\_\_  
LOCATION

\_\_\_\_\_  
U.S. Army Corps  
of Engineers

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APPLICATION INFORMATION PACKAGE  
FOR  
(RECREATION DEVELOPMENT) / (INDUSTRIAL DEVELOPMENT)  
AT  
(SITE/SITES)

The information below must appear in the lower left corner of Lease Application envelope.

Sealed Application for Lease of Real Property

To be opened:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

Notice No. \_\_\_\_\_

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The application package should include:

1. A description of the site/sites. Use project brochures and other available information, if possible. Include technical specifications.
2. Purpose of leasing (Marina, resort, industrial, etc.)
3. The minimum development required; types of development not allowed, i.e. residential, timeshare, condominiums
4. The maximum development allowed, if applicable.
5. Note restrictions on storage of solid waste and storage of toxic or hazardous materials.
6. Description of the government's ownership.
7. Copy of the lease with known information completed
8. Rent provisions.
9. If the considerations is less than fair market value, then state that this is considered a type of federal financial assistance and a Civil Rights assurance is required. Otherwise, point out the non-discrimination condition in the lease.
10. Arrangements for inspection of the site, POC, etc.
11. Schedule, if any, between Notice and execution of lease
12. Selection criteria
13. Submission Instructions

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I. SUBMISSION INSTRUCTIONS

A. Sealed, written Applications should be submitted: (District/address) Give number of copies and any special requirements, i.e. 3-ring binders, drawing no larger than 11x14.

B. Applications will not be accepted after (time) and (date). Modifications of applications may be made in sealed envelopes, as for original application, up to that time.

C. REJECTION of Application. The right is reserved, as the interests of the Government may require, to reject at any time any and all applications, to waive any informality in applications received, and to accept or reject any items of any applications unless such application is qualified by specific limitation.

D. DEFAULT. In the event that the successful applicant fails to enter into a lease within ten (10) days after receipt of Government notification that his application has been accepted and receipt of a draft lease for execution, or in the event that the successful applicant fails to otherwise comply with the terms of this Notice, the Government may declare the applicant in default in writing giving the applicant 10 days to respond or correct the default. The Government may then select the next highest rated applicant.

E. ADDITIONAL INFORMATION. Any additional information may be obtained from \_\_\_\_\_ (fill in District POC).

F. AWARD OF LEASE. Leases will be granted to the applicant with the best application, who is responsive to this Notice, provided that the applicant is responsible, the application is reasonable, and it is in the interest of the Government to issue the lease.

G. DEPOSIT. Applicant will submit a (non)refundable application fee/deposit of \$ \_\_\_\_\_. Amount will apply to initial rental for successful bidder.

II. APPLICATION INFORMATION: The following information must be provided to assist the Government in selecting the successful lease applicant:

A. General Information: Provide name, address, and telephone number of the applicant and, if applicable, the name, address, and telephone number of a representative authorized to act on behalf of the applicant during the course of the project.

B. Experience and Background: (Not required for federal, state or local governmental entities)

1. List any/all previous business endeavors with a description of the business operations and status.

2. Provide a description of any management qualifications and experience.

3. Provide third party personal and business references.

4. If applicant is a corporation it must provide:

a. Articles of Incorporation and by-laws.

b. Names, addresses, dates of birth, and Social Security numbers



of officers and participating principals and all addresses they have used for the last ten (10) years.

c. Corporate resolution authorizing the proposed transaction.

d. Summary of Corporate Activity.

5. If applicant is a partnership it must provide:

a. The partnership agreement.

b. Names, addresses, dates of birth, and Social Security numbers of the partners and all addresses they have used for the last ten (10) years.

6. If applicant is a sole proprietor he/she must provide Social Security number, date of birth, current address, and all addresses used for the last ten (10) years.

c. Financial Capability (Note: All financial data will be held in confidence).

1. If applicant is a corporation or limited partnership it must provide a current financial statement prepared by an independent Certified Public Accountant or by an independent licensed public accountant. It must also include a personal financial statement of the key owners/principals.

2. If applicant is an individual or partnership he/she/they must provide a complete and current personal financial statement.

3. Except for governmental agencies, provide the names, addresses, and telephone numbers of at least two commercial or institutional credit references from which the applicant has previously obtained financing. Attach a letter authorizing each credit reference to respond to inquiries from the Government.

4. Provide a preliminary budget, projected cash flow, estimated operating costs, and detailed plans of financing including identity of proposed lenders. Identify all interim and permanent sources of funds and include copies of loan documents used to implement the assignment.

D. Plan of Operation and Development.

1. Provide a five-year plan for operation and development of the leased premises. The plan must show goals and objectives for each year showing the estimated cost of any development.

2. Identify key positions and their duties and responsibilities as they relate to the business.

3. Depending on the scope of development and individual circumstances of the applicants, a performance bond, letter of credit, or performance deposit may be required to defray Government expenses of going through the lease selection process should applicant default.

4. If the property is subject to Coastal Zone Management, provide a consistency certification.

5. Other information may be requested as required by the District Engineer or his authorized representative.

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III. APPLICATION CONDITIONS.

A. It is the responsibility of the applicant to make sure that all lease provisions are understood and the condition of the premises proposed for lease are known. Prior to selection of the successful applicant, the Corps will conduct a pre-lease conference with the applicants. At this conference the lease will be reviewed, Corps policies will be discussed, and, at the conclusion, the applicants will be required to sign an acknowledgement attesting to the conference and the information provided therein.

B. By submittal of an application, the applicant agrees to provide non-discrimination and Civil Rights assurances, if applicable.

C. The information provided by the applicant may be used by the Corps to conduct a comprehensive background and credit check.

D. All questions may be directed to the Corps' \_\_\_\_\_ District Real Estate Division at \_\_\_\_\_, telephone number \_\_\_\_\_.

IV. GENERAL SUBMITTAL INFORMATION

A. SELECTION CRITERIA: The following will be considered to assist the Government in selecting the successful lease applicant:

1. Diversity of Recreation Opportunities/Operation Proposed
  - a. Proposed operation and development
  - b. Design
  - c. Quality and nature of development
  - d. Consistency with the lake setting/mobilization or installation mission
  - e. Proposed construction sequencing/phasing
1. Experience and background
  - a. Business experience and training
  - b. Comparable experience
  - c. Current or previous work with Federal Government
  - d. Business and personal references
2. Financial capability
  - a. Bank references
  - b. Financial Statement
  - c. Financial Plan for first three years
3. Credit and Criminal Background Check

V. TECHNICAL SPECIFICATIONS

Attach a copy here or indicate where a copy is available for inspection.

- Conservation plan for A&G leasing
- Project technical information (e.g. flood control, hydroelectric, navigation; any water level fluctuations; environmental data, etc.)
- Note wetland or floodplain areas, if any, and any restrictions.
- List any environmental, cultural or historical restrictions, if any. If environmental reports are too bulky to provide with the application package, state where they may be inspected. The cost of providing copies to applicant may be calculated as part of the cost to receive application package or as an extra costs.
- Industrial lease technical guidance (e.g., environmental data, safety requirements, etc.)
- If there is residual contamination from ammunition, explosives, or chemicals, detail extent and include any restrictions and prohibitions concerning use.
- Master plan data, if necessary to applicant. Where additional areas for similar development are shown in the Master Plan, all interested parties should be advised of the Government's tentative plans for these sites.
- Topographic site maps
- Etc.

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DEPARTMENT OF THE ARMY  
SUBMITTED BY OFFICE, CHIEF OF ENGINEERS  
REAL ESTATE  
DISPOSAL REPORT NO. \_\_\_\_\_

Submitted pursuant to Title 10, United State Code, Section 2662.

Name of Installation/Agency: (Use the official Blue Book inventory name, not common variations, with location of the proposed space by city and state);

Using Service: (MACOM, e.g. U.S. Forces Command; DOD agency, e.g. Defense Contract Audit Agency);

Present Use: (e.g. administrative, storage, housing, office, special purpose);

Interest: (fee, easement, etc.)

Area: (Space in acres, square feet, etc.);

Original Cost: (give land:, improvements: , total:);

Acquisition Date: (give land and improvements separate, round to nearest decade if more than one year);

Proposed Action: (outgrant, disposal, outgrant renewal);

Authority: cite the authority for the action, e.g. Title 10, United States Code, Section 2667; Federal Property and Administrative Services Act of 1949, as amended;

(a) three or four numbered paragraphs: [It has been reasonably said that a T-10 report should be clear and convincing to the man-on-the-street. Remember, the report is reviewed by several people, who will have only your submittal to review the action(s) by.]

1. The Department of the Army proposes to lease/dispose (# of acres/square feet) of Government owned real property/(type) space at (installation) in (city, state).

2. Brief narrative of the installation/unit, giving MACOM/Agency, its mission, and the number of personnel (actual and authorized).

3. Describe the present situation (e.g. brief description by categories of improvements and current total costs of construction, if applicable, interest owned, with separate breakdown of troop and family housing data; summary of any related outleaping history and current total annual rental received;) Explain why the action is necessary.

4. Describe: (a) property which is available for leasing with brief reason therefor; (b) specific property, of only a portion of an installation is involved, including acreages or square feet, cost of land and date of acquisition, description and cost of improvements, and description of other outgrants; (c) any property to be retained in 4.(b) detailed and including

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family and troop housing data; (d) other information or circumstances peculiar or essential to the proposed action such as production capacity of Army Ammunition Plants; and (e) estimated savings for operations and maintenance or care and maintenance that would result from leasing.

5. (Brief concluding statement of proposal including information on advertising, period of lease, termination privileges, consideration, and other significant provisions.)

Note: See recent guidance from HQUSACE (CERE-L) on acquisition reports for further comments.

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FIGURE A-1 REGULATORY REFERENCES

<u>Regulation</u>	<u>Chapter 8 References</u>
Executive Order 11988 . . . . .	.8-27a, 8-54p, 8-59
Executive Order 11990 . . . . .	.8-54o, 8-58a
Executive Order 12088 . . . . .	.8-61
Executive Order 12411 . . . . .	.8-19
Executive Order 12512 . . . . .	.8-4i, 8-6, 8-7, 8-8e, 8-18
32 CFR 229 . . . . .	.8-226a
32 CFR 229.5 . . . . .	.8-226b (1)
32 CFR 229.6 . . . . .	.8-226b (1)
32 CFR 229.7 . . . . .	.8-226b (2) (b)
32 CFR 229.8 . . . . .	.8-226b (1)
32 CFR 229.9 . . . . .	.8-226b (2) (b) (4)
32 CFR 229.15 . . . . .	.8-226b (2) (b) (5) (c)
32 CFR 664.4 . . . . .	.8-9
33 CFR 230 . . . . .	.8-51e
33 CFR Subparts 1-6 . . . . .	.8-66a
36 CFR 327 . . . . .	.8-158
40 CFR 302.4 . . . . .	.8-55e
40 CFR 373 . . . . .	.8-51
40 CFR 1500 . . . . .	.8-51e
41 CFR 101-42 . . . . .	.8-51d
41 CFR 101-47.2 . . . . .	.8-7
41 CFR 101-47.8 . . . . .	.8-7, 8-18b, 8-18c
41 CFR 101-47.103-12 . . . . .	.8-7
41 CFR 101-47.201-1 . . . . .	.8-7
41 CFR 101-47.202-2 . . . . .	.8-55b
41 CFR 101-47-203.9 . . . . .	.8-103b, 8-186a
41 CFR 101-47.801(a) . . . . .	.8-18i
41 CFR 101-47.801(b) . . . . .	.8-13b
41 CFR 101-47.802(b) . . . . .	.8-18j
43 CFR 8 . . . . .	.8-9
43 CFR 2880 . . . . .	.8-182b (2)
DOD Directive 1000.11 . . . . .	.8-130a
DOD Directive 4000.19R . . . . .	.8-212a
DOD Directive 4170.10 . . . . .	.8-50
DOD Instructions 1000.10 . . . . .	.8-130a
DOD Instructions 1000.12 . . . . .	.8-130a
DOD Instructions 7230.1 . . . . .	.8-81a (3)
AR 75-15 . . . . .	.8-62
AR 140-483 . . . . .	.8-207b

Figure 8-A-1

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AR 200-1 . . . . . 8-51a, 8-55, 8-71b  
 AR 200-2 . . . . . 8-51b, 8-53b  
 AR 210-10 . . . . . 8-116  
 AR 210-12 . . . . . 8-203b  
 AR 210-24 . . . . . 8-130a  
 AR 210-135 . . . . . 8-130a  
 AR 340-17 . . . . . 8-118  
 AR 385-64 . . . . . 8-63  
 AR 405-15 . . . . . 8-40  
 AR 405-20 . . . . . 8-185c  
 AR 405-30 . . . . . 8-35e, 8-200f (4) (b)  
 AR 405-70 . . . . . 8-19, 8-20, 8-226b (2) (a)  
 AR 405-80 . . . . . 8-5, 8-57, 8-68, 8-109  
 AR 405-80 (cont.) . . . . . 8-130, 8-131, 8-172  
 AR 405-80 (cont.) . . . . . 8-226b (2) (a)  
 AR 420-74 . . . . . 8-126  
 AR 735-5 . . . . . 8-12

ER 200-2-2 . . . . . 8-51e, 8-53b  
 ER 405-1-12 Chapter 10 . . . . . 8-40a  
 ER 405-1-12 Chapter 11 . . . . . 8-28c, 8-29d  
 ER 420-1-3 . . . . . 8-19  
 ER 1105-2-100 . . . . . 8-155c (1)  
 ER 1105-2-100 (cont.) . . . . . 8-202b, 8-202d (1)  
 ER 1110-2-1454 . . . . . 8-41a  
 ER 1130-2-400 . . . . . 8-4e, 8-15e, 8-18f, 8-159  
 ER 1130-2-406 . . . . . 8-158, 8-159  
 ER 1130-2-441 . . . . . 8-160a, 8-160b  
 ER 1165-2-26 . . . . . 8-59  
 ER 1165-2-131 . . . . . 8-156a (2)

Figure 8-A-1 (Continued)

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Utilization Evaluation Questions  
Part B

B-1. The standards and definition set out in 41 CFR 101-47.801 should be used in the evaluation and are not repeated here. The following are also suggested for consideration in developing the narrative portion of the report. This is not intended to be a complete list of all possible questions and should not be used as a checklist. Some items may not be applicable while others not on the list may be essential. It is intended only as a guide to aid in the preparation of the report:

(a) Are all lands and facilities thereon being used for Congressionally authorized purposes and programs?

(b) Based on (a) above, is utilization consistent with the master plan, operational master plans, appendices, supplement or other approved documents? Are there significant deviations?

(c) What are the public use trends and how do they affect project visitation?

(d) Do services and facilities meet public use adequately? Do private facilities interfere with public use?

(e) Have land or facilities been significantly developed since the previous survey? How?

(f) Are there natural resources inventories available for this project? Is there an OMP containing resource use objectives and site specific prescriptions for the management of the resources? Is there multiple use forest and woodland management?

(g) Are adequate boundary monuments maintained? Have funding constraints prevented boundary survey or maintenance?

(h) If the land is not utilized, would any interim use be appropriate, such as Agricultural & Grazing leasing?

(i) Is there evidence of unauthorized use? Is there evidence of trends of unauthorized use or certain areas where the problem is more prevalent? Is there a lack of public awareness that could be overcome with a public affairs effort? Is legal action needed?

(j) Is there evidence of unauthorized Government use of adjoining property? Is this of a recurring nature that would necessitate acquisition of the private party or that has already resulted in a taking? Is a legal opinion of the possible taking needed?

(k) Are Government quarters furnished to employees with the proper rental arrangement and documentation? What is the status of the phase-out actions required by the Housing Management Plan?

Figure 8-A-2 (Continued)



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(l) What is the status of previously reported utilization problems? Did the necessary follow-up action take place?

(m) What percent of project buildings is occupied? Has a space management survey been performed?

(n) Has all property identified as underutilized, not utilized or not put to optimum use been reported to HUD for determination of suitability for use by the homeless under the McKinney Act?

(o) Is the property over-utilized? Is the visitation excessive in relation to the current design carrying capacity? Should acquisition of additional property be considered? Is the property inadequate for reasonable near-term future development? Is plant growth deterioration beyond natural capability to regenerate? Are facilities overcrowded on days of normal (not peak) use? Are maintenance requirements above those required for routine wear?

(p) Is maintenance being deferred due to funding constraints?

(q) You should be sensitive to instances where District and Division rankings of O&M money may have caused deficiencies beyond the control of the project personnel. However, the management evaluation report is not the place for crusades. Where funding is a factor, it should be noted in a neutral manner.

Figure 8-A-2 (Continued)

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REPORT OF AVAILABILITY

A. GENERAL:

1. Project: (Use official name from Chief of Engineer report)
2. Tract No(s) and Name, if any: (Segment maps, Master Plan designations)
3. Type of Outgrant:  lease  license  easement  permit
4. Proposed use:  Commercial Concession  Park and Recreation  Fish and Wildlife  Agricultural and Grazing  Road  Pipeline  Other \_\_\_\_\_ (list may be varied to name outgrants commonly issued)
5. Recommended Term of outgrant: Proposed for \_\_\_\_\_ years. Start date, if applicable: \_\_\_\_\_
6. Use requested by:  Army element  private party  adjoining grantee  State, local government  other Federal agency  Other \_\_\_\_\_
7. General property description/characteristics of the property:  
Acreage \_\_\_\_\_; Land character \_\_\_\_\_.
8. Are Government buildings and improvements included in the area:  No  Yes. If yes, give details on buildings and improvements and attach copy of floor plan, if applicable:  
  
Building Identification No. \_\_\_\_\_; Square footage outgranted/percentage of building \_\_\_\_\_; Condition of the facilities \_\_\_\_\_.
9. If building space only and land is not included in grant, explain why the improvement is not excess: \_\_\_\_\_
10. United States property interest:  fee simple title  easement  in-lease; or  other.
11. Army jurisdiction:  primary jurisdiction,  permit from a Federal Agency,  withdrawn from the public domain.
12. If land is being made available for a public road, show type of access, governmental entity, any restrictions: \_\_\_\_\_ Is jurisdiction to be relinquished?  Yes  No
13. Are Utilities available?  Yes  No. Will utilities or other support services be provided by Army on reimbursable basis?  Yes  No
14. Destruction, relocation, and replacement of Government facilities:  
  
 I Certify the proposed use will not require the destruction, relocation, or replacement of any Government facilities.  
  
 The following information is provided with regard to the destruction, relocation, or replacement of any Government facilities:  
\_\_\_\_\_  
\_\_\_\_\_
15. I certify that the grant of the proposed use will not interfere with operation of the project, or with contemplated development and other

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16. The following site specific recommendations are made as to limitations, restrictions, or conditions to be included in the grant to make the proposed use compatible with the operation of the project:

---

17. Safety issues and concerns, if any: \_\_\_\_\_

18. REMARKS - include any legal, policy, or mission factors you are aware of that may affect the proposed use of the property: \_\_\_\_\_

19. BASED ON THE INFORMATION PROVIDED ABOVE, I RECOMMEND THE OUTGRANT BE [ ] APPROVED [ ] DENIED.

\_\_\_\_\_  
Date

\_\_\_\_\_  
SIGNATURE  
Title

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REPORT OF AVAILABILITY

B. ENVIRONMENTAL and CULTURAL CONSIDERATION:

1. COASTAL ZONE MANAGEMENT (CZM) (if applicable):

CZM is not applicable.

CZM is applicable and the proposed use is/will be consistent with the approved state CZM Plan.

2. CLEAN WATER ACT (FEDERAL WATER POLLUTION CONTROL ACT):

This action will not involve the discharge of any pollutants into the waters of the United States or less than one million gallons of discharge per day will be made.

This action will entail the discharge of more than one million gallons of pollutants into the waters of the United States per day.

The applicant has applied for and received a NPDES Permit from the EPA/appropriate state agency. If not received, state circumstances:

The Grantee is complying with the requirements of a NPDES Permit and the Grantee has a monitoring and reporting procedure.

Subsequent requests for expansion or additional construction should be reviewed to assure the Grantee is in compliance with the five acre rule.

3. FLOODPLAIN:

This property is not located within the 100 year floodplain and does not fall under the purview of Executive Order 11988.

This property is located within the 100 year floodplain and does fall under the purview of Executive Order 11988 and (circle the appropriate):

a. The proposed occupancy or modification will not adversely impact the floodplain.

b. There is no other practicable alternative available for this intended use.

c. The proposed occupancy or modification may be allowed subject to the following restrictions being incorporated in the outgrant document:

4. WETLANDS:

This property is not located within a wetlands area and, therefore, does not fall under the purview of Executive Order 11990.

This property is located within a wetlands area and does fall under the purview of Executive Order 11990, accordingly, the following restrictions must be incorporated in the outgrant document:

(Status of 404 Permit process

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5. ENDANGERED SPECIES:

This action will not jeopardize the habitat of any endangered species of fish, wildlife, or plants pursuant to the Endangered Species Act.

This action jeopardizes the habitat of endangered species of fish, wildlife, and/or plants identified on an attached map. Accordingly, the following restrictions must be incorporated in the outgrant document to protect the habitat: \_\_\_\_\_

6. FISH AND WILDLIFE COORDINATION ACT:

This action will not jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans, or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA.

This action will jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans, or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA. Impact description: \_\_\_\_\_  
RECOMMENDED ACTIONS PRIOR TO AVAILABILITY: \_\_\_\_\_

7. HISTORICAL AND CULTURAL RESOURCES:

The area has been surveyed for historical and cultural resources and there have been none identified on this property, and this action is in compliance with the National Historic Preservation Act and other relevant laws; Executive order 11593, Protection and Enhancement of the Cultural Environment; or any MOA's related thereto.

A survey has identified historical and/or cultural resources on this property. This action has been coordinated with the State Historic Preservation Officer and the Advisory Council on Historic Preservation in accordance with 36 CFR 800. The following restrictions must be incorporated into the outgrant document to protect the resource: \_\_\_\_\_

Native American graves or artifacts have been identified on this property. Refer to requirements of the American Indian Religious Freedom Act and Native American's Graves Protection and Repatriation Act.

Archaeological sites or resources have been identified on this property. Refer to the Antiquities Act; Archaeological and Historical Preservation Act; and Archaeological Resources Protection Act.

8. MISCELLANEOUS PROVISIONS.

The proposed outgrant activity will involve the use of pesticides, e.g. Agricultural, golf courses, restaurants. Refer to the Federal Insecticide, Fungicide, and Rodenticide Act and state pesticide regulations, as necessary.

The proposed outgrant activity will impact an area designated under the Wild and Scenic Rivers Act. Attach any site specific restrictions necessary to protect the area.

The proposed outgrant activity will include fuel burners, incinerators, gas pumps, solvent or other volatile compounds. Refer to the

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Clean Air Act and state and local regulations. Give status of state and local permits.

The proposed outgrant activity will include substances covered by the Toxic Substances Control Act.

Other special purpose environmental laws, as follows:

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9. NEPA REQUIREMENTS:

This action falls under one of the Categorical Exclusions (CX) contained in AR 200-2 or ER 200-2-2 (Procedures for Implementing NEPA). The environmental affect of the action has been considered. A Record of Environmental Consideration (REC) is attached.

The impact of this action is considered to be minimal or insignificant. An Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI) is attached/is being prepared.

The impact of this action is considered to be significant. An Environmental Impact Statement (EIS), or supplement thereto, is attached/is being prepared.

10. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Environmental Baseline Study (EBS) or Preliminary Assessment Screening (PAS):

An EBS/PAS has been conducted and no HTRW substances were identified as released, stored, or disposed on the property in the threshold quantities. Copy is attached.

released, stored, or disposed on the property in the threshold quantities. The CERCLA notice should be included in the outgrant document. Copy is attached containing the details. Choose one:

a. Remedial actions have been taken so that the property is considered safe for the proposed use.

b. Remedial actions have not been taken. Provide details and justification for outgranting in the current condition.

11. Real Property Contaminated with Ammunition, Explosives or Chemicals.

The property has been decontaminated using the most appropriate technology consistent with the proposed use of the property.

Transfers is to another Federal agencies for compatible use of surface de-contaminated real property, subject to the following limitations, restrictions and prohibitions concerning the use of the property, to ensure personnel and environmental protection: \_\_\_\_\_

Access rights are reserved to implement any monitoring plan.

Coordination with HQDA, DACS-SF and DAMO-SWS attached with the Land Disposal Site Plan (LDSP). Reference AR 385-64, "U.S. Army Explosives Safety Program."

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12. WASTE DISPOSAL (The Solid Waste Recovery Act, as amended; Resource Conservation and Recovery Act (RCRA).

[ ] The applicant will not generate hazardous waste or will not treat, dispose or store waste defined by EPA as having the following characteristics - corrosivity, ignitability, reactivity, or toxicity.

[ ] The applicant will generate hazardous waste or will produce waste defined by EPA as having the following characteristics - corrosivity, ignitability, reactivity, or toxicity. Choose the appropriate:

The applicant has obtained a hazardous waste identification number from EPA and, if applicable, the state.

b. The applicant has established records, waste management requirements, and a Spill Prevention Plan.

13. Underground/Other Storage Tanks.

[ ] There are no UST on the property and the applicant will not be installing tanks.

[ ] There are no above ground storage tanks for fuel or other regulated substances and the applicant will not be installing tanks.

[ ] There are UST on the property and/or the applicant will be installing tanks. Existing tanks are in compliance with current laws and regulations: \_\_\_\_\_ Yes \_\_\_\_\_ No. Construction of proposed tanks have been certified for such compliance: \_\_\_\_\_ Yes \_\_\_\_\_ No.

[ ] There are above ground storage tanks for fuel or other regulated substances on the property and/or the applicant will be installing tanks. Existing tanks are in compliance with current laws and regulations: \_\_\_\_\_ Yes \_\_\_\_\_ No. Construction of proposed tanks have been certified for such compliance: \_\_\_\_\_ Yes \_\_\_\_\_ No.

14. ADDITIONAL COMMENTS: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
SIGNATURE  
Title

REPORT OF AVAILABILITY

c. PRELIMINARY PROCEDURES:

1. STEWART B. MCKINNEY HOMELESS REQUIREMENTS:

McKinney Act requirements do not apply to this action.

McKinney Act requirements apply, necessary screening has been completed, and no interest was expressed.

2. INVENTORY AND CONDITION REPORTS:

No Government improvements are included in the proposed outgrant, so an inventory and condition report is not required.

Government improvements are included and an inventory and condition report is required/attached.

3. CONSIDERATION:

There is no monetary consideration required for this action.

Consideration is the greater of the administrative costs of \$ \_\_\_\_\_ or the FAIR MARKET RENTAL value for the property of \$ \_\_\_\_\_. Give source of value (i.e. appraisal, estimate).

offsets (In kind amounts) for the improvement, maintenance, protection, repair or restoration of the property leased will be provided in lieu of rent in the amount of \$ \_\_\_\_\_. Offsets to be provided are attached.

Consideration is less than fair market value and the outgrant document must contain assurances for Civil Rights Act non-discrimination and the Rehabilitation Act.

4. WAIVER OF COMPETITION:

A waiver of competition is not required.

A waiver of competition is recommended/not recommended. Provide full justification and proposed grantee, if waiver is recommended.

5. Other applicable laws, regulations, MOA'S, etc. requiring consideration for processing this action:

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6. TECHNICAL SPECIFICATIONS: (Attach a copy here or indicate where a copy is available.) (Conservation plan for A&G leasing; Project technical information (e.g. flood control, hydroelectric, navigation; any water level fluctuations; environmental data, etc.); Safety requirements; Master plan data, if necessary to potential outgrantee. Where additional areas for similar development are shown in the Master Plan, all interested parties should be advised of the Government's tentative plans for these sites.)

7. Additional information that will assist in processing this application/action: \_\_\_\_\_



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8. BASED ON THE INFORMATION PROVIDED ABOVE, I RECOMMEND THE OUTGRANT BE [ ]  
APPROVED [ ] DENIED. If the outgrant is recommended for denial, state the  
reasons: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
SIGNATURE  
Title

Encl 1. Maps showing the nearest project boundary; acreage, character  
of land, and the number and type of improvements, if both land and  
improvements are included. If only building space is involved, give total  
square feet and describe the type of construction. Use existing maps whenever  
feasible.

Encl 2. Attach environmental reports and data (REC, CX, EA, EIS, PAS)  
and any other documentation of compliance with environmental and cultural  
considerations.

Encls: any other attachments listed.

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#### INSTRUCTIONS

The Determination of Availability would be signed by the official with the delegated authority to approve the outgrant, whether the District, the Division, or SAILE.

Section A. of the ROA would usually be the starting of the outgrant process. If the outgrant is the culmination of the Master Plan process, then this section would pull information from the Master Plan and project data. If a private party has requested the outgrant or outgrant expansion, then the office which takes the request would fill in as much information as is available and submit it for further processing. This section would usually be done by the operation element.

Section B. would be completed by the appropriate environmental office or offices with expertise in the various areas. This section could be divided into more than one subpart if the district/project organization involves several offices which each need to sign a portion.

Section C. contains general preliminary information. This section would usually be done by the Real Estate element.

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DETERMINATION OF AVAILABILITY  
CIVIL WORKS PROJECTS

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1. The attached Report of Availability and its findings has been reviewed.

2. I have determined that the intended use of this property as set out in the attached Report of Availability is in the public interest or will further project purposes is consistent with delegated authorities and Government regulations.

3. I have determined that the proposed use is not a potential embarrassment to the Army.

4. I have determined that the property is not excess to the overall project purpose and has not been identified as not utilized in a Real Property Management Report. (PROVIDE JUSTIFICATION WHERE NECESSARY).

5. I have determined (for 10 USC 2667 leases) that the rental consideration is not less than the fair market value of the lease interest, taking into account the benefit to the United States, to the public and to the Department of Army and that the amount stated in the Report of Availability is appropriate and includes cash or in kind amounts for the improvement, maintenance, protection, repair or restoration of the property leased.

(For other outgrants) I have determined that the rental consideration is appropriate for the use proposed.

6. The proposed use as \_\_\_\_\_ is approved subject to (state any modifications to the restrictions stated in the Report of Availability which must be placed in the outgrant document).

7. Coordination:  
(list)

8. It has been determined that the property is available for the proposed use with the restrictions as stated in the Report of Availability (and as added above) and may be outgranted in accordance with applicable laws, rules and regulations.

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Approving Official)

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US ARMY CORPS OF ENGINEERS

NOTICE OF AVAILABILITY FOR LEASING  
(RECREATIONAL)/(INDUSTRIAL) SITES  
(DISTRICT/ADDRESS)

SITE SELECTED: (Site name, project/installation, city, county, state)

CONSISTING OF (Acreage, type of real property; nature of Government  
improvements, if any; zoning, if applicable)

FOR (Park and Recreation/ Commercial Concession/ Industrial Leasing purpose)

The site will be leased on a competitive basis to the individual or  
corporation presenting the best plan for development.

Applications will be evaluated by: (1) quality of proposed development, (2)  
compatibility with overall project/installation mission; (3) expertise of  
potential Lessee, (4) return to the United States, and (5) return to the  
potential Lessee.

Potential Lessees may request Applications for Leasing describing the sites  
and giving details of the lease requirements through (Date). To obtain a  
copy, send a check for \$ \_\_\_\_\_ to:  
(District/address)

Checks should be made payable to the F&A Officer, ( ) District, Corps of  
Engineers.

Applications will be submitted in sealed envelopes which will be opened and  
evaluated on:

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TIME (Local time at place of Opening)

\_\_\_\_\_  
LOCATION

\_\_\_\_\_  
U.S. Army Corps  
of Engineers

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APPLICATION INFORMATION PACKAGE  
FOR  
(RECREATION DEVELOPMENT) / (INDUSTRIAL DEVELOPMENT)  
AT  
(SITE/SITES)

The information below must appear in the lower left corner of Lease Application envelope.

Sealed Application for Lease of Real Property

To be opened:

Time: \_\_\_\_\_

Date: \_\_\_\_\_

Notice No. \_\_\_\_\_

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The application package should include:

1. A description of the site/sites. Use project brochures and other available information, if possible. Include technical specifications.
2. Purpose of leasing (Marina, resort, industrial, etc.)
3. The minimum development required; types of development not allowed, i.e. residential, timeshare, condominiums
4. The maximum development allowed, if applicable.
5. Note restrictions on storage of solid waste and storage of toxic or hazardous materials.
6. Description of the government's ownership.
7. Copy of the lease with known information completed
8. Rent provisions.
9. If the considerations is less than fair market value, then state that this is considered a type of federal financial assistance and a Civil Rights assurance is required. Otherwise, point out the non-discrimination condition in the lease.
10. Arrangements for inspection of the site, POC, etc.
11. Schedule, if any, between Notice and execution of lease
12. Selection criteria
13. Submission Instructions

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I. SUBMISSION INSTRUCTIONS

A. Sealed, written Applications should be submitted: (District/address) Give number of copies and any special requirements, i.e. 3-ring binders, drawing no larger than 11x14.

B. Applications will not be accepted after (time) and (date). Modifications of applications may be made in sealed envelopes, as for original application, up to that time.

C. REJECTION of Application. The right is reserved, as the interests of the Government may require, to reject at any time any and all applications, to waive any informality in applications received, and to accept or reject any items of any applications unless such application is qualified by specific limitation.

D. DEFAULT. In the event that the successful applicant fails to enter into a lease within ten (10) days after receipt of Government notification that his application has been accepted and receipt of a draft lease for execution, or in the event that the successful applicant fails to otherwise comply with the terms of this Notice, the Government may declare the applicant in default in writing giving the applicant 10 days to respond or correct the default. The Government may then select the next highest rated applicant.

E. ADDITIONAL INFORMATION. Any additional information may be obtained from \_\_\_\_\_ (fill in District POC).

F. AWARD OF LEASE. Leases will be granted to the applicant with the best application, who is responsive to this Notice, provided that the applicant is responsible, the application is reasonable, and it is in the interest of the Government to issue the lease.

G. DEPOSIT. Applicant will submit a (non)refundable application fee/deposit of \$ \_\_\_\_\_. Amount will apply to initial rental for successful bidder.

II. APPLICATION INFORMATION: The following information must be provided to assist the Government in selecting the successful lease applicant:

A. General Information: Provide name, address, and telephone number of the applicant and, if applicable, the name, address, and telephone number of a representative authorized to act on behalf of the applicant during the course of the project.

B. Experience and Background: (Not required for federal, state or local governmental entities)

1. List any/all previous business endeavors with a description of the business operations and status.

2. Provide a description of any management qualifications and experience.

3. Provide third party personal and business references.

4. If applicant is a corporation it must provide:

a. Articles of Incorporation and by-laws.

b. Names, addresses, dates of birth, and Social Security numbers

of officers and participating principals and all addresses they have used for the last ten (10) years.

- c. Corporate resolution authorizing the proposed transaction.
- d. Summary of Corporate Activity.

5. If applicant is a partnership it must provide:

- a. The partnership agreement.
- b. Names, addresses, dates of birth, and Social Security numbers of the partners and all addresses they have used for the last ten (10) years.

6. If applicant is a sole proprietor he/she must provide Social Security number, date of birth, current address, and all addresses used for the last ten (10) years.

c. Financial Capability (Note: All financial data will be held in confidence).

1. If applicant is a corporation or limited partnership it must provide a current financial statement prepared by an independent Certified Public Accountant or by an independent licensed public accountant. It must also include a personal financial statement of the key owners/principals.

2. If applicant is an individual or partnership he/she/they must provide a complete and current personal financial statement.

3. Except for governmental agencies, provide the names, addresses, and telephone numbers of at least two commercial or institutional credit references from which the applicant has previously obtained financing. Attach a letter authorizing each credit reference to respond to inquiries from the Government.

4. Provide a preliminary budget, projected cash flow, estimated operating costs, and detailed plans of financing including identity of proposed lenders. Identify all interim and permanent sources of funds and include copies of loan documents used to implement the assignment.

D. Plan of Operation and Development.

1. Provide a five-year plan for operation and development of the leased premises. The plan must show goals and objectives for each year showing the estimated cost of any development.

2. Identify key positions and their duties and responsibilities as they relate to the business.

3. Depending on the scope of development and individual circumstances of the applicants, a performance bond, letter of credit, or performance deposit may be required to defray Government expenses of going through the lease selection process should applicant default.

4. If the property is subject to Coastal Zone Management, provide a consistency certification.

5. Other information may be requested as required by the District Engineer or his authorized representative.



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III. APPLICATION CONDITIONS.

A. It is the responsibility of the applicant to make sure that all lease provisions are understood and the condition of the premises proposed for lease are known. Prior to selection of the successful applicant, the Corps will conduct a pre-lease conference with the applicants. At this conference the lease will be reviewed, Corps policies will be discussed, and, at the conclusion, the applicants will be required to sign an acknowledgement attesting to the conference and the information provided therein.

B. By submittal of an application, the applicant agrees to provide non-discrimination and Civil Rights assurances, if applicable.

C. The information provided by the applicant may be used by the Corps to conduct a comprehensive background and credit check.

D. All questions may be directed to the Corps' \_\_\_\_\_ District Real Estate Division at \_\_\_\_\_, telephone number \_\_\_\_\_.

IV. GENERAL SUBMITTAL INFORMATION

A. SELECTION CRITERIA: The following will be considered to assist the Government in selecting the successful lease applicant:

1. Diversity of Recreation Opportunities/Operation Proposed
  - a. Proposed operation and development
  - b. Design
  - c. Quality and nature of development
  - d. Consistency with the lake setting/mobilization or installation mission
  - e. Proposed construction sequencing/phasing
1. Experience and background
  - a. Business experience and training
  - b. Comparable experience
  - c. Current or previous work with Federal Government
  - d. Business and personal references
2. Financial capability
  - a. Bank references
  - b. Financial Statement
  - c. Financial Plan for first three years
3. Credit and Criminal Background Check

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V. TECHNICAL SPECIFICATIONS

Attach a copy here or indicate where a copy is available for inspection.

- Conservation plan for A&G leasing
- Project technical information (e.g. flood control, hydroelectric, navigation; any water level fluctuations; environmental data, etc.)
- Note wetland or floodplain areas, if any, and any restrictions.
- List any environmental, cultural or historical restrictions, if any. If environmental reports are too bulky to provide with the application package, state where they may be inspected. The cost of providing copies to applicant may be calculated as part of the cost to receive application package or as an extra costs.
- Industrial lease technical guidance (e.g., environmental data, safety requirements, etc.)
- If there is residual contamination from ammunition, explosives, or chemicals, detail extent and include any restrictions and prohibitions concerning use.
- Master plan data, if necessary to applicant. Where additional areas for similar development are shown in the Master Plan, all interested parties should be advised of the Government's tentative plans for these sites.
- Topographic site maps
- Etc.

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DEPARTMENT OF THE ARMY  
 SUBMITTED BY OFFICE, CHIEF OF ENGINEERS  
 REAL ESTATE  
 DISPOSAL REPORT NO. \_\_\_\_\_

Submitted pursuant to Title 10, United State Code, Section 2662.

- Name of Installation/Agency: (Use the official Blue Book inventory name, not common variations, with location of the proposed space by city and state);
- Using Service: (MACOM, e.g. U.S. Forces Command; DOD agency, e.g. Defense Contract Audit Agency);
- Present Use: (e.g. administrative, storage, housing, office, special purpose);
- Interest: (fee, easement, etc.)
- Area: (Space in acres, square feet, etc.);
- Original Cost: (give land:, improvements: , total:);
- Acquisition Date: (give land and improvements separate, round to nearest decade if more than one year);
- Proposed Action: (outgrant, disposal, outgrant renewal);
- Authority: cite the authority for the action, e.g. Title 10, United States Code, Section 2667; Federal Property and Administrative Services Act of 1949, as amended;

(a) three or four numbered paragraphs: [It has been reasonably said that a T-10 report should be clear and convincing to the man-on-the-street. Remember, the report is reviewed by several people, who will have only your submittal to review the action(s) by.]

1. The Department of the Army proposes to lease/dispose (# of acres/square feet) of Government owned real property/(type) space at (installation) in (city, state).
2. Brief narrative of the installation/unit, giving MACOM/Agency, its mission, and the number of personnel (actual and authorized).
3. Describe the present situation (e.g. brief description by categories of improvements and current total costs of construction, if applicable, interest owned, with separate breakdown of troop and family housing data; summary of any related outleaping history and current total annual rental received;) Explain why the action is necessary.
4. Describe: (a) property which is available for leasing with brief reason therefor; (b) specific property, of only a portion of an installation is involved, including acreages or square feet, cost of land and date of acquisition, description and cost of improvements, and description of other outgrants; (c) any property to be retained in 4.(b) detailed and including

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family and troop housing data; (d) other information or circumstances peculiar or essential to the proposed action such as production capacity of Army Ammunition Plants; and (e) estimated savings for operations and maintenance or care and maintenance that would result from leasing.

5. (Brief concluding statement of proposal including information on advertising, period of lease, termination privileges, consideration, and other significant provisions.)

Note: See recent guidance from HQUSACE (CERE-L) on acquisition reports for further comments.

## **BRAC LEASE - INDEX OF CONDITIONS**

1. Authorized Representatives
2. Use of the Leased Premises and Personal Property
3. Term
4. Termination, Revocation, Default, and Relinquishment
5. Consideration
6. Notices
7. Supervision of the Leased Premises
8. Applicable Laws and Regulations
9. Condition of the Leased Premises
10. Transfers, Assignments, and Subleasing
11. Cost of Utilities
12. Protection of Property
13. Insurance
14. Right to Enter
15. Indemnity and Hold Harmless
16. Restoration
17. Non-Discrimination
18. Subject to Easements
19. Subject to Mineral Interests
20. Rental Adjustment
21. Prohibited Uses
22. Waste of Natural Resources
23. Disputes Clause
24. Environmental Protection
25. Hazardous Substances Notice
26. (Alternate) Lead-Based Paint Warning and Covenant
26. (Alternate) Notice of the Presence of Lead-Based Paint and Covenant
27. Notice of the Presence of Asbestos and Covenant
28. Other Environmental Restrictions
29. Site Specific Restrictions
30. Historic Preservation
31. Soil and Water Conservation
32. Taxes
33. Covenant Against Contingent Fees
34. Officials Not To Benefit
35. Several Lessees
36. Modifications
37. No Commitments For Future Use
38. Disclaimer
39. Availability of Funds

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Exhibits to BRAC Lease

- A Leased Premises (Map and/or description)
- B Reuse Plan
- C Development/Use of Premises (Description, if any)
- D Condition Survey Report (with Environmental Baseline Survey)
- E Personal Property
- F UXO Parcels

**DEPARTMENT OF THE ARMY  
LEASE**

**UNDER**

**BASE REALIGNMENT AND CLOSURE (BRAC)**

\_\_\_\_\_  
(Name of Installation)

\_\_\_\_\_  
(County, State)

Lease Number \_\_\_\_\_

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY** (“Lessor”), and \_\_\_\_\_ (“Lessee”).

**WITNESSETH:**

That the Secretary of the Army, by the authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the Lessee the property identified in Exhibit A, attached hereto and made a part hereof, hereinafter referred to as the “Leased Premises”.

**THIS LEASE** is granted subject to the following conditions:

**1. AUTHORIZED REPRESENTATIVES**

The Secretary of the Army, the “Lessor”, may act by and through the [the same DA official designated in Condition 7] or the District Engineer, \_\_\_\_\_ District, or through other duly authorized representatives. The (designated DA official) or the District Engineer may also act by and through their duly authorized representatives. Except as otherwise specifically provided, any reference herein to "Lessor", "[Installation Commander or DA official]", “District Engineer”, or "said officer" shall include their duly authorized representatives. The Lessee also may act by and through duly authorized representatives. Any reference to "Lessee" shall include any assignees, or successors and their duly authorized representatives.

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[Note: If there is no reuse plan, delete reference to it.]

## **2. USE OF THE LEASED PREMISES AND PERSONAL PROPERTY.**

a. The sole purpose(s) for which the Leased Premises and any improvements thereon may be used, in the absence of prior written approval of the Lessor for any other use, is for the use designated in or consistent with the approved Reuse Plan covering the Leased Premises, attached hereto as Exhibit B, [In the absence of a Reuse Plan or if the Reuse Plan fails to adequately identify uses that will be permitted under the Lease, permissible use of the Leased Premises must be specifically described by building or area, showing any building modification, demolition, new construction, and improvements.] which use of the Leased Premises has been properly evaluated by the Lessor under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 to 4370d (NEPA).

b. The Lessor, in the Lessor's sole discretion, must approve any change in the use of the Leased Premises as set forth in subcondition a. above. Prior to approval of any changes in use requested by the Lessee, the Lessee shall furnish, at the Lessee's expense, any additional environmental analyses and documentation deemed necessary by the Lessor to comply with the National Environmental Policy Act of 1969, as amended, and implementing regulations, and other applicable environmental laws and regulations. In granting approval for the change in use, the Lessor reserves the right to impose such additional environmental protection provisions and restrictions as the Lessor deems appropriate.

c. During the term of this Lease, the Lessee shall have the use of the personal property described in Exhibit E hereto in accordance with the terms of this Lease, which personal property shall be deemed to be a part of the Leased Premises.

## **3. TERM**

a. The Leased Premises are leased for a term of \_\_\_\_\_ [The term of the Lease should be the shortest term that will meet the needs of the parties, generally five (5) years] years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_, or until terminated under the condition on **TERMINATION, REVOCATION, DEFAULT AND, RELINQUISHMENT**, whichever is sooner.

[Alternate Language for use in Master Leases]

a. The Leased Premises are leased for a term of \_\_\_\_\_ [The term of the Lease should be the shortest term that will meet the needs of the parties, generally five (5) years] years, commencing as provided for herein and ending \_\_\_\_\_ years thereafter or until terminated under the condition on **TERMINATION, REVOCATION, DEFAULT, AND RELINQUISHMENT**, whichever is sooner. The term of this Lease



shall commence, and the provisions of this Lease shall become effective, in accordance with the schedules and procedures set forth below:

(1) The Original Lease Term for the Leased Premises, as described in Exhibit A-1, shall commence on \_\_\_\_\_.

(2) With regard to expansion of the Leased Premises, the Lessee may request additional land and/or buildings (“Additional Leased Premises”) be added to the Leased Premises hereunder by written notice to the Lessor, acting by and through the District Engineer and the Installation Commander (“Expansion Request”), which Expansion Request shall include a plan of the Additional Leased Premises requested, any recommended site or use specific lease terms related thereto, a brief description of the intended use for the Additional Leased Premises, the commencement date of the Original Lease Term for said Additional Leased Premises, and copies of any subleases or licenses that will commence on the date of the Original Lease Term.

(3) Upon receipt of an Expansion Request by the Lessee, the Lessor shall promptly prepare an amendment to this Lease (“Amendment”), which Amendment shall incorporate a plan of the Additional Leased Premises into Exhibit A, as Exhibit A-2; establish the commencement date of the Original Lease Term for the Additional Leased Premises; incorporate site or use specific terms into the Lease as may be agreed by the parties; and amend the Environmental Protection Provisions below by incorporating site specific restrictions regarding the Additional Leased Premises contained in the Finding of Suitability to Lease (FOSL) for the Additional Leased Premises. As of the date the Lessor and the Lessee sign the Amendment, the Lease shall be deemed modified and amended thereby, without the need for additional action by either party.

b. [Include the following only if an option to extend the term has been approved and may be needed to coincide with the estimated dates for environmental completion:] The Lessee shall have the right to extend the original term of the Lease for one (1) successive period of \_\_\_\_\_ [Not to exceed five (5)] years (“Option Term”), provided that, as to this option, Lessee shall give written notice to the Lessor of its election to extend the Lease term at least eighteen (18) months prior to the time when the term expires; provided that, at the time when such notice is given, there shall not be any uncured event of default on the part of Lessee and the lease term has not been terminated or revoked by the Lessor under the Condition on **TERMINATION, REVOCATION, DEFAULT, AND RELINQUISHMENT**. If the Lessee exercises the option under this subcondition b., the terms and conditions of this Lease shall remain in effect, except that the annual base rental shall increase to \_\_\_\_\_ [Set out increased consideration] during the Option Term.

#### **4. TERMINATION, REVOCATION, DEFAULT, AND RELINQUISHMENT**

a. Termination.

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(1) In the event of the Lessor's decision to convey the Leased Premises or a portion thereof to the Lessee, the Lease shall terminate upon conveyance of the Leased Premises or a portion thereof to the Lessee with respect to that portion so conveyed.

(2) In the event the Lessor decides to convey the Leased Premises or a portion thereof to a third party and the Lessor executes a Finding of Suitability to Transfer (FOST), the Lessor may terminate this Lease with respect to any portion of the Leased Premises to be so conveyed, upon giving the Lessee sixty (60) days written notice of termination.

(3) The Lessor may terminate this Lease and remove the Lessee, and any sublessees, in the event of a national emergency as declared by the President or the Congress of the United States.

b. Default. The following events shall be deemed to be events of default by the Lessee under this Lease:

(1) Lessee shall fail to pay any rental payment hereunder within thirty (30) days after written notice thereof from Lessor. (Delete this default event if this is a public benefit discounted rental.)

(2) Lessee shall fail to comply with any condition, provision, covenant, or warranty made under this Lease by Lessee (other than the payment of rent) and shall not cure such failure within ninety (90) days after written notice thereof to Lessee, unless said non-compliance is the subject of a shorter notice given by a federal, state, or local governmental agency, in which case the shorter notice shall apply.

(3) Lessee shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(4) Lessee shall file a petition under any Section or Chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or there shall be filed against the Lessee a petition for reorganization for an insolvency or a similar proceeding filed against Lessee.

(5) A receiver or trustee shall be appointed for the Leased Premises or for all or substantially all of the assets of the Lessee.

(6) Lessee shall do or permit to be done anything which creates a lien upon the Leased Premises.

c. Revocation. The Lessee is charged at all times with full knowledge of all the conditions and requirements of this Lease, and the necessity for correction of defaults and

non-compliance. Upon the occurrence of any of the aforesaid events of default, Lessor shall have the option to revoke this Lease, in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying said Leased Premises or any part thereof, without being liable for any claim of damages therefor; Lessee hereby agreeing to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of such termination. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided, including closure of the Leased Premises or temporary suspension of activities under the Lease, or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein provided constitute an election of remedies, thereby excluding the later election of an alternate remedy. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. Lessee agrees to pay to Lessor all costs and expenses incurred by Lessor in the enforcement of this Lease, including, without limitation, the reasonable fees of Lessor's attorneys when such attorneys are employed by Lessor to effect collection of any sums due hereunder or to enforce any right or remedy of Lessor.

d. Sublessees. In accordance with the Condition on **TRANSFERS, ASSIGNMENTS, AND SUBLEASING**, any sublease is to be subject to the conditions and terms of this Lease. Nevertheless, should default and non-compliance described in subcondition b. above stem from the activities of a sublessee, the Lessee is responsible for ensuring compliance, either by corrective action itself or through the sublessee. If the Lessee is making diligent, good faith efforts to obtain corrective action and compliance by the sublessee, to the satisfaction of the Lessor, then the Lessor's exercise of rights under subcondition c. will only be for that part of the Leased Premises under the control of the sublessee.

e. Relinquishment. This Lease may be terminated or relinquished by the Lessee by giving thirty (30) days prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES** [Delete the following proviso if the lease is for a public benefit discounted rental], and provided further, that in the event that said notice is not given at least thirty (30) days prior to the rental due date, the Lessee shall be required to pay the rental for the period shown in the condition on **CONSIDERATION**.

[Select the appropriate condition on Consideration – either fair market rental or public benefit discounted rental, as applicable]

**5. CONSIDERATION** [Cash payment/fair market rental]

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a. [Use if there will be no rental offsets] The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_

a. [Alternate Condition a. Use if there will be rental offsets] As consideration for this Lease, the Lessee shall pay fair market rental in the amount of \_\_\_\_\_, (\$ \_\_\_\_\_) payable in cash in advance to the United States in the amount of \_\_\_\_\_, (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_. In addition, such cash rental may be offset by the value of work items which shall be accomplished by the Lessee for the maintenance, protection, repair, restoration, and improvement of the Leased Premises as described in the Re-Use Plan attached as Exhibit \_\_\_\_.

b. All rent and other payments due under the terms of this Lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative, and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

**5. CONSIDERATION** [Public Benefit Discounted Rental - less than Fair Market Value - Generally only allowed if the lessee is the LRA]

a. The consideration for this Lease is the operation and maintenance of the Leased Premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

b. All monies received by the Lessee from operations conducted on the Leased Premises, including, but not limited to, use fees and rental or other consideration received from its sublessees or licensees, shall be utilized by the Lessee for the protection, operation, maintenance, repair, improvement, and costs related to the Leased Premises and the installation, to include marketing and management activities of the Lessee. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. The Lessor shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, sublessees or licensees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the Lessor with the results of such an audit.

## 6. NOTICES

All correspondence and notices to be given pursuant to this Lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and, if to the United States, to [insert mailing location for legal notice] the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_ District, \_\_\_\_\_, or as may from time to time otherwise be directed by the parties. [Copies of correspondence and notices will also be furnished to \_\_ (Installation Commander or DA official), \_\_\_\_\_.] Notices must be given in a properly sealed envelope, addressed as aforesaid, and deposited postage prepaid by either registered mail, return receipt requested, or by certified mail, return receipt requested, in a post office regularly maintained by the United States Postal Service. The service of the notice shall be deemed complete upon the receipt of said notice, or the refusal thereof, by the applicable party.

## 7. SUPERVISION OF THE LEASED PREMISES

The use and occupation of the Leased Premises shall be subject to the general supervision and approval of the Installation Commander [If not the IC, then designate the DA officer who will have day-to-day supervision] for \_(insert name)\_\_\_\_\_ Installation, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

## 8. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal, state, and local laws, ordinances, regulations, and standards that are or may become applicable to their activities

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on the Leased Premises, including, but not limited to, those regarding the environment, construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. Additional compliance conditions are included in the condition on **ENVIRONMENTAL PROTECTION**.

## **9. CONDITION OF THE LEASED PREMISES**

a. The Lessee acknowledges that it has inspected the Leased Premises, knows its condition, and understands that the same is leased in an "as is," and "where is" condition, without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto, except as may be specifically provided herein.

b. The Lessor and the Lessee have jointly conducted an inventory and condition survey of the Leased Premises, to include the environmental condition, prior to lease execution by either party. The inventory and condition survey is documented in a Condition Survey report prepared by the Lessor, signed by the duly authorized representatives of both parties, and attached as Exhibit D to this Lease. The Condition Survey will refer to and incorporate by reference the Environmental Baseline Survey (EBS) prepared by the Lessor, as well as any other environmental conditions that may not be specifically identified in the EBS. Preceding expiration, revocation, or termination of this Lease, the Lessor and the Lessee will jointly conduct a close-out survey. The Lessor will prepare a close-out report. The Lessee shall fully fund the Lessor's preparation of an updated EBS that will document the environmental condition of the property at that time as part of the close-out survey. The close-out survey and report will refer to, and incorporate by reference, the updated EBS. All significant variances from the initial Condition Survey shall be clearly documented in the close-out report. This close-out report will constitute the basis for settlement by the parties for any leased property shown to be lost, damaged, contaminated, or destroyed during the lease term, in determining any environmental restoration requirements to be completed by the Lessee, and restoration of the property as required in the condition on **RESTORATION**.

## **10. TRANSFERS, ASSIGNMENTS, AND SUBLEASING**

a. Successors. This Lease and the covenants and conditions herein contained shall be binding upon Lessee, its successors and assignees; and shall inure to the benefit of Lessee and only such successors or assignees of the Lessee to whom the transfer or assignment by Lessee has been consented to by Lessor in writing. No transfers or assignments shall be valid unless the successor or assignees shall, by an instrument in a form sufficient for recording and acceptable to the Lessor, enter into an assumption

agreement and assume all of the Lessee's obligations under this Lease. A duplicate original of that assumption agreement will be delivered to the Lessor, and the assignment shall not take effect until delivery is made.

b. Sublease. The Lessee may sublease the Leased Premises, so long as the Lessee remains primarily liable for performance of all the obligations of Lessee hereunder. The Lessee shall neither sublease, license, nor grant any interest in the Leased Premises or any part thereof or any property thereon, nor grant any other interest, privilege, or license whatsoever in connection with this Lease, without prior written notice to the Lessor, as set out in the condition on **NOTICES**. The Lessee shall provide the Lessor a copy of every executed sublease hereunder. No sublease shall be valid unless and until the Lessee shall have delivered to the Lessor a copy of the executed sublease. Every sublease shall contain the Environmental Protection provisions set out in this Lease and shall state that it is subject to the conditions and terms of this Lease and that, in case of any conflict between the instruments, this Lease will control. The Lessee shall provide each approved sublessee or licensee with a copy of this Lease.

c. Notice to EPA and State. The Lessee further agrees that in the event of an assignment or sublease of the Leased Premises, it shall provide to the EPA and [state agency] by certified mail a copy of the agreement or sublease of the Leased Premises within 14 days after the effective date of such transaction. The Lessee may delete the financial terms and any other proprietary information from the copy of any agreement or assignment or sublease furnished pursuant to this condition.

[If DA is to provide utilities, do not execute lease until a utility contract is signed. Delete the following condition if not applicable, or modify it to state the situation.]

## **11. COST OF UTILITIES**

a. As set out in the Utility Contract, executed by the Lessee and said officer having jurisdiction over the Leased Premises, dated \_\_\_\_\_, the Lessee shall pay the cost of producing and/or supplying any utilities and other services furnished by the Lessor or through government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. Payment shall be made in the manner prescribed in said Utility Contract.

b. The United States shall be under no obligation to furnish utilities or services. The supplying of utilities or other services by the Lessor is not a commitment to provide utilities after Lessor's activities at the installation cease. The Lessee should develop plans for assumption of the utilities by a local utility provider or other qualified entity.

## **12. PROTECTION OF PROPERTY**

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The Lessee shall keep the Leased Premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee and/or its sublessees or licensees under this Lease, and shall exercise due diligence in the protection of all property located on the Leased Premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property, except personal property, to a condition satisfactory to said officer.

### **13. INSURANCE**

a. At the commencement of this Lease, the Lessee shall obtain, from a reputable insurance company, or companies, comprehensive liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable, and consistent with sound business practices or an amount not less than a combined single limit of \$\_\_\_[insert amount based upon risk of activities, but no less than \$1,500,000] \_\_\_ DOLLARS (\$\_\_\_\_\_), whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons upon the Leased Premises or arising from activities conducted under this Lease.

b. The liability insurance policy shall insure the hazards of the Leased Premises and operations conducted in and on the Leased Premises, independent contractors, contractual liability (covering the indemnity included in this Lease agreement), and shall name the United States as an insured party. Each policy will provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee or the United States or any other person; provide that the insurer will have no right of subrogation against the United States; and be reasonably satisfactory to the Lessor in all respects. Under no circumstances will the Lessee be entitled to assign to any third party rights of action that it may have against the United States arising out of this Lease.

c. The Lessee shall require that the insurance company give said officer and the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. Said officer or the District Engineer may require closure of any or all of the Leased Premises during any period for which the Lessee does not have the required insurance coverage. The Lessee shall require its insurance company to furnish to said officer and to the District Engineer a copy of the policy or policies, or if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer every two (2) years or upon renewal or modification of this Lease.



[Delete the following condition if no government structures or improvements are within the leased premises, or if structures and improvements are included but the determination of availability waives the requirement for fire insurance.]

d. As to those structures and improvements on the Leased Premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the Leased Premises pursuant to the terms and conditions of this Lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the Leased Premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used for the repair, restoration, or replacement of the property damaged or destroyed or of the Leased Premises, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the District Engineer does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore, or replace the Leased Premises or any part thereof should it be diminished in value, damaged, or destroyed.

e. The Lessee may require any sublessees, assignees, transferees, or successors, as joint and several responsible parties with the Lessee for those portions of the Leased Premises under their control, to maintain and carry at their expense portions of the insurance requirement.

f. [Include if there is an insurance policy.] Notwithstanding anything herein to the contrary, each party hereto hereby releases the other party, its agents, sublessees and employees, to the full extent recoverable under the insurance policies of the releasing party, from any and all liability for any loss or damage which may be inflicted upon the property of such party, notwithstanding that such loss or damage shall have arisen out of the negligent or the tortious act or omission of the other party, its agents, sublessees or employees; provided, however, that this release shall be effective only with respect to loss or damage occurring during such time as the appropriate policy of insurance of the party so releasing shall contain a clause to the effect that such release shall not affect the said policy or the right of the insured to recover thereunder, and each party at the request of the other shall use reasonable efforts to have such a clause included in its said policies. Each party hereto shall notify the other in the event such a clause is not included in its said policies, or is withdrawn therefrom, in which event the release herein of the other party shall be null and void.

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f. [Use for self-insured municipal governments only] Notwithstanding anything contained herein to the contrary, Lessee may self-insure against the risks provided for in this Condition under a plan of self-insurance maintained in accordance with sound accounting practices and the state laws, which Lessee may from time to time have in force and effect. The Lessee's insurance status shall not eliminate the requirement for its sub-lessees to have insurance from a reputable insurance carrier as set out above or to also be self-insured, if applicable.

#### **14. RIGHT TO ENTER**

a. The right is reserved to the United States, its officers, agents, and employees to enter upon the Leased Premises at any time and for any purpose necessary or convenient in connection with government purposes; to make inspections, to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

b. Additional rights to enter are reserved in the condition on **ENVIRONMENTAL PROTECTION**.

#### **15. INDEMNITY AND HOLD HARMLESS**

a. The Lessee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident attributable or incident to the condition or state of repair of the Leased Premises or to its possession and/or use of the Leased Premises or the activities conducted under this Lease. The Lessee expressly waives all claims against the United States of America for any such loss, damage, personal injury, or death caused by or occurring as a consequence of such condition, possession and/or use of the Leased Premises by the Lessee, or the conduct of activities or the performance of responsibilities under this lease by the Lessee. The Lessee further agrees to indemnify and hold harmless the United States of America, the Lessor, its officers, agents, and employees from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of the Leased Premises by the Lessee. The Lessor will give the Lessee notice of any claim against it covered by this indemnity as soon after learning of such claim as practicable.

b. The Lessee shall indemnify and hold harmless the United States of America from any costs, expenses, liabilities, fines, or penalties resulting from discharges, releases, emissions, spills, storage, disposal, or any other action by the Lessee giving rise to United States of America liability, civil or criminal, or responsibility under Federal, state, or local environmental laws.

c. Subconditions a. and b. of this Condition and the obligations of the Lessee hereunder shall survive the expiration or termination of the Lease and the conveyance of the Leased Premises. The Lessee's obligation hereunder shall apply whenever the United States incurs costs or liabilities for the Lessee's actions giving rise to liability under this condition.

d. In leasing the Leased Premises, the United States recognizes its obligation to hold harmless, defend, and indemnify the Lessee and any successor, assignee, transferee, lender, or sublessee of the Lessee as provided for in Section 330 of the Department of Defense Authorization Act of 1993, as amended, and to otherwise meet its obligations under the law.

e. Any sublessees, assignees, transferees, or successors shall be jointly and severally responsible with the Buyer/Lessee for those portions of the Leased Premises under their control.

## **16. RESTORATION**

On or before the expiration of this Lease or its termination by the Lessee, the Lessee shall vacate the Leased Premises, remove the property of the Lessee, and restore the Leased Premises to a condition satisfactory to said officer. If, however, this Lease is revoked, the Lessee shall vacate the Leased Premises, remove said property and restore the Leased Premises to the aforesaid condition within such time as the said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the Leased Premises, then, at the option of the said officer, the property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this Lease in restoring the Leased Premises.

[Select one of the following conditions on non-discrimination, as appropriate, based upon the consideration.]

## **17. NON-DISCRIMINATION** [Use if lease is for fair market value]

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs, or activities conducted on the Leased Premises because of race, color, religion, sex, age, handicap, or national origin.

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**17. NON-DISCRIMINATION** [Alternate if lease is for public benefit discounted rental]

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs, or activities conducted on the Leased Premises because of race, color, religion, sex, age, handicap, or national origin.

b. The Lessee, by acceptance of this Lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees, and assignees.

**18. SUBJECT TO EASEMENTS**

This Lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the Leased Premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the Leased Premises by the Lessee.

**19. SUBJECT TO MINERAL INTERESTS**

This Lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Lessor will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the Leased Premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

[Delete the following condition if there is no rental]

**20. RENTAL ADJUSTMENT**

In the event the United States revokes this Lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this Lease. Such adjustment of rental shall be evidenced by a supplemental agreement in writing; provided, however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this Lease.

## **21. PROHIBITED USES**

a. The Lessee shall not permit gambling, except for state lottery tickets in accordance with applicable state and local laws and regulations, on the Leased Premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the Leased Premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the Leased Premises any activity which would constitute a nuisance.

b. The Lessee shall not construct or place any structure, improvement, or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

c. The Lessee shall not sell, store, or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the Leased Premises.

[If the proposed use by the lessee will allow hotel, restaurant, or other similar facilities the following paragraph may be used instead of the above c.]

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines, or other intoxicating beverages on the Leased Premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

## **22. WASTE OF NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the Leased Premises except as authorized in writing by the District Engineer.

## **23. DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee.

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However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph c(2) below. [Delete the following sentence if there is no rent.] The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the            (designate Lessee's official or named individual)           .

(2) For Lessee claims exceeding \$100,000, the Lessee shall submit with the claim a certification that—

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief and;

(iii) the amount requested accurately reflects the Lease adjustment for which the Lessee believes the Lessor is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For lessee-certified claims over \$100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in subparagraph c(2) of this condition, and be executed in accordance with subparagraph c(3) of this condition.

g. The Government shall pay interest or the amount found due and unpaid by the Lessor from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each six-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the Lease, pending final resolution of any request for relief, claim, or action arising under the Lease, and comply with any decision of the District Engineer.

#### **24. ENVIRONMENTAL PROTECTION**

a. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the Lessee, the Lessee shall be liable to restore the damaged resources. [Add, if applicable: The Lessee shall not discharge waste or effluent from the Leased Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.] The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the Leased Premises.

[The following provisions are based on the model EPA language. The district should closely compare the actual language in the FOSL for deviations. Use the language in the FOSL.]

b. The Lessee shall be responsible for obtaining and paying for any environmental or other permits required for its operations under the Lease, independent of any existing permits.

c. The Government's rights under this Lease specifically include the right for Government officials to inspect, upon reasonable notice, the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Government normally will give the Lessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof.

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[Note: Use the following provision, if the leased premises is part of a NPL site; Adapt to cleanup agreements under state regulatory authorities; e.g., non-NPL sites.]

d. The Government acknowledges that (insert the name of the military installation) has been identified as a National Priorities List Site under CERCLA. The Lessee acknowledges that the Government has provided it with a copy of the (military installation) Federal Facility Agreement (FFA) entered into by the United States EPA Region ( ), the State of ( ), and the Lessor and effective on \_\_\_\_\_ date, and will provide the Lessee with a copy of any amendments thereto. The Lessee agrees that should any conflict arise between the terms of the FFA, as it presently exists or may be amended, and the provisions of this Lease, the terms of the FFA will take precedence. The Lessee further agrees that notwithstanding any other provision of the Lease, the Government assumes no liability to the Lessee should implementation of the FFA interfere with the Lessee's use of the Leased Premises. The Lessee shall have no claim on account of any such interference against the United States or any officer, agent, employee, or contractor thereof, other than for abatement of rent.

[Note: Use the following provision if a Federal Facilities Agreement (FFA) or Interagency Agreement (IAG) applies to the leased premises; e.g., an NPL site.]

e. The Lessor, EPA, and the (insert State agency), their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee, and to parties in possession, to enter upon the Leased Premises for purposes consistent with the applicable provisions of the FFA, and for the following purposes:

(1) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, soil boring tests, and other activities related to the (Installation name) Installation Restoration Program, FFA, or IAG;

(2) to inspect field activities of the Lessor and its employees, agents, contractors, and subcontractors in implementing that IRP, FFA, or IAG;

(3) to conduct any test or survey required by EPA or (state agency) relating to the implementation of the FFA or environmental conditions at the Leased Premises, or to verify any data submitted to the EPA or (state agency) by the Lessor relating to such conditions; and

(4) to construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the IRP, FFA, or IAG, including, but not limited to, monitoring wells, soil removal, pumping wells, and treatment facilities.

[Note: Use the following alternative provision if the Installation Restoration Program (IRP) or other environmental investigation applies to the leased premises; e.g., a non-NPL site.]



e. The Lessor and its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee, and to parties in possession, to enter upon the Leased Premises for purposes enumerated in this subparagraph:

(1) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, soil boring tests, and other activities related to the (Installation name) Installation Restoration Program (IRP);

(2) to inspect field activities of the Lessor and its employees, agents, contractors, and subcontractors in implementing the IRP;

(3) to conduct any test or survey related to the implementation of the IRP or environmental conditions at the Leased Premises, or to verify any data submitted to the EPA or (state agency) by the Lessor relating to such conditions; and

(4) to construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the (insert name of installation) IRP, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

f. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of the above-described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee. The Lessee shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee shall comply with all applicable Federal, state, and local occupational safety and health regulations.

g. The Lessee shall comply with the requirements of 10 U.S.C. 2692(b)(9) to obtain the Lessor's approval for the storage, treatment, or disposal of toxic or hazardous materials not owned by the Department of Defense on the Leased Premises.

h. The Lessee shall comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its (state) equivalent, and any other applicable laws, rules, or regulations. Except as specifically authorized by the Lessor in writing, the Lessee must provide, at its own expense, such hazardous waste management facilities, including storage, treatment, or disposal facilities, complying with all applicable laws and regulations. Hazardous waste management facilities of the Lessor will not be available to the Lessee. Any violation of the requirements of this provision shall be deemed a material breach of this Lease.

i. Any of Lessor's accumulation points for hazardous and other wastes will not be used by the Lessee. The Lessee will not permit its hazardous waste to be commingled with hazardous waste of the Lessor.

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j. The Lessee shall have a plan approved by the Lessor for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the Leased Premises, which approval shall not be unreasonably withheld or delayed. Such plan shall be independent of (installation name) and, except for initial fire response and/or spill containment, shall not rely on use of installation personnel or equipment. Should the Lessor provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on the request of the Lessee, or because the Lessee was not, in the opinion of the Lessor, conducting timely cleanup actions, the Lessee agrees to reimburse the Lessor for its costs. The plan may be developed in phases as sublease activities are identified. Sublessees shall provide to the Lessee a plan to cover their activities and portion of the Leased Premises prior to commencement of operations on the subleased portion, which will be incorporated by the Lessee into the overall plan.

k. The Lessee shall not construct or make or permit its sublessees or assigns to construct or make any substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the Leased Premises in any way which may adversely affect the cleanup, human health, or the environment without the prior written consent of the Lessor. Such consent may include a requirement to provide the Lessor with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the United States. For construction or alterations, additions, modifications, improvements, or installations in the proximity of operable units that are part of a National Priorities List (NPL) site, such consent may include a requirement for written approval by the Lessor's Remedial Project Manager.

l. The Lessee shall not conduct or permit its sublessees to conduct any subsurface excavation, digging, drilling, or other disturbance of the surface without the prior written approval of the Lessor.

## **25. HAZARDOUS SUBSTANCES NOTICE**

To the extent such information is available on the basis of a complete search of Lessor's files, notice regarding hazardous substances stored for one year or more, known to have been released or disposed of on the Leased Premises, is provided in Exhibit G. The Lessee should consult the Condition Survey and the EBS for more detailed information.

[Include the following conditions if required by the FOSL. The FOSL is not attached as an exhibit to the lease. It is an internal decision document. Modifications of these conditions may be made to comply with the FOSL.]

[Select the appropriate condition below on lead-based paint, as applicable.]

[Alternate Condition 26 where the leased premises do not include residential housing]

**26. LEAD-BASED PAINT WARNING AND COVENANT**

a. The Leased Premises do not contain residential housing and are not being leased for residential purposes. The Lessee is notified that the Leased Premises contain buildings built prior to 1978 that contain lead-based paint. Exposure to lead from lead-based paint may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to lease.

b. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the EBS, referenced in the Condition Survey attached as Exhibit D, which has been provided to the Lessee. [If applicable: Additionally, the following reports pertaining to lead-based paint and/or lead-based paint hazards have been provided to the Lessee: \_\_\_\_\_.] Additionally, the Lessee has been provided with a copy of the federally-approved pamphlet on lead poisoning prevention. The Lessee hereby acknowledges receipt of all the information described in this subcondition.

c. The Lessee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Lease.

d. The Lessee shall not permit use of any buildings or structures on the Leased Premises for residential habitation without first obtaining the written consent of the Lessor. As a condition of its consent, the Lessor may require the Lessee to:

(1) inspect for the presence of lead-based paint and/or lead-based paint hazards;

(2) abate and eliminate lead-based paint hazards by treating any defective lead-based paint surface in accordance with all applicable laws and regulations; and

(3) comply with the notice and disclosure requirements under applicable Federal and state law. The Lessee agrees to be responsible for any future remediation of lead-based paint found to be necessary on the Leased Premises.

[Alternative Condition 26 where the leased premises contains residential housing]

**26. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT AND COVENANT**

a. The Lessee is hereby informed and does acknowledge that all buildings on the Leased Premises, which were constructed or rehabilitated prior to 1978, are presumed to

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contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 residential housing, lessors must disclose to lessees and sublessees the presence of lead-based paint and/or lead-based paint hazards therein. "Residential housing" means any housing constructed prior to 1978, except housing for the elderly (households reserved for and composed of one or more persons 62 years of age or more at the time of initial occupancy) or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. A risk assessment or inspection for possible lead-based paint hazards by the Lessee is recommended prior to lease.

b. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the EBS, referenced in the Condition Survey attached as Exhibit D, which have been provided to the Lessee. [If applicable: Additionally, the following reports pertaining to lead-based paint and/or lead-based paint hazards have been provided to the Lessee: \_\_\_\_\_.] Additionally, the Lessee has been provided with a copy of the federally-approved pamphlet on lead poisoning prevention, and acknowledges that all sublessees must also receive this pamphlet. The Lessee hereby acknowledges receipt of all of the information described in this subparagraph.

c. The Lessee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Lease.

d. The Lessee shall not permit the occupancy or use of any buildings or structures as residential housing without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of residential housing, if required by law or regulation, the Lessee, at its sole expense, will abate and eliminate lead-based paint hazards by treating any defective lead-based paint surface in accordance with all applicable laws and regulations.

e. The United States assumes no liability for remediation or damages for personal injury, illness, disability, or death to the Lessee, its successors or assigns, sublessees, or to any other person, including members of the general public, arising from or incident to possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. The Lessee further agrees to indemnify and hold harmless the United States, its officers, agents, and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. This Condition and

the obligations of the Lessee hereunder shall survive the expiration or termination of this Lease and any conveyance of the Leased Premises to the Lessee. The Lessee's obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section.

(Include the following if required by the FOSL. Modification may be made to comply with the terms of the FOSL. In particular, an alternate provision, as set forth in the FOSL, will be needed where the leased premises contain asbestos that poses an unacceptable risk to human health and the lessee is required to remediate prior to use or occupancy.)

## **27. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT**

a. The Lessee is hereby informed and does acknowledge that (friable and) non-friable asbestos or asbestos-containing materials (ACM) has been found on the Leased Premises, as described in the Condition Survey attached as Exhibit D. To the best of the Lessor's knowledge, the ACM on the Leased Premises does not currently pose a threat to human health or the environment.

b. In addition to the Lessee's general indemnity contained in the condition on **INDEMNITY AND HOLD HARMLESS**, with regard specifically to ACM, the Lessee covenants and agrees that its use and occupancy of the Leased Premises will be in compliance with all applicable laws relating to asbestos; and that the Lessor assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death to the Lessee, its successors or assigns, sublessees, or to any other person, including members of the general public, arising from, or incident to, the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Leased Premises described in this Lease, whether the Lessee, its successors or assigns have properly warned or failed to properly to warn the individual(s) injured. The Lessee agrees to be responsible for any future remediation of asbestos found to be necessary on the Leased Premises.

## **28. OTHER ENVIRONMENTAL RESTRICTION**

[Insert from the FOSL any site specific environmental restrictions or provisions, such as endangered species, underground storage tanks. The FOSL is not attached to the lease as an exhibit. It is an internal decision document.]

## **29. SITE SPECIFIC RESTRICTIONS**

[Insert from the FOSL/Report of Availability any site specific restrictions or provisions, such as UXOs, restrict use of wetlands, support coastal zone management plans, limit flood plain activities.]

[Note: Additional numbered conditions may be inserted for clarity or due to length.]

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### **30. HISTORIC PRESERVATION**

a. The Lessee shall not remove or disturb, or cause or 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 Leased Premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

b. [Include any provision required by a Memorandum of Agreement or Programmatic Agreement with the State Historic Preservation Officer and Advisory Council on Historic Preservation.]

### **31. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said Leased Premises at the beginning of or that may be constructed by the Lessee during the term of this Lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the Leased Premises. Any soil erosion occurring outside the Leased Premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

### **32. TAXES**

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the Leased Premises shall be paid promptly by the Lessee. If and to the extent that the property owned by the United States is later made taxable by state or local governments under an Act of Congress, the Lease shall be renegotiated.

### **33. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this Lease without liability or, in its discretion, to require the Lessee to pay, in addition to the Lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

#### **34. OFFICIALS NOT TO BENEFIT**

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this Lease is for the general benefit of such corporation or company.

#### **35. SEVERAL LESSEES**

If more than one Lessee is named in this Lease the obligations of said Lessees herein contained shall be joint and several obligations.

#### **36. MODIFICATIONS**

This Lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative, and this provision shall apply to this condition as well as all other conditions of this Lease.

#### **37. NO COMMITMENTS FOR FUTURE USE**

This Lease does not commit the United States to any renewals of the use authorized herein [delete if no option to extend: beyond the extension of the term provided for in the Condition on **TERM**] or to any future reuse or disposal and does not create any right or expectation for the Lessee or its sublessees or tenants to acquire the leased property.

#### **38. DISCLAIMER**

This Lease is effective only insofar as the rights of the United States in the Leased Premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the Leased Premises. It is understood that the granting of this Lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

#### **39. AVAILABILITY OF FUNDS**

The Lessor's obligation to pay or reimburse any money under this Lease is subject to the availability of appropriated funds, and nothing in this Lease shall be interpreted to require obligations or payments by the United States in violation of the

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Anti-Deficiency Act; provided that the Lessor shall otherwise comply with applicable statutory requirements and its obligations under the terms of this lease.

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_



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AGRICULTURAL AND GRAZING LEASE

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_ LEASE

FOR AGRICULTURAL OR GRAZING PURPOSES

LOCATED ON

\_\_\_\_\_  
(PROJECT, INSTALLATION)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE** \_\_\_\_\_, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 10, United States Code, Section 2667, and for the consideration set forth herein, hereby leases to the Lessee the property hereinafter identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for \_\_\_\_\_ purposes, and in accordance with the land use regulations identified in Exhibit(s) \_\_\_\_\_, which is attached hereto and made a part hereof.

**THIS LEASE** is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ (months) (years), beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_, \_\_\_\_\_, but revocable at will by the Secretary.

2. **CONSIDERATION**

a. (Use if there will be no rental offsets) The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_.

a. (Alternate Condition) (Use if there will be rental offsets) As consideration for this lease, the Lessee shall pay cash rental in advance to the United States in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_. Such cash rental shall be offset by the value of work items which shall be accomplished by the Lessee for the maintenance, protection, repair, restoration, and improvement

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of the leased premises as described in the Land Use Regulations attached as Exhibit \_\_\_\_\_.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717) . This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the lessee, to \_\_\_\_\_

\_\_\_\_\_ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division \_\_\_\_\_

\_\_\_\_\_, 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", or "said officer", include their duly authorized representatives. Any reference to "Lessee" shall include any sublessees, assignees, transferees, successors and their duly authorized representatives.

**5. SUPERVISION BY THE (DISTRICT ENGINEER (INSTALLATION COMMANDER)**

The use and occupation of the premises shall be subject to the general supervision and approval of the (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (Installation) hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. **APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representation or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached as Exhibit \_\_\_\_\_ and made a part hereof. Upon expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. The reports will constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY.**

8. **TRANSFERS AND ASSIGNMENTS**

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the District Engineer.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

9. **COST OF UTILITIES**

The Lessee shall pay the cost, as determined by the officer having immediate jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. **PROTECTION OF PROPERTY**

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

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11. **RENTAL ADJUSTMENT**

In the event the United States revokes this lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this lease. Where the said premises are being used for farming purposes, the Lessee shall have the right to harvest, gather and remove such crops as may have been planted or grown on said premises, or the District Engineer may require the Lessee to vacate immediately and, if funds are available, compensation will be made to the Lessee for the value of the remaining crops. Any adjustment of rent or the right to harvest, gather and remove crops shall be evidenced by a written supplemental agreement, executed by the District Engineer; PROVIDED, however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this lease and in that event any remaining crops shall become property of the United States upon such revocation.

12. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents and employees to enter upon the premises at any time and for any purposes necessary or convenient in connection with government purposes; to make inspections; to remove timber or other materials, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever, and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claims for damages on account thereof against the United States or any officer, agent or employee thereof.

13. **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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

14. **RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate or as otherwise specified by the provisions of the condition on **RENTAL ADJUSTMENT**. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages

against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

**15. NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap or national origin.

**16. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the premises by the Lessee.

**17. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development of Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessees operations or would be contrary to local law.

**18. TERMINATION**

This lease may be terminated by the Lessee at any time by giving at least sixty (60) days notice thereof, in writing, to the District Engineer. In the case of such termination, no refund by the United States of any rental previously paid shall be made and payment in full of all rent becoming due during the period of notice will be required. In the event the effective date of termination occurs after the start of the grazing, planting or harvesting season as specified in the Land Use Regulations, any rent due for the balance of the annual term, or the rental due for the remaining term if the lease is for less than one year, shall be due and payable on or before the date of such termination.

**19. PROHIBITED USES**

a. Certain soil conservation practices may be required by the land use regulations which are identified as rental offsets. By acceptance of such offsets, the Lessee agrees that he will not accept any Federal or State cost-sharing payments or subsidies for the same soil conservation practices.

b. The Lessee shall not construct or place any structure, improvement or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

**20. PROTECTION OF NATURAL RESOURCES**

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The Lessee shall use the premises in accordance with the attached Land Use Regulations and shall at all times: (a) maintain the premises in good condition and free from weeds, brush, washes, gullies and other erosion which is detrimental to the value of the premises for agricultural purposes; (b) cut no timber, conduct no mining operations, remove no sand, gravel or kindred substances from the premises; (c) commit no waste of any kind nor in any manner substantially change the contour or condition of the premises except changes required to accomplish soil and water conservation measures as may be authorized by said officer.

21. **DISPUTES**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer

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must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the Condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

## 22. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground and water. The Lessee shall 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 disposal of any toxic or hazardous materials within the premises is specifically 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 lease. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from activities of the Lessee, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

## 23. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or 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 Lessee shall immediately notify said



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officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

**24. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon the premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed in writing by the District Engineer.

**25. TAXES**

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the premises shall be promptly paid by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

**26. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fees, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

**27. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

**28. SEVERAL LESSEES**

If more than one Lessee is named in this lease, the obligation of said Lessees herein named shall be joint and several obligations.

**29. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modifications of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

**30. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned. The Lessee shall obtain any permit or license which may be required by Federal, state or local statute in connection with

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the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

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

**IN WITNESS WHEREOF** I have hereunto set my hand by direction of he Secretary of the \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

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GENERAL PURPOSE LEASE

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2. CONSIDERATION
3. NOTICES
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5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
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30. SEVERAL LESSEES
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NO \_\_\_\_\_  
DEPARTMENT OF THE \_\_\_\_\_ LEASE  
\_\_\_\_\_  
(PROJECT/ INSTALLATION)  
\_\_\_\_\_  
COUNTY, STATE

THIS LEASE, made on behalf of the United States, between the SECRETARY OF THE \_\_\_\_\_, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee.

**WITNESSETH:**

That the Secretary, by the authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the Lessee the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for \_\_\_\_\_ purposes.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_, but revocable at will by the Secretary.

2. **CONSIDERATION**

a. The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee) . An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or

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portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division \_\_\_\_\_

\_\_\_\_\_, 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", or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include any sublessees, assignees, transferees, successors and their duly authorized representatives.

**5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)**

The use and occupation of the premises shall be subject to the general supervision and approval of the (District Engineer) (Installation Commander) \_\_\_\_\_ (District) (Installation) hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

**6. APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

**7. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property

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must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY**.

8. **TRANSFERS AND ASSIGNMENTS**

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the District Engineer.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

9. **COST OF UTILITIES**

The Lessee shall pay the cost, as determined by the officer having jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the government or through government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. The government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. **PROTECTION OF PROPERTY**

The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. **INSURANCE (DELETE CONDITIONS A&B IF LIABILITY INSURANCE IS NOT APPLICABLE)**

a. At the commencement of this lease, the Lessee shall obtain, from a reputable insurance company, or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit of \$ \_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer every three years or upon renewal or modification of this lease.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types

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of facilities, services and activities involved. The lessee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

**12. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**13. 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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**14. RESTORATION**

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On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate or as otherwise specified by the provisions of the condition on **RENTAL ADJUSTMENT**. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the said officer, the property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

15. **NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

16. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the premises by the Lessee,

17. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the lessee's operations or would be contrary to local law.

18. **TERMINATION**

This lease may be terminated by the Lessee at any time by giving the District Engineer at least thirty (30) days notice in writing provided that no refund by the United States of any rental previously paid shall be made, and provided further, that in the event that said notice is not given at least thirty (30) days prior to the rental due date, the Lessee shall be required to pay the rental for the period shown in the condition on **CONSIDERATION**.

19. **RENTAL ADJUSTMENT**

In the event the United States revokes this lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee



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prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this lease. Such adjustment of rental shall be evidenced by a supplemental agreement in writing; PROVIDED however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this lease.

20. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance. The Lessee shall not sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the premises.

b. The Lessee shall not construct or place any structure, improvement or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

21. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises except as authorized in writing by the District Engineer.

22. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that--

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief;

(iii) and the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest or the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the District Engineer.

### 23. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground, and water. The Lessee shall 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, State, interstate or local governmental agency are hereby made a condition of this lease. The Lessee shall not discharge waste or effluent from the premises

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in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the lessee, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**24. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

**25. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or 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 Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

**26. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

**27. TAXES**

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the premises shall be paid promptly by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

**28. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to

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the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

29. **OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

30. **SEVERAL LESSEES**

If more than one Lessee is named in this lease the obligations of said Lessees herein contained shall be joint and several obligations.

31. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as all other conditions of this lease.

32. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**NOTE:** The following condition should be deleted only on leases of military property when the annual rental value exceeds \$200,000.

**THIS LEASE** 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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APPENDIX 8-C

LEASE FORMATS UNDER 16 U.S.C. § 460d

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PUBLIC PARK LEASE TO  
STATES

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
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6. STRUCTURES AND EQUIPMENT
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18. NON-DISCRIMINATE ON
19. SUBJECT TO EASEMENTS
20. SUBJECT TO MINERAL INTERESTS
21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
22. HEALTH AND SAFETY
23. PUBLIC USE
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28. PRELIMINARY ASSESSMENT SCREENING
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30. SOIL AND WATER CONSERVATION
31. TRANSIENT USE
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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY  
LEASE TO STATES  
FOR PUBLIC PARK AND RECREATIONAL PURPOSES**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

**THIS LEASE** is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_.

2. **CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_

\_\_\_\_\_;  
and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_,

\_\_\_\_\_ , 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 of the Army," "District Engineer," "said officer or "Lessor" shall

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include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

**5. DEVELOPMENT PLANS**

a. The Lessee shall be guided by an implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit \_\_\_\_\_ which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

**6. STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**.

**7. APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

**8. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and said improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the



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expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY**.

#### 9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

#### 10. **TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

#### 11. **FEEES**

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

#### 12. **ACCOUNTS, RECORDS AND RECEIPTS**

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of

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Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

**13. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**14. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**15. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**16. INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sub-lessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

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b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance,

c. The District Engineer may require closure of any or all of the premises during any period for which the sub-lessees and concessionaires do not have the required insurance coverage.

#### 17. **RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

#### 18. **NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. S 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees and assignees.

#### 19. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

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**20. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM4), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

**21. COMPLIANCE, CLOSURE, REVOICATION AND RELINQUISHMENT**

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on NOTICES.

**22. HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

**23. PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

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**24. PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

**25. NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

**26. DISPUTES CLAUSE**

Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

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(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

## 27. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby

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made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Service for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

**28. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

**29. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

**30. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

**31. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

**32. COVENANT AGAINST CONTINENT FEES**

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The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**33. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

**34. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

**35. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_



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PUBLIC PARK LEASE TO  
POLITICAL SUBDIVISIONS OF STATES

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
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19. SUBJECT TO EASEMENTS
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21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
22. HEALTH AND SAFETY
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31. TRANSIENT USE
32. COVENANT AGAINST CONTINGENT FEES
33. OFFICIALS NOT TO BENEFIT
34. MODIFICATIONS
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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY  
LEASE TO NON-STATE GOVERNMENTAL AGENCIES  
FOR PUBLIC PARK AND RECREATIONAL PURPOSES**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_;

and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_,

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**

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Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

#### 5. DEVELOPMENT PLANS

The Lessee shall be guided by an annual Plan of Operation and Maintenance in furtherance of the Lessee's implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit\_\_\_\_\_ which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. No later than \_\_\_\_\_ of each year the Lessee will submit the annual Plan to be mutually agreed on between the Lessee and the District Engineer. Such annual Plan shall include but is not limited to the following:

a. Plans for management, maintenance and development activities to be undertaken by the Lessee and any sublessees.

b. Report of the management, maintenance and development accomplishments of the Lessee for the preceding year.

c. Report on any significant modification of policies or procedures which are planned for the following year as well as those implemented in the preceding year.

d. Minor modifications to the Development Plan. Major modifications are to be accomplished by amendment to the Plan before proceeding to implement any changes in the development or management of the leased premises.

e. Budget of the Lessee for carrying out all activities for the upcoming year.

f. Personnel to be used in the management of the leased premises.

g. Annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

#### 6. STRUCTURE AND EQUIPMENT

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**. However, not structures may be erected or altered upon the premises unless and until the type of use, design, and proposed location or alteration thereof shall have been approved in writing by the District Engineer. The District Engineer may require the

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Lessee, upon the completion of each of the proposed developments to furnish complete "as built" construction plans for all facilities.

#### 7. **APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disability Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

#### 8. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

##### **(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY**.

#### 9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

**10. TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

**11. FEES**

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

**12. ACCOUNTS, RECORDS AND RECEIPTS**

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall establish and maintain accurate records and accounts and provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

**13. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**14. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner

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whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**15. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**16. INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum Combined Single Limit of \$ \_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee, sub-lessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

c. In the event the Lessee is self-insured, the Lessee shall certify such self-insurance in writing in the minimum amount specified above to the District Engineer. The Lessee's insurance status shall not eliminate the requirement for its sub-lessees and concessionaires to have insurance from a reputable insurance carrier as set out above.

d. The District Engineer may require closure of any or all of the premises during any period for which the Lessee and/or its sub-lessees and concessionaires do not have the required insurance coverage.

**17. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the

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premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

#### 18. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is rec Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

#### 19. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The lessee will not close any established access routes without written permission of the District Engineer.

#### 20. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

#### 21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and

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continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sub-lessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES**.

## 22. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

## 23. **PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

## 24. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the



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premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

## 25. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

## 26. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

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d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

## 27. ENVIRONMENT PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

**28. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal substances thereon is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. my such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

**29. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

**30. SOIL AND WATER CONSERVATION**

The Lessee shall maintain in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any spoil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

**31. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

**32. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full ammount of such commision, percentage, brokerage, or contingent fee.

**33. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However nothing herein contained shall be construed to extend to

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any incorporated company if the lease be for the general benefit of such corporation or company.

34. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

35. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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FISH AND WILDLIFE MANAGEMENT LEASE

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8. CONDITION OF PREMISES
9. FISH AND WILDLIFE ACTIVITIES
10. TRANSFERS, ASSIGNMENTS, SUBLEASES
11. ACCOUNTS, RECORDS AND RECEIPTS
12. PROTECTION OF PROPERTY
13. RIGHT TO ENTER AND FLOOD
14. LIGHTS, SIGNALS AND NAVIGATION
15. RESTORATION
16. NON-DISCRIMINATION
17. SUBJECT TO EASEMENTS
18. SUBJECT TO MINERAL INTERESTS
19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
20. HEALTH AND SAFETY
21. PUBLIC USE
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23. DISPUTES CLAUSE
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29. COVENANT AGAINST CONTINGENT FEES
30. OFFICIALS NOT TO BENEFIT
31. MODIFICATIONS
32. DISCLAIMER

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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**  
**LEASE FOR**  
**FISH AND WILDLIFE MANAGEMENT PURPOSES**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section(s) \_\_\_\_\_, and for the consideration hereinafter set forth, hereby grants to the Lessee: the land and/or water areas under the primary jurisdiction of the Department of the Army as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for fish and wildlife management purposes.

THIS LEASE is granted subject to the following conditions:

**1. TERM**

Said premises are hereby granted for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_, 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

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deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

**4. AUTHORIZE REPRESENTATIVES INCLUDED**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include its successors, employees and duly authorized representatives.

**5. DEVELOPMENT PLANS**

a. The Lessee shall be guided by a Fish and Wildlife Development and Management Plan (Development Plan), attached as Exhibit \_\_\_\_\_, which shows the facilities and management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

**6. STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to accomplish the purposes of this lease. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the condition on **RESTORATION**.

**7. APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, and use of pesticides. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises, if any, have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

**8. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

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b. An inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY**.

**9. FISH AND WILDLIFE ACTIVITIES**

a. The lessee may plant or harvest crops, either directly, by service contract, by sharecrop agreements with local farmers, or by agricultural agreements to provide food and/or habitat for wildlife and for the development and conservation of land, fish and wildlife, forests, and other natural resources. Where feasible, contracts and agreements with third parties shall be by competitive bid procedures.

b. Any lands not being managed by the lessee for wildlife habitat will be made available for lease by the District Engineer for agricultural or grazing purposes under conditions which would not be incompatible with the lessee's use of the premises.

c. The Lessee may take, trap, remove, stock or otherwise control all forms of fish and wildlife on the premises, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use shall be consistent with the state laws for the protection of fish and wildlife.

**10. TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the demised premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. Agreements covered by the condition on **FISH AND WILDLIFE ACTIVITIES** are not subject to this condition.

**11. ACCOUNTS, RECORDS AND RECEIPTS**

a. All monies received by the Lessee from operations conducted on the premises may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. The District Engineer shall have the right to perform audits of the Lessee's records and accounts.

b. Payment of direct expenses is authorized for planning and development of optimum wildlife habitat including planting of wildlife food plots, necessary timber clearing, erosion control or habitat improvements such as shelter, restocking of fish and wildlife, and protection of endangered species. Payment of Lessee's employees who are directly engaged in such activities at the project is also authorized. However, proceeds will not be used for the payment of general administrative expenses.



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c. Proceeds derived from the sale of fishing and hunting leases are not subject to this condition.

**12. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**13. RIGHT TO ENTER AND FLOOD**

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 work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee.

**14. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**15. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

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**16. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7.

**17. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

**18. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

**19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to the United States in the manner prescribed in the condition on **NOTICES**.

20. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean and safe condition.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

21. **PUBLIC USE**

No attempt shall be made by the Lessee to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee under this lease to manage the premises and provide safety and security to the visiting public.

22. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the condition on **DEVELOPMENT PLANS**. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

23. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer,

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

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(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

#### 24. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the

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premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease.

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

c. The Lessee must obtain approval in writing from the District Engineer before any pesticide or herbicides are applied to the premises.

#### 25. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

#### 26. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

#### 27. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

#### 28. **TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

#### 29. **COVENANT AGAINST CONTINGENT FEES**

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The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**30. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

**31. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

**32. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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COMMERCIAL CONCESSION LEASE

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No. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**  
**LEASE**  
**FOR COMMERCIAL CONCESSION PURPOSES**

\_\_\_\_\_  
 SITE

\_\_\_\_\_  
 PROJECT NAME

\_\_\_\_\_  
 COUNTY, STATE

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_ hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for commercial concession purposes.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_.

**2. CONSIDERATION**

a. The rent due to the United States in consideration of this lease shall be calculated using the Revised Graduated Rental System (RGRS). The total gross receipts for each rental payment period will be multiplied by the applicable percentage rate and the resulting total due payable within ten days to \_\_\_\_\_

The percentage rate for the upcoming rental year will be selected from the following RGRS rental rate chart, using the line for the total gross receipts of the ending rental year:

GROSS RECEIPTS (GR)	% RENT
Under \$50,000	2.0%
\$50,000-\$200,000	2.1%
\$200,000-\$400,000	2.2%
\$400,000-\$600,000	2.3%
\$600,000-\$800,000	2.4%
\$800,000-\$1,000,000	2.5%



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\$1,000,000-\$1,200,000	2.6%
\$1,200,000-\$1,400,000	2.7%
\$1,400,000-\$1,600,000	2.8%
\$1,600,000-\$1,800,000	2.9%
\$1,800,000-\$2,000,000	3.0%
\$2,000,000-\$2,200,000	3.1%
\$2,200,000-\$2,400,000	3.2%
\$2,400,000-\$2,600,000	3.3%
\$2,600,000-\$2,800,000	3.4%
\$2,800,000-\$3,000,000	3.5%
\$3,000,000-\$3,200,000	3.6%
\$3,200,000-\$3,400,000	3.7%
\$3,400,000-\$3,600,000	3.8%
\$3,600,000-\$3,800,000	3.9%
\$3,800,000-\$4,000,000	4.0%
\$4,000,000-\$4,200,000	4.1%
\$4,200,000-\$4,400,000	4.2%
\$4,400,000-\$4,600,000	4.3%
\$4,600,000-\$4,800,000	4.4%
\$4,800,000-\$5,000,000	4.5%
\$5,000,001 and above	4.6%

(1) Gross receipts are defined as the total of the concessionaire's receipts from business operations conducted on the premises, including receipts of sub-lessees and licensees. No reductions are permitted except the costs of hunting and fishing licenses, and license fees and taxes collected for direct remittance to a taxing authority, and the exact amount collected from customers for electrical service which is metered to the customer and collected by the Lessee as the servicing agent and paid to the power company. (OPTIONAL: Sale receipts from boats and motors are excluded and assessed a straight one-percent rent.)

(2) The rental payment shall be (monthly) (quarterly) (semi-annually) (annually) with the first payment due \_\_\_\_\_. The rental year (will begin on the beginning date of this lease, and each anniversary date thereafter) (will be a partial year the first year, beginning on the date of this lease and ending on 31 December\_\_\_\_; for each rental year thereafter, the year will begin on 1 January and end on 31 December.)

(3) RENT PAYMENT CALCULATION FORM

Reporting period \_\_\_\_\_

a) Gross receipts for this period: \$ \_\_\_\_\_

b) Rent rate: x \_\_\_\_\_

c) Amount due (a x b) \$ \_\_\_\_\_

IF OPTIONAL BOAT RATE SELECTED:

d) Boat and motor sales: \$ \_\_\_\_\_

e) Rate: x 0.01

f) Amount due (d x e) \$ \_\_\_\_\_

TOTAL DUE (C+f) \$ \_\_\_\_\_

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. § 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an

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additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charges.

### 3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_, and, if to the United States, to the District Engineer, Attn: Chief, Real Estate Division, \_\_\_\_\_, 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 of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sub-lessees, assignees, transferees, concessionaires, and its duly authorized representatives.

### 5. USE AND DEVELOPMENT OF THE PREMISES

a. The premises may be occupied and used by the Lessee or duly authorized agents, sublessees, assignees, or transferees solely for the conduct of business in connection with the recreational development of the premises for the general use of the public. Lessee shall provide facilities and activities in accordance with the Use and Development Plan and its architectural theme and sign plan, as supplemented or amended, (Development Plan) and attached hereto as Exhibit\_\_\_\_\_. **(FOR RENEWALS WITHOUT SIGNIFICANT PROPOSED NEW DEVELOPMENT, REPLACE PRECEDING SENTENCE WITH THE FOLLOWING):** Lessee shall continue to provide current facilities and activities in accordance with a Use Plan showing location of existing facilities and current activities, attached exhibit \_\_\_\_\_, and will place and maintain signs in accordance with the sign plan, attached as exhibit\_\_\_\_\_.) The sign plan will be in accordance with the Sign Standards Manual, EP 310-1-6A, Chapter 17.

b. No structure may be erected or altered upon the premises unless and until said Development Plan **(FOR RENEWALS WITHOUT A DEVELOPMENT PLAN, REPLACE "said Development Plan" with "such Structure)** has been approved in writing by the District Engineer. The District Engineer may require the Lessee, upon

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completion of each of the proposed developments, to furnish a complete "as built" site plan and "as built" construction plans for all facilities with certification by a Professional Engineer that the construction meets all codes and standards.

**(DELETE THE FOLLOWING CONDITION FOR RENEWAL WITHOUT DEVELOPMENT PLANS)**

c. The District Engineer may agree in writing to an extension of time for providing the facilities and activities designated in said Development Plan or may waive the providing thereof for other than those specified for the first lease year as designated in said development Plan, whenever, in the opinion of the District Engineer, the public demand does not reach the anticipated level at the time stated, or when a delay in providing the facilities and services is beyond the control of the Lessee; provided, however, that at the discretion of the District Engineer, such undeveloped areas may be withdrawn from the leased premises.

d. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. Modifications to said Development Plan must be approved in writing by the District Engineer prior to implementation of the change.

e. All structures and equipment furnished by the Lessee shall be and remain the property of the Lessee, except as otherwise provided in the Condition on RESTORATION.

**(DELETE THE FOLLOWING CONDITION FOR LEASE RENEWALS)**

**6. PERFORMANCE OF CONTRACT**

The Lessee agrees to obtain and deliver to the District Engineer, within thirty (30) days, either a valid surety bond issued by a surety corporation licensed by a state regulatory entity, a performance deposit, or an irrevocable letter of credit issued by a Federally insured financial institution in a form satisfactory to the District Engineer. Said surety bond, performance deposit, or letter of credit shall be in the sum of \$\_\_\_\_\_, payable to the United States, and conditioned upon full and satisfactory performance of the obligations of the Lessee herein set forth in this lease. To insure favorable performance by the Lessee of all the covenants, terms and conditions of this lease, said deposit shall be retained or said bond or letter of credit shall be kept in full force and effect by the Lessee until released in writing by the District Engineer upon completion of the development set out in said Development Plan, attached as Exhibit \_\_\_\_\_, as supplemented or amended, is completed.

**7. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and of the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be

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either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY.**

**8. RATES AND PRICES**

a. The rates and prices charged by the Lessee or its sub-lessees shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The District Engineer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. The Lessee shall keep such rates and prices posted at all times in an appropriate and conspicuous place on the premises. The District Engineer may require submission of a schedule of the rates and prices at any time.

b. However, no user fees may be charged by the Lessee or its sublessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

**9. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**10. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**11. 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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**12. INSURANCE**

a. At the commencement of this lease, the Lessee will obtain from a reputable insurance company, or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and

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consistent with sound business practices or a minimum Combined Single Limit of \$\_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee under the terms and conditions of this lease, and the Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, a certificate of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance coverage required. The policy shall provide that the insurance company give the District Engineer thirty (30) days written notice of any cancellation, non-renewal or change in such insurance.

b. The lessee's sublessees and licensees, at the commencement of operating under the terms of this lease, shall obtain from a reputable insurance company or companies liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sublessees and licensees under the terms of this lease. The lessee shall require any insurance carrier or carriers to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

c. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

d. As to those structures and improvements on the premises constructed by or at the expense of the United States, for such periods the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration, or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration, or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however, that the insurer, after payment of any proceeds to the Lessee in accordance with the provisions of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore, or replace the leased premises or any part thereof.

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**13. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

**14. NON-DISCRIMINATION**

The Lessee 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 leased premises. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

**15. APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable codes.

**16. TAXES**

Payment of any and all taxes imposed by the state or its political subdivisions upon the property or business of the Lessee on the premises is the responsibility of the Lessee.

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**17. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easments subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The lessee will not close any established access routes without written permission of the District Engineer.

**18. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to Federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

**19. TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease or a controlling interest therein (including, without limitation, mergers, consolidations, reorganizations, or other business combinations), nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease, nor shall this lease be assignable or transferable by process or operation of law including, but not limited to, insolvency proceedings, bankruptcy, or intestacy, or in any other manner whatever.

(1) Failure to comply with this condition or the procedures described herein shall constitute a material breach of this lease for which this lease may be revoked immediately by the District Engineer, and, the secretary shall not be obligated to recognize any right of any person or entity to an interest in this lease or to own or operate the facilities authorized hereunder acquired in violation hereof.

(2) The Lessee shall advise the person(s) or entity proposing to enter into a transaction described in Subsection a. above that the District Engineer shall be notified and that the proposed transaction is subject to review and approval by the District Engineer. The Lessee shall request in writing the District Engineer's approval of the proposed transaction and shall promptly provide the District Engineer all relevant documents related to the transaction, and the name(s) and qualifications of the person(s) or entity involved in the proposed transaction.

b. The District Engineer, in exercising discretion to approve or disapprove transfer, assignments, or subleases, shall among other matters, take into consideration the management qualifications of the individuals or entities that would thereby obtain a controlling interest in the facilities or services authorized hereunder, the experience of such individuals or entities with similar operations, and the ability of such individuals or entities to operate the operations authorized hereunder in the public interest.

c. The term "controlling interest" in a Lessee's ownership shall mean, in the instance of a corporate Lessee, an interest beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of substantial managerial influence over the operations of the

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Lessee, and, in the instance of a partnership, joint venture, or individual Lessee, any beneficial ownership of the capital assets of the Lessee sufficient to permit substantial managerial influence over the operations of the Lessee. The District Engineer will determine at the request of interested parties whether or not an interest in a lease constitutes a controlling interest within the meaning hereof.

d. The Lessee may not enter into any agreement with any entity or person, except employees of the Lessee, to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without the prior written approval of the District Engineer.

e. No mortgage shall be executed, and no bonds, shares of stock, or other evidence of interest in, or indebtedness upon the assets of the Lessee located on the premises, including this lease, shall be issued, except for the purposes of installing, enlarging, refinancing or improving concession plant, equipment and facilities, provided that, such assets, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of other assignment, transfer, or encumbrance, the creditor or any assignee thereof shall succeed to the interest of the Lessee in such assets but shall not thereby acquire operating rights or privileges. Such rights or privileges shall be subject to disposition by the District Engineer.

f. The lessee may allow independent private service companies to enter and conduct business on the premises for the benefit of the Lessee's customers on an as-called basis without a formal sublease or license agreement, provided that the service is occasional and incidental to the Lessee's operation and that any compensation paid to the Lessee is included in gross receipts.

g. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The lessee will not subdivide nor develop the premises into private residential development.

## 20. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of its terms and conditions and continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving six months prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES**.



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c. In addition to the above right of revocation, if the rent or other payments provided to be paid by the Lessee or any part thereof shall be in arrears and unpaid for thirty (30) days after the same shall become due, then, and in such case, the District Engineer may elect to revoke this lease by notification in writing to the Lessee.

#### 21. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sublessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to the health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee will be obligated to pay rental, notwithstanding any interruption or suspension of activities. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

#### 22. PUBLIC USE

No attempt shall be made by the Lessee, nor any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

#### 23. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

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24. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Condition on **USE AND DEVELOPMENT OF THE PREMISES** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber.

25. **ACCOUNTS AND RECORDS**

a. The Lessee shall maintain complete and accurate records and no later than 120 days following the end of the Lessee's fiscal year shall submit to the District Engineer reports and data for the preceding year to include a financial statement for the activity covered by the lease and compiled by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state.

b. The District Engineer shall have the right at any time (1) to verify all financial reports and copy the books, correspondence, memoranda, income tax returns and other records of the Lessee and sublessees, if any, and of the records of proprietary or affiliated companies, if any, related to this lease during the period of the lease (This right shall extend for such time thereafter as may be necessary to accomplish such verification, but in no event more than five (5) years after the close of the business year of the Lessee); (2) to require the Lessee to furnish an audited financial statement; or (3) to require the Lessee to furnish an audited statement of gross receipts for the concession operation, including the gross income of any sublease operation, and certification of the accuracy of the reported income.

c. Statements will be prepared by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state. Audits will be in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountant. Financial statements requiring audits and accompanied by remarks such as "prepared from client records without audit" are unacceptable. Audited and reviewed financial statements shall contain appropriate footnotes. The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial report are consistent with those included in the Federal tax returns. If the amounts are not consistent, then a statement showing differences shall be included. An audit of Lessees tax returns is not required.

26. **ENVIRONMENT PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation

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facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the property in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

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

c. The lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

#### 27. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

#### 28. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

#### 29. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected as directed by the District Engineer.

#### 30. **LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

#### 31. **HUNTING AND TRAPPING**

The Lessee shall not hunt or trap or allow hunting or trapping on the premises.

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32. **TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites, said system to be acceptable to the District Engineer.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees, residing on the premises, for security purposes, if authorized by the District Engineer.

33. **DISPUTES CLAUSE**

Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-6113) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

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d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the Condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

#### 34. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

#### 35. **OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

#### 36. **SEVERAL LESSEES**

If more than one Lessee is named in this lease the obligations of said Lessees herein contained shall be joint and several obligations.

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37. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

38. **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 lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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PARK LEASE TO NONPROFIT ORGANIZATIONS

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No. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**  
**LEASE TO NONPROFIT ORGANIZATION**  
**FOR PARK AND RECREATIONAL PURPOSES**

\_\_\_\_\_  
SITE

\_\_\_\_\_  
PROJECT NAME

\_\_\_\_\_  
COUNTY, STATE

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration set forth herein, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises for

\_\_\_\_\_

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

a. The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 USC Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue



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from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

**2. CONSIDERATION (ALTERNATE) (USE ONLY WITH THE ALTERNATE CONDITION ON NON-DISCRIMINATION)**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_, 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 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 of the Army", "District Engineer" or "said officer" shall include their duly authorized representatives. Any reference to "lessee" shall include, assignees, transferees, successors and their duly authorized representatives.

**5. SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

**6. APPLICABLE LAWS AND REGULATIONS**

a. The lessee shall comply with all applicable federal laws and regulations and with all applicable laws, ordinances and regulations of the state, county and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

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b. The lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the Lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the Lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable codes.

#### 7. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by said officer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. The report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY**.

#### 8. **DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises for park or recreation purposes only and in accordance with a development and management plan as approved in writing by said officer. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. The Lessee also agrees to prohibit any exclusive or private use of all or any part of the premises by any individual or group of individuals. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the Condition on **RESTORATION**, and shall be maintained by the Lessee to the satisfaction of said officer.

#### 9. **AVAILABILITY OF THE PREMISES**

The Lessee agrees that the premises are leased for organized group recreational use only and that the premises and the facilities thereon must be made available on a rotational basis among any various groups within the lessee organization, and their guests. The Lessee further agrees to make the site and facilities available to other nonprofit organizations on a first come, first served reservation basis when not scheduled for use by members of the Lessee organization. The Lessee will not unreasonably withhold availability to such organizations.

#### 10. **TRANSFERS AND ASSIGNMENTS**

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a. Without prior written approval of said officer the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by said officer.

b. The Lessee will not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

**11. FEES**

Fees may be charged by the Lessee for use of the premises or facilities constructed thereon. The said officer shall have the right to review such fees and require an increase or reduction when it is determined that the objectives of this lease have been violated. However, no user fees may be charged by the Lessee for use of facilities developed in whole or in part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law. All monies received by the Lessee from operations conducted on the premises must be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Any such monies not so utilized or programmed for use within a reasonable time shall be paid to said officer at the end of each 5 year period. The Lessee shall furnish annual statements of receipts and expenditures to said officer.

**12. PROTECTION OF PROPERTY**

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

**13. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

**14. INSURANCE**

a. At the commencement of this, the Lessee shall obtain from a reputable insurance company or companies, liability insurance. The insurance

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shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit in the amount of \$ \_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the lessee under the terms of this lease. The Lessee shall require its insurance company to furnish to said officer a copy of the policy or policies, or if acceptable to said officer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give said officer thirty (30) days written notice of any cancellation or change in such insurance. Said officer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain, at the Lessees cost, a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purpose hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

**15. 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 of the lessee, or for damages to the property or injuries to the person of the lessee'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 lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**16. RESTORATION**

On or before the expiration of this lease or its termination by the lessee, the Lessee shall vacate the premises, remove the property of the

lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, said property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

**17. NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

**17. NON-DISCRIMINATION (ALTERNATE) (USE ONLY WITH THE ALTERNATE CONDITION ON CONSIDERATION)**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

**18. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the Lessee.

**19. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said

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mineral leases that are designed to protect the premises from activities that would interfere with the lessee's operations or would be contrary to local law.

**20. COMPLIANCE, CLOSURE, REVOCATION, AND RELINQUISHMENT**

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by said officer. This lease may be revoked in the event the Lessee violates any of its terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Decisions by the said officer concerning future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall reflect the lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to said officer in the manner prescribed in the condition on NOTICES.

**21. HEALTH AND SAFETY**

a. The lessee shall keep the premises in good order and in a clean, sanitary and safe condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed until such condition is corrected and the danger eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

**22. PUBLIC USE**

The lessee shall not forbid the full use by the public of the water areas of the project, subject however, to the authority and responsibility of the Lessee to carry out its responsibilities under this lease to manage the premises and provide safety and security to the facility users.

**23. PROHIBITED USES**

a. The lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

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b. In accordance with state and local laws and regulations, the Lessee may store, or dispense, or permit the storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises for members of the lessee organization and their guests. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

#### 24. NATURAL RESOURCES

The lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT PLANS**. The lessee may salvage fallen or dead timber on the leased premises for use as firewood only. All sales of timber or forest products will be conducted by the United States and the proceeds therefrom shall not be available to the lessee under the provisions of this lease.

#### 25. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) (i) If the Lessee is an individual, the certificate shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by:

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(A) A senior company official in charge at the Lessee's location involved; or

(B) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim or action arising under the lease, and comply with any decision of said officer.

## 26. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The lessee shall require all sanitation facilities on boats moored at the lessee's facilities to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The lessee 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 lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising



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from the lessee's activities, the lessee shall be liable to restore the damaged resources.

c. The lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**27. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit         . Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

**28. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbances until said officer gives clearance to proceed.

**29. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by said officer.

**30. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes if authorized by said officer.

**31. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

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**32. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

**33. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

**34. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_

THIS LEASE is also executed by the lessee this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_

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PRIVATE RECREATION LEASE

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24. HISTORIC PRESERVATION
25. SOIL AND WATER CONSERVATION
26. COVENANT AGAINST CONTINGENT FEES
27. OFFICIALS NOT TO BENEFIT
28. MODIFICATIONS
29. DISCLAIMER

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NO \_\_\_\_\_  
**DEPARTMENT OF THE ARMY**  
**LEASE FOR**  
**PRIVATE RECREATION PURPOSES**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
PROJECT

\_\_\_\_\_  
COUNTY, STATE

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_ hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises for private recreation purposes consisting of \_\_\_\_\_

\_\_\_\_\_.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

A. The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$\_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 USC Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

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(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### 3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_, 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 of the Army", "District Engineer" or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include, assignees, transferees, successors and their duly authorized representatives.

### 5. SUPERVISION BY THE DISTRICT ENGINEER

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

### 6. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable federal, laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

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c. In addition to other applicable codes, the Lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the Lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable NFPA codes.

#### **7. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

#### **(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by said officer and the Lessee to reflect the condition of said property and improvements. A copy of said report is to be attached as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. The report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY**.

#### **8. DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises for private recreation purposes only and in accordance with a development and management plan as approved in writing by said officer. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the condition on RESTORATION, and shall be maintained by the Lessee to the satisfaction of said officer.

#### **9. TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of said officer the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by said officer.

b. The Lessee shall not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee shall not subdivide nor develop the premises into private residential development.

#### **10. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property

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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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

**11. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

**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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**13. RESTORATION**

On or before the expiration of this lease or its termination by the lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, said property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

**14. NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

**15. SUBJECT TO EASEMENTS**

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This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the Lessee.

#### **16. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

#### **17. COMPLIANCE, CLOSURE, REVOCATION, AND RELINQUISHMENT**

a. The Lessee is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by said officer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to said officer in the manner prescribed in the condition on **NOTICES**.

c. In addition to the above right of revocation, if the rent or other payments provided to be paid by the Lessee or any part thereof shall be in arrears and unpaid for thirty (30) days after the same shall become due, then, and in such case, the said officer may elect to revoke this lease by notification in writing to the Lessee.

#### **18. HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, safe and sanitary condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed until such condition is corrected and the danger eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.



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19. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the Lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

b. In accordance with state and local laws and regulations, the Lessee may store, or dispense, or permit the storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises for members of the Lessee organization and their guests only.

c. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees, residing on the premises, for security purposes, if authorized by said officer.

20. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT PLANS**. The Lessee may salvage fallen or dead timber, however, no commercial use shall be made of such timber. All sales of timber or forest products will be conducted by the United States and the proceeds therefrom shall not be available to the lessee under the provisions of this lease.

21. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

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(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim or action arising under the lease, and comply with any decision of said officer.

## 22. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or

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instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The lessee 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 lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the lessee's activities, the lessee shall be liable to restore the damaged resources.

c. The lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

#### **23. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirement of the Lessee. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

#### **24. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbances until said officer gives clearance to proceed.

#### **25. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by said officer.

#### **26. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

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27. **OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

28. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

29. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_

THIS LEASE is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

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COOPERATIVE ASSOCIATION LEASE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE DISTRICT ENGINEER
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. TRANSFERS AND ASSIGNMENTS
9. FEES, RATES AND PRICES
10. DEVELOPMENT AND MANAGEMENT PLANS
11. PROTECTION OF PROPERTY
12. RIGHT TO ENTER AND FLOOD
13. INSURANCE
14. INDEMNITY
15. RESTORATION
16. NON-DISCRIMINATION
17. SUBJECT TO EASEMENTS
18. SUBJECT TO MINERAL INTERESTS
19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
20. HEALTH AND SAFETY
21. PUBLIC USE
22. PROHIBITED USES
23. NATURAL RESOURCES
24. DISPUTES CLAUSE
25. ENVIRONMENTAL PROTECTION
26. PRELIMINARY ASSESSMENT SCREENING
27. HISTORIC PRESERVATION
28. SOIL AND WATER CONSERVATION
29. TRANSIENT USE
30. COVENANT AGAINST CONTINGENT FEES
31. OFFICIALS NOT TO BENEFIT
32. MODIFICATION
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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**

**LEASE TO NONPROFIT ORGANIZATION  
FOR COOPERATIVE MANAGEMENT OF**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, a non-profit corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and pursuant to a Cooperative Agreement dated \_\_\_\_\_, hereinafter referred to as the Agreement, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_ attached hereto and made a part hereof, hereinafter referred to as the premises, for the development and management, in cooperation with the Secretary.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee, in cooperation with the Secretary, for the benefit of the United States and the general public in accordance with the terms of this lease and those of the Agreement. It is understood and agreed that this lease will be controlling if there are any conflicts between the two documents.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_

and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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

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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 of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, successors, and its duly authorized representatives.

**5. SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision of the District Engineer, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer, including any special provisions that may be established due to the cooperative joint management of the premises by the Lessee and the United States as contemplated by the Agreement.

**6. APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county, and municipal laws, ordinances and regulations wherein the premises are located.

**7. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, Repairs to additions thereto except as may be required to carry out its responsibilities pursuant to the terms of the Agreement.

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the said officer and the Lessee to reflect the condition of the said property and improvements. A copy of the said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such settlement will take into account the cooperative relationship of the parties, and will reflect an equitable apportionment of damages.

**8. TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of the said officer the lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the said officer.

b. The Lessee shall not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

**9. FEES, RATES AND PRICES**

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The Lessee may charge a general admission fee and/or fees for visitor/interpretative services or special events. The said officer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. However, no user fees may be charged by the Lessee for use of facilities developed in whole or in part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law. Monies received by the Lessee from operations conducted on the premises shall be utilized by the Lessee to fulfill its obligations under the Agreement. The Lessee shall furnish an annual report of itemized receipts and expenditures to said officer.

**10. DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises in accordance with the Agreement. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. The Lessee also agrees to prohibit any exclusive or private use of all or any part of the premises by any individual or group of individuals. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the Condition on **RESTORATION**, and shall be maintained by the Lessee to the satisfaction of said officer.

**11. PROTECTION OF PROPERTY**

The lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the lessee under this lease, 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 lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the lessee to a condition satisfactory to the said officer, or at the election of the said officer, reimbursement made therefor by the lessee in an amount necessary to restore or replace the property to a condition satisfactory to the said officer.

**12. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

**13. INSURANCE**

a. At the commencement of this lease, the lessee shall obtain, from a reputable insurance company or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit in the amount of \$\_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall require the insurance company or companies to furnish the said officer a copy



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of the policy or policies, or if acceptable to the said officer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the said officer thirty (30) days written notice of any cancellation or change in such insurance. The said officer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain, at the Lessee's cost, a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purpose hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

**14. 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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**15. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and

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restore the premises, then, at the option of the said officer, said property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

**16. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation. 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

**17. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of the said officer, interfere with the use of the premises by the Lessee.

**18. SUBJECT TO MINERAL INTEREST**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

**19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee and/or any sublessees or licenses are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the said officer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance.

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Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving Ninety (90) days prior written notice to the said officer in the manner prescribed in the Condition on NOTICES.

#### 20. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, the said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

#### 21. PUBLIC USE

The Lessee shall not forbid the full use by the public of the water areas of the project, subject however, to the authority and responsibility of the Lessee to carry out its responsibilities under this lease to manage the premises and provide safety and security to the facility users.

#### 22. PROHIBITED USES

The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the Lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

#### 23. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT**. The Lessee may salvage fallen or dead timber on the premises for use as firewood. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

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#### 24. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. § 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph C. (2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A Claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that--

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

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g. The Government shall pay interest or the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the said officer.

#### 25. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. Services for waste disposal shall be provided by the Lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

#### 26. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit         . Upon expiration, revocation, or relinquishment of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining the environmental restoration requirements of the Lessee. Appropriate consideration will be given to the cooperative relationship between the parties.

#### 27. **HISTORIC PRESERVATION**

Except as may be otherwise provided in the Agreement, the Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the said officer and protect

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the site and the material from further disturbance until the said officer gives clearance to proceed.

**28. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. My soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

**29. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes if authorized by said officer.

**30. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

**31. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

**32. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

**33. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of

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this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. § 403), and Section 404 of the Clean Waters Act (33 U.S.C. § 1344) .

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_

THIS LEASE is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

(ADD THE CORPORATE CERTIFICATE FORMAT)

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RECREATION COST SHARE LEASE TO STATES

1. TERM
2. CONSIDERATION AND OBLIGATIONS
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
8. CONDITION OF PREMISES
9. FACILITIES AND SERVICES
10. TRANSFERS AND ASSIGNMENTS
11. FEES
12. ACCOUNTS, RECORDS AND RECEIPTS
13. PROTECTION OF PROPERTY
14. RIGHT TO ENTER AND FLOOD
15. LIGHTS, SIGNAL AND NAVIGATION
16. INSURANCE
17. RESTORATION
18. NON-DISCRIMINATION
19. SUBJECT TO EASEMENTS
20. SUBJECT TO MINERAL INTERESTS
21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
22. HEALTH AND SAFETY
23. PUBLIC USE
24. PROHIBITED USES
25. NATURAL RESOURCES
26. DISPUTES CLAUSE
27. ENVIRONMENTAL PROTECTION
28. PRELIMINARY ASSESSMENT SCREENING
29. HISTORIC PRESERVATION
30. SOIL AND WATER CONSERVATION
31. TRANSIENT USE
32. HOLD HARMLESS
33. COVENANT AGAINST CONTINGENT FEES
34. OFFICIALS NOT TO BENEFIT
35. MODIFICATIONS
36. DISCLAIMER



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NO. \_\_\_\_\_

DEPARTMENT OF THE ARMY  
LEASE TO STATES  
FOR COST-SHARED PUBLIC PARK AND RECREATIONAL PURPOSES

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

THIS LEASE is made on behalf of the United States, between the SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Sections 460d and 4601-13, and Title 33, United States Code, Section 2213, and pursuant to a Project Cooperation Agreement entered into on \_\_\_\_\_ (hereinafter referred to as the PCA), and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_ attached hereto and made a part hereof, hereinafter referred to as the praires, for public park and recreational purposes.

THIS LEASE is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of fifty (50) years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_.

**2. CONSIDERATION AND OBLIGATIONS**

The consideration for this lease is the operation and maintenance of the premises and the operation, maintenance, replacement and rehabilitation of the facilities and improvements shown on the inventory prepared under the condition on CONDITION OF THE PREMISES, by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth. As used in this lease the term "replacement" shall be construed to mean the replacement in whole or in part of any structure or improvement so worn or damaged by any cause as to no longer adequately serve its designed function with normal maintenance. As used in this lease the term "rehabilitation" shall mean to restore in whole or in part any structure or improvement to a good and useable condition.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee to \_\_\_\_\_

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\_\_\_\_\_ and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_, 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 of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives: Any reference to "Lessee" shall include sublessees, transferees, concessionaires, and its duly authorized representatives.

**5. DEVELOPMENT PLANS**

a. The Lessee shall be guided by an implementing Plan of Recreation Development and Management (Development Plan) \*\* NOTE adopted pursuant to Article I of the PCA and by this reference made a part hereof and the management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

**\*\*NOTE** The PCA, Art. I, attaches project technical documents, i.e. feasibility studies, GDM. If Federal land will be provided for recreational development, then the documents need to have the same details that would be in a non-cost shared park lease Development Plan.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

**6. STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease at its own expense, to erect additional structures and to provide such equipment upon the premises as may be necessary to furnish additional facilities and services in accordance with an approved amendment to the Plan as provided in the condition on **DEVELOPMENT PLANS**. Those additional structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**, and shall not be added to the inventory described in the Condition on **CONDITION OF THE PREMISES**.

**7. APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of law cited in the granting clause.

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b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitation Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

#### 8. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises and all structures and improvements, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

b. As of the date of this lease an inventory and condition report of all personal property and improvements constructed in whole or in part with Federal funds under the terms of the PCA included in this lease shall be made by a representative of the District Engineer and a representative of the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement.

#### 9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sublessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

#### 10. **TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease or any property constructed in whole or in part with Federal funds on the premises. The lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodation, or personal property on the premises. The lessee will not subdivide nor develop the premises into private residential development.

b. The Lessee shall neither sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without prior written permission from the District Engineer.

**(ALTERNATE b.) USE IF THE ENTIRE WATER RESOURCE DEVELOPMENT PROJECT IS LEASED SO THAT THE STATE IS THE PRIMARY LAND MANAGER**

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b. The Lessee may grant permits and licenses to adjacent private property owners for use of a portion of the premises if the use is conditioned on:

- (1) Unrestricted use by the general public,
- (2) Free and unimpeded passage along the shore,
- (3) Compatibility with the Plan and the Environmental Impact Statement adopted for the project,
- (4) Signs being posted to the effect that "This is public property open to the general public."

#### 11. FEES

Fees may be charged by the lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sublessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

#### 12. ACCOUNTS, RECORDS AND RECEIPTS

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee to fulfill its obligations under the PCA. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sublessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

#### 13. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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.

#### 14. RIGHT TO ENTER AND FLOOD

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 work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee.

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**15. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**16. INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sublessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

c. The District Engineer may require closure of any or all of the premises during any period for which the sublessees and concessionaires do not have the required insurance coverage.

**17. RESTORATION**

On or before the expiration of this lease, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and so restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

**18. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102);

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the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

#### **19. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

#### **20. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Department of the Army will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

#### **21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

The Lessee and/or any sublessees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such violation. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent.

#### **22. HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sublessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions within the area covered by the lease that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its concessionaires or sublessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

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**23. PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sublessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee under this lease to manage the premises and provide safety and security to the visiting public.

**24. PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

**25. NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

**26. DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613)(the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim

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under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that--

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.



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## 27. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The disposal of any toxic or hazardous materials within the premises is specifically **PROHIBITED**. The Lessee shall comply promptly 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. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

## 28. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

## 29. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

## 30. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

## 31. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60)

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consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

**32. HOLD HARMLESS**

The Lessee shall hold and save the Government free from damages arising from the operation, maintenance, replacement and rehabilitation of the premises and the facilities and improvement, except for damages due to the fault or negligence of the Government or the Government's contractors.

**33. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**34. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

**35. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

**36. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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CONTRACT NO. \_\_\_\_\_

DEPARTMENT OF THE ARMY  
LEASE  
FOR COTTAGE SITE PURPOSES

\_\_\_\_\_  
SITE  
\_\_\_\_\_  
PROJECT NAME  
\_\_\_\_\_  
COUNTY, STATE

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and of Section 1134 of the Act of Congress approved 17 November 1986 (P.L. 99-662) and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for recreational cottage site purposes and purposes incidental thereto.

That this lease grants no vested property rights but affords only a limited right to occupy the land pending termination as set out in Condition 14.

**THIS LEASE** is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term beginning \_\_\_\_\_, 19\_\_, and ending on \_\_\_\_\_ 20\_\_, or until such time as the lease is terminated by the lessee, or by the secretary, as set out in Condition 14 on Termination.

2. **CONSIDERATION**

a. The consideration for this lease is the fair market rental, reviewed and adjusted every 5 years for compliance with fair market value, of the initial sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), payable as shown in the attached Exhibit A in advance to the order of the Finance and Accounting Officer (FAO), \_\_\_\_\_, and delivered in the same manner as set out in condition 3 on Notices.

b. All rent and other payments due under the terms of this instrument must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, Title 31, United

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States Code, Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from the due date. An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

### **3. NOTICES**

All notices to be given pursuant to this lease shall be addressed, if to the Lessee, to if to the United States, to the District Engineer, \_\_\_\_\_ hereinafter referred to as the District Engineer, 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 or branch post office regularly maintained by the United States Postal Service.

### **4. AUTHORIZED REPRESENTATIVES INCLUDED**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, and their duly authorized representatives.

### **5. APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, use of pesticides, licenses or permits. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer and to such rules and regulations as may be prescribed from time to time.

### **6. USE OF THE PREMISES**

a. The leased premises may be used by the lessee, lessee's family, agents, and guests, for recreational cottage site purposes and purposes incidental thereto and for no other different object or purpose. The lessee may maintain an existing private recreational dwelling, and may maintain existing accessory improvements, but agrees not to unreasonably expand these existing improvements. These existing improvements erected by the lessee or a predecessor under a previous lease shall remain the property of lessee, subject, however, to the provisions of Condition 15 hereof, and shall be maintained by the lessee in a usable and safe condition. Failure to maintain may be grounds for termination under Condition 14.

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b. No improvement may be erected, expanded or altered upon the premises unless and until the type of use, design, and proposed location or alterations thereof shall have been approved in writing by the District Engineer.

**7. CONDITION OF PREMISES**

The Lessee acknowledges that he has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**8. TRANSFERS, ASSIGNMENTS, SUBLEASES**

The Lessee shall neither transfer nor assign this lease or any property on the demised premises, nor sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, in license whatsoever in connection with this lease without permission in writing from the District Engineer. The provisions and conditions of this instrument shall extend to and be binding upon and shall inure to the benefit of the lessee's heirs, representatives, successors and assigns.

**9. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all improvements, trees or timber, and other 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer or at the election of the District Engineer, reimbursement may be made at the current market value.

**10. RIGHT TO ENTER AND FLOOD**

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 work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

b. This property is located within the 100-year floodplain and is subject to periodic flooding. This lease is subject to floodplain management requirements unless inconsistent with the approved cottage site use.

**11. HOLD HARMLESS**

The lessee agrees to hold the United States harmless from any claim for damages or injury to persons or property arising from the occupancy of or through the use of the premises.

**12. LIGHTS, SIGNALS AND NAVIGATION**

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There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**13. PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which, in the opinion of the District Engineer, is contrary to good morals or is otherwise objectionable; or use the premises or permit them to be used for any illegal or immoral business or purpose. There shall not be carried on or permitted upon the premises any activity which would constitute a nuisance and the Lessee will use the premises in a quiet and inoffensive manner.

b. The Lessee will not conduct any commercial or business activities on the premises.

**14. TERMINATION**

a. This lease may be terminated by the lessee, any successors or assigns of the lessee, at any time by giving ten-days' notice in writing to the District Engineer. Provided that, in case of such termination, no remission shall be made by the United States of any rental theretofore paid, and provided further that, in the event that the notice is not given at least ten days prior to the next rental due date, the lessee shall be required to pay that rental payment. Abandonment or nonuse of the premises for one year or nonpayment of the rent for 90-days past the due date will be considered notice of termination of the lease by the lessee.

b. The Secretary may terminate this lease only if the premises are needed for immediate use for public park purposes or other higher public use or for a navigation or flood control project; or if lessee substantially violates a provision of the lease. The lessee is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies and with compliance with reasonable requests by the District Engineer. The lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. A termination notice will be given in writing to the lessee at least 30 days prior to the termination date and designating the time for compliance with Condition 15.

c. In the event of termination by the lessee or the Secretary, the District Engineer may re-enter the premises andg from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

d. This lease does not exclude lessee from being required to obtain a Department of the Army permit under 33 U.S.C 403 or Section 404.

**22. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

**23. SOIL AND WATER CONSERVATION**

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The Lessee shall maintain, in a manner satisfactory to the District Engineer, all terraces, retaining walls, drop structures, revetments and other soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the use and maintenance of the premises by the Lessee shall be in accordance with good soil and water conservation practices.

**24. SEVERAL LESSEES**

If more than one lessee is named in this lease the obligations of said lessees shall be joint and several obligations.

**25. HUNTING AND TRAPPING**

The Lessee shall not hunt or trap or allow hunting or trapping on the premises.

**26. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, id States in the premises are concerned. The lessee shall obtain any further permission necessary on account of any other existing rights.

Before the execution of this lease, conditions were deleted, revised and added in the following manner:

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_

THIS LEASE is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_



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PUBLIC PARK LEASE TO  
STATES

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
8. CONDITION OF PREMISES
9. FACILITIES AND SERVICES
10. TRANSFERS, ASSIGNMENTS, SUBLEASES
11. FEES
12. ACCOUNTS, RECORDS AND RECEIPTS
13. PROTECTION OF PROPERTY
14. RIGHT TO ENTER AND FLOOD
15. LIGHTS, SIGNALS AND NAVIGATION
16. INSURANCE
17. RESTORATION
18. NON-DISCRIMINATE ON
19. SUBJECT TO EASEMENTS
20. SUBJECT TO MINERAL INTERESTS
21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
22. HEALTH AND SAFETY
23. PUBLIC USE
24. PROHIBITED USES
25. NATURAL RESOURCES
26. DISPUTES CLAUSE
27. ENVIRONMENTAL PROTECTION
28. PRELIMINARY ASSESSMENT SCREENING
29. HISTORIC PRESERVATION
30. SOIL AND WATER CONSERVATION
31. TRANSIENT USE
32. COVENANT AGAINST CONTINGENT FEES
33. OFFICIALS NOT TO BENEFIT
34. MODIFICATIONS
35. DISCLAIMER

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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY  
LEASE TO STATES  
FOR PUBLIC PARK AND RECREATIONAL PURPOSES**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

**THIS LEASE** is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

2. **CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_;  
and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_,  
\_\_\_\_\_, 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 of the Army," "District Engineer," "said officer or "Lessor" shall

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include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

**5. DEVELOPMENT PLANS**

a. The Lessee shall be guided by an implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit \_\_\_\_\_ which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

**6. STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**.

**7. APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

**8. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and said improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the

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expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY**.

#### 9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

#### 10. **TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

#### 11. **FEEES**

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

#### 12. **ACCOUNTS, RECORDS AND RECEIPTS**

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of

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Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

**13. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**14. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**15. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**16. INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sub-lessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

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b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance,

c. The District Engineer may require closure of any or all of the premises during any period for which the sub-lessees and concessionaires do not have the required insurance coverage.

#### 17. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

#### 18. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. S 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees and assignees.

#### 19. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

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**20. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM4), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

**21. COMPLIANCE, CLOSURE, REVOICATION AND RELINQUISHMENT**

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on NOTICES.

**22. HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

**23. PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

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**24. PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

**25. NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

**26. DISPUTES CLAUSE**

Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;



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(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

## 27. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby

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made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Service for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

**28. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

**29. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

**30. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

**31. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

**32. COVENANT AGAINST CONTINENT FEES**

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The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**33. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

**34. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

**35. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_

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PUBLIC PARK LEASE TO  
POLITICAL SUBDIVISIONS OF STATES

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
8. CONDITION OF PREMISES
9. FACILITIES AND SERVICES
10. TRANSFERS, ASSIGNMENTS, SUBLEASES
11. FEES
12. ACCOUNTS, RECORDS AND RECEIPTS
13. PROTECTION OF PROPERTY
14. RIGHT TO ENTER AND FLOOD
15. LIGHTS, SIGNALS AND NAVIGATION
16. INSURANCE
17. RESTORATION
18. NON-DISCRIMINATION
19. SUBJECT TO EASEMENTS
20. SUBJECT TO MINERAL INTERESTS
21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
22. HEALTH AND SAFETY
23. PUBLIC USE
24. PROHIBITED USES
25. NATURAL RESOURCES
26. DISPUTES CLAUSE
27. ENVIRONMENTAL PROTECTION
28. PRELIMINARY ASSESSMENT SCREENING
29. HISTORIC PRESERVATION
30. SOIL AND WATER CONSERVATION
31. TRANSIENT USE
32. COVENANT AGAINST CONTINGENT FEES
33. OFFICIALS NOT TO BENEFIT
34. MODIFICATIONS
35. DISCLAIMER

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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY  
LEASE TO NON-STATE GOVERNMENTAL AGENCIES  
FOR PUBLIC PARK AND RECREATIONAL PURPOSES**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_;

and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_;

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**

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Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

#### 5. DEVELOPMENT PLANS

The Lessee shall be guided by an annual Plan of Operation and Maintenance in furtherance of the Lessee's implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit\_\_\_\_\_ which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. No later than \_\_\_\_\_ of each year the Lessee will submit the annual Plan to be mutually agreed on between the Lessee and the District Engineer. Such annual Plan shall include but is not limited to the following:

a. Plans for management, maintenance and development activities to be undertaken by the Lessee and any sublessees.

b. Report of the management, maintenance and development accomplishments of the Lessee for the preceding year.

c. Report on any significant modification of policies or procedures which are planned for the following year as well as those implemented in the preceding year.

d. Minor modifications to the Development Plan. Major modifications are to be accomplished by amendment to the Plan before proceeding to implement any changes in the development or management of the leased premises.

e. Budget of the Lessee for carrying out all activities for the upcoming year.

f. Personnel to be used in the management of the leased premises.

g. Annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

#### 6. STRUCTURE AND EQUIPMENT

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**. However, not structures may be erected or altered upon the premises unless and until the type of use, design, and proposed location or alteration thereof shall have been approved in writing by the District Engineer. The District Engineer may require the

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Lessee, upon the completion of each of the proposed developments to furnish complete "as built" construction plans for all facilities.

#### 7. **APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disability Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

#### 8. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

##### **(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY**.

#### 9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

**10. TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

**11. FEES**

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

**12. ACCOUNTS, RECORDS AND RECEIPTS**

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall establish and maintain accurate records and accounts and provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

**13. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**14. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner



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whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**15. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**16. INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum Combined Single Limit of \$ \_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee, sub-lessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

c. In the event the Lessee is self-insured, the Lessee shall certify such self-insurance in writing in the minimum amount specified above to the District Engineer. The Lessee's insurance status shall not eliminate the requirement for its sub-lessees and concessionaires to have insurance from a reputable insurance carrier as set out above.

d. The District Engineer may require closure of any or all of the premises during any period for which the Lessee and/or its sub-lessees and concessionaires do not have the required insurance coverage.

**17. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the

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premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

#### 18. **NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is rec Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

#### 19. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The lessee will not close any established access routes without written permission of the District Engineer.

#### 20. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

#### 21. **COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and

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continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sub-lessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES**.

## 22. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

## 23. **PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

## 24. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the

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premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

## 25. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

## 26. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

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d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

## 27. ENVIRONMENT PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

**28. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal substances thereon is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. my such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

**29. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

**30. SOIL AND WATER CONSERVATION**

The Lessee shall maintain in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any spoil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

**31. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

**32. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full ammount of such commision, percentage, brokerage, or contingent fee.

**33. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However nothing herein contained shall be construed to extend to

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any incorporated company if the lease be for the general benefit of such corporation or company.

34. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

35. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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FISH AND WILDLIFE MANAGEMENT LEASE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
8. CONDITION OF PREMISES
9. FISH AND WILDLIFE ACTIVITIES
10. TRANSFERS, ASSIGNMENTS, SUBLEASES
11. ACCOUNTS, RECORDS AND RECEIPTS
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17. SUBJECT TO EASEMENTS
18. SUBJECT TO MINERAL INTERESTS
19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
20. HEALTH AND SAFETY
21. PUBLIC USE
22. NATURAL RESOURCES
23. DISPUTES CLAUSE
24. ENVIRONMENTAL PROTECTION
25. PRELIMINARY ASSESSMENT SCREENING
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28. TRANSIENT USE
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30. OFFICIALS NOT TO BENEFIT
31. MODIFICATIONS
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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**  
**LEASE FOR**  
**FISH AND WILDLIFE MANAGEMENT PURPOSES**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section(s) \_\_\_\_\_, and for the consideration hereinafter set forth, hereby grants to the Lessee: the land and/or water areas under the primary jurisdiction of the Department of the Army as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for fish and wildlife management purposes.

THIS LEASE is granted subject to the following conditions:

**1. TERM**

Said premises are hereby granted for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_, 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

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deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

#### 4. AUTHORIZE REPRESENTATIVES INCLUDED

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include its successors, employees and duly authorized representatives.

#### 5. DEVELOPMENT PLANS

a. The Lessee shall be guided by a Fish and Wildlife Development and Management Plan (Development Plan), attached as Exhibit\_\_\_\_\_, which shows the facilities and management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

#### 6. STRUCTURES AND EQUIPMENT

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to accomplish the purposes of this lease. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the condition on **RESTORATION**.

#### 7. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, and use of pesticides. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises, if any, have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

#### 8. CONDITION OF PREMISES

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

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b. An inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY**.

#### 9. **FISH AND WILDLIFE ACTIVITIES**

a. The lessee may plant or harvest crops, either directly, by service contract, by sharecrop agreements with local farmers, or by agricultural agreements to provide food and/or habitat for wildlife and for the development and conservation of land, fish and wildlife, forests, and other natural resources. Where feasible, contracts and agreements with third parties shall be by competitive bid procedures.

b. Any lands not being managed by the lessee for wildlife habitat will be made available for lease by the District Engineer for agricultural or grazing purposes under conditions which would not be incompatible with the lessee's use of the premises.

c. The Lessee may take, trap, remove, stock or otherwise control all forms of fish and wildlife on the premises, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use shall be consistent with the state laws for the protection of fish and wildlife.

#### 10. **TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the demised premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. Agreements covered by the condition on **FISH AND WILDLIFE ACTIVITIES** are not subject to this condition.

#### 11. **ACCOUNTS, RECORDS AND RECEIPTS**

a. All monies received by the Lessee from operations conducted on the premises may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. The District Engineer shall have the right to perform audits of the Lessee's records and accounts.

b. Payment of direct expenses is authorized for planning and development of optimum wildlife habitat including planting of wildlife food plots, necessary timber clearing, erosion control or habitat improvements such as shelter, restocking of fish and wildlife, and protection of endangered species. Payment of Lessee's employees who are directly engaged in such activities at the project is also authorized. However, proceeds will not be used for the payment of general administrative expenses.

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c. Proceeds derived from the sale of fishing and hunting leases are not subject to this condition.

**12. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**13. RIGHT TO ENTER AND FLOOD**

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 work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee.

**14. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**15. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

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**16. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7.

**17. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

**18. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

**19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to the United States in the manner prescribed in the condition on **NOTICES**.

20. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean and safe condition.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

21. **PUBLIC USE**

No attempt shall be made by the Lessee to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee under this lease to manage the premises and provide safety and security to the visiting public.

22. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the condition on **DEVELOPMENT PLANS**. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

23. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer,

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

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(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

#### 24. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the

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premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease.

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

c. The Lessee must obtain approval in writing from the District Engineer before any pesticide or herbicides are applied to the premises.

#### 25. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

#### 26. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

#### 27. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

#### 28. **TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

#### 29. **COVENANT AGAINST CONTINGENT FEES**



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The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**30. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

**31. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

**32. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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COMMERCIAL CONCESSION LEASE

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No. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**  
**LEASE**  
**FOR COMMERCIAL CONCESSION PURPOSES**

\_\_\_\_\_  
 SITE

\_\_\_\_\_  
 PROJECT NAME

\_\_\_\_\_  
 COUNTY, STATE

**THIS LEASE** is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_ hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for commercial concession purposes.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_.

**2. CONSIDERATION**

a. The rent due to the United States in consideration of this lease shall be calculated using the Revised Graduated Rental System (RGRS). The total gross receipts for each rental payment period will be multiplied by the applicable percentage rate and the resulting total due payable within ten days to \_\_\_\_\_

The percentage rate for the upcoming rental year will be selected from the following RGRS rental rate chart, using the line for the total gross receipts of the ending rental year:

GROSS RECEIPTS (GR)	% RENT
Under \$50,000	2.0%
\$50,000-\$200,000	2.1%
\$200,000-\$400,000	2.2%
\$400,000-\$600,000	2.3%
\$600,000-\$800,000	2.4%
\$800,000-\$1,000,000	2.5%

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\$1,000,000-\$1,200,000	2.6%
\$1,200,000-\$1,400,000	2.7%
\$1,400,000-\$1,600,000	2.8%
\$1,600,000-\$1,800,000	2.9%
\$1,800,000-\$2,000,000	3.0%
\$2,000,000-\$2,200,000	3.1%
\$2,200,000-\$2,400,000	3.2%
\$2,400,000-\$2,600,000	3.3%
\$2,600,000-\$2,800,000	3.4%
\$2,800,000-\$3,000,000	3.5%
\$3,000,000-\$3,200,000	3.6%
\$3,200,000-\$3,400,000	3.7%
\$3,400,000-\$3,600,000	3.8%
\$3,600,000-\$3,800,000	3.9%
\$3,800,000-\$4,000,000	4.0%
\$4,000,000-\$4,200,000	4.1%
\$4,200,000-\$4,400,000	4.2%
\$4,400,000-\$4,600,000	4.3%
\$4,600,000-\$4,800,000	4.4%
\$4,800,000-\$5,000,000	4.5%
\$5,000,001 and above	4.6%

(1) Gross receipts are defined as the total of the concessionaire's receipts from business operations conducted on the premises, including receipts of sub-lessees and licensees. No reductions are permitted except the costs of hunting and fishing licenses, and license fees and taxes collected for direct remittance to a taxing authority, and the exact amount collected from customers for electrical service which is metered to the customer and collected by the Lessee as the servicing agent and paid to the power company. (OPTIONAL: Sale receipts from boats and motors are excluded and assessed a straight one-percent rent.)

(2) The rental payment shall be (monthly) (quarterly) (semi-annually) (annually) with the first payment due \_\_\_\_\_. The rental year (will begin on the beginning date of this lease, and each anniversary date thereafter) (will be a partial year the first year, beginning on the date of this lease and ending on 31 December\_\_\_\_; for each rental year thereafter, the year will begin on 1 January and end on 31 December.)

(3) RENT PAYMENT CALCULATION FORM

Reporting period _____	
a) Gross receipts for this period:	\$ _____
b) Rent rate: _____ x _____	_____
c) Amount due (a x b)	\$ _____
IF OPTIONAL BOAT RATE SELECTED:	
d) Boat and motor sales:	\$ _____
e) Rate: _____ x _____	0.01
f) Amount due (d x e)	\$ _____
TOTAL DUE (C+f)	\$ _____

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. § 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an

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additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charges.

### 3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_, and, if to the United States, to the District Engineer, Attn: Chief, Real Estate Division, \_\_\_\_\_, 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 of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sub-lessees, assignees, transferees, concessionaires, and its duly authorized representatives.

### 5. USE AND DEVELOPMENT OF THE PREMISES

a. The premises may be occupied and used by the Lessee or duly authorized agents, sublessees, assignees, or transferees solely for the conduct of business in connection with the recreational development of the premises for the general use of the public. Lessee shall provide facilities and activities in accordance with the Use and Development Plan and its architectural theme and sign plan, as supplemented or amended, (Development Plan) and attached hereto as Exhibit\_\_\_\_\_. **(FOR RENEWALS WITHOUT SIGNIFICANT PROPOSED NEW DEVELOPMENT, REPLACE PRECEDING SENTENCE WITH THE FOLLOWING):** Lessee shall continue to provide current facilities and activities in accordance with a Use Plan showing location of existing facilities and current activities, attached exhibit \_\_\_\_\_, and will place and maintain signs in accordance with the sign plan, attached as exhibit\_\_\_\_\_.) The sign plan will be in accordance with the Sign Standards Manual, EP 310-1-6A, Chapter 17.

b. No structure may be erected or altered upon the premises unless and until said Development Plan **(FOR RENEWALS WITHOUT A DEVELOPMENT PLAN, REPLACE "said Development Plan" with "such Structure)** has been approved in writing by the District Engineer. The District Engineer may require the Lessee, upon

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completion of each of the proposed developments, to furnish a complete "as built" site plan and "as built" construction plans for all facilities with certification by a Professional Engineer that the construction meets all codes and standards.

**(DELETE THE FOLLOWING CONDITION FOR RENEWAL WITHOUT DEVELOPMENT PLANS)**

c. The District Engineer may agree in writing to an extension of time for providing the facilities and activities designated in said Development Plan or may waive the providing thereof for other than those specified for the first lease year as designated in said development Plan, whenever, in the opinion of the District Engineer, the public demand does not reach the anticipated level at the time stated, or when a delay in providing the facilities and services is beyond the control of the Lessee; provided, however, that at the discretion of the District Engineer, such undeveloped areas may be withdrawn from the leased premises.

d. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. Modifications to said Development Plan must be approved in writing by the District Engineer prior to implementation of the change.

e. All structures and equipment furnished by the Lessee shall be and remain the property of the Lessee, except as otherwise provided in the Condition on RESTORATION.

**(DELETE THE FOLLOWING CONDITION FOR LEASE RENEWALS)**

**6. PERFORMANCE OF CONTRACT**

The Lessee agrees to obtain and deliver to the District Engineer, within thirty (30) days, either a valid surety bond issued by a surety corporation licensed by a state regulatory entity, a performance deposit, or an irrevocable letter of credit issued by a Federally insured financial institution in a form satisfactory to the District Engineer. Said surety bond, performance deposit, or letter of credit shall be in the sum of \$\_\_\_\_\_, payable to the United States, and conditioned upon full and satisfactory performance of the obligations of the Lessee herein set forth in this lease. To insure favorable performance by the Lessee of all the covenants, terms and conditions of this lease, said deposit shall be retained or said bond or letter of credit shall be kept in full force and effect by the Lessee until released in writing by the District Engineer upon completion of the development set out in said Development Plan, attached as Exhibit \_\_\_\_\_, as supplemented or amended, is completed.

**7. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and of the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be

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either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY.**

**8. RATES AND PRICES**

a. The rates and prices charged by the Lessee or its sub-lessees shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The District Engineer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. The Lessee shall keep such rates and prices posted at all times in an appropriate and conspicuous place on the premises. The District Engineer may require submission of a schedule of the rates and prices at any time.

b. However, no user fees may be charged by the Lessee or its sublessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

**9. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

**10. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**11. 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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**12. INSURANCE**

a. At the commencement of this lease, the Lessee will obtain from a reputable insurance company, or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and

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consistent with sound business practices or a minimum Combined Single Limit of \$\_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee under the terms and conditions of this lease, and the Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, a certificate of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance coverage required. The policy shall provide that the insurance company give the District Engineer thirty (30) days written notice of any cancellation, non-renewal or change in such insurance.

b. The lessee's sublessees and licensees, at the commencement of operating under the terms of this lease, shall obtain from a reputable insurance company or companies liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sublessees and licensees under the terms of this lease. The lessee shall require any insurance carrier or carriers to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

c. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

d. As to those structures and improvements on the premises constructed by or at the expense of the United States, for such periods the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration, or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration, or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however, that the insurer, after payment of any proceeds to the Lessee in accordance with the provisions of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore, or replace the leased premises or any part thereof.



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**13. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

**14. NON-DISCRIMINATION**

The Lessee 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 leased premises. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

**15. APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable codes.

**16. TAXES**

Payment of any and all taxes imposed by the state or its political subdivisions upon the property or business of the Lessee on the premises is the responsibility of the Lessee.

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17. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easments subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The lessee will not close any established access routes without written permission of the District Engineer.

18. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to Federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

19. **TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease or a controlling interest therein (including, without limitation, mergers, consolidations, reorganizations, or other business combinations), nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease, nor shall this lease be assignable or transferable by process or operation of law including, but not limited to, insolvency proceedings, bankruptcy, or intestacy, or in any other manner whatever.

(1) Failure to comply with this condition or the procedures described herein shall constitute a material breach of this lease for which this lease may be revoked immediately by the District Engineer, and, the secretary shall not be obligated to recognize any right of any person or entity to an interest in this lease or to own or operate the facilities authorized hereunder acquired in violation hereof.

(2) The Lessee shall advise the person(s) or entity proposing to enter into a transaction described in Subsection a. above that the District Engineer shall be notified and that the proposed transaction is subject to review and approval by the District Engineer. The Lessee shall request in writing the District Engineer's approval of the proposed transaction and shall promptly provide the District Engineer all relevant documents related to the transaction, and the name(s) and qualifications of the person(s) or entity involved in the proposed transaction.

b. The District Engineer, in exercising discretion to approve or disapprove transfer, assignments, or subleases, shall among other matters, take into consideration the management qualifications of the individuals or entities that would thereby obtain a controlling interest in the facilities or services authorized hereunder, the experience of such individuals or entities with similar operations, and the ability of such individuals or entities to operate the operations authorized hereunder in the public interest.

c. The term "controlling interest" in a Lessee's ownership shall mean, in the instance of a corporate Lessee, an interest beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of substantial managerial influence over the operations of the

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Lessee, and, in the instance of a partnership, joint venture, or individual Lessee, any beneficial ownership of the capital assets of the Lessee sufficient to permit substantial managerial influence over the operations of the Lessee. The District Engineer will determine at the request of interested parties whether or not an interest in a lease constitutes a controlling interest within the meaning hereof.

d. The Lessee may not enter into any agreement with any entity or person, except employees of the Lessee, to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without the prior written approval of the District Engineer.

e. No mortgage shall be executed, and no bonds, shares of stock, or other evidence of interest in, or indebtedness upon the assets of the Lessee located on the premises, including this lease, shall be issued, except for the purposes of installing, enlarging, refinancing or improving concession plant, equipment and facilities, provided that, such assets, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of other assignment, transfer, or encumbrance, the creditor or any assignee thereof shall succeed to the interest of the Lessee in such assets but shall not thereby acquire operating rights or privileges. Such rights or privileges shall be subject to disposition by the District Engineer.

f. The lessee may allow independent private service companies to enter and conduct business on the premises for the benefit of the Lessee's customers on an as-called basis without a formal sublease or license agreement, provided that the service is occasional and incidental to the Lessee's operation and that any compensation paid to the Lessee is included in gross receipts.

g. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The lessee will not subdivide nor develop the premises into private residential development.

## 20. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of its terms and conditions and continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving six months prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES**.

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c. In addition to the above right of revocation, if the rent or other payments provided to be paid by the Lessee or any part thereof shall be in arrears and unpaid for thirty (30) days after the same shall become due, then, and in such case, the District Engineer may elect to revoke this lease by notification in writing to the Lessee.

#### 21. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sublessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to the health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee will be obligated to pay rental, notwithstanding any interruption or suspension of activities. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

#### 22. PUBLIC USE

No attempt shall be made by the Lessee, nor any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

#### 23. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

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24. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Condition on **USE AND DEVELOPMENT OF THE PREMISES** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber.

25. **ACCOUNTS AND RECORDS**

a. The Lessee shall maintain complete and accurate records and no later than 120 days following the end of the Lessee's fiscal year shall submit to the District Engineer reports and data for the preceding year to include a financial statement for the activity covered by the lease and compiled by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state.

b. The District Engineer shall have the right at any time (1) to verify all financial reports and copy the books, correspondence, memoranda, income tax returns and other records of the Lessee and sublessees, if any, and of the records of proprietary or affiliated companies, if any, related to this lease during the period of the lease (This right shall extend for such time thereafter as may be necessary to accomplish such verification, but in no event more than five (5) years after the close of the business year of the Lessee); (2) to require the Lessee to furnish an audited financial statement; or (3) to require the Lessee to furnish an audited statement of gross receipts for the concession operation, including the gross income of any sublease operation, and certification of the accuracy of the reported income.

c. Statements will be prepared by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state. Audits will be in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountant. Financial statements requiring audits and accompanied by remarks such as "prepared from client records without audit" are unacceptable. Audited and reviewed financial statements shall contain appropriate footnotes. The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial report are consistent with those included in the Federal tax returns. If the amounts are not consistent, then a statement showing differences shall be included. An audit of Lessees tax returns is not required.

26. **ENVIRONMENT PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation

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facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the property in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

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

c. The lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

#### **27. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

#### **28. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

#### **29. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected as directed by the District Engineer.

#### **30. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

#### **31. HUNTING AND TRAPPING**

The Lessee shall not hunt or trap or allow hunting or trapping on the premises.

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32. **TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites, said system to be acceptable to the District Engineer.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees, residing on the premises, for security purposes, if authorized by the District Engineer.

33. **DISPUTES CLAUSE**

Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-6113) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

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d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the Condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

#### 34. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

#### 35. **OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

#### 36. **SEVERAL LESSEES**

If more than one Lessee is named in this lease the obligations of said Lessees herein contained shall be joint and several obligations.



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37. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

38. **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 lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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PARK LEASE TO NONPROFIT ORGANIZATIONS

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No. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**

**LEASE TO NONPROFIT ORGANIZATION  
FOR PARK AND RECREATIONAL PURPOSES**

\_\_\_\_\_  
SITE

\_\_\_\_\_  
PROJECT NAME

\_\_\_\_\_  
COUNTY, STATE

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration set forth herein, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises for

\_\_\_\_\_

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

a. The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 USC Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue

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from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

**2. CONSIDERATION (ALTERNATE) (USE ONLY WITH THE ALTERNATE CONDITION ON NON-DISCRIMINATION)**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_, 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 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 of the Army", "District Engineer" or "said officer" shall include their duly authorized representatives. Any reference to "lessee" shall include, assignees, transferees, successors and their duly authorized representatives.

**5. SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

**6. APPLICABLE LAWS AND REGULATIONS**

a. The lessee shall comply with all applicable federal laws and regulations and with all applicable laws, ordinances and regulations of the state, county and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

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b. The lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the Lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the Lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable codes.

#### 7. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by said officer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. The report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY**.

#### 8. **DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises for park or recreation purposes only and in accordance with a development and management plan as approved in writing by said officer. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. The Lessee also agrees to prohibit any exclusive or private use of all or any part of the premises by any individual or group of individuals. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the Condition on **RESTORATION**, and shall be maintained by the Lessee to the satisfaction of said officer.

#### 9. **AVAILABILITY OF THE PREMISES**

The Lessee agrees that the premises are leased for organized group recreational use only and that the premises and the facilities thereon must be made available on a rotational basis among any various groups within the lessee organization, and their guests. The Lessee further agrees to make the site and facilities available to other nonprofit organizations on a first come, first served reservation basis when not scheduled for use by members of the Lessee organization. The Lessee will not unreasonably withhold availability to such organizations.

#### 10. **TRANSFERS AND ASSIGNMENTS**

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a. Without prior written approval of said officer the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by said officer.

b. The Lessee will not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

**11. FEES**

Fees may be charged by the Lessee for use of the premises or facilities constructed thereon. The said officer shall have the right to review such fees and require an increase or reduction when it is determined that the objectives of this lease have been violated. However, no user fees may be charged by the Lessee for use of facilities developed in whole or in part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law. All monies received by the Lessee from operations conducted on the premises must be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Any such monies not so utilized or programmed for use within a reasonable time shall be paid to said officer at the end of each 5 year period. The Lessee shall furnish annual statements of receipts and expenditures to said officer.

**12. PROTECTION OF PROPERTY**

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

**13. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

**14. INSURANCE**

a. At the commencement of this, the Lessee shall obtain from a reputable insurance company or companies, liability insurance. The insurance

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shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit in the amount of \$ \_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the lessee under the terms of this lease. The Lessee shall require its insurance company to furnish to said officer a copy of the policy or policies, or if acceptable to said officer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give said officer thirty (30) days written notice of any cancellation or change in such insurance. Said officer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain, at the Lessees cost, a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purpose hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

**15. 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 of the lessee, or for damages to the property or injuries to the person of the lessee'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 lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**16. RESTORATION**

On or before the expiration of this lease or its termination by the lessee, the Lessee shall vacate the premises, remove the property of the

lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, said property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

**17. NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

**17. NON-DISCRIMINATION (ALTERNATE) (USE ONLY WITH THE ALTERNATE CONDITION ON CONSIDERATION)**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

**18. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the Lessee.

**19. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said



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mineral leases that are designed to protect the premises from activities that would interfere with the lessee's operations or would be contrary to local law.

**20. COMPLIANCE, CLOSURE, REVOCATION, AND RELINQUISHMENT**

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by said officer. This lease may be revoked in the event the Lessee violates any of its terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Decisions by the said officer concerning future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall reflect the lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to said officer in the manner prescribed in the condition on NOTICES.

**21. HEALTH AND SAFETY**

a. The lessee shall keep the premises in good order and in a clean, sanitary and safe condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed until such condition is corrected and the danger eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

**22. PUBLIC USE**

The lessee shall not forbid the full use by the public of the water areas of the project, subject however, to the authority and responsibility of the Lessee to carry out its responsibilities under this lease to manage the premises and provide safety and security to the facility users.

**23. PROHIBITED USES**

a. The lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

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b. In accordance with state and local laws and regulations, the Lessee may store, or dispense, or permit the storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises for members of the lessee organization and their guests. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

#### 24. NATURAL RESOURCES

The lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT PLANS**. The lessee may salvage fallen or dead timber on the leased premises for use as firewood only. All sales of timber or forest products will be conducted by the United States and the proceeds therefrom shall not be available to the lessee under the provisions of this lease.

#### 25. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) (i) If the Lessee is an individual, the certificate shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by:

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(A) A senior company official in charge at the Lessee's location involved; or

(B) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim or action arising under the lease, and comply with any decision of said officer.

## 26. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The lessee shall require all sanitation facilities on boats moored at the lessee's facilities to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The lessee 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 lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising

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from the lessee's activities, the lessee shall be liable to restore the damaged resources.

c. The lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**27. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit         . Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

**28. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbances until said officer gives clearance to proceed.

**29. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by said officer.

**30. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes if authorized by said officer.

**31. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

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**32. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

**33. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

**34. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_

THIS LEASE is also executed by the lessee this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_

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PRIVATE RECREATION LEASE

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5. SUPERVISION BY THE DISTRICT ENGINEER
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
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10. PROTECTION OF PROPERTY
11. RIGHT TO ENTER AND FLOOD
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NO \_\_\_\_\_  
**DEPARTMENT OF THE ARMY**  
**LEASE FOR**  
**PRIVATE RECREATION PURPOSES**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
PROJECT

\_\_\_\_\_  
COUNTY, STATE

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_ hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises for private recreation purposes consisting of \_\_\_\_\_

\_\_\_\_\_.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

A. The Lessee shall pay rental in advance to the United States in the amount of \_\_\_\_\_ (\$\_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 USC Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

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(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### 3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_, 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 of the Army", "District Engineer" or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include, assignees, transferees, successors and their duly authorized representatives.

### 5. SUPERVISION BY THE DISTRICT ENGINEER

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

### 6. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable federal, laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.



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c. In addition to other applicable codes, the Lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the Lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable NFPA codes.

**7. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by said officer and the Lessee to reflect the condition of said property and improvements. A copy of said report is to be attached as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. The report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY**.

**8. DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises for private recreation purposes only and in accordance with a development and management plan as approved in writing by said officer. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the condition on RESTORATION, and shall be maintained by the Lessee to the satisfaction of said officer.

**9. TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of said officer the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by said officer.

b. The Lessee shall not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee shall not subdivide nor develop the premises into private residential development.

**10. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property

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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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

**11. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

**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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**13. RESTORATION**

On or before the expiration of this lease or its termination by the lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, said property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

**14. NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

**15. SUBJECT TO EASEMENTS**

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This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the Lessee.

#### **16. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

#### **17. COMPLIANCE, CLOSURE, REVOCATION, AND RELINQUISHMENT**

a. The Lessee is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by said officer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to said officer in the manner prescribed in the condition on **NOTICES**.

c. In addition to the above right of revocation, if the rent or other payments provided to be paid by the Lessee or any part thereof shall be in arrears and unpaid for thirty (30) days after the same shall become due, then, and in such case, the said officer may elect to revoke this lease by notification in writing to the Lessee.

#### **18. HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, safe and sanitary condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed until such condition is corrected and the danger eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

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19. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the Lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

b. In accordance with state and local laws and regulations, the Lessee may store, or dispense, or permit the storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises for members of the Lessee organization and their guests only.

c. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees, residing on the premises, for security purposes, if authorized by said officer.

20. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT PLANS**. The Lessee may salvage fallen or dead timber, however, no commercial use shall be made of such timber. All sales of timber or forest products will be conducted by the United States and the proceeds therefrom shall not be available to the lessee under the provisions of this lease.

21. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

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- (i) The claim is made in good faith;
  - (ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and
  - (iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.
- (3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:
- (i) A senior company official in charge at the Lessee's location involved; or
  - (ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.
- d. For Lessee claims of \$50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.
- e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.
- f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c.(3) of this clause.
- g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.
- h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim or action arising under the lease, and comply with any decision of said officer.

## 22. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or

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instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The lessee 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 lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the lessee's activities, the lessee shall be liable to restore the damaged resources.

c. The lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**23. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirement of the Lessee. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION**.

**24. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbances until said officer gives clearance to proceed.

**25. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by said officer.

**26. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

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27. **OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

28. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

29. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_

\_\_\_\_\_

THIS LEASE is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

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COOPERATIVE ASSOCIATION LEASE

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2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE DISTRICT ENGINEER
6. APPLICABLE LAWS AND REGULATIONS
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29. TRANSIENT USE
30. COVENANT AGAINST CONTINGENT FEES
31. OFFICIALS NOT TO BENEFIT
32. MODIFICATION
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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY**

**LEASE TO NONPROFIT ORGANIZATION  
FOR COOPERATIVE MANAGEMENT OF**

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT)

\_\_\_\_\_  
(COUNTY, STATE)

**THIS LEASE**, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, a non-profit corporation duly organized and existing under and by virtue of the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and pursuant to a Cooperative Agreement dated \_\_\_\_\_, hereinafter referred to as the Agreement, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_ attached hereto and made a part hereof, hereinafter referred to as the premises, for the development and management, in cooperation with the Secretary.

**THIS LEASE** is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_.

**2. CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee, in cooperation with the Secretary, for the benefit of the United States and the general public in accordance with the terms of this lease and those of the Agreement. It is understood and agreed that this lease will be controlling if there are any conflicts between the two documents.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to \_\_\_\_\_

and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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

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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 of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, successors, and its duly authorized representatives.

**5. SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision of the District Engineer, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer, including any special provisions that may be established due to the cooperative joint management of the premises by the Lessee and the United States as contemplated by the Agreement.

**6. APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county, and municipal laws, ordinances and regulations wherein the premises are located.

**7. CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, Repairs to additions thereto except as may be required to carry out its responsibilities pursuant to the terms of the Agreement.

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the said officer and the Lessee to reflect the condition of the said property and improvements. A copy of the said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such settlement will take into account the cooperative relationship of the parties, and will reflect an equitable apportionment of damages.

**8. TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of the said officer the lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the said officer.

b. The Lessee shall not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

**9. FEES, RATES AND PRICES**

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The Lessee may charge a general admission fee and/or fees for visitor/interpretative services or special events. The said officer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. However, no user fees may be charged by the Lessee for use of facilities developed in whole or in part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law. Monies received by the Lessee from operations conducted on the premises shall be utilized by the Lessee to fulfill its obligations under the Agreement. The Lessee shall furnish an annual report of itemized receipts and expenditures to said officer.

**10. DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises in accordance with the Agreement. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. The Lessee also agrees to prohibit any exclusive or private use of all or any part of the premises by any individual or group of individuals. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the Condition on **RESTORATION**, and shall be maintained by the Lessee to the satisfaction of said officer.

**11. PROTECTION OF PROPERTY**

The lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the lessee under this lease, 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 lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the lessee to a condition satisfactory to the said officer, or at the election of the said officer, reimbursement made therefor by the lessee in an amount necessary to restore or replace the property to a condition satisfactory to the said officer.

**12. RIGHT TO ENTER AND FLOOD**

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 remove timber or other material, except property of the Lessee; to flood the premises to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

**13. INSURANCE**

a. At the commencement of this lease, the lessee shall obtain, from a reputable insurance company or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit in the amount of \$\_\_\_\_\_, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall require the insurance company or companies to furnish the said officer a copy

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of the policy or policies, or if acceptable to the said officer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the said officer thirty (30) days written notice of any cancellation or change in such insurance. The said officer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain, at the Lessee's cost, a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purpose hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

**14. 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 of the Lessee, or for damages to the property or injuries to the person of the Lessee'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 Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

**15. RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and

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restore the premises, then, at the option of the said officer, said property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

**16. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation. 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

**17. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of the said officer, interfere with the use of the premises by the Lessee.

**18. SUBJECT TO MINERAL INTEREST**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

**19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee and/or any sublessees or licenses are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the said officer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance.

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Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving Ninety (90) days prior written notice to the said officer in the manner prescribed in the Condition on NOTICES.

#### 20. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, the said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

#### 21. **PUBLIC USE**

The Lessee shall not forbid the full use by the public of the water areas of the project, subject however, to the authority and responsibility of the Lessee to carry out its responsibilities under this lease to manage the premises and provide safety and security to the facility users.

#### 22. **PROHIBITED USES**

The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the Lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

#### 23. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT**. The Lessee may salvage fallen or dead timber on the premises for use as firewood. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

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#### 24. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. § 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph C. (2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A Claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that--

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

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g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the said officer.

#### 25. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The Lessee shall comply promptly 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 disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. Services for waste disposal shall be provided by the Lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

#### 26. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit         . Upon expiration, revocation, or relinquishment of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining the environmental restoration requirements of the Lessee. Appropriate consideration will be given to the cooperative relationship between the parties.

#### 27. **HISTORIC PRESERVATION**

Except as may be otherwise provided in the Agreement, the Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the said officer and protect



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the site and the material from further disturbance until the said officer gives clearance to proceed.

**28. SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. My soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

**(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

**29. TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes if authorized by said officer.

**30. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

**31. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

**32. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

**33. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of

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this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. § 403), and Section 404 of the Clean Waters Act (33 U.S.C. § 1344) .

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the Army, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_

THIS LEASE is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_

(ADD THE CORPORATE CERTIFICATE FORMAT)

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RECREATION COST SHARE LEASE TO STATES

1. TERM
2. CONSIDERATION AND OBLIGATIONS
3. NOTICES
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5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
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12. ACCOUNTS, RECORDS AND RECEIPTS
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21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
22. HEALTH AND SAFETY
23. PUBLIC USE
24. PROHIBITED USES
25. NATURAL RESOURCES
26. DISPUTES CLAUSE
27. ENVIRONMENTAL PROTECTION
28. PRELIMINARY ASSESSMENT SCREENING
29. HISTORIC PRESERVATION
30. SOIL AND WATER CONSERVATION
31. TRANSIENT USE
32. HOLD HARMLESS
33. COVENANT AGAINST CONTINGENT FEES
34. OFFICIALS NOT TO BENEFIT
35. MODIFICATIONS
36. DISCLAIMER

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NO. \_\_\_\_\_

DEPARTMENT OF THE ARMY  
LEASE TO STATES  
FOR COST-SHARED PUBLIC PARK AND RECREATIONAL PURPOSES

\_\_\_\_\_  
(SITE)

\_\_\_\_\_  
(PROJECT NAME)

\_\_\_\_\_  
(COUNTY, STATE)

THIS LEASE is made on behalf of the United States, between the SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Sections 460d and 4601-13, and Title 33, United States Code, Section 2213, and pursuant to a Project Cooperation Agreement entered into on \_\_\_\_\_ (hereinafter referred to as the PCA), and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) \_\_\_\_\_ attached hereto and made a part hereof, hereinafter referred to as the praires, for public park and recreational purposes.

THIS LEASE is granted subject to the following conditions:

**1. TERM**

Said premises are hereby leased for a term of fifty (50) years, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_.

**2. CONSIDERATION AND OBLIGATIONS**

The consideration for this lease is the operation and maintenance of the premises and the operation, maintenance, replacement and rehabilitation of the facilities and improvements shown on the inventory prepared under the condition on CONDITION OF THE PREMISES, by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth. As used in this lease the term "replacement" shall be construed to mean the replacement in whole or in part of any structure or improvement so worn or damaged by any cause as to no longer adequately serve its designed function with normal maintenance. As used in this lease the term "rehabilitation" shall mean to restore in whole or in part any structure or improvement to a good and useable condition.

**3. NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee to \_\_\_\_\_

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\_\_\_\_\_ and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, \_\_\_\_\_

\_\_\_\_\_, 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 of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives: Any reference to "Lessee" shall include sublessees, transferees, concessionaires, and its duly authorized representatives.

#### 5. **DEVELOPMENT PLANS**

a. The Lessee shall be guided by an implementing Plan of Recreation Development and Management (Development Plan) \*\* NOTE adopted pursuant to Article I of the PCA and by this reference made a part hereof and the management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

**\*\*NOTE** The PCA, Art. I, attaches project technical documents, i.e. feasibility studies, GDM. If Federal land will be provided for recreational development, then the documents need to have the same details that would be in a non-cost shared park lease Development Plan.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

#### 6. **STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease at its own expense, to erect additional structures and to provide such equipment upon the premises as may be necessary to furnish additional facilities and services in accordance with an approved amendment to the Plan as provided in the condition on **DEVELOPMENT PLANS**. Those additional structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**, and shall not be added to the inventory described in the Condition on **CONDITION OF THE PREMISES**.

#### 7. **APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of law cited in the granting clause.

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b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitation Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

#### 8. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises and all structures and improvements, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

b. As of the date of this lease an inventory and condition report of all personal property and improvements constructed in whole or in part with Federal funds under the terms of the PCA included in this lease shall be made by a representative of the District Engineer and a representative of the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement.

#### 9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sublessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

#### 10. **TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease or any property constructed in whole or in part with Federal funds on the premises. The lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodation, or personal property on the premises. The lessee will not subdivide nor develop the premises into private residential development.

b. The Lessee shall neither sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without prior written permission from the District Engineer.

**(ALTERNATE b.) USE IF THE ENTIRE WATER RESOURCE DEVELOPMENT PROJECT IS LEASED SO THAT THE STATE IS THE PRIMARY LAND MANAGER**

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b. The Lessee may grant permits and licenses to adjacent private property owners for use of a portion of the premises if the use is conditioned on:

- (1) Unrestricted use by the general public,
- (2) Free and unimpeded passage along the shore,
- (3) Compatibility with the Plan and the Environmental Impact Statement adopted for the project,
- (4) Signs being posted to the effect that "This is public property open to the general public."

#### 11. FEES

Fees may be charged by the lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sublessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

#### 12. ACCOUNTS, RECORDS AND RECEIPTS

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee to fulfill its obligations under the PCA. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sublessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

#### 13. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease 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.

#### 14. RIGHT TO ENTER AND FLOOD

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 work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee.

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**15. LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**16. INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sublessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

c. The District Engineer may require closure of any or all of the premises during any period for which the sublessees and concessionaires do not have the required insurance coverage.

**17. RESTORATION**

On or before the expiration of this lease, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and so restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

**18. NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102);



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the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

#### **19. SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

#### **20. SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Department of the Army will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

#### **21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

The Lessee and/or any sublessees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such violation. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent.

#### **22. HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sublessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions within the area covered by the lease that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its concessionaires or sublessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

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**23. PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sublessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee under this lease to manage the premises and provide safety and security to the visiting public.

**24. PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

**25. NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

**26. DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613)(the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim

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under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that--

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION**.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

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## 27. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The disposal of any toxic or hazardous materials within the premises is specifically **PROHIBITED**. The Lessee shall comply promptly 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. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee 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 Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

## 28. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

## 29. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

## 30. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

## 31. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60)

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consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

**32. HOLD HARMLESS**

The Lessee shall hold and save the Government free from damages arising from the operation, maintenance, replacement and rehabilitation of the premises and the facilities and improvement, except for damages due to the fault or negligence of the Government or the Government's contractors.

**33. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**34. OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

**35. MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

**36. DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease 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), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

**IN WITNESS WHEREOF** I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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**THIS LEASE** is also executed by the Lessee this \_\_\_\_\_ day  
of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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CONTRACT NO. \_\_\_\_\_

DEPARTMENT OF THE ARMY  
LEASE  
FOR COTTAGE SITE PURPOSES

\_\_\_\_\_  
SITE  
\_\_\_\_\_  
PROJECT NAME  
\_\_\_\_\_  
COUNTY, STATE

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and \_\_\_\_\_, hereinafter referred to as the Lessee,

**WITNESSETH:**

That the Secretary, by authority of Title 16, United States Code, Section 460d, and of Section 1134 of the Act of Congress approved 17 November 1986 (P.L. 99-662) and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises, for recreational cottage site purposes and purposes incidental thereto.

That this lease grants no vested property rights but affords only a limited right to occupy the land pending termination as set out in Condition 14.

**THIS LEASE** is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term beginning \_\_\_\_\_, 19\_\_, and ending on \_\_\_\_\_ 20\_\_, or until such time as the lease is terminated by the lessee, or by the secretary, as set out in Condition 14 on Termination.

2. **CONSIDERATION**

a. The consideration for this lease is the fair market rental, reviewed and adjusted every 5 years for compliance with fair market value, of the initial sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), payable as shown in the attached Exhibit A in advance to the order of the Finance and Accounting Officer (FAO), \_\_\_\_\_, and delivered in the same manner as set out in condition 3 on Notices.

b. All rent and other payments due under the terms of this instrument must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, Title 31, United

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States Code, Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from the due date. An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

### **3. NOTICES**

All notices to be given pursuant to this lease shall be addressed, if to the Lessee, to if to the United States, to the District Engineer, \_\_\_\_\_ hereinafter referred to as the District Engineer, 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 or branch post office regularly maintained by the United States Postal Service.

### **4. AUTHORIZED REPRESENTATIVES INCLUDED**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, and their duly authorized representatives.

### **5. APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, use of pesticides, licenses or permits. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer and to such rules and regulations as may be prescribed from time to time.

### **6. USE OF THE PREMISES**

a. The leased premises may be used by the lessee, lessee's family, agents, and guests, for recreational cottage site purposes and purposes incidental thereto and for no other different object or purpose. The lessee may maintain an existing private recreational dwelling, and may maintain existing accessory improvements, but agrees not to unreasonably expand these existing improvements. These existing improvements erected by the lessee or a predecessor under a previous lease shall remain the property of lessee, subject, however, to the provisions of Condition 15 hereof, and shall be maintained by the lessee in a usable and safe condition. Failure to maintain may be grounds for termination under Condition 14.



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b. No improvement may be erected, expanded or altered upon the premises unless and until the type of use, design, and proposed location or alterations thereof shall have been approved in writing by the District Engineer.

**7. CONDITION OF PREMISES**

The Lessee acknowledges that he has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

**8. TRANSFERS, ASSIGNMENTS, SUBLEASES**

The Lessee shall neither transfer nor assign this lease or any property on the demised premises, nor sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, in license whatsoever in connection with this lease without permission in writing from the District Engineer. The provisions and conditions of this instrument shall extend to and be binding upon and shall inure to the benefit of the lessee's heirs, representatives, successors and assigns.

**9. PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all improvements, trees or timber, and other 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 Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer or at the election of the District Engineer, reimbursement may be made at the current market value.

**10. RIGHT TO ENTER AND FLOOD**

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 work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

b. This property is located within the 100-year floodplain and is subject to periodic flooding. This lease is subject to floodplain management requirements unless inconsistent with the approved cottage site use.

**11. HOLD HARMLESS**

The lessee agrees to hold the United States harmless from any claim for damages or injury to persons or property arising from the occupancy of or through the use of the premises.

**12. LIGHTS, SIGNALS AND NAVIGATION**

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There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

**13. PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which, in the opinion of the District Engineer, is contrary to good morals or is otherwise objectionable; or use the premises or permit them to be used for any illegal or immoral business or purpose. There shall not be carried on or permitted upon the premises any activity which would constitute a nuisance and the Lessee will use the premises in a quiet and inoffensive manner.

b. The Lessee will not conduct any commercial or business activities on the premises.

**14. TERMINATION**

a. This lease may be terminated by the lessee, any successors or assigns of the lessee, at any time by giving ten-days' notice in writing to the District Engineer. Provided that, in case of such termination, no remission shall be made by the United States of any rental theretofore paid, and provided further that, in the event that the notice is not given at least ten days prior to the next rental due date, the lessee shall be required to pay that rental payment. Abandonment or nonuse of the premises for one year or nonpayment of the rent for 90-days past the due date will be considered notice of termination of the lease by the lessee.

b. The Secretary may terminate this lease only if the premises are needed for immediate use for public park purposes or other higher public use or for a navigation or flood control project; or if lessee substantially violates a provision of the lease. The lessee is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies and with compliance with reasonable requests by the District Engineer. The lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. A termination notice will be given in writing to the lessee at least 30 days prior to the termination date and designating the time for compliance with Condition 15.

c. In the event of termination by the lessee or the Secretary, the District Engineer may re-enter the premises andg from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

d. This lease does not exclude lessee from being required to obtain a Department of the Army permit under 33 U.S.C 403 or Section 404.

**22. HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

**23. SOIL AND WATER CONSERVATION**

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The Lessee shall maintain, in a manner satisfactory to the District Engineer, all terraces, retaining walls, drop structures, revetments and other soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the use and maintenance of the premises by the Lessee shall be in accordance with good soil and water conservation practices.

**24. SEVERAL LESSEES**

If more than one lessee is named in this lease the obligations of said lessees shall be joint and several obligations.

**25. HUNTING AND TRAPPING**

The Lessee shall not hunt or trap or allow hunting or trapping on the premises.

**26. COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, id States in the premises are concerned. The lessee shall obtain any further permission necessary on account of any other existing rights.

Before the execution of this lease, conditions were deleted, revised and added in the following manner:

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_

THIS LEASE is also executed by the Lessee this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_

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APPENDIX 8-D  
EASEMENT AND CONSENT FORMATS

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ELECTIRC POWER OR COMMUNICATION EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
0. INSPECTION AND REPAIRS
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. TRANSFERS AND ASSIGNMENTS
12. INDEMNITY
13. SUBJECT TO EASEMENTS
14. REQUIRED SERVICES
15. RELOCATION OF FACILITIES
16. TERMINATION
17. SOIL AND WATER CONSERVATION
18. ENVIRONMENTAL PROTECTION
19. PRELIMINARY ASSESSMENT SCREENING
20. HISTORIC PRESERVATION
21. NON-DISCRIMINATION
22. RESTORATION
23. DISCLAIMER

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_  
EASEMENT FOR ELECTRIC POWER OR  
COMMUNICATION FACILITY  
LOCATED ON

\_\_\_\_\_  
(Project, Installation)

\_\_\_\_\_  
County, State

**THE SECRETARY OF THE** \_\_\_\_\_, under and by virtue of the authority vested in the Secretary by Title 43, United States Code, Section 961, having found that the granting of this easement is not incompatible with the public interest, hereby grants to:

\_\_\_\_\_  
hereinafter referred to as the grantee, an easement for

\_\_\_\_\_  
hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibit(s) \_\_\_\_\_, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

**THIS EASEMENT** is granted subject to the following conditions.

**1. TERM**

This easement is hereby granted for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_.

**2. CONSIDERATION**

a. The grantee shall pay in advance to the United States the amount of ( \_\_\_\_\_ \$ \_\_\_\_\_ ) (in full for the term hereof) (payable \_\_\_\_\_) to the order of the Finance and Accounting Officer, \_\_\_\_\_ District and delivered to \_\_\_\_\_.

b. All consideration and other payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States, an administrative charge to cover the costs of processing and handling delinquent debts, and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the

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amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### 3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to \_\_\_\_\_

and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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 assignees, transferees and their duly authorized representatives.

### 5. SUPERVISION BY THE (DISTRICT ENGINEER) (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 (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (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 but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB'S).

### 7. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, 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.

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**8. INSPECTION AND REPAIRS**

The grantee shall inspect the facilities at reasonable intervals and immediately 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 remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, 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. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the 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 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, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

**14. REQUIRED SERVICES**



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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 governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises 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 the sole expense of the grantee.

**16. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

**17. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or 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. 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. ENVIRONMENT PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. 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 disposal of any toxic or hazardous materials within the premises 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 the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising

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from the grantee's activities, the grantee shall be liable to restore the damaged resources.

**19. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION**.

**20. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

**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 time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. 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 property 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.

**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

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of the \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, -  
\_\_\_\_\_.

\_\_\_\_\_

**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of

\_\_\_\_\_

\_\_\_\_\_

(Add Acknowledgments)

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GAS, WATER AND SEWER PIPELINE EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. INSPECTION OF PREMISES
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. TRANSFERS AND ASSIGNMENTS
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15. RELOCATION OF FACILITIES
16. TERMINATION
17. SOIL AND WATER CONSERVATION
18. ENVIRONMENTAL PROTECTION
19. PRELIMINARY ASSESSMENT SCREENING
20. HISTORIC PRESERVATION
21. NON-DISCRIMINATION
22. RESTORATION
23. DISCLAIMER

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_

EASEMENT FOR PIPELINE RIGHT-OF-WAY

LOCATED ON

\_\_\_\_\_  
(Project, Installation)

\_\_\_\_\_  
(County, State)

**THE SECRETARY OF THE** \_\_\_\_\_ under and by virtue of the authority vested in the Secretary by Title 10 United States Code, Section 2669, 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,

\_\_\_\_\_  
hereinafter referred to as the grantee, an easement for \_\_\_\_\_, hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibit(s) \_\_\_\_\_, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

**THIS EASEMENT** is granted subject to the following conditions.

**1. TERM**

This easement is hereby granted for a term of \_\_\_\_\_ years beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_.

**2. CONSIDERATION**

a. The grantee shall pay in advance to the United States the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) (in full for the term hereof) (payable \_\_\_\_\_) to the order of the Finance and Accounting officer, \_\_\_\_\_ District and delivered to \_\_\_\_\_.

b. All consideration and other payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States, an administrative charge to cover the costs of processing and handling delinquent debts, and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

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(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

**3. NOTICES**

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to \_\_\_\_\_

and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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 assignees, transferees and their duly authorized representatives.

**5. SUPERVISION BY THE (DISTRICT ENGINEER) (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 (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (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.

**7. CONDITION OF PREMISES**

The grantee acknowledges that it has inspected the premises, 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 REPAIRS**

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

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**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 remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account there 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. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the 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 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, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, 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.

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**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 governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises 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 the sole expense of the grantee.

**16. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

**17. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or 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. 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. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. 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 disposal of any toxic or hazardous materials within the premises 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 the premises.

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.

**19. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous



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substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION**.

**20. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

**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 time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. 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 property 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.

**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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_

(Add Acknowledgments)

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PUBLIC ROAD OR STREET EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. INSPECTION AND REPAIRS
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. RIGHT TO CONNECT
12. OTHER AGENCY AGREEMENTS
13. TERMINATION
14. SOIL AND WATER CONSERVATION
15. ENVIRONMENTAL PROTECTION
16. PRELIMINARY ASSESSMENT SCREENING
17. HISTORIC PRESERVATION
18. NON-DISCRIMINATION
19. RESTORATION
20. DISCLAIMER

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_

EASEMENT FOR PUBLIC ROAD OR STREET

LOCATED ON

\_\_\_\_\_  
(Project, Installation)

\_\_\_\_\_  
(County, State)

**THE SECRETARY OF THE** \_\_\_\_\_ under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement will not be against the public interest, hereby grants to \_\_\_\_\_

\_\_\_\_\_  
hereinafter referred to as the grantee, an easement for a road or street, hereinafter referred to as the facilities, over, across, in and upon the lands of the United States as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises.

**THIS EASEMENT** is granted subject to the following conditions:

**1. TERM**

This easement is granted in perpetuity.

**2. CONSIDERATION**

The consideration for this easement shall be the construction, operation and maintenance of a public road for the benefit of the United States and the general public 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 \_\_\_\_\_

and if to the United States, to the District, Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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 assignees, transferees and their duly authorized representatives.

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**5. SUPERVISION BY THE (DISTRICT ENGINEER)(INSTALATION 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 (District Engineer) (Instalation Commander),  
(District)(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.

**7. CONDITION OF PREMISES**

The grantee acknowledges that it has inspected the premises, 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 REPAIRS**

The grantee shall inspect the facilities at reasonable intervals and immediately 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 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 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 remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**11. RIGHT TO CONNECT**

The United States reserves the right to make such connections between the road or street herein authorized and roads and streets on other government lands as said officer may from time consider necessary, and also reserves to

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itself rights-of-way for all purposes across, over or under the right-of-way hereby granted; provided that such rights shall be used in a manner that will not create unnecessary interference with the use and enjoyment by the grantee of the right-of-way herein granted.

**12. OTHER AGENCY AGREEMENTS**

It is understood that the provisions of the conditions on **SUPERVISION BY THE (DISTRICT ENGINEER)(INSTALATION COMMANDER)** and **RIGHT TO ENTER** above shall not abrogate or interfere with any agreements or commitments made or entered into between the grantee and any other agency of the United States with regard to financial aid to the grantee in connection with the construction, maintenance, or repair of the facilities herein authorized.

**13. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

**14. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or 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. 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.

**15. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground and water. The grantee shall 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 disposal of any toxic or hazardous materials within the premises is specifically 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, interstate, and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

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.

**16. PRELIMINARY ASSESSMENT SCREENING**

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A Preliminary Assessment Screening (PAS), documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION**.

#### **17. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

#### **18. NON-DISCRIMINATION**

a. The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national, origin or religion.

b. The grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defence Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the grantee, its agents, successors, transferees, and assignees.

#### **19. RESTORATION**

On or before the termination or revocation of this easement, the grantee shall, without expense to the United States and within such time as said officer may indicate, restore the premises to the satisfaction of said officer. In the event the grantee shall fail to restore the premises, at the option of said officer, said improvements shall either become the property of the United States without compensation therefore, or said officer shall have the option to 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.

#### **20. 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 for 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, interstate or local laws in connection with the use of the premises.

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**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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Add Acknowledgments)

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DEPARTMENT OF \_\_\_\_\_

EASEMENT AND RELINQUISHMENT OF ACCESS RIGHTS FOR A SECTION OF  
 THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

(Indicate reservations)

The United States of America, acting by and through the SECRETARY OF THE \_\_\_\_\_, under and by virtue of the authority of Title 10, U.S.C., Section 2668, and in furtherance of Title 23, U.S.C., Section 107(d), hereby grants to the State of \_\_\_\_\_ (appropriate title of the highway department), hereinafter designated as the grantee, an easement for a right-of-way for a controlled-access highway, as part of the National System of Interstate and Defense Highways, on, over, across, in and upon lands of the United States which are a portion of \_\_\_\_\_ the (indicate reservation), as shown on the map marked Exhibit \_\_\_\_\_, and more particularly described on Exhibit \_\_\_\_\_, which exhibits are attached hereto and made a part hereof, together with all abutters' existing, future or potential rights of access to, from and between the right-of-way of the public way known as \_\_\_\_\_ and the remaining lands of said reservation, except for such rights as may be hereinafter specifically reserved in this instrument.

THIS EASEMENT is granted subject to the following provisions and conditions:

1. That the grantee shall, at all times, maintain said highway in good condition and shall promptly make all repairs thereto needed to preserve a smooth-surface highway.
2. That any property of the United States damaged or destroyed by the grantee incident to the use and occupation of the said premises shall be promptly repaired, replaced or relocated by the grantee, to the satisfaction of the local representative of the DEPARTMENT OF \_\_\_\_\_, and in accordance with plans and specifications approved, in advance, by the said officer, or, in lieu of such repair, replacement or relocation, the grantee shall, if so required by said representative, pay to the United States, money in an amount sufficient to compensate for the loss sustained by the United States by reason of damages to, or destruction of, United States property.
3. a. That the United States reserves the right to construct, from time to time, grade separation crossing structures or pedestrian crossing structures over or under the controlled-access highway, at such points as it may deem necessary; provided, that such structures shall be constructed in accordance with standards for the National System of Interstate and Defense Highways, approved by the Department of Transportation, Bureau of Public Roads. The United States also reserves the right to cross over and/or under the right-of-way hereby granted with utility lines and related facilities; provided, however, that such rights shall be exercised in accordance with regulations issued by the Secretary of Transportation and policies adopted by the Federal Highway Administrator.
- b. That, during any emergency declared by the President or Congress of the United States, the United States shall have the right to enter and exit directly to and from said right-of-way from the abutting Government-owned land, including the right to construct temporary direct entrances and exits, crossings at grade, or substandard grade-separation structures, including acceleration and deceleration lanes; provided, that all such temporary facilities shall, subject to availability of appropriations, be removed within a reasonable time after official termination of the emergency.



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4. That it is to be understood that this instrument is effective only insofar as the rights of the United States in the property over which the said highway is to be extended are concerned, and that the grantee shall obtain such permission as may be necessary because of any other existing rights.

5. That all, or any part, of such right-of-way herein granted may be terminated by the Secretary of the \_\_\_\_\_ for failure to comply with any or all of the terms or conditions of this grant, or for nonuse for a two-year period, or abandonment of rights granted herein.

6. Additional special provisions as may be necessary to meet particular circumstances of each case, such as the following:

a. Provision for construction and maintenance at the expense of grantee of necessary controlled-access facilities to, over, under and across the highway to meet the requirements of the military installation affected, pursuant to plans, specifications and maps approved by the installation commanders and attached as exhibits to the grant.

b. Provision of construction and maintenance of special signs, signals, markers, etc.

c. Relocation of facilities adjacent to and adversely affected by the highway construction, etc.

7. That the grantee, within the limits of its respective legal powers, shall comply with all Federal, interstate, state and/or local governmental regulations, conditions, or instructions for the protection of the environment and all other matters as they relate to real property interests granted herein.

8. That the grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, \_\_\_\_\_ District, and the site and the material shall be protected by the grantee from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the District Commander.

9. That 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 easement premises.

10. Merger Clause. Prior to the execution of this easement, the following conditions were deleted: \_\_\_\_\_; changed: \_\_\_\_\_; added:

\_\_\_\_\_

This easement is not subject to Title 10, U.S.C., Section 2662.

**IN WITNESS WHEREOF**, I have hereunto set my hand by authority of the Secretary of the \_\_\_\_\_, this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of

\_\_\_\_\_, \_\_\_\_\_.

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(Add Acknowledgments)

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DEPARTMENT OF THE ARMY  
EASEMENT FOR  
FUEL CARRYING PIPELINE

THE SECRETARY OF THE ARMY, under and by virtue of the authority vested in him by 30 U.S.C. 185, hereby grants to \_\_\_\_\_ hereinafter designated as the grantee, for a period of \_\_\_\_\_ years from \_\_\_\_\_, an easement for a right-of-way for the installation, construction, operation, maintenance, and repair of a \_\_\_\_\_-inch underground gas pipeline for the purpose of \_\_\_\_\_ over, across, in, and upon land the Army at the location shown in red on Exhibit \_\_\_\_\_ attached hereto and made a part hereof, and described on Exhibit \_\_\_\_\_ attached hereto and made a part hereof.

THE EASEMENT is granted subject to the following conditions:

1. The grantee shall pay to the United States in advance upon delivery of this easement the sum of \_\_\_\_\_ per annum for the easement, the sum of \_\_\_\_\_ as reimbursement for the costs incurred by the United States in processing the application, and the sum of \_\_\_\_\_ as reimbursement for the cost of monitoring construction, operation and maintenance of said pipeline for the entire term of the easement. In the event of termination of this easement, the grantee further agrees to reimburse the United States for any and all costs incurred by the United States in monitoring the termination. All payments shall be made to the Finance and Accounting Office, U.S. Army Corps of Engineers and forwarded by the grantee to the District Commander, U.S. Army Engineer District, \_\_\_\_\_ no later than \_\_\_\_\_. The U.S. will impose a charge, the amount to be determined by law or regulation on late payment of rent or other payments due under this agreement for each 30 day period that the payment is overdue. The full late charge will also be applicable to periods of less than 30 days.
2. The grantee shall construct, operate, maintain, and terminate the said pipeline in all accordance Federal, state, county, and municipal laws, regulations, and ordinances.
3. The installation and/or operation and maintenance of said line shall be accomplished without cost or expense to the United States under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter designated as "said officer," and in such manner as not to endanger personnel or property of the United States on the said United States land or obstruct travel on any road thereon. The grantee shall have the right of ingress and egress for such purposes, subject to approval of access by said officer.
4. The use and occupation of said land incident to the exercise of the privileges hereby granted shall be subject to such rules and regulations as the said officer may from time to time prescribe.
5. Upon completion of the installation of said line and the making of any repairs thereto, the premises shall be restored immediately by the grantee, at the grantee's own expense, to the same condition in which they existed prior to the commencement of such work, to the satisfaction of the said officer. The grantee shall supervise the said line and cause it to be inspected at reasonable intervals, and shall immediately repair any leaks found therein as a result of such inspection, or when requested by said officer to repair any defects.

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6. The grantee shall be strictly liable to the United States for damage or injury which may arise from or be incident to the construction, maintenance or removal of said line and the use or occupation of the right-of-way herein granted. Damages to property of the United States shall be promptly repaired or replaced by the grantee to the satisfaction of the said officer, or in lieu of such repair or replacement the grantee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States. All owners of any interest in, and all affiliates or subsidiaries of the grantee, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim for damage or injury is not satisfied by the grantee. Liability without fault hereunder shall be limited to (insert maximum amount commensurate with the foreseeable risks or hazards presented) for any one incident. Liability of such grantee for damages in excess (insert figure above) shall be in accord with ordinary rules of negligence. However, this condition shall not impose strict liability on the grantee for damage or injury resulting from (a) an act of war, or (b) negligence of the United States. In any case where liability without fault is imposed pursuant to this condition and the damage or injuries involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage or injury occurred.

7. The United States shall not be responsible for damages or injuries which may arise from or be incident to the construction, maintenance, and use of said line, nor for damages to the property of the grantee, nor for damages to the property or injuries to the person of the grantee's officers, agents, servants, or employees, or others who may be on said premises at the grantee's invitation or any one of them. The grantee does hereby accept liability, if any, imposed by Federal and state statutes to third parties for injuries incurred in connection with the use and occupancy of the right-of-way. The grantee shall hold the United States harmless from any and all such claims.

8. The United States reserves to itself and its grantees or licensees the right to construct, use, and maintain on or adjacent to the right-of-way hereby granted, electric transmission, telephone, telegraph, water, gas, gasoline, oil and sewer lines, roads and permits for other compatible uses in such manner as not to create any unreasonable interference with the use of the right-of-way herein granted.

9. That the grantee shall furnish through said line such service as may be required from time to time for governmental purposes on said land, 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 charged by the grantee for similar service.

10. In the event all or any portion of said land occupied by said line shall be needed by the United States, or in the event the existence of said line shall be considered detrimental to governmental activities, the grantee shall, from time to time, upon notice to do so, and as often as so notified, remove said line and related facilities to such other location or locations on said land as may be designated by said officer. And in the event said line shall not be removed or relocated within ninety (90) days after any aforesaid notice, the United States may cause the same to be done at the expense of the grantee.

11a. Abandonment of a right of way herein granted or noncompliance with any provisions of this easement or applicable provisions of 30 U.S.C. 185 may be grounds for suspension or termination of the right of way if ta) after due notice to the holder of the right of way, (b) a reasonable opportunity to comply with this section, and (c) an appropriate administrative proceeding

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pursuant to Title 5, U.S.C., Section 554, the Secretary determines that any such ground exists that suspension or termination is justified.

b. If the Secretary of the Army determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

c. Deliberate failure of the grantee to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: Provided, that where the failure to use the right-of-way is due to circumstances not within the holder's control, the Secretary is not required to commence proceedings to suspend or terminate the right-of-way.

12. Upon the expiration or termination of this grant, the grantee shall, without expense to the United States, and within such time as the Secretary of the Army may indicate, remove the said line from said land and restore the premises hereby authorized to be used and occupied to a condition satisfactory to the said officer. In the event the grantee shall fail, neglect, or refuse to remove the said line and so restore the premises, the United States shall have the option either to take over the said line as the property of the United States, without compensation therefor, or to remove the said line and perform the restoration work as aforesaid at the expense of the grantee, and in no event shall the grantee have any claim for damages against the United States or its officers or agents, on account of the taking over of said line or on account of its removal.

13. The conditions of this instrument shall extend to and be binding upon and shall inure to the benefit of the representatives, successors, and assigns of the grantee.

14. That it is understood that this instrument is effective only insofar as the rights of the United States in the said property are concerned, and that the grantee shall obtain such permission as may be necessary on account of any other existing rights.

15. The pipeline and related facilities herein authorized shall be constructed, operated, and maintained as common carriers. The owners or operators of the pipeline herein authorized shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or nonfederal lands. (Delete this clause if inapplicable)

16. It is understood that the provision of Condition No. 3, above, shall not abrogate or interfere with any agreements or commitments made or entered into between the grantee and any other agency of the United States with regard to financial aid to the grantee in connection with the installation, operation, or maintenance of said line.

17. That the pipeline will be buried at a depth of not less than \_\_\_\_\_ feet below the surface and such installation will be in accordance with applicable Federal and state standards.

18. That the grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, \_\_\_\_\_ District, and the site and the material shall be protected by the grantee from further disturbance until

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a professional examination of them can be made or until clearance to proceed is authorized by the District Commander.

This easement is not subject to Title 10, U.S.C., Section 2662.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_ day \_\_\_\_\_ of 19 \_\_\_\_\_ by authority of the Secretary of the Army.

\_\_\_\_\_

The above easement is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ by authority of the Secretary of the Army.

BY \_\_\_\_\_

\_\_\_\_\_

(TITLE)

C O R P O R A T E C E R T I F I C A T E

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as grantee herein; that \_\_\_\_\_, who signed this easement on behalf of the grantee was then \_\_\_\_\_ of the corporation, and that said easement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(SEAL)

\_\_\_\_\_

(ACKNOWLEDGMENT)

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DEPARTMENT OF THE \_\_\_\_\_  
CONSENT TO CROSS U. S. GOVERNMENT EASEMENT  
AT

KNOW ALL MEN BY THESE PRESENTS:

That the consent of the United States is hereby granted to \_\_\_\_\_ hereinafter designated as grantee, to construct, use, maintain, control, operate and repair a \_\_\_\_\_, herein referred to as "structure", across, over and under the lands where the United States has acquired a perpetual \_\_\_\_\_ easement identified as Tract(s) No(s) \_\_\_\_\_, \_\_\_\_\_ (Project/Installation) and which is recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in the records of \_\_\_\_\_ county, (State). The right-of-way for said structure for the purpose of this consent is specifically identified-as Parcel(s) \_\_\_\_\_, located as shown on Exhibit "A" attached hereto and made a part hereof and described as follows:

This consent is granted subject to the following conditions:

1. That it is understood that this consent is effective only insofar as the pxproperty rights of the United States in the land to be occupied are concerned, and that it does not relieve the grantee from the necessity of obtaining grants from the owners of the fee and/or other interests therein.
2. That the proposed construction authorized herein shall not be commenced until appropriate rights shall have been obtained by the grantee from the record owners and encumbrances of the fee title to the lands involved.
3. That the exercise of the privileges hereby consented to shall be without cost or expense to the Department of the \_\_\_\_\_, under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter referred to as "said officer," and subject to such regulations as may be prescribed by the District Commander, \_\_\_\_\_, District, from time to time, including, but not limited to, the specific conditions, requirements and specifications set forth in Exhibit "B" attached hereto and made a part hereof.
4. That the grantee shall supervise and maintain the said structure and cause it to be inspected at reasonable intervals, and shall immediately repair any damage found therein as a result of such inspection, or when requested by said officer to repair any defects. Upon completion of the installation of said structure or the making of any repairs thereto, the premises shall be restored immediately by the grantee, at the grantee's own expense, to the same condition as that in which they existed prior to the commencement of such work, to the satisfaction of said officer.
5. That any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges hereby granted shall be promptly repaired or replaced by the grantee to the satisfaction of the said officer or in lieu of such repair or replacement, the grantee shall, if so required by the said officer and at his option, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damage to or destruction of Government property.
6. That 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

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privileges herein granted, or for damages to the property of the grantee, or for damages to the property or injuries to the person of the grantee, or the persons of grantee's officers, agents, servants, or employees or others who may be on said premises at their invitation or the invitation of one of them arising from governmental activities on or in the vicinity of the said premises, and the grantee shall hold the United States harmless from any and all such claims.

7. That this consent is effective only as to the following rights of the United States in the lands hereinabove described.

8. That the United States shall in no case be liable for any damage or injury to the construction herein authorized which may be caused by any action of the Government, under the rights obtained in its easements, either hidden or known, or that may result from future operations under taken by the Government, and no claim or right to compensation shall accrue from such damage or injury, and if further operations of the United States require the alteration or removal of the structure herein authorized, the grantee shall, upon due notice from the Chief of Engineers, Department of Army, alter or remove said structure without expense to the Government and subject to the supervision and approval of the officer having jurisdiction over the property and no claim for damages shall be made against the United States on account of such alterations or removal.

9. That construction and/or operation maintenance and use of said structure incident to the exercise of the privileges hereby granted shall be in such a manner as not to conflict with the rights of the Government, nor to interfere with the operations by the Government under such rights, nor to endanger lives and safety of the public.

10. That this consent may be terminated by the Secretary of the \_\_\_\_\_ upon reasonable notice to the grantee if the Secretary of the \_\_\_\_\_ shall determine that installation to which consent is hereby granted interferes with the use of said land or any part thereof by the United States, and this consent may be annulled and forfeited by the declaration of the Secretary of the \_\_\_\_\_ for failure to comply with any and all of the provisions and conditions of this consent, or for nonuse for a period of two years, or for abandonment.

11. That upon the relinquishment, termination, revocation, forfeiture or annulment of the consent herein granted, the grantee shall vacate the premises, remove all property of the grantee therefrom, and restore the premises to a condition satisfactory to the officers having immediate jurisdiction over the property. If the grantee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Secretary of the \_\_\_\_\_, the said property shall either become the property of the United States without compensation therefor, or the Secretary of the \_\_\_\_\_ may cause it to be removed and the premises to be so restored at the expense of the grantee, and no claim for damages against the United States, or its officers or agents, shall be created by or made on account of such removal and restoration.

12. That the terms and conditions of this consent shall extend to and be binding upon the heirs, successors and assigns of the grantee.

13. That the grantee within the limits of his respective legal powers shall comply with all Federal, interstate, state and/or local governmental regulations, conditions or instructions for the protection of the environment and all other matters as they relate to real property interests granted herein.



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14. That the grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, \_\_\_\_\_ District, and the site and the material shall be protected by the grantee from further disturbance until a Professional examination of them can be made or until clearance to proceed is authorized by the District Commander.

15. 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 assignees, transferees and their duly authorized representatives.

16. Merger clause. Prior to the execution of this consent, the following conditions were deleted: \_\_\_\_\_; changed: \_\_\_\_\_; or added: \_\_\_\_\_.

This consent is not subject to Title 10, U.S.C., Section 2662.

In Witness Whereof, I have hereunto set my hand, by authority of the Secretary of the \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_

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APPLICATION FOR CONSENT TO CROSS U. S. GOV'T EASEMENT

Date \_\_\_\_\_

APPLICATION IS MADE for the consent of the Department of \_\_\_\_\_ to construct, maintain, control, operate and repair a (state type of structure) located as shown on the attached print, over, under or across the Easement vested in the United States of America, and identified as Acquisition Tract No. \_\_\_\_\_ and situated in Section \_\_\_\_\_, Township North, Range \_\_\_\_\_, Montana Principal Meridian \_\_\_\_\_, County \_\_\_\_\_.

Names and addresses of Record Owners are \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Names and addresses of Record Encumbrances are \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Fill in as applicable)

1. Width of right-of-way desired \_\_\_\_\_.
2. Diameter of pipe \_\_\_\_\_.
3. Kind of pipe \_\_\_\_\_.
4. Substance pipe to carry \_\_\_\_\_.
5. Type of service if electrical (Power, feeder, light feeder, telephone) \_\_\_\_\_.
6. A.C. or D.C. \_\_\_\_\_, Voltage \_\_\_\_\_ Phase \_\_\_\_\_  
Cycle \_\_\_\_\_
7. No. wires or cables \_\_\_\_\_, ultimate number wires or cable conductors \_\_\_\_\_, guage \_\_\_\_\_, diameter of cable \_\_\_\_\_, kind of wire (copper, iron, etc.) \_\_\_\_\_. Is wire bare or insulated \_\_\_\_\_, solid or strand \_\_\_\_\_?

The undersigned agrees that construction of the facility or structure involved in this application shall not begin until the Consent to Cross U.S. Government Easement, herein applied for, shall have been granted and appropriate rights shall have been acquired from the record owners and encumbrances of the underlying fee in the land involved.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS  
\_\_\_\_\_ DISTRICT

Consent No. \_\_\_\_\_  
Project: \_\_\_\_\_  
Tract No. \_\_\_\_\_

CONSENT TO EASEMENT STRUCTURES

WHEREAS, the United States has acquired a perpetual \_\_\_\_\_ easement over Tract(s) No(s) \_\_\_\_\_, \_\_\_\_\_, (Project/Installation) and which is recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in the records of \_\_\_\_\_ County, \_\_\_\_\_ (State).

(DELETE THE FOLLOWING WHEREAS, IF NOT APPLICABLE)

WHEREAS, said easement grants to the United States the right of prior approval for any structure to be located within the easement area, which area is under the administrative control of the District, Corps of Engineers;

WHEREAS, the United States has been requested to give consent for ( the construction / placement / location of \_\_\_\_\_ ) on the above identified tract (s).

NOW THEREFORE, the United States hereby gives consents to \_\_\_\_\_ for (the construction / placement / location of \_\_\_\_\_) at the location shown on Exhibit "A" attached hereto;

PROVIDED HOWEVER, that this consent is subject to the following conditions:

1. All activities conducted on the premises shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.
2. The giving of this consent does not in any way subordinate the United States prior easement rights. The United States shall in no case be liable for any damage or injury to the structures herein consented to, which may be caused by any action of the United States under its easement, or that may result from future operations undertaken by the United States, and no claim or right to compensation shall accrue from such exercise of the United States' easement rights.
3. 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 consented activity.
4. This instrument is effective only insofar as the rights of the United States in the premises are concerned; and the consentee shall obtain such permission as may be required on account of any other existing rights. It is understood that this consent does not eliminate the necessity for 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, interstate or local laws in connection with the use of the premises.

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5. \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the  
Secretary of the \_\_\_\_\_, this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

THIS CONSENT is also executed by the grantee this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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ELECTRIC POWER OR COMMUNICATION EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. INSPECTION AND REPAIRS
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. TRANSFERS AND ASSIGNMENTS
12. INDEMNITY
13. SUBJECT TO EASEMENTS
14. REQUIRED SERVICES
15. RELOCATION OF FACILITIES
16. TERMINATION
17. SOIL AND WATER CONSERVATION
18. ENVIRONMENTAL PROTECTION
19. PRELIMINARY ASSESSMENT SCREENING
20. HISTORIC PRESERVATION
21. NON-DISCRIMINATION
22. RESTORATION
23. DISCLAIMER

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_  
EASEMENT FOR ELECTRIC POWER OR  
COMMUNICATION FACILITY  
LOCATED ON

\_\_\_\_\_  
(Project, Installation)

\_\_\_\_\_  
County, State

**THE SECRETARY OF THE** \_\_\_\_\_, under and by virtue of the authority vested in the Secretary by Title 43, United States Code, Section 961, having found that the granting of this easement is not incompatible with the public interest, hereby grants to:

\_\_\_\_\_  
hereinafter referred to as the grantee, an easement for

\_\_\_\_\_  
hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibit(s) \_\_\_\_\_, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

**THIS EASEMENT** is granted subject to the following conditions.

**1. TERM**

This easement is hereby granted for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_.

**2. CONSIDERATION**

a. The grantee shall pay in advance to the United States the amount of (\$ \_\_\_\_\_) (in full for the term hereof) (payable \_\_\_\_\_) to the order of the Finance and Accounting Officer, \_\_\_\_\_ District and delivered to \_\_\_\_\_.

b. All consideration and other payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States, an administrative charge to cover the costs of processing and handling delinquent debts, and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the

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amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### 3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to \_\_\_\_\_

and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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 assignees, transferees and their duly authorized representatives.

### 5. SUPERVISION BY THE (DISTRICT ENGINEER) (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 (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (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 but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB'S).

### 7. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, 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.

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**8. INSPECTION AND REPAIRS**

The grantee shall inspect the facilities at reasonable intervals and immediately 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 remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, 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. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the 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 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, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

**14. REQUIRED SERVICES**



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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 governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises 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 the sole expense of the grantee.

**16. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

**17. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or 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. 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. ENVIRONMENT PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. 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 disposal of any toxic or hazardous materials within the premises 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 the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising

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from the grantee's activities, the grantee shall be liable to restore the damaged resources.

**19. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION**.

**20. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

**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 time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. 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 property 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.

**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

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of the \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, -  
\_\_\_\_\_.

\_\_\_\_\_

**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of

\_\_\_\_\_

\_\_\_\_\_

(Add Acknowledgments)

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GAS, WATER AND SEWER PIPELINE EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. INSPECTION OF PREMISES
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. TRANSFERS AND ASSIGNMENTS
12. INDEMNITY
13. SUBJECT TO EASEMENTS
14. REQUIRED SERVICES
15. RELOCATION OF FACILITIES
16. TERMINATION
17. SOIL AND WATER CONSERVATION
18. ENVIRONMENTAL PROTECTION
19. PRELIMINARY ASSESSMENT SCREENING
20. HISTORIC PRESERVATION
21. NON-DISCRIMINATION
22. RESTORATION
23. DISCLAIMER

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_

EASEMENT FOR PIPELINE RIGHT-OF-WAY

LOCATED ON

\_\_\_\_\_  
(Project, Installation)

\_\_\_\_\_  
(County, State)

**THE SECRETARY OF THE** \_\_\_\_\_ under and by virtue of the authority vested in the Secretary by Title 10 United States Code, Section 2669, 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,

\_\_\_\_\_  
hereinafter referred to as the grantee, an easement for \_\_\_\_\_,  
\_\_\_\_\_ hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibit(s) \_\_\_\_\_, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

**THIS EASEMENT** is granted subject to the following conditions.

**1. TERM**

This easement is hereby granted for a term of \_\_\_\_\_ years beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_.

**2. CONSIDERATION**

a. The grantee shall pay in advance to the United States the amount of \_\_\_\_\_ (\$ \_\_\_\_\_) (in full for the term hereof) (payable \_\_\_\_\_) to the order of the Finance and Accounting officer, \_\_\_\_\_ District and delivered to \_\_\_\_\_

b. All consideration and other payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States, an administrative charge to cover the costs of processing and handling delinquent debts, and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

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(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

**3. NOTICES**

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to \_\_\_\_\_

and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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 assignees, transferees and their duly authorized representatives.

**5. SUPERVISION BY THE (DISTRICT ENGINEER) (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 (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (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.

**7. CONDITION OF PREMISES**

The grantee acknowledges that it has inspected the premises, 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 REPAIRS**

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

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**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 remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account there 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. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the 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 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, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, 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.

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**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 governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises 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 the sole expense of the grantee.

**16. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

**17. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or 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. 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. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. 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 disposal of any toxic or hazardous materials within the premises 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 the premises.

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.

**19. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous



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substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION**.

**20. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

**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 time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. 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 property 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.

**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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,

(Add Acknowledgments)

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PUBLIC ROAD OR STREET EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. INSPECTION AND REPAIRS
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. RIGHT TO CONNECT
12. OTHER AGENCY AGREEMENTS
13. TERMINATION
14. SOIL AND WATER CONSERVATION
15. ENVIRONMENTAL PROTECTION
16. PRELIMINARY ASSESSMENT SCREENING
17. HISTORIC PRESERVATION
18. NON-DISCRIMINATION
19. RESTORATION
20. DISCLAIMER

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_

EASEMENT FOR PUBLIC ROAD OR STREET

LOCATED ON

\_\_\_\_\_  
(Project, Installation)

\_\_\_\_\_  
(County, State)

**THE SECRETARY OF THE** \_\_\_\_\_ under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement will not be against the public interest, hereby grants to \_\_\_\_\_

\_\_\_\_\_  
hereinafter referred to as the grantee, an easement for a road or street, hereinafter referred to as the facilities, over, across, in and upon the lands of the United States as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises.

**THIS EASEMENT** is granted subject to the following conditions:

**1. TERM**

This easement is granted in perpetuity.

**2. CONSIDERATION**

The consideration for this easement shall be the construction, operation and maintenance of a public road for the benefit of the United States and the general public 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 \_\_\_\_\_

and if to the United States, to the District, Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_

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 assignees, transferees and their duly authorized representatives.

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**5. SUPERVISION BY THE (DISTRICT ENGINEER)(INSTALATION 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 (District Engineer) (Instalation Commander), \_\_\_\_\_(District)(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.

**7. CONDITION OF PREMISES**

The grantee acknowledges that it has inspected the premises, 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 REPAIRS**

The grantee shall inspect the facilities at reasonable intervals and immediately 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 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 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 remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

**11. RIGHT TO CONNECT**

The United States reserves the right to make such connections between the road or street herein authorized and roads and streets on other government lands as said officer may from time consider necessary, and also reserves to

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itself rights-of-way for all purposes across, over or under the right-of-way hereby granted; provided that such rights shall be used in a manner that will not create unnecessary interference with the use and enjoyment by the grantee of the right-of-way herein granted.

**12. OTHER AGENCY AGREEMENTS**

It is understood that the provisions of the conditions on **SUPERVISION BY THE (DISTRICT ENGINEER)(INSTALATION COMMANDER)** and **RIGHT TO ENTER** above shall not abrogate or interfere with any agreements or commitments made or entered into between the grantee and any other agency of the United States with regard to financial aid to the grantee in connection with the construction, maintenance, or repair of the facilities herein authorized.

**13. TERMINATION**

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

**14. SOIL AND WATER CONSERVATION**

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or 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. 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.

**15. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground and water. The grantee shall 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 disposal of any toxic or hazardous materials within the premises is specifically 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, interstate, and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

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.

**16. PRELIMINARY ASSESSMENT SCREENING**

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A Preliminary Assessment Screening (PAS), documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION**.

#### **17. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

#### **18. NON-DISCRIMINATION**

a. The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national, origin or religion.

b. The grantee, by acceptance of this easement, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defence Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the grantee, its agents, successors, transferees, and assignees.

#### **19. RESTORATION**

On or before the termination or revocation of this easement, the grantee shall, without expense to the United States and within such time as said officer may indicate, restore the premises to the satisfaction of said officer. In the event the grantee shall fail to restore the premises, at the option of said officer, said improvements shall either become the property of the United States without compensation therefore, or said officer shall have the option to 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.

#### **20. 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 for 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, interstate or local laws in connection with the use of the premises.

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**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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
**THIS EASEMENT** is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Add Acknowledgments)

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DEPARTMENT OF THE ARMY  
EASEMENT FOR  
FUEL CARRYING PIPELINE

THE SECRETARY OF THE ARMY, under and by virtue of the eauthority vested in him by 30 U.S.C. 185, hereby grants to \_\_\_\_\_ hereinafter designated as the grantee, for a period of \_\_\_\_\_ years from \_\_\_\_\_, an easement for a right-of-way for the installation, construction, operation, maintenance, and repair of a \_\_\_\_\_-inch underground gas pipeline for the purpose of \_\_\_\_\_ over, across, in, and upon land the Army at the location shown in red on Exhibit \_\_\_\_\_ attached hereto and made a part hereof, and described on Exhibit \_\_\_\_\_ attached hereto and made a part hereof.

THE EASEMENT is granted subject to the following conditions:

1. The grantee shall pay to the United States in advance upon delivery of this easement the sum of \_\_\_\_\_ per annum for the easement, the sum of \_\_\_\_\_ as reimbursement for the costs incurred by the United States in processing the application, and the sum of \_\_\_\_\_ as reimbursement for the cost of monitoring construction, operation and maintenance of said pipeline for the entire term of the easement. In the event of termination of this easement, the grantee further agrees to reimburse the United States for any and all costs incurred by the United States in monitoring the termination. All payments shall be made to the Finance and Accounting Office, U.S. Army Corps of Engineers and forwarded by the grantee to the District Commander, U.S. Army Engineer District, \_\_\_\_\_ no later than \_\_\_\_\_. The U.S. will impose a charge, the amount to be determined by law or regulation on late payment of rent or other payments due under this agreement for each 30 day period that the payment is overdue. The full late charge will also be applicable to periods of less than 30 days.
2. The grantee shall construct, operate, maintain, and terminate the said pipeline in all accordance Federal, state, county, and municipal laws, regulations, and ordinances.
3. The installation and/or operation and maintenance of said line shall be accomplished without cost or expense to the United States under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter designated as "said officer," and in such manner as not to endanger personnel or property of the United States on the said United States land or obstruct travel on any road thereon. The grantee shall have the right of ingress and egress for such purposes, subject to approval of access by said officer.
4. The use and occupation of said land incident to the exercise of the privileges hereby granted shall be subject to such rules and regulations as the said officer may from time to time prescribe.
5. Upon completion of the installation of said line and the making of any repairs thereto, the premises shall be restored immediately by the grantee, at the grantee's own expense, to the same condition in which they existed prior to the commencement of such work, to the satisfaction of the said officer. The grantee shall supervise the said line and cause it to be inspected at reasonable intervals, and shall immediately repair any leaks found therein as a result of such inspection, or when requested by said officer to repair any defects.



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6. The grantee shall be strictly liable to the United States for damage or injury which may arise from or be incident to the construction, maintenance or removal of said line and the use or occupation of the right-of-way herein granted. Damages to property of the United States shall be promptly repaired or replaced by the grantee to the satisfaction of the said officer, or in lieu of such repair or replacement the grantee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States. All owners of any interest in, and all affiliates or subsidiaries of the grantee, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim for damage or injury is not satisfied by the grantee. Liability without fault hereunder shall be limited to (insert maximum amount commensurate with the foreseeable risks or hazards presented) for any one incident. Liability of such grantee for damages in excess (insert figure above) shall be in accord with ordinary rules of negligence. However, this condition shall not impose strict liability on the grantee for damage or injury resulting from (a) an act of war, or (b) negligence of the United States. In any case where liability without fault is imposed pursuant to this condition and the damage or injuries involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage or injury occurred.

7. The United States shall not be responsible for damages or injuries which may arise from or be incident to the construction, maintenance, and use of said line, nor for damages to the property of the grantee, nor for damages to the property or injuries to the person of the grantee's officers, agents, servants, or employees, or others who may be on said premises at the grantee's invitation or any one of them. The grantee does hereby accept liability, if any, imposed by Federal and state statutes to third parties for injuries incurred in connection with the use and occupancy of the right-of-way. The grantee shall hold the United States harmless from any and all such claims.

8. The United States reserves to itself and its grantees or licensees the right to construct, use, and maintain on or adjacent to the right-of-way hereby granted, electric transmission, telephone, telegraph, water, gas, gasoline, oil and sewer lines, roads and permits for other compatible uses in such manner as not to create any unreasonable interference with the use of the right-of-way herein granted.

9. That the grantee shall furnish through said line such service as may be required from time to time for governmental purposes on said land, 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 charged by the grantee for similar service.

10. In the event all or any portion of said land occupied by said line shall be needed by the United States, or in the event the existence of said line shall be considered detrimental to governmental activities, the grantee shall, from time to time, upon notice to do so, and as often as so notified, remove said line and related facilities to such other location or locations on said land as may be designated by said officer. And in the event said line shall not be removed or relocated within ninety (90) days after any aforesaid notice, the United States may cause the same to be done at the expense of the grantee.

11a. Abandonment of a right of way herein granted or noncompliance with any provisions of this easement or applicable provisions of 30 U.S.C. 185 may be grounds for suspension or termination of the right of way if ta) after due notice to the holder of the right of way, (b) a reasonable opportunity to comply with this section, and (c) an appropriate administrative proceeding

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pursuant to Title 5, U.S.C., Section 554, the Secretary determines that any such ground exists that suspension or termination is justified.

b. If the Secretary of the Army determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

c. Deliberate failure of the grantee to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: Provided, that where the failure to use the right-of-way is due to circumstances not within the holder's control, the Secretary is not required to commence proceedings to suspend or terminate the right-of-way.

12. Upon the expiration or termination of this grant, the grantee shall, without expense to the United States, and within such time as the Secretary of the Army may indicate, remove the said line from said land and restore the premises hereby authorized to be used and occupied to a condition satisfactory to the said officer. In the event the grantee shall fail, neglect, or refuse to remove the said line and so restore the premises, the United States shall have the option either to take over the said line as the property of the United States, without compensation therefor, or to remove the said line and perform the restoration work as aforesaid at the expense of the grantee, and in no event shall the grantee have any claim for damages against the United States or its officers or agents, on account of the taking over of said line or on account of its removal.

13. The conditions of this instrument shall extend to and be binding upon and shall inure to the benefit of the representatives, successors, and assigns of the grantee.

14. That it is understood that this instrument is effective only insofar as the rights of the United States in the said property are concerned, and that the grantee shall obtain such permission as may be necessary on account of any other existing rights.

15. The pipeline and related facilities herein authorized shall be constructed, operated, and maintained as common carriers. The owners or operators of the pipeline herein authorized shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or nonfederal lands. (Delete this clause if inapplicable)

16. It is understood that the provision of Condition No. 3, above, shall not abrogate or interfere with any agreements or commitments made or entered into between the grantee and any other agency of the United States with regard to financial aid to the grantee in connection with the installation, operation, or maintenance of said line.

17. That the pipeline will be buried at a depth of not less than \_\_\_\_\_ feet below the surface and such installation will be in accordance with applicable Federal and state standards.

18. That the grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, \_\_\_\_\_ District, and the site and the material shall be protected by the grantee from further disturbance until

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a professional examination of them can be made or until clearance to proceed is authorized by the District Commander.

This easement is not subject to Title 10, U.S.C., Section 2662.

IN WITNESS WHEREOF, I have hereunto set my hand this \_\_\_\_\_  
day \_\_\_\_\_ of 19 \_\_\_\_ by authority of the Secretary of the Army.

\_\_\_\_\_

The above easement is hereby accepted this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ by authority of the Secretary of the Army.

BY \_\_\_\_\_

\_\_\_\_\_

(TITLE)

C O R P O R A T E C E R T I F I C A T E

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as grantee herein; that \_\_\_\_\_, who signed this easement on behalf of the grantee was then \_\_\_\_\_ of the corporation, and that said easement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(SEAL)

\_\_\_\_\_

(ACKNOWLEDGMENT)

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DEPARTMENT OF THE \_\_\_\_\_  
CONSENT TO CROSS U. S. GOVERNMENT EASEMENT  
AT

KNOW ALL MEN BY THESE PRESENTS:

That the consent of the United States is hereby granted to \_\_\_\_\_ hereinafter designated as grantee, to construct, use, maintain, control, operate and repair a \_\_\_\_\_, herein referred to as "structure", across, over and under the lands where the United States has acquired a perpetual \_\_\_\_\_ easement identified as Tract(s) No(s) \_\_\_\_\_, \_\_\_\_\_ (Project/Installation) and which is recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in the records of \_\_\_\_\_ county, (State). The right-of-way for said structure for the purpose of this consent is specifically identified-as Parcel(s) \_\_\_\_\_, located as shown on Exhibit "A" attached hereto and made a part hereof and described as follows:

This consent is granted subject to the following conditions:

1. That it is understood that this consent is effective only insofar as the pxproperty rights of the United States in the land to be occupied are concerned, and that it does not relieve the grantee from the necessity of obtaining grants from the owners of the fee and/or other interests therein.
2. That the proposed construction authorized herein shall not be commenced until appropriate rights shall have been obtained by the grantee from the record owners and encumbrances of the fee title to the lands involved.
3. That the exercise of the privileges hereby consented to shall be without cost or expense to the Department of the \_\_\_\_\_, under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter referred to as "said officer," and subject to such regulations as may be prescribed by the District Commander, \_\_\_\_\_, District, from time to time, including, but not limited to, the specific conditions, requirements and specifications set forth in Exhibit "B" attached hereto and made a part hereof.
4. That the grantee shall supervise and maintain the said structure and cause it to be inspected at reasonable intervals, and shall immediately repair any damage found therein as a result of such inspection, or when requested by said officer to repair any defects. Upon completion of the installation of said structure or the making of any repairs thereto, the premises shall be restored immediately by the grantee, at the grantee's own expense, to the same condition as that in which they existed prior to the commencement of such work, to the satisfaction of said officer.
5. That any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges hereby granted shall be promptly repaired or replaced by the grantee to the satisfaction of the said officer or in lieu of such repair or replacement, the grantee shall, if so required by the said officer and at his option, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damage to or destruction of Government property.
6. That 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

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privileges herein granted, or for damages to the property of the grantee, or for damages to the property or injuries to the person of the grantee, or the persons of grantee's officers, agents, servants, or employees or others who may be on said premises at their invitation or the invitation of one of them arising from governmental activities on or in the vicinity of the said premises, and the grantee shall hold the United States harmless from any and all such claims.

7. That this consent is effective only as to the following rights of the United States in the lands hereinabove described.

8. That the United States shall in no case be liable for any damage or injury to the construction herein authorized which may be caused by any action of the Government, under the rights obtained in its easements, either hidden or known, or that may result from future operations under taken by the Government, and no claim or right to compensation shall accrue from such damage or injury, and if further operations of the United States require the alteration or removal of the structure herein authorized, the grantee shall, upon due notice from the Chief of Engineers, Department of Army, alter or remove said structure without expense to the Government and subject to the supervision and approval of the officer having jurisdiction over the property and no claim for damages shall be made against the United States on account of such alterations or removal.

9. That construction and/or operation maintenance and use of said structure incident to the exercise of the privileges hereby granted shall be in such a manner as not to conflict with the rights of the Government, nor to interfere with the operations by the Government under such rights, nor to endanger lives and safety of the public.

10. That this consent may be terminated by the Secretary of the \_\_\_\_\_ upon reasonable notice to the grantee if the Secretary of the \_\_\_\_\_ shall determine that installation to which consent is hereby granted interferes with the use of said land or any part thereof by the United States, and this consent may be annulled and forfeited by the declaration of the Secretary of the \_\_\_\_\_ for failure to comply with any and all of the provisions and conditions of this consent, or for nonuse for a period of two years, or for abandonment.

11. That upon the relinquishment, termination, revocation, forfeiture or annulment of the consent herein granted, the grantee shall vacate the premises, remove all property of the grantee therefrom, and restore the premises to a condition satisfactory to the officers having immediate jurisdiction over the property. If the grantee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Secretary of the \_\_\_\_\_, the said property shall either become the property of the United States without compensation therefor, or the Secretary of the \_\_\_\_\_ may cause it to be removed and the premises to be so restored at the expense of the grantee, and no claim for damages against the United States, or its officers or agents, shall be created by or made on account of such removal and restoration.

12. That the terms and conditions of this consent shall extend to and be binding upon the heirs, successors and assigns of the grantee.

13. That the grantee within the limits of his respective legal powers shall comply with all Federal, interstate, state and/or local governmental regulations, conditions or instructions for the protection of the environment and all other matters as they relate to real property interests granted herein.

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14. That the grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, \_\_\_\_\_ District, and the site and the material shall be protected by the grantee from further disturbance until a Professional examination of them can be made or until clearance to proceed is authorized by the District Commander.

15. 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 assignees, transferees and their duly authorized representatives.

16. Merger clause. Prior to the execution of this consent, the following conditions were deleted: \_\_\_\_\_; changed: \_\_\_\_\_; or added: \_\_\_\_\_.

This consent is not subject to Title 10, U.S.C., Section 2662.

In Witness Whereof, I have hereunto set my hand, by authority of the Secretary of the \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_

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APPLICATION FOR CONSENT TO CROSS U. S. GOV'T EASEMENT

Date \_\_\_\_\_

APPLICATION IS MADE for the consent of the Department of \_\_\_\_\_ to construct, maintain, control, operate and repair a (state type of structure) located as shown on the attached print, over, under or across the Easement vested in the United States of America, and identified as Acquisition Tract No. \_\_\_\_\_ and situated in Section \_\_\_\_\_, Township North, Range \_\_\_\_\_, Montana Principal Meridian \_\_\_\_\_, County \_\_\_\_\_.

Names and addresses of Record Owners are \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Names and addresses of Record Encumbrances are \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Fill in as applicable)

1. Width of right-of-way desired \_\_\_\_\_.
2. Diameter of pipe \_\_\_\_\_.
3. Kind of pipe \_\_\_\_\_.
4. Substance pipe to carry \_\_\_\_\_.
5. Type of service if electrical (Power, feeder, light feeder, telephone) \_\_\_\_\_.
6. A.C. or D.C. \_\_\_\_\_, Voltage \_\_\_\_\_ Phase \_\_\_\_\_  
Cycle \_\_\_\_\_
7. No. wires or cables \_\_\_\_\_, ultimate number wires or cable conductors \_\_\_\_\_, guage \_\_\_\_\_, diameter of cable \_\_\_\_\_, kind of wire (copper, iron, etc.) \_\_\_\_\_. Is wire bare or insulated \_\_\_\_\_, solid or strand \_\_\_\_\_?

The undersigned agrees that construction of the facility or structure involved in this application shall not begin until the Consent to Cross U.S. Government Easement, herein applied for, shall have been granted and appropriate rights shall have been acquired from the record owners and encumbrances of the underlying fee in the land involved.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS  
\_\_\_\_\_ DISTRICT

Consent No. \_\_\_\_\_  
Project: \_\_\_\_\_  
Tract No. \_\_\_\_\_

CONSENT TO EASEMENT STRUCTURES

WHEREAS, the United States has acquired a perpetual \_\_\_\_\_ easement over Tract(s) No(s) \_\_\_\_\_, \_\_\_\_\_, (Project/Installation) and which is recorded in Deed Book \_\_\_\_\_, Page \_\_\_\_\_, in the records of \_\_\_\_\_ County, \_\_\_\_\_ (State).

(DELETE THE FOLLOWING WHEREAS, IF NOT APPLICABLE)

WHEREAS, said easement grants to the United States the right of prior approval for any structure to be located within the easement area, which area is under the administrative control of the District, Corps of Engineers;

WHEREAS, the United States has been requested to give consent for ( the construction / placement / location of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_) on the above identified tract (s).

NOW THEREFORE, the United States hereby gives consents to \_\_\_\_\_ for (the construction / placement / location of \_\_\_\_\_) at the location shown on Exhibit "A" attached hereto;

PROVIDED HOWEVER, that this consent is subject to the following conditions:

1. All activities conducted on the premises shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.
2. The giving of this consent does not in any way subordinate the United States prior easement rights. The United States shall in no case be liable for any damage or injury to the structures herein consented to, which may be caused by any action of the United States under its easement, or that may result from future operations undertaken by the United States, and no claim or right to compensation shall accrue from such exercise of the United States' easement rights.
3. 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 consented activity.
4. This instrument is effective only insofar as the rights of the United States in the premises are concerned; and the consentee shall obtain such permission as may be required on account of any other existing rights. It is understood that this consent does not eliminate the necessity for 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, interstate or local laws in connection with the use of the premises.



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5. \_\_\_\_\_

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the  
Secretary of the \_\_\_\_\_, this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

THIS CONSENT is also executed by the grantee this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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APPENDIX 8-E  
LICENSE FORMATS

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GENERAL PURPOSE LICENSE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITIONAL USE BY GRANTEE
8. CONDITION OF PREMISES
9. COST OF UTILITIES
10. PROTECTION OF PROPERTY
11. INDEMNITY
12. RESTORATION
13. NON-DISCRIMINATION
14. TERMINATION
15. ENVIRONMENTAL PROTECTION
16. HISTORIC PRESERVATION
17. DISCLAIMER

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No. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_ LICENSE

\_\_\_\_\_  
PROJECT/INSTALLATION

\_\_\_\_\_  
COUNTY, STATE

THE SECRETARY OF THE \_\_\_\_\_, hereinafter referred to as the Secretary, under authority of \_\_\_\_\_, hereby grants to

\_\_\_\_\_  
hereinafter referred to as the grantee, a license for \_\_\_\_\_

over, across, in and upon lands of the United States, as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS LICENSE is granted subject to the following conditions.

**1. TERM**

This license is granted for a term of \_\_\_\_\_, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_, but revocable at will by the Secretary.

**2. CONSIDERATION**

a. The grantee shall pay in advance to the United States the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), (in full for the term hereof) (payable \_\_\_\_\_) to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_

b. All consideration and other payments due under the terms of this license must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall

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accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### 3. NOTICES

All notices and correspondence to be given pursuant to this license shall be addressed, if to the grantee, to \_\_\_\_\_; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_;

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 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 any duly authorized representatives.

### 5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)

The use and occupation of the premises shall be subject to the general supervision and approval of the (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (Installation hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

### 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.

### 7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises.
- c. subject to other outgrants of the United States on the premises.
- d. personal to the grantee, and this license, or any interest therein, may not be transferred or assigned.

### 8. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any

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representations or warranties whatsoever and without any obligation on the part of the United States.

#### **9. COST OF UTILITIES**

The grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

#### **10. PROTECTION OF PROPERTY**

The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, 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.

#### **11. 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 of the grantee, 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 due to the fault or negligence of the United States or its contractors.

#### **12. RESTORATION**

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

#### **13. NON-DISCRIMINATION**

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The grantee shall not discriminate against any person or persons or exclude them from participation in the grantee's operations, programs or activities because of race, color, religion, sex, age, handicap or national origin in the conduct of operations on the premises. The grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

#### **14. TERMINATION**

This license may be terminated by the grantee at any time by giving the District Engineer at least ten (10) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made and provided further, that in the event that said notice is not given at least ten (10) days prior to the rental due date, the grantee shall be required to pay the consideration for the period shown in the Condition on CONSIDERATION.

#### **15. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. 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 grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

#### **16. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

#### **17. DISCLAIMER**

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army

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permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**THIS LICENSE** 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

THIS LICENSE is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_



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**FISH AND WILDLIFE LICENSE**

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE DISTRICT ENGINEER
6. STRUCTURES AND EQUIPMENT
7. ANNUAL MANAGEMENT PLANS
8. FISH AND WILDLIFE ACTIVITIES
9. ACCOUNTS, RECORDS AND RECEIPTS
10. APPLICABLE LAWS AND REGULATIONS
11. CONDITIONAL USE BY GRANTEE
12. CONDITION OF PREMISES
13. PROTECTION OF PROPERTY
14. RESTORATION
15. NON-DISCRIMINATION
16. TERMINATION
17. NATURAL RESOURCES
18. ENVIRONMENTAL PROTECTION
19. HISTORIC PRESERVATION
20. DISCLAIMER

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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY LICENCE  
FOR FISH AND WILDLIFE ACTIVITIES ON**

\_\_\_\_\_  
PROJECT/INSTALLATION

\_\_\_\_\_  
COUNTY, STATE

**THE SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, under authority of \_\_\_\_\_ hereby grants to \_\_\_\_\_ hereinafter referred to as the grantee, a license for fish and wildlife activities over, across, in and upon lands of the United States, as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises.

**THIS LICENSE** is granted subject to the following conditions.

**1. TERM**

This license is granted for a term of \_\_\_\_\_, beginning \_\_\_\_\_ and ending \_\_\_\_\_, but revocable at will by the Secretary.

**2. CONSIDERATION**

The consideration for this license is the operation and maintenance of the premises by the grantee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this license shall be addressed, if to the grantee to \_\_\_\_\_; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_; 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", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include any duly authorized representatives.

**5. SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

**6. STRUCTURES AND EQUIPMENT**

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The grantee shall have the right, during the term of the license, to erect such structures and to provide such equipment upon the premises to accomplish the purposes of the license and as provided for in the Annual Management Plan. Those structures and equipment shall be and remain the property of the grantee, except as otherwise provided in the condition on **RESTORATION**.

#### **7. ANNUAL MANAGEMENT PLANS**

The grantee shall administer the premises in accordance with an Annual Management Plan which shows the management and development activities to be undertaken by the grantee. No later than \_\_\_\_\_ of each year, the grantee will submit the Annual Management Plan to be mutually agreed upon between the grantee and the said officer. Such Annual Management Plan shall include but is not limited to the following:

- a. Plans for management, maintenance, and development activities to be undertaken by the grantee or jointly by the Corps of Engineers and the grantee which shall include plans for any proposed structures and improvements.
- b. The areas to be utilized for agricultural purposes.
- c. The variety and scope of crops to be planted, as well as any rotations.
- d. The type of wildlife cover to be cultivated, if any.
- e. The areas designated for various species of fish and wildlife propagation.

#### **8. FISH AND WILDLIFE ACTIVITIES**

a. The grantee may plant or harvest crops, either directly, by service contract, by sharecrop agreements with local farmers, or by agricultural agreements to provide food and/or habitat for wildlife and for the development and conservation of land, fish and wildlife, forests, and other natural resources. Where feasible, contracts and agreements with third parties shall be by competitive bid procedures.

b. Any lands not being managed by the grantee for wildlife habitat will be made available for lease by the said officer for agricultural or grazing purposes under conditions which would not be incompatible with the grantee's use of the premises.

c. The grantee may take, trap, remove, stock or otherwise control all forms of fish and wildlife on the premises, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use shall be consistent with the state laws for the protection of fish and wildlife.

#### **9. ACCOUNTS, RECORDS AND RECEIPTS**

a. All monies received by the grantee from operations conducted on the premises may be utilized by the grantee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this license and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid

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to said officer. The grantee shall provide an annual statement of receipts and expenditures to the said officer. The said officer shall have the right to perform audits of the grantee's records and accounts.

b. Payment of direct expenses is authorized for planning and development of optimum wildlife habitat including planting of wildlife food plots, necessary timber clearing, erosion control or habitat improvements such as shelter, restocking of fish and wildlife, and protection of endangered species. Payment of grantee's employees who are directly engaged in such activities at the project is also authorized. However, proceeds will not be used for the payment of general administrative expenses.

c. Proceeds derived from the sale of fishing and hunting leases are not

#### **10. 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.

#### **11. CONDITIONAL USE BY GRANTEE**

The exercise of the privileges herein granted shall be:

a. without cost or expense to the United States;

b. subject to the right of the United States to improve, use or maintain the premises.

c. subject to other outgrants of the United States on the premises.

d. personal to the grantee, and this license, or any interest therein, may not be transferred or assigned.

#### **12. CONDITION OF PREMISES**

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

#### **13. PROTECTION OF PROPERTY**

The premises shall at all times be protected and maintained in good order and condition by and at the expense of the grantee. 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 license, 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.

#### **14. RESTORATION**

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On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

**15. NON-DISCRIMINATION**

a. The grantee shall not discriminate against any person or exclude them from participation in the grantee's operations, programs or activities conducted on the licensed premises, because of race, color, religion, sex, age, handicap or national origin. The grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

b. The grantee, by acceptance of this license, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7.

**16. TERMINATION**

This license may be terminated by the grantee at any time by giving the said officer at least thirty (30) days notice in writing.

**17. NATURAL RESOURCES**

The grantee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the approved Annual Management Plan. The grantee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the grantee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the grantee under the provisions of this license.

**18. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall 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

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local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. 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 grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**19. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

**20. DISCLAIMER**

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be require by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**THIS LICENSE** 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LICENSE** is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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NATIONAL GUARD LICENSE

1. TERM
2. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
3. APPLICABLE LAWS AND REGULATIONS
4. FACILITY MAINTENANCE
5. RIGHT TO USE
6. COST OF UTILITIES
7. USE RESTRICTIONS
8. IMPROVEMENTS AND ALTERATIONS
9. CONDITION OF PREMISES
10. TERMINATION
11. EXPIRATION AND RESTORATION
12. USE BY OTHERS
13. PROTECTION OF PREMISES
14. ENVIRONMENTAL PROTECTION
15. PRELIMINARY ASSESSMENT SCREENING
16. HISTORICAL PRESERVATION
17. NON-DISCRIMINATION

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_  
LICENSE FOR  
NATIONAL GUARD PURPOSES

\_\_\_\_\_  
PROJECT/INSTALLATION

\_\_\_\_\_  
COUNTY, STATE

THE SECRETARY OF THE \_\_\_\_\_, hereinafter referred to as the Secretary, under the authority of Title 32, United States Code, Section 503, hereby grants to the State of \_\_\_\_\_, hereinafter referred to as the grantee, a license to use and occupy for training and support of the \_\_\_\_\_ National Guard certain land and improvements, hereinafter referred to as the premises, as shown identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof.

THIS LICENSE is granted subject to the following conditions:

**1. TERM**

This license is granted for (an indefinite term,) (a term of \_\_\_\_\_ years, beginning \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_,) but revocable at will by the Secretary.

**\*NOTE:** See chapter 8 for additional wording when licensed area is not owned in fee by the United States.

**2. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)**

The use and occupancy of the premises shall be without cost to the regular establishment of the military departments of the Department of Defense and shall be under the general supervision of the (District Engineer) (Active Army Installation Commander) (U.S. Property and Fiscal Officer), \_\_\_\_\_, (District) (Installation) hereinafter referred to as said officer, and subject' to such rules and regulations as may be prescribed from time to time by said officer.

**3. 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

**4. FACILITY MAINTENANCE**

The grantee shall maintain and keep the premises in good repair and condition and all costs of operation, maintenance, and restoration shall be paid for from funds available to the grantee, or from funds other than those appropriated for the regular establishment of the military departments.

**5. RIGHT TO USE**

The United States, hereinafter referred to as the Government, reserves the right to use the premises, or any part thereof, including all buildings



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and improvements situated thereon, for such purposes as said officer deems necessary in the interest of national defense.

**6. COST OF UTILITIES**

The grantee shall pay the cost, as determined by the officer having immediate jurisdiction over the premises, of producing and/or supplying any utilities or other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced and supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

**7. USE RESTRICTIONS**

The buildings and improvements included in this license shall not be used for the quartering of personnel engaged in the national guard activities except when such personnel are in the federal service or are participating in authorized training.

**8. IMPROVEMENTS AND ALTERATIONS**

Additions to or alteration or improvement of the premises shall not be made without prior written approval of the District Engineer. All such additions, alterations or improvements shall be maintained by the grantee in good repair and condition. All such work designated as permanent by said officer shall, upon completion, become property of the Government.

**9. CONDITION OF PREMISES**

a. The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the Government.

**DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this license, an inventory and condition report of all personal property and improvements of the Government included in this license shall be made by the District Engineer and the grantee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this license, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored as provided for in the condition on **RESTORATION.**

**10. TERMINATION**

This license may be terminated by the grantee at any time by giving the District Engineer at least thirty (30) days notice in writing.

**11. RESTORATION**

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove its property (except those permanent additions, alterations, and improvements which have become

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property of the Government under provision of the condition on **IMPROVEMENTS AND ALTERATIONS**) and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises within such time as the said officer may designate. In either event, if the grantee fails to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the Government without compensation therefor, or said officer may cause the property to be removed at the expense of the grantee, and no claim for damages against the Government shall be created on account of such action.

## **12. USE BY OTHERS**

The grantee shall not transfer or assign this license, or any interest in the premises, however, upon concurrence of the Director, (Army) (Air force) National Guard, National Guard Bureau, the grantee may (1) permit the temporary or intermittent use of the premises by elements of the Department of Defense for joint use or individual training purposes, provided such use will not interfere with the National Guard use; or (2) issue licenses for nonprofit, community service-type activities under the same conditions as those allowed by active installation commanders by existing (Army) (Air Force) regulations.

## **13. PROTECTION OF PROPERTY**

a. The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, 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.

b. Upon termination of the grantee's requirement for the premises, the grantee shall remain responsible to protect and maintain the premises until transfer to and acceptance by another accountability officer is accomplished or in accordance with applicable laws, rules and regulations.

## **14. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. 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.

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

**15. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or relinquishment of this license, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee to the satisfaction of the said officer.

**16. HISTORICAL PRESERVATION**

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until the said officer gives clearance to proceed.

**17. NON-DISCRIMINATION**

The grantee shall not discriminate against any person or persons or exclude them from participation in the grantee's operations, programs or activities conducted on the licensed premises because of race, color, religion, sex, age, handicap or national origin. The grantee by acceptance of this license, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C 6102); the Rehabilitation Act of 1973 as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Department of Defense Directive 5500.11 (32 CFR Part 300) issued on December 28, 1964.

**THIS LICENSE** 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_

This license is executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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GENERAL PURPOSE LICENSE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITIONAL USE BY GRANTEE
8. CONDITION OF PREMISES
9. COST OF UTILITIES
10. PROTECTION OF PROPERTY
11. INDEMNITY
12. RESTORATION
13. NON-DISCRIMINATION
14. TERMINATION
15. ENVIRONMENTAL PROTECTION
16. HISTORIC PRESERVATION
17. DISCLAIMER

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No. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_ LICENSE

\_\_\_\_\_  
PROJECT/INSTALLATION

\_\_\_\_\_  
COUNTY, STATE

THE SECRETARY OF THE \_\_\_\_\_, hereinafter referred to as the Secretary, under authority of \_\_\_\_\_, hereby grants to

\_\_\_\_\_  
hereinafter referred to as the grantee, a license for \_\_\_\_\_

over, across, in and upon lands of the United States, as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS LICENSE is granted subject to the following conditions.

**1. TERM**

This license is granted for a term of \_\_\_\_\_, beginning \_\_\_\_\_, \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_, but revocable at will by the Secretary.

**2. CONSIDERATION**

a. The grantee shall pay in advance to the United States the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), (in full for the term hereof) (payable \_\_\_\_\_) to the order of the Finance and Accounting Officer, \_\_\_\_\_ District, and delivered to \_\_\_\_\_

b. All consideration and other payments due under the terms of this license must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall

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accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

### 3. NOTICES

All notices and correspondence to be given pursuant to this license shall be addressed, if to the grantee, to \_\_\_\_\_; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_;

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 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 any duly authorized representatives.

### 5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)

The use and occupation of the premises shall be subject to the general supervision and approval of the (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (Installation hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

### 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.

### 7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises.
- c. subject to other outgrants of the United States on the premises.
- d. personal to the grantee, and this license, or any interest therein, may not be transferred or assigned.

### 8. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any

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representations or warranties whatsoever and without any obligation on the part of the United States.

#### **9. COST OF UTILITIES**

The grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

#### **10. PROTECTION OF PROPERTY**

The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, 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.

#### **11. 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 of the grantee, 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 due to the fault or negligence of the United States or its contractors.

#### **12. RESTORATION**

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

#### **13. NON-DISCRIMINATION**

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The grantee shall not discriminate against any person or persons or exclude them from participation in the grantee's operations, programs or activities because of race, color, religion, sex, age, handicap or national origin in the conduct of operations on the premises. The grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

#### **14. TERMINATION**

This license may be terminated by the grantee at any time by giving the District Engineer at least ten (10) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made and provided further, that in the event that said notice is not given at least ten (10) days prior to the rental due date, the grantee shall be required to pay the consideration for the period shown in the Condition on CONSIDERATION.

#### **15. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. 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 grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

#### **16. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

#### **17. DISCLAIMER**

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army



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permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**THIS LICENSE** 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

THIS LICENSE is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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**FISH AND WILDLIFE LICENSE**

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE DISTRICT ENGINEER
6. STRUCTURES AND EQUIPMENT
7. ANNUAL MANAGEMENT PLANS
8. FISH AND WILDLIFE ACTIVITIES
9. ACCOUNTS, RECORDS AND RECEIPTS
10. APPLICABLE LAWS AND REGULATIONS
11. CONDITIONAL USE BY GRANTEE
12. CONDITION OF PREMISES
13. PROTECTION OF PROPERTY
14. RESTORATION
15. NON-DISCRIMINATION
16. TERMINATION
17. NATURAL RESOURCES
18. ENVIRONMENTAL PROTECTION
19. HISTORIC PRESERVATION
20. DISCLAIMER

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NO. \_\_\_\_\_

**DEPARTMENT OF THE ARMY LICENCE  
FOR FISH AND WILDLIFE ACTIVITIES ON**

\_\_\_\_\_  
PROJECT/INSTALLATION

\_\_\_\_\_  
COUNTY, STATE

**THE SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, under authority of \_\_\_\_\_ hereby grants to \_\_\_\_\_ hereinafter referred to as the grantee, a license for fish and wildlife activities over, across, in and upon lands of the United States, as identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises.

**THIS LICENSE** is granted subject to the following conditions.

**1. TERM**

This license is granted for a term of \_\_\_\_\_, beginning \_\_\_\_\_ and ending \_\_\_\_\_, but revocable at will by the Secretary.

**2. CONSIDERATION**

The consideration for this license is the operation and maintenance of the premises by the grantee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

**3. NOTICES**

All correspondence and notices to be given pursuant to this license shall be addressed, if to the grantee to \_\_\_\_\_; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, \_\_\_\_\_; 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", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include any duly authorized representatives.

**5. SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

**6. STRUCTURES AND EQUIPMENT**

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The grantee shall have the right, during the term of the license, to erect such structures and to provide such equipment upon the premises to accomplish the purposes of the license and as provided for in the Annual Management Plan. Those structures and equipment shall be and remain the property of the grantee, except as otherwise provided in the condition on **RESTORATION**.

#### **7. ANNUAL MANAGEMENT PLANS**

The grantee shall administer the premises in accordance with an Annual Management Plan which shows the management and development activities to be undertaken by the grantee. No later than \_\_\_\_\_ of each year, the grantee will submit the Annual Management Plan to be mutually agreed upon between the grantee and the said officer. Such Annual Management Plan shall include but is not limited to the following:

- a. Plans for management, maintenance, and development activities to be undertaken by the grantee or jointly by the Corps of Engineers and the grantee which shall include plans for any proposed structures and improvements.
- b. The areas to be utilized for agricultural purposes.
- c. The variety and scope of crops to be planted, as well as any rotations.
- d. The type of wildlife cover to be cultivated, if any.
- e. The areas designated for various species of fish and wildlife propagation.

#### **8. FISH AND WILDLIFE ACTIVITIES**

a. The grantee may plant or harvest crops, either directly, by service contract, by sharecrop agreements with local farmers, or by agricultural agreements to provide food and/or habitat for wildlife and for the development and conservation of land, fish and wildlife, forests, and other natural resources. Where feasible, contracts and agreements with third parties shall be by competitive bid procedures.

b. Any lands not being managed by the grantee for wildlife habitat will be made available for lease by the said officer for agricultural or grazing purposes under conditions which would not be incompatible with the grantee's use of the premises.

c. The grantee may take, trap, remove, stock or otherwise control all forms of fish and wildlife on the premises, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use shall be consistent with the state laws for the protection of fish and wildlife.

#### **9. ACCOUNTS, RECORDS AND RECEIPTS**

a. All monies received by the grantee from operations conducted on the premises may be utilized by the grantee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this license and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid

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to said officer. The grantee shall provide an annual statement of receipts and expenditures to the said officer. The said officer shall have the right to perform audits of the grantee's records and accounts.

b. Payment of direct expenses is authorized for planning and development of optimum wildlife habitat including planting of wildlife food plots, necessary timber clearing, erosion control or habitat improvements such as shelter, restocking of fish and wildlife, and protection of endangered species. Payment of grantee's employees who are directly engaged in such activities at the project is also authorized. However, proceeds will not be used for the payment of general administrative expenses.

c. Proceeds derived from the sale of fishing and hunting leases are not

#### **10. 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.

#### **11. CONDITIONAL USE BY GRANTEE**

The exercise of the privileges herein granted shall be:

a. without cost or expense to the United States;

b. subject to the right of the United States to improve, use or maintain the premises.

c. subject to other outgrants of the United States on the premises.

d. personal to the grantee, and this license, or any interest therein, may not be transferred or assigned.

#### **12. CONDITION OF PREMISES**

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

#### **13. PROTECTION OF PROPERTY**

The premises shall at all times be protected and maintained in good order and condition by and at the expense of the grantee. 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 license, 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.

#### **14. RESTORATION**

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On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

**15. NON-DISCRIMINATION**

a. The grantee shall not discriminate against any person or exclude them from participation in the grantee's operations, programs or activities conducted on the licensed premises, because of race, color, religion, sex, age, handicap or national origin. The grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

b. The grantee, by acceptance of this license, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7.

**16. TERMINATION**

This license may be terminated by the grantee at any time by giving the said officer at least thirty (30) days notice in writing.

**17. NATURAL RESOURCES**

The grantee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the approved Annual Management Plan. The grantee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the grantee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the grantee under the provisions of this license.

**18. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall 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

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local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. 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 grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

**19. HISTORIC PRESERVATION**

The grantee shall not remove or disturb, or cause or 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 said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

**20. DISCLAIMER**

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be require by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

**THIS LICENSE** 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

**THIS LICENSE** is also executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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NATIONAL GUARD LICENSE

1. TERM
2. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
3. APPLICABLE LAWS AND REGULATIONS
4. FACILITY MAINTENANCE
5. RIGHT TO USE
6. COST OF UTILITIES
7. USE RESTRICTIONS
8. IMPROVEMENTS AND ALTERATIONS
9. CONDITION OF PREMISES
10. TERMINATION
11. EXPIRATION AND RESTORATION
12. USE BY OTHERS
13. PROTECTION OF PREMISES
14. ENVIRONMENTAL PROTECTION
15. PRELIMINARY ASSESSMENT SCREENING
16. HISTORICAL PRESERVATION
17. NON-DISCRIMINATION



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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_  
LICENSE FOR  
NATIONAL GUARD PURPOSES

\_\_\_\_\_  
PROJECT/INSTALLATION

\_\_\_\_\_  
COUNTY, STATE

THE SECRETARY OF THE \_\_\_\_\_, hereinafter referred to as the Secretary, under the authority of Title 32, United States Code, Section 503, hereby grants to the State of \_\_\_\_\_, hereinafter referred to as the grantee, a license to use and occupy for training and support of the \_\_\_\_\_ National Guard certain land and improvements, hereinafter referred to as the premises, as shown identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof.

THIS LICENSE is granted subject to the following conditions:

**1. TERM**

This license is granted for (an indefinite term,) (a term of \_\_\_\_\_ years, beginning \_\_\_\_\_ and ending \_\_\_\_\_, \_\_\_\_\_,) but revocable at will by the Secretary.

**\*NOTE:** See chapter 8 for additional wording when licensed area is not owned in fee by the United States.

**2. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)**

The use and occupancy of the premises shall be without cost to the regular establishment of the military departments of the Department of Defense and shall be under the general supervision of the (District Engineer) (Active Army Installation Commander) (U.S. Property and Fiscal Officer), \_\_\_\_\_, (District) (Installation) hereinafter referred to as said officer, and subject' to such rules and regulations as may be prescribed from time to time by said officer.

**3. 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

**4. FACILITY MAINTENANCE**

The grantee shall maintain and keep the premises in good repair and condition and all costs of operation, maintenance, and restoration shall be paid for from funds available to the grantee, or from funds other than those appropriated for the regular establishment of the military departments.

**5. RIGHT TO USE**

The United States, hereinafter referred to as the Government, reserves the right to use the premises, or any part thereof, including all buildings

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and improvements situated thereon, for such purposes as said officer deems necessary in the interest of national defense.

**6. COST OF UTILITIES**

The grantee shall pay the cost, as determined by the officer having immediate jurisdiction over the premises, of producing and/or supplying any utilities or other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced and supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

**7. USE RESTRICTIONS**

The buildings and improvements included in this license shall not be used for the quartering of personnel engaged in the national guard activities except when such personnel are in the federal service or are participating in authorized training.

**8. IMPROVEMENTS AND ALTERATIONS**

Additions to or alteration or improvement of the premises shall not be made without prior written approval of the District Engineer. All such additions, alterations or improvements shall be maintained by the grantee in good repair and condition. All such work designated as permanent by said officer shall, upon completion, become property of the Government.

**9. CONDITION OF PREMISES**

a. The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the Government.

**DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)**

b. As of the date of this license, an inventory and condition report of all personal property and improvements of the Government included in this license shall be made by the District Engineer and the grantee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit \_\_\_\_\_ and made a part hereof. Upon the expiration, revocation or termination of this license, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored as provided for in the condition on **RESTORATION.**

**10. TERMINATION**

This license may be terminated by the grantee at any time by giving the District Engineer at least thirty (30) days notice in writing.

**11. RESTORATION**

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove its property (except those permanent additions, alterations, and improvements which have become

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property of the Government under provision of the condition on **IMPROVEMENTS AND ALTERATIONS**) and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises within such time as the said officer may designate. In either event, if the grantee fails to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the Government without compensation therefor, or said officer may cause the property to be removed at the expense of the grantee, and no claim for damages against the Government shall be created on account of such action.

#### **12. USE BY OTHERS**

The grantee shall not transfer or assign this license, or any interest in the premises, however, upon concurrence of the Director, (Army) (Air force) National Guard, National Guard Bureau, the grantee may (1) permit the temporary or intermittent use of the premises by elements of the Department of Defense for joint use or individual training purposes, provided such use will not interfere with the National Guard use; or (2) issue licenses for nonprofit, community service-type activities under the same conditions as those allowed by active installation commanders by existing (Army) (Air Force) regulations.

#### **13. PROTECTION OF PROPERTY**

a. The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, 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.

b. Upon termination of the grantee's requirement for the premises, the grantee shall remain responsible to protect and maintain the premises until transfer to and acceptance by another accountability officer is accomplished or in accordance with applicable laws, rules and regulations.

#### **14. ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall 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 disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. 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.

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

**15. PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or relinquishment of this license, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee to the satisfaction of the said officer.

**16. HISTORICAL PRESERVATION**

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until the said officer gives clearance to proceed.

**17. NON-DISCRIMINATION**

The grantee shall not discriminate against any person or persons or exclude them from participation in the grantee's operations, programs or activities conducted on the licensed premises because of race, color, religion, sex, age, handicap or national origin. The grantee by acceptance of this license, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C 6102); the Rehabilitation Act of 1973 as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Department of Defense Directive 5500.11 (32 CFR Part 300) issued on December 28, 1964.

**THIS LICENSE** 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_

This license is executed by the grantee this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

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APPENDIX 8-F  
PERMIT FORMATS

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_

**PERMIT TO OTHER FEDERAL GOVERNMENT DEPARTMENT OR AGENCY**

TO USE PROPERTY **LOCATED** ON

\_\_\_\_\_  
(project, installation)

**THE SECRETARY OF THE** \_\_\_\_\_, hereinafter referred to as the Secretary hereby **grants** to \_\_\_\_\_, hereinafter referred to as the grantee, a permit for \_\_\_\_\_, over, across, in and upon the lands identified in Exhibit(s) \_\_\_\_\_, attached hereto and made a part hereof, hereinafter referred to as the premises.

**THIS PERMIT** is granted **subject** to the following conditions.

1. This permit is hereby granted for a term of \_\_\_\_\_ **years**, beginning \_\_\_\_\_, and ending \_\_\_\_\_, but revocable at will by the Secretary.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

2. The grantee shall pay rental to the Department of the \_\_\_\_\_ in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District and delivered to \_\_\_\_\_.

3. All **correspondence** and notices to be given pursuant to **this** permit shall be addressed, if to the grantee, to \_\_\_\_\_, and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division \_\_\_\_\_ 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 **aforsaid**, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. The **use** and occupation of the **premises** shall be without cost or expense to the Department of the \_\_\_\_\_, and under the general supervision and subject to the **approval** of the (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (Installation), or his duly authorized representative, hereinafter referred to as said officer and to such rules and regulations as may be prescribed from time to time by said officer.

5. The grantee acknowledges that it **has inspected** the premises, <sup>knows</sup> its condition, and understands that the same is granted without any **representations** or **warranties whatsoever** and without any obligation on the part of the Department of the \_\_\_\_\_.

6. The grantee shall, at its own **expense** and without cost or expense to the Department of the \_\_\_\_\_, maintain and keep the premises in good repair and condition.

7. Any interference with the **use** of or damage to property under control of the Department of the \_\_\_\_\_ incident to the **exercise** of the

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privileges herein granted shall be promptly corrected by the grantee to the satisfaction of said officer.

8. The grantee shall pay the cost, as determined by the officer having immediate jurisdiction over the premises, of producing or supplying any utilities and/or other services furnished by or through the Department of the \_\_\_\_\_ for the use of the grantee.

9. No additions to or alterations of the premises shall be made without the prior written approval of the District Engineer.

10. On or before the date of expiration of this permit or its relinquishment by the grantee, the grantee shall vacate the premises, remove its property therefrom \*(and restore the premises to a condition satisfactory to Baid officer, ordinary wear and tear and damage beyond the control of the grantee excepted.) If, however, this permit is revoked, the grantee shall vacate the premises and remove its property therefrom within such time as the District Engineer may designate.

**\*NOTE:** The above restoration clause shown in parenthesis is to be deleted in those permits where no monetary consideration is charged.

11. The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

12. A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as Exhibit \_\_\_\_\_. Upon expiration, revocation or relinquishment of this permit, another PAS shall be prepared which will document the environmental condition of the property at that time. **NOTE** The following wording in parenthesis is to be included in only those permits which contain a restoration requirement in condition 10 above. (A comparison of the two assessments will assist the Baid officer in determining any environmental restoration requirements of the grantee. Any such requirements will be completed by the grantee in accordance with the restoration provisions in condition 10 above.)

(The following condition should be deleted in permits where there is no interagency or interservice support agreements)

13. It is understood that the requirements of this permit pertaining to maintenance, repair, protection, and restoration of the premises and reimbursement for utilities and other services, shall be effective only insofar as they do not conflict with any agreement, pertaining to such matters made between local representatives of the grantor and grantee in accordance with existing regulations.

THIS PERMIT 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 \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

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This permit is also executed by the grantee this \_\_\_\_\_  
day of \_\_\_\_\_,

\_\_\_\_\_



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DEPARTMENT OF THE \_\_\_\_\_  
 PERMIT FOR SCHOOL PURPOSES ON  
 \_\_\_\_\_

The Secretary of Education (Department of Education), hereinafter called the Permittee, is hereby granted a permit, effective the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by the Secretary of \_\_\_\_\_, hereinafter called the Permittee, to use and occupy for school purposes, with the right of ingress and egress thereto, as more fully described below, a tract of land of the United States within the \_\_\_\_\_ (Installation), \_\_\_\_\_ now under control of the Secretary of \_\_\_\_\_, at the location shown in red on Exhibit "A" attached hereto, and more particularly described as follows:

This permit is granted subject to the following provisions and conditions:

1. The Permittee, or its designee, shall use said land for the purpose of providing school facilities and making arrangements for conducting an educational program in accordance with Public Law 815, approved 23 September 1950 (64 Stat. 967) and Public Law 874, approved 30 September 1950 (64 Stat. 1100), as amended, or subsequent similar legislation.
2. The Permittee, or its designee, if necessary, shall have the right to connect to the base utility systems at its own expense, and to connect with public utility systems, if necessary.
3. The Permittee or its designee shall pay all proper charges for utilities and services furnished, except police and fire protection and the construction and maintenance of roads.
4. The Permittee, or its designee, shall, at its own cost and expense, protect, preserve, maintain, repair and keep in good order and condition, any facilities erected on the land and made available hereunder, which obligation shall extend to the making of capital repairs and replacements to the facilities as long as the Permittee has authority to do so and deems the facilities to be necessary to the accomplishment of its statutory obligations. Prior to any substantial addition or alteration of any building erected on the premises, by the Permittee or its designee, the Permittee shall consult with the Permittee, or its representative, as to plans and specifications therefor.
5. This permit may be revoked by the Permittee:
  - (a) At will.
  - (b) Upon termination of the authority and responsibility of the Permittee to make arrangements for the education of, and to provide school facilities for children residing on Federal establishments pursuant to Public Laws 815 and 874.
  - (c) In the event the Permittee, or its designee, fails to use and occupy the land for a period of one year.
6. The Secretary of Education may terminate obligations under this permit by reasonable notice to the Permittee in the event of either of the following contingencies:

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(a) The Secretary deems the use of the property and facilities occupied under this permit to be **unnecessary** to the fulfillment of statutory obligations under Public Laws 815 and 874, as amended.

(b) Statutory authority of the Secretary to provide for the maintenance or make arrangements for the operation of the facilities erected and occupied under the permit is terminated or expires.

7. The Permittee or **its designee** operating the school shall exercise such authority and control over the facilities erected on the land described herein as it shall deem necessary for the education of children in attendance at the **school** facilities. It is understood and agreed, however, that the **activities** authorized hereunder shall be subject to such rules and regulations as the officer having immediate **jurisdiction** over the premises may, from time to time, **prescribe** for safety and security purposes consistent with the use of the **premises** for educational purposes.

8. The operation of school facilities which may be located on the property described herein shall be conducted without segregation on the **basis** of race or color.

9. The "**designee**" of the Permittee, referred to herein, is the local educational agency or Federal agency with whom an arrangement is made for the conducting of an educational program under the provisions of Public Laws 815 or 874, **as** amended.

10. Upon termination of **this** permit either by the Department \_\_\_\_\_ of or the Permittee, the accountability for all Government-owned improvements constructed upon the premises by the Permittee shall automatically transfer to the Department of \_\_\_\_\_ without compensation therefor.

11. The Permittee shall comply with all applicable Federal, state, county, and municipal laws, **regulations**, and ordinances.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
The terms and conditions of this permit are acceptable to the Secretary of Education, Department of Education.

DEPARTMENT OF EDUCATION  
By: \_\_\_\_\_

Date: \_\_\_\_\_

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NO. \_\_\_\_\_

DEPARTMENT OF THE \_\_\_\_\_

PERMIT TO OTHER FEDERAL GOVERNMENT DEPARTMENT OR AGENCY

TO USE PROPERTY LOCATED ON

\_\_\_\_\_  
(project, installation)

THE SECRETARY OF THE \_\_\_\_\_, hereinafter referred to as the Secretary hereby grants to \_\_\_\_\_, hereinafter referred to as the grantee, a permit for \_\_\_\_\_, over, access, in and upon the lands identified in Exhibit(s) \_\_\_\_\_ attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS PERMIT is granted subject to the following conditions.

1. This permit is hereby granted for a term of \_\_\_\_\_ years, beginning \_\_\_\_\_, \_\_\_\_\_, and ending \_\_\_\_\_, \_\_\_\_\_, but revocable at will by the Secretary.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

2. The grantee shall pay rental to the Department of the \_\_\_\_\_ in the amount of \_\_\_\_\_ (\$ \_\_\_\_\_), payable \_\_\_\_\_ to the order of the Finance and Accounting Officer, \_\_\_\_\_ District and delivered to \_\_\_\_\_.

3. All correspondence and notices to be given pursuant to this permit shall be addressed, if to the grantee, to \_\_\_\_\_ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division \_\_\_\_\_, 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. The use and occupation of the premises shall be without cost or expense to the Department of the \_\_\_\_\_, and under the general supervision and subject to the approval of the (District Engineer) (Installation Commander), \_\_\_\_\_ (District) (Installation), or his duly authorized representative, hereinafter referred to as said officer and to such rules and regulations as may be prescribed from time to time by said officer.

5. The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the Department of the \_\_\_\_\_.

6. The grantee shall, at its own expense and without cost or expense to the Department of the \_\_\_\_\_, maintain and keep the premises-in good repair and condition.

7. Any interference with the use of or damage to property under control of the Department of the \_\_\_\_\_ incident to the exercise of the

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CHAPTER 9

FEDERAL LEGISLATIVE JURISDICTION AND ANNEXATION

SECTION I. FEDERAL LEGISLATIVE JURISDICTION

9-1. Federal Legislative Jurisdiction. AR 405-20 sets forth the policies, procedures and responsibilities relating to the acquisition and retrocession of Federal legislative jurisdiction over land areas within the United States under the control of the Department of the Army and the Department of the Air Force.

SECTION II. ANNEXATION

9-2. Purpose. This section sets forth procedures attributable to those situations where a political subdivision of a State seeks to alter its existing boundaries to include real estate under the control of the Department of the Army. These guidelines will also be used by the Corps of-Engineers in processing annexation of lands under control of the Department of the Air Force.

9-3. Applicability. This section is applicable to all Division and District Engineers having real estate responsibilities.

9-4. General:

a. Political subdivisions, including municipalities, usually acquire the power to tax private persons and private property within the annexed area. To some extent, military personnel and Government instrumentalities (such as Post Exchanges) are exempt from this taxation where the land is under exclusive Federal jurisdiction. Local taxes may be imposed on Army contractors and concessionaires or others, which may result in their charging higher prices to the Department of the Army or Army personnel. In some instances, taxes may be imposed on dependents of military personnel as Congress has enacted laws authorizing such taxation.

b. Annexation does not change the kind of Federal jurisdiction held over Army-controlled land and does not result in any interference with official Army activities or functions because these lands are protected by Federal constitutional immunity (see AR 405-20). However, upon annexation of lands, the annexing State political subdivision assumes the responsibility for providing a number of governmental functions and services which it may not be authorized to offer under its State constitution and statutes if the Federal government holds and exercises exclusive legislative jurisdiction over the lands involved. This element should be fully explored and explained to the community proposing annexation.

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9-5. Procedure.

a. General. Upon receipt of information or official notice that a political subdivision is in the process of undertaking an annexation, and also upon receipt of a request by a political subdivision of a State for annexation, the initial action will be taken by the commanding officer of the installation concerned as to military real property and by the District Engineer as to civil works lands.

b. Military Lands. The installation commander involved will immediately request the appropriate District Engineer to prepare an Annexation Assembly and Evaluation Report in quadruplicate. The installation commander will submit the report in triplicate through channels, with comments and recommendations, to the major field commander, chief, or executive with command responsibility, who will forward the assembly, with his comments and recommendations, through the Chief of Engineers (DAEN-REM) and The Judge Advocate General, in turn, for submission to the Assistant Secretary of the Army (Installations, Logistics and Financial Management), for determination of Army position. The District Engineer will forward to the Division Engineer, simultaneously, a copy of the Annexation Assembly and Evaluation Report. When Air Force land is involved, Annexation Assemblies and Evaluation Reports prepared by the District Engineer will be referred to Headquarters, U.S. Air Force with recommendation for determination by the Secretary of the Air Force.

c. Civil Works Lands. The District Engineer having real estate responsibility for the area involved will immediately notify HQDA (DAEN-REM), WASH DC 20314 by electrical message, with information copies to the appropriate Division Engineer, when he learns or receives notice that an annexation proceeding is in process or has occurred. He will prepare an Annexation Assembly and Evaluation Report for submission through the Division Engineer to HQDA (DAEN-REM) with comments and recommendations. The Chief of Engineers will evaluate the Annexation Assembly in the light of Departmental policy and forward it with recommendations to the Assistant Secretary of the Army (Installations, Logistics and Financial Management) for determination of Army position.

9-6. Annexation Assembly. The District Engineer's annexation assembly with report will be prepared in coordination with the installation commander when Army or Air Force military real property is involved and with internal coordination when civil works real property is involved. The assembly will be furnished in triplicate and will include all information and exhibits to be considered in the determination of the Army position pursuant to policies and requirements stated in AR 405-25. It should include the following:

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a. Background material: Identification of area to be annexed, present use and purpose and the political subdivision of the particular State proposing or undertaking annexation.

b. Details of acquisition and kind of title held by the Government in the property proposed to be annexed.

c. Kind of legislative jurisdiction held by the Federal government over the property proposed for annexation and copies of instruments of cession, if any.

d. Citations and copies of State annexation laws and, where applicable, city ordinances.

e. A map of the general area, showing the present boundaries of the annexing political subdivision and the area proposed for annexation, which is color-coded to indicate kind of jurisdiction. A real estate drawing or map of the Government installation or project with the portion involved in the annexation proceeding color-coded to reflect both the boundaries of area to be annexed and the type of jurisdiction. A general State highway map color-coded to reflect the Government lands of the entire installation or project, the lands proposed for annexation, the geographical limits of both the present political subdivision and those of the political subdivision after annexation.

f. The source of utilities presently being provided by outside sources to the installation or project and the probable future source of utilities.

g. A determination whether annexation would adversely affect the mission of the Army at the installation or project concerned. Where applicable, this should include an in-depth discussion of problems which might arise because of disruption of arrangements for utilities and sanitation services, fire and police protection, schools, street maintenance, snow removal, or other services provided by local governments or by utility companies, and the probability of increased or decreased costs for services and utilities. Include also any probable adverse effects on military and civilian personnel and their dependents from municipal taxation, licensing or other prospective municipal actions, including any increased costs or prices, which might result from the annexing unit imposing taxes on Army concessionaires, contractors, or lessees.

h. A determination whether annexation would affect the master plan for the installation or project.

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i. A determination that actual benefits to the installation or project or its personnel will result from annexation, such as the provisions Of municipal fire protection, maintenance of streets, snow removal police services, use of schools, sanitation services and the costs therefor, and utility services or reduced utility rates. Definite information of the annexor's capability to furnish such services should be provided by the annexing political subdivision.

j. Comments on the effect, if any, on the budget of the installation or project which might result from the annexation, such as higher prices charged by Army contractors or others due to municipal taxation or higher costs for services resulting from annexation.

k. Reasons advanced by the State political subdivision for annexing the Government land.

l. Interest in, approval of, or objection to the proposed annexation, if any, of other political subdivisions, including the view of the political subdivision in which the land involved presently lies.

m. Conclusions and recommendations regarding the annexation.

9-7. Approved Annexation Requests. Upon receipt of notice of approval of a request for annexation of land, and with direction by the Department of the Army, or Department of the Air Force, as appropriate, the District Engineer will communicate with the appropriate government official of the annexing political subdivision and execute the required Army or Air Force consent to the action or, if required, prepare the necessary document or petition for annexation in a form mutually considered to be appropriate. Upon completion of the annexation, the District Engineer will furnish three copies of all pertinent documents reflecting the complete annexation to HQDA (DAEN-REM) WASH DC 20314 and if military land is involved, one copy to the commander of the annexed installation.

9-8. Public Access to Information. Division and District Engineers may make available for inspection factual information reflecting annexation of Army or Air Force lands, such as letters, public documents evidencing annexation, not of public record; together with maps, descriptions, title opinions, and property records of these lands. A schedule of fees to be charged for copying, certification, and search of records, as authorized in 5 U.S.C. 552, is furnished in AR 340-17. \*

TABLE 9-1

REGULATORY REFERENCES

AR 405-20

AR 405-25



TABLE 9-1

REGULATORY REFERENCES

AR 405-20

AR 405-25

## CHAPTER 10

## REAL ESTATE CLAIMS

## SECTION I. GENERAL

\* 10-1. Purpose and Scope. This chapter describes the procedures to be followed by the Division and District Engineers in the administration of claims pertaining to real estate. This includes the following classes of contractual claims:

a. Claims for rent and payments for janitor, custodial, utility and other similar contractual services.

b. Claims for damages to real property founded upon express or implied contract.

c. Claims for permanent or recurring damages to real property situated in the United States or its territories resulting in the Government taking of an interest in real estate for which compensation must be made pursuant to the Fifth Amendment to the Constitution.

All real estate claims based on express or implied contract or involving a taking under the Fifth Amendment to the Constitution will be processed to the General Accounting Office pursuant to AR 405-15.

## SECTION II. AUTHORITIES

10-2. Statutory Authorities.

a. General. Except as otherwise provided by law, all claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office (GAO). (Title 31, United States Code, Section 71)

b. Limitation of Time on Claims and Demands. Every claim or demand (except a claim or demand by any state, territory, possession or District of Columbia) against the United States cognizable by GAO under a and b of this paragraph, shall be forever barred unless such claim, bearing the signature and address of the claimant or of an authorized agent or attorney, shall be received in GAO within six years after the date such claim first accrued; provided, that when a claim of any person serving in the military or naval forces of the United States accrues in time of war, or when war intervenes within five years after its accrual, such claim may be presented within five years after peace is established. (Title 31, United States Code, Section 71a)

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c. Other Claims Acts.

(1) Military Claims Act - Title 10, United States Code, Section 2733, authorizes administrative settlement of certain claims for property loss, personal injury or death incident to noncombat activities for the Departments of the Army, Navy or Air Force in an amount not over \$25,000. That Act is implemented by Chapter 3 of AR 27-20. Claims cognizable under the Act include claims for damage to real property occupied under a lease, express or implied, or occupied otherwise. This includes damages arising out of trespass or other tort, even though claimed as rent. Claims under the Military Claims Act must be presented in writing within two years after they accrue.

(2) The Meritorious Claims Act - When a claim is presented to GAO which has merit or one which GAO would allow except that there is no statutory basis for payment, the Meritorious Claims Act (Title 31, United States Code, Section 236) permits the Comptroller General of the United States to submit the claim to Congress by a special report containing the material facts and his recommendation thereon.

10-3. Regulations.

a. Contractual Claims. AR 405-15 is applicable to real estate claims founded upon express or implied contract and which may be settled administratively by the Division or District Engineer or which must be submitted to GAO for settlement pursuant to Title 31, United States Code, Sections 71 or 236.

b. Other Claims. AR 27-20 is the Army's general claims regulation and pertains principally to claims of a noncontractual nature. Certain claims may be processed under either AR 27-20 or AR 405-15 as specified therein.

c. Air Force Claims.

(1) Under basic agreements between the Departments of the Army and Air Force, as stated in AR 405-5, the latter will use the services of the Chief of Engineers for the acquisition and disposal of real estate.

(2) These services include processing of Air Force real estate claims founded upon express or implied contract which the Army would recognize under AR 405-15 or AR 27-20. Any claims which cannot be settled in the field will be reported through channels to the appropriate Air Force Major Command for further instructions. If submission to GAO is necessary, the case file will also be transmitted to HQDA (DAEN-REM) WASH DC 20314. \*

- \* 10-4. Delegation of Authority. Under the delegation of authority provided in paragraph 3-14b of AR 27-20, Division and District Engineers and the Chief of Engineers are authorized to settle claims in the amount of \$5,000 or less. All claims under Chapter 3 of AR 27-20 exceeding this authority, and all disapprovals of such claims must be submitted to the Army Claims Service through command channels.

### SECTION III. GUIDANCE

#### 10-5. Guidance.

- a. Avoidance of Claims. It is the desire of the Department of the Army that efforts be made to minimize the number of claims presented. The prompt negotiation of a lease will often avoid the subsequent submission of a claim for use and occupancy of real property.
- b. Avoidance of Duplicate Payments. Care should be taken to avoid duplicate payment of a claim. This possibility exists particularly where litigation is pending involving the same subject matter as contained in the claim. In this case, payment of the claim should be withheld pending outcome of the litigation.
- c. Claims for Rent or Other Payments. Claims for rent or other payments of a contractual nature, regardless of amount, arising out of the use and occupancy of real estate will be processed under AR 405-15 subject to the limitations set forth in sub-paragraph e below.
- d. Claims Accrued Over Four Years. Any claim cognizable by the GAO under Title 31, United States Code, Section 71 which is received four years or more after accrual of right of payment, and which cannot promptly be approved and paid in the full amount claimed because of the time required for adjudication, will immediately be referred to GAO through appropriate channels in order to permit their filing in that office within the legally permissive period of six years. After recording, the claim will be returned for processing.
- e. Mixed Claims. Claims for rent, damages, or other payments involving the acquisition, use, possession or disposition of real property or interests therein by and for the Department of the Army are generally payable under AR 405-15. Claims for damage to real property and incidental personal property damage during noncombat activities of the Army are payable under either AR 405-15 or AR 27-20. Such claims usually arise during a maneuver or training exercise or an emergency operation. If the property is occupied pursuant to a lease or use permit and O&M funds are available for payment of damage claims, AR 405-15 should be utilized. Care should be exercised to \*

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\* avoid splitting the claim and considering the real property aspect under AR 405-15 and the incidental personal property part under AR 27-20. Rather, efforts should be made to consider the entire claim under AR 405-15. If such is not possible, or if O&M funds are not available, a statement to this effect should be included in the file and the claim or remainder thereof should be processed under Chapter 3, 10, or 13 of AR 27-20.

SECTION IV. SUBMISSION TO GAO

10-6. Claims to be Submitted to GAO.

a. The "GAO Policy and Procedures Manual for Guidance of Federal Agencies" lists the type and classes of claims to be submitted and provides the procedures which must be followed for claims submitted to GAO.

b. Section 5 of the manual reads as follows:

"5.1 CLAIMS REQUIRED TO BE SUBMITTED TO CLAIMS DIVISION

"The following classes of claims may not be paid or denied administratively, but must be forwarded to the Claims Division for adjudication, unless otherwise specifically provided by law:

"(1) Claims which involve doubtful questions of law or fact, except those under \$25, as provided in section 5.3 of this title, and claims which have been the subject of an advance decision of the Comptroller General, in which case a reference to the decision must appear on the voucher supporting the payment;

"Note: When a claim contains items which involve doubt and items which the agency can settle administratively, only the doubtful portions over \$25 should be referred to GAO for settlement.

"(2) Claims, regardless of doubt, which are required by statute, by regulation appearing in other chapters of this title, or by decision of the Comptroller General, to be settled in the General Accounting Office before payment is made or denied;

"(3) Reclaims of items previously denied by the administrative agency, unless it is determined administratively that the action taken was clearly in error and properly can be corrected by the agency; and

"(4) Claims which appear to be barred by an applicable statute of limitation at the time of receipt by an administrative agency."

\*

\* "5.2 DOUBTFUL CLAIM DEFINED

"A claim is doubtful when in the exercise of reasonable prudence either a person having final responsibility for deciding appropriate administrative action or the person who, in accordance with applicable statutes, will be held accountable if the claim were paid and then found to be incorrect, illegal, or improper, is unable to decide with reasonable certainty the validity and correctness of the claim."

"5.3 SIMPLIFIED PROCEDURE FOR DOUBTFUL CLAIMS OF \$25 OR LESS

"Claims of \$25 or less, involving doubtful questions of law or fact, may be settled by the agency in which the claim arose, relying upon written advice from an agency official designated by the head of each department or agency to provide such advice. If paid, a copy of the document containing such advice should be attached to the voucher, and the propriety of any such payment will be considered conclusive on the General Accounting Office in its settlement of the accounts involved."

10-7. Procedure.

a. Form of Claim.

(1) No specific form is required for claims submitted to GAO. A claim will be considered only when presented in writing over the signature and address of the claimant or over the signature of the claimant's authorized agent or attorney and when a demand is made for a specified sum of money. Standard Form 95, Claim For Damage, Injury, or Death, may be used if it fits the facts of the claim.

(2) A claim filed by an agent or attorney must be supported by a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the claimant.

b. Real Estate Claims Officers. Division and District Engineers will appoint commissioned officers or qualified civilian employees as real estate claims officers and assistant real estate claims officers. AR 27-20 contains appointment procedure for claims cognizable both under that regulation and AR 405-15.

c. Investigations. Claims officers will obtain all evidence necessary for a full consideration of the claim. In the investigation of claims arising out of Government use and occupancy of real property, sufficient evidence will be obtained to establish with certainty the following general points: \*

\*

(1) The interest of the claimant and other in the property. Use of ENG Form 900, Tract Ownership Data, is suggested.

(2) Dates and circumstances under which occupation of premises occurred and date of vacation. If under a lease, state the lease number and date of lease.

(3) If claim is for rental without formal lease or agreement, ENG Form 869-R, 15 Percent Valuation Certificate, will be required. The GSA requires the data set forth in ENG Form 869-R, or equivalent information. In the case of farm lands, rental value of similar lands is required.

d. Transmittal of Reports and Assemblies.

(1) Preparation of Reports. Upon conclusion of the investigation, the claims officer will prepare a report setting forth completely but briefly the nature and amount of the claim, all pertinent facts necessary to determine the rights and liabilities of the claimant and the Government, and the claims officer's conclusions and recommendations as to allowance or disallowance of the claim in whole or in part and reasons therefor, including citations to any laws, court or administrative decisions which would substantiate the recommendation. The report will be reviewed by the Division or District Counsel and Counsel's recommendations will be included with the report. The original, photostatic reproduction, or true copy (indicated as such and signed by the officer or civilian preparing the same) of all supporting papers, including transcript of any hearing or proceedings held, will be attached to each number of the claims officer's report. The original written claim signed by claimant or claimant's duly authorized agent accompanied by a power of attorney must be included in the claims assembly and will be attached to the original of the claims officer's report.

(2) Assemblies. Each copy of the claims officer's report, together with supporting documents, will be assembled in the following order, with such variations or additions as the circumstances require, and be fastened together with a jacket cover or heavy paper backing by an Acco or similar fastener;

(a) Claims officer's report.

(b) Written claim and amendments, if any. The original copy of the claim must be included.

(c) Order appointing claims officer.

(d) Copy of lease, agreement, or permit under which premises were occupied-

(e) Copies of initial and terminal survey or condition report. \*

\*

(f) Pertinent bills, invoices, reports, etc., evidencing payments by claimant.

(g) Such maps diagrams and plats, when pertinent, as will aid in a clear understanding of claim.

(h) Any other pertinent data relating to the claim. Enclosures will be marked as exhibits with letter designations, A, B, C, etc., in the order that they appear in the assembly. Inclosures to exhibits will be designated in the following manner: Inclosure 1, Exhibit A; Inclosure 2, Exhibit B, etc.

(3) Transmittal. The claims assembly being submitted to GAO for settlement will be transmitted through channels to HQDA (DAEN-REM) WASH DC 20314 for review and processing to GAO. Letters of transmittal will furnish fiscal information required by AR 405-15 and will include as a minimum, a citation of funds to be charged in the event payment is allowed by the Comptroller General and a statement that the claim will not be paid except pursuant to certification in the name of the Comptroller General. If payment of the claim, in whole or in part, is recommended, a certified voucher for the amount of recommended payment must be included with the report, stating the complete citation of funds to be charged.

10-8. GAO Settlement of Account.

a. Certificate of Settlement of Account. When GAO authorizes payment of a claim in any amount, a Certificate of Settlement of Account is included with the material returned to the Department of the Army. Any Certificate of Settlement of Account received by the Office of the Chief of Engineers will be forwarded through channels to the Division or District Engineer originating the claims officer's report. The Division or District Engineer will notify the claimant and prepare the appropriate real estate instruments to effect payment in accordance with the decision of GAO. The original and two copies of the Certificate of Settlement of Account, the voucher, and the real estate instruments prepared will be forwarded to Commander, U.S. Army Finance and Accounting Center (USAFAC), ATTN: FINCY-AB, Indianapolis, Indiana 46249. Copies will be retained in the files of the office of the originating Division or District Engineer.

b. Denial of Payment of Claim. If payment of a claim is denied by GAO, the Division or District Engineer will notify the claimant and annotate the file accordingly.

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10-9. Resubmittal or Appeal of Claim. Any resubmittal or appeal of any claim denied wholly or partly by GAO will be processed like a new claim, except that the investigation and report will be submitted only on new matters raised on appeal or reconsideration unless otherwise requested by OCE or GAO. A copy of the original assembly will be forwarded with the transmittal to HQDA (DAEN-REM) WASH DC 20314.

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TABLE 10-1

REGULATORY REFERENCES AND OTHER PERTINENT MATERIAL

Title 31, United States Code, Section 71

Title 31, United States Code, Section 236

Title 10, United States Code, Section 2733

GAO Policy and Procedures Manual for Guidance of Federal Agencies --  
available from US General Accounting Office, Washington, D. C. 20548

AR 27-20

AR 405-15

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AR 405-15

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## CHAPTER 11

## DISPOSAL

## SECTION I. GENERAL

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11-1. Purpose. This chapter sets forth general authority, responsibilities, procedures, methods, and guidance for the performance of real property disposal functions.

11-2. Applicability. This chapter is applicable to Division and District Engineers having real estate responsibilities.

11-3. Authority. The major portion of real property disposal actions performed by the Corps of Engineers is predicated on authority derived from the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq.), hereinafter referred to as the Federal Property Act, and the rules, regulations and delegations of authority issued by the General Services Administration (GSA) thereunder. Other authorities relating to the disposal of military real property are found in AR 405-90. The Army and Air Force Basic Real Estate Agreements covering disposal of Air Force real estate are found in AR 405-5 and AFR 87-15.

11-4. Rules and Regulations of the General Services Administration (GSA). Under the rules, regulations and delegations of authority issued by GSA under the Federal Property Act, the military departments are authorized to dispose of the following:

a. Real property under its control (except land withdrawn or reserved from the public domain), together with the improvements thereon and related personal property, which has a value of less than \$1,000.

b. Leases, permits, licenses, easements, or similar interests, including Government-owned improvements on the premises, unless it is determined that the interest should be included with the disposal of other property being reported to GSA for disposal.

c. Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

d. Standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land.

11-5. Disposal Priorities. Consistent with the best interest of the United States and with applicable laws and regulations, the following priorities should be followed in disposing of real property no longer needed by the Departments of the Army and Air Force: \*

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a. Transfer to other Department of Defense agencies and the U.S. Coast Guard.

b. Transfer to other Federal agencies.

c. Conveyance to eligible non-Federal agencies.

d. Sale to the public.

11-6. Environmental Considerations. The National Environmental Policy Act of 1969 (NEPA), as amended, (42 U.S.C. 4321 et seq.) directs that a five point Environmental Impact Statement (EIS) be prepared, circulated among interested Federal, State and local agencies, and filed with the Environmental Protection Agency (EPA) before a major Federal action is taken which affects the quality of the human environment. This may include some disposals. No major disposal action will be undertaken where the Corps of Engineers is the disposal agency, or is acting for the disposal agency, until the required EIS has been submitted to the EPA unless a "Finding of No Significant Impact" (FONSI) has been prepared for the action, or if the action is classified as a "categorically excluded" item because it has no significant effect on the environment. The Environmental Assessment is subject to review and approval in accordance with instructions found in AR 200-1 and AR 200-2 (to be printed) for military real property disposal, and the forthcoming Engineer Regulation for civil works real property disposal. Where property is reported to GSA for disposal, GSA is responsible for compliance with NEPA.

11-7. Preserving Historic Landmarks and Properties. Purposes of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470) and Executive Order 11593, Protection and Enhancement of the Cultural Environment (13 May 1971) have been set forth in Chapter 8, para 8-2b, supra, and the authorities there cited also apply to the disposal of real property. Specific policy guidance in connection with disposals having historic significance is published in AR 200-1 and AR 405-90 for military real properties and in ER 1105-2-460 for civil works real properties.

a. The Criteria of Adverse Effect on eligible properties may occur under conditions which include but are not limited to:

(1) Destruction or alteration of all or part of a property.

(2) Isolation from or alteration of the property's surrounding environment.

(3) Transfer or sale of a property without adequate conditions or restrictions regarding preservation, maintenance, or use.

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b. It is normally intended that the agency responsibilities under Section 106 of the National Historic Presentation Act of 1966 and Executive Order 11593 run concurrently with the NEPA review process. However, obligations pursuant thereto are independent from NEPA requirements and must be complied with even when an environmental impact statement is not required.

11-8. Compliance with State Coastal Zone Management Programs.

Paragraph 8-2c of Chapter 9, supra, outlines the provisions of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.). These provisions also apply to the disposal of land or water resources when the action is subject to the Federal consistency requirements of the Act and when the disposal is consistent with an approved state management program.

11-9. Protection of Wetlands. The requirements of Executive Order 11990, Protection of Wetlands, 42 Fed. Reg. 26961, (24 May 1977) are applicable to the disposal of Federal lands and facilities, and the policy and procedures implementing the order are as set forth in paragraph 8-2d of Chapter 8, supra.

11-10. Floodplain Management. The requirements of Executive Order 11988, Floodplain Management, 42 Fed. Reg. 26951, (24 May 1977) and its implementation are outlined in paragraph 8-2e of Chapter 8, supra. In accordance with ER 1165-2-26, paragraph 13, when civil works property in floodplains is proposed for disposal to non-Federal public or private parties, the Corps of Engineers shall reference in the conveyance those uses that are restricted under Federal, State and local floodplain regulations and attach other restrictions to uses of the property as may be deemed appropriate.

11-11. Nondiscrimination Covenant. As required by Section 101-47.307-2 of the Federal Property Management Regulations (FPMR), substantially the following covenant will be included in all deeds or other disposal instruments to public bodies when the sale is negotiated under Section 101-47.304.9(4) of the FPMR:

The grantee covenants for itself, its heirs, successors, and assigns and every successor in interest to the property hereby conveyed, or any part thereof, that said grantee and such heirs, successors, and assigns shall not discriminate upon the basis of race, color, religion, age, sex, handicap, or national origin in the use, occupancy, sale, or lease of the property, or in their employment practices conducted thereon. The covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it \*

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remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

11-12. Disposition of Proceeds from Disposal.

a. Land and Water Conservation Fund. Except as provided in b and c below, and unless otherwise obligated by existing or future acts of Congress, all proceeds received from any civil works project disposal of surplus real property or related personal property under the Federal Property Act, shall be covered into the land and water conservation fund in the Treasury of the United States (16 U.S.C 460L-5(a), FPMR Section 101-47.307-6). This includes the net proceeds from the sale of timber and structures.

b. Department of Defense Family Housing Management Account. Section 501(b) of Public Law 87-554, as amended, 42 U.S.C 1594a-1, provides that the proceeds from the disposal of family housing of the Department of Defense, including related land and improvements, shall be transferred to Family Housing Management Account, Defense. This does not include civil works housing, or houses on land acquired for military purposes unless the housing was specifically acquired to house military personnel. This means that excess military family housing and related land and improvements should be reported to GSA on Standard Form 118 separate and apart from Reports of Excess for other portions of an excess installation. Particular care should be taken to ensure that the following statement be included in each such report of excess to GSA:

"Net proceeds from the sale of family housing, including related land and improvements, shall be remitted to the Department of Defense for deposit to Family Housing Management Account, Defense (97 X 0700)."

c. Proceeds from Sale or Transfer of Property Acquired. Under Section 5 of the Act of 13 June 1902, as amended (33 U.S.C. 558), the proceeds from a sale or transfer of buildings or other improvements on river and harbor improvement projects may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, which are on nonexcess land come within the purview of this law. Where both land and buildings or other improvements are excess, proceeds from the sale of land and buildings, or either one, will be deposited in the land and water conservation fund as provided in paragraph a, above.

11-13. Reserved.

11-14. Reserved.

11-15. Reserved.

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SECTION II. PROCEDURE FOR PLACING REAL  
PROPERTY IN EXCESS STATUS

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11-16. Army Military Real Property. Military real property, including industrial real property, under the control of the Department of the Army will be placed in excess status as outlined in AR 405-90.

11-17. Air Force Military Real Property. Military real property under the control of the Department of the Air Force will be placed in excess status as outlined in AFR 87-4.

11-18. Army Military Leased Property.

a. Department of the Army command installations or parts thereof held by lease, permit, or other similar right of occupancy, excess to the needs of the using service will be reported direct to the Division or District Engineer for disposition wherever essential continuing operations of the installation will not be adversely affected, and the annual rental does not exceed \$50,000.

b. Division Engineers are authorized to make the finding that leased real estate of the Corps of Engineers, where essential continuing operations of the installation are not adversely affected, and the annual rental does not exceed \$100,000, is excess and to take necessary action to cancel or otherwise dispose of leases.

c. Any leased command real estate not coming within the category outlined in a and b above will not be considered by the Division Engineer as excess until notice is received from the Chief of Engineers (COE) that the property has been placed in excess status in accordance with AR 405-90.

11-19. Army Civil Works Real Property.

a. Fee-Owned Land and Easements.

(1) Action by Division/District Engineer (DE). When the DE is of the opinion that real property acquired in fee or easement for a civil works project is no longer required for such purpose, he will submit a report and recommendation to HQDA (DAEN-REM) WASH DC 20314, accompanied by:

(a) A brief description of the character or nature of the land with an appropriately marked map showing the approximate acreage consideration to be excess. Detailed perimeter descriptions need not be procured or furnished with the report and recommendation for exessing.

(b) Description of buildings and improvements.

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(c) Information as to circumstances that might hinder or prevent disposition, e.g. remoteness of location, unfavorable topography, and lack of legal access.

(d) Information as to when and how the property was acquired.

(e) Information as to the estate which the Government has in the land, reservations and exceptions in and to the Government's title, and outstanding interests granted by the Government or reserved or excepted in the acquisition of the land, will be stated with particularity. The map or plat will delineate any grant, exception or reservation, such as telephone, telegraph, electric transmission, oil, gas, and water lines.

(f) Purchase price of lands (estimate if only a portion of original tract), buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.

(2) Action by the Office of the Chief of Engineers. When the value of an easement interest reported pursuant to (a)(1) above does not exceed \$1,500, OCE will make the final determination of excess and authorize action accordingly. In the case of fee-owned land regardless of value, or easement interests having a value in excess of \$1,500, when OCE finds that no requirement for the property exists, a recommendation will be made to the Secretary of the Army that authority be granted for disposal of the property.

b. Leaseholds. When the DE is of the opinion that real property acquired by lease for a civil works project is no longer required for such purpose, and after screening the property for other Federal requirements in accordance with Section III of this Chapter, he will take necessary action to terminate the lease in accordance with the procedure outlined in Section X.

11-20. Reserved.

11-21. Reserved.

11-22. Reserved.

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SECTION III. SCREENING, REASSIGNMENT AND  
TRANSFER OF REAL PROPERTY

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11-23. Screening for Defense Needs. Real property which becomes excess to the needs of any element of the Army or Air Force will be screened against requirements of other Department of Defense (DOD) agencies and the U.S. Coast Guard in order to promote and obtain the most efficient and complete utilization of real property before disposing of it.

a. Procedure for Screening Army Military Property. Screening for defense requirements with respect to base closures publicly announced by the Secretary of Defense or Secretary of the Army which result in excessing of real property will not be accomplished unless directed by HQDA (DAEN-ZCI) WASH DC 20314. Instructions to screen will be included in the disposal directive transmitted to the DE when such action is desired. In the absence of such instructions, it is presumed that DOD has negatively evaluated all possible requirements of DOD agencies before making the public announcement.

(1) Pre-owned Land. Screening is required in all other cases unless specifically directed otherwise. Property will be screened simultaneously against other Army requirements, and for Navy, Air Force, Coast Guard, and Defense agency requirements. The property should also be screened against known Department of the Army Civil Works requirements.

(a) The DE will dispatch a screening message promptly upon receipt of an excess directive or recommendation pursuant to AR 405-90. The sample screening message (Figure 11-1), or a letter similar in form and content will be used without substantial deviation.

(b) All action addressees and parties listed for information on Figure 11-1 will be included, except that Air Force real property in Hawaii will be screened with the Commander-in-Chief, Pacific Air Forces, in lieu of HQ, USAF. The appropriate major Army command, when not the using command, will be listed as an action addressee.

(c) In no case will screening be deferred unless authorized by DAEN-REM. At the expiration of the screening period (normally 30 days) a report of results will be forwarded and subsequent action initiated as provided in paragraph e below.

(d) For certain cases, most frequently in connection with base realignments or Executive Order 11954 surveys, accelerated screening procedures are set out in AR 405-90.

(2) Capehart and Wherry Housing Projects. Due to the complicated financial arrangements under which such projects are constructed and \*

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operated, the disposal thereof, whether separately or as a part of a larger installation, requires careful study. In order to assure maximum time in which to discover and evaluate problems arising in each of such cases, the DE will notify HQDA (DAEN-REM) WASH DC 20314, by teletype, immediately upon receipt of information of an installation commander's recommendation of excess involving Capehart and acquired Wherry housing projects. Included with this notice will be advice on the source of utilities and any problems of which the DE may be aware.

b. Leaseholds, Buildings and Improvements. Leaseholds, buildings, and other improvements will not be screened formally within the Department of the Army (DA). When such property is made available or disposal under AR 405-90 and Section II of this chapter, it will be screened by the responsible DE with the Air Force, Coast Guard, and Navy and against known Army military and civil works requirements within the Division. Screening with the Air Force of leaseholds having an annual rental in excess of \$50,000 will be addressed to HQ, USAF. Other Air Force screening under this subparagraph will be with local Air Force installations. Screening with the Navy will be addressed to the appropriate naval district. Screening with the Coast Guard and Defense agencies will be with the local representatives of those agencies. Property under the jurisdiction of GSA which has been assigned to the DA or Department of the Air Force (DAF) for use is not subject to this screening procedure, but the DE will determine whether such property would serve any current unfulfilled real property acquisition directives pending in his office.

(1) Family Housing Leases. Family housing leases under authority of Section 515, public Law 84-161, 69 Stat. 352, as amended and extended, will be terminated promptly upon determination that the property is excess to the needs of the using command, without screening for other requirements.

(2) Limit Screening. Screening which would serve no useful purpose is to be avoided. Screening of buildings and improvements on sites needed for approved construction should be limited as construction schedules require. The DE will take timely action to minimize additional cost and rental payments due to screening and may, at his discretion, limit screening of leaseholds and improvements to be removed from the site to informal notices to appropriate local. Defense agencies. The DEs are authorized to waive screening of nonassignable or short term interests in real property when such screening would serve no useful purpose.

(3) Notice of Restoration Requirements. All screening notices of leaseholds and improvements available for off-site removal will indicate that transferees will be required to perform necessary site \*

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restoration as a prerequisite to obtaining transfer and will reflect the extent of restoration required.

c. Procedure for Screening Civil Works Property. Buildings and improvements, leaseholds, and fee-owned land that have been determined excess to civil works requirements in accordance with this Chapter will be screened with the appropriate major Army and local service commanders, and with the Navy, Air Force, Coast Guard, and Defense agencies. (GSA property assigned to the Army for use is not subject to formal screening hereunder but will be screened against known acquisition directives or requirements in the DE office.) Except to the extent that DEs determine they are inappropriate, screening procedures for civil works property will be the same as for Army military property.

d. Screening of Air Force Property. HQ, USAF and the major Air Force commands screen Air Force real property before authorizing disposal action by the Corps of Engineers in accordance with AFR 87-4. DEs will act on requests for disposal action on buildings and improvements and leased property received directly from major Air Force commands which conform with AFR 87-4. Disposal directives on fee-owned land and easements will be issued by HQ, USAF and referred through DAEN-REM.

e. Report on Screening and Related Actions. Immediately following the screening of fee-owned land, the DE will forward to DEAN-REM a report of the results of the screening (with comments and recommendations where a further Army or other Defense requirement is indicated). This report will serve as one of the basis of a determination whether the property is excess to the requirements of the DOD. Upon dispatch of the screening report, the DE will proceed with further action pursuant to Sections IV and VIII of this Chapter. No report on screening of civil works property is required unless there is a request for transfer or reassignment of the property screened.

f. Property with an Estimated Value of \$100,000 or Less. If the property has an estimated value of \$100,000 or less, the determination that the property is excess to Army requirements will be made by the Department of the Army without referral to DOD, and the Chief of Engineers will direct the DE accordingly. Upon receipt of this disposal directive, prompt action will be taken to report the property to GSA or take other disposal action as appropriate.

g. Estimated Value in Excess of \$100,000. If military property has an estimated value in excess of 100,000, it must be reported to the Armed Services Committees of Congress pursuant to Title 10, United States Code, Section 2662. The final Army determination of excess and recommendations to the Assistant Secretary of Defense (MRA&L) to \*

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approve the proposed disposal report to the Armed Services Committees by the Chief of Engineers, utilizing Real Estate Disposal Report, ENG Form 2187R, are combined in a single action. The Chief of Engineers will advise of DOD approval of the proposed disposal when made. Upon receipt of this information responsible Division and District Engineers will furnish GSA a preliminary report of excess. The preliminary report of excess will be finalized, upon receipt of instructions from the Chief of Engineers. This procedure is also applicable to Air Force disposals. If the preliminary report of excess is sufficiently complete and accurate, it may be finalized by letter or simple statement on Standard Form 118, Report of Excess Real Property.

h. Date of Excess for Reporting Purposes. From the above, it will be noted that where property has an estimated value in excess of \$100,000, the determination that the property is excess to the requirements of the Department of the Army is, in effect, made concurrently with the determination that the property is excess to the requirements of the DOD, or is approved for transfer to another military department. For all practical purposes, these determinations are best evidenced by the Assistant Secretary of Defense's approval of the proposed disposal. The date of approval may be used as the date the property was determined excess to Army requirements for reporting purposes.

11-24. Reassignment and Transfer Procedures. Reassignment refers to the changing of the administrative or command jurisdiction of real property from one command to another within the same military department. Reassignments may be accomplished by the Secretary or the staff without prior approval of the DOD or the Armed Services Committees of the Congress. Transfer refers to changing the jurisdiction for using and administering real property from one military department to another.

a. Reassignment Procedures - Army.

(1) Military. Reassignments of military real property are accomplished pursuant to a directive from DAEN-REM. These are not real estate disposal actions.

(2) Civil Works. Reassignments from civil works to military jurisdiction, and vice versa, are accomplished pursuant to directive or approval of the Secretary of the Army based on the recommendations of the Chief of Engineers.

(3) Information Required. Information to support recommendation for reassignments of military or civil real property to another using service of the Army, or to change the military or civil accountability within the Corps, will be furnished by the DE to DAEN-REM as follows: \*

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- (a) Reference to excess directive, if any.
- (b) Description and map of lands.
- (c) Date, manner, and cost of acquisition of land and improvements.
- (d) Reference to any encumbrances which might affect the reassignment and use.
- (e) Proposed effective date of reassignment.
- (f) Proposal new use.

b. Reassignment of Air Force Property. The Air Force Staff re-assigns real property within the Department of the Air Force.

c. Transfer of Military Property. Procedure for transfer among military departments is substantially the same as for transfer to other Federal agencies, and is set forth in Sections IX and XI of this Chapter.

11-25. Screening of Excess DOD Property for Nondefense Federal Agency Needs.

a. Screening by GSA.

(1) GSA will screen all excess real property reported to it for disposal, to determine whether the property is surplus to all Federal agencies.

(2) GSA will screen certain classes of excess real property which must be reported to it for screening, even though the Department of the Army will act as the disposal agency (Section V of this Chapter).

(3) Under the FPMR, Federal agencies are allowed 30 days to advise whether there is a tentative or firm requirement and another 30 days to determine and advise whether the tentative requirement is firm. Where there is a firm requirement, agencies are allowed an additional 60 days to prepare and submit a formal request for transfer pursuant to FPMR Section 101-47.203-7. The DE should obtain from GSA information on the status of screening if advice is not furnished promptly after expiration of the screening period.

b. Screening by Corps of Engineers. Properties which are not reported to GSA for disposal or screening will be screened by the DE with nondefense Federal agencies at the same time they are screened with Defense agencies. Screening of such properties will be limited to \*

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agencies that maintain local offices and may be done on an informal basis. The DE may waive screening of nonassignable and short term interests in real property when they determine such screening will serve no useful purpose. When screening discloses no requirement, the property will be determined surplus and disposed of.

11-26. Notices to Departments of Interior (DI); Health and Human Resources (HHR); Education; and Housing and Urban Development (HUD). Simultaneously with screening under paragraph 11-25b notices of availability will be given to DI of land suitable for public park and recreation or an historical monument site; to HHR and/or Department of Education property suitable for educational purposes or to protect the public health, and to HUD of property for housing and related facilities (Section 101-47.203.5 FPMR). Where such notice is given, these departments will be notified promptly if screening discloses another Federal requirement for the property. They will also be notified if there is no other Federal requirement and the property is determined surplus.

11-27. Source of Supply-Blank Forms. ENG Forms with the "R" suffix mentioned in this Chapter are available from local Forms Management Officers. All other forms mentioned in this Chapter are available through normal publications supply channels with the exception of Standard Form 118, Report of Excess Real Property, which will be procured directly from the General Service Administration.

11-28. Reserved.

11-29. Reserved.

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SECTION IV, CLEARANCES - ARMY MILITARY REAL PROPERTY

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11-30. Reports to the Armed Services Committees.

a. This Section describes the responsibilities of the Chief of Engineers in, and prescribes procedures for, clearing proposals for certain leasing and for disposals of Army real property with the Department of Defense and the Armed Services Committees of the Senate and House of Representatives. (The Air Force obtains its own clearance.) It is applicable to Division and District Engineers having military real estate responsibility. Clearance is not required for civil works properties.

b. Title 10 U.S.C. 2662, as amended by P.L. 96-418, 10 October 1980, provides, in part that:

"(a) The Secretary of a military department, or his designee, may not enter into any of the following listed transactions by or for the use of that department until after the expiration of 30 days from the date upon which a report of the facts concerning the proposed transaction is submitted to the Committees on Armed Services of the Senate and of the House of Representatives:

\* \* \* \* \*

"(3) A lease or license of real property owned by the United States, if the estimated annual fair market rental value of the property is more than \$100,000.

"(4) A transfer of real property owned by the United States to another Federal agency or another military department or to a State, if the estimated value is more than \$100,000.

"(5) A report of excess real property owned by the United States to a disposal agency, if the estimated value is more than \$100,000.

"(6) Any termination of modification by either the grantor or grantee of an existing license or permit of real property owned by the United States to a military department, under which substantial investments have been or are proposed to be made in connection with the property by the military department.

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"(c) This section applies only to real property in the United States, Puerto Rico, Guam, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. It does not apply to real property for river and harbor projects or flood control projects, or to leases of Government-owned real property for agricultural or \*



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grazing purposes or to any real property acquisition specifically authorized in a Military Construction Authorization Act.

"(d) A statement in an instrument of conveyance, including a lease, that the requirements of this section have been met, or that the conveyance is not subject to this section, is conclusive."

c. While not specifically required by 10 U.S.C. 2662, DOD has directed that all proposed relinquishments of public domain land will be reported to the Armed Services Committees where (1) the area exceeds 500 acres or (2) the estimated fair market value of the property exceeds \$100,000.

11-31. Clearance with the Armed Services Committees.

a. Prior to a final report of excess, or transfer to another Federal agency or a State, of any Government-owned military real property with an estimated value, including the value of existing improvements, in excess of \$100,000 the proposed disposal must be reported to the Committees. Also, proposals to outlease military real property for other than agricultural or grazing purposes must be reported if the estimated annual rental consideration is more than \$100,000. A formal appraisal for estimating value need not be made. Reports to the Committees pertaining to Army military real property are made by the Chief of Engineers, and copies of reports are furnished the two senators of the State, and the congressman of the district where the property is located. Reports pertaining to Air Force property are made by that department. DEs, upon request, will assist Air Force commands in assembling the required data.

b. For Army property, data will be furnished in the format shown in Figure 11-2 (ENG Form 2187-R, Real Estate Dispsal Report), and three copies forwarded to HQDA (DAEN-REM) WASH DC 20314. The information should be submitted within three weeks after dispatch of the screening message, or within three weeks after receipt of the disposal directive when screening is not required.

c. Clearance for transfer to another military department is obtained by the acquiring department. However, HQDA (DAEN-REL) obtains clearance for transfer of Army property to a nondefense Federal agency where authorized by law.

11-32. Prior Approval of Department of Defense.

a. DOD Instruction 4165.12 requires advance approval by the Assistant Secretary of Defense (MRA&L) of disposal actions requiring congressional committee clearance. DOD approval is also required for \*

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withdrawal from excess of real estate, or an interest in real estate, which has an estimated fair market value in excess of \$100,000

b. The data submitted pursuant to paragraph 11-31 will be used to obtain DOD approval of projects to be submitted to the Armed Services Committees. Appropriate information will be furnished to obtain required DOD approval of withdrawals from excess.

11-33. Additional Data for Clearance with the Committees. To support Army witnesses appearing before the Armed Services Committees, and to satisfy other information requirements, include the following data when forwarding the ENG Form 2187-R (Figure 11-2).

a. Four copies of a site plan of the installation, clearly depicting the property involved, and four copies of a real estate map, color coded with legend, showing the area and acreage to be excessed.

(1) Segment-size maps and plans should be of excellent quality, current, show accurate acreages, and current name of installation. They must be clearly visible at a distance of 30 feet or more.

(2) Basic color codes for maps are:

Red - Excess Area(s)

Green - Retained Area

Yellow - Previously Excessed Area(s)

Black or Dark Blue - Installation Boundary, in heavy definition

Other Colors - for other purposes

b. Copy of last utilization inspection report, plus information as to when and how the excess property was last used by the Army.

c. Basis for disposal: Base closure announcement, E.O. Survey; Command Report of Excess, Report of Availability, etc.

d. A list of and general terms of any outgrants in effect on the excess area.

e. Whether continuing military activities are housed on the property proposed for disposal; arrangements which have been made to provide space for these activities; estimated cost of leasing or converting space for that purpose, and any other costs of closing or severing the installation and relocating the activities. \*

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f. Whether civilian employees will lose their employment, number of employees involved, and to what extent they can be employed elsewhere.

g. Details of significant history of acquisition, development, and disposal, if not included in ENG Form 2187-R. Include official name of installation and former designations.

h. Description of any related or off-post family housing, giving number of units, type (MCA-Capehart, etc.) acreage of site, land and construction costs, and distance from installations served

i. Probable impact on local economy, if any.

j. Estimate of any annual savings in operating and maintenance costs.

k. Statement as to exchange potential of excess area.

l. Estimate of value, including any restrictions or limitations on prospective use of the land by subsequent users.

m. Character and use of area in vicinity of excess area.

n. Care and custody costs for excess area.

o. Staff/MACOM coordination.

p. Environmental Assessment.

q. Any other pertinent information, e.g., any adverse factors severance or undesirable impact on utility systems, and local interest in acquiring the property.

r. Congressional district in which the property is located.

11-34. Coordination with GSA. At the time of formal submission of the Disposal Report to the Armed Services Committees, DAEN-REM will furnish-ed copies to the DEs and to the central and regional offices of GSA as advance information to permit preliminary disposal planning.

11-35. Reserved.

11-36. Reserved.

11-37. Reserved.

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SECTION V. REPORTS OF EXCESS REAL PROPERTY  
AND RELATED PERSONAL PROPERTY TO  
GENERAL SERVICES ADMINISTRATION  
(GSA)

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11-38. Delegation of Authority to Division and District Engineers. Much of the authority and responsibility of the COE as real estate agent for the Departments of the Army and Air Force to report excess real and related personal property to GSA in accordance with the provisions of the Federal Property Act, and the Federal Property Management Regulations (FPMR), subpart 101-47.3 has been delegated to Division and District Engineers having responsibility for real estate operations. Final reports will be made only after the property has been determined excess to the needs of the Department of Defense, in accordance with Section III supra, and has been cleared with congressional committees, if required, in accordance with Section IV.

11-39. Excess Property Reported for Disposal. The following types of excess real property must be reported to GSA for disposal, utilizing Standard Form 118 (SF 118), Report of Excess Real property, as set forth in paragraph 11-45 of this section:

a. Fee-owned. All fee-owned property, with improvements and related personal property, which has, in the opinion of the DE, an estimated fair market value of \$1,000 or more, together with such incidental, related, or appurtenant lesser interests, with or without Government-owned improvements and related personal property, held under lease, permit, license, easement, or similar instrument, useful in connection therewith, except property which is subject to:

- (1) A lease containing an option to purchase;
- (2) A lease containing a right of first refusal to purchase or to lease for an additional period;
- (3) A right in the Government's grantor to the reversion of title;  
or
- (4) A right reserved by the Government's grantor to repurchase the property.

b. Public Domain. All withdrawn or reserved public domain lands, together with the improvements thereon which, in the opinion of the DE, have an estimated fair market value of \$1,000 or more, and for which notification, pursuant to 43 CFR 2374.1, has been received from the Bureau of Land Management (BLM) that the property, in effect, has been determined excess within the meaning of the Federal Property Act (see Section VII for procedures for disposal of public domain land). \*

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Minerals in the lands will be specifically excluded from the report of excess unless BLM advises otherwise. The Report of Excess, SF 118, will include as a part of the report on the Government's legal title, a true copy of the notice by BLM to report the property excess, and information of record in BLM on claims, if any, by other agencies, and any claims or encumbrances under the public land laws.

11-40. Excess Property Reported for Screening. The types of property described in a, b, and c below must be reported to GSA for screening purposes notwithstanding the fact that the military departments have been delegated authority to dispose of such property. SF 118 will be utilized for reporting these types of property without attaching the usual Schedules A, B, and C and supporting documents. A notice should be included on the face sheet that "This report is made for screening purposes only. Disposal will be accomplished by the Corps of Engineers." Distribution of copies of such reports within the departments is not required.

a. Land held under lease, permit, license, easement, or similar instrument, other than listed in paragraph 11-41.

b. Improvements located on nonexcess Government-owned lands (including improvements on land held under permit from another Government agency; see Section VII infra, for preliminary procedure in these cases), which improvements, with related personal property, in the opinion of the responsible DE, have an estimated net salvage value of \$1,000 or more.

c. Improvements located on excess land held under lease or other temporary right of occupancy (even though a report of excess is not required for the leasehold itself or other right of occupancy interest under the criteria set forth in paragraph 11-41) when, in the opinion of the DE, the improvements have a net salvage or market value of \$1,000 or more, and it is proposed to dispose of such improvements by sale for removal from site. The report of excess will contain an estimate of the cost of restoration necessary under the lease that a prospective transferee agency will be required to assume.

d. Fee-owned property which, with improvements and related personal property, in the opinion of the responsible Division or District engineer, have a fair market value of \$1,000 or more, and is not reported to the General Services Administration for disposal as a result of the exception contained in paragraph 11-39a, above (because of outstanding options to purchase, etc., or because of rights retained by the Government grantor). \*

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11-41. Excess Property Exempted from Reporting. No reports to GSA are required for the following types of excess property:

a. Fee-owned land, including withdrawn or reserved public domain land which BLM made available for disposal under Federal Property Act, together with the Government-owned improvements and related personal property, having an estimated fair market value of less than \$1,000 in the opinion of the responsible DE;

b. Excess non-Government-owned property held under lease, license, easement, or similar instrument, when Government-owned improvements with related personal property have a net salvage value of less than \$1,000 or are to be transferred to the owner of the land in retraction settlement, and;

(1) The lease or similar instrument is subject to termination by the grantor of the premises within nine months; or

(2) The remaining term of the lease or similar instrument, including renewal rights, will provide for less than nine months of use and occupancy; or

(3) A provision of the lease or similar instrument would preclude transfer to another Federal agency or disposal to a third party; or

(4) The lease or similar instrument provides for use and occupancy of space for office, storage, and related facilities, which does not exceed a total of 2,500 square feet; or

(5) Where additional rental would be incurred.

c. Excess Government-owned improvements on nonexcess land, which improvements, in the opinion of the responsible DE, have a net salvage value of less than \$1,000.

d. Leased space assigned by GSA, and land and improvements owned by and permitted from other Government agencies.

e. Excess timber, sand, gravel and stone-quarried products, and growing crops on nonexcess land regardless of value.

f. Excess withdrawn or reserved public domain lands, regardless of value, which are offered to and accepted by the Department of Interior for return to the public domain pursuant to Section VII infra.

g. Prefabricated movable structures, such as Butler-type storage warehouses and quonset huts, and house trailers (with or without

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undercarriages), which are located on nonexcess land for off-site use. These types of structures shall be reported as personal property in accordance with FPMR, Part 101-43, Utilization of Personal Property. However, when such structures are located on leased permitted land subjecting the Department to any restoration obligations, the property will be treated as real property for the purpose of satisfying such obligations to the maximum extent feasible

11-42. Evaluation and Reporting of Flood Hazards. Pursuant to Executive Order 11296, 10 August 1966, the DE having civil works responsibility for the area where property proposed for disposal is located will evaluate the property (civil or military) for the presence of flood hazards. If such hazards are found, a report will be forwarded to HQDA (DAEN-REM) recommending appropriate restrictions with respect to future uses of the property, or that the property be withheld from disposal. If decision is made to proceed with disposal, detailed information regarding the flood hazard will be reported to GSA on SF 118 as required by FPMR, 101-47.202-2, with the appropriate restrictions with respect to use of the property by a purchaser and his successors. (See ER 1105-2-40 for information on the Flood Plain Management Services Program.)

11-43. Determination of Values for Reporting. Where more than one parcel or item of excess property is involved at the same project or installation, the total value of all such parcels or items will be included in determining whether the property has an estimated value of \$1,000 or more for the purpose of making reports of excess. Estimates of value should be made by qualified real estate employees, but not necessarily by a professional appraiser.

11-44. Conditional Reports of Excess. As an exceptions to its general policy, GSA has agreed with the Department of Defense to accept reports of excess on some facilities with instructions on their disposal, specifically:

a. Defense Industrial Reserve (DIR). The Defense Industrial Reserve Act 50 U.S.C. 451 et seq., authorizes the Secretary of Defense to determine which excess industrial properties should become a part of DIR and to formulate a national security clause or recapture provisions to preserve the production capacity of the plants for use in the event of a national emergency. Excess DIR plants are reported to GSA for disposal subject to the national security clause or the recapture provisions. (See FPMR Subsection 101-47.306-2 for procedures where GSA is unable to dispose of the property because of the restrictions imposed by the national security clause or recapture provisions.) \*

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b. Reserving Property for Civil Defense Purposes. GSA has agreed to accept reports of excess of missile sites and other facilities having similar protective features, with restrictions on their disposal. DEs will be notified when DOD advises that a specified local government unit is interested in acquiring such property. Reports of excess will specify the local government unit interested. Disposal of the property will be limited to conveyance to the local government unit, with conditions restricting its use to civil defense purposes for a period of 20 years, with reverter to the United States for breach of condition. In appropriate cases, GSA will enter into a temporary lease arrangement if necessary to afford a local government unit an opportunity to obtain the necessary funds for purchase. This procedure is limited to causes where DOD has determined and advised there is a civil defense need. Disposal action will not be delayed pending receipt of such advice.

11-45. Preparation and Submission of Reports of Excess.

a. Preparation.

(1) General. Reports of excess will be prepared on SF 118, with schedules, in accordance with the instructions contained in FPMR section 101-47.4902, and paragraph 11-39. However, since the type of information called for in Block 9 of SF 118 and Columns f, g, h, and i of schedule A is not generally applicable to camps, airfields, etc., such information will be furnished only when it is available and can be furnished without additional cost. Reports of excess will include all related or appurtenant easements, licenses, and related personal property. Decontamination data will be included as prescribed in Section XIII, infra. Information on flood hazard will be included as required by paragraph 11-42.

(2) GSA Regulations. Pursuant to GSA regulations, all final reports of excess will be made only after the property has been determined excess to the needs of the Department of Defense and will bear the statement: "This property has been screened against the known defense needs of the Department of Defense." Report of excess will indicate that the provisions of Title 10, United States Code, Section 2662, requiring reports to the Armed Services Committees of Congress, have been met, or that the report of excess is not subject to this section.

(3) Reports of Excess - Air Force Property. The Air Force will prepare SF 118, with Schedules A and C, and transmit them to the DE for completion and execution. Land descriptions, title reports, and other data required by the FPMR will be the responsibility of the DE. \*



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(4) Reports of Excess - Army Property. DEs will prepare the SF 118 and the schedules for excess Army property.

b. Submission. Reports of excess will be transmitted directly by the DE to the appropriate regional office of GSA. Each DE making such reports of excess will assign a number in Block 1 of SF 118, beginning with No. 1 for the first report and continuing in numerical sequence for succeeding reports made during the calendar year. The number will be preceded by the symbol of the DE making the report and the calendar year e.g., SWF-79-6, for the sixth report submitted by Fort Worth District of Southwestern Division for calendar year 1979.

11-46. Report on Government Title. In all cases where Government-owned land is reported, there shall be attached to and made a part of SF 118 (original and copies thereof), a report prepared by a qualified employee of the holding agency on the Government's title to the property, based upon his review of the records of the agency. The report shall recite:

- a. The description of the property.
- b. The date title vested in the United States.
- c. All exceptions, reservations, conditions and restrictions relating to the title acquired.
- d. Detailed information concerning any action, thing or circumstance that occurred from the date of the acquisition of the property by the United States to the date of the report which in any way affected, or may have affected, the right, title, and interest of the United States in and to the real property (together with copies of such legal comments or opinions as may be contained in the file concerning the manner in which and the extent to which such right, title or interest may have been affected). In the absence of any such action, thing or circumstance, a statement to that effect shall be made a part of the report.
- e. The status of legislative civil and criminal jurisdiction over the land peculiar to the property by reason of it being Government-owned land. If the United States does not hold such legislative jurisdiction, the report on government title should so state.
- f. All exceptions, reservations, conditions and restrictions imposed by higher authority on the property at time of disposal. No additions or substantive changes to these will be made without prior approval from HQDA (DAEN-REM) WASH DC 20314. \*

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g. If the property, or any portion of it, has been listed in the National Register of Historic Places, or has been nominated for listing or nomination, this should be included in the SF 118. Specific fixtures and related personal property having possible historic or artistic value should also be included. (See Section I, para 11-7, supra, for information on historic preservation.)

11-47. Outgrant Instruments, Appraisals and Muniments of Title. There shall be transmitted with the SF 118 copies of outgrants involving the property reported, all conveyances, encumbrances and other instruments affecting the use and operation of the property, including deeds, mortgages, and agreements covering and licenses to use any patents, processes, techniques, or inventions. Where there is more than one like instrument as, for example, agricultural leases, it may be preferable to list them, locate them on the land use map, and furnish a sample copy. FPMR contemplates that muniments of title will be transmitted with the report of excess. The title report (paragraph 11-46, supra) will state that HQDA (DAEN-REP) WASH DC 20314 is the custodian of title papers and has been requested by the DE to transmit applicable title papers direct to the GSA Regional Office. Accordingly, as soon as practicable after receipt of an information copy of the declaration of excess by the using service, and a disposal directive, the DE will assign a disposal report number and advise DAEN-REP to transmit the pertinent title papers directly to the appropriate GSA Regional Office, citing the disposal report number as a reference. Simultaneous action by DAEN-REP and the DE to assemble necessary reporting data is important to avoid delay of acceptance by GSA of the Report of Excess. If experience should demonstrate that such simultaneous preparation and transmittal of data is not practical in saving time and effort, the DE will arrange in advance for transmittal of the necessary title data from DAEN-REP for incorporation in the Report of Excess before transmittal by the DE to the GSA Regional Office.

11-48. Deposit of Proceeds from Disposal of Family Housing in the Family Housing Management Account.

a. Title 42 U.S.C. 1594a-1(b) provides that the proceeds from the disposition of Department of Defense Housing, including related land and improvements, shall be transferred to the DOD Family Housing Management Account for the purpose of debt service. Arrangements have been made between DOD and GSA to implement this law and apply it to excess MCA housing as well as to housing encumbered by mortgage debts such as Capehart and Wherry Housing projects. (See Section I, para 11-12b, supra.)

b. The agreement with GSA calls for separate identification and description in the Report of Excess (SF 118) of those improvements \*

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which are considered family housing within the purview of the law and a request in the report that proceeds from disposal be transferred to the DOD Family Housing Management Account. (The actual transfer of funds will be accomplished at Washington level.)

c. Where the Report of Excess includes both housing and property not related to housing, separate schedules (SF 118a and b) will be prepared to cover the housing involved, including related land and other improvements. The housing schedules should be annotated and arranged categorically to show:

(1) Number of structures by type of authorization, i.e. Wherry Act, Capehart Act, Military Construction Authorization Act, Lanham Act, etc.

(2) The number of family units.

(3) Those improvements and collateral facilities which are considered "related" to the housing.

(4) Where reasonably apparent, a description of the acreage or boundaries of the family housing areas as distinguished from other excess lands.

(5) A statement as follows: "Net proceeds from the sale of this family housing, including related lands and improvements, shall be remitted to DOD for deposit to Family Housing Management Account, Defense 97X0700."

11-49. Supplemental Information. The DE will cooperate to the greatest extent practicable in furnishing further information and assistance requested by GSA Regional Offices. However, requests for engineering surveys should be carefully monitored in the interest of economy. When such requests appear excessive or other requests for services appear to require unnecessary expenditures, DAEN-REM will be fully informed, with recommendations, in order that the matter may be resolved through appropriate coordination with the GSA central office.

11-50. Reports Submitted for Screening. Excess leaseholds and buildings and improvements to be disposed of separately from the land which, pursuant to paragraph 11-40, must be reported to GSA for screening purposes only, will be reported immediately when the property is determined to be excess to the particular military department having jurisdiction. The report will contain the statement: "This property is reported for screening with civilian agencies by GSA prior to its disposal by the Corps of Engineers. The property is being screened within DOD and when the screening has been completed, appropriate certification will be submitted to GSA." Screening against defense requirements, \*

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pursuant to Section III, supra, will then be completed and GSA notified of the result. If such screening results in the development of a requirement by one of the other military services, the Report of Excess will be withdrawn and the transfer of the property to the requesting military service effected. This specialized procedure for this type of property is adopted to allow screening for defense requirements by the Corps of Engineers to be accomplished simultaneously with the screening of civilian agencies by GSA. Where circumstances require that this type of property be screened within a limited period of time, the period should be specified and an explanation set forth on the face of the Report of Excess, as, for example: "Buildings are in the way of planned new construction and must be removed or demolished not later than (date). Accordingly, advice must be received on or before (date) as to whether a requirement exists for the property, or whether it is to be transferred or assigned to another Federal agency for removal within the time specified." If such advice is not received by the time specified, the property should be disposed of without further delay and GSA notified of the action.

11-51. Distribution of Report of Excess. Copies of the final Report of Excess (SF 118) will be distributed simultaneously as follows:

a. Complete copies to:

- (1) Regional Office, GSA - original. and four copies
- (2) District Engineer - one copy.

b. Division Engineer - one copy of the cover sheet (SF 118), and transmittal letter.

c. A complete copy, except Schedule C (SF 118c), to HQDA (DAEN-REP) WASH DC 20314 and one copy of the cover sheet to HQDA (DAEN-REM) WASH DC 20314.

d. Where family housing is involved, one copy of the cover sheet and the pertinent schedules A and B to the Deputy Assistant Secretary of Defense (Installations and Housing), Washington, DC 20301.

11-52. Notice of Receipt. GSA should promptly notify the holding agency of the date of acceptance of each Report of Excess (SF 118). The date GSA will assume the expense of cost and custody as provided in section VI, infra, will be figured from this date.

11-53. Withdrawals or Corrections of Reports of Excess.

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a. Subject to the approval of GSA, and to such conditions as GSA considers appropriate, Reports of Excess may be withdrawn or corrected at any time prior to disposition of the property, by filing a corrected SF 118 with the regional office of GSA. Corrections and withdrawals will bear the same number as the report of excess to which they pertain, but will bear a letter suffix beginning with "A" for the first correction or withdrawal and continuing in alphabetical sequence for succeeding corrections or withdrawals. "Correction: will be conspicuously stamped on the face of the SF 118 for both withdrawals and corrections. Distribution of requests for withdrawal or correction will be the same as that made of the Report of Excess to which the withdrawal or correction pertains.

b. Property which is reported to GSA for disposal will not be withdrawn without the prior approval of HQDA (DAEN-REM) WASH DC 20314, nor will return of the SF 118 be accepted without the approval of DAEN-REM. (See Section IV, supra, concerning prior approval of DOD for withdrawals from excess of real property having an estimated fair market value in excess of \$50,000.)

11-54. Supply of Forms. SF 118, 118a, 118b, and 118c, are not available in normal Adjutant General supply channels. The forms should be procured from GSA.

11-55. Reserved.

11-56. Reserved.

11-57. Reserved.

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\* SECTION VI. CARE AND CUSTODY OF EXCESS AND SURPLUS PROPERTY

11-58. Procedures and Responsibilities for Care, Custody, Accountability, and Maintenance.

a. Department of the Army Military Property. Care, custody, accountability, and maintenance of excess Army military real property will be as prescribed in AR 405-90.

b. Department of the Army Civil Works Property. DEs will retain custody and accountability of all excess civil works real property under their jurisdiction until final disposition is effected.

c. Department of the Air Force Property. Pursuant to AFR 87-4, the Department of the Air Force is responsible for care and custody of excess Air Force real property. However, upon request by the Air Force DEs may assume custody if no costs are involved, or where cost is involved if funds therefor are furnished upon request by the DE.

d. Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and Other Federal Agencies. Where the Corps of Engineers is acting as real estate agent for other Federal agencies, DEs, at the request of the agency, may assume care and custody of excess real property on a reimbursable basis.

11-59. Guidelines for Protection and Maintenance of Excess and Surplus Real Property. Detailed guidelines are provided in FPMR Subsection 101-47.4913.

a. Calculated Risk. These guidelines, which are binding on holding agencies, embody the principle of calculated risk. In applying this principle, the anticipated losses and deteriorations, including pilferage and vandalism, in terms of realizable values are expected to be less than expenditures to minimize the risks. Normally, where property is of little value, only periodic surveillance is necessary and care and custody forces will not be maintained. However, where property, regardless of realizable value, is potentially an attractive nuisance to children and curiosity seekers, or is inherently dangerous, the public should be protected by guards stationed on the property or by other satisfactory means. Every effort should be made to minimize the cost of care, protection and maintenance consistent with these principles.

b. Improvements or Alterations. FPMR Subsection 101-47.401-5, provides that improvements and alterations to excess and surplus real property may be considered, with the prior approval of GSA, where disposal cannot be made. However, it is not considered likely that a situation will arise in the Corps' disposal operations where such improve- \*

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ments or alterations can be justified. Repairs necessary for protection and maintenance of marketable property will not be undertaken except to prevent serious loss to the Government. Excess equipment or facilities should not be updated or improved. At predisposal conferences, or earlier where practical, the DE, in coordination with GSA representatives, will furnish specific guidance to the using command as to the minimum acceptable GSA requirement for care and custody. The requirement for minimum maintenance does not extend to historic places. Historic places in excess or surplus status will be maintained in accordance with the letter and spirit of approved Department of the Army criteria for protection, preservation and maintenance of historic places.

11-60. Transfer of Custody to General Services Administration (GSA).

a. Custody of an excess installation reported to the GSA for disposal will continue to be held until GSA transfers to its purchaser or other designee. All expenses pertaining to care, custody and maintenance will be borne by the holding department or agency, except that such expense for property reported to GSA for disposal and not disposed of within 12 months from the date the formal report of excess was received by GSA, shall be assumed by GSA as of the first day of the succeeding quarter of the fiscal year. GSA will give notice of the receipt of the report of excess and will, within 15 days, furnish advice on the acceptability of the report. (See FPMR as amended, Subsection 101-47.202-10.) Any request made to the disposal agency to defer disposal action, or failure to submit an acceptable report, will extend the obligation of the department with respect to expenses for care and custody caused by such deferment. In the event the department is not relieved of custody within the period for which it is obligated to stand the expense thereof, the retention of care and custody thereafter will be reimbursed by the disposal agency. Because of the magnitude of custodial expense for larger installations and the longer periods of time often consumed in effecting their disposal, it is imperative that reports of excess be made as promptly as possible in order that the 12-month period may commence and terminate as soon as possible and the department's expense minimized.

b. The DE will maintain close liaison with GSA with a view to obtaining prompt transfer of custody and accountability from the department to that agency, and will coordinate transfers between the using service and GSA. However, DEs will not take over custody of an installation or coordinate the transfer of custody until a statement of clearance or a statement that such clearance is not necessary because of the use of the installation has been furnished. Under GSA procedures, the department generally retains the responsibility for care, custody, and accountability of its excess facilities until final disposition \*

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is made by GSA. Until that time, the property is to be carried on the real property inventory of the department.

11-61. Contracting for Care and Custody. Care and custody of excess and surplus installations should be performed by contract whenever it is legally possible and more economical to do so. Due to the temporary nature of such services and the extreme variations in kind and fluctuations in quality of such services required from time to time, contracting for custodial service will often prove to be more economical and efficient. In contracting for such services which include watchman, patrol and protective services, attention is invited to the prohibition against hiring detective agencies pursuant to the following Act of Congress: "\*\*\* An individual employed by the Pinkerton Detective Agency, or similar organization, may not be employed by the Government of the United States or the Government of the District of Columbia." (5 U.S.C. 3108). This has been construed to apply to employees of organizations which provide the services of a detective agency, but not to organizations which are organizations to render watchman, patrol or protective services and do not include detective services as one of their functions (26 Comp. Gen. 303). Custodial and protective services referred to herein are the type ordinarily procured by contract by GSA and other Government agencies charged with the responsibility for care and handling of excess and surplus real property pending its disposal in accordance with the FPMR.

11-62. Care and Custody through Interim Use.

a. General. Upon receipt of initial information that real property is excess, the DE should promptly initiate planning for interim productive use. Interim use should be planned to save care and custody expense but must not interfere with, delay, or retard transfer of the property to another Federal agency or its disposal otherwise. Any permit or lease must have the prior approval of GSA, and shall be for a period not exceeding one year and shall be revocable on 30 days' notice (FPMR Sections 101-47. 203-9 and 101-47. 312).

b. Permits to other Federal Agencies. Interested Federal agencies will be afforded a priority in the interim use of excess and surplus real property. The permit will require the Federal agency to perform care and custody and perform routine maintenance. 41 CFR Section 101-47.203-8, provides for temporary assignment, conditional transfers, and rental or user charges for use of excess property by Federal agencies.

c. Leases for Non-Federal Use. Leases of excess and surplus property are made under authority of the Federal Property and Administrative Services Act of 1949, as amended and AR 405-80. Such leases are subject to the Economy Act (40 U.S.C. 303b), and must be \*



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for a money consideration only. The lessee can and should, however, be made responsible for ordinary maintenance and restoration as required by standard Corps of Engineers lease forms. Where a portion of an excess or surplus installation is leased, it may be advantageous to enter into an agreement with the lessee for care and custody of the remainder. The agreement cannot provide for a reduction of rental for the portion leased. The Economy Act may not apply in some cases where industrial plants are determined excess subject to the National Security Clause or similar recapture conditions. Such cases should be coordinated with DAEN-REM on an individual basis.

11-63. Reserved.

11-64. Reserved.

11-65. Reserved.

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SECTION VII. RETURN OF PUBLIC DOMAIN LANDS  
AND LANDS OBTAINED ON A TEMPORARY  
BASIS FROM ANOTHER FEDERAL AGENCY

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11-66. Procedure for Disposal of Public Domain Land

a. Lands withdrawn or reserved from the public domain, together with Government-owned improvements, which have been determined to be excess to the department, after screening with other DOD agencies and the U.S. Coast Guard in accordance with Section III of this chapter, will be processed for disposal in accordance with 43 CFR 2370-2374 and paragraph 11-71 hereof. The DE will file a Notice of Intention to Relinquish as provided by 43 CFR 2372.1. The notice will be filed in the Bureau of Land management (BLM) Land Office having jurisdiction.

Excess buildings and improvements on the property should be left in place and no disposal action taken thereon pending further instructions from BLM, unless it is determined that they should be abandoned in accordance with the procedures set forth in Section XI of this chapter. A copy of the Notice of Intention to Relinquish submitted to the appropriate BLM Land Office will be transmitted to HQDA (DAEN-REM) WASH DC 20314 and to the appropriate GSA regional office.

b. If any restoration, or other work, is proposed to be performed on the land, the matter will be forwarded to DAEN-REM for prior approval. Where the DE recommends disposition of the land by GSA as excess property rather than return to the public domain, no restoration of the property will be proposed (see 43 CFR 2372.1). Generally, lands which are unimproved, or contain only minor improvements, will be recommended for return to the public domain. Exception to this procedure should be made where development surrounding, or in the vicinity of the land, has changed its character, although the land itself has not been improved. Another exception would be the situation described in paragraph 11-40d supra. Generally lands which are extensively improved will be recommended to BLM for disposal. as excess property.

c. If the authorized officer of BLM determines, pursuant to 43 CFR 2372.3, that the conditions prescribed by that regulation have been met and that the land is suitable for return to the public domain, he will notify the DE, as the representative of the holding agency, that the Department of the Interior accepts accountability and responsibility for the property. A copy of this notification will be furnished to HQDA (DAEN-REP) WASH DC 20314.

d. If the authorized officer of BLM determines, pursuant to 43 CFR 2374.1, that the land is not suitable for return to the public domain because it is substantially changed in character, and GSA concurs in this determination, he will notify the DE to report the land and \*

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improvements, with or without minerals, to GSA as excess property. Upon receipt of this notice, the DE will advise DAEN-REP and report the property to GSA on SF 118, Report of Excess Real Property, including the information on claims and encumbrances furnished by BLM under 43 CFR 2374.1 (c). The holding agency has the same responsibility for care, custody, and accountability of excess public domain as for other property reported to GSA for disposal.

11-67. Formal Revocation of public Land Withdrawals and Reservations.

When the authorized officer of BLM determines that the land is suitable for return to the public domain, the BLM Land Office will transmit to the DE a draft of public land order (PLO) designed to formally revoke the order or reservation which withdrew or reserved the land. The DE will review the draft PLO for accuracy and return it unsigned. The draft PLO will be transmitted through BLM channels to DAEN-REM for signature of the Secretary of the Army or Air Force and return to the Washington office of BLM.

11-68. Cancellation of Permits.

a. Land obtained by permit, or some other form of instrument, from another Federal agency on a temporary basis which has not been substantially improved while being utilized by the Department, when determined to be excess in accordance with the procedure set forth in Section II of this chapter, will be returned to the Federal agency from which it was obtained.

b. When it is determined by the DE that land obtained by permit, or other form of instrument, from another Federal agency on a temporary basis has been substantially improved while being utilized by the Department, the DE will request DAEN-REM to determine whether the land is excess, or is expected to become excess, to the requirements of the agency from which it was obtained.

(1) If the agency from which the land was obtained advises that the land is excess, or is expected to become excess, to its requirements, the improvements will be reported to GSA on SF 118 in accordance with the procedure described in Section V of this chapter, with a statement that the agency from which the land was obtained has advised that the land is excess, or is expected to become excess to its requirements, and that the agency will be or has been requested to reassume administrative control over the land. Coincident with the report of excess, action will be initiated to return the land to the agency from which it was obtained. \*

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(2) If the agency from which the land was obtained advises that the land is not excess, and is not expected to become excess to its requirements, improvements constructed thereon while the property was being utilized by the Department will be disposed of in accordance with the provisions of paragraph 11-71 infra. Where the improvements are substantial, and cannot be utilized effectively by the agency from which the land was obtained, and it appears that the best interests of the Government may not be served by disposal of the improvements for removal from the site, a report, with recommendations, should be forwarded to DAEN-REM for a determination whether the permit and improvements should be reported to GSA for disposal, or whether other action would be appropriate.

c. The Chief of Engineers, or his duly authorized representatives, will execute and deliver necessary papers effecting the relinquishment of permits and the transfer of real property to other Federal agencies when the installations to which such real property or permits pertain have been determined to be excess. However, where permits were obtained at local level, DEs will effect relinquishment in the same manner. Unless otherwise instructed, no action will be taken by the DE to restore or return the lands pertaining to an industrial installation to the agency which granted the permit. DEs will, however, submit the report required in paragraph 11-69, infra.

d. Where an installation embraces lands acquired in fee by a military department and lands acquired for temporary use from other departments or agencies, and if return of the latter type of lands to the department or agency which granted the permit would destroy the integrity of the installation or affect its ultimate disposal as a unit, a report will be made to DAEN-REM with recommendations that they will provide disposition instructions.

11-69. Procedure for Cancellation of Permits.

a. When permitted land is excess and the permit is to be executed, the DE will submit the following information with his recommendations to DAEN-REM:

- (1) Description and location of the property;
- (2) Date use was acquired;
- (3) Department agency from which acquired;
- (4) Manner of acquisition; that is, by permit or other means, with copy of document; \*

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(5) ENG Form 1440-R, Cost of Restoration (Engineer Estimate and Appraisal), which includes a statement of cost and value of improvements or structures placed on the lands by the department;

(6) Statement of restoration work performed by the department if any;

(7) Statement of local representative of owning agency as to whether restoration will be required, or, where restoration work has been performed, whether such restoration is satisfactory; and

(8) Statement that no clearance of explosives or other harmful elements is necessary because of the manner in which the land was used, or, if otherwise, statement of clearance action taken or necessary.

b. Upon receipt of the foregoing information, the Chief of Engineers will effect relinquishment of the land by letter. Where the DE has authority to relinquish the land as outlined in paragraph 11-68c, he will effect relinquishment by letter addressed to the permittor, with a copy to DAEN-REM.

11-70. Restoration of Lands Made Available by Other Government Agencies.

a. Requirement. Where the Department retransfers real property, the use of which has been obtained from other Federal agencies (including withdrawals from the public domain recommended for return to the public domain) by means of use permits, public land orders, or other methods, the property should be restored to a condition as good as that which existed at the time the department took possession, damages by the elements or by circumstances over which the Department has no control excepted, unless the agency from which the property was obtained expressly waives restoration. Restoration of public domain land will not be initiated until the determination is made that the land is suitable for return to the public domain. Public domain land that is to be reported excess to GSA will not be restored. The procedure enunciated in Section XIII of this chapter relative to neutralization of unexploded bombs or artillery projectiles located on leased premises applies with equal force to Government-owned lands returned to other Federal agencies and to public domain land that is to be reported as excess for disposal by GSA.

b. Authority. The report of the Senate Appropriations Committee on the DOD Appropriation Bill, 1966 (Senate Report 625, 89th Congress, dated 18 August 1965), contained the following language: \*

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"Such funds as may be required may be used to restore lands under jurisdiction of other Government agencies, damaged while being used for military training purposes under agreement with such agencies."

The Comptroller General considers the foregoing to be a clear expression of Congressional intent, and that authority exists for the Department of the Army to restore (or make payment in lieu thereof) lands of other Federal agencies which have been damaged by the Army while being used under agreement.

c. Determination of Restoration Costs. ENG Form 1440-R, Cost of Restoration, appropriately modified, will be used for the preparation of an estimate of cost of restoration, or salvage or market value, for the purpose of determining the cost of restoration.

d. Payments for, or in Lieu of Restoration.

(1) Work Performed by the Department of the Army. If the work is performed by the Department, payment will be made from funds available to the office performing the work.

(2) Work Performed by Controlling Agency. If the work has been performed by the agency having administrative control over the property, pursuant to agreement with the Department, reimbursement to that agency may be made by properly supported SF 1080, Voucher for Transfer Between Appropriations and/or Funds, from funds available to the DE.

(3) Payment in Lieu of Restoration. If the work has not been performed by either agency and a payment is desired in lieu of restoration, the payment is, in effect, an advance of funds. As such, the advance of funds will be accomplished in OCE, based on controlling agency of SF 1080 properly supported.

11-71. Disposal of Buildings and Other Improvements. Where improvements have a net salvage value and are not to be reported to GSA for disposal with the land, the permitting agency, or Department of the Interior in the case of public domain land, will be required to reimburse the Army for their net salvage value, or the buildings or improvements will be disposed of in accordance with Section XI of this chapter.

11-72. RESERVED.

11-73. RESERVED.

11-74. RESERVED.

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SECTION VIII. PREDISPOSAL ACTION

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11-75. Record of Excess Classification. The DE will establish record on ENG Form 836A, Real Property Disposal Report, of the excess classification of each Army property and each Air Force property for which a preliminary or final real estate directive has been issued (Chapter 14 of this handbook).

11-76. Utilization for Other Needs. The DE will determine the feasibility of utilizing each installation classified as excess to fulfill current directives for acquisition of real estate or known or foreseen potential needs of the Army or Air Force, which may have been generated since the screening process. If redistribution for this purpose is deemed advantageous, recommendations will be submitted to HQDA (DAEN-REM) WASH DC 20314 on the proposed action, indicating when excess status was determined and by which element of the Departments of the Army or Air Force.

11-77. Suspension of Acquisition Action on Installations Proposed for Disposal. When a fee-owned installation is recommended for excess by the installation commander, or a preliminary or final real estate disposal directive is issued by the Air Force, any pending acquisition in connection with the installation will be suspended, unless the directive provides otherwise. A recommended plan for curtailment of uncompleted acquisition will be submitted to HQDA (DAEN-REA-L) WASH DC 20314. The plan will include the following information: Identification by tract numbers, names of owners, and area of each tract for which an option has been accepted or a declaration of taking filed, but as to which it is considered practicable and economical to obtain cancellation of the option or a stipulation for dismissal of the condemnation proceeding and revestment of title. Specific information as to the extent and nature of demolition of improvements, new construction, or other damages or changes made by the Government to the premises, and the probable cost of restoration in case of such cancellation or stipulation, will be included. Pertinent public relations aspects should also be covered. Generally, tracts on which a declaration of taking has been filed will not be returned to the owners by stipulation for amendment or dismissal of the condemnation proceedings. Exceptions to this may be recommended when shown to be in the best of interest of the United States.

11-78. Army Military - Screening, Clearance, Preliminary Report of Excess, Except where an E.O. 11954 Survey has been made. Upon receipt of a copy of the installation commander's recommendation of excess, the DE will take the following actions:

a. Immediately notify DAEN-REM by teletype, furnishing a brief statement of the real estate included in the recommendation. \*

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b. Promptly screen the property against Army and other defense requirements if required by and in accordance with Section III of this Chapter, and advise DAEN-REM of the results.

c. As soon as the screening message is dispatched under b above, or immediately upon receipt of a disposal directive from DAEN-REM when screening is not required by Section III, DEs will prepare and forward:

(1) SF 118, Report of Excess Real Property and other documentation required in reporting the excess property to GSA.

(2) ENG Form 2187-R, Disposal Report (Figure 11-2), for clearance with DOD and the Armed Services Committees (ASC) of Congress where required in accordance with Section IV. This should be forwarded to DAEN-REL within three weeks of dispatch of the screening message, or receipt of the disposal directive. This schedule will allow the Chief of Engineers to process the disposal assembly through the DA and DOD secretariats and to obtain necessary clearances from the ASC. DAEN-REM will furnish the DE copies of the DOD approval and the report to the ASC. This office will also furnish copies of the ASC report to the Washington and regional offices of GSA, to permit screening with other Government agencies.

d. DOD approval of the disposal (property having estimated value in excess of \$100,000) signifies the property is excess to Defense requirements. Upon receipt of this approval, the DE will forward a preliminary Report of Excess to GSA by transmitting necessary copies of the completed SF 118, with attachments, carefully identified as preliminary. Where screening is negative for property having an estimated value of \$100,000 or less, the property is considered excess to Defense requirements and a final report of excess should be forwarded promptly to GSA.

11-79. Army Military - Modified Predisposal Procedures where E.O. 11954 Surveys have been made.

a. DEs will be advised of military installations to be surveyed under E.O. 11954 by a DOD or GSA survey team.

b. If property is to be declared excess as a result of a decision by the Department of the Army, appropriate commanders and DEs will be advised. The major commander will be requested to submit a Report of Excess pursuant to AR 405-90 to HQDA (DAEN-REM) WASH DC 20314 within 15 days. DEs will be furnished a copy of the report. \*



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c. Upon receipt of advice that property will be excessed, the DE, in coordination with the installation commander concerned, will commence preparation of ENG Form 2187-R, if required, for submission to DAEN-REL.

d. When the Report of Excess is approved, DAEN-REM will advise the DE and will request that screening be initiated. The approved report will be promptly referred through channels to the DE for further appropriate action.

e. The ENG Form 2187-R will be forwarded to DAEN-REM not later than 15 days after receipt of the approved Report of Excess.

f. As soon as the areas to be excessed are clearly defined, action will be initiated to assemble all necessary data so that the final SF 118 may be submitted to GSA within 30 days after necessary Congressional clearance is obtained under 10 U.S.C. 2662.

g. When the estimated value of the property does not exceed \$100,000 and preparation of an ENG Form 2187-R is not required, the DE, upon being notified of the approval of the Report of Excess, will notify DAEN-REM of the date the SF 118 will be submitted to GSA.

11-80. Executive Order 11954 Surveys of Civil Works Properties. Procedures to be followed by DEs when civil works properties are surveyed by GSA under E.O. 11954 are contained in Chapter 8 of this pamphlet.

11-81. Predisposal Conference.

a. Where a substantial Army installation, or portion thereof, is involved, the DE will convene a predisposal conference with representatives of the using command, GSA, and other interested parties. Where an Air Force installation is involved, the Major Air Command will take the initiative in convening the conference. In any cases involving flying facilities, Federal Aviation Administration representatives will be invited. The agenda of the predisposal conference should provide for:

(1) Determinations on maintenance guidelines based on probable future uses of the property with emphasis on agreements concerning responsibility for assumption of care and custody, in accordance with AR 405-90, AFR 87-4, and Section VI of this Chapter.

(2) Review of the SF 118 to assure its acceptability to GSA.

(3) Review with GSA, when appropriate, of the advisability of transferring custody and maintenance responsibilities to GSA at an early date. \*

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(4) Planning for and, to the extent possible, making definite determinations on interim utilization pending disposal by GSA.

b. It is of utmost importance that excess installations be put to productive use as military operations are phased out. This will do much to lessen the impact of the installation's closing on the economy of the local community. For this purpose, installations, in many cases, will be reported to GSA prior to phase out of military operations. In these cases, the DE has responsibility to insure, to the extent practicable, that other productive use is phased in as military operations are phased out. This can be accomplished only by careful planning and continuous coordination by the DE with using command and GSA. The using command will plan and execute the military phase out. However, the DE will assure that the Report of Excess to GSA specifically identifies and excludes the real and personal property to be retained by the military department. This information is required by GSA for disposal purposes.

c. A report on the predisposal conference will be forwarded to DAEN-REM. Any difficulties indicated by GSA will be summarized in the report, along with any other problems encountered or foreseen.

d. When requested, and on an individual project basis, the DE will prepare a real estate disposal study concerning the transfer of custody and maintenance responsibilities to GSA prior to final disposal. This study will be developed in conjunction with appropriate using command and GSA representatives. Its purpose will be to determine whether the transfer of the excess property to GSA would be more economical and in the best interest of the Government. Important benefits to DOD agencies would be reduction in expenditures and personnel of the military departments for such functions. Copies of the study will be furnished the using command concerned for timely review and recommendations.

11-82. Air Force - Preliminary Report of Excess. The DAD will issue a preliminary real estate disposal directive when a disposal project is forwarded to the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) for clearance. (Air Force screens its own properties for other defense requirements and clears the disposal with DOD and the Armed Services Committees of the Congress.) When the preliminary real estate disposal directive is received, the DE, unless directed otherwise, will proceed to perform all necessary actions in coordination with the installation commander concerned, for submission of a preliminary Report of Excess to GSA.

11-83. Final Report of Excess to GSA. Where a preliminary Report of Excess is made to GSA, the DE will promptly finalize the report upon receipt to the final Air Force disposal directive. In all cases where a disposal is reported to the Armed Services Committee, the DE will furnish \*

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HQDA (DAEN-REM) advice when the final report is made to GSA. Where the report is finalized by statement confirming a preliminary report as final, copies of the preliminary report and confirming statement should be distributed in accordance with Section V of this Chapter. Distribution of preliminary Reports of Excess, except to GSA, will not be made in other cases.

11-84. Protection of Disposal Information. To Prevent premature disclosure to the public, information on and plans for disposal of all or a portion of an installation should be protected (AR 340-16), until such time as the property is determined excess to Army or Air Force requirements. (The Air Force preliminary real estate disposal directive is not issued until a determination has been made that the property is excess to Air Force requirements.) After determinations of excess are made, it is desirable that information on the availability of the property for disposal be widely disseminated. "FOR OFFICIAL USE ONLY" marking on plans and correspondence pertaining to the excess action may be cancelled by any recipient or holder. Where the classification "CONFIDENTIAL" or higher has been used, documents must be declassified in accordance with AR 380-5.

11-85. Coordination on Disposal Problems. If any major change or problem requires a significant revision in the time schedule for disposal, prompt action will be taken to advise offices concerned. HQDA (DAEN-REM) should be promptly informed of any problem adversely affecting a specific disposal project or the overall program for disposal or property.

11-86. Assignment of Personnel to Administer. To extent appropriate according to the circumstances and nature of the property, the DE will assign a responsible representative to each installation, or group of installations, to act under his staff supervision in performance of the following functions:

a. Monitoring and expediting the actions described by this Section and maintaining close liaison with GSA on disposal problems and actions.

b. Monitoring and expediting performance of such demolition, dismantling or other construction work as may be authorized.

c. Administration, operation and maintenance of the excess installation until final disposal, making every effort by consolidation of activities and otherwise to reduce the costs consistent with economic management of the facilities.

d. Coordination of ultimate transfer of assumed custodial responsibility to other agencies or persons as directed. \*

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11-87. RESERVED.

11-88. RESERVED.

11-89. RESERVED.

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SECTION IX. DISPOSAL OF FEE-OWNED REAL PROPERTY  
 AND EASEMENT INTERESTS

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11-90. Authorities (General).

a. Statutory Authorities. Power to dispose of real estate belonging to the United States is vested in Congress (paragraph 2, Section 3, Article IV, Constitution of the United States), and no real estate of the Department will be sold or otherwise disposed of without authority of Congress. By the Federal Property and Administrative Services Act of 1949 (Federal Property Act), (Public Law 152, 81st Congress; 63 Stat. 377) as amended, (40 U.S.C. 471 et seq.), Congress provided authority for utilization of excess property and the disposal of surplus Federal property, and established the General Services Administration (GSA) to administer the provisions of that Act. All excess and surplus Federal real estate and real property components will be disposed of under authority of the Federal Property Act, as amended, unless other statutory authority for such disposal is specifically withheld under the provisions of the Act or enacted subsequent thereto. In connection with disposals made under statutory authority other than the Federal Property Act, attention should be given to the purposes of the legislation and insofar as practicable, disposal of property should be in accordance with the provisions of the Act and the regulations issued thereunder, in order that the greatest overall efficiency and economy be effected.

b. Rules and Regulations.

(1) Issued by the GSA. Rules and regulations issued by the GSA to effectuate its authority in respect to disposal of real estate and real property components are contained in FPMR, Section 101-47, as amended, including disposition of timber, embedded sand, gravel and stone, buildings and other structures, and leaseholds and other rights to use or occupy real estate. The DE will be governed by these rules and regulations. GSA also issues, from time to time, special delegations of authority to the Department of Defense with power of redelegation.

(2) Issued by the Departments. Policies and procedures of the departments with respect to the control, management, maintenance, and disposition of real estate and real property components located within the continental United States and its territories and possessions, placed in excess status or to be placed in excess status are contained in AR 405-90, AFR 87-4, and AR 405-5/AFR 87-15, except Army civil works property which is governed by this handbook.

c. Authorities Delegated to the Department of Defense. Under the publications and special delegations issued by GSA, the Department of Defense has been designated disposal agency categories enumerated in paragraph 11-4 supra. \*

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d. Authorities Delegated to the Army and Air Force. Department of Defense Directive 4165.6, among other things, redelegates to the Secretaries of the Army, Navy and Air Force, and to such individuals as they may designate for the purpose of administering real estate actions within their respective departments, the authorities which were then, or may hereafter be, assigned and delegated to, or vested in the Secretary of Defense by:

(1) Sections 401 and 402 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 511 and 512) and regulations of the GSA promulgated thereunder.

(2) The Administrator of General Services, pursuant to Section 203(a), (b) and (c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U. S. C. 484).

(3) Other specific delegations from the Administrator of General Services.

e. Authorities (Special). In addition to the general authority cited in paragraph (2) above, the Department derives authority from a number of special purpose statutes to transfer real property to other Federal agencies and to dispose of real property for special purposes, or to special classes or in a specific manner to achieve a specific objective. Some of these acts are utilized in conjunction with regulations of GSA and some are exercised independently thereof according to the nature of the particular law. These laws are described in subsequent sections of this handbook.

11-91. Transfers - General. Resumes of the principal legislative acts authorizing transfer of Army and Air Force real property to other Federal departments are contained in succeeding paragraphs. The authorities in these acts are exercised independently of GSA regulations. Transfers under these authorities are made without reimbursement. Real property can also be retransferred under the Federal Property Act within the scope of disposal authority delegated by GSA. Transfers under the Federal Property Act are subject to reimbursement as prescribed by FPMR, section 101-47.203-7. Property reported to GSA for disposal will be transferred only at the direction of GSA. Exceed property excepted from reporting may be transferred by the DE under GSA regulations. Transfers to the Department of the Interior of surplus lands

11-92. Transfers Among the Armed Services. 10 U. S. C. 2571(a) authorizes the interchange without reimbursement of military stores, supplies, and equipment of every character, including real estate \*

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owned by the Government, between the Army, Navy, Air Force and Coast Guard upon request by the head of one service and with the approval of the head of the other service.

11-93. Transfers to Tennessee Valley Authority. 10 U. S. C. 831f(b) authorizes the President of the United States to provide for the transfer to the Tennessee Valley Authority of the use, possession and control of such real or personal property of the United States as he may from time to time deem necessary and proper for its purposes. This authority is applicable to property under the jurisdiction or control of the Secretaries of the Army and the Air Force. The authority vested in the President by this law has been delegated to the Office of Management and Budget by Executive Order No. 10530 dated 11 May 1954, as amended (see footnote to 3 U. S. C. 301).

11-94. Transfers to Federal Prison Industries, Inc. 18 U. S. C. 4122 authorizes any department or agency of the Department of Defense to transfer without exchange of funds, to Federal Prison Industries, Inc., any property or equipment suitable for use in performing the functions and duties covered by agreement entered into under subsection (d) of this Act. The provisions include the industrial employment and training of prisoners convicted by general courts-martial and confined in any institution under the jurisdiction of any DOD agency or department.

11-95. Transfers to Veterans Administration. 38 U. S. C. 5003 authorizes the secretaries of the military departments to transfer, without reimbursement, to the Veterans Administration, facilities, supplies, equipment, or material necessary and proper for the authorized care of veterans. The word "facilities," as used in this Act, has been construed to include buildings and grounds.

11-96. Transfers to Secretary of Transportation and the National Weather Service. 49 U. S. C. 1157 authorizes the Department of Defense to transfer, without charge, to the Secretary of Transportation, airport property and airway property, exclusive of meteorological facilities in territory outside the continental limits of the United States (including Alaska). Section (b) of this Act, similarly authorizes transfer of meteorological facilities, without charge, to the National Weather Service.

11-97. Transfers to District of Columbia. 40 U.S.C. 122 authorizes Federal and District authorities administering properties within the District of Columbia, owned by the United States or by the District, to transfer jurisdiction over parts or all of such property among or between themselves for purposes of administration and maintenance under such conditions as may be mutually agreed upon, provided that, prior to the consummation of any such transfer, the proposed transfer shall be \*

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recommended by the National Capital Planning Commission. All such transfers and agreements shall be reported to Congress by the District authorities concerned.

11-98. Interchange of National Forest and Military and Civil Works Lands. 16 U.S.C. 505a, 505b authorizes the Secretary of Agriculture, with respect to national forest lands, and the Secretary of a military department with respect to lands under the control of the military department which lie within or adjacent to the exterior boundaries of a national forest, to interchange such lands, or parts thereof, without reimbursement or transfer of funds whenever they shall determine that such interchange will facilitate land management and provide maximum use thereof, for authorized purposes. This law further provides that no transfer thereunder shall become effective until 45 days after the submission to the Congress by the respective Secretaries of notice of intention to make the interchange. The law also provides, in effect, that lands so transferred shall thereafter be subject only to the laws applicable to the lands of which the transferred lands become a part. Lands under the administrative control of the Congress, both military and civil, and that of the Air Force are within the scope of this law.

11-99. Procedures for Interchange of National Forest Lands.

a. General. The interchange of national forest lands is accomplished in three steps: first, agreement must be reached between the two departments involved as to which lands will be interchanged; second, the two departments will jointly notify the Speaker of the House of Representatives and the President of the Senate, by letter, of the intention of the two departments to make the interchange agreed upon; third, upon the expiration of 45 days from the date of submission of the notice of intention (counting only days occurring during any regular or special session of the Congress) the two secretaries will execute jointly and cause to be published in the Federal Register an order transferring the respective lands of each department to the other.

b. Initiation of Requests for Interchange. Requests for interchange of lands may be originated by either the military department involved or the Department of Agriculture. Those originated by the Department of the Army may result from land requirements generated by newly authorized civil works or military construction projects or from authorized expansion of existing projects or as a result of property utilization surveys. Department of the Air Force requirements may develop similarly. When a request originates with the Department of the Air Force requirements may develop similarly. When a request originates with the Department of Agriculture pertaining to a civil-works project or a military installation, it will be analyzed and coordinated by the DE with local representatives of the Department of Agriculture and \*



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the using service, as appropriate, to determine the feasibility of and need for the acquisition of any forest land to improve administration of the Army project or installation and the availability of Army lands for transfer to the Department of Agriculture. When coordinated analysis indicates the propriety of an interchange, an interchange planning report will be developed by by the DE, in coordination with interested local elements of the two departments and submitted to HQDA (DAEN-REM) WASH DC 20314, with appropriate recommendations.

c. Contents of Interchange Planning Report. The planning report should include the following information:

(1) Location of the areas proposed for interchange, including the county or municipality, names of the forest, project or installation, and number of acres to be interchanged by each department.

(2) If the areas involved include public domain lands, the number and date of the Executive Order or Public Land Order by which withdrawn or established.

(3) If the areas include acquired lands:

(a) Approximate dates, methods and cost of acquisition of Department of the Army lands proposed for interchange.

(b) Interest, restrictions and reservations currently outstanding, to which the lands were subject when acquired, together with such rights subsequently granted by the Government and presently in force.

(4) Any additional reservations, conditions or restrictions under which the interchange is to be made.

(5) A map, in triplicate, indicating by appropriate color scheme the lands of each department which are to be interchanged. The map should show the jurisdictional boundary, and, where appropriate, the contour elevations used as a basis for determining the extent of the interchange.

(6) An informal estimate of the current values of the areas to be interchanged.

(7) Information upon which to base a determination by the two Secretaries that the interchange will facilitate land management and provide maximum use thereof for authorized purposes.

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(8) Any other information or data that might be helpful to representatives of the Department of the Army in answering pertinent questions that may be raised by the committees of Congress.

(9) A draft of order of interchange prepared, in sextuplicate, in coordination with representatives of the Forest Service for execution jointly by the two Secretaries.

(10) Recommendations of the District and Division Engineers.

d. Relinquishment and Assumption of Possession. Upon notification by the Chief of Engineers that an order of interchange has been published, the DE will coordinate with local representatives of the Forest Service, and the using service if appropriate, the exchange of custody and accountability of the respective areas.

11-100. Procedure for Other Transfers.

a. Applicability - Exceptions. This paragraph and paragraphs 11-101 and 11-102 are applicable to all transfers of real and related personal property to other Federal agencies by the Army and Air Force except as provided above.

b. Authority to Execute.

(1) Secretaries of the Army and Air Force. Instruments effecting the transfer of fee-owned land (except fee-owned land that has been reported to GSA and is transferred at the direction of GSA) will be executed at Secretarial level. The Secretary of the Army, or his designee, will execute instruments transferring Air Force land to other Federal agencies.

(2) Divison and District Engineers will execute instruments transferring real property and related personal property to other Federal agencies: (a) which has been reported to GSA and which is transferred at the direction of GSA; (b) leaseholds, easements, and other lesser interests in lands; and (c) buildings, fixtures, and other improvements.

11-101. Form of Inter-Agency Transfer Instrument.

a. Inter-agency transfer instruments will be prepared by the Chief of Engineers in either memorandum or letter form. The instruments will be prepared for signature of the Secretary of the transferring department and will be addressed to the Secretary or head of the receiving department or agency. The instrument will provide, as a minimum, the following: citation of statutory authority for the transfer; statement as to whether the transfer is made with or without reimbursement; \*

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statement of the reimbursement amount, if applicable; statement as to whether the requirements of 10 U.S.C. 2662 have been met or that the transfer is not subject thereto; statement as to the acreage of land involved; and, by means of an inclosure, a description of the property being transferred. Based on the circumstances and nature of the property, other appropriate data outlined below will be included in the instrument.

(1) Effective date of transfer (where right-of-entry has been granted or custody transferred, this date will be used.)

(2) Restrictions, conditions, reservations and exceptions, as necessary.

(3) When, where, how and by whom transfer of physical possession and accountability for the property will be accomplished.

(4) Location and proposed disposition of title papers pertaining to the property.

(5) Description of the land and copy of map depicting the property and reflecting its relation to retained property, if any, and to encumbrances such as rights-of-way, easements, and leaseholds.

(6) Instructions concerning payment of rent where a lease is involved. The transfer will be conditioned upon assumption of all obligations incurred in connection with the leasehold, including obligations to restore the premises.

(7) Instructions concerning removal and site restoration where buildings or timber, or sand and gravel or other separable property is involved.

(8) Statement of source of title and cost of acquisition where land is involved. Reservations and exceptions in and to the Government's title and easements and other rights in the property granted by the Government will be stated with particularity.

(9) List and description of buildings and improvements and cost of buildings and improvements not acquired with the land.

(10) Preference to excess or other directive making the property available for transfer when instrument is executed by District Engineer.

(11) Statement of responsibility and reimbursement for utility services.

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(12) Reference to Report of Excess, Standard Form 118, where property has been reported to GSA.

(13) Other appropriate information.

b. The DE will provide the data outlined in a above to HQDA (DAEN-REM) WASH DC 20314 for use in preparing transfers to be executed at the Secretariat level. The forwarding correspondence will contain sufficient information for a full and complete understanding of the proposed transfer action, including an appraisal when reimbursement is required, together with other appropriate comments and recommendations.

11-102. Transfer of Custody and Accountability. The DE will transfer custody and accountability or will coordinate the transfer, as appropriate. The DE will collect any reimbursement and obtain any releases required. Where a leasehold is involved, the DE will furnish the transferee a copy of the lease and advice of the last rental paid and when the next rent is due. Upon completion of the transfer, proper notice will be given to the General Accounting Office, the lessor, and the Finance Officer as to the responsibility of the transferee for future rental payments. This action will be initiated or completed promptly upon receipt of a copy of the executed instrument, and a conformed copy thereof will be furnished to HQDA (DAEN-REP) WASH DC 20314.

11-103. Exchanges of Fee-owned Land and Easement Interests. The statutes identified in the following paragraphs authorize the exchange of Government-owned lands and interests therein for private lands and lands owned by states, other non-Federal agencies, and their instrumentalities. As a general rule, any exchange of lands should be restricted to lands of approximately equal value. Where the Government property proposed for exchange has a value substantially in excess of the private land to be acquired, the question of whether the transaction is truly an exchange arises. In drafting relocation contracts, care must be exercised to insure that there is legal authority for execution of the conveyance or easement proposed.

11-104. MCA Acts. The annual military construction authorization acts usually contain general authority for the acquisition, "by donation, purchase, exchange of Government-owned lands, or otherwise," of lands and interests therein at specified installations or for specified military purposes. The annual acts must be examined to determine that specific authority exists to acquire land by exchange, unless a contemplated exchange falls within the scope of one of the special laws mentioned in paragraphs 11-105 through 11-109.

11-105. Army Military and Air Force Lands - \$50,000 Limitation. \*

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a. 10 U.S.C. 2672 authorizes the Secretary of a military department to acquire land and interests in land by gift, purchase, exchange of Government-owned land, or otherwise, that:

(1) The Secretary or his designee determines is needed in the interest of national defense, and

(2) Does not cost more than \$50,000.

b. 10 U.S.C. 2672a authorizes the Secretary of a military department to acquire any interest in land, including by exchange of Government-owned land, that:

(1) The Secretary or his designee determines is needed in the interest of national defense;

(2) Is required to maintain the operational integrity of a military installation, and

(3) Considerations of urgency do not permit the delay necessary to include the required acquisition in an annual Military Construction Authorization Act.

11-106. Army Civil Works Lands. The Secretary of the Army is authorized to exchange lands acquired for river and harbor and flood control projects for privately-owned lands required for such purposes (33 U.S.C. 558b and 558b-1).

11-107. For MCA Family Housing. The Act of 1 September 1954, Public Law 765, 83rd Congress (68 Stat. 1119), as amended by Sec. 415 of Public Law 968, 84th Congress, Act of 3 August 1956 (70 Stat. 1018) authorizes the acquisition of real estate by donation, purchase, exchange of Government-owned lands, or otherwise, for "Military Construction-Army Family Housing at Military Installations and Facilities."

11-108. Procedure for Exchange.

a. Each agreement for the exchange of real property should be formalized by written contract specifying the terms and conditions of the exchange, including, by reference to exhibits incorporated therein or otherwise, the form and terms of the conveyance of the title to the property to and from the Government. The agreement, in the case of relocation contracts, will be developed in accordance with ER 1180-1-1 (Sec. 73, ECI). Where an exchange of land or interests therein is considered desirable in the course of a condemnation proceeding, the agreement can be incorporate in a stipulation therein (Section IV, Chapter 5 of this handbook).

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b. Submission to the Chief of Engineers of draft of conveyance.

(1) Conveyance will usually be executed by the Secretary or head of the agency involved (paragraph 11-131). To avoid impinging on his discretionary powers, the execution of any contract or agreement involving an exchange of real property interests must be approved in advance or be deferred pending execution of the conveyance, or provide that the terms and conditions of any grant to be made pursuant to the contract will be subject to approval by the Secretary or agency head. It is considered preferable that the contract contain a draft of conveyance as an exhibit thereto and, where time will permit, be submitted to DAEN-REM for review prior to final execution of the contract in order to avoid possible difficulties arising from subsequent disagreement over terms acceptable to the signatory of the Government's conveyance.

(2) In submitting for final approval and execution the conveyance of the Government's interest in land pursuant to a contract for exchange, the following data should be included to support the proposed action:

(a) Description and map of the property to be conveyed.

(b) Statement as to how and when the Government acquired title to the property, the nature and extent of its interest therein, and a statement of any encumbrance to which the property is subject and the nature thereof, such as easements for road rights-of-way, utility lines, etc.

(c) A sufficient number of drafts of the conveyance to permit distribution thereof to interested agencies and the grantee.

(d) Two copies of the contract, option, stipulation in condemnation or other agreement which provides for the proposed conveyance, or, in lieu thereof, pertinent excerpts therefrom sufficient to clearly show the nature and extent of the Government's obligation to execute the conveyance.

(e) A citation of the statutory authority on which the execution of the conveyance is to be predicated.

(f) Any additional information necessary to a proper understanding of the proposed transaction.

(g) When the exchange agreement is other than a relocation contract, an appraisal report showing the relative fair values of the properties to be exchanged.

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(h) A copy of the conveyance to be made to the United States, or a statement by the Attorney General that an acceptable conveyance has been executed and delivered to the United States, and that an opinion of good title has been made or it not required by regulation to be made.

(i) Recommendations of the Division and District Engineers.

11-109. Public Law 87-852 Easements. P.L. 87-852, approved 23 October 1962 (76 Stat. 1129), authorizes executive agencies to grant easements on real property of the United States for rights-of-way or other purposes on terms and considerations deemed necessary to protect the interest of the United States, with or without monetary consideration, or other consideration, including any interest in real property. The Act also authorizes the relinquishment of legislative jurisdiction to the State.

11-110. Disposal of Property in which the Military Departments have a Continuing Interest Under Special Acts of Congress. General. Because of the continuing interest of the departments in the following properties and in view of the determinations under the Acts on which the disposals are premised, properties that can be conveyed under authorities discussed in paragraphs 11-111 through 11-114 are not considered surplus or excess within the meaning of these terms as defined in the Federal Property Act.

11-111. Highway Purposes. Title 23 U.S.C. 317 provides that upon application of the Secretary of Transportation, land or materials may be transferred to a state for the construction or maintenance of a right-of-way for any highway adjacent to a Government installation. If, within a period of four months after such application by the Secretary of Transportation, the Secretary of the Department shall not have certified to the Secretary of Transportation that the proposed appropriation of such land or material is contrary to the public interest or inconsistent with the purpose for which such land or materials have been reserved, they may be appropriated and transferred to the state for such purposes. When the need for such land or material ceases to exist, they shall revert to the control of the department. This section applies only to projects constructed on a Federal-aid system, or under the provisions of Chapter 2 of Title 23 U.S.C. Usually applications for highway rights-of-way or the use of borrow material made under this Act by the Federal Highway Administration, Department of Transportation, on behalf of a particular state can be and are more simply satisfied by the issuance of a road easement or a license to take borrow material. This latter procedure is also desirable in that controls necessary to satisfy military requirements may be retained. Title 23 U.S.C. 107(d) directs Federal agencies to cooperate with the Secretary of Transportation \*

in providing rights-of-way, including control of access, for the interstate highway system over lands and interests in lands owned by the United States.

11-112. Authorized Widening of a Public Highway, Street, or Alley.

40 U.S.C. 345c authorizes the conveyance, upon application, of such interest in real property as is determined will not be adverse to the interests of the United States, to the states or political subdivisions for authorized widening of a public highway, street, or alley. The conveyance may be made with or without consideration, and subject to terms and conditions deemed necessary to protect the interests of the United States. Excepted from this authority is the conveyance of any interest in real property that can be transferred under Title 23 of the United States code (see paragraph 11-111), and to public lands in the National Forest System.

11-113. Airport Development.

a. Authority. 49 U.S.C. 1723 provides that

"(a) ...whenever the Secretary of Transportation determines that use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project for airport development under this subchapter, or for the operation of any public airport, including lands reasonably necessary to meet future development of an airport in accordance with the national airport system plan, he shall file with the head of the department or agency having control of the lands a request that the necessary property interests therein be conveyed to the public agency sponsoring the project in question or owning or controlling the airport. The property interest may consist of the title to, or any other interest in, land or any easement through or other interest in airspace. (b) Upon receipt of a request from the Secretary under this section, the head of the department or agency having control of the lands in question shall determine whether the requested conveyance is inconsistent with the needs of the department or agency, and shall notify the Secretary of his determination within a period of four months after receipt of the Secretary's request. If the department or agency head determines that the requested conveyance is not inconsistent with the needs of that department or agency, the department agency head is hereby authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested. A conveyance may be made only on the condition that, at the option of the Secretary, the property interest conveyed shall revert to the United States in the event that the lands in question are not developed for airport purposes or used \*



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in a manner consistent with the terms of the conveyance. If only a part of the property interest conveyed is not developed for airport purposes, or used in a manner consistent with the terms of the conveyance, only that particular part shall at the option of the Secretary, revert to the United States."

b. Approval. The requirement for approval by the President was waived by Executive Order 12079 dated 18 September 1978. The Attorney General delegated his authority to approve to the Assistant Attorney General, Land and Natural Resources Division, by Section 0.67 of Title 28 of the Code of Federal Regulations (Order No. 468.71 of the Attorney General, October 22, 1971: 36 F.R. 20428). The instrument of conveyance must cite authority for the waiver and the delegation as shown in Suggested format of deed (Figure 11-3).

c. Requirements for Conveyance Instrument. Under authority delegated by the Secretary of Transportation to the Federal Aviation Administration (FAA), when the Administrator of the FAA requests a conveyance from a military department, the instrument of conveyance requires the following provisions as covenants running with the land, binding the grantee, its successors and assigns.

(1) That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport in accordance with the National Airport System Plan the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

(2) That the airport, and its appurtenant areas and its buildings and facilities, whether or not the land is conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, religion, age, sex, handicap or national origin, as to airport employment practices, and as to accommodations, services, facilities, and other public uses of the airport.

(3) That the grantee will not grant or permit any exclusive forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it. \*

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(4) That the grantee agrees that no personal shall be excluded from any participation, be denied any benefits or be otherwise subjected to any discrimination on the grounds of race, color, religion, age, sex, handicap or national origin.

(5) That the grantee agrees to comply with all requirements imposed by or pursuant to Part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21) - nondiscrimination in federally assisted programs of the Department of Transportation - effectuation of Title IV of the Civil Rights Act of 1964.

(6) That in furtherance of the policy of the FAA under this covenant, the grantee:

(a) Agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity;

(b) Agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before 17 July 1962 at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

(c) Agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

(7) That any later transfer of the property interest conveyed will be subject to the covenants and conditions in the instrument of conveyance.

(8) That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed \*

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period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

(9) That, if any covenant condition in the instrument of conveyance, other than the covenant contained in paragraph 7 above, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

(10) That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Administrator, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates.

d. Procedure for Conveyance. Upon receipt of a deed from the District Engineer, DAEN-REM will submit the deed to the appropriate Secretary for execution, and to the Assistant Attorney General, Land and Natural Resources Division, for approval before returning it to the District Engineer for delivery to the grantee.

(1) The deed assembly submitted will contain, in triplicate:

(a) The request from the Administrator of FAA to the Secretary of the military department concerned;

(b) The reply from the Secretary involved to the Administrator, making the property available;

(c) The resolution by the appropriate governing body of the public agency sponsoring the project in question indicating authorization for acquisition by such agency and its concurrence with the terms and conditions of the conveyance.

(2) Transmittal correspondence shall also set forth:

(a) The type and condition of the property, including improvements acquired therewith or constructed since acquisition; \*

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(b) Whether there has been any change in the nature, quantity, etc., of the property requested by the agency from the date of its original request to the present. If so, details should be furnished together with an appropriate amendatory resolution (in triplicate) by the governing body of the sponsoring agency;

(c) Expenses of transfer. In view of the provision in the Act that the conveyance will be made without any expense to the United States, if land surveys are required the transferee agency will be required to pay cost of making such surveys.

11-114. Development of Public Port or Industrial Facilities.

a. Authority. Section 108 of Public Law 86-645 approved 14 July 1960 (33 U.S.C. 578) authorizes the Secretary of the Army, after certain determinations are made, to convey land which is a part of a water resource development project to a state, political subdivision thereof, port district, port authority, or other body created by the State or through a compact between two or more States for the purpose of developing or encouraging the development of public port or industrial facilities.

b. Limitation. Only lands within a navigation project will be made available for conveyance for these purposes.

c. Delegations, Rules, and Regulations. Pursuant to rules and regulations published in the Federal Register 11 March 1961 (26 F.R. 2117-2118; 33 C.F.R. 211.141-211.147),

(1) The Chief of Engineers or the Director of Civil Works has been delegated authority to determine:

(a) That the development of public port or industrial facilities on land within a project will be in the public interest;

(b) That such development will not interfere with the operation and maintenance of the project;

(c) That the disposition of the land for these purposes under this Act will serve the objectives of the project;

(d) If two or more agencies file applications for the same land, which agency's intended use of the land will best promote the purpose for which the project was authorized; and

(e) The conditions, reservations and restrictions to be included in a conveyance under the Act. \*

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(2) The District Engineer has been delegated authority to:

(a) Give notice of any proposed conveyance under the Act and afford an opportunity to interested eligible agencies in the general vicinity of the land to apply for its purchase; and

(b) Determine the period of time in which applications for conveyances may be filed.

(3) Notice. The District Engineer shall give notice of the availability of any land for conveyance under this Act and afford an opportunity to eligible agencies in the general vicinity of the land to apply for its purchase (a) by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within the state in which the available land is located and, if any agency of an adjoining state or states may have an interest in the development of such land for public port or industrial facilities, by publication at least twice at not less than 15-day intervals in two newspapers having general circulation within such state or states, and (b) by letters to all agencies who may be interested in the development of public port or industrial facilities on the available land.

(4) Filing of Application. Any agency interested in the development of public ports or Industrial facilities upon the available land shall file a written application with the District Engineer within the time designated in the public notice. The application shall state fully the purposes for which the land is desired and the scope of proposed development.

(5) Price. No conveyance shall be made for a price less than the fair market value of the land.

(6) Conveyance. Any conveyance of land under this Act for public port or industrial facilities will be by quitclaim deed in the form of Figure 11-5, executed by the Secretary of the Army.

d. Procedure.

(1) Proposals to convey land included in navigation projects for development of public port or industrial facilities will be forwarded by the District Engineer, through the Division Engineer, to HQDA (DAEN-REM), with recommendations, and with the information required by paragraph 11-19 of Section II, and such additional information as will enable the Chief of Engineers to make the determinations required under c above. \*

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(2) Upon receipt of notification from the Chief of Engineers that the property is available for sale for development of public port or industrial facilities, the District Engineer shall give notice of such availability in accordance with c(3) above. The public notice will follow substantially the guide format in Figure 11-4.

(3) If two or more applications are received from eligible agencies, all applications, with recommendations, will be forwarded, through the Division Engineer, to DAEN-REM for the determination referred to in c(1) (d) above.

(4) Upon determination of the actual property to be included in a conveyance, the fair market value thereof will be established by an appraisal.

(5) Upon the acceptance of an application, negotiations will be conducted at the price established by the appraisal. However, the applicant will be advised that the price is subject to approval by the Secretary of the Army. This is necessary since the Secretary of the Army has not delegated his authority to determine the fair market value for conveyances under this Act. If public port facilities that can be used in connection with proposed industrial facilities have not been constructed in the vicinity, no disposal under this authority will be authorized which does not provide for construction of public port facilities.

(6) Upon completion of negotiations a quitclaim deed following the sample format in Figure 11-5 will be prepared and forwarded, through the Division Engineer, to HQDA (DAEN-REM) for execution by the Secretary of the Army, in accordance with the general procedure for submission of deeds for execution as outlined in paragraph 11-131.

11-115. Authority and Procedure for Disposal of Surplus Property by DA to Eligible Public Agencies. FPMR Section 101-47.303-2 provides that the disposal agency shall allow a reasonable period of time for states, municipalities, and their instrumentalities, to perfect a comprehensive and coordinated plan of use and procurement of surplus property in which they may be interested. This provision applies to surplus property that can be disposed of by negotiated sale under the special acts listed in paragraphs 11-118 through 11-122 for public highways, streets, and alleys under the Act listed in paragraphs 11-111 and 11-112, by transfer to the District of Columbia under paragraph 11-97, and under the individual agency negotiating authority of the Federal Property Act, (40 U.S.C. 484(e)3). A listing of the special acts, with the eligible public agencies, and some guides for classification of property for disposal are contained in FPMR, Section 101-47.4905. \*

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11-116. Classification. Pursuant to FPMR, Section 101-47.303-1, any item of surplus land not reported to GSA for disposal under the provisions of Section V of this Chapter will be classified according to its highest and best use, e.g., industrial, commercial, agricultural, or for disposal under the special acts referred to above. Where required by the special acts, classification will be coordinated with the interested Federal agency. The classification will be recorded on ENG Form 1825 (Real Property Classification), with sufficient information to justify the classification. Surplus property may be reclassified from time to time whenever such action is deemed appropriate. Based on its classification, notice of the availability of surplus land for disposal will be given to public agencies eligible to procure such property as provided in the following paragraph.

11-117. Notice to Eligible Public Agencies. FPMR, Section 101-47.303-2 and Section 101-47.308-1, et seq., provide a procedure of formal notice to eligible public agencies of the availability of surplus land for disposal. Notices are not required for property having an estimated fair market value of less than \$1,000, except where the disposal agency has reason to believe that an eligible public agency may be interested in the property. Notices as provided in this section will be given for all surplus airport property and surplus fee-owned land for which the Army is the disposal agency, that is classified for disposal under a special act, or if there is reason to believe that a public agency may be interested in acquiring the land by negotiation at its appraised fair market value under the Federal Property Act (40 U.S.C. 484(e) (3) (H)).

11-118. Airport Property.

a. Eligible Transferees. The right to acquire surplus property without monetary consideration for airport purposes, under 50 U.S.C. 1622(g), with the approval of the Administrator of GSA, is limited to states, political subdivisions, municipalities and tax-supported institutions. This is the proper statutory provision governing transfers of entire military airports to state or local agencies for their use as public airports. The right of such transferees is subordinate to the priority of Federal agencies to acquire the property for their own use. Airport property will not be disposed of for any other non-Federal use until every reasonable effort has been made to dispose of it for airport purposes.

b. Preliminary Procedures.

(1) Request a determination by the Administrator of the FAA that the surplus land is essential, suitable or desirable for the development, improvement, operation or maintenance of a public airport as required by 50 U.S.C. 1622(g) (1). \*

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(2) Upon receipt of a determination by the Administrator of FAA, furnish the FAA Regional Office with a description of the property, or a copy of the Standard Form 118 if the property has been reported to GSA for screening, together with a list of the operating and maintenance equipment available for disposal with the airfield, and request that a survey under the Surplus Property Act be made and that, based thereon, recommendations for classification of the property under the Act be furnished.

c. Classification. District Engineers are authorized to approve ENG Form 1825, Real Property Classification, based on FAA recommendations. Generally, the recommendations of FAA in regard to classification of property, will be followed, except the following will be forwarded to DAEN-REM without final classification action: cases involving reduction in land areas, runways, taxiways, etc.; controversial cases; and cases where changes in the reservations, restrictions, or conditions specified in the Act are recommended by FAA, District Engineers will not classify as airport property, property in excess of that recommended by FAA or property of which the highest and best use is determined to be industrial. Where the District Engineer does not agree with the report of FAA, he will immediately submit complete data setting forth all objections to the report, together with his recommendations, to DAEN-REM.

d. Notice of Availability. Upon classification of the property as airport property, notice of the proposed disposal will be sent by certified mail to the political subdivisions, or municipalities in which the property is located, and also to any other state, political subdivision, municipality, or tax-supported institution which the District Engineer has reason to believe may be interested in the property. A reasonable time will be allowed eligible agencies to submit an acceptable application. Figure 11-6 is a format for use in preparing the notice.

e. Advertising. The proposed disposal of airport property will be advertised in at least two newspapers of general circulation within the state in which the airport is located. This advertising will insure notification to political subdivisions, tax-supported institutions, and others that the property is available. Property not classified as airport property will be advertised in accordance with the applicable requirements for the type of property. However, the first advertising of non-airport property adjacent to an airport will contain a statement that the property may be acquired under Section 13(g) of the Surplus Property Act of 1944, as amended, for airport purposes, provided FAA \* approves such acquisition.



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f. Form of Application. Public agencies desiring to acquire surplus airport property will be required to submit an Application For Airport Property (Figure 11-7). The application includes the provisions of Section 13(g) of the Surplus Property Act of 1944, as amended. If the applicant desires to enter and use the property prior to conveyance, such other terms and conditions considered desirable and necessary governing interim use of the property by the applicant will be included. The application will be signed by the applicant and forwarded to DAEN-REM for acceptance by proper authority in the Department. Evidence of the applicant's legal and financial ability to maintain and operate the property, as proposed, will also be submitted with the application.

g. Request for Modifications in the Provisions of Section 13(g) of the Surplus Property Act of 1944, as Amended. Should an applicant request modifications in the restrictions and conditions imposed by Section 13(g) of the Surplus Property Act of 1944, as amended, the application and all pertinent data, including the FAA report, will be forwarded to DAEN-REM. If the requested modification is approved, the case will again be referred to FAA for its recommendation. If FAA does not concur in the modification, the fact will be reported to DAEN-REM for further necessary action.

h. Personal Property. Non-industrial personal property of any other nature or description made available for disposal with an airport and located on it may be transferred with the airport on recommendation by FAA.

i. Meetings with Public Bodies. Close cooperation will be maintained with FAA, and its representatives will be invited to participate in negotiations with public bodies in connection with transfer of airport property.

j. Land Survey. In the event that a property survey is required to establish a correct metes and bounds description of the land to be transferred as airport property, a survey will be provided by the prospective transferee without cost to the Government.

k. Transfer Instruments. The type of instrument used in conveying or transferring the Government's interest will vary according to the type of property that may be involved, i.e., wholly Government-owned, mixed owned and leased, and leased property. However, instruments of conveyances will contain provisions required by the Surplus Property Act of 1944, as amended. Where a lease is involved and it is from other than the prospective transferee, such transferee will be required to obtain a long term lease on the land prior to conveyance of the Government-owned improvements. Execution of the lease to the \*

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prospective transferee and acceptance of the application by the Government should be handled simultaneously. Figure 11-8 is a format of quitclaim deed covering fee-owned and leased land (Airport Property). A quitclaim deed can be used to surrender leased land and convey the improvements and related personal property, or this can be done by supplemental agreement to the lease or other type of contract as considered desirable in accordance with local conveyancing practices.

l. Recordation. All transfer instruments will be recorded by and at the expense of the transferee.

m. Compliance. The Administrator, FAA, is responsible for determining an enforcing compliance of conditions and restrictions contained in any instrument of disposal of airport property, and is authorized to reform, correct, or amend any such instrument for such action as deemed necessary by him under applicable law. Care will be exercised to furnish copies of the application, classification, and instrument of conveyance to FAA so that it can properly perform its compliance function.

11-119. Wildlife Purposes.

a. Authority. The military departments, when acting as a disposal agency, are authorized under the provisions of 16 U.S.C. 667b-d. in connection with land and improvements that: (1) can be utilized for wildlife conservation purposes by the agency of the state exercising administration over the wildlife resources of the state wherein the real property lies, or by the Secretary of the Interior; and (2) are chiefly valuable for use for any such purpose and which, in the determination of the GSA is available for such use, to convey such property to such agency without reimbursement or transfer of funds if the management thereof for the conservation of wildlife relates to other than migratory birds, or to the Secretary of the Interior if the property has particular value in carrying out the national migratory bird program. Personal property cannot be conveyed or transferred under this authority and only such improvements as the District Engineer determines to be necessary for proper execution of the applicant's program may be conveyed.

b. Notice of Availability. If property is considered by the District Engineer to be valuable for wildlife conservation purposes, or if interest has been shown in acquiring the property for that purpose, notice of availability should be given to the agency administering state wildlife resources and to the Federal Fish and Wildlife Service if the property has particular value in carrying out the national migratory bird program. \*

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c. Classification - Factors to be Considered and Determinations to be Made by Disposal Agency. Should the property be classified as being chiefly valuable for purposes other than wildlife conservation purposes, such as agricultural, commercial, etc., the property may not be transferred to any state or to the Department of the Interior, under the authority cited in a above. However, should an application be received for conveyance of the property for wildlife conservation purposes, and the classification of the property indicates that it is chiefly valuable for other purposes, the classification, all pertinent papers and the application, together with the Division Engineer's recommendation, will be forwarded to HQDA (DAEN-REM) WASH DC 20314. In addition to the determination that the property is chiefly valuable for wildlife conservation purposes and is available for such use, the Division Engineer will determine, when recommending that property be conveyed for such use, that the applicant has the legal and financial ability to acquire, operate and maintain the property as proposed, and will furnish information to DAEN-REM to support his opinion. With proper safeguards, contaminated property can be made available for use in the wildlife conservation program.

d. Application. Any state desiring to make application for property for wildlife conservation will be furnished copies of Application For Real Property For the Conservation of Wildlife with accompanying instructions for preparation (Figure 11-9). In evaluating the application, the responsible District Engineer will request review of the application by the Regional Office of the Fish and Wildlife Service, Department of the Interior, and will obtain that Service's recommendation as to the value of the property for wildlife conservation purposes.

e. Instrument of Conveyance. Any instrument of conveyance of property for wildlife conservation will contain the restrictions and conditions required by 16 U.S.C. 667b, c, d. A Sample for conveyance of Land and Improvements For Conservation of Wildlife, with the statutory restrictions and conditions is provided as Figure 11-10.

f. Publication of Order. The order required to be published in the Federal Register after disposal of the property under this authority will be processed for publication by the Chief of Engineers.

11-120. Shrines, Memorials, or Religious purposes. Pursuant to the provisions of FPMR, Section 101-47.308-5, when the Department, acting as a disposal agency, determines that a chapel may properly be used in place, a suitable area of land may be sold with the chapel for use as a shrine, memorial, or for religious purposes. The sale price of land for this purpose will be its fair market value based on its highest and \*

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best use as established by an appraisal. Deeds conveying lands for such purposes will contain no restriction on the use of the land. Sale of the chapel building will be subject to the procedure and terms and conditions provided in Section XI of this Chapter.

11-121. Power Transmission Lines.

a. Authority. Pursuant to the provisions of Section 13(d) of the Surplus Property Act of 1944, as amended (50 U.S.C., App. 1622(d)), any state, or political subdivision thereof, or any state or Government agency or instrumentality may certify to the disposal agency that a surplus power transmission line and the right of way acquired for its construction is needed for or adaptable to the requirements of a public or cooperative power project. Whenever any property is reported to GSA for screening, it will be assumed that GSA has screened Federal agencies for such purpose and no further screening with such agencies is necessary. Property not reported to GSA for screening will be screened in accordance with Section III of this Chapter. Screening with the appropriate state agencies will be conducted in all cases.

b. Procedure. Whenever a State, or political subdivision thereof, or state or Federal agency or instrumentality certifies that such property is needed for or adaptable to the requirements of a public or cooperative power project, the property may be sold for such utilization at its appraised fair market value. In the event that a sale cannot be consummated and the certification is not withdrawn, such facts will be reported to DAEN-REM in order that a determination of the action to be taken maybe obtained from the Administrator, GSA. If no certification from a state or Federal instrumentality as outlined above is received after proper notice is given, the property may be disposed of in the same manner as other excess or surplus real property.

11-122. Assignment to Department of Health, Education, and Welfare (HEW) or Successor Agencies for Health or Educational Purposes.

a. Authority. Under Section 203(k) (1) of the Federal Property Act of 1949, as amended (40 U.S.C. 484(k) (1)) the Administrator, GSA is authorized, under such regulations as he may prescribe and in his discretion, to assign to the Secretary of HEW for disposal, such surplus real property as is recommended by the Secretary of HEW as being needed for school, classroom, or other educational use, or for use in the protection of public health, including research. The Secretary of HEW is authorized under Section 203(k) (1), subject to disapproval by the Administrator, GSA after notice to him from the Department of Health, Education, and Welfare (HEW), to sell or lease surplus real property for such purposes. Pursuant to FPMR, Section 101-47.308-4, a military department, when acting as disposal agency is authorized to assign \*

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property to HEW for disposal for education or health purposes and to disapprove, within 30 days after notice, any transfer of property proposed to be made by HEW for such purposes.

b. Notice to Department of Health, Education, and Welfare or Successor Agencies.

When real property is reported to GSA for screening prior to disposal by the military department, notification will be given HEW by the GSA Regional Office simultaneously with notification to the District Engineer that the property has been determined surplus to Federal requirements. The District Engineer will furnish such notification directly to the appropriate regional representative of the Department of HEW in the case of nonreportable real property immediately after he determines that the property is surplus to Federal requirements. Such notification will include the following information:

(1) A brief description of the property in sufficient detail to enable a determination of its probable suitability for uses authorized in Section 203(k) (1) of the Act.

(2) When the property may be inspected and where and how arrangements may be made for inspection of the property.

(3) That the property will be withheld from advertisement for bids for a period of 20 days from the time of the notification unless the office submitting the notification is sooner informed in writing as to whether the property is needed for school, classroom, or other educational use, or for use in the protection of public health, including research. If within that time notice is received of a known potential need, the property will be held for an additional 45 days or until a certification of need or request for assignment is received, whichever occurs first.

(4) The District Engineer shall not give such notification to HEW on surplus buildings and improvements located on surplus leaseholds where their removal from the site will increase the Government's restoration obligations under the lease. Where such a situation exists and GSA is to screen the property prior to disposal by the Department, GSA should be advised to this effect. Where any surplus buildings and improvements (on leaseholds or fee-owned land) are available for off-site disposal, notification will be given HEW (unless time restrictions prohibit as set out in Sections III and V) but the notification will include the same restoration obligations as would be placed in a sale of the property to a private party. \*

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(5) During the 20-day period, action will be taken preparatory to advertising the property for sale. All inquiries received concerning acquisition of the property for such purposes from the state, or local agencies, or qualified organizations, seeking the purchase of available real property for health or educational purposes will be referred to the appropriate field representatives of HEW. If, within the 20 day period, HEW shall inform the District Engineer of any known potential requirement, the District Engineer will withhold disposition until a certification of need is received but not to exceed 45 days.

(6) Upon receipt from HEW of a certification that the property is needed for educational or public health purposes and a request from HEW for assignment of the property, if the property is available for such purposes, it will be assigned by the responsible District Engineer by letter addressed to the HEW office from which the request for assignment was received, citing the Act and GSA regulations as authority therefor. A copy of such letter of assignment will be furnished to the Regional Office of GSA.

(7) When notification of the proposed disposal is received from HEW, subsequent to assignment, if there is no reason for disapproval of the proposed disposition, notice from the responsible District Engineer to HEW of approval thereof is not necessary. Under Section 203(k) (1), approval is automatically given in the absence of notice of disapproval within 30 days from the date of notification of the proposed disposal. If in the request for assignment HEW furnishes the name of the proposed transferee and states that an application from the transferee is on file and that the proposed use by the transferee is one authorized under Section 203(k) (1), the District Engineer, in making the assignment to HEW, may state that no objection is interposed to the proposed transfer of the property.

(8) GSA has advised that it is not anticipated that the Corps of Engineers, in acting as the disposal agency, would investigate each request to it by the Department of HEW, because to make such investigations in each case would clearly duplicate the function assigned to the Department of HEW. Doubtful cases would only arise in connection with property for which the highest and best use is industrial or commercial, or where further study may be required by the Federal Government concerning future requirements for the property. In accordance with a further suggestion by GSA, where there is a reasonable doubt as to the propriety of an assignment to HEW or a proposed disposal by it, the request will be referred to GSA for final decision. Such referrals will be made through DAEN-REM.

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(9) The District Engineer making the assignment of the property will request HEW to furnish two copies of the sales contract. Upon receipt of these copies, together with a request from HEW that the property be transferred, custody will be given to the grantee or transferee named in the sales contract.

11-123. Surplus Disposal to Private Parties. General.

Paragraphs 11-125b through 11-130 cover general procedures for the sale of surplus fee-owned land and easement interests and includes actions to be taken preliminary to proceeding with the appropriate sale procedures set forth in Section XIV of this Chapter.

11-124. Cottage Site Disposal.

Disposal of lots for cottage site development and use is authorized by P.L. 84-999 (16 U.S.C. 460e). No new allocations of land for private cottage use will be made. The policy concerning phasing out of existing cottage site areas is set out in ER 1130-2-400. The DE has delegated authority to sell or lease cottage sites. Contract of Sale, ENG Form 3297-R, will be used.

11-125. Procedure.

a. Fee-owned land. When fee-owned land for which the department is acting as disposal agency has been found to be surplus to requirements of the Federal Government, has been classified under paragraph 11-116 and disposal is not made to a state, political subdivision, etc., the property will be offered for sale to the highest responsible bidder, except under special circumstances provided in Section XIV of this Chapter.

b. Easements. Easements that are readily assignable will be disposed of in the same manner as fee-owned land. Easements will usually be disposed of with land to which they are appurtenant. Easements may be disposed of to the owner of land which is subject to the easement (the servient estate). A determination should be made as to whether the disposal should be with or without reimbursement to the Government on the basis of all the circumstances and factors involved and with due regard to the acquisition cost to the Government. The amount of such reimbursement should be the appraised fair market value of the easement. In the case of disposal of an easement acquired for the deposit of spoil material a minimum charge of \$225.00 will be imposed where relinquishment is being accomplished for the benefit of the owner of the servient estate and where no direct benefit will inure to the Government. A statement as to the commercial value will be made when recommending an easement for disposal. The circumstances and factors leading to these determinations shall be documented and retained in the files (FPMR, Section 101-47.313-1).

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11-126. Appraisal. Under the usual circumstances prompt action will be taken to appraise surplus property concurrently with its classification. Appraisals will not be undertaken for property which has been or is likely to be classified for disposal for any of the following purposes: airport; wildlife conservation; public highways, streets and alleys; disposal to the District of Columbia; and property assigned to HEW for disposal. Property that is to be disposed of for other than the above listed purposes will be appraised.

11-127. Disposal Plan for Fee-owned Land. A disposal plan will be made for each surplus property. It will include the District Engineer's recommendation of the method or methods of disposal and the reasons therefor; for example, whether improvements or minerals and lands should be sold separately; improvements cannibalized; whether the property should be subdivided; the media for advertising; and other pertinent factors. In addition, the following will be included as part of the disposal plan:

- a. Description and map of the lands.
- b. Description of buildings and other improvements.
- c. Appraisal made in accordance with Chapter 4 of this pamphlet, unless exempted by paragraph 11-126.
- d. Information as to when, from whom, and how the property was acquired.
- e. Information as to the estate which the Government has in the land, and reservations and exceptions in and to the Government's title. Outstanding interests granted by the Government or reserved or excepted in the acquisition of the lands will be stated with particularity. The map or plat will delineate any grant, exception, or reservation, such as telephone and telegraph, electric transmission, oil, gas and water lines.
- f. Purchase price of land, buildings and improvements acquired with the lands, and the cost of buildings and improvements, if any, constructed by the United States.
- g. If there is an indication of valuable minerals, such statement will be made with full explanatory data.
- h. Where the estimated value of the land together with improvements and related personal property is in excess of \$1,000, the disposal plan will be submitted to DAEN-REM for approval. \*



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11-128. Disposal Plan for Easements. When recommending disposal of a surplus easement the District Engineer will submit the following:

- a. Information as to when and from whom the easement was acquired.
- b. The consideration paid therefor.
- c. Identification of the installation to which it is appurtenant.

d. If the easement has no commercial value, the amount that should be paid by the owner of the servient estate, representing a rebate on the purchase price, or the amount paid for severance damages will be specified. (For example, if the easement was acquired for a 15-year period and the price paid therefor was substantial and one year after acquisition it is returned to the owner of the servient estate, an effort should be made to obtain a rebate on the purchase price although the easement has no commercial value. The same would be applicable to the payment for severance damages).

e. If the owner of the servient estate or other prospective grantee, is not willing to pay the appraised value in consideration of the release of an easement acquired for a substantial consideration, all action to release the easement will be held in abeyance until such time as an adequate consideration can be obtained for the release. Note the minimum payment for release of spoil easements discussed in paragraph 11-125b.

11-129. Sale and Conveyance. Sales procedure, including advertising, will be in accordance with Section XIV of the Chapter. Normally conveyance will be by deed, prepared and executed as provided in paragraph 11-131.

11-130. Application of Antitrust Laws. Section 207 of the Federal Property Act provides that real property and related personal property with an aggregate total cost of \$1,000,000 or more, or patents, processes, techniques, or inventions, regardless of costs, shall not be disposed of until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the antitrust laws. Prior to obligating the Government on any such disposal, the District Engineer will furnish DAEN-REM information the probable terms or conditions. DAEN-REM will use this information as the basis for a request to the Attorney General for advice (FPMR, Section 101-47.301-2).

11-131. Preparation and Execution of Deeds.

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\* a. Authority to Execute. All conveyances of fee ownership and other permanent interests in land which the Army and Air Force have authority to convey under the statutory authorities and delegation set forth in this section of Chapter 11, will be executed by the Secretary of the Army, for Army land, and by direction of the Secretary of the Air Force, for Air Force land. Conveyances of surplus property that have been assigned to HHS for disposal will be executed by officers of that department.

b. Form of Deed or Instrument. Conveyances of fee-owned land and easements shall be by quitclaim deed prepared in conformance with local law and practice except where it is found that another form of conveyance is necessary or desirable to obtain a reasonable price for the property, or to render the title marketable, or for other reasons. Appropriate recommendations will be forwarded to CDR USACE (DAEN-REM) WASH DC 20314-1000. Forwarding correspondence should contain information as to the requirements of local law for witnesses, acknowledgment, authentication of acknowledgment, and other special requirements. The instrument of conveyance should contain a statement that the requirements of 10 U.S.C. 2662 have been met, or that the conveyance is not subject to these requirements. \*

c. Authority for Conveyance. Authority for conveyance will be recited in the granting clause. Conveyances under the Federal Property Act will recite: "\*\*\*\* under and pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, and the delegation of authority to the Secretary of Defense from the Administrator of General Services Administration (41 C.F.R. 101-47.601) and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) (20 F.R. 7113)." Conveyances to states and their instrumentalities under the special statutes, listed in paragraphs 11-115 through 11-122, will recite the special statutes, as continued in effect by the Federal Property Act and the delegations. Conveyances to states for wildlife conservation purposes under Public Law 537, 80th Congress (paragraph 11-119a) will cite the special act and recite that the property has been determined surplus under the Federal Property Act and delegations thereunder. Conveyances releasing the restrictions contained in a flowage easement prohibiting the construction and maintenance of structures for human habitation should cite as authority for the conveyance the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) as amended, and the Federal Property Management Regulations (101-47.313-11).

d. Conditions in the Conveyance. The deed will contain the reservations, restrictions, or conditions, required by: (1) the directive which authorized the disposal; (2) any special acts under which the property is conveyed; and (3) by any contract of sale, agreement to extend credit, or relocation contract, pursuant to which conveyance is made.

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e. Acceptance by Grantee. Where the instrument of conveyance imposes obligations on the grantee, the instrument will be executed and accepted by or on behalf of the grantee prior to forwarding for execution. If the grantee is a corporation or body politic, the instrument will contain a certificate attesting to the authority of the officer executing the instrument to act for and bind the corporation or body politic, and that his signature is genuine. Where a resolution or other special action is necessary to legally bind the grantee, a copy will be attached to the instrument.

f. Execution of Deed.

\* (1) The Division Commander will forward to DAEN-REM a draft of the deed, prepared in final form, together with copies of as many of the items listed below as are appropriate depending on the nature and purpose of the conveyance, any other information necessary for a complete understanding of the case, and the remarks and recommendations of the Division and District Commander. Upon approval of the proposed disposal by DAEN-REM, the deed will be forwarded to higher authority for execution and returned to the District Commander for delivery and distribution.

(2) Items to be forwarded with draft of deed proposed for execution, as appropriate:

(a) Real Property Classification, ENG Form 1825.

(b) Application or plan for use and procurement with recommendations and determinations of other interested Federal agencies when the conveyance is under one of the special acts listed in paragraphs 11-115 through 11-122.

(c) Disposal plans.

(d) Appraisal where not included in (c) above.

(e) Statement on advertising conducted.

(f) Abstract of bids.

(g) Relocation contract or exchange agreement.

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\* g. Distribution of Deeds. The District Commander will deliver deeds, which will be recorded by or at the expense of the grantee. Copies of the deed will be conformed by writing the following on them: date and manner of delivery; date, time, and place of recordation in public land records. Place copies in the Division/District Real Estate Files. According to FPMR, Section 101-47.307-3, two conformed copies will be sent to any Federal agency charged with enforcement of reservations, restrictions or conditions of the deed. A confirmed copy will be sent to the holding agency. \*

11-132. Reserved.

11-133. Reserved.

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SECTION X. DISPOSAL OF LEASEHOLDS AND  
 LEASEHOLD IMPROVEMENTS

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11-134. Authority. Surplus leasehold interests in real property are disposed of under authority delegated by the General Services Administration (GSA) to the Department of Defense (DOD). DOD has redelegated this authority to the military departments. DEs, within the limits of the authority delegated, have been authorized to terminate leases, execute agreements in settlement of restoration obligations, and perform necessary restoration work required by lease terms, directly or by contract, in accordance with the provisions of this section. Exceptions are where: (a) under the terms of the lease the leasehold is transferable to third parties or Government-owned improvements on leased airport or other special types of leased property have an in-place value to the lessor for airport or other special purposes; or (b) the leasehold or Government-owned improvements may be disposed of to eligible public agencies under special statutes (FPMR 101-47.4905), in which cases the procedures provided in Section IX will be applied to the extent applicable. Disposals within the scope of the above exceptions require the prior approval of DAEN-REM.

11-135. Procedure for Termination of Leases. When leased premises are no longer required for use by the Government, a notice of termination will be given to the lessor in accordance with the terms of the lease, effective as of the date of vacation. The termination notice will be served sufficiently in advance to allow time for compliance by the Government with terms providing for removal of improvements and restoration of premises. Where a lease does not contain provision for continuing renewal without notice and will automatically expire, the Government is not required to give notice when it intends to surrender the premises at the expiration of the lease. However, the lessor should be informed, as far in advance as possible, of the Department's intention to vacate, in order that he may plan for a new tenant for other use of the premises. Where a lease provides for a continuing renewal without notice, the DE will ascertain in advance of the beginning of each fiscal year whether the using service has need during the fiscal year for the premises. When the premises are no longer required, a notice of termination will be served in accordance with the terms of the lease. In the event the lease does not provide for termination by the Government, but the lessor will consent to termination, either in its entirety or partially, a supplemental agreement should be entered into to terminate or amend the lease as of the date the premises will be vacated, Government improvements removed, and restoration completed.

a. Forms of Notice of Termination. Where leases provide for restoration, Notice of Cancellation (Restoration) will be prepared in sextuplet in accordance with Figure 11-11. Figure 11-12, Notice of

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Cancellation, will be used for leases which do not provide for restoration or for leases where written notice requiring restoration has been submitted by the lessor prior to termination. Notice of termination will be prepared on the letterhead of the DE concerned, who will assign his own form-letter number.

b. Manner of Serving, Notice of Cancellation. The Notice of Termination must conform to requirements of state law, and will, whenever possible, be served personally upon the lessor. In some states, to be legally effective personal service is mandatory, unless expressly waived. The lessor will be requested to execute the acknowledgment of receipt of notice on the form. Where the service is effected by registered or certified mail, a return receipt will be requested and a sufficient number of days (in addition to the stipulated period of notice) will be allowed for transmission and receipt of notice. The return receipt properly signed will be evidence that full notice required by the lease has been given. Should the owner refuse or fail to acknowledge receipt of the notice, the officer serving the notice will so certify thereon, giving the date and method of service. In the case of an absentee lessor, where time will not permit use of certified or registered mail for effecting service, notice will be given by telegram to be delivered, not telephoned, to the addressee. In the case of notice by personal service, any available Army facility or personnel in the lessor's locality may be used.

c. Distribution of Notice of Termination. The original notice of termination will be delivered to the lessor; one copy to the finance and accounting officer who pays the rental; one copy to the using service; and one copy to the DE office files.

11-136. Vacation and Protection of Premises. The DE will take action to insure that the premises are vacated by the using service on or before the date specified in the termination notice (or the date of expiration of the lease where formal notice is not required), and will assure provision is made by either the using service or the DE, as appropriate, for proper protection of the property pending the transfer of custody to the lessor pursuant to Section VI of this Chapter and AR 405-90.

11-137. Joint Survey of Premises.

a. When Required. As soon as practical after restoration is requested by the lessor, a terminal condition report to reflect the condition of the leased property as of the termination of the lease, and a terminal survey to determine the extent of restoration required, if any, will be prepared. The lessor will be invited to have his estimators accompany the survey party. The lessor's estimates of restoration \*

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costs should be obtained promptly, and included in the terminal survey for purposes of comparison in accordance with paragraph 11-144c. Survey and condition reports will not be limited to items for which the lessor specifically requests restoration, but will include all items which the DE determines should be restored in order to fulfill the Government's obligation under the lease.

b. Contents. The report will show, in detail, the work items necessary to place the premises in as good a condition as they were at the time they were taken over by the Government, as disclosed by the survey and condition report made at that time, reasonable and ordinary wear and tear, damages by the elements, or circumstances over which the Government has no control, excepted.

c. Housing Leases. The tenant of leased housing is personally responsible for damage to the property, beyond reasonable and ordinary wear and tear, resulting from his acts, the acts of members of his family, his invitees and licensees. Restoration of leased housing therefor should be coordinated with the using service to minimize payments for repairs which are the obligation of the Government's tenant.

11-138. Limits on Government Obligation to Restore. The standard lease forms may provide that the Government will, if stipulated notice is given by the lessor, restore the premises to as good a condition as they were in at the time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. This requirement is subject to certain limitations.

a. Restoration Not to Exceed Fee Simple Value. The cost of restoration, or settlement in lieu thereof, will not exceed the fee simple value of the property restored to the condition that existed at time of entering into possession, reasonable and ordinary wear and tear, and damages by the elements, or circumstances over which the Government has no control, excepted. The valuation should be fixed as of the time of termination of the lease.

b. Where Estimated Cost of Restoration Exceeds Diminution in Value. When it appears that the estimated cost of restoration substantially exceeds the diminution in the value of the premises, occasioned by the Government's use and the damage therefrom, an appraisal will be made of the present value of the property in its unrestored condition and a separate appraisal will be made of the present value of the property, assuming restoration is accomplished as provided in the lease. The difference between the unrestored and restored value, as determined by comparison of the appraisals will be the amount of diminution in the value of the lessor's property and will be the maximum amount of \*

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the restoration obligation. As to the measure of damages to be used in establishing the Government's restoration obligation under leases which contain the standard restoration provision, the Comptroller General decided that, "This office would not be warranted in concluding that any greater amount could be legally expended for restoration or paid to the lessor in lieu thereof than the amount by which the market value of the premises has been diminished" (28 Comp. Gen 206). As a corollary, restoration, or payment in lieu thereof, is not authorized where Government improvements enhance the value of the property. Representatives of the General Accounting Office have advised informally that it is not the intention to have appraisals made of the before and after value in each instance and that the lack of such appraisals will not be the cause for questioning a restoration settlement. It is considered, however, that where the estimated cost of restoration is a substantial amount in comparison with the value of the property covered by the lease, such appraisals should be made. Obviously, however, it would not be to the Government's advantage to make appraisals where the estimated restoration cost is small.

11-139. Requirement for Notice by Lessor. Ordinarily, notification by the lessor of his intention to require restoration of the premises is, when required by the terms of the lease, a condition precedent to any obligation on the part of the Government to restore and is a vested contract right which no part of the Government has authority to give away or surrender (16 Comp. Gen 92; Simpson vs. United States, 172 U.S. 372; United States vs. American Sales Corp., 27 F. 2d 389, affirmed in 32 F. 2d 141, certiorari denied, 280 U.S. 574; Pac. Hardware Co. vs. United States, 49 Ct. CL 327, 335). However, it has been held in the case of Smith vs. United States, 96 Ct. CL 326, that a formal written notice of demand for restoration might be waived, provided knowledge of the lessor's intention to require restoration was conveyed to the Government orally or by implication at, or prior to, the time required under the terms of the lease. In opinion B-48678, 10 April 1945, the Comptroller General expressed the following views along this line:

a. In leases containing to provisions for termination by the Government prior to the end of the term, and which require 60 days written notice of demand for restoration, a supplemental agreement relinquishing space prior to the end of the term, which contains a stipulation excepting restoration from the provisions of the release may be regarded as notice to the Government of the lessor's intention to require restoration and an otherwise proper claim for restoration may be considered where the entire transaction is in the interest of the United States.

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b. In leases which require 30 days written notice of termination and 30 days notice of demand for restoration, waiver of termination notice by the lessor would constitute sufficient consideration to support a waiver of restoration notice by the Government where the effect of waiving the notices would be to protect more adequately the Government's interest through immediate termination of the lease.

c. Generally, in leases which require 90 days written notice of demand for restoration and 30 days written notice of termination, if it is determined administratively under the particular facts, that the failure to give restoration notice until receipt of termination notice does not affect the merits of the claim for restoration, or operate to the prejudice of the United States, an otherwise proper claim for restoration may be considered.

d. As a general rule, in leases which require 30 days written notice of termination and 30 days written notice of demand for restoration, notice of demand for restoration given within a reasonable time after receipt of termination notice would be sufficient and, in this connection, a few days delay would not be regarded as unreasonable. Where restoration is predicated on other than strict compliance by the lessor with requirements of the lease relative to notice requiring restoration, the facts will be clearly stated in the restoration assembly.

11-140. Items Excluded from Usual Restoration Obligation. Damage to the following items will not ordinarily be restored as under the standard provisions of the lease it will be attributable to reasonable and ordinary wear and tear, damage by the elements, or damages by circumstances over which the Government has no control. (However, where the lease requires the Government to maintain the interior or exterior, or both, such of the items as the Government is obligated to repair during the term of the lease should be included in the restoration if they have not been maintained adequately by the Government and are not in the required condition upon the termination of the lease.)

- a. Foundation work.
- b. Waterproofing or membraning.
- c. Exterior tuck pointing.
- d. Cleaning or repair of catch basins, cesspools, or manholes.
- e. Repair of:
  - (1) Interior unfinished walls.

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- (2) Unfinished hollow tile, concrete block, or gypsum block walls.
- (3) Floor joints, roof trusses (including roof boards and roofing), and framing timbers (including studs, sheathings, and exterior surface).
- (4) Insulating materials in walls necessitated by leakage in walls or roofs.
- (5) Damage to plaster caused by leakage in wall or roof.
- (6) Windows and floors, where the damage is caused by elements or inadequate hinging, counterweighing, caulking or sealing.
- (7) Sheet metal such as eaves, gutters, downspouts, flashings, hips, valleys, skylights, ventilators, and metal ceilings.
- (8) Structural steel or iron.
- (9) Fire escapes.
- (10) Heating systems.
- (11) Plumbing systems.
- (12) Ventilating systems and air conditioning systems.
- (13) Power Plants.
- (14) Electric wiring.
- (15) Lighting fixtures (or replacement).
- (16) Sprinkler systems.
- f. Settling or subsidence.
- g. Other structural repairs to buildings or equipment.

11-141. Nature of Required Restoration. Restoration by the Government will ordinarily include the following:

- a. Wear and tear beyond that which is reasonable and ordinary.
- b. Damage due to negligence by Government personnel.
- c. Restoration or reinstallations necessitated by alterations or removals by the Government.

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d. Neutralization of unexploded bombs or artillery projectiles, disposition of military scrap, and decontamination of chemically contaminated lands or improvements. (See Section XIII of this Chapter).

11.142. Minor Restoration Cases - Determining Extent of Restoration Required.

a. In minor restoration cases, ENG Form 1440A-R, Joint Terminal Condition Survey (Figure 11-13) will be used. The Government representative, in these cases, will also make a detailed investigation as to the extent of damages, cost of repairs, and other factors sufficient to properly complete and sign ENG Form 14401B-R, Cost of Restoration. (Figure 11-14). In order to effect economies, the DE may arrange for the utilization of the services of the Facilities Engineer or the using service to perform joint terminal condition surveys. Such use, however, should be coupled with issuance of proper instructions for guidance of the respective personnel. A restoration case is considered to be minor under the following conditions:

(1) The initial cost of Government improvements or alterations did not exceed \$5,000; and

(2) The net salvage value of Government improvements remaining does not exceed \$1,000; and

(3) The cash payment to the lessor in lieu of restoration does not exceed \$1,000; and

(4) The lessor has agreed to accept a cash settlement in lieu of physical restoration.

b. Preparation of ENG Form 1440-R. Use of ENG Form 1440B-R is premised upon the ability of the field investigator to adequately analyze conditions and develop sufficient supporting data as to the cost of the items of restoration involved. While this form is considered self-explanatory, the following is to be noted:

(1) The procedure hereunder envisions the use of both ENG Form 1440A-R and ENG Form 1440B-R, which complement each other.

(2) The use of ENG Form 1440B-R for estimating restoration costs does not waive the requirements for a proper evaluation of the Government's restoration obligations either as to the legal principles or as to the proper measure of damages.

(3) Distribution of these forms, together with any supporting exhibits, will be accomplished in the same manner as set forth in 11-150b below,

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11-143. Major Restoration Cases - Determining Extent of Restoration Required.

a. Engineer Estimate and Appraisal. Any restoration case not covered by the definitions of minor restoration case in paragraph 11-142a above is a major restoration case. A complete engineer estimate and appraisal will be prepared by the DE for use in negotiating a cash settlement, or to determine the cost of restoration, if the work is to be performed by the Government. ENG Form 1440-R, Cost of Restoration, (Figure 11-15) will be used for this purpose. A copy of this form will be transmitted to the General Accounting Office in support of settlements made with landowners in the case of military property and contains the minimum data required by that office. Such transmittal is not required when civil works property is involved. In order to afford a measure of flexibility, ENG Form 1440-R is divided into five parts, each relating to specific factors, to be used as conditions may require.

b. Preparation of ENG Form 1440-R. Comments and instructions for preparation of ENG Form 1440-R are contained in the following paragraphs which are keyed to the item numbers on the Recapitulation sheet, Part I of the form:

(1) "1" to "6" Self-explanatory.

(2) "7.Original Cost (Actual or Estimated) of Government-owned improvements, fixtures and alterations: (Part 4)." The General Accounting Office requires that, in all cases involving the relinquishment of Government-owned improvements to lessors in lieu of restoration, and in any other cases where a contract is entered into between the Government and another party to transfer improvements, the original cost of the improvements be given. If not ascertainable, an estimate should be submitted. In exceptional cases, where, because of the circumstances or expense of the work involved, neither the original cost nor a reasonably accurate estimate can be given, an explanation of the facts and circumstances is required. Where structures have been built under contract, or improvements made under contract, a citation to the contract under which the work was performed should be submitted with the original cost statement, estimate, or explanation.

(3) "8. Estimated Market Value, (Value in place of Government-owned improvements, fixtures, and alterations) : (Part 4)." An estimate will be made of the current market value of the buildings or improvements in place. In those cases where it is indicated that the Government-owned buildings or improvements located on leased lands may materially enhance the value of the leased site, an appraiser will estimate the market value of the fee title to the leased area in its unrestored condition. He will also separately estimate the market

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value of the site, assuming restoration as provided in the existing lease. The difference between the fee title value and restored land value will be reported as the "value in place" of the improvements to be sold or otherwise disposed of. "Value in place" is defined as the amount by which the improvements involved enhance the market value of the leased site. This value will serve to establish the top sales price expectancy in negotiations with the landowner.

(4) "9. Gross Salvage Value of Government-owned property: (Part 4)". The "gross salvage value" is the highest price obtainable in the open market for Government-owned improvements when sold for use elsewhere than on the leased premises, assuming that no expense to the buyer is involved in the dismantling and/or removal of the improvements from the leased property to the nearest probable market or location of future use. The estimate of gross salvage value should be made in accordance with established property appraisal procedures. Because market demand usually determines the highest and best use to which the components of a group of improvements will be put (e.g., whether a building will be worth more on the market for rining intact to a new site for continued use as a building, or worth more as a stockpile of used construction material), it is important to consider not only prevailing market prices and demand for used construction materials in the vicinity by contacting sources such as local building trades, wrecking companies, used material dealers, etc., but to also give consideration to possible interest by house moving and construction companies and individuals who might utilize improvements intact. Due consideration should also be given in making the estimate to the effect that such facts as the original cost of the improvements, the original cost of the materials therein, and the deterioration or depreciation of the materials in place might have upon the market value.

(5) "10. Estimated Cost of Dismantling and/or Removal of Government-owned Property: (Part 4)." The estimated dismantling cost and/or cost of removal will be itemized in the appropriate column opposite the itemized listing of improvements on the ENG Form 1440-R (Part 4), and the total will be reflected on the recapitulation sheet (Part 1). The dismantling cost is the amount of expenditure necessary to accomplish dismantlement in a manner providing the greatest net return to the Government. Net return is the value of the improvements when detached or dismantled, less the cost of dismantling or detaching, and less the cost of removal. The cost of removal is the cost of moving the detached or dismantled improvements to the nearest probable market or the nearest installation of the Department having adequate storage space. In cases of frame buildings having concrete or similar permanent-type floors or foundations, the cost of removal of such floors or foundations will not be included as an item of dismantling and/or removal cost. Instead, it will be treated as an item in the

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estimated "Cost of Restoration other than Cost of Dismantling and Removal" (Item 12). In developing estimates of gross salvage value and costs of dismantling and/or removal, inquiry should be made of experienced tradesmen, used material dealers, wrecking contractors, etc., familiar with the local market for the types of materials and services involving the current costs of loading, hauling, unloading, cleaning, stockpiling and other economic factors contributing to the current local market value of similar materials in useable form.

(6) "11. Estimated Net Salvage Value of Government-owned Property: (Part 4)". This amount is obtained by subtracting the estimated cost of dismantling and/or removal (Item 10) from the estimated gross salvage value (Item 9).

(7) "12. Cost of Restoration other than Cost of Dismantling and Removal: (Part 3)". From information developed by the joint survey of the property, paragraph 11-137 above, it is the responsibility of the real estate officer, or his representative, to advise the personnel responsible for preparing the restoration cost estimate of the items which will require restoration, repair or replacement under the terms of the lease. A brief statement as to the probable cause of damage, in excess of ordinary wear and tear, or resulting from other than circumstances over which the Government has no control, will be included in the supporting data.

(8) "13. Total Cost of Restoration: (Item 10 plus Item 12)". The estimates of cost under Items 10 and 12 will be based on sound estimating practices generally employed for the type of work involved. The estimates will be predicated on performance of the work by contract and, therefore, consideration will be given to justifiable allowances for contractor's profits, insurance, employees compensation payments, and overhead.

(9) "14. Net Cost of Restoration: (Item 9 minus Item 13)". In those cases where the cost of dismantling and/or removal of Government-owned improvements (as defined in Item 10), and the other costs of restoration (as defined in Item 12), exceed the gross salvage value (as defined in Item 9), the difference is a minus quantity and constitutes the maximum amount of money which the Government can pay the lessor, in addition to transferring all improvements to him in lieu of restoration and paying rent during the estimated period of restoration (provided such improvements are not considered to have an "in place" value). If this is a plus quantity, it represents the minimum amount of cash that the Government can accept from the lessor after transferring to him all items of property or equipment shown in the report, less the allowance for rental during the estimated period of restoration. \*

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(10) "15. Approximate Time Required for Actual Salvaging and Restoration Operations". So long as the owner is deprived of use of his property he is entitled to rental stipulated in the lease. A fair allowance will be made in a settlement with the lessor to cover a reasonable time required to fit the premises for use. If all improvements are to be left in place, it may well be that no allowance for rental will be required by the lessor for time required for salvaging.

11-144. Negotiating Restoration Settlements. Negotiated settlements in lieu of performance of actual restoration work by the Government are ordinarily favored because they most satisfactorily achieve the objectives of fulfilling the Government's obligations under the lease in the most efficient and economical manner, recouping the greatest amount of the Government's investment in improvements to leased property and maintaining good public relations in the acquisition and disposal of leaseholds. However, because of variable circumstances, this principle cannot be stated as an inflexible rule applicable to every case. It is the responsibility of the DE to carefully consider all possible approaches within the scope of this chapter and select the best course of procedure in each case.

a. Financial Limitations Which preclude Actual Restoration. In view of the limitations of the Government's restoration obligations to amounts not in excess of the fee value of the leased property, or the difference in values of the leased property with and without restoration, actual performance of restoration work is precluded where these amounts would be exceeded, and a settlement in lieu of restoration is in order in amounts not to exceed the limitations indicated.

b. Settlement Where Property Enhanced in Value by Improvements. Where the leased property has been enhanced in value by the Government's improvements, no restoration should be performed nor payment by the Government made in lieu thereof. Instead, effort should first be made to obtain from the lessor a cash payment to the Government equal to the in place value of the improvements, together with a full release of the Government from any restoration obligations. If the lessor is not willing to pay the in place value, but will offer a lesser amount in excess of the estimated net salvage value, settlement may be reached on that basis. If the lessor will not agree to make payment of any amount, or will offer only an amount which is less than the net salvage value of the improvements, consideration should be given to selling the improvements for removal and accomplishing any remaining restoration by payment in lieu thereof or by actual performance of the work. If it becomes necessary or advisable to arrange for separate sale of any or all of the improvements, the sale should be accomplished in accordance with Section XIV. The terms of sale in such case will require the removal of the improvements on or before the expiration or termination of the lease \*

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and contains any other special requirements applicable to the particular case, including site restoration. Bids received should be compared with the highest price offered by the lessor, due consideration being given to the cost of restoration, if any, which would remain after removal of the improvements. It must always be borne in mind that the disposition of public property to private parties must be at prices which can be shown to be in the best interests of the Government.

c. Reaching Agreement on Estimates of Cost. The terminal survey and condition reports specify the Items to be restored and the lessor's estimate of cost. Those items reflected on the ENG Form 1440-R (Part 3) afford comparison between the lessor's and the Government's estimates. Where there is a variance in the estimates and the lessor's total estimate is lower, effort will be made to settle on the basis of his estimate. If the lessor's overall estimate is higher than the Government's, effort will be made to reach agreement on acceptance of the Government's total estimate. If the lessor's estimate is substantially higher on specific items, it may be desirable to disclose the basis on which the Government's estimate is predicated in order to demonstrate its reasonableness. The Government's estimate of cost for items of restoration maybe made available to the lessor upon request. When the lessor requests items of work not shown on the Government's estimate, careful consideration will be given to his request, further inspection of the premises made, when necessary, and a determination made as to whether the Government is obligated under the lease to perform the work. If no liability is determined to exist, the lessor will be fully informed as to the reasons for noninclusion in the estimate. If liability is determined to exist, the estimate will be adjusted accordingly. In any case where the existence or extent of the legal obligation of the Government to restore is questionable, the DE will submit the facts, in writing, to DAEN-REM together with his recommendation. No lease restoration settlement will be allowed to become involved in litigation or formal claims procedure without the matter having been submitted to DAEN-REM for review. When a satisfactory cash settlement by the Government cannot be negotiated, the DE is authorized to perform the actual restoration work.

11-145. Claims for Loss or Damage of Personal Property. In some cases, owners have been allowed to store personal property, owned by them or under their control, on premises leased from such owners by the Government, the personal property not being covered by the lease. The rooms in which this property was stored have been broken into and, upon termination of the lease, it has been found that much of the property is damaged or is missing. Unless the lease specifically places some responsibility on the Government, payment for such damaged or missing property cannot be included in restoration settlements for payment. In the event the lessor refuses to sign a full release, a provision may be included in the supplemental agreement releasing the Government from \*



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all liability except for claims for damage, loss, or destruction of personal property stored on the leased premises and not covered by the lease, and the lessor advised that he may submit a claim for the amounts which he considers due him.

11-146. Rent During the Period Required for Restoration. A sufficient period of time for performance of the restoration, commencing on the date premises are vacated by the Government, will be specified in the Government's estimate, and rent allowed in the settlement during such period to the extent that the lessor is actually deprived of beneficial use. If there is an outstanding maintenance and operation contract with the lessor, contained in either the lease or in an independent instrument, which fixes compensation in addition to the rent, the settlement agreement with the lessor will include the rent and such part of the compensation for maintenance and operation as will be necessarily incurred by the lessor during the performance of restoration.

11-147. Settlement Where Part of the Premises is Surrendered. Where there is a partial reduction of area in a lease requiring restoration, the supplemental agreement may contain a settlement in lieu of restoration of the area surrendered. A waiver of further claims covering the space released will be contained in the supplemental agreement.

11-148. Documenting Lease Terminations and Restoration Settlements. In the case of leases in which there is no obligation to restore, and in all cases of leases where terminal survey discloses no damage to the premises for which the Government is liable, an effort will be made to obtain an unqualified release from the lessor as of the date the premises are vacated and Government improvements removed. Releases will also be obtained as indicated in paragraph 11-152 below.

a. Form to be Used. Releases will be executed, in triplicate, on ENG Form 232-R, Release (Corporation), or ENG Form 231, Release (Partnership), according to whether the lessor is a corporation, or partnership. If signed by an attorney or agent, evidence of authority should be attached to the release. If the lessor is an individual, a letter incorporating a Notice of Termination and a Release Clause will be sent. The letter will substantially follow the form shown in Figure 11-16. Distribution of releases will be accomplished in the same manner as set forth in paragraph 11-150. ENG Form 232-R is shown as Figure 11-17.

b. Qualified Release. In case the lessor declines to sign an unqualified release, he should be requested to execute an appropriate release subject to exceptions. The exceptions may be enumerated on the reverse side of the form. \*

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11-149. Preparation of Supplemental Agreements Effecting Settlement. The terms of settlement in lieu of restoration, negotiated with the lessor, will be embodied in a supplemental agreement: to the lease, antedating termination, substantially in accordance with ENG Form 341, Supplemental Agreement Transferring Improvements to Lessor. Supplemental agreements may be used to effect restoration settlements of obligations incurred under permits, trespass right agreements, and other unnumbered contracts for the temporary use of land. Restoration settlements may also be effected even though the premises were occupied rent free and without formal contract, provided use of the premises was authorized properly by the Government (Decision of the Comptroller General B-63340, February 1947). Care should be exercised in determining the existence and extent of the legal obligation of the Government to restore. Payment will not be made for doubtful items: instead, the other party to the agreement will be advised of his right to submit a claim. On the other hand, every effort will be made to agree upon a reasonable settlement as to items for which the Government is legally responsible.

11-150. Supplemental Agreement Assembly.

a. Composition. Supplemental agreement assembly, covering agreement for settlement in lieu of restoration, will be composed of the following:

- (1) Completed Notice of Termination (Figure 11-11 or 11-12).
- (2) ENG Form 340 (Supplemental Agreement Accepting Proposed Restoration) or ENG Form 341 (Supplemental Agreement Transferring Improvements to Lessor).
- (3) Lessor's notice requiring restoration, unless the lessor has signified that restoration is not required (Figure 11-11).
- (4) Joint terminal survey and condition report.
- (5) ENG Form 1440-R, or 1440A-R and 1440B-R.
- (6) Estimated cost of restoration of leased personal property if not otherwise included.
- (7) Statement of cost of any restoration actually performed by the Government.

b. Distribution. An executed copy of the assembly will be retained by the DE. An executed copy of the supplemental agreement will be furnished the lessor. Conformed copies will be transmitted to the \*

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major command, the installation commander and, when monetary consideration is involved, to the appropriate finance and accounting office.

11-151. Payment for Restoration or Settlement in Lieu of Restoration. Voucher forms, appropriate to the circumstances, will be used in making payment of the settlement. Reference should be made on the voucher to the lease and supplemental agreement. The cost of restoration work performed directly by the Government, or by contract, or compensation in any settlement agreement in lieu of restoration, will be paid from funds available for the payment of rental. The limitations of Section 322 of the Economy Act of 1932, as amended (40 U.S.C. 278a and b), on the expenditure of funds for the alteration, improvement, or repair of leased premises to 25 percent of rent for the first year, are not applicable to costs of performing restoration work pursuant to obligations of the lease nor for payments of settlements in lieu thereof (20 Comp. Gen. 105).

11-152. Performance of Restoration Work by District Engineer - Extension of Time. Where the lessor will not accept a cash settlement in lieu of restoration, or desires the work to be done by the Government, the restoration will be performed, without delay, directly or by contract, within the limitations outlined in this Chapter. Any contract entered into for such work should provide for required restoration work to be performed on or before the determined effective date of termination of the lease. A complete record of the items of work performed and the costs thereof will be kept. If the lessor, prior to commencement of the work, is not agreeable to executing ENG Form 340, DA Supplemental Agreement Accepting proposed Restoration, efforts will be made, upon completion of the work, to obtain a release on ENG Forms 232-R, or 231, or on ENG Form 341 in the event of a cash settlement for that part of the restoration not performed. Where the Government is obligated to perform restoration and remove improvements, and it cannot be accomplished by the Government prior to the effective date of termination, a supplemental agreement will be prepared, antedating the effective date of termination, for such periods as may be required to effect restoration and to remove improvements, if the lessor is unwilling to terminate the lease and rental thereunder, with the reservation that the Government will have a right upon the premises for the purpose of performing restoration, conducting sales of improvements thereon, or doing similar acts related to restoration.

11-153. Termination and Settlement of Leasehold Condemnation Proceedings. \*

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a. Leasehold Condemnation Termination Assembly. When leasehold estates in land, or other similar limited estates or terms for years, acquired or in the process of acquisition, have been determined surplus in accordance with this chapter, a prompt report will be made to DAEN-REM containing the following items of information as appropriate and necessary to a full understanding of the proposed disposition action.

- (1) Name of project and using using service.
- (2) Style and civil number of the condemnation proceedings in which the land is involved.
- (3) Particular tract or tracts involved.
- (4) A citation of the authority pursuant to which the surplus status has been determined.
- (5) Three copies of ENG Form 1440-R, or 1440A-R and 1440B-R.
- (6) The proposed date of vacation of premises by Government.
- (7) The term condemned and rights of the Government as to extension and cancellation thereof.
- (8) Whether a declaration of taking, or supplement thereto, has been filed and the amount of deposit, if any.
- (9) Whether an award or order for payment has been made, and the amount of the owner's withdrawal, if any.
- (10) The estimated rental cost through the end of the term acquired in the condemnation proceeding.
- (11) The estimated fair rental value of the land for the period of occupancy by the Government, including time for restoration.
- (12) Recommendation as to the advisability of abandoning the proceeding.
- (13) Request for termination of condemnation proceeding.

b. Action by Chief of Engineers. DAEN-REM will review the termination assembly and settlement proposal recommended and, if approved, recommend to the Department of Justice a basis for settlement at the same time requesting the Department of Justice to move for termination or conclusion of the proceedings. \*

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11-154. Negotiating Stipulation Where Proposed Settlement Not Acceptable. Should the court overrule the motion for abandonment, or should it appear that claims for damages will be interposed by the property owner, the responsible DE and the Department of Justice representative will negotiate with the owner for the purpose of obtaining his consent to the abandonment of the condemnation action. The Government will agree to pay the owner a sum representing the rental value of the premises for the period of occupancy by the Government, plus the cost of restoration as determined under paragraphs 11-142 and 11-143. Such estimate will include the value of personal property, buildings, crops, and other property damaged, destroyed or lost by the Government. DAEN-REM upon recommendation of the DE will request the amendment of the proceeding to include the taking of any property for which compensation is to be paid. The same criteria for settlement with lessors as under a negotiated lease will govern. In the event the landowner will not agree to settle, his best offer will be submitted to DAEN-REM, with the DE's recommendation, for consideration. If a tentative settlement is reached, the term will be included in a stipulation to be filed in the condemnation proceedings, after approval by DAEN-REM and the Department of Justice, which stipulation will specifically provide:

a. That the property owner releases and relinquishes all claims of any nature whatsoever which have arisen, or may arise, out of the Government's occupancy of the property; and

b. that the owner consents to the abandonment and dismissal of the condemnation proceedings. Where the settlement amount is to be paid directly to the owner by the DE in lieu of deposit in the proceedings, the stipulation will so provide.

11-155. Physical Restoration Where Stipulation Not Obtained. If such stipulation is not obtainable, then, whether or not a declaration of taking has been filed, the owner will be requested to designate, in writing, the restoration for which he believes the Government is liable. The Government will restore the property to the condition existing at the time of first entry by the Government, except for reasonable and ordinary wear and tear, damage due to acts of God, or circumstances over which the Government has no control. The cost of restoration or settlement in lieu thereof will be limited as outlined in this chapter.

11-156. Release and Record of physical Restoration. The responsible DE, upon completion of restoration, will make every effort to obtain a release of further claims for damages. A complete record of all items of restoration and the cost will be kept for use at the final hearing in condemnation or in any collateral proceedings, in the event a release is not obtained. Where litigation is anticipated, photographic evidence of work performed will be obtained.

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11-157. Condition Reports. Survey and inspection reports covering the real estate, and inventory and condition reports covering the personal property located therein, made prior to first entry by the Government under condemnation proceeding, will be compared with the condition shown by similar reports made when the using service vacates the property.

11-158. Settlement of Claims. Claims for damages or restoration filed in condemnation cases, when practicable, will be settled in the condemnation proceeding to avoid separate suit by the owner to recover compensation to which he may be entitled. In such cases request will be made of DAEN-REA-C to have the proceeding amended to enlarge the issues to include restoration.

11-159. RESERVED.

11-160. RESERVED.

11-161. RESERVED.

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SECTION XI

DISPOSAL OF BUILDINGS AND OTHER  
IMPROVEMENTS (WITHOUT THE RELATED LAND)

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11-162. Authority. Under authority vested in the GSA by the Federal Property Act, and the delegation of such authority made by GSA in FPMR, Section 101-47.302-2, the Department of the Army is designated as the disposal agency for the following property:

a. Leases, permits, licenses, easements, and similar real estate interests held by the Government in non-Government-owned property (including Government-owned improvements located on the premises), except when it is determined by either the holding agency or GSA that the Government's interest will be best served by the disposal of such real estate interests together with other property owned or controlled by the Government, that has been or is being reported to GSA as excess; and

b. Fixtures, structures, and improvements of any kind to be disposed of without the underlying land.

11-163. Methods of Disposal. Excess buildings and other improvements may be disposed of by the following methods:

a. By demolition for utilization of salvage materials in the over-all Army or Air Force construction or maintenance program. Screening with other military departments is not necessary for this purpose.

b. By transfer to another Federal agency.

c. By assignment to the Department of HEW for disposal for health or educational purposes pursuant to Section 203k(1) of the Federal Property Act (FPMR 101-47.308-4).

d. By sale intact for removal from site to the most appropriate of the following, according to the circumstances:

(1) Eligible public agencies (Sections IX and XIV).

(2) Boy Scouts of America (Section XIV).

(3) Military chapel buildings and chapel equipment to nonprofit organizations for use, first as a shrine or memorial and, second as a denominational house of worship.

(4) Owner of the underlying land as a part of restoration settlement where disposal of a leasehold is involved. \*

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(5) An emergency Plant Facilities contractor.

(6) The general public, through competitive bidding, unless special circumstances warrant a negotiated sale for a specific purpose.

e. By donation, abandonment or destruction.

11-164. Determining Method of Disposal. DEs are designees of the Chief of Engineers under AR 405-90 to determine the method of disposal authorized by law or regulations which is most advantageous to the Government. Where alternatives are presented, there will be an affirmative finding that the method of disposal approved is most advantageous. In the exercise of this authority, due consideration will be given to the effect of particular methods of disposal on safety and sanitation in the area, the proposed or probable future utilization of Government-owned sites by the Government, or in the case of leased lands, the restoration obligations of the Government under the lease. In order to assure consideration of these factors, disposals by transfer to other Government agencies or by sale intact will be brought to the attention of the installation commander or his representative prior to initiation of disposal action. Reasonable requirements for site clearance consistent with the foregoing criteria should be favorably considered and disposal conditioned accordingly, notwithstanding the fact that such action may result in a greater burden to transferee agencies or, in the case of disposal by sale intact, may result in a reduction in the monetary return which might be reasonably expected in a sale involving less stringent site clearance requirements. DAEN-REM will be informal of any instances of excessive or unreasonable requirements with respect to site clearance. The DE will determine by inspection and survey the method to be used in disposal of buildings and improvements.

11-165. Excessing Army Military and Air Force Property. The procedures for placing buildings and improvements in excess status are set forth in AR 405-90 and AFR 87-4. In instances of land acquisition where buildings and improvements were acquired incident thereto, DEs are designated by the Chief of Engineers under AR 405-90 to make disposition of this property. Coordination with the installation commander concerned is required. When, under AFR 87-4, the responsible DE is called upon by the Air Force Command to furnish an estimate of the value of buildings and improvements for the purpose of determining the approval authority for excessing the property, no formal appraisal will be made. If, in his opinion, the total property exceeds a value of \$100,000, he will furnish only a rough estimate of its value in round figures. If the property is, in his opinion, of a value of \$100,000 or less, he will limit his statement to this fact and will not specify an estimated valuation. \*



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11-166. Excessing Civil Works Property. The DE are authorized to approve the disposal of buildings and improvements acquired incidental to the acquisition of land in reservoir areas, regardless of the original cost thereof, when they are in the way of authorized construction or when the land upon which they are located is to be permanently or frequently inundated. DEs may authorize the disposal of buildings and other improvements in any one or more of the following categories, which are located on lands which are not excess and which are not expected to become excess, and the sale is to be made after advertising:

a. Buildings or improvements on land acquired by the Government determined to be available for disposal pursuant to ER 735-2-1 (Property Accounting Procedures - Civil).

b. Buildings or improvements which cannot be kept in repair at a reasonable cost.

c. Buildings or improvements which are dangerous to life or likely to damage adjoining structures or have become hazardous or nuisances.

d. Buildings or improvements which are damaged or unsuitable for public service.

e. Buildings or improvements constructed by the Federal Government which occupy or interfere with sites for new construction or for other civil works purposes.

f. Temporary buildings or improvements which have served the purpose for which they were constructed.

11-167. Civil Works property - Reimbursement of Appropriation. Under Title 33, United States Code, Section 558, the proceeds from a sale or transfer of buildings or improvements may be credited to the appropriation for the work for which the property was acquired. Buildings or other improvements, including timber, on non-excess land come within the purview of this law. For further instructions on disposition of proceeds, see paragraph 11-12 Supra.

11-168. Demolition of Buildings and Other Improvements for Utilization of Salvage Material. With respect to DA property, demolition may be undertaken by the DE of buildings on non-excess land made available for disposal, when the salvage is to be used in construction or maintenance work by the Corps of Engineers or upon specific request from another service, where funds for the purpose are made available. Real Estate funds will not be used for such demolition. Determination of practicability for use of buildings or improvements in authorized new construction at other sites or for salvage of materials will be made by the DE in accordance with existing instructions relating to use of materials \*

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in new construction. Where restoration of leased premises is being performed, it is the responsibility of the Corps of Engineers to perform the necessary demolition work as part of the restoration obligation, as set forth in Section X. Demolition may be accomplished under contract when special or expert services are required for removal of certain types of structures and funds are available therefor. Unused salvage materials will be turned over to redistribution and salvage officers for redistribution or disposal in accordance with existing regulations pertaining to personal property. The relocation of buildings or improvements on the same installation or for re-erection at another installation is not to be accomplished as a real estate function (AR 420-70). Further, it is provided in AR 420-70 that demolition of buildings or improvements where retention of the salvage for use at the installation is approved, or where no requirement or market is found for buildings or improvements approved for disposal by the Corps of Engineers, is a facilities engineering responsibility. Pursuant to AFR 87-4, disposal of AF buildings and improvements by sale will be accomplished by the Corps of Engineers, but all disposal of such property by salvage will be accomplished by the base commander.

11-169. Authority for Transfer of Buildings and Improvements to Other Federal Agencies. Buildings and other improvements which have been screened for defense requirements as outlined in Section III, Supra, may be transferred to another Federal agency as hereinafter outlined. The authority for the transfer of such property to other Federal agencies is outlined in Section IX, Supra. The responsible DE is authorized to transfer buildings or structures for removal from the site, which have been made available for disposal by proper authority, upon receipt of a request signed by an official of another Federal agency.

11-170. Procedure for Transfer. Transfer of buildings to other Federal agencies will be accomplished by Form 1354. An estimate of value will be shown on DD Form 1354, Transfer and Acceptance of Military Real Property or other forms used and, in the case of transfer without reimbursement, the following footnote will be made: "Transfer to (Department or Agency), adjustment of funds not required." When the transfer is made at the direction of GSA, an explanation therefor will also be made on the form. Buildings and other improvements which are reported to GSA for screening against requirements of other Federal agencies (Section V) will be transferred to another Federal agency only at the direction of GSA and for the amount of reimbursement, if any, determined by GSA. Buildings and improvements which are not required to be reported to GSA will be screened against requirements of other Federal agencies by the responsible DE as provided in Section III. Upon request by a Federal agency for transfer of such property, the responsible DE will determine the amount of reimbursement, if any, in accordance with the criteria outlined in Section IX. \*

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11-171. Responsibility of Transferee. Where buildings or other improvements are on lands leased to the United States, the agency requesting the buildings will be expected to remove the building and restore the premises, as required by the terms of the lease, or to accept an assignment of the lease together with all obligations thereunder. Where the buildings or other improvements are to be removed from non-excess land, the transferee agency will be expected to perform reasonable site clearance as may be required by the commanding officer.

11-172. Assignment to Department of HEW or Successor Agencies. Pursuant to delegation of authority contained in FRMR, Section 101-47.308-4, as set forth in Section IX, Supra, the responsible DE may assign buildings or other improvements made available for disposal and not required for Federal purposes to HEW upon receipt of request therefore from the appropriate regional representative of that department for disposal for public health or educational Purposes. Assignments will be effected by letter addressed as indicated in paragraph 11-173 infra. Further, pursuant to delegation of authority the Department may disapprove within 30 days after notice from HEW, any transfer of property proposed to be made by that agency for such purpose. The DE will be guided by the policy set forth in Section IX, in regard to the delegation to disapprove transfers by HEW.

11-173. Notification of Department of HEW or Successor Agencies. When buildings or other structures are reported to GSA for screening pursuant to Section V, supra, the Reports of Excess are available to HEW by the Regional Office of GSA, and no notice of the proposed disposal need be given by the DEs. Where buildings and other structures are not reported to GSA simultaneously with circularization of other Federal agencies, HEW will be notified in writing of the availability of such structures. Such notification will be addressed to the appropriate field representative of HEW, and will include the following information:

a. A brief description of the buildings and improvements, including dimensions of buildings, types of construction, and demountable characteristics, if any.

b. The extent of building site clearance expected.

c. That the improvements must be removed and site clearance completed within a specified definite period from the date of assignment to HEW (usually 60 to 90 days, depending upon the size of the removal operation).

d. When improvements may be inspected.

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e. That the improvements will be withheld from advertisement for bids for a period of 20 days from the date of the notification, unless the office submitting the notification is sooner informed in writing that such property is not needed for school, classroom, or other educational use or for use in the protection of public health, including research. If within the 20-day period, notice is received of a potential need, the property may be held an additional 45 days until a certification of need or request for assignment is received.

11-174. Procedure for Disposal through the Department of HEW or Successor Agencies. During the period held, action preparatory to the publication of Invitations for Bids and Specifications of Sale of Buildings and Improvements will be taken in order to minimize the time lapse between the expiration of the 20-day period and the beginning of the sale procedure. Inquiries received prior to the expiration of the holding period from state or local agencies or qualified organizations seeking the purchase of available improvements for health or educational purposes, will be referral to the appropriate field representatives of HEW.

a. Final disposal is not effected until the improvements have been transferred by HEW to an eligible recipient. Therefore, in the letter of assignment, HEW will be requested to furnish to the responsible DE, three copies of the sales contract. One copy of the contract will be forwarded to the officer accountable for the property, together with a certificate of performance upon completion of the operation (the latter to be furnished by the HEW contracting officer), and one copy will be furnished to the property auditor charged with periodic audit of the property records.

b. Should HEW fail to consummate disposition of the improvements after assignment to it and request cancellation of the assignment, the assignment may be cancelled by a letter of cancellation and appropriate disposition of the improvements affected. If there is an excessive number of such requests, DAEN-REM will be informed in order that corrective action may be requested of HEW.

11-175. Sale of Buildings and Other Improvements. Buildings and other improvements made available for disposal by competent authority and not needed for further Federal utilization, or assigned to HEW, will be disposed of by sale by the responsible DE. Sales will be accomplished in the following manner:

a. Sale to Lessor Where Restoration is not Required. Where the terms of a lease do not require restoration by the Government, it may nevertheless be in the best interest of the Government to negotiate a sale of the improvements to the lessor. In such cases, the DE is authorized to negotiate such sale where the net salvage value of all \*

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improvements located on the premises involved in any one lease is less than \$1,000, and the sales price is determined to be as high as can be expected under the circumstances and compares favorably with the Government estimate prepared in accordance with d. below.

b. Sale Under Options. All leases or other rights of occupancy will be examined to determine whether the owner of the land has an option to purchase buildings or other improvements. See paragraph 11-176 for sale of improvements constructed under Emergency Plant Facilities or similar contracts.

c. Sale to Eligible Public Agencies, the Boy Scouts, and the public. The sales procedure, including notice to eligible public agencies and advertising, set forth in Section XIV will be followed in the sale of buildings or other improvements.

d. Appraisal. Except as otherwise provided in Section XIV, infra, buildings and other improvements will be appraised prior to sale. Except as provided in paragraph 11-180, appraisal will be based on the highest and best use which may be for (1) removal and use intact; or (2) for dismantling, and removal and stockpiling the salvageable material for reuse or sale.

11-176. Disposal of Buildings and Improvements Constructed Under Emergency Plant Facilities (EPF) or Similar Contracts. Procedure for the disposal of property constructed under a facilities contract on lands neither owned by nor leased to the Department is set forth as follows:

a. By Using Service. Disposal of structural components as well as equipment may be accomplished by the using service. The term "structure" is defined to mean plant equipment which:

- (1) Is held under a facilities contract of the Department;
- (2) Is not readily severable;

(3) Is a separate building or a complete structural addition to a building in which the Government otherwise has no interest, such as a wing, and in which a defense contractor carries on part or all of his defense production.

b. By the Corps of Engineers. Where disposal of structures, as well as other plant equipment located within such structure, is to be accomplished by the Corps of Engineers, instructions will be issued as to the extent to which the Corps of Engineers will participate in such action. Subject to special instructions by DAEN-REM, the following coordinated actions will be taken: \*

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(1) The using service will report to the Corps of Engineers the property which is excess to the Department's needs.

(2) The excess directive report will include the designation by name and address of a responsible officer of the using service to join with the DE concerned as a representative of the Chief of Engineers. These two representatives will meet with the contractor within seven days of their appointment to determine his interest in acquiring all or any part of the facilities. This determination will be made in the shortest possible time.

(3) The meeting with the contractor will promptly establish those facilities to be retained by the contractor and those to be declared excess. Waiver of existing options will be obtained where necessary.

(4) Equipment that is of no interest to the contractor will be disposed of by using service in accordance with applicable regulations.

(5) Custody of and accountability for the entire facility remains with the using service until other arrangements have been completed.

(6) The Corps of Engineers will complete negotiations for property to be retained by the contractor as rapidly as possible.

(7) When an agreement has been reached with the contractor, the DE or his contracting officer may execute the supplemental agreement to the lease or facilities contract transferring improvements, including machinery and equipment as a unit. Authority for the transfer should be recited in the supplemental agreement. In the case of a supplemental agreement to a facilities contract, authority will be obtained from the using service through its local representative for the DE or his contracting officer to sign the supplemental agreement transferring the improvements, including machinery and equipment to the contractor, (Figure 11-18 is the suggested format for Supplemental Agreement to Emergency Plant Facilities Contract.)

(8) Upon completion of negotiations, the responsible DE will issue instructions to the using service to dispose of equipment not included in the final negotiations in accordance with applicable regulations. Accountability for the property will be transferred at this time to the new owner or, in the case of real property retained by the Department, to the Corp of Engineers.

(9) Property not disposed of to the contractor will be disposed of in the same manner as improvements located on surplus leasehold property.

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11-177. Procedure for Disposal of Surplus Chapels. By direction of the President and pursuant to GSA and Army regulations, special procedures have been established for disposal of chapels. Surplus chapels must be segregated from other buildings for sale intact, separate and apart from the land, for use as shrines, memorials, or for religious purposes. Where the chapel is located on surplus land and it is determined the chapel may properly be used in place, a suitable area of land may be set aside for such purposes and sold with the chapel (Section IX Supra).

11-178. Soliciting Applications for Purchase of Chapels. Promptly upon receipt of an approved DA Form 337 (Request for Approval of Disposal of Building and Improvements) or AF Form 300, the DE will solicit applications by public advertising. Advertising will consist of publication of notice in newspapers, paid advertising when necessary, posting of notices in public places, and mailing of invitations to all known local churches. A period of thirty (30) days will be allowed in which to file written applications. Instructions will provide that the applicant will give his name, address, and denomination if applicable. The advertisement will describe the chapel, give its location, terms and conditions of sale, and the time and place where application must be filed. The advertisement will also state that the sale price will be made available upon request of interested parties, and that the Chief of Chaplains will select the purchaser. To assist that office in making a recommendation, the following information should be included in applications for the purchase of chapels:

- a. Purpose and intent of the use of the chapel.
- b. Facilities currently being used by the church/organization applying.
- c. Membership size of the church/organization.
- d. History of the church/organization and when established locally.
- e. Denomination and/or organization.

11-179. Conditions of Sale of Chapels. When sold under the provisions of paragraph 11-180, chapels shall be sold subject to the condition that during their useful life they will be maintained and used as shrines or memorials or for religious purposes, and not for any commercial, industrial, or other similar use. The contract or deed of sale will provide further that in the event the purchaser fails to maintain and use the chapel for such purposes there shall become due and payable to the Government the difference, if any, between the appraisal fair market value of the chapel, as of the date of the sale, without restriction on its use, and the price actually paid. This difference should be figured at the time of sale and included in the contract of sale or deed of conveyance.

11-180. Determining Price and Provisions of Sale for Chapels.

a. Price. The sale price of the chapel structure in the case of sale for use as a shrine, or memorial, or denominational house of worship, will be at its fair value in the light of the conditions imposed relating to its future use, and the estimated cost of removal from the site. Appraisals made to establish the price of specific chapels will be predicated on:

(1) The fair value of the material in place, less the cost of dismantling, removal of the material to the outside limits of the installation, and the cost of restoring the site.

(2) The restrictions imposed on the future use of the chapel with due regard to the difference between the fair value price obtainable in the open market and that which might be obtainable in the limited market to which sale is restricted.

(3) In addition to the criteria set forth in (1) and (2) above, cognizance will be taken of the prevailing prices of chapels being sold by other disposal agencies within the general area in which chapels are being disposed of by the Corps of Engineers.

b. Provisions of Sale.

(1) Disposal of chapels which are not excess or surplus will be conditioned on the removal of the chapels from the premises. In the disposal of chapels located on excess or surplus leased land, no commitments will be made to purchasers for the continued use of utilities and services (sewer, water, electric, fire protection, guarding). Arrangements may be made between the lessor of the premises and the purchaser to leave the chapels in place, provided the lessor releases the Government from any and all obligations to restore the premises occupied by the chapel.

(2) Care will be exercised that, prior to the disposal of the chapel, equipment such as organs, hymn books, and other ecclesiastical furnishings have been removed or shipped in accordance with applicable regulations.

(3) All copies of the contract evidencing the sale of chapels will be accompanied by copies of the instructions, if any, received from the Chief of Chaplains authorizing the disposal. If no such instructions have been received, the DE will attach a statement that in the absence of instructions, all known interested parties have been contacted and that the disposal has been made after due consideration of applications, the uses to be made of the chapel building and the need therefor. \*



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11-181. Coordination with the Chief of Chaplains. The DE will submit applications for the purchase of chapels to DAEN-REM, who will request the Chief of Chaplains to select the purchaser and advise DAEN-REM of his selection. Where no applications are obtained as a result of the advertising, the DE will so advise the Chief of Chaplains, reporting steps taken to obtain a purchaser, and recommending that the chapel be sold without conditions, in the same manner as provided for disposal of other buildings. If the Chief of Chaplains does not approve this recommendation or issue other appropriate disposal instructions within a period of 60 days, DAEN-REM will be informed.

11-182. Report on disposal of Chapel. As soon as practicable after the sale has been consummated, notification of disposal of chapels will be made by the DE direct to the Chief of Chaplains, with a copy to HQDA (DAEN-REM) WASH DC 20314, by letter, which will contain the following information:

- a. Location and brief description of chapel or chapels.
- b. Reference to disposal instructions, if any, received from the Chief of Chaplains.
- c. Identity of purchaser and price paid.

11-183. Release of Restrictions on Chapels Sold. Where the purchaser fails to maintain and use the chapel in accordance with the conditions of sale, or the purchaser requests release of the conditions, the facts will be reported to DAEN-REM with appropriate recommendations. DAEN-REM may release the purchaser from the conditions of sale without payment of a monetary consideration upon a determination that the property no longer serves the purpose for which it was sold, or that such release will not prevent accomplishment of the purpose for which the property was sold.

11-184. Donation, Abandonment or Destruction.

a. General. Improvements may be abandoned, destroyed or donated to a public body, upon a finding in writing by the DE (but in no event shall such finding be made by the official directly accountable for the property) that the property has no commercial value or that the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, or that abandonment or destruction is required by military necessity, or by considerations of health, safety or security.

b. Finding of Fact. The finding will be prepared as a separate document headed: FINDING OF FACT FOR \_\_\_\_\_. The finding will be sufficiently complete within itself to justify the decision to donate, abandon, or destroy the property proposed, without outside reference. It will be drafted to provide, where the finding is made \*

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by the District Engineer, for approval by the Division Engineer. Finding of fact concerning property which had an original cost in excess of \$500,000 requires the approval of DAEN-REM. A copy of each such finding, so approved, will be forwarded by the DE to the regional office of GSA.

11-185. Donation to a Public Body. A public body, as defined by GSA for this purpose, means any State, territory or possession of the United States, any Political subdivision thereof, the District of Columbia, any agency or instrumentality of any of the foregoing, or any agency of the Federal Government. Property as to which findings of fact have been made, may be donated to a public body.

11-186. Abandonment. Abandonment, as used herein, has reference to cases where the lessor or a permittor Government agency is unwilling to accept transfer of buildings or improvements in lieu of restoration, but is willing to permit the Department to leave buildings or improvements having no net salvage value on their premises. It is desirable to transfer title of or accountability for improvements having no net salvage value to lessors or permittors instead of obtaining their consent to abandon such improvements. Abandonment as authorized herein will not be a means for dropping accountability or responsibility for maintenance of improvements on non-excess land.

11-187. Destruction. Disposal by the Corps of Engineers, as authorized in AR 405-90, does not contemplate expenditure of funds for destruction of improvements which have no sale or salvage value. Accordingly, where such improvement have been approved for disposal by the Corps of Engineers, they will be referred back to the appropriate Army or Air Force command for disposal action under AR 405-90 or AFR 87-4 as appropriate. However, improvements with little or no salvage value may be included in the same item with other improvements being offered for sale which are more attractive improvements without an expenditure of Government funds.

11-188. RESERVED.

11-189. RESERVED.

11-190. RESERVED.

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\* SECTION XII. DISPOSAL OF STANDING TIMBER, CROPS, AND EMBEDDED GRAVEL,  
SAND AND STONE

11-191 Authority.

a. Crops. Crops are defined as personal property in FPMR Section 101-47.103-12 and are disposed of under FPMR Section 101-45.309-1 (Sale, Abandonment, or Destruction of Personal Property). The Corps of Engineers does not dispose of crops on military lands. However, when lands are in the custody of the Corps for construction purposes, the Corps will dispose of crops thereon.

b. Standing Timber, Embedded Gravel, Sand or Stone. These are defined as real property (FPMR Section 101-47.103-12(c)). The holding agency is designated as disposal agency for standing timber and embedded gravel, sand, and stone to be disposed of without the underlying land. (FPMR Section 101-47.302-2) .

c. Small Lots of Standing Timber. In accordance with AR 405-90, installation commanders are authorized to sell small lots of standing timber with a value not more than \$1000 that are in conformity with the installation Forest Management Plan. Public notice is required of the availability of the timber for sale. The total of such sales in any one calendar year will not exceed \$10,000.

d. Restriction on Removal of Sand, Clay, Gravel, Stone and Similar Material. The Army is without authority to remove such products from public domain land located within the military installation where the material is to be used off the installation. With permission of the Secretary of the Interior, such material may be removed pursuant to 30 U.S.C 601. In such cases, DAEN-REM will obtain the necessary permission.

11-192. Determination of Excess Status.

a. Military. The procedure for excessing and disposal of standing timber and embedded gravel, sand and stone is outlined in AR 405-90. The procedure for the determination of availability of timber for disposal is outlined in AR 420-74.

b. Civil Works.

(1) When the DE believes that standing timber, embedded gravel, sand or stone (whether designated for disposition with the land or by severance and removal from the land) is excess to requirements, he will submit a recommendation to DAEN-REM for approval. The DE is authorized, however, to dispose of standing timber or other forest products \*

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required to be removed incident to construction and operational requirements of the project; that which is generated incident to recreational development or the management of public park and recreational areas or wildlife management areas; or that which is generated in accordance with approved forest management supplements to the approved Master Plan (ER 1130-2-400). As far as practicable, high grade species in short supply will not be disposed of, but will be retained for possible defense requirements. When the amount for sawtimber under the above criteria available for disposal exceeds 5,000,000 board feet, request will be made to DAEN-REM, for determination of whether there are any defense requirements for the timber. The request will include an estimate of the amounts by species and the range in sizes. All timber disposals, except those involving timber below the project clearing line or in construction sites, will be compatible with the planned use of the areas for the purpose to which they are allocated in approved Master Plans and such disposals will be incidental to that use. The DE may authorize the disposal of growing crops when their disposal is deemed necessary to prevent waste.

(2) Under the provisions of Section 5 of the Act of 13 June 1902, as amended (33 U.S.C. 558), proceeds from disposal of these items on civil works property may be returned to the appropriation.

11-193. Methods of Disposal. Standing timber, crops, sand, gravel, or stone-quarried products, authorized for disposal in accordance with the foregoing, will be disposed of by transfer to another Federal agency or by sale.

11-194. Disposal Plan for Timber. The DE will take appropriate action to assure that construction contractors are not authorized, in the clearance of construction sites, to burn or otherwise destroy merchantable timber unless circumstances exist which preclude sale or salvage. In preparing for disposal of timber, a disposal plan will be prepared which will include the following:

a. Live timber and merchantable dead timber will be marked for cutting in accordance with the land management plan, Master Plan, or forestry supplement thereto, and cutting will be limited to the timber so marked. The disposal plan will contain sufficient information in this respect to permit preparation of specifications for inclusion in the invitation for bids.

b. Utilization of existing roadways and construction of new roads and saw mills should be limited to the minimum necessary.

c. Requirement that the customary practices in elimination of fire hazards be observed with necessary specifications therefor. \*

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d. The installation commander will be consulted to obtain his desires in connection with security measures, and other matters affecting the installations, and the requirements of such measures will be set forth specifically.

e. Any measures considered necessary to protect timber and young growth not marked for cutting will be specified.

f. Where an appraisal is required, the appraisal report will be prepared by a competent forester. The report will indicate the number and size of each species and classification of trees to be cut; the estimated board feet in log scale measurement; linear estimates of pole timber, and amount of cord wood. The appraiser should indicate in the appraisal report what, in his opinion, should be acceptable as a minimum price for different types of timber, as well as a total or lump sum estimate for the whole. Methods of administration and sale of timber by the Army or Air Force should follow the same general rules employed by the U.S. Forest Service in its sales and forestry practices. U.S. Forest Service personnel may be available for this work, if desired, on a reimbursable basis, provided the size of the area in question and the location render such arrangements feasible.

g. Minor sales, involving lots with an estimated value of \$1000 or less, may be accomplished by the reservoir manager on civil works projects under general guidance issued by the Real Estate Branch. In such minor sales, two or more informal bids, in writing, will be obtained, if possible. If only one bid can be obtained, the proposed sale will be posted for a period of ten (10) days.

11-195. Disposal Plan for Embedded Gravel, Sand or Stone. Prior to offering sand, gravel, or stone for disposal, a disposal plan will be prepared, which will include the following:

a. Control of transportation facilities which will limit use of roads and construction of new roads to the minimum necessary.

b. Security measures established by consultation with the installation commander to properly protect Government property and other interests of the Government.

c. Where applicable, the depth or level to which the material may be removed, and any restoration of the site after removal.

d. Specifications as to methods to establish amount of material removed for the purpose of payment.

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e. With certain exceptions as discussed in paragraph 11-234d, infra, an appraisal report will be prepared by a person familiar with the material involved and the operations for mining, quarrying or otherwise removing it, giving the type or grade of material involved and an opinion as to the minimum price that should be acceptable.

11-196. Procedure for Transfer to Another Federal Agency. As soon as possible after standing timber, embedded sand, gravel, or stone are made available for disposal, other Federal agencies having activities within the vicinity of the location of the property and which, in the opinion to the responsible DE, may desire transfer of the property will, to the extent practical or economical, be notified of the availability of the property for disposal. Such notification should include the following: information concerning how arrangements can be made to inspect the property; information concerning conditions governing cutting, harvesting, mining, or removal of the property and a statement that the property will be advertised for sale upon the expiration of fifteen (15) calendar days from the date of the notification, unless a request for transfer of the property, or a statement that a request for transfer of the property, or a statement that a request therefor may be made, is received within the fifteen (15) day period. Should a Federal agency request within the fifteen (15) day period, that disposal of the property be withheld pending determination of a requirement, disposal will be withheld not longer than sixty (60) days from the date of notice of availability, unless DAEN-REM approves withholding disposal for a longer period. Disposal will not be withheld for such sixty (60) day period, extended if applicable, if to do so would interfere with construction or other necessary operations. Should a request be received from a Federal agency for transfer of the property, the property will be transferred in accordance with existing procedures without reimbursement except as provided by FPMR Section 101-47.203-7. If no request for transfer is received, the property will be considered surplus and disposed of by one of the methods outlined in succeeding paragraphs. The foregoing instructions do not apply to land clearance operations performed either by contractor force account. It applies only to those cases where it is proposed to offer property for sale.

11-197. Sales. DEs will be governed by the general procedure set forth in Section XIV in selling standing timber, growing crops, embedded sand or gravel or stone products.

11-198. Agreement with Small Business Administration (SBA) on Sale of Timber. The Department of Defense has entered into an agreement with the SBA for the development of a program of assistance for small concerns operating in the timber business. This agreement is published for compliance as Figure 11-19. In the implementation of this agreement, \*

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the DE will cooperate with field representatives of SBA to the fullest extent compatible with efficient administration of the Army's timber disposal program.

11-199. Status as Small Business.

a. Definition. Each invitation for bids for the sale of timber with an estimated value of \$2,000 or more will contain a definition of small business and provision for self-certification of the bidder's status within its terms. A definition for use in invitations for bids on Army timber is provided in the "Certificate as to Small Business Status" (Figure 11-20).

b. Self Certification. The Code of Federal Regulations (13 CFR 121.3-9(c)) provides: "In the absence of a written protest or other information which would cause him to question the veracity of the self-certification, the contracting officer shall accept the self-certification at face value for the particular sale involved."

c. Definition for Set-Asides. The definition of small business provided in Figure 11-20 omits portions of the definition prescribed by SBA regulations which are not presently applicable to sales of Army timber. The omitted portions relate to sales of timber reserved for or involving preferential treatment of small business (para 11-202). These portions of the definition are subject to frequent revision by SBA.

11-200. Information for SBA on Timber Sales. Representatives of SBA will visit District offices from time to time for purposes of coordination and assistance; to furnish names and information on prospective bidders from the SBA facilities list; and to obtain information on programmed sales of Army timber. In addition to the information which may be furnished during the course of these visits, the following items of information will be furnished to appropriate SBA field offices on each sale of timber products with an estimated value of \$2,000 or more:

a. Advice on proposed or prospective timber sales of Army timber.

b. Copies of invitation for bids.

c. Name of successful bidder, his status as a small business, the bid price, and an estimate of the amount of timber sold.

11-201. Certificate of Competency by SBA Section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b) (7)) authorizes the SBA to certify the competency of a small business concern as to capacity and credit. In any case where timber is being sold on a credit basis, if the bid \*

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is being questioned solely on the financial ability of the bidder and the bidder is a small business concern, the DE will notify the appropriate SBA field office immediately and follow the other procedures provided by Section III of the DOD-SBA Agreement (Figure 11-19). A certificate of competency issued by SBA will be honored in such cases.

11-202. DA-SBA Joint Set-Aside Determination. Section 15 of the Small Business Act (15 U.S.C. 644), provides that where certain joint determinations are made by the SBA and a disposal agency, the award of a contract for the sale of Government property shall be made to a small business concern. Section IV, Joint Set-Aside Determination of the DOD-SBA Agreement implements Section 15 of the Small Business Act. It is not anticipated that SBA will recommend that Army timber be reserved or set aside for sale to small business concerns on an exclusive or preferential basis. In the event recommendations on set asides of Army timber are received from SBA field offices, the SBA recommendations will be forwarded promptly to HQDA (DAEN-REM) WASH DC 20314 with DE comments and recommendation.

11-203. RESERVED.

11-204. RESERVED.

11-205. RESERVED.

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SECTION XIII. CLEARANCE OF EXPLOSIVE HAZARDS  
AND OTHER CONTAMINATION FROM PROPOSED  
EXCESS LAND AND IMPROVEMENTS

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11-206. Clearance of Air Force Lands. The Chief of Engineers has no responsibility for inspecting or clearing excess Air Force land of explosives or chemical/biological contaminants. When a target or bombing range, or other land under the control of the Department of the Air Force, which might be contaminated with explosives or other harmful or dangerous substances, becomes excess to Defense requirements, the appropriate DE will obtain a certificate as to the extent of contamination and clearance thereof from the Commander, Air Force Logistics Command (AFLC), Wright-Patterson Air Force Base, Ohio 45433. The Corps of Engineers will continue to be the agency with which the disposal agencies, purchasers, and former lessors will communicate when explosives or objects resembling explosives, are discovered on the land after disposition has been effected. The AFLC, upon request of the DE, will neutralize or remove such objects or substances and make a report to the requesting agency or person. See paragraph 11-225 infra, for support required of the Corps.

11-207. Clearance of Army Lands. The responsibility for performing clearance of ordnance contaminated excess Army military real property is placed upon and remains with the using command. That command, after completion of the clearance work, will furnish the DE a "Statement of Clearance" (Appendix E, AR 405-90) and a record of the clearance work performed. In addition to the Statement of Clearance, the following information will be furnished to the DE upon completion of the neutralization:

- a. Records of the neutralization work performed, including statement of methods employed.
- b. List of dangerous and explosive materials removed.
- c. Number and names of demolition technicians employed.
- d. Other data that may be pertinent in the defense of any suit or claim that might subsequently arise as a result of civilian occupancy.

11-208. Determination of Categories. Prior to making a recommendation for excess, the state of contamination of the property must be determined by the installation commander as either of the following:

- a. Category One. Those lands such as ammunition plants, storage, test, impact and training areas, bombing or target ranges, which may contain explosives or unexploded ordnance. The report will include proposed methods of neutralization and the costs thereof. \*

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b. Category Two. Those lands or buldings which are suspected of being contaminated with radiological, industrial-military chemicals, or explosives. The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA), Aberdeen Proving Ground, Maryland 21010), will be requested to determine if the land contains any of the above contaminants, to determine the extent of the contamination, and to decontaminate, if necessary before such property is reported for dispsal.

11-209. Responsibilities.

a. Category One. The DE, as designee of the Chief of Engineers, will satisfy himself that the clearance work, as certified in the Statement of Clearance, has been performed and that such clearance complies with the requirements of this section. If the DE determines that the completed clearance work is not sufficient, he will request the using command to perform the necessary additional clearance. The Department of Defense Explosives Safety Board (DDESB), has responsibility for reviewing and approving, from an explosive safety viewpoint clearance reports for real property declared excess and offered for disposal. DDESB should be consulted for review and analysis of accomplished clearance work for Category One property when determinations of adequacy are not within the capacities of the DE. Requests, fully documented, for review and/or analysis by the Board may be forwarded to DAEN-REM for submission to the Board. Department of Defense procedures include staff study of all proposed excess reports by the Board before grant of "Prior Approval" for those disposals requiring reports to the Armd Services Committees (10 U.S.C. 2662). When the clearance work has been satisfactorily performed, disposal action will be continued as set forth in this chapter. If the DE determines that further clearance work is necessary to render the land safe for use but that such further clearance work is not economically justified, he will make a report to DAEN-REM with his recommendations and pertinent supporting data. The report will include a statement of the current status of the excess action.

b. Category Two. The U.S. Army Toxic and Hazardous Materials Agency (USATHAMA) is responsible for the identification and containment and elimination of all toxic and hazardous materials, and related contamination on all land and/or buildings where an excessing action is planned. USATHAMA will conduct the survey and assessments of all proposal excess property to establish the type and quantities of contaminants and then plan, direct and control the program to decontaminate and clean up the property. Following the completion of the decontamination clean up program, USATHAMA will prepare a clearance statement stating the property has been cleared of all toxic and hazardous materials reasonably possible to detect using present state-of-the-art methodology, and it will provide any exceptions or restriction for utilization of the property. Clearance statements which identify contaminations

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of ammunition and explosives will be submitted to the DDESB for review. Category Two items may include chemical munitions or agents, liquid propellants and pyrotechnics. The clearance statement will be forwarded through the MACOM to DAEN-REM.

(1) Decontamination of Category Two real property will comply with the requirements of TB 700-4 (Decontamination of Facilities and Equipment). The Bulletin provides general policies, responsibilities and procedures applicable whenever potentially contaminate facilities are disposed of to other Government agencies, qualified users in industry, or to the general public.

(2) The degrees of decontamination are designated in TB 700-4. Contaminated real and personal property excessed for disposal shall be decontaminated to XXXXX before it can be removed from the Government premises, or transferred to nonqualified Government or industry users.

11-210. Contaminated Industrial Property.

a. GSA may arrange to sell contaminated chemical or other industrial plants to a purchaser whose operations will result in the same type of contamination, or who agrees to perform the necessary decontamination. Any decontamination work required will be monitored by USATHAMA who will also review the completed program for adequacy of decontamination. If these arrangements cannot be worked out, USATHAMA will decontaminate the property at the request of OCE, or the property may be withdrawn from excess and returned to the using command for care and custody.

b. A Statement of Clearance is required for industrial property to be declared excess in order to establish a qualitative and quantitative base line for the contaminants present. In the Statement, USATHAMA will provide an adequate description of the nature and extent of the contamination. The description furnished to the DE should include the following information:

(1) Name and location of installation.

(2) Date of final clearance.

(3) Reference to attached real estate map showing locations of contaminated, cleared and restricted areas. The map(s) will be attached to the description of contamination.

(4) Statement that the area has been cleared of toxic and hazardous materials reasonably possible to detect either by present state-of-the-art methodology or by a visual inspection. \*

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(5) Recommendation as to whether the land or structures may be used for any purpose for which it is suited, clearly identifying any areas recommended for restricted use and listing restricted tract and building numbers.

11-211. Limitations on Clearance Cost. The following principles are established for determination of the financial limit of clearance operations at excess installations:

a. Government-owned land. Clearance work will not be undertaken where the estimated cost thereof exceeds the value of the land after decontamination plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

b. Leased land. Clearance will not be undertaken where the estimated cost, plus the cost of any other required land restoration work, exceeds the value of the land after clearance and restoration plus the estimated cost of keeping it security-fenced and posted for a period of 25 years.

11-212. Clearance of Military Scrap. Military scrap can contain or be contaminated with explosives, chemicals, and other hazardous materials. The primary consideration in determining whether scrap metal will be removed should be the safety of persons coming on the land in question and, secondarily, the prevention of accidents resulting from the sale and/or use of the scrap metal subsequent to the land passing from the jurisdiction of the Department. The DE will insure the removal or destruction, by using command, of all military scrap and scrap metal from lands suitable for cultivation or other subsurface operations. In the case of land unsuitable for cultivation or other subsurface operations, all military scrap will be removed or destroyed and scrap metal removed, if it is reasonably possible to do so. Cases where it is considered impracticable to remove the scrap metal, will be reported to DAEN-REM for final decision. In such instances, pertinent data and the recommendation of the DE will be furnished. Disposition of military scrap or scrap metal by dumping into inland waters or by land burial in other than an approved landfill is prohibited.

11-213. Restricting Future of Artillery and Other Ranges. Experience indicates that, on ranges where high explosive projectiles have been fired or dropped, such as artillery, bombs, mortars, rockets, grenades, and the like, it is impossible to make certain that land in impact areas is absolutely safe for unrestricted use. Such impact areas receive a high concentration of fire, and the properties of these projectiles are such that many duds are deeply buried. Depth of burial, as well as the concentration of fragments or components, will affect the dependability of mine detectors. Since there is no knowndefinite period within which such projectiles will become inert through

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weathering and corrosion, such contaminated areas can be safely released for restricted use only, even after decontamination work as been carried to its practicable limit. Such restrictions will usually be in the form of a recommendation that the land be restricted to surface use only. Restrictions will be based solely on the type and/or extent of contamination. If land is contaminated to such a degree that it is considered it cannot be rendered safe for any use, disposal action will be suspended and the facts will be reported to DAEN-REM-C with the DE recommendations.

11-214. Reporting Contaminated Land to the General Services Administration. Contaminated areas, except industrial properties as covered by paragraph 11-210, will not be included in a Report of Excess to GSA until such time as the affected areas have been cleared by the using command to the satisfaction of the DE and a Statement of Clearance has been received. If an exception is granted and the Department of the Army, with the concurrence of GSA, reports contaminated nonindustrial property excess, the report of excess will include statements concerning:

- a. The extent and type of such contamination;
- b. Plans for decontamination, if any; and
- c. The extent to which the property may be excessed without future decontamination.

11-215. Statement of Clearance in Reporting Excess Property to GSA. The Report of Excess will include the Statement of Clearance furnished by the using command (paragraph 11-207). The record of the clearance work performed by the using command will not be included in the Report of Excess but will be preserved in the permanent records of the DE. It is anticipated in these cases that the disposal agency (GSA) will, at the time the land is offered for sale or lease, give public notice of the circumstances surrounding its past and future restricted use. Included in such notice will be the statement that the Department of the Army is willing to remove or destroy any potentially dangerous materials discovered at any time in the future, subject to the availability of funds for this purpose.

11-216. Reporting Target Ranges. All Reports of Excess to GSA covering lands which have been used as target ranges of any kind will contain an affirmative or negative statement in regard to contamination. This will be by appropriate schedule and reference thereto in the following manner: \*

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a. If the statement is negative, it will declare that no explosive or other contaminating materials were used or stored on any portion of the installation.

b. If the statement is affirmative, reference will be made to appropriate schedules of the Report of Excess containing statements of clearance on the installation, or portions thereof.

11-217. Recording Statements of Clearance. On property disposals for which the Corps of Engineers is the disposal agency, the DE will have the Statement of Clearance recorded, if possible, as part of the permanent history of the property involved, with the proper county land record office. A copy of the report of clearance work performed will be furnished DAEN-REM and DAEN-REP.

11-218. Return of Contaminated Leased Land to Owners. Where leased land has been contaminated, whether excess to military requirements or being used, it may often prove advisable and economical to acquire the fee to such properties. Prior to considering the return of contaminated leased land to owners, District Engineers will assist installation commanders in preparing an analysis as a basis for recommendation to acquire or not acquire such areas. In the case of recommended restriction of use, notice should be given the lessor as described in paragraph 11-215.

a. Where such a restriction reduces the value of the land, the Department will, if consistent with the terms of the lease, pay damages equal to the reduction in value as of the effective date of termination.

b. As stated in paragraph 11-215, the owner should be advised that the Department is willing to remove or destroy any potentially dangerous materials that may be discovered in the future, subject to the availability of funds.

11-219. Supplemental Agreement with Owner of Contaminated Leased Land. In the event that it becomes necessary to pay damages to a lessor in lieu of restoration i.e., decontamination, the following clause, appropriately modified to fit the circumstances, will be made a part of the supplemental agreement terminating the lease and effecting monetary settlement in lieu of restoration. Additionally, in order to protect the Government from possible claims for damages from future purchasers, the executed supplemental agreement will, in those jurisdictions permitting recordation, be recorded by the DE thus providing legal notice to subsequent purchasers of the condition of the premises. \*

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SUGGESTED CLAUSE FOR USE IN SUPPLEMENTAL AGREEMENT

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WHEREAS, by reason of the use made of the premises by the Government it is impossible to ascertain after completion of decontamination operations by the Government that the following described portion of land is safe for unrestricted use by the lessor (or state because of use made by Government that use of land must be restricted to grazing, etc.):

(Legal Description; utilize hachured/annotated maps(s) as attachment plus legal description.)

Now, therefore, in consideration of the payment by the Government of the United States to the lessor, (Name of lessor), of dollars (\$\_\_\_\_\_), representing the estimated compensation to which the lessor is entitled by reason of the loss of the unrestricted use of the above described property, the lessor hereby releases the Government from all claims for damages to property and/or injury to persons which may arise out of the existence on the premises of unexploded ammunition or chemical/biological agents. It is mutually understood, however, that for a period of 25 years from the date hereof, the Government shall, upon request of the lessor, remove or destroy any potentially dangerous materials that may be discovered on the land, provided that adequate appropriations are available to cover the cost of such service. (If use of the land is restricted to surface use, the lessor should agree and covenant, in consideration of the payment, to use the land for such purposes only.)

11-220. Conditions in Conveying Land Suspected of Contamination. The following conditions, appropriately modified to conform to local law, will be included in deeds conveying land which is, or is suspected of being, contaminated with explosive or toxic materials and is restricted to surface use: (GSA should be requested to include these conditions in deeds that they prepare.)

WHEREAS, said property was a part of (Name of Installation), a military installation used for \_\_\_\_\_, and portions of this property were subject to contamination by the introduction into the said installation of bombs, shells and other charges (insert reference to toxic chemical/biological agents, if applicable) either below or upon the surface thereof; and

WHEREAS, the grantor has caused the property to be inspected and has decontaminated the said property to the extent deemed reasonably necessary, and, to the extent deemed consistent with sound economic limitations, has cleared the property of all dangerous and explosive materials and/or chemical/biological agents, reasonably possible to detect, and has made certain recommendations pertaining to the use \*

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to which the land may be devoted, and the said recommendations are contained in a statement, a copy of which is attached hereto and made a part hereof; and

WHEREAS, the grantor, by attaching such statement, does not intend to make, nor shall it be construed to have made, any representations or warranties pertaining to the condition of the land; and

WHEREAS, the hereinafter-designated grantee has entered into a contract to purchase said property with full knowledge of, and notwithstanding the foregoing recitals which are incorporated for the purpose of disclosing the former use made of the property hereinafter described; and

WHEREAS, by acceptance of this instrument, the grantee admits and confesses to full knowledge with respect to the facts contained in the foregoing recitals as to possible contaminated condition of the property;

NOW, therefore, by acceptance of this instrument, and as a further consideration for this conveyance, the grantee here covenants and agrees for himself, his heirs, successors, or assigns, to assume all risk for all personal injuries and property damages arising out of ownership, maintenance, use, and occupation of the foregoing property; and further covenants and agrees to indemnify and save harmless the United States of America, its servants, agents, officers, and employees, against any and all liability, claims, causes of action, or suits, due to, arising out of, or resulting from, immediately or remotely, the possible contaminated condition, ownership, use, occupation, or presence of the grantee, or any other person, upon the property, lawfully or otherwise.

11-221. Warning to Public of Danger in Handling Explosive Missiles.  
When any land which has been contaminated with explosive objects, or chemical/biological agents, is released for disposal to, or use by, the general public in addition to the clearance statement furnished to the disposal agency, the DE will publicize, to the fullest extent practicable, the possibility of contaminants remaining on the land and the inherent danger of handling explosives or other contaminants. Such publication should be in the form of articles in official news media, or posting of the premises whenever the latter is considered most feasible. Such publicity should include instructions that, in the event of the discovery of an explosive missile, or an object resembling an explosive missile, or other contaminant, or in the event of an injury caused by an explosion or exposure to toxic agents, such discovery or injury should be reported immediately to the DE. An effort should be made to obtain the cooperation of local law enforcing agencies to \*



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insure the prompt reporting of an accident, or the discovery of an explosive missile. The majority of accidents are the result of the removal of explosive missiles by individuals for sale to scrap dealers. Scrap dealers in the vicinity of contaminated lands should be informed of the inherent dangers and asked to cooperate by refusing to buy military scrap from private parties.

11-222. Reporting Accidents. Immediately upon receipt of information of an accident involving, or appearing to involve, explosive or chemical/biological elements remaining on, or carried from an excess or surplus installation, whether under the jurisdiction of the Corps of Engineers, other Government agency, or sold or returned to public or private owners, the DE will institute an investigation and prepare a report prescribed by AR 385-40 and OCE Supplement thereto. Further, upon determination that an accident has occurred, the former using command should be requestd to send qualified explosive, chemical or biological specialists to the scene of the accident immediately, in order that proper corrective measures to eliminate future accidents may be instituted. HQDA (DAEN-REM) will be immediately informed, by teletype, of any accidents due to explosives on lands which have been used by the Department involving injuries to persons and/or animals, or damages to private property.

11-223. Contamination Discovered After Return of Land to Owner, or Sale. When land has been previously declared clear of explosives or other dangerous material so as to be safe for all uses and disposed of, but is later found to have been contaminated to such an extent that, in his opinion, it is dangerous to the public, the DE will request the former using command to re-examine the land for the purpose of determining the extent to which the original Statement of Clearance should be revisal and to determine the kind and cost of any further clearance work by the using command which would be required to place the property in the condition set forth in the original Statement of Clearance. If further clearance work is necessary and considered economically justified, the DE will request the using command to perform such work and furnish a new Statement of Clearance and record of the further clearance effected. If further clearance work is not considered economically justified, he will make a report thereof to DAEN-REM with his recommendations and pertinent supporting data. Recommendation for reacquisition of contaminated lands will be limited to those which involve full restrictions of both surface and subsurface uses. Where subsurface use of lands only is to be restricted, it is preferable to make compensation to the owners through claim procedure, when and if instituted by the owner on his own initiative. \*

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11-224. Return of Public Domain Land.

a. General. The procedures described elsewhere in this section to carry out the continuing responsibility of the Department of the Army to assist and advise the land holder and protect the public from dangerous substances on or in the land after release are equally applicable to public domain lands. Air Force policy and procedures are generally comparable.

b. Congressional. A provision has been added to several laws enacted by Congress that upon request of the Secretary of the Interior at the time of final termination of the reservation effected by the Act, the Department of the Army shall make safe for nonmilitary uses the land withdrawn and reserved, or such portions thereof as may be specified by the Secretary of the Interior, by neutralizing unexploded ammunition, bombs, artillery projectiles, or other explosive objects and chemical agents. The intent of the provision is explained by a statement of the Committee on Interior and Insular Affairs, House of Representatives, in Report No. 279, 87th Congress, 1st Session: The committee concluded that it would be appropriate to amend the bill to designate the Secretary of the Interior to act on behalf of the Federal Government in delineating the areas to be made safe for nonmilitary use when the lands are no longer required for defense purposes. "It is expected that the Secretary of the Interior will not require the Department of the Army to proceed with expensive cleanup work in areas where there would be no direct benefit. On the other hand, it is anticipated that when potential resources or use values are such, as to make deduinding or decontamination advisable, the Secretary of the Interior will identify those resources and values for the Secretary of the Army. This will permit a full and complete justification in the event that a separate appropriation therefor is required." Report No. 279 also quoted the following policy statement by the then Bureau of the Budget: "... requirement for decontamination should be related to a standard not only of practicability, but also to one of economic feasibility that takes into account the desired future use and value of the land to be decontaminated."

c. Army. The congressional policy outlined above does not change the existing Army policy. Its principal effect is to make it clear that the Secretary of the Interior has an equal interest with the Secretary or the Army in the final decision on whether it is practicable or feasible to clear lands for return to the public domain, and the extent of clearance. No difficulties in reaching agreement with Interior in these matters are anticipated. Where large expenditures are involved, it will usually be necessary to request a special appropriation, leaving the final decision to Congress. In any instance, if difficulty in \*

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reaching agreement with officials of the Bureau of Land Management (or the Secretary of the Interior) should occur, it will be reported promptly to DAEN-REM with complete background data for review and instructions.

11-225. Support in Clearance of Air Force Lands. Where Air Force range lands are proposed for disposal, the AFLC, in most cases, will make an economic study to determine the extent of clearance that is justified by the relative values of the property before and after decontamination. For this purpose, AF comands declaring range lands excess will submit a copy of the excess recommendation to the AFLC. Upon request, the DE will prepare and furnish a disposal planning report to the AF Logistics Command for assistance in making the economic study. The disposal planning report will include, but need not be limited to, the following:

a. A map which depicts and annotates differing areas according to their estimated highest and best use.

b. An appraisal report reflecting the fair market value of each of the differing areas based on their highest and best use, and based on the assumption that the lands are entirely free of dangerous materials or other contamination. AFLC will compare such evaluation with cost of decontamination work. While needed primarily in connection with the return of AF range lands to the public domain, economic studies may be made and disposal planning reports requested by the AF in other areas.

11-226. RESERVED.

11-227. RESERVED.

11-228. RESERVED.

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11-229. RESERVED.

## SECTION XIV

## SALE PROCEDURE

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11-230. Advertising.

a. Definition and Purposes. GSA regulations require that disposal agencies shall widely publicize all surplus real property which becomes available for sale. Sales will be made to the highest responsible bidder after advertising. Advertising consists of the preparation of Invitation for Bids, the posting of copies thereof in public places, their distribution to interested persons or prospective bidders, and publication of notice of sale in newspapers where such publication is deemed advisable or is required by this chapter. The purpose of advertising and obtaining competition in selling Government property is:

(1) To give all qualified persons equal opportunity to bid for the property.

(2) To secure for the Government the benefits which flow from competition.

(3) To prevent criticism that favoritism has been shown by officers or employees of the Government in making sales of public property.

b. Notice to Department of Commerce. A condensed statement of proposed sales of surplus real property by advertising for competitive bids, except where the estimated fair market value of all the property included in the advertisement is less than \$5,000, shall be prepared for publication in the U.S. Department of Commerce publications, "Commerce Business Daily." Guideline is contained in the Defense Acquisition Regulation (DAR) 1-1005.1, (formerly the Armed Services Procurement Regulation). Forward statement to: U.S. Department of Commerce, Commerce Business Daily, P.O. Box 5999, Chicago, Illinois 60680.

c. Procedure. Whether newspaper advertising in addition to distribution and posting of Invitation for Bids is desirable will depend upon the value of the property and in some instances the anticipated interest in the property. The ever-changing market requires different methods or efforts to obtain the best price for the Government. The time allowed for submission of bids will depend upon the time available, usually 30 days. If available, a longer period may be desirable based on value and other factors. A shorter period may be necessary and, in an emergency, a period of less than 10 days may be allowed. However, the contracting officer should make a record of written findings to support such a decision. If the emergency is based on requirements of the using command that appear questionable, a report with recommendations should be forwarded to DAEN-REM by the most expeditious means. \*

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d. Bidders Mailing Lists. Instructions contained in procurement regulations are applicable generally for establishing, maintaining, and controlling bidders mailing lists (DAR 2-205). Generally, all proposed sales should be preceded by an advance notice, to eliminate disinterested bidders and as a measure of economy in printing and distributing voluminous Invitation for Bids. Notice to bidders will provide that their failure to respond to two successive sales offerings will result in the removal of their names from the bidders list. When time does not permit an advance notice, one copy of the Invitation may be sent to the potential bidder, which contains the following notice: "Attention Bidders. If interested in bidding on any or all items, three (3) additional copies will be furnished on request." The advance notice will describe the property offered and ordinarily provide that Invitation for Bids will be mailed on request or may be picked up at the installation or project at the time the property is inspected.

e. Inspection of the Property. Upon request, interested persons should be permitted to make appropriate inspection of the property, including inventory records, plans, specifications, and engineering reports, subject to any restrictions necessary in the interest of national security and to such reasonable rules as may be prescribed by the using command or the DE.

11-231. Award of Contract.

a. Opening of Bids. All bids shall be opened and publicly disclosed by a duly authorized representative of the responsible DE at the time and place stated in the Invitation and advertisements.

b. Award and Notice to Bidders. Award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered, provided that any or all bids may be rejected when it is in the public interest to do so. When an award is made, unsuccessful bidders should be notified promptly and their earnest money deposits returned.

c. Equal Offers. Equal offers mean two or more offers that are equal in all respects taking into consideration the best interests of the Government. When equal acceptable offers are received, award shall be made by a drawing by lot limited to the equal acceptable offers received (See also paragraph 11-232.)

d. Public Auction. When authorized by GSA, sales of surplus property may be made through contract auctioneers. Consideration should be given to auction sales when there is likely to be considerable interest in the property. GSA Regional Offices have had experience with actions, maintain lists of qualified auctioneers, are in a position \*

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to give other advice and assistance, and may authorize auction sales on behalf of GSA, pursuant to FPMR, Section 101-47.304-7. Auctioneers retained under contract shall be required to publicly advertise for bids in accordance with applicable provisions of that regulation. The prior approval of DAEN-REM will be obtained before auction sales are undertaken.

11-232. Application of Anti-Trust Laws. The Federal Property Act provides that real property and related personal property with an aggregate total cost of \$1,000,000 or more (or personal property with an acquisition cost of \$3,000,000 or more) or patents, processes, techniques, or inventions, regardless of cost, shall not be disposed of to any private interest until the advice of the Attorney General has been received as to whether the proposed disposal would tend to create or maintain a situation inconsistent with the anti-trust laws. Prior to obligating the Government on any such disposal, Division Engineers will furnish DAEN-REM information on the probable terms and conditions of the sale. DAEN-REM will use the information as the basis for a request to the Attorney General for advice. Under the provision cited, the Attorney General is allowed up to 60 days to furnish the advice requested. The Federal Property Management Regulation, Section 101-47.301.2 provides guidance on the information to be furnished. Where identical bids in excess of the \$2,500 are received, FPMR, Section 101-47.304-8 provides for a report to the Department of Justice. Section 101-47.304-8 provides guidance for such reports to be addressed to the Attorney General, WASH, DC, 20530.

11-233. Determination of Acceptable Offers After Advertising.

a. Generally an acceptable offer is one which:

- (1) Is submitted by a responsible bidder.
- (2) Conforms to the Invitation for Bids.
- (3) Equals or exceeds the appraised fair market value of the property.
- (4) Was independently arrived at in open competition.

b. A formal appraisal is not required where real property components:

- (1) Are to be offered on a competitive sale basis that will adequately test the market.
- (2) Are at the same location and are to be sold under a single advertisement.

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(3) Have a total estimated fair market value of \$10,000 or less for all property to be sold.

The determination as to necessity for a formal appraisal because of the \$10,000 limitation may be made by an experienced real estate employee who need not be a real estate appraiser. This determination may be in the form of a simple written statement that in the judgment of the signer the property is not considered to exceed \$10,000 in value. In these cases, awards will be supported by a determination by the DE that the market was adequately tested, and the price bid reasonable. For the purpose of records and reports, the sale price will be recorded as the fair market value. If it appears the market was not adequately tested, bids will be rejected and the property readvertised, or, if time does not permit readvertising, a sale may be consummated using the procedure provided in d and e below.

c. All land, irrespective of estimated value, and all other real property and components with an estimated value in excess of \$10,000 will be appraised. Where an acceptable offer, as defined in a and b above, is not received for such property as a result of public advertising, it will be readvertised unless the responsible DE determines, based upon written findings which shall be preserved as part of the permanent file, that further public advertising will serve no useful purpose.

d. Where no acceptable bid is received as a result of the second advertising, or a determination was made that further advertising would serve no useful purpose or is not feasible, the DE may negotiate a sale at the highest price obtainable, provided:

(1) All bids are first rejected.

(2) The total of the appraised value for all property included in any single sales contract does not exceed \$1,000.

(3) All past bidders, on any of the items, and any other known interested parties are afforded a fair opportunity to participate in the negotiations.

(4) The sale price is in excess of the highest bid received as a result of advertising.

(5) In his opinion the price is reasonable.

e. Where the appraised or estimated value of all items to be included in a single sales contract exceeds \$1,000, and no acceptable bid is received, the high bidder may at the discretion of the DE be given a reasonable period, not to exceed five working days, to

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increase his bid. At the same time all other bids shall be rejected and bid deposits returned. If the high bidder increases his offer to an amount equal to the total appraised or estimated value of the items involved, the DE may consummate the sale. All other cases will be forwarded to DAEN-REM together with an opinion as to whether the market was adequately tested and the highest price offered is reasonable, and with recommendations as to the course of action to be followed. If a negotiated sale to other than the highest bidder is recommended, information for preparation of a report to the Government Operations Committees of Congress will be included, as required in paragraph 11-234C(2).

11-234. Negotiated Sales.

a. To Private Parties. Negotiated sales to private parties are not viewed with favor. Generally, such negotiated sales will be approved only where an emergency exists that will not permit advertising, where advertising would serve no useful purpose, or where a negotiated sale is in the best interest of the Government. Emergencies which justify sales without advertising do not ordinarily justify sales without competition. Instances are rare where the emergency is such that time does not permit the oral solicitation of quotations from more than one source. In any sales which are made without benefit of advertising, competition by informal solicitation and quotation will be obtained to the maximum extent feasible under the circumstances. Such sales should be negotiated at the best terms obtainable and at not less than the appraised fair market value.

b. To Eligible Agencies

(1) Acts of Congress listed in the Federal Property Management Regulation, Section 101-47.4905 (Illustrations), authorize negotiated sales of surplus real property to states and other eligible public agencies listed therein. The Acts listed, except Section 203(c) (3) (H) of the Federal property Act (40 U.S.C. 484(c) (3) (H)), cover special classifications of property for specialized use, the most important of which is disposal of airport property. The Section of the Act cited authorizes negotiated sales of surplus property to states, territories, possessions, political subdivisions thereof, or tax-supported agencies thereof, provided the appraised fair market value of the property and other satisfactory terms of disposal are obtained. (The other Acts listed in Section 101-47.4905 provide for disposal subject to conditions of use but without consideration, or at reduced consideration, except power transmission lines which are sold without conditions but at the appraised fair market value.) Notification that surplus property is available for disposal will be given to eligible public agencies for \*



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all airport property and for any other property where there is reason to believe that an eligible public agency may be interested in the property or that the property may be adaptable to the agency's use (Section IX).

(2) Title 10, United States Code, Section 4682, authorizes the Secretary of the Army to sell obsolete or excess material at fair value to the National Council of the Boy Scouts of America. The Judge Advocate General has held that buildings and other improvements no longer required by the Department be sold to that organization at the appraised fair market value.

c. Authority to Negotiate

(1) The DE is authorized to dispose of land, improvements, related personal property and real property components (including standing timber and embedded sand, gravel, and stone-quarried products in their unmined or natural state) with an estimated fair market value of \$1,000 or less by negotiated sale without advertising, provided that such action is within the purview of a and b above, and satisfactory terms of disposal can be obtained. Except as provided in paragraphs 11-233 and 234b, all sales are not less than the appraised fair market value. See d below for requirement for appraisal by contract.

(2) Another proposals to negotiate sales without advertising will be submitted to DAEN-REM for advance approval. In submitting such proposals, the nature of the emergency or other situation justifying the waiver of advertising will be clearly stated. The property involved will be adequately defined, and the appraised fair market value and proposed price will be set forth. Negotiated sales of surplus property with an appraised value in excess of \$1,000 under provisions of the Federal Property Act cited in b(1) above, require submission of an explanatory statement to the Government Operations Committees of Congress. Under the FPMR, a statement must be submitted at least 35 days in advance of each such negotiated disposal. When required, the DE will forward a draft of statement to HQDA (DAEN-REM) for transmittal to GSA for submission to the Committees.

d. Appraisal by Contract. Pursuant to Federal Property Management Regulation, Section 101-47.304-9(b), where sales are to be negotiated under the authority provided by paragraph 11-234 a and b above, a contract appraisal should be obtained provided that the cost of such a contract would not be out of proportion to the recoverable value of the property and is in the best interest of the Government. If such is not the case, the head of the disposal agency, or his designee, may authorize any other appropriate method to obtain an estimate of fair market value. Requests for waiver will be forwarded to DAEN-REM. \*

e. Record to Justify Waiver of Advertising

(1) A written justification for negotiated sales made under the authority of these instructions will be prepared and filed by the DE with the record of disposal in each case. A copy of Standard Form 1036 may be used for this purpose.

(2) Except for those cases covered by b above, the nature of the emergency compelling waiver of advertising, the reason why it was considered that advertising would serve no useful purpose, or why the negotiated sale was considered to be in the best interest of the Government, will be clearly stated. In cases where an explanatory statement is transmitted to the Committees on Government Operations, a copy of that statement will be furnished the appropriate GSA Regional Office and filed with record of the case as the required documentation of justification for waiver of advertising. DAEN-REM will make available to the DE necessary copies of such statements for filing or distribution.

11-235. Form of Invitation for Bids and Contract of Sale. Sale contract forms will be prepared by the DE conducting the sale. ENG Form 571-R, DA Invitation for Bids, Bid and Acceptance, Sale of Surplus Real Property (Figure 11-21) will be used as a guide in sales of bare land or improved land and related personal property. ENG Form 1038-R, DA Invitation for Bids, Bid and Acceptance, Sale and Removal of Buildings (or other Real Estate Improvements) Located At \_\_\_\_\_ Figure 11-22), will be used as a guide in sales of buildings and other improvements for removal from the site. These forms are designed for use in normal sales of land and real estate improvements pursuant to existing delegations of authority. The DE is authorized to change formats, to rearrange the sequence of paragraphs, and to add or to delete paragraphs in whole or part, as local circumstances require, but no substantive departure from the forms is authorized without prior specific approval of DAEN-REM. Whenever a sale is to be conducted pursuant to a special delegation of authority, and whenever the circumstances of a sale are such as to render use of these forms inappropriate, a form will be devised by the DE to meet the requirements of the particular sale involved, and forwarded to  
\* DAEN-REM for approval. ENG Form 4808, Minor Forest Products Sales Contract, will be used to sell timber byproducts. Copies will be furnished to the purchaser, District Financial Accounting Officer, head of project office and the resource manager or post forester. Minor forest products are defined as timber byproducts with a fair market value of less than \$1,000. Suggested additional provisions and conditions for use in the sale of  
\* standing timber are contained in ENG Form 2140-R, Supplement to Standard Form 114 for Use in Timber Sales Contract (Figure 11-23). In preparing sale contract forms, the following instructions will be followed:

- a. A definite date and time will be set for the opening of bids.
- b. Bids will be prepared in quadruplicate, all copies to be signed by the bidder.

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\* c. The Invitation for Bids will require each bidder to submit with his bid a certified check, cashier's check, traveler's check, or United States postal money order drawn to the order of the "Finance and Accounting Officer, U.S. Army Corps of Engineers" for at least 20 percent of the bid. \* When the cash bid may be a small part of the total consideration (where such dismantling and restoration is involved), the DE should set a definite higher amount as a bid deposit. Also, in such cases a performance bond, adequate to discourage breach of contract after only partial performance, may be required.

d. For real property components the Invitation for Bids will require payment in full within seven days after the successful bidder is notified that his bid is accepted and, in any event, prior to removal of the property. The time specified for completion of payment for land will depend upon the sum of money involved.

e. Bids may be submitted for one or any number of items. Items or lots of real property will be offered in such reasonable quantities as to permit all bidders, small as well as large, to compete on equal terms. Land, however, will not be subdivided solely for this purpose, and in the case of timber sales or sales of embedded sand, gravel and stone, it may not be feasible to have more than one purchaser operating in the same area. Further, it may not be to the Government's interest. Buildings will be offered for sale as single items whenever practicable but submission of bids covering specified groups as an item or all of the buildings may be permitted if the DE considers such a procedure is in the best interest of the Government. It may sometimes be advantageous to divide the buildings into appropriate groups and to permit bidding on individual buildings or on specified groups of buildings or on the entire lot. When such bids are permitted, the Invitation for Bids, ENG Form 1038-R, will be flagged to inform bidders that lump sum bids on the entire lot (and specified groupings, if this procedure is appropriate) may be made but will not be accepted unless the lump sum bid exceeds the total of the highest bids received on each item (or on the groupings).

11-236. Credit. Payment of the purchase price over an extended period of time should be considered only when the price is a considerable amount, and it may be to the Government's interest to extend credit. prior to offering property for sale on an extended payment plan basis, approval from DAEN-REM will be obtained. Extension of credit will be within the limitations of FPMR, Section 101-47.304-4. Credit cannot be extended, except to state or local governments, nor can any other special condition be applied, unless provision was made for it in the Invitation for Bids.

\*

11-237. Extensions of Time. Granting an extension of time, where unusual or unforeseeable circumstances are not present, is contrary to the form of the Invitation for Bids, and amounts to the application of special conditions not provided for therein. This violates GSA regulations and the principles of fair competition. Adoption of the following guides in the development and administration of sales programs will help to avoid unjustified requests for extensions of time:

a. Establishment of realistic periods for completion of the sales contract.

b. Necessary and justified extensions to be authorized subject to posting additional bond to insure performance and payment of adequate consideration where use of Government land is involved.

c. Reasonable restrictions on resale of improvements at the site.

d. Prohibition against posting advertising signs and storage of salvaged material on the installation pending sale to other customers.

11-238. Abstract of Bids. At the opening of bids, DD Form 1501 or 1501-1 (Abstract of Bids) will be prepared showing bid received, the amount for each item, and the total. The successful bid will be encircled in red or typed in red.

11-239. Payments. All payments should be in the form of cash, cashier's check, money order, traveler's check, draft, or any other form of payment not subject to stoppage or revocation. All such checks, money orders, or drafts should be drawn to the order of the "Treasurer of the United States. "

11-240. Sale To Employees or Military Personnel. The sale of Government real property will not be made to civilian employees or military members of the Department of Defense (including an agent, employee or member of the immediate family of such personnel) whose duties include any functional or supervisory responsibility for the disposal of real property under Army control.

11-241. Equal Opportunity - Sales of Timber, Embedded Sand, Gravel, Stone, and Surplus Structures. Consistent with Executive Order No. 11246 as amended by Executive Order No. 11375, every Government contract involving employment shall include provisions for equal opportunity in employment, in connection with the performance of work under the contract. The equal employment opportunity clause in DAR 7-103.18 will be included in all contracts and first-tier sub-contracts over \$10,000 pertaining to the following real estate actions in the United States and its possessions, unless exempted under the provisions of DAR 12-805. \*

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\*

a. Sale of standing timber.

b. Sale of embedded sand, gravel, and stone in their natural state.

c. Sale of surplus structures where an appreciable amount of dismantling and site restoration is involved.

11-242. Statement of Contingent or Other Fees. The instructions and procedures contained in Section I, Part 5, DAR, are applicable to the sale of Government-owned real property and will be followed. Where applicable the statement set forth in DAR 1-506 will be included in Invitation for Bids and Contracts of Sale and an identical signed statement will be secured from the prospective purchaser where the property is to be sold without advertising for competitive bids. In addition to the statement, Standard Form 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing, or Resulting From Award of Contract) will be completed where either part of the statement is answered in the affirmative. The exceptions to the use of the statement and Standard Form 119 are set forth in DAR 1-506-3 and may apply generally to real property sales of the Army, Air Force and non-defense agencies except that the monetary limitation prescribed by DAR 1-506.3 is \$1,000 insofar as sales or property of the Department of Energy are concerned.

11-243. Preparation and Distribution of Sales Documents and Reports of Sales.

a. Report of Funds Received. As funds are collected from sales, reports will be prepared promptly. Sales may be allowed to accumulate to permit the making of fewer reports, but in no case will they go unreported longer than 48 hours. DD Form 1131 and supporting papers will be signed by the DE conducting the sale.

b. Numbering of Contracts. The numbering of contracts involving the receipt or expenditure of funds will be in accordance with ER 1180-1-1 (ECI 30-203).

c. Documentation and Reports of Sale. The DE responsible for the sale will prepare and retain copies of documents pertaining to the sale, and will make required distribution of the following (see d below):

(1) Contract - one signed and two authenticated copies.

(2) DD Form 1501 or 1501C (Abstract of Bids)- one copy (not required for negotiated sales).

\*

\*

(3) DD Form 1131 - four copies. All sales will be listed on DD Form 1131, extended if necessary. Separate forms are not required for each contract. When receipts from more than one contract are reported on one DD Form 1131, all related contracts will be attached to and transmitted with the form.

4) Standard Form 1036, Statement and Certificate of Award, attached to the original signed contract and the DE's copy of each contract, or separate statement justifying negotiation (paragraph 11-234, supra).

(5) Advertisement, if any - two copies.

(6) Bond, if any - two signed copies.

d. Distribution of Reports of Sale.

(1) Military Property. The finance officer will be furnished one authenticated copy of the contract and four executed copies of DD Form 1131, together with funds collected. The finance officer will retain the contract, funds, and one copy of DD Form 1131, and will receipt and return to the responsible DE three copies of DD Form 1131.

(2) Civil Works Property. The finance officer will be furnished four executed copies of DD Form 1131, together with funds collected, an authenticated copy of each contract, Standard Form 1036 or a statement justifying negotiation, copy of advertisement, if any, and or original signed bond, if any. Three copies of DD Form 1131 (Cash Collection Voucher) will be receipted and returned to the DE.

11-244. Insurance Against Loss or Damages to Buildings and Improvements by Fire or Acts of God. The Department does not carry property insurance of any nature. Vendees, however, may be advised as to their liability for certain losses and that insurance protection against such risks is optional. Under the FPMR, the vendee must provide insurance to protect the United States when credit is extended (Section 101-47.304-4(f)).

11-245. RESERVED.

11-246. RESERVED.

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11-247. RESERVED.

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SECTION XV  
INSPECTIONS TO INSURE COMPLIANCE WITH  
DISPOSAL CONDITIONS

\*

11-248. Properties Requiring Compliance Inspections. The principal properties conveyed which require inspections are for the training of civilian components of the Armed Forces. However, other properties are sometimes conveyed under special acts of Congress subject to conditions required by the authorizing act. These properties will also be inspected for compliance with such conditions.

11-249. Civilian Component Training Facilities.

a. Authority. Under the provisions of the Surplus Property Act of 1944, as amended, a number of surplus real properties of the United States certified by the Governor of the state in which located and by the Secretary of the Army, Navy or Air Force as the case was, as being suitable and needed for use in training and maintaining civilian components of the Armed Forces under their respective jurisdictions, were conveyed by the Administrator of the War Assets Administration or by the General Services Administration to states, their political subdivisions or tax-supported instrumentalities for such purposes. These conveyances contained a number of covenants, conditions, restrictions and reservations, designed to insure the use and maintenance of the property and appurtenances for the purpose for which conveyed and otherwise to protect the interests of the United States. The Secretary of Defense is authorized by 40 U.S.C. (484(k) (4) (d) to:

(1) Determine and enforce compliance with the terms, conditions, reservations and restrictions contained in any instrument by which such transfer was made;

(2) Reform, correct, or amend any such instrument by the execution of a corrective, reformative, or amendatory instrument where necessary to correct such instrument or to conform such transfer to the requirements of applicable law; and

(3) Grant releases from any of the terms, conditions, reservations and restrictions contained in, and convey, quitclaim, or release to the transferee or other eligible user any right or interest reserved to the United States by any instrument by which such transfer was made, if he determines that the property so transferred no longer serves the purpose for which it was transferred, or that such release, conveyance, or quitclaim deed will not prevent accomplishment of the purpose for which such property was transferred: Provided, that any such release, conveyance, or quitclaim deed may be granted on, or made subject to, such terms and conditions as he shall deem necessary to protect or advance the interest of the United States. \*

\*

b. Authority Delegated. The authority vested in the Secretary of Defense under the Act cited in a above has been redelegate to the Secretary of the Army and the Secretary of the Force, respectively (Department of Defense Directive 5100.10, dated 16 March 1972).

11-250. Inspections of Civilian Component Training Facilities and Other Properties Conveyed Subject to Conditions. The DE, within whose areas of military real estate operations are located the facilities conveyed under paragraph 11-249, supra, will make physical inspections thereof for the purpose of determining compliance with the terms of the conveyance. Any evidence of noncompliance should be reported to DAEN-REM in order that appropriate recommendations may be made to the respective Secretary for corrective action. A detailed statement of the facts and recommendations of the DE should be included in the report. Inspections should be scheduled and integratd with outlease compliance inspection itineraries in the interest of economy. This requirement for inspections extends to properties conveyed by the Secretary of the Army or Air Force under special legislation, where the deed of conveyance imposes conditions on future use of the land. These inspections need not be made annually but frequently enough so that the DE is assured that the conditions are being observed, and at least every three years. Compliance with conditions in deeds for property conveyed for airport purposes under 49 U.S.C. 1723 and 50 App. U.S.C. 1622g is the responsibility of the Secretary of Transportation; for property conveyed for purposes of health and education, the Secretary of Health, Education, and Welfare or its successor agencies (40 U.S.C. 484(k) (4)). The Commander, U.S. Army Materiel Development and Readiness Command, is responsible for compliance with the National Security Clause, and similar conditions, in deeds conveying industrial properties.

11-251. Inspections of Civil Works Properties. Disposal of real estate interests which impose restrictions on the use of the land, or reserve an estate in the land, will be inspected for compliance on an annual or other reasonable basis to assure compliance.

11-252. RESERVED.

11-253. RESERVED.

\*

11-254. RESERVED.



TABLE 11-1. REGULATORY REFERENCES

SECTION I

63 Stat. 377 (40 U.S.C. 471)  
16 U.S.C. 460L-5(a)  
16 U.S.C. 470  
16 U.S.C. 1451  
33 U.S.C. 558  
42 U.S.C. 1594a-1  
42 U.S.C. 4321  
Executive Order 11593  
Executive Order 11988  
Executive Order 11990  
Federal Property Management Regulations, Section 101-47  
AR 200-1  
AR 405-5  
AR 405-90  
ER 1105-2-460  
ER 1165-2-26  
ER 405-1-12, Chapter 8

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SECTION II

AR 405-90  
AFR 87-4

SECTION III

10 U.S.C. 2662 as amended by P.L. 96-418, dated 10 October 1980  
Executive Order 11954  
Federal Property Management Regulations, Section 101.47  
AR 405-90  
AFR 87-4

SECTION IV

10 U.S.C. 2662 as amended by P.L. 96-418, dated 10 October 1980  
DOD Instruction 4165.12

SECTION V

43 CFR 2374.1  
10 U.S.C. 2662 as amended by P.L. 96-418, dated 10 October 1980  
42 U.S.C. 1594a-1 (b)  
50 U.S.C. 451  
Executive Order 11296  
Federal Property Management Regulations, Section 101.47

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SECTION V cont.

ER 755-2-1  
ER 1105-2-40

SECTION VI

63 Stat. 377 (40 U.S.C. 471)  
5 U.S.C. 3108  
40 U.S.C. 303b  
26 Comp. Gen. 303  
Federal Property Management Regulations, Section 101,47  
AR 405-80  
AR 405-90  
AFR 87-4

SECTION VII

43 CFR 2370-22374

SECTION VIII

10 U.S.C. 2662 as amended by P.L. 96-418 dated 10 October 1980  
Executive Order 11954  
AR 380-5  
AR 405-90  
AFR 87-4  
ER 405-1-12, Chapters 8 and 14

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SECTION IX

63 Stat. 377 (40 U.S.C. 471)  
68 Stat. 1119 (P.L. 83-765)  
70 Stat. 1018 (P.L. 84-968)  
76 Stat. 1129 (P).L. 87-852)  
33 CFR 211.141 - 211-147  
41 CFR 101-47  
9 CFR 21  
10 U.S.O. 831f(b)  
10 U.S.C. 2571(a)  
10 U.S.C. 2662 as amended by P.L. 96-418 dated 10 October 1980  
10 U.S.C. 2672  
16 U.S.C. 460e  
16 U.S.C. 505a and b  
16 U.S.C. 667b-d  
18 U.S.C. 4122  
23 U.S.C. 107(d)  
23 U.S.C. 317  
33 U.S.C. 558b and b.1  
33 U.S.C. 578

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SECTION IX Cont.

38 U.S.C. 5003  
40 U.S.C. 122  
40 U.S.C. 345c  
40 U.S.C. 484  
40 U.S.C. 484(e)  
40 U.S.C. 484(k)  
40 U.S.C. 511 nd 512  
49 U.S.C. 1157  
49 U.S.C. 1349(a)  
49 U.S.C. 1723  
50 U.S.C. 1622(g)  
Surplus Property Act of 1944  
Executive Order 10530  
Executive Order 12079  
36 FR 20423  
Federal Property Management Regulations, Section 101.47  
DOD Directive 4165.6  
AR 405-5  
AR 405-90  
AFR 87-4  
ER 1130-2-400  
ER 1180-1-1  
ER 405-1-12, Chapters 4 and 5

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SECTION X

40 U.S.C. 278a and b  
Federal Property Management Regulations, Section 101.47  
AR 405-90

SECTION XI

33 U.S.C. 558  
Federal Property Management Regulations, Section 101.47  
AR 405-90  
AR 420-70  
AFR 87-4  
ER 735-1-1

SECTION XII

13 U.S.C. 121.3  
15 U.S.C. 637(b)(7)  
15 U.S.C. 644  
30 U.S.C. 601  
33 U.S.C. 558  
Federal Property Management Regulations, Section 101.45 and 101.47  
AR 405-90  
AR 420-74  
ER 1130-2-400

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\*SECTION XIII.

10 U.S.C. 2662 as amended by P.L. 96-148 dated 10 October 1980  
AR 385-40  
AR 405-90  
TB 700-4

SECTION XIV.

10 U.S.C. 4682  
40 U.S.C. 484(c)  
Executive Order 11246  
Executive Order 11375  
Federal property Management Regulations, section 101-47  
Defense Acquisition Regulations (formerly the Armed Services Procurement  
Regulations)  
ER 1180-1-1

SECTION XV.

40 U.S.C. 484(k)  
49 U.S.C. 1723  
50 U.S.C. 1622g  
Surplus Property Act of 1944  
DOD Directive 5100.10

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\* 01 02

RR RR EEE

HQDA {2DAEN -REM-C} WASH DC/DISTRICT ENGINEER  
DLA CAMERON STA VA  
CCNGB WASHDC //NGB-ARI-R//  
CDRARCOM ALEX VA //DRCIS-ER//  
CDRFORSCO FT MCPHERSON GA  
CDRTRADOC FT MONROE VA  
CDRUSA {AREA ARMY}  
DAF WASHDC //AF LEER//  
CDR AAFES DALLAS TX  
CDRNAVACENCOM CODE 204 ALEX VA  
CDR AREA NAVAL DISTRICT  
AREA NAVFACENCOM  
COMDT US COAST GUARD WASHDC  
CDR AREA COAST GUARD DISTRICT  
AREA DIVENGR/DISTENGR

DA FOR COFENGRS ATTN, DAEN-ZCI; TSG, DAAR-LOI, DAMO, DCSRDA

UNCLAS E F T O FOUO

SUBJ: SCREENING EXCESS REAL PROPERTY FOR DISPOSAL

{EO 11724 IF APPROPRIATE}.

A. STURTEVANT REALTY OFFICER  
DAEN-REM-C X20504

W. LOCKWOOD REM X20511

\*

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\*02 02 RR RR EEEE

1. DA IS CONSIDERING ACTION TO DECLARE AS EXCESS THE FOLLOWING PROPERTY: {BRIEFLY DESCRIBE THE PROPERTY AND IMPROVEMENTS, GIVE ITS LOCATION, INDICATE ITS PAST USE, THE INTEREST OF THE UNITED STATES IN THE LAND; STATE WHETHER OR NOT THE PROPERTY HAS AS ESTIMATED VALUE OF \$100000 OR MORE, AND OTHER PERTINENT INFORMATION.}

2. ADDRESSEES HAVING REQUIREMENTS FOR ANY PORTION OF THE ABOVE WILL SUBMIT REQUESTS TO REACH {ORIGINATING OFFICE} PRIOR TO 30 DAYS FROM THE DATE OF THIS MESSAGE. {IF E01194 EXCESS REPORT, REQUESTS ARE TO BE SUBMITTED TO REACH ASD {MRA&L} WITHIN 15 DAYS FROM THE DATE OF MESSAGE.} NEGATIVE REPORTS ARE NOT, REPEAT, NOT REQUIRED. ANY ARMY REQUIREMENTS DISCLOSED BY THIS SCREENING WILL BE AFFORDED PRIORITY.

3. ARMY ADDRESSEES HAVING REQUIREMENTS SHOULD SUBMIT REQUESTS WHICH, CONCLUSIVELY INDICATE THAT PROPOSED UTILIZATIONS ARE ESSENTIAL TO ACCOMPLISHMENT OF ASSIGNED MISSION, THAT OTHER AVAILABLE DA PROPERTIES CANNOT BE USED, AND CONTAIN SUPPORTING DATA REQUIRED BY AR 405-90, PARA 10.

4. THE FOUO MARKING IS CANCELLED UPON OCCURRENCE OF THE EVENT SPECIFIED IN PARA 2 OF THIS MESSAGE. \*

A. STURTEVANT REALTY OFFICER  
DAEN-REM-C X20504

W. LOCKWOOD, REM X20511

Figure 11-1b

11-204

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 27 Oct 80

\*

DEPARTMENT OF THE ARMY  
 SUBMITTED BY OFFICE, CHIEF OF ENGINEERS  
 REAL ESTATE  
 DISPOSAL REPORT NO. \_\_\_\_

Submitted pursuant to Title 10, United States Code, Section 2662

Name of Installation: Fort Brown, Greenfield, Connecticut  
 Using Service (Command): United States Army Forces Command  
 Former Use: Training Camp  
 Interest: Fee  
 Area: 3,000 Acres  
 Original Cost: Land: \$ 250,000  
 Improvements: 5,000,000  
 Total \$5,250,000  
 Acquisition Date: 1942  
 Proposed Action: Report to General Services Administration  
 as excess real property  
 Authority: Federal Property and Administrative  
 Services Act of 1949 (63 Stat. 377)

Par. 1. "The Department of the Army proposes . . . ." (Here make a brief statement of the proposed action being reported to the Congress.)

Par. 2. Set out concise historical background of installation involved, which may include: Date and purpose of establishment; summary history of real estate data including original land acquisition and cost, with fee, easement and other types of ownership to be listed separately, and similar information for additional acquisitions, disposals, and for the current holdings, showing total acreage and cost of fee, easement, and other types of real estate holdings and costs thereof.

Brief chronological summary of installation, indicating active and inactive periods, current mission and present uses for other than assigned mission including other Army, Navy and Air Force, non-military Government, and civilian use. \*

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\*

DEED WITHOUT WARRANTY

THIS DEED, made this \_\_\_\_\_, 19\_\_\_\_  
by and between the United States of America, Grantor, acting by and  
through the Secretary of the Army, under and pursuant to the powers and  
authority contained in Section 23 of the Airport and Airways Development  
Act of 1970 (84 Stat. 232; 49 U.S.C. 1723) and in conformity with Part 154  
of Title 14 and Section 0.67 of Title 28 of the Code of Federal Regulations  
and Executive Order No.12079, 43 Fed. Reg. 42233 (1978) and in accordance  
with the request of the Administrator of the Federal Aviation Administra-  
tion (herein called the "Administrator"), and the City of \_\_\_\_\_,  
organized and existing as a City of the \_\_\_\_\_ Class under the laws  
of the State of \_\_\_\_\_ with principal office and place  
of business in the City of \_\_\_\_\_, State of \_\_\_\_\_,  
Grantee.

WHEREAS, it has been determined that the conveyance requested by the  
City of \_\_\_\_\_ is not inconsistent with the needs of the  
Department of the Army.

WITNESSETH: That the Grantor, in consideration of the benefits which  
shall accrue to the public by virtue of the use of the property herein-  
after described for public airport purposes, does hereby bargain, sell  
grant and convey without warranty, express or implied subject to the  
conditions, covenants and reservations hereinafter set forth, unto the  
Grantee all of its right, title and interest in and all those certain  
parcels of land designated as a portion of Fort \_\_\_\_\_ Military  
Reservation, situated in the County of \_\_\_\_\_,  
State of \_\_\_\_\_, to wit:

A tract of land in the \_\_\_\_\_ of Section \_\_\_\_\_,  
Township \_\_\_\_\_, Range of the \_\_\_\_\_ Meridan  
in \_\_\_\_\_ County \_\_\_\_\_, described as  
follows:

Beginning at \_\_\_\_\_ (Complete legal description of tract) \_\_\_\_\_.  
The tract of land hereby conveyed contains \_\_\_\_\_ acres, more or  
less.

\*

Figure 11-3a



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This Grant is subject to the following covenants and conditions which the Grantee, by acceptance of this deed, assumes for itself and its successors and assigns, as covenants running with the land:

1. That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport, in accordance with the National Airport System Plan, the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

2. That the airport, and its appurtenant areas and its buildings and facilities, whether or not on the land conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, or national origin, as to airport employment practices, and as to accommodations, services, facilities, and other public uses of the airport.

3. That the grantee will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it.

4. That in the operation of the airport and its appurtenant areas, the grantee:

a. agrees that no person shall be excluded from any participation, be denied any benefits or be otherwise subjected to any discrimination, on the grounds of race, color, or national origin;

b. agrees to comply with all requirements imposed by or pursuant to Part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21) - nondiscrimination in federally assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.

5. That the furtherance of the policy of the FAA under this covenant, the grantee:

a. agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft \*

Figure 11-3b

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\* rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which, because of their direct relationship to the operation of aircraft, can be regarded as an aeronautical activity; and

b. agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before July 17, 1962, at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

c. agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

6. That any later transfer of the property interest conveyed will be subject to the covenants and conditions in this instrument of conveyance.

7. That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

8. That, if any covenant or condition in the instrument of conveyance, other than the covenant contained in paragraph 7 of this section, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

9. That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Administrator, or his successor in function, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates. \*

Figure 11-3c

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\* TO HAVE AND TO HOLD the said premises, with the appurtenances, unto the said Grantee and its successors and assigns, forever, subject to the covenants and conditions herein set forth.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed and the official seal of the Department of the Army to be hereunto affixed.

UNITED STATES OF AMERICA

(SEAL)

\_\_\_\_\_  
SECRETARY OF THE ARMY

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

The approval by the Assistant Attorney General, Land and Natural Resources Division, is made pursuant to authority delegated by the Attorney General by Section 0.67 of Title 28 of the Code of Federal Regulations (Order No. 468.71 of the Attorney General, October 9, 1971: 36 F.R. 20428).

\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL  
LAND AND NATURAL RESOURCES DIVISION  
DEPARTMENT OF JUSTICE

\*

Figure 11-3d



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TO PUBLIC BODIES IN THE \_\_\_\_\_

Notice of the Availability of Land for Development  
of Public Port or Industrial Facilities

Pursuant to provisions contained in Section 108 of Public Law 86-645,  
86th Congress, \_\_\_\_\_ (General Description of Property)

is available for sale to the State of \_\_\_\_\_, political  
subdivisions thereof, port districts, port authorities, or other bodies  
created by the State for the purpose of developing or encouraging the  
development of public port or industrial facilities. The parcel of land  
is about \_\_\_\_\_ (location).

Any sale of this property shall be at the fair market value of the land,  
as determined by the Secretary of the Army, upon condition that the prop-  
erty shall be used for public port or industrial purposes and subject to  
such conditions, reservations or restrictions as the Secretary may  
determine to be necessary for the development, maintenance, or operation  
of the \_\_\_\_\_ (Project)  
or otherwise in the public interest.

A legal description of this land will be mailed upon request.

Applications for purchase of this property must be filed in writing  
with me by \_\_\_\_\_. Applications must state fully  
the purposes for which the land is desired and the scope of the proposed  
development.

\*

Figure 11-4

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SAMPLE QUITCLAIM DEED

FOR PUBLIC PORT OR INDUSTRIAL FACILITIES

THIS INDENTURE, made by and between the United States of America, acting by and through the Secretary of the Army, under and pursuant to the powers and authority contained in Section 108 of the Act of Congress approved July 14, 1960 (Public Law 86-645; 74 Stat. 486), party of the first part, and the \_\_\_\_\_, party of the second part.

WHEREAS, pursuant to said Act and to the Delegations, Rules and Regulations of the Secretary of the Army, as published in the Federal Register of March 11, 1961 (Volume 26, No. 47, pages 2117-2118), it has been determined (1) that the development of public port and industrial facilities on the hereinafter described land within the \_\_\_\_\_ Project, a water resource development project under the jurisdiction of the Department of the Army, will be in the public interest; (2) that such development will not interfere with the operation and maintenance of the \_\_\_\_\_; and (3) that disposition of such land for this purpose will serve the objectives of the \_\_\_\_\_ Project.

NOW, THEREFORE, in consideration of the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), and subject to the exceptions, reservation, restrictions, covenants and conditions hereinafter set forth, the party of the first part hereby conveys and quitclaims unto the party of the second part, its successors and assigns: \*

Figure 11-5a

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\* FOR PUBLIC PORT PURPOSES ONLY, all right, title and interest of the United States of America in and to the real estate described as follows:

TRACT A

and,

FOR INDUSTRIAL PURPOSES ONLY, all right, title and interest of the United States of America in and to the real estate described as follows:

TRACT B

SUBJECT TO the following exceptions and rights outstanding in third parties: Existing easements for public roads and highways, public utilities, railroads and pipelines.

EXCEPTING, SAVING AND RESERVING unto the United States of America and its assigns, from this conveyance the following rights, power, privileges and easements, namely:

(Set forth exceptions and reservations deemed necessary for purpose of the project.)

The said party of the second part does by the acceptance of this deed, covenant and agree for itself, and its successors and assigns, forever, as follows:

(Set forth conditions of conveyance)

- 1.
- 2.
- 3.
- 4.

\*

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\*  
5. The Grantee agrees to construct public port facilities only on the area described as Tract A and to construct industrial facilities only on the area described as Tract B.

PROVIDED, HOWEVER, that if any portion of the above described tracts is used for any purpose other than the purpose designated in Condition 5 above then all right, title and interest in and to the portion of the tract so used shall revert to and become the property of the United States at its option and it shall have the immediate right of entry upon said premises, subject to the conditions hereafter set forth.

In the event of a breach of the above condition pertaining to public port and industrial use, the Grantor shall, before claiming any forfeiture, give notice in writing of said breach, and of its intention to exercise said option, to the then occupant of the premises. Said occupant shall have a period of sixty (60) days after receipt of said notice to correct and cure said breach. The right of entry of the Grantor shall arise and become exercisable only after the termination of said sixty (60) day period and failure of the then occupant to correct or cure said breach.

In the event of the failure or refusal of the then occupant of said premises to correct or cure said breach within the time limited, and after exercise by the Grantor of its right of entry, said occupant shall have a reasonable time, not to exceed 120 days, to remove any improvements that have theretofore been placed upon said premises. Such right of removal shall under no circumstances permit such occupant to cause damage to the land involved. In the event that said occupant fails to

\*

Figure 11-5c

11-214



\* remove said improvements within the time limited, they shall become the property of the United States.

Failure of the United States to exercise its right of entry upon breach of the above condition pertaining to public port and industrial use shall not be construed as a waiver or relinquishment of said right.

TO HAVE AND TO HOLD the above-described premises unto the said  
its successors and assigns, forever, subject  
to the exceptions, reservations, restrictions covenants, and conditions  
herein contained.

\*

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\* IN WITNESS WHEREOF, the United States of America has caused these presents to be executed in its name by \_\_\_\_\_, Secretary of the Army, and the seal of the Department of the Army to be hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

UNITED STATES OF AMERICA

BY \_\_\_\_\_  
Secretary of the Army

The Foregoing Instrument is also executed and accepted for and in behalf of the Party of the Second Part by \_\_\_\_\_

\_\_\_\_\_  
its Commissioners, and attested by its Secretary, and its seal hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\*

Figure 11-5e

FORMAT FOR NOTICE OF AVAILABILITY

GOVERNMENT AIRPORT PROPERTY

FOR DISPOSAL

(BRIEF DESCRIPTION - LOCATION)

Terms and conditions of disposal, and all necessary information about this property, will be furnished upon request at the office of the District Engineer, U.S. Army Engineer District, \_\_\_\_\_, \_\_\_\_\_.

Acquisition of this property is subject to the following priorities: (1) Federal Government agencies; (2) State and local governments, and tax-supported institutions. Your priority expires \_\_\_\_\_ days after date of this notice, if no advice is received of your interest in acquiring the property.

To receive consideration, proposals from priority holders must be submitted on special forms obtainable at the \_\_\_\_\_ District Engineer's Office, and must arrive at that office within \_\_\_\_\_ days after date of this notice, or not later than (a reasonable time so determined by the District Engineer)\_\_\_\_\_.

States, political subdivisions, municipalities and tax-supported institutions may, on a priority basis immediately following that of Federal Government agencies, acquire this property under the terms and conditions of Title 50, Appendix, United States Code, Section 1622(g) as amended. \*

Figure 11-6

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\* APPLICATION FOR AIRPORT PROPERTY  
BY STATE, POLITICAL SUBDIVISION, MUNICIPALITY, OR TAX-SUPPORTED INSTITUTION

APPLICATION is hereby made to the District Engineer, \_\_\_\_\_,  
by \_\_\_\_\_  
(hereinafter referred to as Applicant) for the transfer to it, upon the  
terms and conditions hereinafter set forth, of surplus property consti-  
tuting all or part of the installation generally known as \_\_\_\_\_  
Air Force Base located near \_\_\_\_\_, State of \_\_\_\_\_,  
including certain personal property, all as more particularly described in  
Schedule "A" attached hereto and made a part hereof. All real or personal  
property described in Schedule "A" is hereinafter referred to as the  
"airport."

TERMS AND CONDITIONS

1. This application and its acceptance by the District Engineer, \_\_\_\_\_  
\_\_\_\_\_, hereinafter referred to as the Government shall constitute  
the entire agreement between the applicant and the Government unless  
modified in writing signed by both parties.
2. Applicant warrants that no person or agency has been employed or  
retained to solicit or secure acceptance of this application upon an  
agreement or understanding for a commission, percentage, brokerage,  
or other contingent fee, except bona fide employees or bona fide  
commercial agencies maintained by the applicant for the purpose of  
doing business. For breach or violation of this warranty, the Govern-  
ment shall have the right to annul this contract without liability, or  
in its discretion to require applicant to pay to it the full amount of  
such commission, percentage, brokerage, or contingent fee.
3. The failure of applicant to inspect fully the property described in  
Schedule "A" or to be fully informed as to the condition thereof will not  
constitute grounds for any noncompliance with the terms of this applica-  
tion if accepted by the Government. \*

Figure 11-7a

\* 4. The property offered for disposal will be transferred "as is" and "where is" without warranty or guaranty, express or implied, of any kind or nature.

5. Transfer of property shall be accomplished by an instrument of transfer in form satisfactory to the Government without warranty, express or implied, and shall contain covenants running with the land for the observance by the transferee of the following reservations, restrictions, and conditions; except that the provisions of a(1) and (2) shall be included in the instrument of transfer as conditions subsequent rather than covenants:

a. Use by the Transferee.

(1) That, except as provided in subsection (4) hereof, the above-described property, hereinafter called "the airport," shall be used for the use and benefit of the public as a public airport on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of subsection 13 (g) (2) (C) of the Surplus Property Act of 1944, as amended.

(2) That, except as provided in subsection (4) hereof, the entire landing area, and all structures, improvements, facilities and equipment in which any interest is transferred shall be maintained for the use and benefit of the public at all times in good and serviceable condition to assure its efficient operation, provided, however, that such maintenance shall be required as to improvements, facilities, and equipment only during the remainder of their estimated life as determined by the Administrator of the Federal Aviation Agency or his successor. In the event materials are required to rehabilitate or repair certain of the aforementioned improvements, facilities, or equipment, they may be procured by demolition of other improvements facilities, or equipment conveyed as a result of this application and located on the above-described premises, which, in the opinion of the Administrator of the Federal Aviation Agency or his successor, have outlived their use as airport property.

(3) That insofar as is within its power, the transferee shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting, or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(4) That none of the property described in Schedule "A" shall be used, leased, sold, salvaged, or disposed of by the grantee or transferee for other than airport purposes without the written consent of the Administrator of the Federal Aviation Agency, which consent shall\*

Figure 11-7b

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- \* be granted only if the Administrator of the Federal Aviation Agency determines that the property can be used, leased, sold, salvaged, or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the airport at which such property is located.

b. Use by the Government.

(1) That the United States of America through any of its employees or agents shall at all times have the right to make nonexclusive use of the landing area of the airport at which any property applied for herein is located or used, without charge; provided, however, that such use may be limited as may be determined at any time by the Administrator of the Federal Aviation Agency to be necessary to prevent undue interference with use by other authorized aircraft; provided, further that the United States shall be obligated to pay for damages caused by such use, or, if its use of the landing area is substantial, to contribute a reasonable share of the cost of maintaining and operating the landing area commensurate with the use made by it.

(2) That during any national emergency declared by the President of the United States of America or the Congress thereof, including any existing national emergency, the United States shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the airport at which the surplus property applied for herein is located or used, as it then exists, or of such portion thereof as it may desire; provided, however, that the United States shall be responsible for the entire cost of maintaining such part of the airport as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession, or control and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession; provided, further, that the United States shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively, of any improvements to the airport made without United States aid and never owned by the United States.

c. Miscellaneous.

(1) That no exclusive right, as defined in subsection (g)(2)(C) of section 13 of the Surplus Property Act of 1944, as amended, for the use of the airport at which the property applied for herein is located or used shall be vested (either directly or indirectly) in any person or persons to the exclusion of others in the same class. \*

Figure 11-7c

11-220

\* (2) That the applicant shall grant or obtain for the benefit of the United States a release from any and all liability it may be under for restoration or other damages under any lease or other agreement covering the use by the United States of any airport, or part thereof, owned, controlled, or operated by the applicant, upon which, adjacent to which, or in connection with which the surplus property applied for herein was located or used; provided, that no such release shall be construed as depriving the applicant of any right it may otherwise have to receive reimbursement under section 17 of the Federal Airport Act for the necessary rehabilitation or repair of public airports heretofore or hereafter substantially damaged by any Federal Agency.

d. Reservations and Restrictions.

(1) That, in the event that any of the terms, conditions, reservations, and restrictions upon or subject to which the property is disposed of are not met, observed, or complied with, whether due to legal inability or otherwise, the title, right of possession, and all other rights transferred shall at the option of the United States revert in then existing condition to the United States upon demand made in writing by the Administrator of the Federal Aviation Agency, or his successor, at least sixty (60) days prior to the date fixed for the reversion of such title, right of possession, and other rights transferred, provided the breach shall not have been remedied within such sixty (60) day period.

(2) That any of the property described in Schedule "A" maybe successively transferred only with approval of the Administrator of the Federal Aviation Agency, or his successor, to the extent required by the provisions of Subsection (a)(4) of Section 5 hereof, with proviso that any such transferee assumes all the obligations imposed herein.

(3) If the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the United States may exercise its option to cause the title, interest, right of possession, and other rights transferred, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

e. Transferee's Obligations. The transferee shall take title subject to such rights, if any, as third persons may have in the above-described premises at the date of disposal of said premises by virtue

\*

Figure 11-7d

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\* of any grant from the United States or others and shall assume all duties, obligations, and liabilities of the United States or any agency thereof thereunder and hold the same harmless from all claims arising therefrom.

f. Mineral Rights. Subsurface rights to minerals or other interests included in the real property transferred for airport purposes may not be exploited in such a way as will interfere with the efficient operation of the airport.

g. United States Rights. The reservation in the United States of the right, title, and interest in and to all property of whatsoever nature not specifically transferred, together with right of removal thereof from the premises within a reasonable time, which shall not be construed to mean any period less than one (1) year after the date of the instrument of transfer. During such period, the United States, its agents, customers, transferees, successors in interest, and assigns shall have a right of ingress to and egress from the premises for the purpose of using, disposing of by sale or otherwise, and removing such property.

h. Application of Subparagraphs a, b, and c. The condition that, if permitted by law, the provisions of subparagraphs a, b, and c, above shall apply with equal force and effect to the airport in its present location, in instances where the airport itself is not included in the disposal.

i. Payment in Cash of Taxes, Assessments, etc. The transferee shall make payment in cash to the Government of an amount of money equivalent to the pro rata amount, as of the date of acceptance of the bid of the transferee, of all taxes, assessments, and similar charges made against the property conveyed, in instances where the particular Government agency holding the property is liable for the payment of such taxes, assessments, or charges.

j. Waiver of Any Existing Option. The transferee must obtain for the benefit of the Government, in form satisfactory to it, a waiver of any existing option granted to purchase the airport or any portion thereof.

6. From the time the Government gives notice of acceptance of the application, the applicant shall bear all risks and shall bear any and all losses sustained by reason of damage or injuries that may be suffered by the airport property, and notwithstanding such losses, damage, or injuries, each and all of the provisions of the agreement formed by acceptance of this application shall remain unimpaired and in full force and effect. \*

Figure 11-7e



\* 7. Upon receipt of Notice of Acceptance of the application by the Government, the successful applicant may, at its option, and upon notification to the Government and approval of the holding Government agency, immediately enter into possession of the airport property and use, operate, and maintain the same subject to, and in accordance with, all of the terms and conditions hereinabove set out and in addition, for the period prior to delivery of the instrument or instruments of transfer conveying legal title, subject to, and in accordance with, following provisions and conditions:

a. Transferee Shall Comply with all Pertinent Rules, Etc. The operation of the airport property shall be subject to such regulations as may be prescribed by the Administrator of the Federal Aviation Agency from time to time, and the transferee shall comply with all pertinent laws, ordinances, rules, orders, or other applicable regulations and shall hold the United States harmless from any liability or penalty which may be imposed by reason of any asserted violation thereof by the transferee.

b. Limitations on Major Structural Changes. The transferee shall not make, permit, or suffer any additions, improvements, or alterations to the airport property which constitute any major structural change or changes unless such change or changes (1) are made in carrying out a project under the Federal Airport Act of 1946, as amended (49 U.S.C. 1101); or (2) are made with the prior written consent of the Administrator of the Federal Aviation Agency. Change or changes made with the prior written consent of said Administrator and not under the Federal-Aid Airport Program shall be solely at the expense of the transferee, and unless such consent provides specifically that title to the addition or improvements so made shall vest in the transferee, title thereto shall at all the transferee, title thereto shall at all times remain in the United States and such additions or improvements shall be subject to all terms and conditions of this instrument. The transferee agrees to hold the United States harmless from mechanics' and materialmen's liens arising from any additions, improvements, or alterations effected by the transferee.

c. Right of Inspection. The District Engineer and the Federal Aviation Agency, or the designated representatives of either of them, shall have the right to inspect the airport at all times.

d. Claim for Damages. The transferee agrees to maintain, indemnify, and save harmless the United States against and from any and all claims for damages which may arise from or in connection with the privileges herein granted, excepting claims for injuries or death to persons resulting from willful or negligent acts or omissions of the United States or any of its officers, employees, agents, or agencies. \*

Figure 11-7f

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\* e. Payment of Charges Due. The transferee shall assume responsibility for the payment of all taxes and assessments and public utility charges becoming due on the property from the date of its entering into possession of the airport property.

f. Violation or Neglect of Contract. That if the transferee violates or neglects to perform any of the terms or conditions of the agreement formed by the acceptance of its application, it will, if required by the Administration, vacate said premises, remove all property of the transferee therefrom and restore the land, improvements, facilities, and equipment included herein to as good condition on such date of expiration or relinquishment as when received, ordinary wear and tear excepted. If the transferee shall fail or neglect to remove said property and to restore the land, improvements, facilities, and equipment included herein, then, at the option of the Government, said property shall either become the property of the United States without compensation therefor, or the Government may cause the property to be removed and the land, improvements, facilities, and equipment included herein to be so restored at the expense of the transferee and no claim for damage against the United States or its officers or agents shall be created by or made on account of such removal and restoration.

g. When Government Property is Unaccounted For. If, upon removal of the transferee from the premises prior to its acceptance of delivery of the instrument or instruments of transfer conveying title to the airport, any property (other than usable supplies and maintenance materials) of the United States is unaccounted for, the transferee shall make replacement to the satisfaction of the Administrator of the Federal Aviation Agency, or in lieu of such replacement, the transferee shall, if so required by the Administrator of the Federal Aviation Agency, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States or any of its agencies.

8. The successful applicant agrees to perform all acts necessary or desirable to enable it to enter into possession of the property within \_\_\_\_\_ days after acceptance of its application by the Administration and agrees to enter into possession not later than that date, under the same provisions and conditions of possession as set out in paragraph 7 above. Time shall be of the essence in the agreement formed by such acceptance.

9. The District Engineer assign or transfer its right, title, and interest in the agreement formed by its acceptance of the application to any other branch or agency of the United States, and upon such assignment or transfer, such branch or agency shall succeed to all the rights, powers, privileges, immunities, duties, and obligations of the District Engineer hereunder, and the District Engineer shall cease to have any duties or obligations hereunder. \*

Figure 11-7g

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\* 10. Neither the agreement formed by acceptance of this application nor any interest therein shall be assigned or transferred by the applicant to any other party.

11. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of the agreement formed by the acceptance of this Application or to any benefit that may arise therefrom, but this provision shall not be construed to extend to such agreement if made with a corporation for its general benefit.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address of Applicant)

---

ACCEPTANCE BY THE GOVERNMENT

Accepted by and on behalf of the United States of America this  
\_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

By \_\_\_\_\_

\*

Figure 11-7h

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\*

SCHEDULE "A"

As the result of a field survey and recommendations made by the Administrator of the Federal Aviation Agency, the property hereinafter described has been classified as available for disposal as airport property under the Federal Property and Administrative Services Act, as amended, and the Surplus Property Act of 1944, as amended. (The descriptions are believed to be correct, but any error or omission shall not constitute any ground or reason for any claim by applicant against the General Services Administration or the Federal Government.)

a. Land. All that certain parcel of land located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.  
more particularly described as:

b. Buildings and Improvements.

c. Necessary Operating Equipment.

Figure 11-7i

## INSTRUCTIONS TO APPLICANTS FOR AIRPORT PROPERTY

1. Standard Application Form. Applications must be submitted on the inclosed standard Application Form. Additional copies and any additional information desired may be obtained at the office of the District Engineer located at \_\_\_\_\_.

2. Rights Reserved. The right is reserved to waive any defect or informality in the applications received and to accept or reject any application. In the case of receipt of two or more applications of equal priority and merit, choice of the transferee will ordinarily be based on need for the property as airport property.

3. Property Offered in its Entirety. The property described in the application is offered for disposal in its entirety and is not severable, and bids for separate portions thereof will not be considered; provided, however, that the applicant may delete from Schedule "A" such buildings, improvements, and equipment as it does not desire to acquire hereunder.

4. If Applicant is Political Entity. If the applicant is a political entity, there shall be attached to the application copies, in duplicate, of so much of the records of its governing body as will show the official character and authority of the officer signing the application; authorize him to accept delivery of all formal instruments of transfer and agree that the transferee shall be bound by all the terms, reservations restrictions, and conditions of transfer set forth in the application. Such copies shall be duly certified to be true copies by the secretary or other official with powers of certification, and the official seal of the applicant shall be affixed to such certification.

5. Applicant Must Furnish Legal Authority. The applicant shall furnish with its application, and as a condition precedent to the delivery of the aforesaid instruments of transfer, evidence satisfactory to the Administration of its legal authority to accept transfer of the property applied for herein and to covenant to operate and maintain the same in the manner required hereby.

6. Airport Subject to Inspection. The airport is now subject to inspection by prospective transferees. Office of the District Engineer \_\_\_\_\_ will, upon request, make arrangements for such inspection.

7. Administration's Notice of Acceptance. Notice by the Government of acceptance or rejection of the application, if not personally made to a \*

Figure 11-7j

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\* duly authorized representative of the applicant, shall be deemed to have been sufficiently given when mailed in a postpaid or franked envelope to the applicant at the address indicated in the application. \*

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QUITCLAIM DEED AND TRANSFER AGREEMENT

(AIRPORT PROPERTY)

THIS QUITCLAIM DEED AND TRANSFER AGREEMENT, made and entered into by and between the UNITED STATES OF AMERICA, acting by and through the Secretary of the Army (Air Force), under and pursuant to the powers and authorities contained in the Surplus Property Act of 1944, 58 Stat. 765, as amended, 50 U.S.C. APP. 1622(g) (1948 ed.), and the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended 40 U.S.C. Chapter 10, (1958 ed.), and the delegation of authority to the Secretary of Defense from the Administrator of the General Services Administration (41 CFR Sections 101-47.302-2 and 101-47.308-2), and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) (20 Fed. Reg. 7113), Party of the First Part, and the (City of \_\_\_\_\_, \_\_\_\_\_, a body cooperate and politic under the laws of the State of \_\_\_\_\_, its successors and assigns, Party of the Second Part:

W I T N E S S E T H :

That the said Party of the First Part, for and in consideration of the assumption by the Party of the Second Part of all the obligations and its taking subject to certain reservations, restrictions and conditions and its covenant to abide by and agreement to certain other reservations, restrictions and conditions, all as set out hereinafter, conveys and \*

Figure 11-8a

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\* quitclaims to the said Party of the Second Part, its successors and assigns, under and subject to the reservations, restrictions, conditions, and exceptions hereinafter set out, all its right, title, and interest in the following described property in the County of \_\_\_\_\_, State of \_\_\_\_\_ to wit:

DESCRIPTION

\* \* \* \* \*

being (a part of) the same property acquired by the United States of America under \_\_\_\_\_ of record in Book \_\_\_\_\_.  
and WHEREAS, by Lease No. DA \_\_\_\_\_ etc.:

DESCRIPTION

\* \* \* \* \*

(Describe leased area)

Together with all existing easements appurtenant to the land covered by said lease, including, but not limited to, the avigation easements for runway approach zones, power easements, water line easements, and sewer line easements;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter contained, it is agreed by and between the Party of the First Part and the Party of the Second Part that the aforementioned lease and any and all modifications now in effect which would otherwise continue \*

Figure 11-8b



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\* in full force and effect, subject to the provisions thereof, including the leasehold interest of Party Of the First Part in buildings, facilities and improvements owned by Party of the Second Part, are hereby surrendered to the Party of the Second Part, subject to the terms and conditions hereof, and the said Party of the First Part, for and in consideration of the assumption by Party of the Second Part of all the obligations and its taking subject to certain reservations, restrictions and conditions and its covenants to abide by the agreement to certain other reservations, restrictions and conditions, all as set out hereinafter, does hereby bargain, sell, assign and transfer, but without warranty, express or implied, unto the said Party of the Second Part, its successors and assigns, under and subject to the reservations, restrictions, conditions, exceptions and rights hereinafter set out, all its right, title, and interest in the following described property, including all equipment and fixtures appurtenant thereto, situated in the County of \_\_\_\_\_, State of \_\_\_\_\_, and located on the leased land described above, to wit:

BUILDING NUMBER                      DESCRIPTION

\*    \*    \*    \*    \*

Together with the interest of Party of the First Part in utility systems, fueling facilities, lighting facilities, taxiways and runways located on the leased land, and also together with the following equipment

QUANTITY                                      DESCRIPTION

\*    \*    \*    \*    \*    \*

Figure 11-8c

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\* EXCEPTING, HOWEVER, from this conveyance all right, title and interest in and to all its property in the nature of equipment, furnishings and other personal property located on the above described premises which can be removed from the land without material injury to the land or structures located thereon, other than property of such nature located on the premises hereby conveyed or surrendered from lease which is reasonably necessary for the operation or maintenance of the airport or for the operation or maintenance of the structures and improvements specifically listed hereinabove as being transferred hereby, for any reasonable use for which such structures or improvements are readily adaptable; and further excepting from this conveyance all its structures on said premises other than structures specifically described or enumerated above as being conveyed hereunder, including \_\_\_\_\_.

\* \* \* \* \*

And reserving to the Party of the First Part for itself and its lessees, licensees, permittees, agents and assigns the right to use the property and structures excepted hereby in such a manner as will not materially and adversely affect the development, improvement, operation, or maintenance of the airport and the right of removal from said premises of such property and structures, all within a reasonable period of time after the date hereof, which shall not be construed to mean any period more than one (1) year after the date of this instrument, together with a right of ingress to and egress from said premises for such purposes; \*

Figure 11-8d

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\* PROVIDED, FURTHER, that if any or all of the buildings and improvements described herein revert to Party of the First Part under the terms hereof, and at the time of such reversion some are located on land of Party of the Second Part not subject to reversion to Party of the First Part, Party of the First Part shall be allowed twelve (12) months from the date of such reversion to remove same, together with the right of ingress and egress for such purposes.

TO HAVE AND TO HOLD said premises, with appurtenances, subject to the exceptions, reservations, restrictions and conditions referred to and set forth in this instrument, unto said Party of the Second Part, its successors and assigns, forever.

By the acceptance of this Agreement or any rights hereunder, the said Party of the Second Part, its successors and assign, forever.

By the acceptance of this Agreement or any rights hereunder, the said Party of the Second Part, its successors and assigns, agrees that the surrender of leasehold and the transfer of the property transferred by this instrument, is accepted subject to the following restrictions set forth in subparagraphs (1) and (2) of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) and applicable rules, regulations and orders:

\*

Figure 11-8e

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(1) That, except as provided in subparagraph (6) of the next succeeding unnumbered paragraph, the land, leased premises, buildings, structures and improvements in which this instrument transfers any interest shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of the term "exclusive right" as used in subparagraph (4) of the next succeeding paragraph. As used in this instrument, the term "airport" shall be deemed to include at least all such leased premises, buildings, structures and improvements;

(2) That, except as provided in subparagraph (6) of the next succeeding paragraph, the entire landing area, as defined in Title 44, C.F.R. Chapter 1, Subchapter C, Section 101.19 (15 F.R. 1346) approved March 8, 1950, and all structures and improvements in which this instrument transfers any interest shall be maintained for the use and benefit of the public at all times in good and serviceable condition, provided, however, that such maintenance shall be required as to structures and improvements only during the remainder of their estimated life, as determined by the Administrator of the Federal Aviation Agency. In the event materials are required to rehabilitate or repair certain of the aforementioned structures and improvements, they may be procured by demolition or other structures and improvements transferred hereby and located on the above described premises which have outlived their use as airport property in the opinion of the Administrator of the Federal Aviation Agency. \*

Figure 11-8f

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\* By acceptance of this Agreement or any rights hereunder, the said Party of the Second Part, for itself, its successors and assigns, also assumes the obligations of, covenants to abide by and agrees to, and this transfer is made subject to, the following reservations and restrictions set forth in subparagraphs (1) to (7), inclusive, of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) and applicable rules, regulations and orders:

(1) That insofar as it is within its powers, the Party of the Second Part shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(2) That the United States of America (hereinafter sometimes referred to as the "Government") through any of its employees or agents shall at all times have the right to make nonexclusive use of the landing area of the airport at which any of the property transferred by this instrument is located or used, without charge: Provided, however, that such use may be limited as may be determined at any time by the Administrator of the Federal Aviation Agency to be necessary to prevent undue interference with use of other authorized aircraft: Provided, further, that the Government shall be obligated \*

Figure 11-8g

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\* to pay for damages caused by such use, or if its use of the landing area is substantial, to contribute a reasonable share of the cost of maintaining and operating the landing area, commensurate with the use made by it.

(3) That during any national emergency declared by the President of the United States of America or the Congress thereof, the Government shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the airport at which any of the property transferred by this instrument is located or used, or of such portion thereof as it may desire, provided, however, that the Government shall be responsible for the entire cost of maintaining such part of the airport as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession, or control, and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession; Provided, further, that the Government shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively of any improvements to the airport made without United States aid.

(4) That no exclusive right for the use of the airport at which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the term "exclusive right" being defined to mean: \*

Figure 11-8h

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\* (a) Any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft;

(b) any exclusive right to engage in the sale or supplying of aircraft, aircraft accessories, equipment, or supplies (excluding the sale of gasoline and oil), or aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, propellers, and appliances).

(5) That, except as provided in subparagraph (6) of this paragraph, the property transferred hereby may be successively transferred only with the proviso that any such subsequent transferee assumes all the obligations imposed upon the Party of the Second Part by the provisions of this instrument.

(6) That no property transferred by this instrument shall be used, leased, sold, salvaged, or disposed of by the Party of the Second Part for other than airport purposes without the written consent of the Administrator of the Federal Aviation Agency which shall be granted only if said Administrator determines that the property can be used, leased, sold, salvaged or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the airport at which such property is located;

(7) The Party of the Second Part does hereby release the Government and will take whatever action may be required by the Secretary of the \_\_\_\_\_ to assure the complete release of the Government from any and all liability the Government may be under for \*

Figure 11-8i

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\* restoration or other damages under any lease or other agreement covering the use by the Government of the Airport, or part thereof, owned, controlled or operated by the Party of the Second Part, adjacent to which, or in connection with which, any property transferred by this instrument was located or used; provided, that no such release shall be construed as depriving the Party of the Second Part of any right it may otherwise have to receive reimbursement under Section 17 of the Federal Airport Act for the necessary rehabilitation or repair of public airports heretofore or hereafter substantially damaged by any Federal agency.

By acceptance of this instrument or any rights hereunder, the Party of the Second Part further agrees with the Party of the First Part, as follows:

(1) That in the event that any of the aforesaid terms, conditions, reservations or restrictions are not met, observed, or complied with by the Party of the Second Part, or any subsequent transferee, whether caused by the legal inability of said Party of the Second Part or subsequent transferee to perform any of the obligations herein set out, or otherwise, the title, right of possession and all other rights transferred by this instrument to the Party of the Second Part, or any portion thereof, shall at the option of the Party of the First Part revert to the Party of the First Part sixty (60) days following the date upon which demand to this effect is made in writing by the Administrator of the Federal Aviation Agency, unless within said sixty (60) days such default or violation shall have been cured and all such terms, conditions,\*

Figure 11-8j



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\* reservations and restrictions shall have been met, observed or complied with, in which event said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the Party of the Second Part, its transferees, successors and assigns.

(2) That if the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the Government may exercise its option to cause the title, right of possession and all other rights transferred to Party of the Second Part, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

This conveyance shall not in any manner waive, cancel, or abridge any rights previously granted or reserved to the Government by Quitclaim Deed dated June 8, 1948, to the City of \_\_\_\_\_ by Instrument of Transfer dated December 21, 1948, to the City of \_\_\_\_\_, or by any other agreement or instrument.

(3) This conveyance is not subject to Title 10, United States Code, Section 2662.

\*

Figure 11-8k

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\* IN WITNESS WHEREOF, the Party of the First Part has caused these presents to be executed in its name by the Secretary of the Army (by direction of the Secretary of the Air Force) and the seal of the Department of the Army (Air Force) to be hereunto affixed, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

UNITED STATES OF AMERICA

By \_\_\_\_\_  
Secretary of the Army  
(leave blank for Air Force)

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE FOREGOING INSTRUMENT is also executed and accepted for and in behalf of the Party of the Second Part by \_\_\_\_\_ its (Mayor), and attested by its (City Clerk), and its seal hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

(City of \_\_\_\_\_, \_\_\_\_\_)

By \_\_\_\_\_  
(Mayor)

(NOTE: Deed should provide for acknowledgment by the appropriate Secretary and Officer executing for the grantee. This form may not be used when fee owned land in excess of \$1,000 value is to be conveyed.)

Figure 11-81

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APPLICATION FOR REAL PROPERTY  
FOR THE CONSERVATION OF WILDLIFE

(Place) \_\_\_\_\_

(Date) \_\_\_\_\_

To: District Engineer

\_\_\_\_\_  
(Address)

The \_\_\_\_\_ acting by and through  
(State Government)

\_\_\_\_\_  
\_\_\_\_\_  
(Street Address)

of the City of \_\_\_\_\_ pursuant to the provisions of the Act of Congress approved May 19, 1948 (Public Law 537, 80th Congress), and to the Rules and Regulations of the General Services Administration, hereby expresses its intention to acquire from the United States of America the following described property described in detail in "Program of Utilization" attached hereto and made a part hereof as "Exhibit A," located at the installation identified as follows:

(Here insert the name of the installation where the property desired is located.)

The Government reserves the right, as its interest may require, to reject any and all requests, or part of any request for property contained in this application; to waive defects, informalities, and irregularities; and to permit alteration of this application by the State by increasing or decreasing the property to be acquired herewith.

Enclosed herewith is a certification as to the authority of the undersigned to execute this application and to do all other acts necessary to consummate the transaction.

The undersigned agrees that this application is made upon the further terms and conditions: \*

Figure 11-9a

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- \* 1. Upon approval of this application, notice in writing of the extent of the property which may be transferred and of any boundary surveys which may be required to be performed at the expense of the transferee will be transmitted by the District Engineer, \_\_\_\_\_ to the undersigned.
- 2. Within five days from the receipt of such notice, the undersigned will elect to accept transfer of the property or to withdraw its application and will communicate such election in writing to the District Engineer at the above address.
- 3. It is understood that property transferred as a result of this request will be subject to:
  - (a) Reservation by the United States of all oil, gas, and mineral rights;
  - (b) The condition that the property shall continue to be used for wildlife conservation; and
  - (c) The condition that in the event the property transferred is no longer used for such purposes, or in the event the property is needed for national defense purposes, title thereto shall revert to the United States.

In support of its eligibility for transfer of the requested property, the undersigned submits a proposal entitled "Program of Utilization," in an original and five copies, which are attached hereto as Exhibit A, which proposal is drawn in accordance with, and contains the information required by "Instructions for Preparation of Applications for Real Property for the Conservation of Wildlife."

STATE OF \_\_\_\_\_

By \_\_\_\_\_

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

Figure 11-9b

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PROGRAM OF UTILIZATION

Real Property for the Conservation of Wildlife

Exhibit "A" of Application dated \_\_\_\_\_ 19 \_\_\_\_

Outline. The following information must be submitted under the above title and date line as a part of each application in connection with each property requested:

a. Name of Applicant Agency and Representative.

(1) Legal name of prospective transferee; and

(2) Name, title, and address of person having authority to consummate transaction as shown by attached certificate.

b. Property Name and Location.

(1) Name and identification of property; and

(2) Location of property the subject of this request:

(a) County;

(b) Nearest town; and

(c) Distance and direction from nearest town.

c. Description of Property.

(1) Land:

(a) Acreage;

(b) Boundaries - by legal description;

(c) Types of land, expressed as percentage of the total requested:

(a) agriculture, (b) wild hay, (c) grazing, (d) timber lands, (e) marsh, (f) brush, (g) submerged land, (h) lakes, (i) river, (j) other types;

(d) Land suitability: Discuss (a) farming, (b) grazing (c) trapping, (d) hunting, (e) logging, (f) fisheries, (g) other;

(e) Timber: Describe species and whether virgin, culled, or cut-over, approximate average stand.

\*

Figure 11-9c

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\* (2) Buildings: Describe individually by building number and designation as "Barracks," "PX," etc., and give dimensions and square feet of floor space.

(3) Utilities:

(a) Designation; and

(b) Description.

b. Program Brief. Here give in detail a complete plan for the administration and utilization of the property covering thoroughly the following:

(1) Portion of area to be set aside as refuge;

(2) Wildlife species to be primarily benefited;

(3) What protection will be afforded wildlife;

(4) What uses will be made of the lands other than for game propagation; and

(5) Specific use for each structure and for utilities.

e. Proof of Need.\*

f. Suitability of Property. \*

g. Plans to Finance and Maintain the Property. \*

h. Tax or Public Revenue Support. \*

i. Current and Planned Land Utilization for Wildlife Conservation. \*

\*Items e through i should be prepared in accordance with e through i of the instructions.

Conclude with a statement under oath as required in the instructions. \*

Figure 11-9d

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INSTRUCTIONS FOR PREPARATION OF APPLICATIONS  
FOR REAL PROPERTY FOR THE CONSERVATION OF WILDLIFE

1. General.

a. Separate Applications. A separate application for such property shall be submitted for each surplus installation or portion thereof. Each application must have attached as a part thereof a "Program of Utilization."

b. Preparation and Distribution of Applications. Applications for such property shall be prepared in an original and five signed copies.

(1) The original and copies as indicated above, consisting of "Application for Real Property for the Conservation of Wildlife" and "Program of Utilization" and exhibits and certificates necessary to meet the requirements of these instructions, shall be forwarded to the Regional Commissioner, General Services Administration, \_\_\_\_\_

(2) The applicant should keep one signed copy.

2. Special Instructions. In preparing the "Program of Utilization" the specific instructions set forth below shall be adhered to:

a. Name of Applicant Agency and Representative. Indicate the correct name of the applicant state, state commission, or agency, etc., to which conveyance may be made. The name, title, and address of the person to whom inquiries concerning the program are to be addressed shall be indicated.

b. Name and Location of Property. Indicate the official name of the surplus installation and its location, showing county and state and distance and direction from the nearest town.

c. Description of Property in Detail. The real property required shall be described. Buildings shall be identified by number, size, and type of construction. Where land and a considerable portion of an installation is applied for, a plat map of the installation, indicating the facilities required, should be attached if possible, and the total acreage, total number of buildings and structures, utilities, easements, etc., shall be summarized thereon. Such maps usually may be obtained from the installation custodian.

Figure 11-9e

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\* d. Program Brief. A complete program brief is required in order for the District Engineer to determine whether the property (1) can be utilized for wildlife purposes; and (2) is chiefly valuable for such purpose.

(1) Briefs should cover specific plans for such programs as:

(a) Refuge Lands. Inviolable sanctuaries for the unmolested feeding and breeding of wildlife, generally unavailable to the public;

(b) Game Management Units. Areas of value for the feeding, resting, and breeding purposes, part or all of which may be open to controlled public shooting during specified periods as a means of harvesting the surplus wildlife crop;

(c) Nurseries and Game Farms. Limited areas within the state to be used for the production of food plants and certain game species for planting and release on other areas within the state; and

(d) Research Areas. Units primarily used for research purposes in studying the life history, habits and management procedures of wildlife species in their native habitat.

(2) Programs which contemplate the unrestricted harvesting of game or the unrestricted shooting or trapping thereof or which for any reason do not contemplate positive action on the part of the requesting state to protect and/or propagate wildlife will not be acceptable. Areas sought solely for field trials, dog runs, etc., are not subject to transfer under the provisions of Public Law 537, 80th Congress.

e. Must Show Definite Proof of Need. Surplus property may not be determined to be chiefly valuable for the conservation of wildlife except where property is shown to be needed for such purposes. It is important that definite proof of need and the degree of inadequacy of existing facilities in the area where the property is sought be reflected in the program.

f. Must Show Suitability or Adaptability. The facilities to be conveyed must be suitable for the program proposed, or readily adaptable to such purposes. A statement as to suitability and/or plans for conversion of the property is required.

g. Must Evidence Plans to Finance and Maintain Property. A full and complete statement of ability to finance, operate, and maintain the facilities to be acquired shall be reflected, and plans for the conversion, staffing, operation and maintenance shall be discussed fully. \*

Figure 11-9f



\* h. Tax or Public Revenue Support. Indicate the degree of tax support. Include any appropriation of public revenues for the operation of the facilities either through contracts for services, etc., or direct appropriation.

i. Current and Planned Land Utilization for Wildlife Conservation. Attach, for the original and for each copy of the application, copies of a map of the state and show thereon the location, acreage, and program designation for each area being used by the state and/or its agencies for wildlife conservation purposes, and indicate by different color or shading the location, acreage, and proposed use of the property requested in this and previous applications and also other property which the state proposes to acquire for wildlife conservation purposes under the provisions of Public Law 537. Also, as paragraph "i" of the "Program of Utilization," itemize all requests previously submitted for property under the provisions of Public Law 537, identifying each by name of installation from which the property was requested, by date of request, and by acreage requested.

j. Statement Under Oath. The authorized official of the state instrumentality making this application shall state under oath that the applicant is an instrumentality of State Government; and that the facilities to be acquired will be used chiefly for the conservation of wildlife. This statement shall be attached to the application.

k. Notice of Intent and Time of Filing. Neither written nor oral inquiries nor oral requests to withhold the disposal of property will be given consideration. Before the District Engineer will take action on a proposal to acquire property, it must receive a formal letter of intent, or an executed application, to acquire such property. However, any requestor filing a timely letter of intent will be given thirty days from the date the letter of intent is received in the District Engineer's office in which to submit a formal application. \*

Figure 11-9g

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SAMPLE DEED FOR CONVEYANCE OF LAND AND IMPROVEMENTS  
FOR CONSERVATION OF WILDLIFE

THIS INDENTURE by and between the United States of America, acting by and through the Secretary of the Army (Air Force) under and pursuant to the powers and authority contained in the Act of 19 May 1948, C.310, 62 Stat. 240, 241 as amended, 16 U.S.C. 667 b-d (1958 ed.), and the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended 40 U.S.C. Chapter 10 (1958 ed.) and the delegation of authority to the Secretary of Defense from the Administrator of the General Services Administration dated 28 March 1957, 22 Fed. Reg. 2265 - 2266, and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) dated 24 April 1957, 22 Fed, Reg. 3164, Party of the First Part and the State of \_\_\_\_\_.

Party of the Second Part:

WITNESSETH:

That the said party of the first part for and in consideration of the continuous use and management of the property hereinafter described for wildlife conservation purposes, and the benefits that will accrue to the United States from its continued use for such purposes, and its taking subject to the reservations, restrictions, and conditions hereinafter set out, does release and quitclaim to the said party of the second part, \*

Figure 11-10a

\* under and subject to the said reservations, restrictions, and conditions, all its right, title and interest in and to the following described property in the county (ies) of \_\_\_\_\_ State of \_\_\_\_\_, to wit:

DESCRIPTION

(Metes and bounds description)

being (apart of) the same property acquired by the United States of America under \_\_\_\_\_, recorded in \_\_\_\_\_.

TO HAVE AND TO HOLD the foregoing described premises, together with all and singular, the appurtenances, rights, powers, and privileges thereunto belonging or in anywise appertaining, subject to the reservations, restrictions, and conditions hereinafter set forth, unto the said party of the second part.

The land and property conveyed by this instrument are subject to the reservation by the United States of all oil, gas, and other minerals, and there is reserved to the United States all oil, gas, and other minerals in the land conveyed hereby, together with the right of the United States, its authorized agents, representatives, lessees, or assigns, to enter upon the said land at any time to prospect for, mine, drill for, and remove, any and all such minerals.

The land and property conveyed by this instrument are subject to the condition that they shall be continuously used and managed for the conservation of wildlife and are conveyed upon and subject to the condition \*

Figure 11-10b

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\* that if they are no longer used for such purposes title thereto shall revert to the United States and the title of the state thereto, its successors and assigns, shall thereupon cease and determine and the United States shall have the immediate right of possession thereof and right of entry thereon.

The land and property conveyed by this instrument are subject to the further condition that in the event the President of the United States, the Congress thereof, the Secretary of Defense, or the Secretaries of the Army, Navy, or Air Force, or either of them, their successors in function or duly authorized representatives, determines that the said land and improvements are needed for national defense purposes, title of the state thereto, its successors and assigns, shall thereupon cease and determine and the United States shall have the immediate right of possession thereof and right of entry thereon.

IN WITNESS WHEREOF, the Party of the First Part has caused these presents to be executed in its name by the Secretary of the Army (by direction of the Secretary of the Air Force) and the seal of the Department of the Army (Air Force) to be hereunto affixed, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

UNITED STATES OF AMERICA

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Secretary of the Army  
(Leave blank for Air Force)

Acknowledgment

\*

Figure 11-10c



DEPARTMENT OF THE ARMY  
OFFICE OF THE CHIEF OF ENGINEERS  
WASHINGTON, D.C. 20314

ER 405-1-12  
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27 Oct 80

REPLY TO  
ATTENTION OF:

NOTICE OF CANCELLATION  
(RESTORATION)

(Addressee)

Re: Notice of Cancellation of Lease No. \_\_\_\_\_  
(Location of Property)

(Salutation)

NOTICE is hereby given that the United States of America exercises its rights reserved in the lease instrument and will quit, relinquish, and give up the premises on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

Request acknowledgment in space below with your signature being witnessed and return \_\_\_\_\_ copies in the inclosed franked envelope. If you are interested in earlier termination, please contact this office. It may be possible to vacate the premises and mutually effect the termination by supplemental agreement to the lease contract.

Your cooperation in making this property available to the Government is very much appreciated.

UNITED STATES OF AMERICA

BY \_\_\_\_\_

Receipt of the above notice is hereby acknowledged. A joint survey of the condition of the premises (is) (is not) requested, as restoration (will) (will not) be required by the lessor under paragraph \_\_\_\_\_ of the lease. (Delete inapplicable words.)

WITNESS:

\_\_\_\_\_

\*

Figure 11-11

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DEPARTMENT OF THE ARMY  
OFFICE OF THE CHIEF OF ENGINEERS  
WASHINGTON, D.C. 20314



REPLY TO  
ATTENTION OF:

NOTICE OF CANCELLATION

(Addressee)

Re: Notice of Cancellation of Lease No. \_\_\_\_\_  
(Location of Property)

(Salutation)

NOTICE is hereby given that the United States of America exercises its rights reserved in the lease instrument and will quit, relinquish, and give up the premises on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

Request acknowledgment in space below with your signature being witnessed and return \_\_\_\_\_ copies in the inclosed franked envelope. If you are interested in earlier termination, please contact this office. It may be possible to vacate the premises and mutually effect the termination by supplemental agreement to the lease contract.

Your cooperation in making this property available to the Government is very much appreciated.

UNITED STATES OF AMERICA

BY \_\_\_\_\_

Receipt of the above notice is hereby acknowledged.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

\*

Figure 11-12

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\* JOINT TERMINAL CONDITION SURVEY OF GOVERNMENT LEASED PROPERTY

ITEMS OF RESTORATION/DAMAGES

LEASE NO. \_\_\_\_\_ USING SERVICE \_\_\_\_\_  
LOCATION \_\_\_\_\_ TYPE OF PROPERTY \_\_\_\_\_  
LESSOR \_\_\_\_\_

The following items of restoration and/or damages have resulted from Government use of the leased premises, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government has no control, excepted:

<u>DESCRIPTION OF ITEM</u>	<u>ESTIMATED COST</u>
1. _____	_____
2. _____	_____
3. _____	_____
TOTAL: _____	

The undersigned agree(s) that the above are all of the items to be considered in the restoration of the leased premises by yhe Government,

The undersigned lessor further agrees to accept the sum of \$ \_\_\_\_\_ in full settlement of any and all claims (except as to any unpaid rent) against the Government arising out of the use and occupancy of the leased premises.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
(Lessor)

\_\_\_\_\_  
(Representative of the Government) \*

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\*

COST OF RESTORATION

LEASE NO. \_\_\_\_\_ USING SERVICE \_\_\_\_\_  
LOCATION \_\_\_\_\_ TYPE OF PROPERTY \_\_\_\_\_  
LESSOR \_\_\_\_\_  
RENTAL \_\_\_\_\_ TERMINATION DATE \_\_\_\_\_

This lease provides for, and the lessor has established a legal right restoration of the leased premises by the Government.

I hereby certify that an investigation has been made as to each of the items of restoration or damages listed on the attached Joint Terminal Condition Survey and that: they are bona fide; that such resulted from use by the Government of the leased premises; that such are in excess of reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government has no control. I further certify that the estimate of cost assigned to each item is just and fair, and that such prices are comparable to charges made to the public generally for like materials and services in the vicinity of the leased premises.

Recapitulation of restoration factors:

Estimated cost of Government improvements ----- \$ \_\_\_\_\_  
Estimated gross salvage value of Government  
improvements -----  
Estimated net salvage value of Government  
improvements -----  
Estimated cost of restoration -----  
Net cost of restoration -----

It is recommended that the Government pay the lessor the sum of \$ \_\_\_\_\_ in lieu of physical restoration of the premises by the Government.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_,

\_\_\_\_\_  
(Representative of the Government)

\_\_\_\_\_  
(Title)

Approved by \_\_\_\_\_  
Title \_\_\_\_\_

\*

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Figure 11-14



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\*

PART 1

RECAPITULATION

Cost of Restoration ( Engineer Estimate and Appraisal)

Lease No. \_\_\_\_\_ Condemnation Action \_\_\_\_\_

Permit \_\_\_\_\_ Other \_\_\_\_\_

- 1. LOCATION: \_\_\_\_\_
- 2. TYPE OF PROPERTY: \_\_\_\_\_
- 3. OWNER: \_\_\_\_\_
- 4. RENTAL: \_\_\_\_\_
- 5. Does lease or Permit Contain a Restoration Clause? \_\_\_\_\_
- 6. Appraised value of Lessor's Property: (Taken from appraisal attached to original lease assembly or Part 5) \_\_\_\_\_
- 7. Original Cost (Actual or Estimated) of Government-owned improvements, fixtures, and alterations): (Part 4) \_\_\_\_\_
- 8. Estimated Market Value (Value in Place of Government-owned improvements, fixtures and alterations: (Part 4) \_\_\_\_\_
- 9. Gross Salvage value of Government-owned property: (Part 4) \_\_\_\_\_
- 10. Estimated Cost of Dismantling and/or Removal of Government-owned property: (Part 4) \_\_\_\_\_
- 11. Estimated Net Salvage Value of Government-owned Property: (Part 4) \_\_\_\_\_
- 12. Cost of Restoration other than Cost of Dismantling and removal (Part 3) \_\_\_\_\_
- 13. Total Cost of Restoration: (Par 10 and Par 12) \_\_\_\_\_
- 14. Net Cost of Restoration: (Par 9 minus Par 13) \_\_\_\_\_
- 15. Approximate Time Required for Actual Salvaging and restoration Operations:
  - Salvaging - No. of days \_\_\_\_\_
  - Restoration - No. of days \_\_\_\_\_
  - TOTAL \_\_\_\_\_

\*

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Figure 11-15a

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\*

PART 2

ANALYSIS AND RECOMMENDATIONS OF DIVISION  
REAL ESTATE OFFICER OR HIS REPRESENTATIVE

Analysis

1. Lease No. \_\_\_\_\_ provides for, and the lesser has established a legal right to restoration of the leased premises by the Government to the extent hereinafter set forth.

2. The Joint Terminal Condition Survey, substantiated by investigation, indicates that certain items of damages/restoration listed therein result from use by the Government. As a consequence, there exists a legal obligation on the part of the Government to either physically restore the leased premises or effect a cash settlement in lieu of restoration.

3. The itemized list of damages, together with cost estimates of the lessor and the Government (Part 3), indicates in summary that it will cost the Government \$ \_\_\_\_\_ to accomplish physical restoration of the leased premises by contract.

4. Substantiation for the pertinent cost estimates as stated in Part 1, Recapitulation, is reflected in the following supporting documents:

a. Part 3 - Itemized List of Damages with Estimate of Restoration costs.

b. Part 4 - Itemized List of Government-owned Improvements, Fixtures and Alterations Placed on Property with Estimated Values.

c. Part 5 - Fee Value Appraisal of Leased Premises. This includes data pertinent to diminution of value.

Proposed Settlement

Recommendations

Certification

I certify that the items of restoration and damages listed herein have been incurred as a result of use by the Government, and are considered above and beyond reasonable and ordinary wear and tear, and damages by the elements or by circumstances over which the Government has no control.

DATE \_\_\_\_\_

SIGNED \_\_\_\_\_

TITLE \_\_\_\_\_

Approved:

By \_\_\_\_\_

Title \_\_\_\_\_

\*

PART 3

ITEMIZED LIST OF DAMAGES RESULTING FROM GOVERNMENT USE OF THE PREMISES, REASONABLE AND ORDINARY WEAR AND TEAR AND DAMAGES RESULTING FROM CIRCUMSTANCES OVER WHICH THE GOVERNMENT HAS NO CONTROL EXCEPTED, WITH THE COST OF REPAIR OF EACH ITEM

ITEM DESCRIPTION  (1)	OWNER'S ESTIMATE  (2)	GOVERNMENT ESTIMATE  (3)	ALLOWANCE TO OWNER* (of actual cost to Government)  (4)	REMARKS (Use reverse side or additional sheets as necessary)  (5)
** TOTAL				

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Explanation of damage, destruction and loss paid for or restored by Government, is attached hereto.

\*Where restoration work is performed by Government, show actual cost to Government.

\*\*Total of all items to appear on last page only.

Prepared by \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Approved by \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Sheet \_\_\_\_\_ of \_\_\_\_\_

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USARJ ESN 10075750

\*

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PART 4

\*

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ITEMIZED LIST OF GOVERNMENT-OWNED  
IMPROVEMENTS, FIXTURES AND ALTERATIONS  
PLACED ON PROPERTY, WITH ESTIMATES OF  
VALUE

LEASE NO.: \_\_\_\_\_  
CONDEMNATION ACTION: \_\_\_\_\_  
PERMIT: \_\_\_\_\_  
OTHER: \_\_\_\_\_

(a)	Description and Size (b)	Quantity (c)	Condition (d)	Original or Estimated Cost (e)	Market Value (value in place) (f)	Gross Salvage Value (g)	Dismantling and/or Cost of Removal (h)	Net Salvage Value (g minus h) (i)	Cost of Restoration Result of Removal (j)	Remarks (use reverse side or additional sheets) (k)

Prepared by \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_  
Approved by \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Sheet \_\_\_\_ of \_\_\_\_

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DISCONTINUED 1/5/67

\*

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PART 5

REAL PROPERTY APPRAISAL ANALYSIS AND RECOMMENDATIONS

(Date)

NOTE: In order that the appraisal can serve as a proper basis for, and support of, determinations required by Section IV of this Regulation, the appraisal should provide an estimate of the current value of the property in its unrestored condition and the current value of the property as restored.

BY \_\_\_\_\_

TITLE \_\_\_\_\_

Reviewed and Approved (date)

BY \_\_\_\_\_

TITLE \_\_\_\_\_

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1 Jan 66

Figure 11-15e

\*

CERTIFIED MAIL

DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT, CORPS OF ENGINEERS

P.O. Box 2711

Los Angeles, California 90053

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SPLRE-MD-(L)

Re : NOTICE OF TERMINATION  
Lease :  
Property:

Dear Lessor:

NOTICE is hereby given that the United States of America exercises its rights reserved in the lease instrument and will terminate the above cited lease on \_\_\_\_\_.

Request your acknowledgement in the appropriate space below with your signature(s). Return 2 copies in the inclosed franked envelope. If you are interested in earlier termination, please contact this office. It may be possible to vacate the premises and mutually effect the termination by Supplemental Agreement to the lease contract.

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
JOHN HOUSTON  
Chief, Real Estate Division

R E L E A S E

I hereby release and forever discharge the Government, its officers, agents, and employees, from all claims for damages or for restoration, and from all liability that may arise out of said lease and the occupation by the Government of the property (except any unpaid rent).

DATED \_\_\_\_\_  
\_\_\_\_\_

R E S T O R A T I O N   R E Q U I R E D

I hereby request a joint terminal inspection of the premises, as stated in paragraph \_\_\_\_ of said lease, as restoration other than normal wear and tear is required.

DATED \_\_\_\_\_  
\_\_\_\_\_

\*

Figure 11-16

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DEPARTMENT OF THE ARMY  
Corps of Engineers

Lease No. \_\_\_\_\_

RELEASE  
(Corporations)

WHEREAS, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_

a corporation existing under and by virtue of the laws of the State of \_\_\_\_\_ with its principal office located in the city of \_\_\_\_\_ county of \_\_\_\_\_, and State of \_\_\_\_\_ did lease, demise, and let unto the United States of America certain premises situated in the city of \_\_\_\_\_, county of \_\_\_\_\_, and the state of \_\_\_\_\_, and more particularly described as follows:

WHEREAS, the use of said premises is no longer required by the United States of America and possession of said property having been redelivered by the United States of America to the lessor, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Now, Therefore, Know All Men By These Presents, that we, \_\_\_\_\_

\_\_\_\_\_

for and in consideration of the sum of One Dollar and other valuable considerations, the receipt of which are hereby acknowledged, have remised, released, and forever discharged and by these presents do for ourselves, our successors, and assigns, remise, release, and forever discharge the United States of America, its officers, agents, employees of and from all manner of actions, liability, and claims (except any unpaid rent for the period ending \_\_\_\_\_, 19 \_\_\_\_\_) against the United States of America, its officers, agents, and employees which we or they ever had, \*

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\* now have, or ever will have upon, or by reason of any matter, cause, or thing whatsoever, particularly arising out of said lease and the occupation by the United States of America of the aforementioned property.

In Witness Whereof, we have caused these presents to be signed by our \_\_\_\_\_ attested by our \_\_\_\_\_,  
and our corporate seal to be hereto affixed this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_

Attest:

\_\_\_\_\_  
By \_\_\_\_\_ \*

Figure 11-17b



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FORMAT FOR  
SUPPLEMENTAL AGREEMENT NO. \_\_\_\_\_  
TO EMERGENCY PLANT FACILITIES CONTRACT NO. \_\_\_\_\_

This Supplemental Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_, by and between the United States of America, hereinafter called  
the Government represented by the Contracting Officer executing this  
Agreement and \_\_\_\_\_, a corporation organized and existing under  
the laws of the State of \_\_\_\_\_, of the City of \_\_\_\_\_, in the  
State of \_\_\_\_\_, hereinafter called the Contractor, WITNESSETH THAT:

WHEREAS, the parties hereto have previously entered into Letter  
Contract No. \_\_\_\_\_ under date of \_\_\_\_\_, which  
Letter Contract was last amended by Supplement No. 6 thereto, \_\_\_\_\_  
\_\_\_\_\_; and

WHEREAS, pursuant to said contract and in accordance with the terms  
of Article 32 of Formal Supplement No. 3 thereto, executed by the parties  
on \_\_\_\_\_, and hereinafter referred to as the  
"principal contract," the Contractor constructed certain improvements  
designated in paragraph (a) of said Article 32 as Items 1 to 7 inclusive  
more particularly described hereinafter, on land owned by the Contractor  
at its plant located at \_\_\_\_\_, \_\_\_\_\_, in  
connection with its work under Contract No. \_\_\_\_\_, the  
costs for which Items 1 to 7 inclusive the Government has reimbursed the \*

Figure 11-18a

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\* the Government has reimbursed the Contractor in accordance with provisions of paragraph (b) of said Article 32, and which contract provides that title to Items 1 to 4 inclusive listed in the said paragraph (a) shall vest in the Government upon reimbursement by the Government to the Contractor of the costs thereof and that said Items 1 to 4 inclusive, hereinafter sometimes referred to as "Government-owned improvements," and all materials incorporated in for forming a part of said Items shall be deemed personality even though affixed to realty, and which contract further provides that title to said Items 5 to 7 inclusive shall be and remain in the Contractor, the Contractor to use said Items 1 to 7 inclusive without payment of rental therefor, in connection with its work under the said contract; and

WHEREAS, said contract further provides that the Contractor shall retain title to said Items 5 to 7 inclusive for a period of five years from the completion or termination of Contract No. \_\_\_\_\_, and that with respect to all improvements designated Items 1 to 7 inclusive the Contractor shall, for a of five years from the completion or termination of said Contract, perform certain obligations set forth in paragraph (e) of said Article 32 of the principal contract, which paragraph (e) further provides that the Contractor shall be released from the said obligations with respect to the said Items 1 to 7 inclusive as follows:

(1) Items 1 and 2, upon payment by the Contractor of the Government of the "added value" (as the same is defined in paragraph (h) of \*

Figure 11-18b

\* this article) of all such improvements, or upon the election by the Government to purchase the land upon which the same are located or to convey to the Contractor as provided for in paragraph (k);

(2) Items 3 and 4, upon payment by the Contractor to the Government of the "added value" of such improvements;

(3) Items 5, 6, and 7 upon the written determination of the Contracting Officer that the Government's interests will not be adversely affected by releasing the Contractor from such obligations and in any event upon the Contractor's being released from the above obligations with respect to the improvements described in Items 1, 2, 3, and 4 of paragraph (a); and

WHEREAS, pursuant to provisions of paragraph (g) (1) of said Article 32, the parties hereto have mutually agreed that the added value of Contractor's plant (as the same is defined in said paragraph (h) by reason of the Government-owned improvements designated as Items 1, 2, 3, and 4 is in the sum of Ninety Thousand Dollars (\$90,000.00); and

WHEREAS, it has been determined to be advantageous and in the interest of the Government to convey the said Items 1, 2, 3, and 4 to the Contractor upon payment to the Government of the said sum agreed upon by the added value to the plant of the Contractor,

NOW THEREFORE, pursuant to provisions of said contract and supplements thereto, and in consideration of the premises as well as the mutual obligations of the parties herein made and undertaken, the parties do mutually agree as follows:

\*

Figure 11-18c

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\* 1. That the Government, under authority of the Federal Property and Administrative Services Act of 1949, as amended, and regulations issued thereunder, and for and in consideration of the payment of Ninety Thousand Dollars (\$90,000.00), and the covenants, promises, and agreements on the part of the Contractor, herein contained and made, agrees and hereby does, effective as of \_\_\_\_\_ sell, relinquish, transfer and deliver to the Contractor without warranty, express or implied, and the Contractor agrees to and hereby does for the price of Ninety Thousand Dollars (\$90,000.00) aforesaid, payable in full on or before \_\_\_\_\_, 19 \_\_\_\_, purchase all rights, title and interest of the Government in and to the following property:

Item 1 - An addition to the west side of the existing plant at the north and thereof containing approximately 44,600 square feet, sometimes referred to as the "main addition."

Item 2 - A building approximately 12 feet by 12 feet located just west of the main addition, sometimes referred to as the "Switch house."

Item 3 - An addition to the west side of the existing plant at the south end of the present tool room containing approximately 2,500 square feet, sometimes referred to as the "tool room addition."

Item 4 - A building approximately 21.4 feet by 41.4 feet located a short distance west of the tool room addition and used for plant and oil storage, sometimes referred to as the "paint and oil storage house."

2. That the Government, as of the \_\_\_\_\_, 19 \_\_\_\_, releases the Contractor from all obligations under the said contract, as \*

Figure 11-18d

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\* supplemented with respect to Items 1, 2, 3, and 4 listed in the foregoing paragraph, and releases the Contractor from all obligations set forth in paragraph (e) of said Article 32 of the principal contract with respect to said Items 1 to 7 inclusive.

3. That the Government, as of \_\_\_\_\_, 19 \_\_\_\_, cancels and relinquishes forever any rights and licenses granted to it by the Contractor under the terms of Contract No. \_\_\_\_\_ and supplements thereto, relating to the said Items 1 to 4 inclusive.

4. That the Contractor will, on \_\_\_\_\_, 19 \_\_\_\_, accept the surrender of the said Government-owned improvements heretofore designated as Items 1, 2, 3, and 4 and appurtenances thereto, in their present condition, and will assume the custody and care of said improvements and the risk of loss or damage thereto by fire or any other cause thereafter, the Government being thereafter relieved from any responsibility therefor.

5. That the Contractor relinquishes and forever discharges the Government, its officers, agents and employees of and from all manner of actions, liabilities and claims which, against the Government, its officers, agents and employees, the contractor now has or ever will have, for the restoration of the land upon which the said improvements designated Items 1 to 4 inclusive were constructed and for any restoration whatsoever of the property of the Contractor in connection with said Items 5, 6 and 7, and for any matter, cause of thing whatsoever arising out of the occupation by the Government or the aforesaid land or buildings of the Contractor, under the said contract and supplements thereto. \*

Figure 11-18e

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\* 6. That the Contractor warrants that it has examined the premises and the buildings and structures thereon and appurtenances thereto to be conveyed hereunder and is fully familiar with the conditions of the same and the Government makes no representation or warranties as to the condition of any item thereof.

7. That the Contractor represents and warrants that it intends that all property being acquired under this contract shall be used in its production and that it is not acquiring any of such property for the purpose of reselling it directly or indirectly at a profit.

8. Except as herein modified, either expressly or by necessary implication, all the terms, covenants and conditions of Contract No. \_\_\_\_\_, as amended shall continue in full force and effect and apply equally to the provisions herein.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the \_\_\_\_\_ DAY OF \_\_\_\_\_, 19 \_\_\_\_.

THE UNITED STATES OF AMERICA

BY \_\_\_\_\_

\_\_\_\_\_

BY \_\_\_\_\_

\_\_\_\_\_

\*

Figure 11-18f

ER 405-1-12

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\*

CERTIFICATE

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_  
\_\_\_\_\_ Secretary of the Corporation named as Contractor  
herein; that \_\_\_\_\_ who signed this contract on  
behalf of the Contractor was then \_\_\_\_\_ of said  
corporation; that said contract was duly signed for and in behalf of said  
corporation by authority of its governing body and is within the scope of  
its corporate powers.

(Corporate seal)

\_\_\_\_\_

\*

Figure 11-18g

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\*  
C       AGREEMENT BETWEEN THE DEPARTMENT OF DEFENSE AND THE SMALL  
O       BUSINESS ADMINISTRATION FOR THE DEVELOPMENT OF A PROGRAM  
P       OF ASSISTANCE FOR SMALL BUSINESS CONCERNS IN THE SALE OF  
Y       TIMBER AND RELATED FOREST PRODUCTS FROM FORESTS ON FEDERAL  
          LANDS UNDER THE JURISDICTION OF DEPARTMENT OF DEFENSE

-----

SECTION I.   PURPOSE

The purpose of this Memorandum of Understanding between the Department of Defense (DOD) and the Small Business Administration (SBA) is to implement the provisions of the Small Business Act, as amended, relative to the sale of Government timber in such manner as will effectuate sections 8(b)(7) and 15 of the Small Business Act.

SECTION II.   UNIFORM POLICY COVERING ASSISTANCE TO SMALL BUSINESS CONCERNS

The DOD will issue regulations requiring each military department to cooperate with SBA in an effort to aid, counsel, assist and protect, insofar as possible, the interests of small business concerns in acquiring timber and to insure that a fair proportion of the total sales be made to such concerns.

The regulations will also require each military department in cooperation with the Small Business Administration:

(A) To utilize to the fullest extent SBA facilities inventory files in order to identify interested small business concerns;

(B) To develop and disseminate sales promotion information designed to broaden small business participation;

(C) To review the terms and conditions of sales programs to assure that participation by small business concerns is being encouraged;       \*

Figure 11-19a



\*

(D) To utilize the definition of small business established by SBA to maintain records to reflect the sales of timber made to small business concerns;

(E) To review periodically the results of sales programs to assure that small business is receiving a fair proportion of the total sales of timber;

(F) To utilize the certificate of competency authority vested in SBA by section 8(b)(7) of the Small Business Act when timber is being sold on a credit basis.

SECTION III. CERTIFICATES OF COMPETENCY

In cases of timber being sold on a credit basis, whenever a small business concern has submitted an otherwise acceptable bid or proposal but has been determined by the disposal officer not to be responsible as to capacity or credit, and if the bid or proposal is to be rejected solely for this reason: (1) SBA shall be notified of the circumstances so as to permit it, if warranted, to process a Certificate of Competency, and (2) award shall be withheld pending SBA action up to 10 working days from date of notification.

This procedure shall be mandatory for all sales except where the contracting officer certifies in writing that award must be made without delay and a statement justifying the action is signed by the contracting officer and placed in the contract file.

To assist SBA in determining the capacity and credit of any small business concern involved in a particular sale, the selling agency shall \*

Figure 11-19b

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- \* make available to SBA, at the time of notification, all available pertinent data, including technical and financial information, with respect to the small business concern involved.

SECTION IV. JOINT SET-ASIDE DETERMINATION

The DOD will afford the SBA an opportunity to review its proposed program of timber and other forest product offerings involving sales which have an estimated value of \$2,000 or more. It is agreed that the SBA will consider the forest management and other pertinent factors involved in such program and will review such matters with the contracting officer before requesting a set-aside. Following consideration and review of the said factors the SBA may request in writing that the contracting officer make certain set-asides for small business concerns under authority of Section 15 of the Small Business Act.

The contracting officers of the DOD will agree to and will make set-asides when recommended by SBA unless such action is inconsistent with program requirements of the DOD, in which case the DOD will submit its reasons for refusal to SBA in writing.

If a set-aside has been agreed to and subsequent events indicate that such action would not be in the best interest of the Government, the contracting officer will request the SBA representative to concur in a withdrawal of the joint determination; if the SBA representative concurs, the set-aside will be canceled; if the SBA representative does not concur, he will be given an opportunity to express his opinion, but the final decision for all sales action will remain with the contracting officer.

\*

Figure 11-19c

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\* SECTION V, PROCEDURES

DOD, in cooperation with SBA, will develop its own operational procedures designed to carry out this Memorandum of Understanding, Such procedures will be similar in effect to Chapter VII, Section 703, SBA Manual 600.

SECTION VI. AMENDMENT

This Understanding may be amended at any time by written agreement of the parties.

SECTION VII. EFFECTIVE DATE

This Understanding shall take effect upon the date of the execution thereof.

EXECUTED BY:

DATE:

Signed: JOHN E. HORNE  
\_\_\_\_\_  
Administrator, Small Business Administration

\_\_\_\_\_  
20 May 1979

Signed: THOMAS D. MORRIS  
\_\_\_\_\_  
Assistant Secretary (IL&FM), Department of  
Defense

\_\_\_\_\_  
16 May 1979

\*

Figure 11 - 19d

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\*

CERTIFICATE AS TO SMALL BUSINESS STATUS

The bidder certifies that he (is) (is not) a small business concern within the terms of the following definition:

In sales of Army forest timber a "small business" is a concern that:  
(1) is primarily engaged in the logging or forest products industry; (2) is independently owned and operated; (3) is not dominant in its field of operation; and (4) together with its affiliates does not employ more than 500 persons.

(From 13 CFR 121,3-9(b),  
Rev. 29 Fed. Reg. 2988, 5 Mar 64)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF BIDDER

Intentional falsification of this certificate is a criminal offense punishable by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both. (Title 15, United States Code, Section 645 (a).)

INSTRUCTIONS: This certificate must be attached to and is a part of every invitation to bid on the sale of Army timber with an estimated value of \$2,000 or more. Failure to properly execute this certificate will not invalidate a bid, but a proper statement must be signed before the bid is accepted by the Government. Refusal or delay in executing a proper statement is grounds for rejecting the bid. \*

Figure 11-20

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Invitation No. \_\_\_\_\_

DEPARTMENT OF THE ARMY

(Name and Address of Issuing Office)

INVITATION FOR BIDS, BID AND ACCEPTANCE

SALE OF SURPLUS REAL PROPERTY

I N V I T A T I O N F O R B I D S

Sealed bids will be received until \_\_\_\_\_ (time of day)  
on \_\_\_\_\_ (date), 19\_\_\_\_, at \_\_\_\_\_ (place)  
and then and there publicly opened, for purchase, subject to the terms  
and conditions and in accordance with the instructions to bidders  
hereinafter contained, of Government-owned real property described as  
follows (including any described related personal property and  
appurtenances, and subject to any stated exceptions, reservations and  
restrictions) : \_\_\_\_\_

The terms and conditions of the sale and instructions to bidders  
are as follows:

1. All bids submitted shall be deemed to have been made with full  
knowledge of all of the terms, conditions, and requirements herein  
contained.

2. The property offered for sale is now subject to inspection by  
prospective bidders. The District Engineer, \_\_\_\_\_  
will, upon request, arrange for inspection of the property, and will  
furnish such further information as may be necessary with respect to  
the terms, conditions and instructions herein contained. Any title  
evidence, including abstracts, and continuations thereof, title  
certificates, or policies of title insurance which may be desired by  
the successful bidder will be procured by him at his sole cost and  
expense. The Government will, however, permit examination and  
inspection of such deeds, abstracts, tax receipts, affidavits of title,  
judgments in condemnation proceedings, or other documents relating to  
the title to the property involved, as it may have available. The \*

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1 Feb 66

Figure 11-21a

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\* failure of any bidder to inspect, or to be fully informed regarding the title to or the condition of all or any portion of the property, or negligence or mistake on the part of the bidder in preparing the bid, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid after and prior to award opening. The foregoing description of the property is believed to be sufficiently specific for purposes of identification. Any error or omission in such description shall not constitute any ground or reason for non-performance of the contract or claim by the successful bidder for any allowance, refund, or deduction from the amounts offered. The property is offered for sale "as is" and "where is." The Government does not make any guaranty or warranty, express or implied, with respect to the property as to title, quantity, quality, character or condition, size or kind; or that the property is in condition or fit to be used for the purpose for which intended.

3. The sale will be on an all-cash basis. Each bid must be accompanied by a certified check, cashier's check or postal money order, payable to the order of the "treasurer of the United States" (1) for the full amount bid if such amount is \$250.00 or less, or (2) for 25% of the amount bid, or \$250.00, whichever is greater, if the amount bid is more than \$250.00. All bids will remain open for acceptance or rejection for a period of \_\_\_\_\_ days from the date of opening bids. The deposit of the successful bidder will be retained by the Government to apply against payment of the purchase price and deposits of unsuccessful bidders will be returned, without interest, as promptly as possible after rejection, provided, however, that in the event of default by any bidder hereunder, that bidder's deposit may be applied by the Government to any loss, cost and expense occasioned to the Government thereby, including any loss, cost and expense incurred in selling the property and including any difference between the amount specified in the bid and the amount for which the Government may sell the property, if the latter amount be less than the former. The bidder is liable for the full amount of damages sustained by the Government because of his default; such liability is not limited to the amount of the bidder's deposit.

4. The balance of the purchase price will be paid by the successful bidder with \_\_\_\_\_ days after notice has been given by the Government of its readiness to deliver a deed. The United States will thereafter deliver to the successful bidder a quitclaim deed (and bill of sale, if needed to cover any related personal property) conveying all right, title, and interest of the United States in and to the property, without warranty, express or implied. The successful bidder will pay any required documentary revenue stamp tax. Title and the right of possession will remain in the United States until the deed has been delivered. The formal instruments of conveyance shall within a reasonable time after delivery be placed of record in the manner prescribed by local recording statues, \*

Figure 11-21b

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\* all at the sole cost and expense of the successful bidder. The successful bidder will assume possession of and responsibility for the property upon delivery of the deed.

5. Sealed bids must be executed and submitted in quadruplicate on the bid form accompanying this Invitation for Bids, Bid and Acceptance or on exact copies thereof. Additional copies of the bid form may be obtained from the District Engineer.

6. A bid executed by an attorney or agent on behalf of the bidder must be accompanied by four authenticated copies of his Power of Attorney or other evidence of his authority to act on behalf of the bidder. If the bidder is a corporation, the CERTIFICATE OF CORPORATE BIDDER must be executed. If the bid is signed by the secretary of the corporation, the CERTIFICATE must be executed by some other officer of the corporation under the corporate seal. In lieu of the CERTIFICATE OF CORPORATE BIDDER, there may be attached to the bid copies so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

7. The invitation number and bid-opening time must be plainly marked on the left side of envelopes in which bids are submitted, for example:

---

Return Address

Sealed Bid

To be opened:

To:

REAL ESTATE DIVISION

Time \_\_\_\_\_

Date \_\_\_\_\_

INVITATION NO. \_\_\_\_\_

8. It will be the duty of each bidder to see that his bid is delivered by the time and at the place prescribed in the invitation. Bids received prior to the time of opening will be securely kept, unopened. The person whose duty it is to open them will decide when the specified time has arrived, and no bid or modifications of a bid or withdrawals of a bid received thereafter will be considered, except that those received before award is made but delayed in the mails by occurrences beyond control of the bidder maybe considered if written certification is \*

Figure 11-21c

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\* furnished by authorized postal authorities to that effect. No responsibility will attach for the premature opening of a bid not properly addressed and identified. All modifications of a bid or withdrawals of a bid must be in writing. Telegraphic bids will not be considered, but modifications or withdrawals by telegraph of bids already submitted will be considered if received prior to the time set for opening bids.

9. At the time fixed for the opening of bids, their contents will be made public by announcement for the information of bidders and others properly interested who may be present either in person or by representative, provided, however, that any information submitted in support thereof, the disclosure of which might tend to subject the person submitting it to a competitive business disadvantage, will upon request be held in strict confidence by the United States.

10. The right is reserved, as the interest of the Government may require, to reject any or all bids, to waive any defect or informality in bids received, and to accept or reject any bid or portion thereof.

11. Notice of acceptance or rejection of bids and notice that the Government is ready to deliver a deed and/or Bill of Sale shall be deemed to have been sufficiently given when telegraphed or mailed to the bidder or his duly authorized representative at the address indicated in the bid.

12. Except as otherwise provided in this Invitation for Bids, any dispute concerning a question of fact arising under this Invitation for Bids which is not disposed of by agreement shall be decided by the District Engineer, who shall reduce his decision to writing, and mail or otherwise furnish a copy thereof to the bidder. The decision of the District Engineer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the bidder mails or otherwise furnishes to the District Engineer a written appeal addressed to the Secretary of the Army. The decision of the Secretary, or his duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the bidder shall be afforded an opportunity to be heard and to offer evidence in support of appeal. Pending final decision of a dispute hereunder, the bidder shall proceed diligently with the performance of the contract and in accordance with the District Engineer's decision. This condition does not preclude consideration of questions of law provided that nothing in this condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law. \*

Figure 11-21d



ER 405-1-12  
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\*

13. This Invitation for Bids, including all the instructions, and conditions set forth herein, and the Bid, when accepted by the Government, shall constitute the contract of sale between the successful bidder and the Government. Such agreement shall constitute the whole contract, unless modified in writing and signed by both parties. No oral statements or representations made by, for, or ostensibly on behalf of either party shall be a part of such contract. Neither this contract, nor any interest therein, shall be transferred or assigned by the successful bidder.

14. No member of or delegate to the Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. The successful bidder warrants that he has not employed any person or agency to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul the contract without liability or at its option to recover from the successful bidder the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the successful bidder upon a contract secured or made through bona fide established commercial agencies maintained by the successful bidder for the purpose of doing business. "Bona fide established commercial agencies" has been construed to include licensed real estate brokers engaged in the business generally. \*

Figure 11-21e

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ER 405-1-12  
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\*

Invitation No. \_\_\_\_\_

B I D

\_\_\_\_\_  
Place

\_\_\_\_\_  
Date

To: (Name and Address  
of Issuing Office)

The undersigned \_\_\_\_\_  
a corporation existing under the laws of the State of \_\_\_\_\_  
or a partnership consisting of \_\_\_\_\_  
or an individual trading as \_\_\_\_\_  
of \_\_\_\_\_

(Address and Telephone Number)

hereby offers to purchase from the United States of America, subject to  
the terms and conditions and in accordance with the instructions to  
bidders contained in Invitation for Bids No. \_\_\_\_\_, attached  
hereto and made a part hereof, the right, title, and interest of the  
United States in and to the property described in said invitation for  
\_\_\_\_\_ (\$ \_\_\_\_\_).

Inclosed is a certified check, cashier's check, or postal money order  
payable to the order of the Treasurer of the United States, in the amount  
of \_\_\_\_\_ (\$ \_\_\_\_\_).

By:

(Business address)

\*

Figure 11-21f

ER 405-1-12  
Change 12  
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\*

Certificate of Corporate Bidder

I, \_\_\_\_\_  
certify that I am the \_\_\_\_\_ Secretary of the corporation  
named as bidder herein; that \_\_\_\_\_, who signed this bid  
on behalf of the bidder, was then \_\_\_\_\_  
of said Corporation; that said bid was duly signed for and in behalf of  
said Corporation by authority of its governing body, and is within the  
scope of its corporate powers.

SEAL

\_\_\_\_\_

ACCEPTANCE BY THE GOVERNMENT

The foregoing bid is hereby accepted by and on behalf of the  
United States this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_ \*

Figure 11-21g

11-281

ER 405-1-12  
Change 12  
27 Oct 80

\*

Invitation No. \_\_\_\_\_

DEPARTMENT OF THE ARMY

(Name and Address of Issuing Office)

INVITATION FOR BIDS, BID AND ACCEPTANCE

SALE AND REMOVAL OF BUILDINGS (OR OTHER REAL ESTATE IMPROVEMENTS)

LOCATED AT \_\_\_\_\_

I N V I T A T I O N F O R B I D S

Sealed bids will be received until \_\_\_\_\_ (time of day)  
on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ (place)  
and then and there publicly opened, for the purchase and removal from  
the site, subject to the terms and conditions and in accordance with  
the instructions to bidders hereinafter contained, of that Government-  
owned property described on the accompanying bid form. This invitation  
does not include personal property, except fixtures firmly attached,  
unless specifically listed or identified herein.

The terms and conditions of the sale and instructions to bidders  
are as follows:

1. All bids submitted shall be deemed to have been made with  
full knowledge of all of the terms, conditions, and requirements  
herein contained.

2. (Note: To be modified at discretion of the District Engineer,  
as provided by applicable regulations.) Bids may be submitted for one  
or any number of items but a separate amount must be bid for each item  
for which a bid is submitted. Lump sum bids covering several or all  
items will not be considered. The Government may accept or reject any  
item or items of any bid, unless such bid is qualified by specific  
limitation.

3. All bids will remain open for acceptance or rejection for a  
period of \_\_\_\_\_ calendar days from the date of opening bids. \*

ENG Form 1038-R  
1 Feb 66

Figure 11-22a

\*

4. The property for sale is located at \_\_\_\_\_ and is now subject to inspection by prospective bidders. The District Engineer, \_\_\_\_\_ will, upon request, arrange for inspection of the property, and will furnish such further information as may be necessary with respect to the terms, conditions and instructions herein contained. The failure of any bidder to inspect, or to be fully informed regarding the condition and location of all or any portion of the property will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid after opening. The description of the property is believed to be sufficiently specific for purposes of identification. Any error or omission in the description (including locations, when specified) shall not constitute any ground or reason for nonperformance of the contract or claim by the successful bidder for any allowance, refund, or deduction from the amounts offered. The property is offered for sale "as is" and "where is." The Government does not make any guaranty or warranty, express or implied, with respect to the property as to quantity, quality, character or condition, size or kind, or that the property is in condition or fit to be used for the purpose for which intended.

5. The sale will be on an all-cash basis. Each bid must be accompanied by a certified check, cashier's check, travelers check, or postal money order, payable to the order of the "Treasurer of the United States": (1) for the full amount bid if such amount is \$100 or less; or (2) for \$100 or 20 per cent of the amount bid whichever is greater if the bid is more than \$100. All bids will remain open for acceptance or rejection by the Government for a period of \_\_\_\_\_ days after the date set for opening of bids by this invitation. The deposit of the successful bidder will be retained by the Government and applied as part payment of the purchase price. The balance of the purchase price must be paid within \_\_\_\_\_ calendar days after notice of acceptance of the bid has been given by the Government. Title to the property will remain in the United States until the full purchase price has been paid. The successful bidder will not remove any property until payment in full is made and a fully executed copy of the contract of sale is received from the said District Engineer, with authorization to proceed with removal. (Note: Requirement for bid deposit may be waived for state and local governments as provided in FPMR Section 101-45.302-11.

6. Upon receipt of authority to proceed with removal of the purchased property, the successful bidder will assume all responsibility for the care and protection of the property and will expeditiously remove the property from the site and restore the site in a manner and to a condition satisfactory to the \_\_\_\_\_ in accordance with the following specifications: \*

Figure 11-22b

ER 405-1-12  
Change 12  
27 Oct 80

(Note: Insert specifications covering the extent and method for accomplishment of work to be performed in connection with each item. The specifications should indicate whether or not removal of foundations, piers, curbs, slabs, floods, etc., is required and if so to what extent, and should include instructions regarding the cutting off of utilities, the capping of utility lines, the disposal of debris resulting from salvage operations, and any other data necessary to assure a proper understanding between the contracting parties as to the work to be performed under the contract.)

The successful bidder will bear all expense involved in accomplishment of the work required here under.

7. The successful bidder will complete all removal and restoration work required hereunder within \_\_\_\_\_ calendar days from the date of notice that removal of the property is authorized. The successful bidder will prosecute the work, or any separate portion thereof, with such diligence as will insure its completion within the time specified. Work may be performed between the hours of \_\_\_\_\_ to \_\_\_\_\_ daily, \_\_\_\_\_ excluded. When more than one item is sold hereunder, the time specified herein for completion of removal and restoration will run concurrently as to each item and not consecutively. No extensions of the time herein specified for completion of removal and restoration work will be granted unless, in the opinion of the said District Engineers unusual and unforeseeable circumstances justify such extensions, and agreement is reached on an adequate consideration for the extension.

(Note: Adequate additional consideration will be obtained for extensions unless the District Engineer determines a charge is inequitable as due to catastrophic circumstances or in some degree to Government action; or a charge would not be feasible because of likelihood of a default or other result not in the best interests of the Government. Where time is of the essence, in order to conform to construction schedules, or for other reasons, a statement to such effect should be made in this paragraph, and a statement that no extensions will be allowed should be substituted for the last sentence of condition 7 above.)

8. (Note: To be used at the discretion of the District Engineer.) In addition to the payments required under paragraph 5 above, each successful bidder will, within \_\_\_\_\_ calendar days after notice of acceptance of his bid by the Governments deliver to the said District Engineer a certified check, cashier's check or postal money order, payable to the order of the "Treasurer of the United States," in an amount equal to the total of the performance deposits specified below for all items on which he is the successful bidder, in order to insure faithful performance under this contract. The amount of the performance deposit required for each item is as follows:

\*

Figure 11-22c

Item No.Performance Deposit

(Note: Insert for each item the amount of performance deposit required. The amount specified for each item should be sufficient to protect the interest of the Government in the event of failure of the purchaser to perform all the work required under the contract incident to removal of the listed item within the time limit prescribed. The performance deposit listing may, if more convenient, be shown on the attached bid form, with appropriate reference in this paragraph to the listing there.)

In lieu of the deposit of a certified check, cashier's check, or postal money orders the purchaser may furnish a performance bond with surety approved by, and in a form acceptable, to the said District Engineer, the penal sum of such bond to be the same as the total of performance deposits provided for above. Standard Form 25, available at all surety and guaranteeing offices, may be used for this purpose.

9. In the event of any default by any bidder hereunder, all claim to and any title held in the property for sale, or any portion of it remaining, will be forfeited and all payments made by the defaulting bidder (including bid or performance deposits or bonds) will be applied by the Government to any loss, cost and expense occasioned to the Government by the default (including any loss, cost and expense in selling or otherwise disposing of such property in such manner, whether economic or not, as time limitations may allow). The defaulting bidder is liable for the full amount of damages sustained by the Government because of his default; such liability is not limited to the amount of the aforesaid payments. If the obligations of the successful bidder under this contract are discharged to the complete satisfaction of the said District Engineer, any performance deposit required hereunder will be promptly returned without interest. In the absence of default, the deposits of unsuccessful bidders will be returned without interest as promptly as possible after rejection of the bids.

10. The successful bidder will assume responsibility and liability for all injuries to persons or damages to property directly or indirectly due to, or arising out of, the operations of the successful bidder under this contract and the successful bidder agrees to indemnify and save harmless the United States against any and all claims of whatsoever kind and nature due to, or arising out of, this contract.

(Note: The District Engineer may, at his discretion, add here a requirement that the successful bidder carry liability insurance.)

11. (Note: To be used at the discretion of the District Engineer.)  
The successful bidder will not resell the property, or any portion \*

Figure 11-22d

ER 405-1-12  
Change 12  
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\* thereof, or advertise the property, or any portion thereof, for resale until the property, or any portion thereof proposed for resale, has been removed from the site in accordance with this contract.

12. Sealed bids must be executed and submitted, in quadruplicate, on the bid form accompanying this invitation for bids, bid and acceptance, or on exact copies thereof. Additional copies of the bid form may be obtained from the said District Engineer.

13. A bid executed by an attorney or agent on behalf of the bidder must be accompanied by four authenticated copies of his Power of Attorney or other evidence of his authority to act on behalf of the bidder. If the bidder is a corporation, the Certificate Of Corporate Bidder must be executed. If the bid is signed by the secretary of the corporation, the Certificate must be executed by some other officer of the corporation under the corporate seal. In lieu of the Certificate of Corporate Bidder, there may be attached to the bid copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

14. The invitation number and bid-opening time must be plainly marked on the left side of the sealed envelope in which bids are submitted, for example:

Return Address

Sealed Bid

To be opened:

Time \_\_\_\_\_

Date \_\_\_\_\_

INVITATION NO. \_\_\_\_\_

TO: District Engineer, \_\_\_\_\_

ATTN: REAL ESTATE DIVISION

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

15. It will be the duty of each bidder to see that his bid is delivered by the time and at the place prescribed in the invitation. Bids received prior to the time of opening will be securely kept, unopened. The person whose duty it is to open them will decide when the specified time has arrived, and no bid or modifications of a bid, or withdrawals of a bid received thereafter, will be considered, except that those received before award is made, but delayed in the mails by occurrences beyond control of the bidder, may be considered if written certification is furnished by authorized postal authorities to that effect. \*  
No responsibility will attach for the premature opening of a bid not

Figure 11-22e



\* properly addressed and identified. All modifications of a bid or withdrawals of a bid must be in writing. Telegraphic bids will not be considered, but modifications or withdrawals, by telegraph, Of bids already submitted will be considered, if received prior to the time set for opening bids.

16. At the time fixed for the opening of bids, their contents will be made public by announcement for the information of bidders and others properly interested, who may be present, either in person or by representative; provided, however, that any information submitted in support thereof, the disclosure of which might tend to subject the person submitting it to a competitive business disadvantage, will upon request be held in strict confidence by the United States.

17. The right is reserved, as the interest of the Government may require, to withdraw any and all items from the sale; to reject any or all bids; and to waive any defect or informality in bids received.

18. Notice of acceptance or rejection of bids, notice of authority to proceed with removal of the purchased property, and any other notices hereunder shall be deemed to have been sufficiently given when telegraphed or mailed to the bidder, or his duly authorized representative, at the address indicated in the bid.

19. Any property of the United States damaged or destroyed by a bidder will be promptly repaired or replaced by the bidder to the satisfaction of the said District Engineer or, in lieu of such repair or replacement, the bidder will, if so required by the said District Engineer, pay to the United States an amount determined by the said District Engineer to be sufficient to compensate for the loss sustained by the United States.

20. Except as otherwise provided in this invitation for bids, any dispute concerning a question of fact arising under this invitation for bids, which is not disposed of by agreement, shall be decided by the District Engineer, who shall reduce his decision to writing, and mail, or otherwise furnish, a copy thereof to the bidder. The decision of the District Engineer shall be final and conclusive, unless, within 30 days from the date of receipt of such copy, the bidder mails, or otherwise furnishes, to the District Engineer a written appeal addressed to the Secretary of the Army. The decision of the Secretary, or his duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the bidder shall be afforded an opportunity to be heard \*

Figure 11-22f

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\* and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the bidder shall proceed diligently with the performance of the contract and in accordance with the District Engineer's decision. This condition does not preclude consideration of questions of law in connection with those decisions; provided, that nothing in this condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

21. This invitation for bids, including all the instructions, terms, and conditions set forth herein, and the bid, when accepted by the Government, shall constitute the contract of sale between the successful bidder and the Government. Such agreement shall constitute the whole contract, unless modified in writing and signed by both parties. No oral statements or representations made by, for, or ostensibly on behalf of, either party shall be a part of such contract. Neither this contract, nor any interest therein, shall be transferred or assigned by the successful bidder.

22. No Member of or Delegate to the Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

23. The successful bidder warrants that he has not employed any person or agency to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract without liability, or, at its option, to recover from the successful bidder the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the successful bidder upon a contract secured or made through bona fide established commercial agencies maintained by the successful bidder for the purpose of doing business. "Bona fide established commercial agencies" has been construed to include licensed real estate brokers engaged in the business generally.

SPECIAL INSTRUCTION TO BIDDERS. ATTENTION IS INVITED TO THE FACT THAT THE INTERSTATE COMMERCE ACT MAKES IT UNLAWFUL FOR ANYONE OTHER THAN THOSE DULY LICENSED UNDER THE ACT TO TRANSPORT THIS PROPERTY IN INTERSTATE COMMERCE FOR HIRE. ANYONE AIDING OR ABETTING IN SUCH VIOLATION IS A PRINCIPAL IN COMMITTING THE OFFENSE (49 U.S.C. 301-327 and 18 U.S.C. 2). \*

Figure 11-22g

ER 405-1-12  
Change 12  
27 Oct 80

\*

Invitation No. \_\_\_\_\_

\_\_\_\_\_  
Place

B I D

\_\_\_\_\_  
Date

TO: (Name and Address of Issuing Office)

The undersigned \_\_\_\_\_  
a corporation existing under the laws of the State of \_\_\_\_\_  
a partnership consisting of \_\_\_\_\_  
an individual trading as \_\_\_\_\_  
of \_\_\_\_\_

(Address and Telephone Number)

hereby offers to purchase from the United States of America, subject to the terms and conditions and in accordance with the instructions to bidders contained in Invitation for Bids No. \_\_\_\_\_, attached hereto and made a part hereof, any or all of the items described below for which bid prices are indicated, in consideration of the price indicated for each such item.

<u>Item No.</u>	<u>Description and Location</u>	<u>Price Bid</u>
		(to be furnished by bidder)

(Note: All property not to be included in the sale should, whenever possible, be separated from the property to be sold and, before the sale, removed from the site. If this is not possible, specify in the listing of items what is not included in the sale and expressly reserve, in the body of the invitation, a right in the Government to remove such property.)

Inclosed is a certified check, cashier's check, or postal money order, Payable to the order of the Treasurer of the United States, in the amount of \_\_\_\_\_  
\_\_\_\_\_ (\$ \_\_\_\_\_).

\_\_\_\_\_  
By \_\_\_\_\_

\_\_\_\_\_  
Business Address

\*

ER 405-1-12  
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\*

CERTIFICATE OF CORPORATE BIDDER

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ Secretary of the corporation named as bidder herein; that \_\_\_\_\_, who signed this bid on behalf of the bidder, was then \_\_\_\_\_ of said corporation; that said bid was duly signed for and in behalf of said corporation by authority of the governing body and is within the scope of its corporate powers.

AFFIX  
SEAL

\_\_\_\_\_

=====

A C C E P T A N C E   B Y   T H E   G O V E R N M E N T

Accepted by and on behalf of the United States this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, as to Items numbered \_\_\_\_\_

\_\_\_\_\_

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_ \*

Figure 11-22i

ER 405-1-12  
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\*

SUPPLEMENT TO STANDARD FORM 114  
FOR USE IN TIMBER SALES CONTRACT

1. At the discretion of the Division or District Engineer, provisions similar to provisions 8 and 9, ENG Form 1038-R, Appendix II, may be included. (See FPMR, Section 101-45 .302-9, 302-10, and 302-11.)

2. Timber will be cut and removed in strict accordance with the terms and conditions of sale and instructions issued by the contracting officer. All timber shall be cut and removed on or before and none later than \_\_\_\_\_ . Stumps shall be cut to cause the least possible waste and not higher than \_\_\_\_\_ inches on the side adjacent to the highest ground; all trees shall be utilized to as low a diameter in the tops as practicable so as to cause the least waste and to a minimum diameter of \_\_\_\_\_ inches.

3. Timber shall be scaled by Scribner Decimal C log rule or counted or measured as prescribed by the contracting officer. If measurement is to be made after falling timber shall be piled or skidded for measurement as directed by the contracting officer or his duly authorized representative.

4. Slash and other refuse shall be disposed of as directed by the contracting officer.

5. All telephone lines, ditches, and fences, locate within or immediately outside the exterior boundaries of the sale area, shall be protected so far as possible in logging operations and, if injured, shall be repaired immediately by the purchaser. The contracting officer may, when in his judgment it is necessary, require the purchaser to move any such telephone line or fence from one location to another. Roads and trails shall at all times be kept free of logs, brush, and debris resulting from the purchaser's operations hereunder. Any road or trail used by the purchaser in connection with this sale that is damaged or injured beyond ordinary wear and tear, through such use, shall promptly be repaired by him to its original condition.

SPECIAL INSTRUCTION TO BIDDERS. ATTENTION IS INVITED TO THE FACT THAT THE INTERSTATE COMMERCE ACT MAKES IT UNLAWFUL FOR ANYONE OTHER THAN THOSE DULY LICENSED UNDER THE ACT TO TRANSPORT THIS PROPERTY IN INTERSTATE COMMERCE FOR HIRE. ANYONE AIDING OR ABETTING IN SUCH VIOLATION IS A PRINCIPAL IN COMMITTING THE OFFENSE (49 U.S.C. 301-327 and 18 U.S.C. 2).

\*

ENG FORM 2140-R  
1 Feb 66

Figure 11-23

ER 405-1-12  
Change 22  
1 Apr 85

CONTRACT OF SALE  
EP 405-1-2

THIS CONTRACT OF SALE made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the District Engineer, U. S. Army Engineer District, \_\_\_\_\_, for and on behalf of the United States of America, hereinafter called the "Government", and \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter called the "Purchaser", WITNESSETH:

THAT under authority of Public Law 999, 84th Congress, approved 6 August 1956 (70 Stat.1065), as implemented by the Delegations, Rules and Regulations issued by the Secretary of the Army (33 CFR 211.71-81; 28 FR 69, pp. 3450, 3451; 28 FR 86, p. 4375) the Government has made available for sale for cottage site development the following \_\_\_\_\_ land in the \_\_\_\_\_ Reservoir area, \_\_\_\_\_ County, State of \_\_\_\_\_:

(DESCRIPTION)

NOW, THEREFORE, in consideration of the \_\_\_\_\_ performance by each of the parties hereto, of the terms and \_\_\_\_\_ hereinafter set forth, it is mutually agreed as follows:

1. The Government agrees to \_\_\_\_\_ the Purchaser agrees to purchase the above-described \_\_\_\_\_ land, for (individual) (omit this word if inapplicable) cottage site development and use only, for the sum of \_\_\_\_\_ (\$\_\_\_\_\_). In addition thereto, the Purchaser shall \_\_\_\_\_ costs of survey and boundary markers necessary as an incident to \_\_\_\_\_ of the land to be conveyed. A deposit in an amount equal to \_\_\_\_\_ (20) per centum of the purchase price shall be paid by the \_\_\_\_\_ at the time of execution of this contract, receipt of which \_\_\_\_\_ acknowledged. Such payment shall be made payable to the \_\_\_\_\_ of the United States. In the event of default by the \_\_\_\_\_ this deposit shall be retained by the Government as liquidated \_\_\_\_\_ Payment in full for the balance of the purchase price and for \_\_\_\_\_ costs of the survey and boundary markers shall be made simultaneously \_\_\_\_\_ with delivery of the executed deed by the Government to the Purchaser.

2. The property hereinbefore described is sold "as is" and without recourse against the Government. The Government makes no representation or warranty, express or implied, as to condition, fitness for any use or purpose, or accuracy of the description. Accordingly, downward adjustment in the purchase price or demand for rescission based upon the failure of the property to correspond with the above description or inability by the Purchaser to use said property for cottage site purposes will not be

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1 Dec 64

(PROPONENT: DAEN-REP)

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considered. In the event a survey reveals that the property to be conveyed contains a substantially greater acreage than contemplated, the Purchaser shall also pay to the Government the appraised fair value of such additional land, simultaneously with delivery of the deed.

3. The conveyance shall be by quitclaim deed, executed by the District Engineer, U. S. Army Engineer District, \_\_\_\_\_, at \_\_\_\_\_.

4. a. The property shall be used for cottage site purposes only. The term "cottage site" as used herein is defined in the Code of Federal Regulations, Title 33, Section 211.72. (The property to be conveyed is an Individual Cottage Site, i.e. a parcel of land developed or to be developed by the construction of a private cottage thereon or to be used, for private recreational purposes. The property shall not be subdivided but shall remain intact as a single unit. More than one (1) cottage may be constructed on such site. If this restriction is breached, title to the land and all interests placed thereon shall revert to and vest in the Government. The Government is required to institute legal proceedings to enforce its right to reversion, the grantee (Purchaser) shall bear the costs of such action.) (Strike the last four sentences. Inapplicable.)

b. The conveyance shall be subject to existing easements for public roads, highways and streets, and public utilities and pipe lines.

c. The Government reserves a perpetual easement to flood those lands lying below elevation \_\_\_\_\_ feet, mean sea level (strike this clause, if inapplicable).

d. The deed shall be placed on record in the manner prescribed by the laws of the State of \_\_\_\_\_ and at the sole cost and expense of the Purchaser, including payment of any required documentary stamp tax.

5. The Government is not obligated and shall not be liable for construction, maintenance or service of access roads or other improvements to the property. The Government shall not be responsible for the improvement of the lands included in this contract of sale.

6. Title to the property sold hereunder shall vest in the Purchaser at the time of delivery of the executed quitclaim deed.

7. If the Purchaser is presently in possession as a lessee of the premises to be conveyed, then it is mutually agreed that effective upon the date of delivery of the executed quitclaim deed, such lease is terminated and any unearned prepaid rental will be refunded to the Purchaser.

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8. In any case where liability of the Government to the Purchaser, under this Contract of Sale, has been established, the Government's maximum liability shall be limited to the refund of any monies paid by the Purchaser to the Government under this Contract of Sale.

9. The Purchaser warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Purchaser for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract or in its discretion to require the Purchaser to pay the full amount of consideration herein set forth, the full amount of commission, percentage, brokerage, or contingent fee.

10. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a view to the promotion for its general benefit.

11. a. That, except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the said officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Purchaser. The decision of the said officer shall be final and conclusive unless, within ten days from the date of receipt of such copy, the Purchaser mails or otherwise furnishes to the said officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition the Purchaser shall be afforded an opportunity to be heard and to present evidence in support of its appeal. Pending final decision of an appeal hereunder, the Purchaser shall proceed diligently with the performance of this contract and in accordance with the said officer's decision.

b. This Condition does not preclude consideration of law questions in connection with decisions provided for in paragraph a above: Provided that nothing in this Condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

12. a. The Government may, by written notice to the Purchaser, terminate this contract if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities

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(in the form of entertainment, gifts, or otherwise) were offered or given by the Purchaser, or any agent or representative of the Purchaser, to any officer or employee of the Government with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of this contract provided, that the existence of the facts upon which the Secretary of \_\_\_\_\_ or his duly authorized representative makes such findings shall \_\_\_\_\_ and may be reviewed in any competent court.

b. In the event this contract is terminated, provided in paragraph a hereof, the Government shall be entitled to pursue the same remedies against the Purchaser as it would be in the event of a breach of the contract by the Purchaser \_\_\_\_\_ a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) \_\_\_\_\_ be not less than three nor more than ten times the costs \_\_\_\_\_ by the Purchaser in providing any such gratuities to any such \_\_\_\_\_ employee.

c. The rights and remedies of the Government provided in this clause shall not be \_\_\_\_\_ and are in addition to any other rights and remedies provided \_\_\_\_\_ under this contract.

13. No part of this contract nor any interest therein shall be assigned or transferred by the Purchaser to any other party.

IN WITNESS WHEREOF, the parties hereto have executed this contract \_\_\_\_\_ and year first above written.

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WITNESSES

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Purchaser (L.S.)

THE UNITED STATES OF AMERICA

By \_\_\_\_\_

District Engineer  
U. S. Army Engineer District \_\_\_\_\_  
Contracting Officer

TABLE 11-1. REGULATORY REFERENCES

SECTION I

63 Stat. 377 (40 U.S.C. 471)  
16 U.S.C. 460L-5(a)  
16 U.S.C. 470  
16 U.S.C. 1451  
33 U.S.C. 558  
42 U.S.C. 1594a-1  
42 U.S.C. 4321  
Executive Order 11593  
Executive Order 11988  
Executive Order 11990  
Federal Property Management Regulations, Section 101-47  
AR 200-1  
AR 405-5  
AR 405-90  
ER 1105-2-460  
ER 1165-2-26  
ER 405-1-12, Chapter 8

\*

\*

SECTION II

AR 405-90  
AFR 87-4

SECTION III

10 U.S.C. 2662 as amended by P.L. 96-418, dated 10 October 1980  
Executive Order 11954  
Federal Property Management Regulations, Section 101.47  
AR 405-90  
AFR 87-4

SECTION IV

10 U.S.C. 2662 as amended by P.L. 96-418, dated 10 October 1980  
DOD Instruction 4165.12

SECTION V

43 CFR 2374.1  
10 U.S.C. 2662 as amended by P.L. 96-418, dated 10 October 1980  
42 U.S.C. 1594a-1 (b)  
50 U.S.C. 451  
Executive Order 11296  
Federal Property Management Regulations, Section 101.47

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SECTION V cont.

ER 755-2-1  
ER 1105-2-40

SECTION VI

63 Stat. 377 (40 U.S.C. 471)  
5 U.S.C. 3108  
40 U.S.C. 303b  
26 Comp. Gen. 303  
Federal Property Management Regulations, Section 101,47  
AR 405-80  
AR 405-90  
AFR 87-4

SECTION VII

43 CFR 2370-22374

SECTION VIII

10 U.S.C. 2662 as amended by P.L. 96-418 dated 10 October 1980  
Executive Order 11954  
AR 380-5  
AR 405-90  
AFR 87-4  
ER 405-1-12, Chapters 8 and 14

\*

\*

SECTION IX

63 Stat. 377 (40 U.S.C. 471)  
68 Stat. 1119 (P.L. 83-765)  
70 Stat. 1018 (P.L. 84-968)  
76 Stat. 1129 (P).L. 87-852)  
33 CFR 211.141 - 211-147  
41 CFR 101-47  
9 CFR 21  
10 U.S.O. 831f(b)  
10 U.S.C. 2571(a)  
10 U.S.C. 2662 as amended by P.L. 96-418 dated 10 October 1980  
10 U.S.C. 2672  
16 U.S.C. 460e  
16 U.S.C. 505a and b  
16 U.S.C. 667b-d  
18 U.S.C. 4122  
23 U.S.C. 107(d)  
23 U.S.C. 317  
33 U.S.C. 558b and b.1  
33 U.S.C. 578

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SECTION IX Cont.

38 U.S.C. 5003  
40 U.S.C. 122  
40 U.S.C. 345c  
40 U.S.C. 484  
40 U.S.C. 484(e)  
40 U.S.C. 484(k)  
40 U.S.C. 511 nd 512  
49 U.S.C. 1157  
49 U.S.C. 1349(a)  
49 U.S.C. 1723  
50 U.S.C. 1622(g)  
Surplus Property Act of 1944  
Executive Order 10530  
Executive Order 12079  
36 FR 20423  
Federal Property Management Regulations, Section 101.47  
DOD Directive 4165.6  
AR 405-5  
AR 405-90  
AFR 87-4  
ER 1130-2-400  
ER 1180-1-1  
ER 405-1-12, Chapters 4 and 5

\*

\*

SECTION X

40 U.S.C. 278a and b  
Federal Property Management Regulations, Section 101.47  
AR 405-90

SECTION XI

33 U.S.C. 558  
Federal Property Management Regulations, Section 101.47  
AR 405-90  
AR 420-70  
AFR 87-4  
ER 735-1-1

SECTION XII

13 U.S.C. 121.3  
15 U.S.C. 637(b)(7)  
15 U.S.C. 644  
30 U.S.C. 601  
33 U.S.C. 558  
Federal Property Management Regulations, Section 101.45 and 101.47  
AR 405-90  
AR 420-74  
ER 1130-2-400

ER 405-1-12  
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\*SECTION XIII.

10 U.S.C. 2662 as amended by P.L. 96-148 dated 10 October 1980  
AR 385-40  
AR 405-90  
TB 700-4

SECTION XIV.

10 U.S.C. 4682  
40 U.S.C. 484(c)  
Executive Order 11246  
Executive Order 11375  
Federal property Management Regulations, section 101-47  
Defense Acquisition Regulations (formerly the Armed Services Procurement  
Regulations)  
ER 1180-1-1

SECTION XV.

40 U.S.C. 484(k)  
49 U.S.C. 1723  
50 U.S.C. 1622g  
Surplus Property Act of 1944  
DOD Directive 5100.10

\*

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\* 01 02

RR RR EEE

HQDA {2DAEN -REM-C} WASH DC/DISTRICT ENGINEER  
DLA CAMERON STA VA  
CCNGB WASHDC //NGB-ARI-R//  
CDRARCOT ALEX VA //DRCIS-ER//  
CDRFORSCO FT MCPHERSON GA  
CDRTRADOC FT MONROE VA  
CDRUSA {AREA ARMY}  
DAF WASHDC //AF LEER//  
CDR AAFES DALLAS TX  
CDRNAVAFACENCOM CODE 204 ALEX VA  
CDR AREA NAVAL DISTRICT  
AREA NAVAFACENCOM  
COMDT US COAST GUARD WASHDC  
CDR AREA COAST GUARD DISTRICT  
AREA DIVENGR/DISTENGR

DA FOR COFENGRS ATTN, DAEN-ZCI; TSG, DAAR-LOI, DAMO, DCSRDA

UNCLAS E F T O FOUO

SUBJ: SCREENING EXCESS REAL PROPERTY FOR DISPOSAL

{EO 11724 IF APPROPRIATE}.

A. STURTEVANT REALTY OFFICER  
DAEN-REM-C X20504

W. LOCKWOOD REM X20511

\*

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\*02 02 RR RR EEEE

1. DA IS CONSIDERING ACTION TO DECLARE AS EXCESS THE FOLLOWING PROPERTY: {BRIEFLY DESCRIBE THE PROPERTY AND IMPROVEMENTS, GIVE ITS LOCATION, INDICATE ITS PAST USE, THE INTEREST OF THE UNITED STATES IN THE LAND; STATE WHETHER OR NOT THE PROPERTY HAS AS ESTIMATED VALUE OF \$100000 OR MORE, AND OTHER PERTINENT INFORMATION.}

2. ADDRESSEES HAVING REQUIREMENTS FOR ANY PORTION OF THE ABOVE WILL SUBMIT REQUESTS TO REACH {ORIGINATING OFFICE} PRIOR TO 30 DAYS FROM THE DATE OF THIS MESSAGE. {IF E01194 EXCESS REPORT, REQUESTS ARE TO BE SUBMITTED TO REACH ASD {MRA&L} WITHIN 15 DAYS FROM THE DATE OF MESSAGE.} NEGATIVE REPORTS ARE NOT, REPEAT, NOT REQUIRED. ANY ARMY REQUIREMENTS DISCLOSED BY THIS SCREENING WILL BE AFFORDED PRIORITY.

3. ARMY ADDRESSEES HAVING REQUIREMENTS SHOULD SUBMIT REQUESTS WHICH, CONCLUSIVELY INDICATE THAT PROPOSED UTILIZATIONS ARE ESSENTIAL TO ACCOMPLISHMENT OF ASSIGNED MISSION, THAT OTHER AVAILABLE DA PROPERTIES CANNOT BE USED, AND CONTAIN SUPPORTING DATA REQUIRED BY AR 405-90, PARA 10.

4. THE FOUO MARKING IS CANCELLED UPON OCCURRENCE OF THE EVENT SPECIFIED IN PARA 2 OF THIS MESSAGE. \*

A. STURTEVANT REALTY OFFICER  
DAEN-REM-C X20504

W. LOCKWOOD, REM X20511

Figure 11-1b

11-204

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\*

DEPARTMENT OF THE ARMY  
 SUBMITTED BY OFFICE, CHIEF OF ENGINEERS  
 REAL ESTATE  
 DISPOSAL REPORT NO. \_\_\_\_

Submitted pursuant to Title 10, United States Code, Section 2662

Name of Installation: Fort Brown, Greenfield, Connecticut  
 Using Service (Command): United States Army Forces Command  
 Former Use: Training Camp  
 Interest: Fee  
 Area: 3,000 Acres  
 Original Cost: Land: \$ 250,000  
 Improvements: 5,000,000  
 Total \$5,250,000  
 Acquisition Date: 1942  
 Proposed Action: Report to General Services Administration  
 as excess real property  
 Authority: Federal Property and Administrative  
 Services Act of 1949 (63 Stat. 377)

Par. 1. "The Department of the Army proposes . . . ." (Here make a brief statement of the proposed action being reported to the Congress.)

Par. 2. Set out concise historical background of installation involved, which may include: Date and purpose of establishment; summary history of real estate data including original land acquisition and cost, with fee, easement and other types of ownership to be listed separately, and similar information for additional acquisitions, disposals, and for the current holdings, showing total acreage and cost of fee, easement, and other types of real estate holdings and costs thereof.

Brief chronological summary of installation, indicating active and inactive periods, current mission and present uses for other than assigned mission including other Army, Navy and Air Force, non-military Government, and civilian use. \*



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\*

DEED WITHOUT WARRANTY

THIS DEED, made this \_\_\_\_\_, 19\_\_\_\_  
by and between the United States of America, Grantor, acting by and  
through the Secretary of the Army, under and pursuant to the powers and  
authority contained in Section 23 of the Airport and Airways Development  
Act of 1970 (84 Stat. 232; 49 U.S.C. 1723) and in conformity with Part 154  
of Title 14 and Section 0.67 of Title 28 of the Code of Federal Regulations  
and Executive Order No.12079, 43 Fed. Reg. 42233 (1978) and in accordance  
with the request of the Administrator of the Federal Aviation Administra-  
tion (herein called the "Administrator"), and the City of \_\_\_\_\_,  
organized and existing as a City of the \_\_\_\_\_ Class under the laws  
of the State of \_\_\_\_\_ with principal office and place  
of business in the City of \_\_\_\_\_, State of \_\_\_\_\_,  
Grantee.

WHEREAS, it has been determined that the conveyance requested by the  
City of \_\_\_\_\_ is not inconsistent with the needs of the  
Department of the Army.

WITNESSETH: That the Grantor, in consideration of the benefits which  
shall accrue to the public by virtue of the use of the property herein-  
after described for public airport purposes, does hereby bargain, sell  
grant and convey without warranty, express or implied subject to the  
conditions, covenants and reservations hereinafter set forth, unto the  
Grantee all of its right, title and interest in and all those certain  
parcels of land designated as a portion of Fort \_\_\_\_\_ Military  
Reservation, situated in the County of \_\_\_\_\_,  
State of \_\_\_\_\_, to wit:

A tract of land in the \_\_\_\_\_ of Section \_\_\_\_\_,  
Township \_\_\_\_\_, Range of the \_\_\_\_\_ Meridan  
in \_\_\_\_\_ County \_\_\_\_\_, described as  
follows:

Beginning at \_\_\_\_\_ (Complete legal description of tract) \_\_\_\_\_.  
The tract of land hereby conveyed contains \_\_\_\_\_ acres, more or  
less.

\*

Figure 11-3a

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This Grant is subject to the following covenants and conditions which the Grantee, by acceptance of this deed, assumes for itself and its successors and assigns, as covenants running with the land:

1. That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance, except that if the property interest is necessary to meet future development of an airport, in accordance with the National Airport System Plan, the grantee will develop that interest for airport purposes on or before the period provided in the plan or within a period satisfactory to the Administrator and any interim use of that interest for other than airport purposes will be subject to such terms and conditions as the Administrator may prescribe.

2. That the airport, and its appurtenant areas and its buildings and facilities, whether or not on the land conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, or national origin, as to airport employment practices, and as to accommodations, services, facilities, and other public uses of the airport.

3. That the grantee will not grant or permit any exclusive right forbidden by Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now owned or controlled by it.

4. That in the operation of the airport and its appurtenant areas, the grantee:

a. agrees that no person shall be excluded from any participation, be denied any benefits or be otherwise subjected to any discrimination, on the grounds of race, color, or national origin;

b. agrees to comply with all requirements imposed by or pursuant to Part 21 of the Regulations of the Office of the Secretary of Transportation (49 CFR 21) - nondiscrimination in federally assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.

5. That the furtherance of the policy of the FAA under this covenant, the grantee:

a. agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right at the airport, or at any other airport now owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft \*

Figure 11-3b

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\* rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which, because of their direct relationship to the operation of aircraft, can be regarded as an aeronautical activity; and

b. agrees that it will terminate any existing exclusive right to engage in the sale of gasoline or oil, or both, granted before July 17, 1962, at such an airport, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right; and

c. agrees that it will terminate forthwith any other exclusive right to conduct any aeronautical activity now existing at such an airport.

6. That any later transfer of the property interest conveyed will be subject to the covenants and conditions in this instrument of conveyance.

7. That, if the covenant to develop the property interest (or any part thereof) for airport purposes within one year after the date of this conveyance is breached, or if the property interest (or any part thereof) is not used in a manner consistent with the terms of the conveyance, the Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or the particular part of the interest to which the breach relates.

8. That, if any covenant or condition in the instrument of conveyance, other than the covenant contained in paragraph 7 of this section, is breached, the Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates.

9. That a determination by the Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Administrator, or his successor in function, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates. \*

Figure 11-3c

ER 405-1-12

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\* TO HAVE AND TO HOLD the said premises, with the appurtenances, unto the said Grantee and its successors and assigns, forever, subject to the covenants and conditions herein set forth.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed and the official seal of the Department of the Army to be hereunto affixed.

UNITED STATES OF AMERICA

(SEAL)

\_\_\_\_\_  
SECRETARY OF THE ARMY

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

The approval by the Assistant Attorney General, Land and Natural Resources Division, is made pursuant to authority delegated by the Attorney General by Section 0.67 of Title 28 of the Code of Federal Regulations (Order No. 468.71 of the Attorney General, October 9, 1971: 36 F.R. 20428).

\_\_\_\_\_  
ASSISTANT ATTORNEY GENERAL  
LAND AND NATURAL RESOURCES DIVISION  
DEPARTMENT OF JUSTICE

\*

Figure 11-3d

11-209

ER 405-1-12  
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\*

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA )  
  : ss  
COUNTY OF ARLINGTON        )

BEFORE ME, a Notary Public in and for the Commonwealth of Virginia,  
County of Arlington, personally appeared, \_\_\_\_\_,  
to me known to be the identical person and officer whose name is  
subscribed to the foregoing instrument and acknowledged to me that he  
executed the said instrument in the capacity therein stated for the  
purposes therein expressed as the act and deed of the United States of  
America.

GIVEN under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_,  
19 .

\_\_\_\_\_  
NOTARY PUBLIC

(SEAL)  
My Commission Expires:

Figure 11-3e

ER 405-1-12  
Change 12  
27 Oct 80

TO PUBLIC BODIES IN THE \_\_\_\_\_

Notice of the Availability of Land for Development  
of Public Port or Industrial Facilities

Pursuant to provisions contained in Section 108 of Public Law 86-645,  
86th Congress, \_\_\_\_\_ (General Description of Property)

is available for sale to the State of \_\_\_\_\_, political  
subdivisions thereof, port districts, port authorities, or other bodies  
created by the State for the purpose of developing or encouraging the  
development of public port or industrial facilities. The parcel of land  
is about \_\_\_\_\_ (location).

Any sale of this property shall be at the fair market value of the land,  
as determined by the Secretary of the Army, upon condition that the prop-  
erty shall be used for public port or industrial purposes and subject to  
such conditions, reservations or restrictions as the Secretary may  
determine to be necessary for the development, maintenance, or operation  
of the \_\_\_\_\_ (Project)  
or otherwise in the public interest.

A legal description of this land will be mailed upon request.

Applications for purchase of this property must be filed in writing  
with me by \_\_\_\_\_. Applications must state fully  
the purposes for which the land is desired and the scope of the proposed  
development.

\*

Figure 11-4

ER 405-1-12  
Change 12  
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SAMPLE QUITCLAIM DEED

FOR PUBLIC PORT OR INDUSTRIAL FACILITIES

THIS INDENTURE, made by and between the United States of America, acting by and through the Secretary of the Army, under and pursuant to the powers and authority contained in Section 108 of the Act of Congress approved July 14, 1960 (Public Law 86-645; 74 Stat. 486), party of the first part, and the \_\_\_\_\_, party of the second part.

WHEREAS, pursuant to said Act and to the Delegations, Rules and Regulations of the Secretary of the Army, as published in the Federal Register of March 11, 1961 (Volume 26, No. 47, pages 2117-2118), it has been determined (1) that the development of public port and industrial facilities on the hereinafter described land within the \_\_\_\_\_ Project, a water resource development project under the jurisdiction of the Department of the Army, will be in the public interest; (2) that such development will not interfere with the operation and maintenance of the \_\_\_\_\_; and (3) that disposition of such land for this purpose will serve the objectives of the \_\_\_\_\_ Project.

NOW, THEREFORE, in consideration of the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), and subject to the exceptions, reservation, restrictions, covenants and conditions hereinafter set forth, the party of the first part hereby conveys and quitclaims unto the party of the second part, its successors and assigns: \*

Figure 11-5a

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\* FOR PUBLIC PORT PURPOSES ONLY, all right, title and interest of the United States of America in and to the real estate described as follows:

TRACT A

and,

FOR INDUSTRIAL PURPOSES ONLY, all right, title and interest of the United States of America in and to the real estate described as follows:

TRACT B

SUBJECT TO the following exceptions and rights outstanding in third parties: Existing easements for public roads and highways, public utilities, railroads and pipelines.

EXCEPTING, SAVING AND RESERVING unto the United States of America and its assigns, from this conveyance the following rights, power, privileges and easements, namely:

(Set forth exceptions and reservations deemed necessary for purpose of the project.)

The said party of the second part does by the acceptance of this deed, covenant and agree for itself, and its successors and assigns, forever, as follows:

(Set forth conditions of conveyance)

- 1.
- 2.
- 3.
- 4.

\*



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\*  
5. The Grantee agrees to construct public port facilities only on the area described as Tract A and to construct industrial facilities only on the area described as Tract B.

PROVIDED, HOWEVER, that if any portion of the above described tracts is used for any purpose other than the purpose designated in Condition 5 above then all right, title and interest in and to the portion of the tract so used shall revert to and become the property of the United States at its option and it shall have the immediate right of entry upon said premises, subject to the conditions hereafter set forth.

In the event of a breach of the above condition pertaining to public port and industrial use, the Grantor shall, before claiming any forfeiture, give notice in writing of said breach, and of its intention to exercise said option, to the then occupant of the premises. Said occupant shall have a period of sixty (60) days after receipt of said notice to correct and cure said breach. The right of entry of the Grantor shall arise and become exercisable only after the termination of said sixty (60) day period and failure of the then occupant to correct or cure said breach.

In the event of the failure or refusal of the then occupant of said premises to correct or cure said breach within the time limited, and after exercise by the Grantor of its right of entry, said occupant shall have a reasonable time, not to exceed 120 days, to remove any improvements that have theretofore been placed upon said premises. Such right of removal shall under no circumstances permit such occupant to cause damage to the land involved. In the event that said occupant fails to

\*

Figure 11-5c

11-214

\* remove said improvements within the time limited, they shall become the property of the United States.

Failure of the United States to exercise its right of entry upon breach of the above condition pertaining to public port and industrial use shall not be construed as a waiver or relinquishment of said right.

TO HAVE AND TO HOLD the above-described premises unto the said  
its successors and assigns, forever, subject  
to the exceptions, reservations, restrictions covenants, and conditions  
herein contained.

\*

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\* IN WITNESS WHEREOF, the United States of America has caused these presents to be executed in its name by \_\_\_\_\_, Secretary of the Army, and the seal of the Department of the Army to be hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_.

UNITED STATES OF AMERICA

BY \_\_\_\_\_  
Secretary of the Army

The Foregoing Instrument is also executed and accepted for and in behalf of the Party of the Second Part by \_\_\_\_\_  
\_\_\_\_\_  
its Commissioners, and attested by its Secretary, and its seal hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\*

Figure 11-5e

FORMAT FOR NOTICE OF AVAILABILITY

GOVERNMENT AIRPORT PROPERTY

FOR DISPOSAL

(BRIEF DESCRIPTION - LOCATION)

Terms and conditions of disposal, and all necessary information about this property, will be furnished upon request at the office of the District Engineer, U.S. Army Engineer District, \_\_\_\_\_, \_\_\_\_\_.

Acquisition of this property is subject to the following priorities: (1) Federal Government agencies; (2) State and local governments, and tax-supported institutions. Your priority expires \_\_\_\_\_ days after date of this notice, if no advice is received of your interest in acquiring the property.

To receive consideration, proposals from priority holders must be submitted on special forms obtainable at the \_\_\_\_\_ District Engineer's Office, and must arrive at that office within \_\_\_\_\_ days after date of this notice, or not later than (a reasonable time so determined by the District Engineer)\_\_\_\_\_.

States, political subdivisions, municipalities and tax-supported institutions may, on a priority basis immediately following that of Federal Government agencies, acquire this property under the terms and conditions of Title 50, Appendix, United States Code, Section 1622(g) as amended. \*

Figure 11-6

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\* APPLICATION FOR AIRPORT PROPERTY  
BY STATE, POLITICAL SUBDIVISION, MUNICIPALITY, OR TAX-SUPPORTED INSTITUTION

APPLICATION is hereby made to the District Engineer, \_\_\_\_\_,  
by \_\_\_\_\_  
(hereinafter referred to as Applicant) for the transfer to it, upon the  
terms and conditions hereinafter set forth, of surplus property consti-  
tuting all or part of the installation generally known as \_\_\_\_\_  
Air Force Base located near \_\_\_\_\_, State of \_\_\_\_\_,  
including certain personal property, all as more particularly described in  
Schedule "A" attached hereto and made a part hereof. All real or personal  
property described in Schedule "A" is hereinafter referred to as the  
"airport."

TERMS AND CONDITIONS

1. This application and its acceptance by the District Engineer, \_\_\_\_\_  
\_\_\_\_\_, hereinafter referred to as the Government shall constitute  
the entire agreement between the applicant and the Government unless  
modified in writing signed by both parties.
2. Applicant warrants that no person or agency has been employed or  
retained to solicit or secure acceptance of this application upon an  
agreement or understanding for a commission, percentage, brokerage,  
or other contingent fee, except bona fide employees or bona fide  
commercial agencies maintained by the applicant for the purpose of  
doing business. For breach or violation of this warranty, the Govern-  
ment shall have the right to annul this contract without liability, or  
in its discretion to require applicant to pay to it the full amount of  
such commission, percentage, brokerage, or contingent fee.
3. The failure of applicant to inspect fully the property described in  
Schedule "A" or to be fully informed as to the condition thereof will not  
constitute grounds for any noncompliance with the terms of this applica-  
tion if accepted by the Government. \*

Figure 11-7a

\* 4. The property offered for disposal will be transferred "as is" and "where is" without warranty or guaranty, express or implied, of any kind or nature.

5. Transfer of property shall be accomplished by an instrument of transfer in form satisfactory to the Government without warranty, express or implied, and shall contain covenants running with the land for the observance by the transferee of the following reservations, restrictions, and conditions; except that the provisions of a(1) and (2) shall be included in the instrument of transfer as conditions subsequent rather than covenants:

a. Use by the Transferee.

(1) That, except as provided in subsection (4) hereof, the above-described property, hereinafter called "the airport," shall be used for the use and benefit of the public as a public airport on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of subsection 13 (g) (2) (C) of the Surplus Property Act of 1944, as amended.

(2) That, except as provided in subsection (4) hereof, the entire landing area, and all structures, improvements, facilities and equipment in which any interest is transferred shall be maintained for the use and benefit of the public at all times in good and serviceable condition to assure its efficient operation, provided, however, that such maintenance shall be required as to improvements, facilities, and equipment only during the remainder of their estimated life as determined by the Administrator of the Federal Aviation Agency or his successor. In the event materials are required to rehabilitate or repair certain of the aforementioned improvements, facilities, or equipment, they may be procured by demolition of other improvements facilities, or equipment conveyed as a result of this application and located on the above-described premises, which, in the opinion of the Administrator of the Federal Aviation Agency or his successor, have outlived their use as airport property.

(3) That insofar as is within its power, the transferee shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking, or lighting, or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(4) That none of the property described in Schedule "A" shall be used, leased, sold, salvaged, or disposed of by the grantee or transferee for other than airport purposes without the written consent of the Administrator of the Federal Aviation Agency, which consent shall\*

Figure 11-7b

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- \* be granted only if the Administrator of the Federal Aviation Agency determines that the property can be used, leased, sold, salvaged, or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the airport at which such property is located.

b. Use by the Government.

(1) That the United States of America through any of its employees or agents shall at all times have the right to make nonexclusive use of the landing area of the airport at which any property applied for herein is located or used, without charge; provided, however, that such use may be limited as may be determined at any time by the Administrator of the Federal Aviation Agency to be necessary to prevent undue interference with use by other authorized aircraft; provided, further that the United States shall be obligated to pay for damages caused by such use, or, if its use of the landing area is substantial, to contribute a reasonable share of the cost of maintaining and operating the landing area commensurate with the use made by it.

(2) That during any national emergency declared by the President of the United States of America or the Congress thereof, including any existing national emergency, the United States shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the airport at which the surplus property applied for herein is located or used, as it then exists, or of such portion thereof as it may desire; provided, however, that the United States shall be responsible for the entire cost of maintaining such part of the airport as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession, or control and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession; provided, further, that the United States shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively, of any improvements to the airport made without United States aid and never owned by the United States.

c. Miscellaneous.

(1) That no exclusive right, as defined in subsection (g)(2)(C) of section 13 of the Surplus Property Act of 1944, as amended, for the use of the airport at which the property applied for herein is located or used shall be vested (either directly or indirectly) in any person or persons to the exclusion of others in the same class. \*

Figure 11-7c

11-220

\* (2) That the applicant shall grant or obtain for the benefit of the United States a release from any and all liability it may be under for restoration or other damages under any lease or other agreement covering the use by the United States of any airport, or part thereof, owned, controlled, or operated by the applicant, upon which, adjacent to which, or in connection with which the surplus property applied for herein was located or used; provided, that no such release shall be construed as depriving the applicant of any right it may otherwise have to receive reimbursement under section 17 of the Federal Airport Act for the necessary rehabilitation or repair of public airports heretofore or hereafter substantially damaged by any Federal Agency.

d. Reservations and Restrictions.

(1) That, in the event that any of the terms, conditions, reservations, and restrictions upon or subject to which the property is disposed of are not met, observed, or complied with, whether due to legal inability or otherwise, the title, right of possession, and all other rights transferred shall at the option of the United States revert in then existing condition to the United States upon demand made in writing by the Administrator of the Federal Aviation Agency, or his successor, at least sixty (60) days prior to the date fixed for the reversion of such title, right of possession, and other rights transferred, provided the breach shall not have been remedied within such sixty (60) day period.

(2) That any of the property described in Schedule "A" maybe successively transferred only with approval of the Administrator of the Federal Aviation Agency, or his successor, to the extent required by the provisions of Subsection (a)(4) of Section 5 hereof, with proviso that any such transferee assumes all the obligations imposed herein.

(3) If the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the United States may exercise its option to cause the title, interest, right of possession, and other rights transferred, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

e. Transferee's Obligations. The transferee shall take title subject to such rights, if any, as third persons may have in the above-described premises at the date of disposal of said premises by virtue

\*

Figure 11-7d



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\* of any grant from the United States or others and shall assume all duties, obligations, and liabilities of the United States or any agency thereof thereunder and hold the same harmless from all claims arising therefrom.

f. Mineral Rights. Subsurface rights to minerals or other interests included in the real property transferred for airport purposes may not be exploited in such a way as will interfere with the efficient operation of the airport.

g. United States Rights. The reservation in the United States of the right, title, and interest in and to all property of whatsoever nature not specifically transferred, together with right of removal thereof from the premises within a reasonable time, which shall not be construed to mean any period less than one (1) year after the date of the instrument of transfer. During such period, the United States, its agents, customers, transferees, successors in interest, and assigns shall have a right of ingress to and egress from the premises for the purpose of using, disposing of by sale or otherwise, and removing such property.

h. Application of Subparagraphs a, b, and c. The condition that, if permitted by law, the provisions of subparagraphs a, b, and c, above shall apply with equal force and effect to the airport in its present location, in instances where the airport itself is not included in the disposal.

i. Payment in Cash of Taxes, Assessments, etc. The transferee shall make payment in cash to the Government of an amount of money equivalent to the pro rata amount, as of the date of acceptance of the bid of the transferee, of all taxes, assessments, and similar charges made against the property conveyed, in instances where the particular Government agency holding the property is liable for the payment of such taxes, assessments, or charges.

j. Waiver of Any Existing Option. The transferee must obtain for the benefit of the Government, in form satisfactory to it, a waiver of any existing option granted to purchase the airport or any portion thereof.

6. From the time the Government gives notice of acceptance of the application, the applicant shall bear all risks and shall bear any and all losses sustained by reason of damage or injuries that may be suffered by the airport property, and notwithstanding such losses, damage, or injuries, each and all of the provisions of the agreement formed by acceptance of this application shall remain unimpaired and in full force and effect. \*

Figure 11-7e

\* 7. Upon receipt of Notice of Acceptance of the application by the Government, the successful applicant may, at its option, and upon notification to the Government and approval of the holding Government agency, immediately enter into possession of the airport property and use, operate, and maintain the same subject to, and in accordance with, all of the terms and conditions hereinabove set out and in addition, for the period prior to delivery of the instrument or instruments of transfer conveying legal title, subject to, and in accordance with, following provisions and conditions:

a. Transferee Shall Comply with all Pertinent Rules, Etc. The operation of the airport property shall be subject to such regulations as may be prescribed by the Administrator of the Federal Aviation Agency from time to time, and the transferee shall comply with all pertinent laws, ordinances, rules, orders, or other applicable regulations and shall hold the United States harmless from any liability or penalty which may be imposed by reason of any asserted violation thereof by the transferee.

b. Limitations on Major Structural Changes. The transferee shall not make, permit, or suffer any additions, improvements, or alterations to the airport property which constitute any major structural change or changes unless such change or changes (1) are made in carrying out a project under the Federal Airport Act of 1946, as amended (49 U.S.C. 1101); or (2) are made with the prior written consent of the Administrator of the Federal Aviation Agency. Change or changes made with the prior written consent of said Administrator and not under the Federal-Aid Airport Program shall be solely at the expense of the transferee, and unless such consent provides specifically that title to the addition or improvements so made shall vest in the transferee, title thereto shall at all the transferee, title thereto shall at all times remain in the United States and such additions or improvements shall be subject to all terms and conditions of this instrument. The transferee agrees to hold the United States harmless from mechanics' and materialmen's liens arising from any additions, improvements, or alterations effected by the transferee.

c. Right of Inspection. The District Engineer and the Federal Aviation Agency, or the designated representatives of either of them, shall have the right to inspect the airport at all times.

d. Claim for Damages. The transferee agrees to maintain, indemnify, and save harmless the United States against and from any and all claims for damages which may arise from or in connection with the privileges herein granted, excepting claims for injuries or death to persons resulting from willful or negligent acts or omissions of the United States or any of its officers, employees, agents, or agencies. \*

Figure 11-7f

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\* e. Payment of Charges Due. The transferee shall assume responsibility for the payment of all taxes and assessments and public utility charges becoming due on the property from the date of its entering into possession of the airport property.

f. Violation or Neglect of Contract. That if the transferee violates or neglects to perform any of the terms or conditions of the agreement formed by the acceptance of its application, it will, if required by the Administration, vacate said premises, remove all property of the transferee therefrom and restore the land, improvements, facilities, and equipment included herein to as good condition on such date of expiration or relinquishment as when received, ordinary wear and tear excepted. If the transferee shall fail or neglect to remove said property and to restore the land, improvements, facilities, and equipment included herein, then, at the option of the Government, said property shall either become the property of the United States without compensation therefor, or the Government may cause the property to be removed and the land, improvements, facilities, and equipment included herein to be so restored at the expense of the transferee and no claim for damage against the United States or its officers or agents shall be created by or made on account of such removal and restoration.

g. When Government Property is Unaccounted For. If, upon removal of the transferee from the premises prior to its acceptance of delivery of the instrument or instruments of transfer conveying title to the airport, any property (other than usable supplies and maintenance materials) of the United States is unaccounted for, the transferee shall make replacement to the satisfaction of the Administrator of the Federal Aviation Agency, or in lieu of such replacement, the transferee shall, if so required by the Administrator of the Federal Aviation Agency, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States or any of its agencies.

8. The successful applicant agrees to perform all acts necessary or desirable to enable it to enter into possession of the property within \_\_\_\_\_ days after acceptance of its application by the Administration and agrees to enter into possession not later than that date, under the same provisions and conditions of possession as set out in paragraph 7 above. Time shall be of the essence in the agreement formed by such acceptance.

9. The District Engineer assign or transfer its right, title, and interest in the agreement formed by its acceptance of the application to any other branch or agency of the United States, and upon such assignment or transfer, such branch or agency shall succeed to all the rights, powers, privileges, immunities, duties, and obligations of the District Engineer hereunder, and the District Engineer shall cease to have any duties or obligations hereunder. \*

Figure 11-7g

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\* 10. Neither the agreement formed by acceptance of this application nor any interest therein shall be assigned or transferred by the applicant to any other party.

11. No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of the agreement formed by the acceptance of this Application or to any benefit that may arise therefrom, but this provision shall not be construed to extend to such agreement if made with a corporation for its general benefit.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address of Applicant)

---

ACCEPTANCE BY THE GOVERNMENT

Accepted by and on behalf of the United States of America this  
\_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

By \_\_\_\_\_

\*

Figure 11-7h

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\*

SCHEDULE "A"

As the result of a field survey and recommendations made by the Administrator of the Federal Aviation Agency, the property hereinafter described has been classified as available for disposal as airport property under the Federal Property and Administrative Services Act, as amended, and the Surplus Property Act of 1944, as amended. (The descriptions are believed to be correct, but any error or omission shall not constitute any ground or reason for any claim by applicant against the General Services Administration or the Federal Government.)

a. Land. All that certain parcel of land located in the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_.  
more particularly described as:

b. Buildings and Improvements.

c. Necessary Operating Equipment.

Figure 11-7i

## INSTRUCTIONS TO APPLICANTS FOR AIRPORT PROPERTY

1. Standard Application Form. Applications must be submitted on the inclosed standard Application Form. Additional copies and any additional information desired may be obtained at the office of the District Engineer located at \_\_\_\_\_.

2. Rights Reserved. The right is reserved to waive any defect or informality in the applications received and to accept or reject any application. In the case of receipt of two or more applications of equal priority and merit, choice of the transferee will ordinarily be based on need for the property as airport property.

3. Property Offered in its Entirety. The property described in the application is offered for disposal in its entirety and is not severable, and bids for separate portions thereof will not be considered; provided, however, that the applicant may delete from Schedule "A" such buildings, improvements, and equipment as it does not desire to acquire hereunder.

4. If Applicant is Political Entity. If the applicant is a political entity, there shall be attached to the application copies, in duplicate, of so much of the records of its governing body as will show the official character and authority of the officer signing the application; authorize him to accept delivery of all formal instruments of transfer and agree that the transferee shall be bound by all the terms, reservations restrictions, and conditions of transfer set forth in the application. Such copies shall be duly certified to be true copies by the secretary or other official with powers of certification, and the official seal of the applicant shall be affixed to such certification.

5. Applicant Must Furnish Legal Authority. The applicant shall furnish with its application, and as a condition precedent to the delivery of the aforesaid instruments of transfer, evidence satisfactory to the Administration of its legal authority to accept transfer of the property applied for herein and to covenant to operate and maintain the same in the manner required hereby.

6. Airport Subject to Inspection. The airport is now subject to inspection by prospective transferees. Office of the District Engineer \_\_\_\_\_ will, upon request, make arrangements for such inspection.

7. Administration's Notice of Acceptance. Notice by the Government of acceptance or rejection of the application, if not personally made to a \*

Figure 11-7j

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\* duly authorized representative of the applicant, shall be deemed to have been sufficiently given when mailed in a postpaid or franked envelope to the applicant at the address indicated in the application. \*

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QUITCLAIM DEED AND TRANSFER AGREEMENT

(AIRPORT PROPERTY)

THIS QUITCLAIM DEED AND TRANSFER AGREEMENT, made and entered into by and between the UNITED STATES OF AMERICA, acting by and through the Secretary of the Army (Air Force), under and pursuant to the powers and authorities contained in the Surplus Property Act of 1944, 58 Stat. 765, as amended, 50 U.S.C. APP. 1622(g) (1948 ed.), and the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended 40 U.S.C. Chapter 10, (1958 ed.), and the delegation of authority to the Secretary of Defense from the Administrator of the General Services Administration (41 CFR Sections 101-47.302-2 and 101-47.308-2), and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) (20 Fed. Reg. 7113), Party of the First Part, and the (City of \_\_\_\_\_, \_\_\_\_\_, a body cooperate and politic under the laws of the State of \_\_\_\_\_, its successors and assigns, Party of the Second Part:

W I T N E S S E T H :

That the said Party of the First Part, for and in consideration of the assumption by the Party of the Second Part of all the obligations and its taking subject to certain reservations, restrictions and conditions and its covenant to abide by and agreement to certain other reservations, restrictions and conditions, all as set out hereinafter, conveys and \*

Figure 11-8a



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\* quitclaims to the said Party of the Second Part, its successors and assigns, under and subject to the reservations, restrictions, conditions, and exceptions hereinafter set out, all its right, title, and interest in the following described property in the County of \_\_\_\_\_, State of \_\_\_\_\_ to wit:

DESCRIPTION

\* \* \* \* \*

being (a part of) the same property acquired by the United States of America under \_\_\_\_\_ of record in Book \_\_\_\_\_.  
and WHEREAS, by Lease No. DA \_\_\_\_\_ etc.:

DESCRIPTION

\* \* \* \* \*

(Describe leased area)

Together with all existing easements appurtenant to the land covered by said lease, including, but not limited to, the avigation easements for runway approach zones, power easements, water line easements, and sewer line easements;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter contained, it is agreed by and between the Party of the First Part and the Party of the Second Part that the aforementioned lease and any and all modifications now in effect which would otherwise continue \*

Figure 11-8b

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\* in full force and effect, subject to the provisions thereof, including the leasehold interest of Party Of the First Part in buildings, facilities and improvements owned by Party of the Second Part, are hereby surrendered to the Party of the Second Part, subject to the terms and conditions hereof, and the said Party of the First Part, for and in consideration of the assumption by Party of the Second Part of all the obligations and its taking subject to certain reservations, restrictions and conditions and its covenants to abide by the agreement to certain other reservations, restrictions and conditions, all as set out hereinafter, does hereby bargain, sell, assign and transfer, but without warranty, express or implied, unto the said Party of the Second Part, its successors and assigns, under and subject to the reservations, restrictions, conditions, exceptions and rights hereinafter set out, all its right, title, and interest in the following described property, including all equipment and fixtures appurtenant thereto, situated in the County of \_\_\_\_\_, State of \_\_\_\_\_, and located on the leased land described above, to wit:

BUILDING NUMBER                      DESCRIPTION

\*                      \*                      \*                      \*                      \*

Together with the interest of Party of the First Part in utility systems, fueling facilities, lighting facilities, taxiways and runways located on the leased land, and also together with the following equipment

QUANTITY                                      DESCRIPTION

\*                      \*                      \*                      \*                      \*                      \*

Figure 11-8c

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\* EXCEPTING, HOWEVER, from this conveyance all right, title and interest in and to all its property in the nature of equipment, furnishings and other personal property located on the above described premises which can be removed from the land without material injury to the land or structures located thereon, other than property of such nature located on the premises hereby conveyed or surrendered from lease which is reasonably necessary for the operation or maintenance of the airport or for the operation or maintenance of the structures and improvements specifically listed hereinabove as being transferred hereby, for any reasonable use for which such structures or improvements are readily adaptable; and further excepting from this conveyance all its structures on said premises other than structures specifically described or enumerated above as being conveyed hereunder, including \_\_\_\_\_.

\* \* \* \* \*

And reserving to the Party of the First Part for itself and its lessees, licensees, permittees, agents and assigns the right to use the property and structures excepted hereby in such a manner as will not materially and adversely affect the development, improvement, operation, or maintenance of the airport and the right of removal from said premises of such property and structures, all within a reasonable period of time after the date hereof, which shall not be construed to mean any period more than one (1) year after the date of this instrument, together with a right of ingress to and egress from said premises for such purposes; \*

Figure 11-8d

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\* PROVIDED, FURTHER, that if any or all of the buildings and improvements described herein revert to Party of the First Part under the terms hereof, and at the time of such reversion some are located on land of Party of the Second Part not subject to reversion to Party of the First Part, Party of the First Part shall be allowed twelve (12) months from the date of such reversion to remove same, together with the right of ingress and egress for such purposes.

TO HAVE AND TO HOLD said premises, with appurtenances, subject to the exceptions, reservations, restrictions and conditions referred to and set forth in this instrument, unto said Party of the Second Part, its successors and assigns, forever.

By the acceptance of this Agreement or any rights hereunder, the said Party of the Second Part, its successors and assign, forever.

By the acceptance of this Agreement or any rights hereunder, the said Party of the Second Part, its successors and assigns, agrees that the surrender of leasehold and the transfer of the property transferred by this instrument, is accepted subject to the following restrictions set forth in subparagraphs (1) and (2) of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) and applicable rules, regulations and orders:

\*

Figure 11-8e

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(1) That, except as provided in subparagraph (6) of the next succeeding unnumbered paragraph, the land, leased premises, buildings, structures and improvements in which this instrument transfers any interest shall be used for public airport purposes for the use and benefit of the public, on reasonable terms and without unjust discrimination and without grant or exercise of any exclusive right for use of the airport within the meaning of the term "exclusive right" as used in subparagraph (4) of the next succeeding paragraph. As used in this instrument, the term "airport" shall be deemed to include at least all such leased premises, buildings, structures and improvements;

(2) That, except as provided in subparagraph (6) of the next succeeding paragraph, the entire landing area, as defined in Title 44, C.F.R. Chapter 1, Subchapter C, Section 101.19 (15 F.R. 1346) approved March 8, 1950, and all structures and improvements in which this instrument transfers any interest shall be maintained for the use and benefit of the public at all times in good and serviceable condition, provided, however, that such maintenance shall be required as to structures and improvements only during the remainder of their estimated life, as determined by the Administrator of the Federal Aviation Agency. In the event materials are required to rehabilitate or repair certain of the aforementioned structures and improvements, they may be procured by demolition or other structures and improvements transferred hereby and located on the above described premises which have outlived their use as airport property in the opinion of the Administrator of the Federal Aviation Agency. \*

Figure 11-8f

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\* By acceptance of this Agreement or any rights hereunder, the said Party of the Second Part, for itself, its successors and assigns, also assumes the obligations of, covenants to abide by and agrees to, and this transfer is made subject to, the following reservations and restrictions set forth in subparagraphs (1) to (7), inclusive, of this paragraph, which shall run with the land, imposed pursuant to the authority of Article 4, Section 3, Clause 2 of the Constitution of the United States of America, the Surplus Property Act of 1944, as amended, the Federal Property and Administrative Services Act of 1949 (63 Stat. 377) and applicable rules, regulations and orders:

(1) That insofar as it is within its powers, the Party of the Second Part shall adequately clear and protect the aerial approaches to the airport by removing, lowering, relocating, marking or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

(2) That the United States of America (hereinafter sometimes referred to as the "Government") through any of its employees or agents shall at all times have the right to make nonexclusive use of the landing area of the airport at which any of the property transferred by this instrument is located or used, without charge: Provided, however, that such use may be limited as may be determined at any time by the Administrator of the Federal Aviation Agency to be necessary to prevent undue interference with use of other authorized aircraft: Provided, further, that the Government shall be obligated \*

Figure 11-8g

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\* to pay for damages caused by such use, or if its use of the landing area is substantial, to contribute a reasonable share of the cost of maintaining and operating the landing area, commensurate with the use made by it.

(3) That during any national emergency declared by the President of the United States of America or the Congress thereof, the Government shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession, without charge, of the airport at which any of the property transferred by this instrument is located or used, or of such portion thereof as it may desire, provided, however, that the Government shall be responsible for the entire cost of maintaining such part of the airport as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession, or control, and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession; Provided, further, that the Government shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively of any improvements to the airport made without United States aid.

(4) That no exclusive right for the use of the airport at which the property transferred by this instrument is located shall be vested (directly or indirectly) in any person or persons to the exclusion of others in the same class, the term "exclusive right" being defined to mean: \*

Figure 11-8h

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\* (a) Any exclusive right to use the airport for conducting any particular aeronautical activity requiring operation of aircraft;

(b) any exclusive right to engage in the sale or supplying of aircraft, aircraft accessories, equipment, or supplies (excluding the sale of gasoline and oil), or aircraft services necessary for the operation of aircraft (including the maintenance and repair of aircraft, aircraft engines, propellers, and appliances).

(5) That, except as provided in subparagraph (6) of this paragraph, the property transferred hereby may be successively transferred only with the proviso that any such subsequent transferee assumes all the obligations imposed upon the Party of the Second Part by the provisions of this instrument.

(6) That no property transferred by this instrument shall be used, leased, sold, salvaged, or disposed of by the Party of the Second Part for other than airport purposes without the written consent of the Administrator of the Federal Aviation Agency which shall be granted only if said Administrator determines that the property can be used, leased, sold, salvaged or disposed of for other than airport purposes without materially and adversely affecting the development, improvement, operation or maintenance of the airport at which such property is located;

(7) The Party of the Second Part does hereby release the Government and will take whatever action may be required by the Secretary of the \_\_\_\_\_ to assure the complete release of the Government from any and all liability the Government may be under for \*

Figure 11-8i



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\* restoration or other damages under any lease or other agreement covering the use by the Government of the Airport, or part thereof, owned, controlled or operated by the Party of the Second Part, adjacent to which, or in connection with which, any property transferred by this instrument was located or used; provided, that no such release shall be construed as depriving the Party of the Second Part of any right it may otherwise have to receive reimbursement under Section 17 of the Federal Airport Act for the necessary rehabilitation or repair of public airports heretofore or hereafter substantially damaged by any Federal agency.

By acceptance of this instrument or any rights hereunder, the Party of the Second Part further agrees with the Party of the First Part, as follows:

(1) That in the event that any of the aforesaid terms, conditions, reservations or restrictions are not met, observed, or complied with by the Party of the Second Part, or any subsequent transferee, whether caused by the legal inability of said Party of the Second Part or subsequent transferee to perform any of the obligations herein set out, or otherwise, the title, right of possession and all other rights transferred by this instrument to the Party of the Second Part, or any portion thereof, shall at the option of the Party of the First Part revert to the Party of the First Part sixty (60) days following the date upon which demand to this effect is made in writing by the Administrator of the Federal Aviation Agency, unless within said sixty (60) days such default or violation shall have been cured and all such terms, conditions,\*

Figure 11-8j

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\* reservations and restrictions shall have been met, observed or complied with, in which event said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously reverted, shall remain vested in the Party of the Second Part, its transferees, successors and assigns.

(2) That if the construction as covenants of any of the foregoing reservations and restrictions recited herein as covenants or the application of the same as covenants in any particular instance is held invalid, the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the Government may exercise its option to cause the title, right of possession and all other rights transferred to Party of the Second Part, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

This conveyance shall not in any manner waive, cancel, or abridge any rights previously granted or reserved to the Government by Quitclaim Deed dated June 8, 1948, to the City of \_\_\_\_\_ by Instrument of Transfer dated December 21, 1948, to the City of \_\_\_\_\_, or by any other agreement or instrument.

(3) This conveyance is not subject to Title 10, United States Code, Section 2662. \*

Figure 11-8k

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\* IN WITNESS WHEREOF, the Party of the First Part has caused these presents to be executed in its name by the Secretary of the Army (by direction of the Secretary of the Air Force) and the seal of the Department of the Army (Air Force) to be hereunto affixed, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

UNITED STATES OF AMERICA

By \_\_\_\_\_  
Secretary of the Army  
(leave blank for Air Force)

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

THE FOREGOING INSTRUMENT is also executed and accepted for and in behalf of the Party of the Second Part by \_\_\_\_\_ its (Mayor), and attested by its (City Clerk), and its seal hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

(City of \_\_\_\_\_, \_\_\_\_\_)

By \_\_\_\_\_  
(Mayor)

(NOTE: Deed should provide for acknowledgment by the appropriate Secretary and Officer executing for the grantee. This form may not be used when fee owned land in excess of \$1,000 value is to be conveyed.)

Figure 11-81

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APPLICATION FOR REAL PROPERTY  
FOR THE CONSERVATION OF WILDLIFE

(Place) \_\_\_\_\_

(Date) \_\_\_\_\_

To: District Engineer

\_\_\_\_\_  
(Address)

The \_\_\_\_\_ acting by and through  
(State Government)

\_\_\_\_\_  
\_\_\_\_\_  
(Street Address)

of the City of \_\_\_\_\_ pursuant to the provisions of the Act of Congress approved May 19, 1948 (Public Law 537, 80th Congress), and to the Rules and Regulations of the General Services Administration, hereby expresses its intention to acquire from the United States of America the following described property described in detail in "Program of Utilization" attached hereto and made a part hereof as "Exhibit A," located at the installation identified as follows:

(Here insert the name of the installation where the property desired is located.)

The Government reserves the right, as its interest may require, to reject any and all requests, or part of any request for property contained in this application; to waive defects, informalities, and irregularities; and to permit alteration of this application by the State by increasing or decreasing the property to be acquired herewith.

Enclosed herewith is a certification as to the authority of the undersigned to execute this application and to do all other acts necessary to consummate the transaction.

The undersigned agrees that this application is made upon the further terms and conditions: \*

Figure 11-9a

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- \* 1. Upon approval of this application, notice in writing of the extent of the property which may be transferred and of any boundary surveys which may be required to be performed at the expense of the transferee will be transmitted by the District Engineer, \_\_\_\_\_ to the undersigned.
- 2. Within five days from the receipt of such notice, the undersigned will elect to accept transfer of the property or to withdraw its application and will communicate such election in writing to the District Engineer at the above address.
- 3. It is understood that property transferred as a result of this request will be subject to:
  - (a) Reservation by the United States of all oil, gas, and mineral rights;
  - (b) The condition that the property shall continue to be used for wildlife conservation; and
  - (c) The condition that in the event the property transferred is no longer used for such purposes, or in the event the property is needed for national defense purposes, title thereto shall revert to the United States.

In support of its eligibility for transfer of the requested property, the undersigned submits a proposal entitled "Program of Utilization," in an original and five copies, which are attached hereto as Exhibit A, which proposal is drawn in accordance with, and contains the information required by "Instructions for Preparation of Applications for Real Property for the Conservation of Wildlife."

STATE OF \_\_\_\_\_

By \_\_\_\_\_

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

Figure 11-9b

ER 405-1-12  
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PROGRAM OF UTILIZATION

Real Property for the Conservation of Wildlife

Exhibit "A" of Application dated \_\_\_\_\_ 19 \_\_\_\_

Outline. The following information must be submitted under the above title and date line as a part of each application in connection with each property requested:

a. Name of Applicant Agency and Representative.

(1) Legal name of prospective transferee; and

(2) Name, title, and address of person having authority to consummate transaction as shown by attached certificate.

b. Property Name and Location.

(1) Name and identification of property; and

(2) Location of property the subject of this request:

(a) County;

(b) Nearest town; and

(c) Distance and direction from nearest town.

c. Description of Property.

(1) Land:

(a) Acreage;

(b) Boundaries - by legal description;

(c) Types of land, expressed as percentage of the total requested:

(a) agriculture, (b) wild hay, (c) grazing, (d) timber lands, (e) marsh, (f) brush, (g) submerged land, (h) lakes, (i) river, (j) other types;

(d) Land suitability: Discuss (a) farming, (b) grazing (c) trapping, (d) hunting, (e) logging, (f) fisheries, (g) other;

(e) Timber: Describe species and whether virgin, culled, or cut-over, approximate average stand.

\*

Figure 11-9c

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\* (2) Buildings: Describe individually by building number and designation as "Barracks," "PX," etc., and give dimensions and square feet of floor space.

(3) Utilities:

(a) Designation; and

(b) Description.

b. Program Brief. Here give in detail a complete plan for the administration and utilization of the property covering thoroughly the following:

(1) Portion of area to be set aside as refuge;

(2) Wildlife species to be primarily benefited;

(3) What protection will be afforded wildlife;

(4) What uses will be made of the lands other than for game propagation; and

(5) Specific use for each structure and for utilities.

e. Proof of Need.\*

f. Suitability of Property. \*

g. Plans to Finance and Maintain the Property. \*

h. Tax or Public Revenue Support. \*

i. Current and Planned Land Utilization for Wildlife Conservation. \*

\*Items e through i should be prepared in accordance with e through i of the instructions.

Conclude with a statement under oath as required in the instructions. \*

Figure 11-9d

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INSTRUCTIONS FOR PREPARATION OF APPLICATIONS  
FOR REAL PROPERTY FOR THE CONSERVATION OF WILDLIFE

1. General.

a. Separate Applications. A separate application for such property shall be submitted for each surplus installation or portion thereof. Each application must have attached as a part thereof a "Program of Utilization."

b. Preparation and Distribution of Applications. Applications for such property shall be prepared in an original and five signed copies.

(1) The original and copies as indicated above, consisting of "Application for Real Property for the Conservation of Wildlife" and "Program of Utilization" and exhibits and certificates necessary to meet the requirements of these instructions, shall be forwarded to the Regional Commissioner, General Services Administration, \_\_\_\_\_

(2) The applicant should keep one signed copy.

2. Special Instructions. In preparing the "Program of Utilization" the specific instructions set forth below shall be adhered to:

a. Name of Applicant Agency and Representative. Indicate the correct name of the applicant state, state commission, or agency, etc., to which conveyance may be made. The name, title, and address of the person to whom inquiries concerning the program are to be addressed shall be indicated.

b. Name and Location of Property. Indicate the official name of the surplus installation and its location, showing county and state and distance and direction from the nearest town.

c. Description of Property in Detail. The real property required shall be described. Buildings shall be identified by number, size, and type of construction. Where land and a considerable portion of an installation is applied for, a plat map of the installation, indicating the facilities required, should be attached if possible, and the total acreage, total number of buildings and structures, utilities, easements, etc., shall be summarized thereon. Such maps usually may be obtained from the installation custodian.

Figure 11-9e



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\* d. Program Brief. A complete program brief is required in order for the District Engineer to determine whether the property (1) can be utilized for wildlife purposes; and (2) is chiefly valuable for such purpose.

(1) Briefs should cover specific plans for such programs as:

(a) Refuge Lands. Inviolable sanctuaries for the unmolested feeding and breeding of wildlife, generally unavailable to the public;

(b) Game Management Units. Areas of value for the feeding, resting, and breeding purposes, part or all of which may be open to controlled public shooting during specified periods as a means of harvesting the surplus wildlife crop;

(c) Nurseries and Game Farms. Limited areas within the state to be used for the production of food plants and certain game species for planting and release on other areas within the state; and

(d) Research Areas. Units primarily used for research purposes in studying the life history, habits and management procedures of wildlife species in their native habitat.

(2) Programs which contemplate the unrestricted harvesting of game or the unrestricted shooting or trapping thereof or which for any reason do not contemplate positive action on the part of the requesting state to protect and/or propagate wildlife will not be acceptable. Areas sought solely for field trials, dog runs, etc., are not subject to transfer under the provisions of Public Law 537, 80th Congress.

e. Must Show Definite Proof of Need. Surplus property may not be determined to be chiefly valuable for the conservation of wildlife except where property is shown to be needed for such purposes. It is important that definite proof of need and the degree of inadequacy of existing facilities in the area where the property is sought be reflected in the program.

f. Must Show Suitability or Adaptability. The facilities to be conveyed must be suitable for the program proposed, or readily adaptable to such purposes. A statement as to suitability and/or plans for conversion of the property is required.

g. Must Evidence Plans to Finance and Maintain Property. A full and complete statement of ability to finance, operate, and maintain the facilities to be acquired shall be reflected, and plans for the conversion, staffing, operation and maintenance shall be discussed fully. \*

Figure 11-9f

\* h. Tax or Public Revenue Support. Indicate the degree of tax support. Include any appropriation of public revenues for the operation of the facilities either through contracts for services, etc., or direct appropriation.

i. Current and Planned Land Utilization for Wildlife Conservation. Attach, for the original and for each copy of the application, copies of a map of the state and show thereon the location, acreage, and program designation for each area being used by the state and/or its agencies for wildlife conservation purposes, and indicate by different color or shading the location, acreage, and proposed use of the property requested in this and previous applications and also other property which the state proposes to acquire for wildlife conservation purposes under the provisions of Public Law 537. Also, as paragraph "i" of the "Program of Utilization," itemize all requests previously submitted for property under the provisions of Public Law 537, identifying each by name of installation from which the property was requested, by date of request, and by acreage requested.

j. Statement Under Oath. The authorized official of the state instrumentality making this application shall state under oath that the applicant is an instrumentality of State Government; and that the facilities to be acquired will be used chiefly for the conservation of wildlife. This statement shall be attached to the application.

k. Notice of Intent and Time of Filing. Neither written nor oral inquiries nor oral requests to withhold the disposal of property will be given consideration. Before the District Engineer will take action on a proposal to acquire property, it must receive a formal letter of intent, or an executed application, to acquire such property. However, any requestor filing a timely letter of intent will be given thirty days from the date the letter of intent is received in the District Engineer's office in which to submit a formal application. \*

Figure 11-9g

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SAMPLE DEED FOR CONVEYANCE OF LAND AND IMPROVEMENTS  
FOR CONSERVATION OF WILDLIFE

THIS INDENTURE by and between the United States of America, acting by and through the Secretary of the Army (Air Force) under and pursuant to the powers and authority contained in the Act of 19 May 1948, C.310, 62 Stat. 240, 241 as amended, 16 U.S.C. 667 b-d (1958 ed.), and the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended 40 U.S.C. Chapter 10 (1958 ed.) and the delegation of authority to the Secretary of Defense from the Administrator of the General Services Administration dated 28 March 1957, 22 Fed. Reg. 2265 - 2266, and the redelegation of authority from the Secretary of Defense to the Secretary of the Army (Air Force) dated 24 April 1957, 22 Fed, Reg. 3164, Party of the First Part and the State of \_\_\_\_\_.

Party of the Second Part:

WITNESSETH:

That the said party of the first part for and in consideration of the continuous use and management of the property hereinafter described for wildlife conservation purposes, and the benefits that will accrue to the United States from its continued use for such purposes, and its taking subject to the reservations, restrictions, and conditions hereinafter set out, does release and quitclaim to the said party of the second part, \*

Figure 11-10a

\* under and subject to the said reservations, restrictions, and conditions, all its right, title and interest in and to the following described property in the county (ies) of \_\_\_\_\_ State of \_\_\_\_\_, to wit:

DESCRIPTION

(Metes and bounds description)

being (apart of) the same property acquired by the United States of America under \_\_\_\_\_, recorded in \_\_\_\_\_.

TO HAVE AND TO HOLD the foregoing described premises, together with all and singular, the appurtenances, rights, powers, and privileges thereunto belonging or in anywise appertaining, subject to the reservations, restrictions, and conditions hereinafter set forth, unto the said party of the second part.

The land and property conveyed by this instrument are subject to the reservation by the United States of all oil, gas, and other minerals, and there is reserved to the United States all oil, gas, and other minerals in the land conveyed hereby, together with the right of the United States, its authorized agents, representatives, lessees, or assigns, to enter upon the said land at any time to prospect for, mine, drill for, and remove, any and all such minerals.

The land and property conveyed by this instrument are subject to the condition that they shall be continuously used and managed for the conservation of wildlife and are conveyed upon and subject to the condition \*

Figure 11-10b

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\* that if they are no longer used for such purposes title thereto shall revert to the United States and the title of the state thereto, its successors and assigns, shall thereupon cease and determine and the United States shall have the immediate right of possession thereof and right of entry thereon.

The land and property conveyed by this instrument are subject to the further condition that in the event the President of the United States, the Congress thereof, the Secretary of Defense, or the Secretaries of the Army, Navy, or Air Force, or either of them, their successors in function or duly authorized representatives, determines that the said land and improvements are needed for national defense purposes, title of the state thereto, its successors and assigns, shall thereupon cease and determine and the United States shall have the immediate right of possession thereof and right of entry thereon.

IN WITNESS WHEREOF, the Party of the First Part has caused these presents to be executed in its name by the Secretary of the Army (by direction of the Secretary of the Air Force) and the seal of the Department of the Army (Air Force) to be hereunto affixed, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

UNITED STATES OF AMERICA

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

By \_\_\_\_\_  
Secretary of the Army  
(Leave blank for Air Force)

Acknowledgment

\*

Figure 11-10c



DEPARTMENT OF THE ARMY  
OFFICE OF THE CHIEF OF ENGINEERS  
WASHINGTON, D.C. 20314

ER 405-1-12  
Change 12  
27 Oct 80

REPLY TO  
ATTENTION OF:

NOTICE OF CANCELLATION  
(RESTORATION)

(Addressee)

Re: Notice of Cancellation of Lease No. \_\_\_\_\_  
(Location of Property)

(Salutation)

NOTICE is hereby given that the United States of America exercises its rights reserved in the lease instrument and will quit, relinquish, and give up the premises on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

Request acknowledgment in space below with your signature being witnessed and return \_\_\_\_\_ copies in the inclosed franked envelope. If you are interested in earlier termination, please contact this office. It may be possible to vacate the premises and mutually effect the termination by supplemental agreement to the lease contract.

Your cooperation in making this property available to the Government is very much appreciated.

UNITED STATES OF AMERICA

BY \_\_\_\_\_

Receipt of the above notice is hereby acknowledged. A joint survey of the condition of the premises (is) (is not) requested, as restoration (will) (will not) be required by the lessor under paragraph \_\_\_\_\_ of the lease. (Delete inapplicable words.)

WITNESS:

\_\_\_\_\_

\*

Figure 11-11

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DEPARTMENT OF THE ARMY  
OFFICE OF THE CHIEF OF ENGINEERS  
WASHINGTON, D.C. 20314



REPLY TO  
ATTENTION OF:

NOTICE OF CANCELLATION

(Addressee)

Re: Notice of Cancellation of Lease No. \_\_\_\_\_  
(Location of Property)

(Salutation)

NOTICE is hereby given that the United States of America exercises its rights reserved in the lease instrument and will quit, relinquish, and give up the premises on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

Request acknowledgment in space below with your signature being witnessed and return \_\_\_\_\_ copies in the inclosed franked envelope. If you are interested in earlier termination, please contact this office. It may be possible to vacate the premises and mutually effect the termination by supplemental agreement to the lease contract.

Your cooperation in making this property available to the Government is very much appreciated.

UNITED STATES OF AMERICA

BY \_\_\_\_\_

Receipt of the above notice is hereby acknowledged.

WITNESS:

\_\_\_\_\_

\_\_\_\_\_

\*

Figure 11-12

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\* JOINT TERMINAL CONDITION SURVEY OF GOVERNMENT LEASED PROPERTY

ITEMS OF RESTORATION/DAMAGES

LEASE NO. \_\_\_\_\_ USING SERVICE \_\_\_\_\_  
LOCATION \_\_\_\_\_ TYPE OF PROPERTY \_\_\_\_\_  
LESSOR \_\_\_\_\_

The following items of restoration and/or damages have resulted from Government use of the leased premises, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government has no control, excepted:

<u>DESCRIPTION OF ITEM</u>	<u>ESTIMATED COST</u>
1.	_____
2.	_____
3.	_____
TOTAL: _____	

The undersigned agree(s) that the above are all of the items to be considered in the restoration of the leased premises by yhe Government,

The undersigned lessor further agrees to accept the sum of \$ \_\_\_\_\_ in full settlement of any and all claims (except as to any unpaid rent) against the Government arising out of the use and occupancy of the leased premises.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
(Lessor)

\_\_\_\_\_  
(Representative of the Government) \*



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\*

COST OF RESTORATION

LEASE NO. \_\_\_\_\_ USING SERVICE \_\_\_\_\_  
LOCATION \_\_\_\_\_ TYPE OF PROPERTY \_\_\_\_\_  
LESSOR \_\_\_\_\_  
RENTAL \_\_\_\_\_ TERMINATION DATE \_\_\_\_\_

This lease provides for, and the lessor has established a legal right restoration of the leased premises by the Government.

I hereby certify that an investigation has been made as to each of the items of restoration or damages listed on the attached Joint Terminal Condition Survey and that: they are bona fide; that such resulted from use by the Government of the leased premises; that such are in excess of reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government has no control. I further certify that the estimate of cost assigned to each item is just and fair, and that such prices are comparable to charges made to the public generally for like materials and services in the vicinity of the leased premises.

Recapitulation of restoration factors:

Estimated cost of Government improvements ----- \$ \_\_\_\_\_  
Estimated gross salvage value of Government  
improvements -----  
Estimated net salvage value of Government  
improvements -----  
Estimated cost of restoration -----  
Net cost of restoration -----

It is recommended that the Government pay the lessor the sum of \$ \_\_\_\_\_ in lieu of physical restoration of the premises by the Government.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_,

\_\_\_\_\_  
(Representative of the Government)

\_\_\_\_\_  
(Title)

Approved by \_\_\_\_\_  
Title \_\_\_\_\_

\*

ENG Form 1440B-R  
1 Feb 61

Figure 11-14

ER 405-1-12  
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\*

PART 1

RECAPITULATION

Cost of Restoration ( Engineer Estimate and Appraisal)

Lease No. \_\_\_\_\_ Condemnation Action \_\_\_\_\_

Permit \_\_\_\_\_ Other \_\_\_\_\_

- 1. LOCATION: \_\_\_\_\_
- 2. TYPE OF PROPERTY: \_\_\_\_\_
- 3. OWNER: \_\_\_\_\_
- 4. RENTAL: \_\_\_\_\_
- 5. Does lease or Permit Contain a Restoration Clause? \_\_\_\_\_
- 6. Appraised value of Lessor's Property: (Taken from appraisal attached to original lease assembly or Part 5) \_\_\_\_\_
- 7. Original Cost (Actual or Estimated) of Government-owned improvements, fixtures, and alterations): (Part 4) \_\_\_\_\_
- 8. Estimated Market Value (Value in Place of Government-owned improvements, fixtures and alterations: (Part 4) \_\_\_\_\_
- 9. Gross Salvage value of Government-owned property: (Part 4) \_\_\_\_\_
- 10. Estimated Cost of Dismantling and/or Removal of Government-owned property: (Part 4) \_\_\_\_\_
- 11. Estimated Net Salvage Value of Government-owned Property: (Part 4) \_\_\_\_\_
- 12. Cost of Restoration other than Cost of Dismantling and removal (Part 3) \_\_\_\_\_
- 13. Total Cost of Restoration: (Par 10 and Par 12) \_\_\_\_\_
- 14. Net Cost of Restoration: (Par 9 minus Par 13) \_\_\_\_\_
- 15. Approximate Time Required for Actual Salvaging and restoration Operations:
  - Salvaging - No. of days \_\_\_\_\_
  - Restoration - No. of days \_\_\_\_\_
  - TOTAL \_\_\_\_\_

\*

ENG FORM 1440-R  
1 Jan 66

Figure 11-15a

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\*

PART 2

ANALYSIS AND RECOMMENDATIONS OF DIVISION  
REAL ESTATE OFFICER OR HIS REPRESENTATIVE

Analysis

1. Lease No. \_\_\_\_\_ provides for, and the lesser has established a legal right to restoration of the leased premises by the Government to the extent hereinafter set forth.

2. The Joint Terminal Condition Survey, substantiated by investigation, indicates that certain items of damages/restoration listed therein result from use by the Government. As a consequence, there exists a legal obligation on the part of the Government to either physically restore the leased premises or effect a cash settlement in lieu of restoration.

3. The itemized list of damages, together with cost estimates of the lessor and the Government (Part 3), indicates in summary that it will cost the Government \$ \_\_\_\_\_ to accomplish physical restoration of the leased premises by contract.

4. Substantiation for the pertinent cost estimates as stated in Part 1, Recapitulation, is reflected in the following supporting documents:

a. Part 3 - Itemized List of Damages with Estimate of Restoration costs.

b. Part 4 - Itemized List of Government-owned Improvements, Fixtures and Alterations Placed on Property with Estimated Values.

c. Part 5 - Fee Value Appraisal of Leased Premises. This includes data pertinent to diminution of value.

Proposed Settlement

Recommendations

Certification

I certify that the items of restoration and damages listed herein have been incurred as a result of use by the Government, and are considered above and beyond reasonable and ordinary wear and tear, and damages by the elements or by circumstances over which the Government has no control.

DATE \_\_\_\_\_

SIGNED \_\_\_\_\_

TITLE \_\_\_\_\_

Approved:

By \_\_\_\_\_

Title \_\_\_\_\_

\*

PART 3

ITEMIZED LIST OF DAMAGES RESULTING FROM GOVERNMENT USE OF THE PREMISES, REASONABLE AND ORDINARY WEAR AND TEAR AND DAMAGES RESULTING FROM CIRCUMSTANCES OVER WHICH THE GOVERNMENT HAS NO CONTROL EXCEPTED, WITH THE COST OF REPAIR OF EACH ITEM

ITEM DESCRIPTION  (1)	OWNER'S ESTIMATE  (2)	GOVERNMENT ESTIMATE  (3)	ALLOWANCE TO OWNER* (of actual cost to Government)  (4)	REMARKS (Use reverse side or additional sheets as necessary)  (5)
	** TOTAL			

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Explanation of damage, destruction and loss paid for or restored by Government, is attached hereto.

\*Where restoration work is performed by Government, show actual cost to Government.

\*\*Total of all items to appear on last page only.

Prepared by \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Approved by \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Sheet \_\_\_\_\_ of \_\_\_\_\_

ENG FORM 1440-R  
1 Jan 66

USARJ ESN 10076735 c

\*

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PART 4

\*

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ITEMIZED LIST OF GOVERNMENT-OWNED  
IMPROVEMENTS, FIXTURES AND ALTERATIONS  
PLACED ON PROPERTY, WITH ESTIMATES OF  
VALUE

LEASE NO.: \_\_\_\_\_  
CONDEMNATION ACTION: \_\_\_\_\_  
PERMIT: \_\_\_\_\_  
OTHER: \_\_\_\_\_

(a)	Description and Size (b)	Quantity (c)	Condition (d)	Original or Estimated Cost (e)	Market Value (value in place) (f)	Gross Salvage Value (g)	Dismantling and/or Cost of Removal (h)	Net Salvage Value (g minus h) (i)	Cost of Restoration Result of Removal (j)	Remarks (use reverse side or additional sheets) (k)

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Prepared by \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_  
Approved by \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Sheet \_\_\_\_ of \_\_\_\_

ENG FORM 1440-R  
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DISCONTINUED 1/5/64

\*

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PART 5

REAL PROPERTY APPRAISAL ANALYSIS AND RECOMMENDATIONS

(Date)

NOTE: In order that the appraisal can serve as a proper basis for, and support of, determinations required by Section IV of this Regulation, the appraisal should provide an estimate of the current value of the property in its unrestored condition and the current value of the property as restored.

BY \_\_\_\_\_

TITLE \_\_\_\_\_

Reviewed and Approved (date)

BY \_\_\_\_\_

TITLE \_\_\_\_\_

ENG FORM 1440-R  
1 Jan 66

Figure 11-15e

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\*

CERTIFIED MAIL

DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT, CORPS OF ENGINEERS

P.O. Box 2711

Los Angeles, California 90053

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SPLRE-MD-(L)

Re : NOTICE OF TERMINATION  
Lease :  
Property:

Dear Lessor:

NOTICE is hereby given that the United States of America exercises its rights reserved in the lease instrument and will terminate the above cited lease on \_\_\_\_\_.

Request your acknowledgement in the appropriate space below with your signature(s). Return 2 copies in the inclosed franked envelope. If you are interested in earlier termination, please contact this office. It may be possible to vacate the premises and mutually effect the termination by Supplemental Agreement to the lease contract.

UNITED STATES OF AMERICA

By: \_\_\_\_\_  
JOHN HOUSTON  
Chief, Real Estate Division

R E L E A S E

I hereby release and forever discharge the Government, its officers, agents, and employees, from all claims for damages or for restoration, and from all liability that may arise out of said lease and the occupation by the Government of the property (except any unpaid rent).

DATED \_\_\_\_\_  
\_\_\_\_\_

R E S T O R A T I O N R E Q U I R E D

I hereby request a joint terminal inspection of the premises, as stated in paragraph \_\_\_\_ of said lease, as restoration other than normal wear and tear is required.

DATED \_\_\_\_\_

\*

Figure 11-16

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DEPARTMENT OF THE ARMY  
Corps of Engineers

Lease No. \_\_\_\_\_

RELEASE  
(Corporations)

WHEREAS, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_ a corporation existing under and by virtue of the laws of the State of \_\_\_\_\_ with its principal office located in the city of \_\_\_\_\_ county of \_\_\_\_\_, and State of \_\_\_\_\_ did lease, demise, and let unto the United States of America certain premises situated in the city of \_\_\_\_\_, county of \_\_\_\_\_, and the state of \_\_\_\_\_, and more particularly described as follows:

WHEREAS, the use of said premises is no longer required by the United States of America and possession of said property having been redelivered by the United States of America to the lessor, on

the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

Now, Therefore, Know All Men By These Presents, that we, \_\_\_\_\_

\_\_\_\_\_ for and in consideration of the sum of One Dollar and other valuable considerations, the receipt of which are hereby acknowledged, have remised, released, and forever discharged and by these presents do for ourselves, our successors, and assigns, remise, release, and forever discharge the United States of America, its officers, agents, employees of and from all manner of actions, liability, and claims (except any unpaid rent for the period ending \_\_\_\_\_, 19 \_\_\_\_\_) against the United States of America, its officers, agents, and employees which we or they ever had, \*



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\* now have, or ever will have upon, or by reason of any matter, cause, or thing whatsoever, particularly arising out of said lease and the occupation by the United States of America of the aforementioned property.

In Witness Whereof, we have caused these presents to be signed by our \_\_\_\_\_ attested by our \_\_\_\_\_,  
and our corporate seal to be hereto affixed this \_\_\_\_\_  
day of \_\_\_\_\_, 19 \_\_\_\_\_

Attest:

\_\_\_\_\_  
By \_\_\_\_\_ \*

Figure 11-17b

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FORMAT FOR  
SUPPLEMENTAL AGREEMENT NO. \_\_\_\_\_  
TO EMERGENCY PLANT FACILITIES CONTRACT NO. \_\_\_\_\_

This Supplemental Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_  
19 \_\_\_\_, by and between the United States of America, hereinafter called  
the Government represented by the Contracting Officer executing this  
Agreement and \_\_\_\_\_, a corporation organized and existing under  
the laws of the State of \_\_\_\_\_, of the City of \_\_\_\_\_, in the  
State of \_\_\_\_\_, hereinafter called the Contractor, WITNESSETH THAT:

WHEREAS, the parties hereto have previously entered into Letter  
Contract No. \_\_\_\_\_ under date of \_\_\_\_\_, which  
Letter Contract was last amended by Supplement No. 6 thereto, \_\_\_\_\_  
\_\_\_\_\_; and

WHEREAS, pursuant to said contract and in accordance with the terms  
of Article 32 of Formal Supplement No. 3 thereto, executed by the parties  
on \_\_\_\_\_, and hereinafter referred to as the  
"principal contract," the Contractor constructed certain improvements  
designated in paragraph (a) of said Article 32 as Items 1 to 7 inclusive  
more particularly described hereinafter, on land owned by the Contractor  
at its plant located at \_\_\_\_\_, \_\_\_\_\_, in  
connection with its work under Contract No. \_\_\_\_\_, the  
costs for which Items 1 to 7 inclusive the Government has reimbursed the \*

Figure 11-18a

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\* the Government has reimbursed the Contractor in accordance with provisions of paragraph (b) of said Article 32, and which contract provides that title to Items 1 to 4 inclusive listed in the said paragraph (a) shall vest in the Government upon reimbursement by the Government to the Contractor of the costs thereof and that said Items 1 to 4 inclusive, hereinafter sometimes referred to as "Government-owned improvements," and all materials incorporated in for forming a part of said Items shall be deemed personality even though affixed to realty, and which contract further provides that title to said Items 5 to 7 inclusive shall be and remain in the Contractor, the Contractor to use said Items 1 to 7 inclusive without payment of rental therefor, in connection with its work under the said contract; and

WHEREAS, said contract further provides that the Contractor shall retain title to said Items 5 to 7 inclusive for a period of five years from the completion or termination of Contract No. \_\_\_\_\_, and that with respect to all improvements designated Items 1 to 7 inclusive the Contractor shall, for a of five years from the completion or termination of said Contract, perform certain obligations set forth in paragraph (e) of said Article 32 of the principal contract, which paragraph (e) further provides that the Contractor shall be released from the said obligations with respect to the said Items 1 to 7 inclusive as follows:

(1) Items 1 and 2, upon payment by the Contractor of the Government of the "added value" (as the same is defined in paragraph (h) of \*

Figure 11-18b

\* this article) of all such improvements, or upon the election by the Government to purchase the land upon which the same are located or to convey to the Contractor as provided for in paragraph (k);

(2) Items 3 and 4, upon payment by the Contractor to the Government of the "added value" of such improvements;

(3) Items 5, 6, and 7 upon the written determination of the Contracting Officer that the Government's interests will not be adversely affected by releasing the Contractor from such obligations and in any event upon the Contractor's being released from the above obligations with respect to the improvements described in Items 1, 2, 3, and 4 of paragraph (a); and

WHEREAS, pursuant to provisions of paragraph (g) (1) of said Article 32, the parties hereto have mutually agreed that the added value of Contractor's plant (as the same is defined in said paragraph (h) by reason of the Government-owned improvements designated as Items 1, 2, 3, and 4 is in the sum of Ninety Thousand Dollars (\$90,000.00); and

WHEREAS, it has been determined to be advantageous and in the interest of the Government to convey the said Items 1, 2, 3, and 4 to the Contractor upon payment to the Government of the said sum agreed upon by the added value to the plant of the Contractor,

NOW THEREFORE, pursuant to provisions of said contract and supplements thereto, and in consideration of the premises as well as the mutual obligations of the parties herein made and undertaken, the parties do mutually agree as follows:

\*

Figure 11-18c

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\* 1. That the Government, under authority of the Federal Property and Administrative Services Act of 1949, as amended, and regulations issued thereunder, and for and in consideration of the payment of Ninety Thousand Dollars (\$90,000.00), and the covenants, promises, and agreements on the part of the Contractor, herein contained and made, agrees and hereby does, effective as of \_\_\_\_\_ sell, relinquish, transfer and deliver to the Contractor without warranty, express or implied, and the Contractor agrees to and hereby does for the price of Ninety Thousand Dollars (\$90,000.00) aforesaid, payable in full on or before \_\_\_\_\_, 19 \_\_\_\_, purchase all rights, title and interest of the Government in and to the following property:

Item 1 - An addition to the west side of the existing plant at the north and thereof containing approximately 44,600 square feet, sometimes referred to as the "main addition."

Item 2 - A building approximately 12 feet by 12 feet located just west of the main addition, sometimes referred to as the "Switch house."

Item 3 - An addition to the west side of the existing plant at the south end of the present tool room containing approximately 2,500 square feet, sometimes referred to as the "tool room addition."

Item 4 - A building approximately 21.4 feet by 41.4 feet located a short distance west of the tool room addition and used for plant and oil storage, sometimes referred to as the "paint and oil storage house."

2. That the Government, as of the \_\_\_\_\_, 19 \_\_\_\_, releases the Contractor from all obligations under the said contract, as \*

Figure 11-18d

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\* supplemented with respect to Items 1, 2, 3, and 4 listed in the foregoing paragraph, and releases the Contractor from all obligations set forth in paragraph (e) of said Article 32 of the principal contract with respect to said Items 1 to 7 inclusive.

3. That the Government, as of \_\_\_\_\_, 19 \_\_\_\_, cancels and relinquishes forever any rights and licenses granted to it by the Contractor under the terms of Contract No. \_\_\_\_\_ and supplements thereto, relating to the said Items 1 to 4 inclusive.

4. That the Contractor will, on \_\_\_\_\_, 19 \_\_\_\_, accept the surrender of the said Government-owned improvements heretofore designated as Items 1, 2, 3, and 4 and appurtenances thereto, in their present condition, and will assume the custody and care of said improvements and the risk of loss or damage thereto by fire or any other cause thereafter, the Government being thereafter relieved from any responsibility therefor.

5. That the Contractor relinquishes and forever discharges the Government, its officers, agents and employees of and from all manner of actions, liabilities and claims which, against the Government, its officers, agents and employees, the contractor now has or ever will have, for the restoration of the land upon which the said improvements designated Items 1 to 4 inclusive were constructed and for any restoration whatsoever of the property of the Contractor in connection with said Items 5, 6 and 7, and for any matter, cause of thing whatsoever arising out of the occupation by the Government or the aforesaid land or buildings of the Contractor, under the said contract and supplements thereto. \*

Figure 11-18e

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\* 6. That the Contractor warrants that it has examined the premises and the buildings and structures thereon and appurtenances thereto to be conveyed hereunder and is fully familiar with the conditions of the same and the Government makes no representation or warranties as to the condition of any item thereof.

7. That the Contractor represents and warrants that it intends that all property being acquired under this contract shall be used in its production and that it is not acquiring any of such property for the purpose of reselling it directly or indirectly at a profit.

8. Except as herein modified, either expressly or by necessary implication, all the terms, covenants and conditions of Contract No. \_\_\_\_\_, as amended shall continue in full force and effect and apply equally to the provisions herein.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the \_\_\_\_\_ DAY OF \_\_\_\_\_, 19 \_\_\_\_.

THE UNITED STATES OF AMERICA

BY \_\_\_\_\_

\_\_\_\_\_

BY \_\_\_\_\_

\_\_\_\_\_

\*

Figure 11-18f

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\*

CERTIFICATE

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_  
\_\_\_\_\_ Secretary of the Corporation named as Contractor  
herein; that \_\_\_\_\_ who signed this contract on  
behalf of the Contractor was then \_\_\_\_\_ of said  
corporation; that said contract was duly signed for and in behalf of said  
corporation by authority of its governing body and is within the scope of  
its corporate powers.

(Corporate seal)

\_\_\_\_\_ \*

Figure 11-18g

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\*  
C       AGREEMENT BETWEEN THE DEPARTMENT OF DEFENSE AND THE SMALL  
O       BUSINESS ADMINISTRATION FOR THE DEVELOPMENT OF A PROGRAM  
P       OF ASSISTANCE FOR SMALL BUSINESS CONCERNS IN THE SALE OF  
Y       TIMBER AND RELATED FOREST PRODUCTS FROM FORESTS ON FEDERAL  
          LANDS UNDER THE JURISDICTION OF DEPARTMENT OF DEFENSE

-----

SECTION I.   PURPOSE

The purpose of this Memorandum of Understanding between the Department of Defense (DOD) and the Small Business Administration (SBA) is to implement the provisions of the Small Business Act, as amended, relative to the sale of Government timber in such manner as will effectuate sections 8(b)(7) and 15 of the Small Business Act.

SECTION II.   UNIFORM POLICY COVERING ASSISTANCE TO SMALL BUSINESS CONCERNS

The DOD will issue regulations requiring each military department to cooperate with SBA in an effort to aid, counsel, assist and protect, insofar as possible, the interests of small business concerns in acquiring timber and to insure that a fair proportion of the total sales be made to such concerns.

The regulations will also require each military department in cooperation with the Small Business Administration:

(A) To utilize to the fullest extent SBA facilities inventory files in order to identify interested small business concerns;

(B) To develop and disseminate sales promotion information designed to broaden small business participation;

(C) To review the terms and conditions of sales programs to assure that participation by small business concerns is being encouraged;       \*

Figure 11-19a

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\*

(D) To utilize the definition of small business established by SBA to maintain records to reflect the sales of timber made to small business concerns;

(E) To review periodically the results of sales programs to assure that small business is receiving a fair proportion of the total sales of timber;

(F) To utilize the certificate of competency authority vested in SBA by section 8(b)(7) of the Small Business Act when timber is being sold on a credit basis.

SECTION III. CERTIFICATES OF COMPETENCY

In cases of timber being sold on a credit basis, whenever a small business concern has submitted an otherwise acceptable bid or proposal but has been determined by the disposal officer not to be responsible as to capacity or credit, and if the bid or proposal is to be rejected solely for this reason: (1) SBA shall be notified of the circumstances so as to permit it, if warranted, to process a Certificate of Competency, and (2) award shall be withheld pending SBA action up to 10 working days from date of notification.

This procedure shall be mandatory for all sales except where the contracting officer certifies in writing that award must be made without delay and a statement justifying the action is signed by the contracting officer and placed in the contract file.

To assist SBA in determining the capacity and credit of any small business concern involved in a particular sale, the selling agency shall \*

Figure 11-19b

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- \* make available to SBA, at the time of notification, all available pertinent data, including technical and financial information, with respect to the small business concern involved.

SECTION IV. JOINT SET-ASIDE DETERMINATION

The DOD will afford the SBA an opportunity to review its proposed program of timber and other forest product offerings involving sales which have an estimated value of \$2,000 or more. It is agreed that the SBA will consider the forest management and other pertinent factors involved in such program and will review such matters with the contracting officer before requesting a set-aside. Following consideration and review of the said factors the SBA may request in writing that the contracting officer make certain set-asides for small business concerns under authority of Section 15 of the Small Business Act.

The contracting officers of the DOD will agree to and will make set-asides when recommended by SBA unless such action is inconsistent with program requirements of the DOD, in which case the DOD will submit its reasons for refusal to SBA in writing.

If a set-aside has been agreed to and subsequent events indicate that such action would not be in the best interest of the Government, the contracting officer will request the SBA representative to concur in a withdrawal of the joint determination; if the SBA representative concurs, the set-aside will be canceled; if the SBA representative does not concur, he will be given an opportunity to express his opinion, but the final decision for all sales action will remain with the contracting officer.

\*

Figure 11-19c

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\* SECTION V, PROCEDURES

DOD, in cooperation with SBA, will develop its own operational procedures designed to carry out this Memorandum of Understanding, Such procedures will be similar in effect to Chapter VII, Section 703, SBA Manual 600.

SECTION VI. AMENDMENT

This Understanding may be amended at any time by written agreement of the parties.

SECTION VII. EFFECTIVE DATE

This Understanding shall take effect upon the date of the execution thereof.

EXECUTED BY:

DATE:

Signed: JOHN E. HORNE  
\_\_\_\_\_  
Administrator, Small Business Administration

\_\_\_\_\_  
20 May 1979

Signed: THOMAS D. MORRIS  
\_\_\_\_\_  
Assistant Secretary (IL&FM), Department of  
Defense

\_\_\_\_\_  
16 May 1979

\*

Figure 11 - 19d

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\*

CERTIFICATE AS TO SMALL BUSINESS STATUS

The bidder certifies that he (is) (is not) a small business concern within the terms of the following definition:

In sales of Army forest timber a "small business" is a concern that:  
(1) is primarily engaged in the logging or forest products industry; (2) is independently owned and operated; (3) is not dominant in its field of operation; and (4) together with its affiliates does not employ more than 500 persons.

(From 13 CFR 121,3-9(b),  
Rev. 29 Fed. Reg. 2988, 5 Mar 64)

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF BIDDER

Intentional falsification of this certificate is a criminal offense punishable by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both. (Title 15, United States Code, Section 645 (a).)

INSTRUCTIONS: This certificate must be attached to and is a part of every invitation to bid on the sale of Army timber with an estimated value of \$2,000 or more. Failure to properly execute this certificate will not invalidate a bid, but a proper statement must be signed before the bid is accepted by the Government. Refusal or delay in executing a proper statement is grounds for rejecting the bid. \*

Figure 11-20

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Invitation No. \_\_\_\_\_

DEPARTMENT OF THE ARMY

(Name and Address of Issuing Office)

INVITATION FOR BIDS, BID AND ACCEPTANCE

SALE OF SURPLUS REAL PROPERTY

I N V I T A T I O N F O R B I D S

Sealed bids will be received until \_\_\_\_\_ (time of day)  
on \_\_\_\_\_ (date), 19\_\_\_\_, at \_\_\_\_\_ (place)  
and then and there publicly opened, for purchase, subject to the terms  
and conditions and in accordance with the instructions to bidders  
hereinafter contained, of Government-owned real property described as  
follows (including any described related personal property and  
appurtenances, and subject to any stated exceptions, reservations and  
restrictions) : \_\_\_\_\_

The terms and conditions of the sale and instructions to bidders  
are as follows:

1. All bids submitted shall be deemed to have been made with full  
knowledge of all of the terms, conditions, and requirements herein  
contained.

2. The property offered for sale is now subject to inspection by  
prospective bidders. The District Engineer, \_\_\_\_\_  
will, upon request, arrange for inspection of the property, and will  
furnish such further information as may be necessary with respect to  
the terms, conditions and instructions herein contained. Any title  
evidence, including abstracts, and continuations thereof, title  
certificates, or policies of title insurance which may be desired by  
the successful bidder will be procured by him at his sole cost and  
expense. The Government will, however, permit examination and  
inspection of such deeds, abstracts, tax receipts, affidavits of title,  
judgments in condemnation proceedings, or other documents relating to  
the title to the property involved, as it may have available. The \*

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\* failure of any bidder to inspect, or to be fully informed regarding the title to or the condition of all or any portion of the property, or negligence or mistake on the part of the bidder in preparing the bid, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid after and prior to award opening. The foregoing description of the property is believed to be sufficiently specific for purposes of identification. Any error or omission in such description shall not constitute any ground or reason for non-performance of the contract or claim by the successful bidder for any allowance, refund, or deduction from the amounts offered. The property is offered for sale "as is" and "where is." The Government does not make any guaranty or warranty, express or implied, with respect to the property as to title, quantity, quality, character or condition, size or kind; or that the property is in condition or fit to be used for the purpose for which intended.

3. The sale will be on an all-cash basis. Each bid must be accompanied by a certified check, cashier's check or postal money order, payable to the order of the "treasurer of the United States" (1) for the full amount bid if such amount is \$250.00 or less, or (2) for 25% of the amount bid, or \$250.00, whichever is greater, if the amount bid is more than \$250.00. All bids will remain open for acceptance or rejection for a period of \_\_\_\_\_ days from the date of opening bids. The deposit of the successful bidder will be retained by the Government to apply against payment of the purchase price and deposits of unsuccessful bidders will be returned, without interest, as promptly as possible after rejection, provided, however, that in the event of default by any bidder hereunder, that bidder's deposit may be applied by the Government to any loss, cost and expense occasioned to the Government thereby, including any loss, cost and expense incurred in selling the property and including any difference between the amount specified in the bid and the amount for which the Government may sell the property, if the latter amount be less than the former. The bidder is liable for the full amount of damages sustained by the Government because of his default; such liability is not limited to the amount of the bidder's deposit.

4. The balance of the purchase price will be paid by the successful bidder with \_\_\_\_\_ days after notice has been given by the Government of its readiness to deliver a deed. The United States will thereafter deliver to the successful bidder a quitclaim deed (and bill of sale, if needed to cover any related personal property) conveying all right, title, and interest of the United States in and to the property, without warranty, express or implied. The successful bidder will pay any required documentary revenue stamp tax. Title and the right of possession will remain in the United States until the deed has been delivered. The formal instruments of conveyance shall within a reasonable time after delivery be placed of record in the manner prescribed by local recording statues, \*

Figure 11-21b

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\* all at the sole cost and expense of the successful bidder. The successful bidder will assume possession of and responsibility for the property upon delivery of the deed.

5. Sealed bids must be executed and submitted in quadruplicate on the bid form accompanying this Invitation for Bids, Bid and Acceptance or on exact copies thereof. Additional copies of the bid form may be obtained from the District Engineer.

6. A bid executed by an attorney or agent on behalf of the bidder must be accompanied by four authenticated copies of his Power of Attorney or other evidence of his authority to act on behalf of the bidder. If the bidder is a corporation, the CERTIFICATE OF CORPORATE BIDDER must be executed. If the bid is signed by the secretary of the corporation, the CERTIFICATE must be executed by some other officer of the corporation under the corporate seal. In lieu of the CERTIFICATE OF CORPORATE BIDDER, there may be attached to the bid copies so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

7. The invitation number and bid-opening time must be plainly marked on the left side of envelopes in which bids are submitted, for example:

---

Return Address

Sealed Bid

To be opened:

To:

REAL ESTATE DIVISION

Time \_\_\_\_\_

Date \_\_\_\_\_

INVITATION NO. \_\_\_\_\_

8. It will be the duty of each bidder to see that his bid is delivered by the time and at the place prescribed in the invitation. Bids received prior to the time of opening will be securely kept, unopened. The person whose duty it is to open them will decide when the specified time has arrived, and no bid or modifications of a bid or withdrawals of a bid received thereafter will be considered, except that those received before award is made but delayed in the mails by occurrences beyond control of the bidder maybe considered if written certification is \*

Figure 11-21c



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\* furnished by authorized postal authorities to that effect. No responsibility will attach for the premature opening of a bid not properly addressed and identified. All modifications of a bid or withdrawals of a bid must be in writing. Telegraphic bids will not be considered, but modifications or withdrawals by telegraph of bids already submitted will be considered if received prior to the time set for opening bids.

9. At the time fixed for the opening of bids, their contents will be made public by announcement for the information of bidders and others properly interested who may be present either in person or by representative, provided, however, that any information submitted in support thereof, the disclosure of which might tend to subject the person submitting it to a competitive business disadvantage, will upon request be held in strict confidence by the United States.

10. The right is reserved, as the interest of the Government may require, to reject any or all bids, to waive any defect or informality in bids received, and to accept or reject any bid or portion thereof.

11. Notice of acceptance or rejection of bids and notice that the Government is ready to deliver a deed and/or Bill of Sale shall be deemed to have been sufficiently given when telegraphed or mailed to the bidder or his duly authorized representative at the address indicated in the bid.

12. Except as otherwise provided in this Invitation for Bids, any dispute concerning a question of fact arising under this Invitation for Bids which is not disposed of by agreement shall be decided by the District Engineer, who shall reduce his decision to writing, and mail or otherwise furnish a copy thereof to the bidder. The decision of the District Engineer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the bidder mails or otherwise furnishes to the District Engineer a written appeal addressed to the Secretary of the Army. The decision of the Secretary, or his duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the bidder shall be afforded an opportunity to be heard and to offer evidence in support of appeal. Pending final decision of a dispute hereunder, the bidder shall proceed diligently with the performance of the contract and in accordance with the District Engineer's decision. This condition does not preclude consideration of questions of law provided that nothing in this condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law. \*

Figure 11-21d

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\*

13. This Invitation for Bids, including all the instructions, and conditions set forth herein, and the Bid, when accepted by the Government, shall constitute the contract of sale between the successful bidder and the Government. Such agreement shall constitute the whole contract, unless modified in writing and signed by both parties. No oral statements or representations made by, for, or ostensibly on behalf of either party shall be a part of such contract. Neither this contract, nor any interest therein, shall be transferred or assigned by the successful bidder.

14. No member of or delegate to the Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

15. The successful bidder warrants that he has not employed any person or agency to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the Government the right to annul the contract without liability or at its option to recover from the successful bidder the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the successful bidder upon a contract secured or made through bona fide established commercial agencies maintained by the successful bidder for the purpose of doing business. "Bona fide established commercial agencies" has been construed to include licensed real estate brokers engaged in the business generally. \*

Figure 11-21e

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\*

Invitation No. \_\_\_\_\_

B I D

\_\_\_\_\_  
Place

\_\_\_\_\_  
Date

To: (Name and Address  
of Issuing Office)

The undersigned \_\_\_\_\_  
a corporation existing under the laws of the State of \_\_\_\_\_  
or a partnership consisting of \_\_\_\_\_  
or an individual trading as \_\_\_\_\_  
of \_\_\_\_\_

(Address and Telephone Number)

hereby offers to purchase from the United States of America, subject to  
the terms and conditions and in accordance with the instructions to  
bidders contained in Invitation for Bids No. \_\_\_\_\_, attached  
hereto and made a part hereof, the right, title, and interest of the  
United States in and to the property described in said invitation for  
\_\_\_\_\_ (\$ \_\_\_\_\_).

Inclosed is a certified check, cashier's check, or postal money order  
payable to the order of the Treasurer of the United States, in the amount  
of \_\_\_\_\_ (\$ \_\_\_\_\_).

By:

(Business address)

\*

Figure 11-21f

ER 405-1-12  
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\*

Certificate of Corporate Bidder

I, \_\_\_\_\_  
certify that I am the \_\_\_\_\_ Secretary of the corporation  
named as bidder herein; that \_\_\_\_\_, who signed this bid  
on behalf of the bidder, was then \_\_\_\_\_  
of said Corporation; that said bid was duly signed for and in behalf of  
said Corporation by authority of its governing body, and is within the  
scope of its corporate powers.

SEAL

\_\_\_\_\_

ACCEPTANCE BY THE GOVERNMENT

The foregoing bid is hereby accepted by and on behalf of the  
United States this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_ \*

Figure 11-21g

11-281

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Change 12  
27 Oct 80

\*

Invitation No. \_\_\_\_\_

DEPARTMENT OF THE ARMY

(Name and Address of Issuing Office)

INVITATION FOR BIDS, BID AND ACCEPTANCE

SALE AND REMOVAL OF BUILDINGS (OR OTHER REAL ESTATE IMPROVEMENTS)

LOCATED AT \_\_\_\_\_

I N V I T A T I O N F O R B I D S

Sealed bids will be received until \_\_\_\_\_ (time of day)  
on \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ (place)  
and then and there publicly opened, for the purchase and removal from  
the site, subject to the terms and conditions and in accordance with  
the instructions to bidders hereinafter contained, of that Government-  
owned property described on the accompanying bid form. This invitation  
does not include personal property, except fixtures firmly attached,  
unless specifically listed or identified herein.

The terms and conditions of the sale and instructions to bidders  
are as follows:

1. All bids submitted shall be deemed to have been made with  
full knowledge of all of the terms, conditions, and requirements  
herein contained.

2. (Note: To be modified at discretion of the District Engineer,  
as provided by applicable regulations.) Bids may be submitted for one  
or any number of items but a separate amount must be bid for each item  
for which a bid is submitted. Lump sum bids covering several or all  
items will not be considered. The Government may accept or reject any  
item or items of any bid, unless such bid is qualified by specific  
limitation.

3. All bids will remain open for acceptance or rejection for a  
period of \_\_\_\_\_ calendar days from the date of opening bids. \*

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1 Feb 66

Figure 11-22a

\*

4. The property for sale is located at \_\_\_\_\_ and is now subject to inspection by prospective bidders. The District Engineer, \_\_\_\_\_ will, upon request, arrange for inspection of the property, and will furnish such further information as may be necessary with respect to the terms, conditions and instructions herein contained. The failure of any bidder to inspect, or to be fully informed regarding the condition and location of all or any portion of the property will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid after opening. The description of the property is believed to be sufficiently specific for purposes of identification. Any error or omission in the description (including locations, when specified) shall not constitute any ground or reason for nonperformance of the contract or claim by the successful bidder for any allowance, refund, or deduction from the amounts offered. The property is offered for sale "as is" and "where is." The Government does not make any guaranty or warranty, express or implied, with respect to the property as to quantity, quality, character or condition, size or kind, or that the property is in condition or fit to be used for the purpose for which intended.

5. The sale will be on an all-cash basis. Each bid must be accompanied by a certified check, cashier's check, travelers check, or postal money order, payable to the order of the "Treasurer of the United States": (1) for the full amount bid if such amount is \$100 or less; or (2) for \$100 or 20 per cent of the amount bid whichever is greater if the bid is more than \$100. All bids will remain open for acceptance or rejection by the Government for a period of \_\_\_\_\_ days after the date set for opening of bids by this invitation. The deposit of the successful bidder will be retained by the Government and applied as part payment of the purchase price. The balance of the purchase price must be paid within \_\_\_\_\_ calendar days after notice of acceptance of the bid has been given by the Government. Title to the property will remain in the United States until the full purchase price has been paid. The successful bidder will not remove any property until payment in full is made and a fully executed copy of the contract of sale is received from the said District Engineer, with authorization to proceed with removal. (Note: Requirement for bid deposit may be waived for state and local governments as provided in FPMR Section 101-45.302-11.

6. Upon receipt of authority to proceed with removal of the purchased property, the successful bidder will assume all responsibility for the care and protection of the property and will expeditiously remove the property from the site and restore the site in a manner and to a condition satisfactory to the \_\_\_\_\_ in accordance with the following specifications: \*

Figure 11-22b

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(Note: Insert specifications covering the extent and method for accomplishment of work to be performed in connection with each item. The specifications should indicate whether or not removal of foundations, piers, curbs, slabs, floods, etc., is required and if so to what extent, and should include instructions regarding the cutting off of utilities, the capping of utility lines, the disposal of debris resulting from salvage operations, and any other data necessary to assure a proper understanding between the contracting parties as to the work to be performed under the contract.)

The successful bidder will bear all expense involved in accomplishment of the work required here under.

7. The successful bidder will complete all removal and restoration work required hereunder within \_\_\_\_\_ calendar days from the date of notice that removal of the property is authorized. The successful bidder will prosecute the work, or any separate portion thereof, with such diligence as will insure its completion within the time specified. Work may be performed between the hours of \_\_\_\_\_ to \_\_\_\_\_ daily, \_\_\_\_\_ excluded. When more than one item is sold hereunder, the time specified herein for completion of removal and restoration will run concurrently as to each item and not consecutively. No extensions of the time herein specified for completion of removal and restoration work will be granted unless, in the opinion of the said District Engineers unusual and unforeseeable circumstances justify such extensions, and agreement is reached on an adequate consideration for the extension.

(Note: Adequate additional consideration will be obtained for extensions unless the District Engineer determines a charge is inequitable as due to catastrophic circumstances or in some degree to Government action; or a charge would not be feasible because of likelihood of a default or other result not in the best interests of the Government. Where time is of the essence, in order to conform to construction schedules, or for other reasons, a statement to such effect should be made in this paragraph, and a statement that no extensions will be allowed should be substituted for the last sentence of condition 7 above.)

8. (Note: To be used at the discretion of the District Engineer.) In addition to the payments required under paragraph 5 above, each successful bidder will, within \_\_\_\_\_ calendar days after notice of acceptance of his bid by the Governments deliver to the said District Engineer a certified check, cashier's check or postal money order, payable to the order of the "Treasurer of the United States," in an amount equal to the total of the performance deposits specified below for all items on which he is the successful bidder, in order to insure faithful performance under this contract. The amount of the performance deposit required for each item is as follows:

\*

Figure 11-22c

Item No.Performance Deposit

(Note: Insert for each item the amount of performance deposit required. The amount specified for each item should be sufficient to protect the interest of the Government in the event of failure of the purchaser to perform all the work required under the contract incident to removal of the listed item within the time limit prescribed. The performance deposit listing may, if more convenient, be shown on the attached bid form, with appropriate reference in this paragraph to the listing there.)

In lieu of the deposit of a certified check, cashier's check, or postal money orders the purchaser may furnish a performance bond with surety approved by, and in a form acceptable, to the said District Engineer, the penal sum of such bond to be the same as the total of performance deposits provided for above. Standard Form 25, available at all surety and guaranteeing offices, may be used for this purpose.

9. In the event of any default by any bidder hereunder, all claim to and any title held in the property for sale, or any portion of it remaining, will be forfeited and all payments made by the defaulting bidder (including bid or performance deposits or bonds) will be applied by the Government to any loss, cost and expense occasioned to the Government by the default (including any loss, cost and expense in selling or otherwise disposing of such property in such manner, whether economic or not, as time limitations may allow). The defaulting bidder is liable for the full amount of damages sustained by the Government because of his default; such liability is not limited to the amount of the aforesaid payments. If the obligations of the successful bidder under this contract are discharged to the complete satisfaction of the said District Engineer, any performance deposit required hereunder will be promptly returned without interest. In the absence of default, the deposits of unsuccessful bidders will be returned without interest as promptly as possible after rejection of the bids.

10. The successful bidder will assume responsibility and liability for all injuries to persons or damages to property directly or indirectly due to, or arising out of, the operations of the successful bidder under this contract and the successful bidder agrees to indemnify and save harmless the United States against any and all claims of whatsoever kind and nature due to, or arising out of, this contract.

(Note: The District Engineer may, at his discretion, add here a requirement that the successful bidder carry liability insurance.)

11. (Note: To be used at the discretion of the District Engineer.)  
The successful bidder will not resell the property, or any portion \*

Figure 11-22d



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Change 12  
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\* thereof, or advertise the property, or any portion thereof, for resale until the property, or any portion thereof proposed for resale, has been removed from the site in accordance with this contract.

12. Sealed bids must be executed and submitted, in quadruplicate, on the bid form accompanying this invitation for bids, bid and acceptance, or on exact copies thereof. Additional copies of the bid form may be obtained from the said District Engineer.

13. A bid executed by an attorney or agent on behalf of the bidder must be accompanied by four authenticated copies of his Power of Attorney or other evidence of his authority to act on behalf of the bidder. If the bidder is a corporation, the Certificate Of Corporate Bidder must be executed. If the bid is signed by the secretary of the corporation, the Certificate must be executed by some other officer of the corporation under the corporate seal. In lieu of the Certificate of Corporate Bidder, there may be attached to the bid copies of so much of the records of the corporation as will show the official character and authority of the officer signing, duly certified by the secretary or assistant secretary, under the corporate seal, to be true copies.

14. The invitation number and bid-opening time must be plainly marked on the left side of the sealed envelope in which bids are submitted, for example:

Return Address

Sealed Bid

To be opened:

Time \_\_\_\_\_

Date \_\_\_\_\_

INVITATION NO. \_\_\_\_\_

TO: District Engineer, \_\_\_\_\_

ATTN: REAL ESTATE DIVISION

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

15. It will be the duty of each bidder to see that his bid is delivered by the time and at the place prescribed in the invitation. Bids received prior to the time of opening will be securely kept, unopened. The person whose duty it is to open them will decide when the specified time has arrived, and no bid or modifications of a bid, or withdrawals of a bid received thereafter, will be considered, except that those received before award is made, but delayed in the mails by occurrences beyond control of the bidder, may be considered if written certification is furnished by authorized postal authorities to that effect. \*  
No responsibility will attach for the premature opening of a bid not

Figure 11-22e

\* properly addressed and identified. All modifications of a bid or withdrawals of a bid must be in writing. Telegraphic bids will not be considered, but modifications or withdrawals, by telegraph, Of bids already submitted will be considered, if received prior to the time set for opening bids.

16. At the time fixed for the opening of bids, their contents will be made public by announcement for the information of bidders and others properly interested, who may be present, either in person or by representative; provided, however, that any information submitted in support thereof, the disclosure of which might tend to subject the person submitting it to a competitive business disadvantage, will upon request be held in strict confidence by the United States.

17. The right is reserved, as the interest of the Government may require, to withdraw any and all items from the sale; to reject any or all bids; and to waive any defect or informality in bids received.

18. Notice of acceptance or rejection of bids, notice of authority to proceed with removal of the purchased property, and any other notices hereunder shall be deemed to have been sufficiently given when telegraphed or mailed to the bidder, or his duly authorized representative, at the address indicated in the bid.

19. Any property of the United States damaged or destroyed by a bidder will be promptly repaired or replaced by the bidder to the satisfaction of the said District Engineer or, in lieu of such repair or replacement, the bidder will, if so required by the said District Engineer, pay to the United States an amount determined by the said District Engineer to be sufficient to compensate for the loss sustained by the United States.

20. Except as otherwise provided in this invitation for bids, any dispute concerning a question of fact arising under this invitation for bids, which is not disposed of by agreement, shall be decided by the District Engineer, who shall reduce his decision to writing, and mail, or otherwise furnish, a copy thereof to the bidder. The decision of the District Engineer shall be final and conclusive, unless, within 30 days from the date of receipt of such copy, the bidder mails, or otherwise furnishes, to the District Engineer a written appeal addressed to the Secretary of the Army. The decision of the Secretary, or his duly authorized representative for the determination of such appeals, shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition, the bidder shall be afforded an opportunity to be heard \*

Figure 11-22f

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Change 12  
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\* and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the bidder shall proceed diligently with the performance of the contract and in accordance with the District Engineer's decision. This condition does not preclude consideration of questions of law in connection with those decisions; provided, that nothing in this condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

21. This invitation for bids, including all the instructions, terms, and conditions set forth herein, and the bid, when accepted by the Government, shall constitute the contract of sale between the successful bidder and the Government. Such agreement shall constitute the whole contract, unless modified in writing and signed by both parties. No oral statements or representations made by, for, or ostensibly on behalf of, either party shall be a part of such contract. Neither this contract, nor any interest therein, shall be transferred or assigned by the successful bidder.

22. No Member of or Delegate to the Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

23. The successful bidder warrants that he has not employed any person or agency to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the contract without liability, or, at its option, to recover from the successful bidder the amount of such commission, percentage, brokerage or contingent fee in addition to the consideration herein set forth. This warranty shall not apply to commissions payable by the successful bidder upon a contract secured or made through bona fide established commercial agencies maintained by the successful bidder for the purpose of doing business. "Bona fide established commercial agencies" has been construed to include licensed real estate brokers engaged in the business generally.

SPECIAL INSTRUCTION TO BIDDERS. ATTENTION IS INVITED TO THE FACT THAT THE INTERSTATE COMMERCE ACT MAKES IT UNLAWFUL FOR ANYONE OTHER THAN THOSE DULY LICENSED UNDER THE ACT TO TRANSPORT THIS PROPERTY IN INTERSTATE COMMERCE FOR HIRE. ANYONE AIDING OR ABETTING IN SUCH VIOLATION IS A PRINCIPAL IN COMMITTING THE OFFENSE (49 U.S.C. 301-327 and 18 U.S.C. 2). \*

Figure 11-22g

ER 405-1-12  
Change 12  
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\*

Invitation No. \_\_\_\_\_

\_\_\_\_\_  
Place

B I D

\_\_\_\_\_  
Date

TO: (Name and Address of Issuing Office)

The undersigned \_\_\_\_\_  
a corporation existing under the laws of the State of \_\_\_\_\_  
a partnership consisting of \_\_\_\_\_  
an individual trading as \_\_\_\_\_  
of \_\_\_\_\_

(Address and Telephone Number)

hereby offers to purchase from the United States of America, subject to the terms and conditions and in accordance with the instructions to bidders contained in Invitation for Bids No. \_\_\_\_\_, attached hereto and made a part hereof, any or all of the items described below for which bid prices are indicated, in consideration of the price indicated for each such item.

<u>Item No.</u>	<u>Description and Location</u>	<u>Price Bid</u>
		(to be furnished by bidder)

(Note: All property not to be included in the sale should, whenever possible, be separated from the property to be sold and, before the sale, removed from the site. If this is not possible, specify in the listing of items what is not included in the sale and expressly reserve, in the body of the invitation, a right in the Government to remove such property.)

Inclosed is a certified check, cashier's check, or postal money order, Payable to the order of the Treasurer of the United States, in the amount of \_\_\_\_\_  
\_\_\_\_\_ (\$ \_\_\_\_\_).

\_\_\_\_\_  
By \_\_\_\_\_

\_\_\_\_\_  
Business Address

\*

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\*

CERTIFICATE OF CORPORATE BIDDER

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ Secretary of the corporation named as bidder herein; that \_\_\_\_\_, who signed this bid on behalf of the bidder, was then \_\_\_\_\_ of said corporation; that said bid was duly signed for and in behalf of said corporation by authority of the governing body and is within the scope of its corporate powers.

AFFIX  
SEAL

\_\_\_\_\_

=====

A C C E P T A N C E   B Y   T H E   G O V E R N M E N T

Accepted by and on behalf of the United States this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, as to Items numbered \_\_\_\_\_

\_\_\_\_\_

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_ \*

Figure 11-22i

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\*

SUPPLEMENT TO STANDARD FORM 114  
FOR USE IN TIMBER SALES CONTRACT

1. At the discretion of the Division or District Engineer, provisions similar to provisions 8 and 9, ENG Form 1038-R, Appendix II, may be included. (See FPMR, Section 101-45 .302-9, 302-10, and 302-11.)

2. Timber will be cut and removed in strict accordance with the terms and conditions of sale and instructions issued by the contracting officer. All timber shall be cut and removed on or before and none later than \_\_\_\_\_ . Stumps shall be cut to cause the least possible waste and not higher than \_\_\_\_\_ inches on the side adjacent to the highest ground; all trees shall be utilized to as low a diameter in the tops as practicable so as to cause the least waste and to a minimum diameter of \_\_\_\_\_ inches.

3. Timber shall be scaled by Scribner Decimal C log rule or counted or measured as prescribed by the contracting officer. If measurement is to be made after falling timber shall be piled or skidded for measurement as directed by the contracting officer or his duly authorized representative.

4. Slash and other refuse shall be disposed of as directed by the contracting officer.

5. All telephone lines, ditches, and fences, locate within or immediately outside the exterior boundaries of the sale area, shall be protected so far as possible in logging operations and, if injured, shall be repaired immediately by the purchaser. The contracting officer may, when in his judgment it is necessary, require the purchaser to move any such telephone line or fence from one location to another. Roads and trails shall at all times be kept free of logs, brush, and debris resulting from the purchaser's operations hereunder. Any road or trail used by the purchaser in connection with this sale that is damaged or injured beyond ordinary wear and tear, through such use, shall promptly be repaired by him to its original condition.

SPECIAL INSTRUCTION TO BIDDERS. ATTENTION IS INVITED TO THE FACT THAT THE INTERSTATE COMMERCE ACT MAKES IT UNLAWFUL FOR ANYONE OTHER THAN THOSE DULY LICENSED UNDER THE ACT TO TRANSPORT THIS PROPERTY IN INTERSTATE COMMERCE FOR HIRE. ANYONE AIDING OR ABETTING IN SUCH VIOLATION IS A PRINCIPAL IN COMMITTING THE OFFENSE (49 U.S.C. 301-327 and 18 U.S.C. 2). \*

ENG FORM 2140-R  
1 Feb 66

Figure 11-23

ER 405-1-12  
Change 22  
1 Apr 85

CONTRACT OF SALE  
EP 405-1-2

THIS CONTRACT OF SALE made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the District Engineer, U. S. Army Engineer District, \_\_\_\_\_, \_\_\_\_\_, for and on behalf of the United States of America, hereinafter called the "Government", and \_\_\_\_\_, whose address is \_\_\_\_\_, hereinafter called the "Purchaser", WITNESSETH:

THAT under authority of Public Law 999, 84th Congress, approved 6 August 1956 (70 Stat.1065), as implemented by the Delegations, Rules and Regulations issued by the Secretary of the Army (33 CFR 211.71-81; 28 FR 69, pp. 3450, 3451; 28 FR 86, p. 4375) the Government has made available for sale for cottage site development the following \_\_\_\_\_ land in the \_\_\_\_\_ Reservoir area, \_\_\_\_\_ County, State of \_\_\_\_\_:

(DESCRIPTION)

NOW, THEREFORE, in consideration of the \_\_\_\_\_ performance by each of the parties hereto, of the terms and \_\_\_\_\_ hereinafter set forth, it is mutually agreed as follows:

1. The Government agrees to \_\_\_\_\_ the Purchaser agrees to purchase the above-described \_\_\_\_\_ land, for (individual) (omit this word if inapplicable) cottage site development and use only, for the sum of \_\_\_\_\_ (\$\_\_\_\_\_). In addition thereto, the Purchaser shall \_\_\_\_\_ costs of survey and boundary markers necessary as an incident to \_\_\_\_\_ of the land to be conveyed. A deposit in an amount equal to \_\_\_\_\_ (20) per centum of the purchase price shall be paid by the \_\_\_\_\_ at the time of execution of this contract, receipt of which \_\_\_\_\_ acknowledged. Such payment shall be made payable to the \_\_\_\_\_ of the United States. In the event of default by the \_\_\_\_\_ this deposit shall be retained by the Government as liquidated \_\_\_\_\_ Payment in full for the balance of the purchase price and for \_\_\_\_\_ costs of the survey and boundary markers shall be made simultaneously \_\_\_\_\_ with delivery of the executed deed by the Government to the Purchaser.

2. The property hereinbefore described is sold "as is" and without recourse against the Government. The Government makes no representation or warranty, express or implied, as to condition, fitness for any use or purpose, or accuracy of the description. Accordingly, downward adjustment in the purchase price or demand for rescission based upon the failure of the property to correspond with the above description or inability by the Purchaser to use said property for cottage site purposes will not be

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1 Dec 64

(PROPONENT: DAEN-REP)

considered. In the event a survey reveals that the property to be conveyed contains a substantially greater acreage than contemplated, the Purchaser shall also pay to the Government the appraised fair value of such additional land, simultaneously with delivery of the deed.

3. The conveyance shall be by quitclaim deed, executed by the District Engineer, U. S. Army Engineer District, \_\_\_\_\_, at \_\_\_\_\_.

4. a. The property shall be used for cottage site purposes only. The term "cottage site" as used herein is defined in the Code of Federal Regulations, Title 33, Section 211.72. (The property to be conveyed is an Individual Cottage Site, i.e. a parcel of land developed or to be developed by the construction of a private cottage thereon or to be used, for private recreational purposes. The property shall not be subdivided but shall remain intact as a single unit. More than one (1) cottage may be constructed on such site. If this restriction is breached, title to the land and all interests placed thereon shall revert to and vest in the Government. The Government is required to institute legal proceedings to enforce its right to reversion, the grantee (Purchaser) shall bear the costs of such action.) (Strike the last four sentences. Inapplicable.)

b. The conveyance shall be subject to existing easements for public roads, highways and streets, and public utilities and pipe lines.

c. The Government reserves a perpetual easement to flood those lands lying below elevation \_\_\_\_\_ feet, mean sea level (strike this clause, if inapplicable).

d. The conveyance shall be placed on record in the manner prescribed by the laws of the State of \_\_\_\_\_ and at the sole cost and expense of the Purchaser, including payment of any required documentary stamp tax.

5. The Government is not obligated and shall not be liable for construction, maintenance or service of access roads or other improvements to the property. The Government shall be responsible for the maintenance of the lands included in this contract of sale.

6. Title to the property sold hereunder shall vest in the Purchaser at the time of delivery of the executed quitclaim deed.

7. If the Purchaser is presently in possession as a lessee of the premises to be conveyed, then it is mutually agreed that effective upon the date of delivery of the executed quitclaim deed, such lease is terminated and any unearned prepaid rental will be refunded to the Purchaser.

ENG FORM 3297-R

**FOR ILLUSTRATION PURPOSES ONLY**  
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ER 405-1-12  
Change 22  
1 Apr 85

8. In any case where liability of the Government to the Purchaser, under this Contract of Sale, has been established, the Government's maximum liability shall be limited to the refund of any monies paid by the Purchaser to the Government under this Contract of Sale.

9. The Purchaser warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Purchaser for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract or in its discretion to require the Purchaser to pay the full amount of consideration herein set forth, the full amount of commission, percentage, brokerage, or contingent fee.

10. No Member of or Delegate to Congress, Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a view to the promotion for its general benefit.

11. a. That, except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the said officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Purchaser. The decision of the said officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Purchaser mails or otherwise furnishes to the said officer a written appeal addressed to the Secretary of the Army. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this condition the Purchaser shall be afforded an opportunity to be heard and to present evidence in support of its appeal. Pending final decision of an appeal hereunder, the Purchaser shall proceed diligently with the performance of this contract and in accordance with the said officer's decision.

b. This Condition does not preclude consideration of law questions in connection with decisions provided for in paragraph a above: Provided that nothing in this Condition shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

12. a. The Government may, by written notice to the Purchaser, terminate this contract if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities

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Change 22  
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(in the form of entertainment, gifts, or otherwise) were offered or given by the Purchaser, or any agent or representative of the Purchaser, to any officer or employee of the Government with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing, of this contract provided, that the existence of the facts upon which the Secretary of \_\_\_\_\_ or his duly authorized representative makes such findings shall \_\_\_\_\_ and may be reviewed in any competent court.

b. In the event this contract is terminated as provided in paragraph a hereof, the Government shall be entitled to pursue the same remedies against the Purchaser as it would be in the event of a breach of the contract by the Purchaser \_\_\_\_\_ a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Army or his duly authorized representative) \_\_\_\_\_ be not less than three nor more than ten times the costs \_\_\_\_\_ by the Purchaser in providing any such gratuities to any such \_\_\_\_\_ employee.

c. The rights and remedies of the Government provided in this clause shall not be \_\_\_\_\_ and are in addition to any other rights and remedies provided \_\_\_\_\_ under this contract.

13. No part of this contract nor any interest therein shall be assigned or transferred by the Purchaser to any other party.

IN WITNESS WHEREOF, the parties hereto have executed this contract \_\_\_\_\_ and year first above written.

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WITNESSES \_\_\_\_\_ (L.S.)  
Purchaser  
\_\_\_\_\_  
THE UNITED STATES OF AMERICA  
\_\_\_\_\_  
By \_\_\_\_\_  
District Engineer  
U. S. Army Engineer District \_\_\_\_\_  
Contracting Officer

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CHAPTER 12  
REAL ESTATE ROLES AND RESPONSIBILITIES FOR CIVIL WORKS:  
COST SHARED AND FULL FEDERAL PROJECTS

SECTION I. GENERAL

12-1. Purpose. This chapter sets forth the roles and responsibilities for real estate planning and land acquisition for cost shared and full Federal water resource projects.

12-2. Applicability. This chapter is applicable to all Headquarters, U.S. Army Corps of Engineers (HQUSACE) elements and all USACE commands having civil works real estate responsibilities. While it applies to all civil works projects - specifically authorized, continuing authority, full Federal or cost shared - the level of detail necessary to apply the requirements of this chapter will vary depending upon the scope and complexity of each project. Further, if there is a conflict between the crediting provisions of this chapter and the terms and conditions of a Project Cooperation Agreement (PCA), a Local Cooperation Agreement (LCA), or a Letter of Assurance executed prior to the effective date of this chapter, then the provisions of such PCA, LCA, or Letter shall govern. The provisions of this chapter supersede all conflicting provisions contained in Sections II, III, IV, VI, and VIII of Chapter 2 and any conflicting provisions of Chapter 5 of ER 405-1-12.

12-3. References. See Appendix 12-A.

12-4. Glossary. A glossary of the acronyms and abbreviations used in this chapter is included as Appendix 12-B.

12-5. Program and Project Management Process. It is HQUSACE policy that Real Estate participate fully in the Program and Project Management process. Real Estate involvement is continuous throughout the development and implementation of the project, although the level of involvement varies during the different phases. Real Estate staff fully supports the Project Manager (PM) in coordinating real estate activities with non-Federal interests. For further information regarding the Program and Project Management process, see ER 5-1-11, Program and Project Management.

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SECTION II. REAL ESTATE PRINCIPLES AND GUIDELINES

12-6. General.

a. Under the Fifth Amendment to the U.S. Constitution, private property cannot be taken by the Federal government (Government) for authorized public purposes without the payment of just compensation. This same principle applies to States and political subdivisions thereof through the Fourteenth Amendment to the U.S. Constitution.

b. In addition to these constitutional provisions, general real estate acquisition policies for Federal and Federally funded projects, including cost shared water resource projects, are described in The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100-17; and the Uniform Regulations contained in 49 C.F.R. Part 24 (hereinafter collectively referred to as "P.L. 91-646"). Except as otherwise allowed therein, P.L. 91-646 requires that an acquiring agency comply with the following basic policies among others:

(1) the acquiring agency must make every reasonable effort to acquire the real property expeditiously by negotiation;

(2) real property must be appraised before the initiation of negotiations with the landowner and the initial offer to the landowner shall not be less than the approved appraisal of the fair market value of the property to be acquired;

(3) lawful occupants of real property that will be acquired shall not be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move;

(4) before requiring an owner to surrender possession of the real property, the acquiring agency must pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the acquiring agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property;

(5) the acquiring agency must not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property;

(6) if the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the acquiring agency must offer to acquire the uneconomic remnant along with the portion of the property needed for the project; and

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(7) if the acquiring agency intends to acquire any interest in real property by exercise of the power of eminent domain, it must institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

12-7. Navigation Servitude

a. Definition. The navigation servitude is the dominant right of the Government under the Commerce Clause of the U.S. Constitution (U.S. CONST. art.I, §8,cl.3) to use, control and regulate the navigable waters of the United States and the submerged lands thereunder for various commerce-related purposes including navigation and flood control. In tidal areas, the servitude extends to all lands below the mean high water mark. In non-tidal areas, the servitude extends to all lands within the bed and banks of a navigable stream that lie below the ordinary high water mark.

b. Determination of Availability. The determination of the availability of the navigation servitude is a two-step process. First, the Government must determine whether the project feature serves a purpose which is in the aid of commerce. Such purposes recognized by the courts include navigation, flood control and hydro-electric power. If it is so determined, then the second step is to determine whether the land at issue is located below the mean or ordinary high water mark of a navigable watercourse.

c. Exercise of Navigation Servitude. As a general rule, the Government does not acquire interests in real property that it already possesses or over which its use or control is or can be legally exercised. Therefore, if the navigation servitude is found to be available as a result of application of the process described in subparagraph b of this paragraph, then the Government will generally exercise its rights thereunder and, to the extent of such rights, will not acquire a real property interest in the land to which the navigation servitude applies. Generally, it is the policy of the U.S. Army Corps of Engineers (USACE) to utilize the navigation servitude in all situations where available, whether or not the project is cost shared or full Federal.

12-8. Relocation of Facilities or Public Utilities.

a. Substitute Facility Doctrine. Generally, the criteria for just compensation is the fair market value of the property at the time of the taking. A generally accepted definition of "fair market value" is "the amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner willing but not obligated to sell to a knowledgeable purchaser who desired but is not obligated to buy." INTERAGENCY LAND ACQUISITION CONFERENCE, UNIFORM APPRAISAL STANDARDS FOR FEDERAL LAND ACQUISITIONS (1992), at 3-4. Deviation from this criteria for measurement of just compensation has been required only when fair market value has been too difficult to ascertain or when its application would result in manifest injustice to the owner or to the public. In such cases,

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the cost of constructing a substitute facility may be used as the measure of just compensation paid to the facility owner where a substitute facility is, in fact, necessary. The substitute facility should generally serve the owner in the same manner and reasonably as well as does the existing facility. Typically, the substitute facility doctrine is applied to acquisitions of public utilities, highways and certain other publicly owned facilities (e.g., schools, courthouses, etc.), railroads, and cemeteries.

b. Relocations. The substitute facility doctrine is the underpinning for the concept of relocations as applied to implementation of water resources projects by the Corps of Engineers. Thus, the term "relocation" generally means providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other eligible public facility, and railroad when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement (and attendant removal) of the affected facility or part thereof. For cost shared projects where it is the responsibility of a non-Federal sponsor to perform or assure the performance of relocations, this general definition must be modified as applied to railroad bridges (and approaches thereto) or as applied to bridges over navigable waters of the United States depending upon the authorized purposes of the specific project. For flood control projects, see Article I.G. of the Model PCA for Structural Flood Control approved March 1994; for commercial navigation projects at harbors or inland harbors, see Article I.J. of the Model PCA for Commercial Navigation Harbor Projects approved May 1996. In addition, the authorizing legislation for a project or any report referenced in that legislation may alter the definition of the term "relocation" as it applies to that project or may alter its applicability to a particular facility.

c. Necessary Findings. Before replacement, alteration or other modification to a facility can properly be categorized as a relocation, generally the following criteria must be satisfied:

- (1) the project design requires that the existing facility be removed in whole, or in part, or that the project will negatively impact the ongoing function or operation of the facility;
- (2) the owner of the facility has a compensable real property interest in the land on which the impacted portion of the facility is located;
- (3) the facility serves a public purpose;
- (4) the owner has a duty to replace the facility as a result of legal or factual necessity; and
- (5) the fair market value of the interest that must be acquired due to project impact is too difficult to obtain; or payment of fair market value instead of providing a substitute facility would result in manifest injustice to the owner or to the public.

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d. **Attorney's Opinion of Compensability.** Preparation of an Attorney's Opinion of Compensability is the principal process for determining the extent of the legal obligation to relocate a utility or public facility that will be impacted by the construction or operation of a project. For additional information on Attorney's Opinions of Compensability, see paragraphs 12-17 and 12-22 of this chapter.

12-9. Determining the Appropriate Interest to Acquire.

a. **General.** It is the policy of USACE to acquire, or to require a non-Federal sponsor to provide, the minimum interest in real property necessary to support a project. The interests described in the following paragraphs have been determined to represent the minimum interest generally required to support the described purposes or features and must be utilized unless otherwise approved as described in subparagraph e of this paragraph. Greater or lesser interests may be appropriate depending upon the purposes of a project or other circumstances relating to project requirements or a particular acquisition.

b. **Fee Title.** Generally, fee title is required for the following:

- (1) dam sites;
- (2) lock and dam sites;
- (3) disposal and borrow areas required for future maintenance work;
- (4) public access areas;
- (5) recreation; and

(6) fish and wildlife mitigation lands, ecosystem restoration, and other environmental purposes. However, a lesser, or easement estate, may be appropriate based on the extent of interest required for the operation or requirements of a project.

(7) disposal areas located on fast land that are required for commercial navigation projects for a harbor or inland harbor.

c. **Permanent Easements.** Generally, permanent easements are required for the following:

- (1) levees, floodwalls and other permanent structures;
- (2) flowage areas;
- (3) ponding areas for dry dams;
- (4) channel rectification works and adequate access thereto;

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(5) areas impacted by induced flooding where the impact rises to the level of a taking;

(6) roads;

(7) waterway improvements and the right to permanently flood areas needed for navigation pools;

(8) the construction and maintenance of aids to navigation (the location and extent of land required for aids to navigation shall be coordinated by the District Commander with the local Coast Guard District Commander at the time the land is being obtained).

d. Temporary Easements. Generally, temporary easements are required for the following:

(1) adequate access and work areas required during construction of the project;

(2) disposal areas for all projects other than commercial navigation projects for a harbor or inland harbor if needed only to support construction; and

(3) Borrow Areas. While a temporary easement is generally required to support borrowing of materials, it is noted that small amounts of borrow materials, or disposal capacity, may sometimes be supplied by the construction contractor through use of a readily available commercial site. If so determined by an analysis conducted by PM, Engineering, Real Estate and other District and non-Federal sponsor offices, and if no other constraints exist, the construction contract solicitation documents should clearly request bids therefor and provision of such materials or capacity by the construction contractor would be in the nature of a construction item not LERRD (lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas). In no instance, however, should a contractor be required to provide lands, easements or rights-of-way (LER) for the project in support of borrow or disposal.

e. Approval Authority. Unless approved as part of a Real Estate Plan (REP) contained in an approved decision document for the project, requests to deviate from application of the interests required by subparagraphs b., c., or d. of this paragraph, together with adequate justification, must be forwarded in writing through Division to HQUSACE (ATTN: CERE-AP) for coordination, review and approval.

#### 12-10. Determining the Appropriate Estate.

a. Meaning. The term "estate" as used in this chapter means the written description of the type, nature, and extent of the real property interest that is required to support the construction, operation, or maintenance of a project.



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b. **Standard Estates.** Standard estates approved for use in either full Federal or cost shared projects are contained in Chapter 5 of this regulation. Once the appropriate interest is determined through application of the requirements of paragraph 12-9 of this chapter, the corresponding standard estate must be used if it is among those listed in Chapter 5.

c. **Non-Standard Estates.** Where there is no corresponding standard estate for the interest to be required, or where changes to the corresponding standard estate (or previously approved non-standard estate) are desired, a non-standard estate must be drafted and approved. The District Chief of Real Estate may approve non-standard estates if they serve the intended project purpose, substantially conform with and do not materially deviate from the corresponding standard estate contained in Chapter 5, and do not increase the costs nor potential liability of the Government. Changing an estate from easement to fee, or vice versa, or altering an estate so as to affect project purposes, is not within the scope of the District's approval authority. For all non-standard estates not within the scope of District's approval authority, approval may be obtained either by placing the body of the non-standard estate in the REP of a feasibility report or other study decision document that is approved by HQUSACE, or by request for approval forwarded prior to use of such estate through Division to HQUSACE (ATTN: CERE-A) for appropriate coordination, review, and final determination.

d. **Coordination with Non-Federal Sponsor.** Because a non-Federal sponsor is generally responsible for acquiring lands, easements, and rights-of-way pursuant to state law and procedure, full coordination and consultation with the non-Federal sponsor must occur prior to the Government's determination of the interests and estates required for a cost shared project. These efforts should begin in the early stages of plan formulation and continue, as appropriate, to the conclusion of the acquisition process.

**12-11. Rights-of-Entry.**

a. **General.** Two types of rights-of-entry are typically obtained by the Government: construction and survey and exploration. Section VI of Chapter 5 of this regulation contains guidance on the use of rights-of-entry by the Government.

b. **Forms.** ENG Form 1258-R, Right-of-Entry for Survey and Exploration, and ENG Form 2803-R, Right-of-Entry for Construction, will be used when the Government obtains rights-of-entry for these purposes. These forms are included as Appendices 12-C and 12-D of this chapter.

c. **Use of Rights-of-Entry by Non-Federal Sponsors.** Non-Federal sponsors are not required to utilize the standard forms for obtaining rights-of-entry for cost shared projects. However, the District Chief of Real Estate must assure that any right-of-entry to be obtained for a project by a non-Federal sponsor is sufficient for the intended project purpose and that it does not subject the Government to risk or liability. For other topics related to the use of rights-of-entry for cost shared projects, see paragraph 12-26 (Certification of Availability) and paragraph 12-37a (credit issues) of this chapter.

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12-12. Joint Land Acquisition Policy for Full Federal Reservoir Projects.

a. The Policy. The joint policy of the Department of the Interior and the Department of the Army governing the acquisition of land for full Federal reservoir projects was published in the Federal Register on 22 February 1962 in Volume 27 beginning at page 1734, and was again published on 2 July 1966 in Volume 31 beginning at page 9108. This policy statement recites, in part, that "[i]n so far as permitted by law, it is the policy of the Departments of the Interior and of the Army to acquire, as part of reservoir project construction, adequate interest in lands necessary for the realization of optimum values for all purposes including additional land areas to assure full realization of optimum present and future outdoor recreational and fish and wildlife potentials of each reservoir." The published policy also contains detailed provisions regarding the estates that are to be acquired in relationship to the reservoir's permanent features, storage pool, and other boundaries. For the full text of the published policy, see 32 C.F.R. §644.4. For implementing guidance, see Section IV of Chapter 2 of this regulation.

b. Applicability to Cost Shared Projects. Generally, the Joint Land Acquisition Policy will not apply to control the extent of land acquisition for cost shared reservoir projects, or to cost shared modifications to existing full Federal projects, where the lands, easements, and rights-of-way (LER) required to implement such project, or modification, must be provided by a non-Federal sponsor. Guidance will be provided by HQUSACE on a case-by-case basis in these circumstances.

SECTION III. PLANNING

12-13. Reconnaissance.

a. General. Before initiation of a feasibility study, USACE is generally required to perform, at Federal expense, a reconnaissance study of the water resources problem in order to identify potential solutions to such problem in sufficient detail to determine whether or not planning to develop a project should proceed to the preparation of a feasibility report.

b. Expedited Reconnaissance Study Phase. Beginning with all FY 97 new reconnaissance starts, an expedited reconnaissance study process applies that is more limited in scope than historical reconnaissance level efforts yet still addresses the requirements of Section 905(b) of the Water Resources Development Act of 1986 (WRDA 86), as amended. Four essential tasks must be accomplished:

(1) Determine that the water resource problem(s) warrant Federal participation;

(2) Define the Federal interest based on a preliminary appraisal consistent with Department of Army policies;

(3) Prepare a Project Study Plan (PSP); and

(4) Assess the level of interest and support from non-Federal entities in the identified potential solutions and cost sharing of feasibility phase and construction.

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c. **Level of Detail.** While the study must include a preliminary analysis of the Federal interest, costs, benefits, environmental impacts, and an estimate of the costs of preparing the feasibility report, generally only existing, readily available data should be used. Generally, the study costs are not to exceed \$100,000.

d. **Real Estate's Role.** Detailed real estate information is not required. However, since cost estimates will typically include costs attributable to real estate requirements, Real Estate is responsible for providing the real estate cost estimate that will be used in the study and for providing the Real Estate Section or information contained in the analysis or report to the same level of detail as contained in the analysis or report generally. In addition, since a major focus of the reconnaissance process is preparation of the PSP, Real Estate is responsible for providing informed input into the PSP regarding a realistic real estate cost estimate, scope of work, schedules and other real estate matters and tasks. Accordingly, Real Estate representatives should attend and participate in reconnaissance phase meetings as necessary to perform these responsibilities. For cost shared projects, the District should consult with the non-Federal sponsor during the preparation of the Real Estate Section, the real estate cost estimate, and the PSP.

12-14. Feasibility - General. If it is determined that there is a Federal interest, and for cost shared projects that a non-Federal sponsor is willing to support additional study, a feasibility phase of study is initiated. For cost shared projects, a Feasibility Cost Sharing Agreement (FCSA) is executed between the Government and the non-Federal sponsor that requires study costs to be shared equally between the Government and the non-Federal sponsor. At least 50 percent of a non-Federal sponsor's share must be in cash and the remaining 50 percent of the non-Federal sponsor's share may be contributed as in-kind products or services.

12-15. Feasibility - Real Estate's Role

a. It is essential that the real estate requirements for a water resource project are adequately identified and that the estimated costs and schedule for land acquisition are accurately established before authorization. Therefore, a comprehensive Real Estate Plan (REP) to the Feasibility Report, General Reevaluation Report, Limited Reevaluation Report, Detailed Project Report, Special Project Report, or other decision document, is generally required for all water resource projects whether cost shared or full federal. The contents of the REP are described in paragraph 12-16c below.

b. To effectively contribute to the formulation of a project, Real Estate should participate with Planning, the PM and other District elements in discussions and meetings held during the feasibility phase, any Alternative Formulation Briefing (AFB) and the Feasibility Review Conference (FRC). The AFB and FRC in the feasibility phase are the principal mechanisms for resolution of identified policy or legal issues. Real Estate representatives should attend these meetings, as appropriate, and should review and comment on subsequent MFRs and PGMs.

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c. For cost shared projects, real estate acquisition and performance of facility and utility relocations are major responsibilities of the non-Federal sponsor. Therefore, Real Estate should participate with Planning, PM and other District elements in the discussion of project requirements with the non-Federal sponsor. Further, Real Estate should initiate discussions with the non-Federal sponsor regarding acquisition policies and procedures, including compliance with P.L. 91-646, as amended, LERRD crediting procedures, and milestones for land acquisition. Real Estate must also regularly consult with the non-Federal sponsor throughout the feasibility phase as to the LER and facility/utility relocation requirements of the project as it proceeds to final formulation.

d. It is the responsibility of the District Chief of Real Estate to assure that the acquisition process is conducted in compliance with the requirements of P.L. 91-646. Accordingly, the feasibility phase work effort must be conducted so that schedules, assignments, and costs include these requirements. Since P.L. 91-646 requirements also attach to the acquisition of LER by non-Federal sponsors for cost shared projects (see paragraph 12-6.b of this chapter), it is the responsibility of the District Chief of Real Estate to monitor the non-Federal sponsor's acquisition program to assure its compliance with the requirements of P.L. 91-646. Accordingly, in addition to providing necessary advice and consultation during the feasibility phase on P.L. 91-646 process, procedures, and requirements, Real Estate must also advise the non-Federal sponsor that:

(1) P.L. 91-646 requirements apply to acquisition of real property that occur in anticipation of a Federal project including such acquisitions that occur prior to the execution of the PCA for the project;

(2) the non-Federal sponsor must maintain records that demonstrate compliance with the requirements of P.L. 91-646 including that landowners have been properly advised of their rights under the program and that evidence appropriate benefit determinations. These records must be maintained for a minimum of three years after the period of construction (as defined in the project PCA) and resolution of all relevant claims arising therefrom including P.L. 91-646 claims or appeals; and

(3) the non-Federal sponsor must have an appeals procedure for the prompt review of claims that it has allegedly failed to properly consider applications or provision of assistance under P.L. 91-646.

e. Project Management Plan (PMP). By the end of the feasibility phase, Real Estate should have a complete REP for inclusion in the Feasibility Report and a Baseline Cost Estimate for Real Estate for inclusion in the M-CACES cost estimate. Real Estate should ensure that the REP is provided to the PM for incorporation of real estate requirements and pertinent real estate data into the PMP. The PMP establishes the scope, schedule, budgets and technical performance requirements for the construction, operation, and management of the project.

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12-16. Real Estate Plan.

a. General. A Real Estate Plan (REP) is the Real Estate work product that supports project plan formulation. It identifies and describes the lands, easements and rights-of-way (LER) required for the construction, operation and maintenance of a proposed project, including those required for relocations, borrow material, and dredged or excavated material disposal. The REP also identifies and describes the facility/utility relocations that are necessary to implement the project. Further, the REP describes the estimated LER value, together with the estimated administrative and incidental costs attributable to providing project LER, and the acquisition process (e.g., who will be acquiring, the types of ownerships, non-Federal sponsor's ability to acquire land) that will be required to support project implementation. For cost shared projects, the REP can be prepared by either USACE or non-Federal sponsor Real Estate personnel. Regardless of who prepares the REP, USACE and the non-Federal sponsor should fully coordinate and consult with each other throughout the drafting and approval process to ensure consistency with applicable Federal and state law, policy, and procedure and to ensure that the expressed conclusions and plans are implementable in a timely fashion. Due to variations among project purposes, state law, and non-Federal sponsors, each REP should be tailored to the particular facts and circumstances of the project at issue with full explanation provided where exceptions to policy are being proposed. The REP must be prepared to the same level of detail as, and be part of, the decision document which it supports (e.g. Feasibility Report, General Reevaluation Report (GRR), Detailed Project Report (DPR), etc).

b. Project Type & Applicability. A REP must be prepared in support of decision documents for all types of water resources projects whether full Federal or cost shared, specifically authorized or continuing authority. The level of detail required for each item described in subparagraph c below will vary depending on the scope and complexity of each project.

c. Scope & Content. The REP must include a discussion of the following significant topics, including sufficient description of the rationale supporting each conclusion presented:

(1) The purpose of the REP must be described in relation to the project document that it supports. For example, if the REP is in support of a GRR, it should state this fact together with a brief description of prior REPs prepared for the project with approval status and the relationship of the subject REP to such prior project REPs (e.g., separable element, next in sequence, supplement, replacement).

(2) For each project purpose and feature, a description of the LER required for the construction, operation and maintenance of the project including those required for relocations, borrow material and dredged or excavated material disposal. This information should include acreage, estates, number of tracts and ownerships, and estimated value. The total acreage will be broken down as to fee and the various types and duration of easements required. Information should also be included regarding the extent that

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project LER is owned by private parties, by the non-Federal sponsor if applicable, and by other public entities. If the project will have more than one stage or phase, then the acreage will be further broken down by stage or phase consistent with the description of the project contained in the main report.

(3) For cost shared projects, a description of all LER required for the project that is already owned by the non-Federal sponsor, the acreage and interest owned, and whether the existing estates are sufficient and available for the project. Because unique aspects of state or local law may be involved, a sufficiency determination should be made by the Government only after full consultation with the non-Federal sponsor. The REP should also briefly discuss special value considerations or crediting principles that may be applicable to existing non-Federal sponsor ownerships (e.g., Federal appraisal rules, no credit for lands previously provided as an item of local cooperation; see paragraphs 12-37 and 12-38 of this chapter for additional information).

(4) Copies of proposed non-standard estates, if available, together with adequate justification therefor if approval of such estates is desired through approval of the decision document for the project.

(5) Whether there is an existing Federal project that lies fully or partially within the LER required for the project. If so, the REP must also briefly describe the existing project; the extent of overlap of the two projects; the identity of the sponsor, if any, of the existing project; whether the LER that supports the existing project was previously provided as an item of local cooperation for such project; the owner of the LER that supports the existing project; the nature of the estate(s) owned; and the sufficiency and availability of the existing estate(s) for the new project.

(6) Whether there is any Federally owned land included within the LER required for the project. If there is such land, the REP must also describe the purpose for which the land is required for the project; the identity of the managing agency for the land, the acreage and estate owned by the United States, and the acreage and estate required for the project; the views of the local representative of the managing Federal agency as to use for the project; and the acquisition plan for acquiring the required real property interests or other possessory rights. (Note: for interchange of national forest land, see 16 U.S.C. §505a).

(7) The extent, if any, that the LER required for the project lies below the ordinary high water mark, or the mean high water mark, as the case may be, of a navigable watercourse together with a brief discussion of whether the navigation servitude is available and will be exercised for project purposes. See paragraph 12-7 of this chapter for further discussion. Any proposed deviations from this policy or questions as to the availability of the navigation servitude should be identified as early as possible in the study phase and forwarded for resolution to CERE-AP who will coordinate with appropriate HQUSACE elements.

(8) A map clearly depicting the project area, the tracts required to support the project, significant utilities and facilities to be relocated, and any known or potential HTRW lands.

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(9) A discussion of whether there will be flooding induced by the construction or the operation and maintenance of the project. If induced flooding is reasonably anticipated, the REP should briefly describe the nature and extent thereof and whether additional acquisition of LER must, or should, occur as a result. Where significant induced flooding is anticipated, or where otherwise required, a written analysis (i.e., a Physical Takings Analysis) separate from the REP should be prepared with the conclusions of such analysis included in the REP. The analysis should incorporate the facts relating to the depth, frequency, duration, and extent of the expected induced flooding; discuss such facts in relationship to relevant case law regarding physical invasion takings and just compensation payment requirements; and present a reasoned conclusion on whether the expected induced flooding would rise to the level of a taking for which just compensation would be owed.

(10) A Baseline Cost Estimate for Real Estate as described in paragraph 12-18 below.

(11) The relocation assistance benefits anticipated to be required in accordance with P.L. 91-646 including the number of persons, farms and businesses to be displaced and estimated costs. Further, it must describe the availability of replacement housing and any need for last resort housing benefits.

(12) A description of the present or anticipated mineral activity in the vicinity of the proposed project that may affect construction, operation, or maintenance of the project together with a recommendation, including rationale, regarding acquisition of mineral rights or interests including oil or gas. The REP should also discuss other subsurface minerals or timber harvesting activity if applicable.

(13) For cost shared projects, a thorough assessment of the non-Federal sponsor's legal and professional capability and experience to acquire and provide the LER for the construction, operation and maintenance of the project, including its condemnation authority and quick-take capability. The Capability Assessment checklist, included as Appendix 12-E to this chapter, must be completed and included as part of the REP. This paragraph should also indicate that the non-Federal sponsor has been advised of P.L. 91-646 requirements and the requirements for documenting expenses for credit purposes. If it is proposed that the Government will acquire project LER on behalf of the non-Federal sponsor, the REP must fully explain the reasons for the Government performing such work. See paragraph 12-34 for information regarding acquisition by the Government on behalf of a non-Federal sponsor.

(14) If application or enactment of zoning ordinances is proposed in lieu of, or to facilitate, acquisition in connection with the project, a discussion of the type of ordinance, its intended purpose, and whether application or enactment and enforcement of the ordinance will result in a taking of a real property interest for which compensation must be paid.

(15) A reasonable and detailed schedule of all land acquisition milestones, including LER certification. The dates reflected in the schedule must be agreed upon by Real Estate, the PM and the non-Federal sponsor, if any.

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(16) A description of the facility or utility relocations that must be performed including information regarding the general nature of the impact to each facility or utility; the identity of the owners of the affected facilities and utilities; the purpose of the affected facilities and utilities; whether the owners have compensable real property interests in the land on which the impacted portion of the facility or utility is located; the conclusions reached in the Attorney's Opinion of Compensability prepared in support of the relocation determinations; whether special legal authority or direction affects relocation classification [for example, the project's authorizing legislation or reports referenced therein; Section 111 of the River and Harbor and Flood Control Act of 1958 (33 U.S.C. §633)]; and other information relevant to the proper identification and performance of relocations necessitated by construction, operation, or maintenance of the project. Each relocation determination must be supported by either a Preliminary or Final Attorney's Opinion of Compensability as described in paragraphs 12-17 and 12-22 of this chapter. In lieu of repeating general relocation information in the REP, specific citations to other report sections may be substituted for REP discussion to the extent that such sections provide the information required by this subparagraph and are consistent with the discussion that is contained in the REP.

(17) A concise discussion of the impacts on the real estate acquisition process and the LER value estimate due to known or suspected presence of contaminants that are located in, on, under, or adjacent to the LER required for the construction, operation or maintenance of the project including LER that is subject to the navigation servitude. See paragraph 12-37g of this chapter and Chapter 4 of this regulation for information on appraisal assumptions for contaminated lands. The discussion must include the status of the district's investigation for such contaminants, whether such contaminants are regulated under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq., (CERCLA); other Federal statutes [e.g., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6921 et seq.(RCRA)]; or specified state law. In the alternative, the status of the districts investigation may be included by referencing to a specific report section that contains such information. The REP must also disclose whether clean-up or other response actions of non-CERCLA regulated material will be required to implement the project and, if the project is cost shared, who will be responsible for performing, and paying the costs of performing such work, as between the Government and the non-Federal sponsor.

(18) A discussion of known or anticipated support for, or opposition to, the project by landowners in the project area and any known or anticipated landowner concerns related to issues that could impact the acquisition process (e.g., selection of estates, willing seller provisions, amount of acreage).

(19) If applicable, a statement that the non-Federal sponsor has been notified in writing about the risks associated with acquiring land before the execution of the PCA and the Government's formal notice to proceed with acquisition. See paragraph 12-31 of this chapter for further information.

(20) A description of any other real estate issue relevant to planning, designing or implementing the project.



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12-17. Preliminary Attorney's Opinions of Compensability.

a. Background. As described in paragraph 12-8 of this chapter, the provision of a functionally equivalent facility to the owner of an existing facility may be an appropriate form of just compensation for the acquisition of a real property interest. Also as described in such paragraph, the provision of the new or modified facility is called a relocation. Since relocation costs on one or more major facilities can increase project costs to a significant degree, and dramatically increase the performance and payment responsibilities of the non-Federal sponsor for a cost shared project, it is critical that informed decisions be made during project planning phases regarding the relocations that will be required as part of project implementation.

b. Attorney's Opinions of Compensability. Preparation of an Attorney's Opinion of Compensability is the principal process for determining the extent of the Government's or non-Federal sponsor's legal obligation to relocate a utility or public facility that will be impacted by construction or operation of a project. See paragraph 12-16c(16) of this chapter regarding the requirements to prepare an Attorney's Opinion of Compensability to support each relocation determination contained in an REP. For cost shared projects, analysis and full consideration of state law will generally be required in determining whether the owner of an impacted facility or utility has a compensable interest in real property. However, full consideration must also be provided as to Federal principles that apply to Federal projects such as the applicability and exercise of the navigation servitude and the existence and terms of Federally issued permits. Therefore, regardless of whether the Government or the non-Federal sponsor prepares the Attorney's Opinions of Compensability, full coordination and consultation must occur between the Government and non-Federal sponsor on this and other relocation issues.

c. Preliminary Attorney's Opinions of Compensability. The preparation of Attorney's Opinions of Compensability for the purposes of finally determining and performing necessary relocation items requires a large degree of certainty regarding project impact as well as significant time to properly investigate the underlying facts and form appropriate legal conclusions based on those facts and applicable law. See paragraph 12-22 of this chapter for extended discussion regarding Final Attorney's Opinions of Compensability. Since significant time may pass from a feasibility level study phase to performance of relocation items and since project impacts may not be fully understood during a feasibility level of study, a lesser degree of certainty and formality is required for Attorney's Opinions prepared for study purposes rather than for final determination and performance purposes. Therefore, to support relocation determinations for an REP, final opinions do not have to be prepared if, in lieu thereof, Preliminary Attorney's Opinions of Compensability have been prepared consistent with the following requirements:

(1) The level and formality of investigation generally, and the level of detail to be included in the preliminary opinion, must be commensurate with the significance of the relocation item(s) to project formulation and estimated project costs. Factors that must be considered include the amount

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of the estimated cost of the particular relocation item as well as the significance of such costs as compared to estimated total project costs; the significance of the relocation as related to successful implementation of the proposed project; the significance of the relocation as related to acceptability of the proposed project by the non-Federal sponsor, other political entities that may be providing funding to the non-Federal sponsor, or the public in general; the size and complexity of the relocation; and other relevant factors.

(2) A separate opinion must be prepared for each significant relocation proposed. Smaller relocation items of similar categorization may be combined into one preliminary opinion so long as each item is individually identified in the opinion.

(3) Title evidence reflecting ownership of a specific real property interest is not generally required and, after consideration of the significance of the individual relocation as discussed in subparagraph c.(1) of this paragraph, the attorney preparing the preliminary opinion may rely on any credible evidence (e.g., deed copy, assertions by the purported owner as to its unconditional interest) in determining the facility owner and the nature of the underlying real property interest.

(4) The preliminary opinion must be in writing and must, at a minimum, include the following matters: the identity of the facility affected and its owner; the general nature of the project impact to the facility; the real property interest owned by the facility owner in the general location of the impact; whether project impact is such that the owner of the facility is entitled to payment of just compensation; whether the facility must be modified, or otherwise relocated, as a result of application of applicable legal principles of just compensation or whether the appropriate measure of just compensation is fair market value; and the applicable legal principles of just compensation applied in the opinion.

(5) Statements must be included in the REP that Preliminary Attorney's Opinions of Compensability have been prepared and used for the purpose of completing the study and that final opinions and final relocation determinations will later occur as required by paragraph 12-22 of this chapter.

(6) In addition to the statements required by subparagraph c.(5) of this paragraph, for all decision documents that will serve as the basis for Congressional authorization of the project, a statement substantially similar to the following must be included in the REP:

"ANY CONCLUSION OR CATEGORIZATION CONTAINED IN THIS REPORT THAT AN ITEM IS A UTILITY OR FACILITY RELOCATION TO BE PERFORMED BY THE NON-FEDERAL SPONSOR AS PART OF ITS LERRD RESPONSIBILITIES IS PRELIMINARY ONLY. THE GOVERNMENT WILL MAKE A FINAL DETERMINATION OF THE RELOCATIONS NECESSARY FOR THE CONSTRUCTION, OPERATION, OR MAINTENANCE OF THE PROJECT AFTER FURTHER ANALYSIS AND COMPLETION AND APPROVAL OF FINAL ATTORNEY'S OPINIONS OF COMPENSABILITY FOR EACH OF THE IMPACTED UTILITIES AND FACILITIES."

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12-18. Baseline Cost Estimate for Real Estate.

a. General. A baseline cost estimate (BCE) for a project is the estimated total cost (for both the Government and the non-Federal sponsor, if applicable) to implement the project. It includes estimated costs for LERRD, planning & design, construction management, construction, contingencies, etc. The BCE is developed in accordance with ER 5-1-11, ER 37-2-10, ER 1110-2-1302 and the Civil Works Work Breakdown Structure (WBS), which provides the list of work activities/items to be included in the BCE.

b. Development of the Baseline Cost Estimate for Real Estate (BCERE). The BCERE includes the fair market value of the LER required for the construction, operation and maintenance of a proposed project, including those required for relocations, borrow material, and dredged or excavated material disposal; the costs of relocating displaced persons from homes, farms or business under P.L. 91-646, as amended; the incidental acquisition costs for both the Government and the non-Federal sponsor, if any; and estimated risk-based contingencies.

(1) The BCERE will be shown under Feature Code 01, Lands and Damages. The Gross Appraisal estimate developed for the REP in Feasibility (see Chapter 4 of this regulation) will be incorporated into the BCERE under Land Payments in the 01 account.

(2) If phased construction is proposed, costs for each construction phase should be separately identified in the BCERE. A list of all construction contracts, as determined during the feasibility phase, must be provided by the PM to Real Estate for use in developing the BCERE.

(3) Incidental acquisition costs for the Government or non-Federal sponsor may include those incurred for title work, appraisals, review of appraisals, coordination meetings, review of documents, review of P.L. 91-646 actions, legal support and other costs that are incidental to the acquisition of LER required for the project and that are otherwise reasonable, allocable and allowable. Government costs for staff monitoring and for reviewing, approving and crediting LER provided by a non-Federal sponsor are also included.

c. In developing the BCERE, the estimated values and costs are based upon financial costs attributable to market value not economic costs since the purpose of the estimate is to determine the total cost of implementing the project. It is noted, however, that cost estimates from Real Estate are also required in support of the economic analysis where the purpose is to estimate the economic costs of a project. Because the amount of these cost estimates may differ, it is important to clearly communicate as to the purpose and the application of all Real Estate cost estimates. For additional information on the distinction between financial and economic costs, see ER 1105-2-100, paragraph 6-149d and the NED Manual on National Economic Development Costs (IWR Report 93-R-12).

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12-19. Real Estate Design Memorandum (REDM).

a. Historical Perspective. Historically, after enactment of construction authorization, an REDM was prepared to present a detailed description of the real estate requirements for the project including utility and public facility relocations. Approval of the REDM at HQUSACE also represented approval to initiate land acquisition for the project. Supplements to the approved REDM were generally approved by the Division Commander acting through the Chief of Real Estate.

b. Post WRDA '86. With the enactment of WRDA '86, the majority of new projects were required to be cost shared by a non-Federal interest and increased emphasis was placed on cost estimate accountability and on streamlining the feasibility study and project authorization processes. As a result, Real Estate's planning efforts and cost estimates were integrated into those required for formulation of the selected project plan for which construction authorization would be sought. Thus, the REP became the most frequently used Real Estate planning document rather than a separate REDM.

c. Continuing Usage. Even though an REP will generally be the required Real Estate planning document, there may be circumstances requiring the preparation and approval of an REDM. One example is where acquisition of real property by the Government is tantamount to implementation of the project and approval of a decision document is required prior to commencement of the acquisition effort (e.g., some fish and wildlife mitigation projects). In addition, an REDM may be appropriate when there is a new acquisition requirement for an existing project for which REDMs were previously utilized.

d. Contents. Where an REDM is required, preparation shall be in accordance with the requirements contained in paragraph 2-19 of Chapter 2 of this regulation.

e. Approval Authority.

(1) In those circumstances where an REDM must be prepared, HQUSACE approval is required when the purpose of the REDM is to gain initial approval for implementing a project, or a separable element thereof, or when the REDM is otherwise classified as a project decision document that must be reviewed and approved at HQUSACE. In these circumstances, six copies of the REDM must be forwarded to CERE-AP for coordination with CECW-AR and other involved offices. Division Commanders are authorized to approve all other REDMs but without the authority to redelegate approval authority to District Commanders.

(2) Where substantial departure from an approved REDM is deemed to be necessary or advisable, an REDM Supplement must be prepared by the District and must be approved by the office that had the approval authority for the REDM being supplemented.

(3) Where REDM approval authority is unclear, a written request for guidance, together with a recommendation must be forwarded to HQUSACE (ATTN: CERE-A) for determination.

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SECTION IV. FINALIZING REAL ESTATE REQUIREMENTS

12-20. Project Boundaries. In preparing real estate acquisition boundaries, the following guidelines should be observed to the greatest extent possible:

a. Close blocking out will be accomplished in accordance with sound real estate practices.

b. For land acquired in fee, the blocked out final real estate acquisition line will be established in such manner as to minimize costs and cause the least disruption in the use of the remainder of the ownership.

c. Severance damages will be avoided to the greatest extent possible consistent with real estate requirements for the project. A remnant without access need not be acquired if the owner desires to retain the property and releases the Government or non Federal sponsor from damages for lack of access.

12-21. Full Federal Projects and Approval of Acquisition Lines. An approved REDM (see paragraph 12-19 of this chapter) contains maps depicting tentative acquisition lines that are, to some extent, irregular and located without full regard to their effect upon fringe tracts. It will, therefore, be necessary to establish final acquisition lines in accordance with sound real estate practices. Accordingly, fringe tracts must not be acquired until the final acquisition lines are approved by the Division Engineer in accordance with the submission and approval provisions contained in paragraphs 2-22 and 2-23 of Chapter 2 of this regulation.

12-22. Final Attorney's Opinions of Compensability.

a. Requirement. As provided in paragraph 12-17 of this chapter, a Preliminary Attorney's Opinion of Compensability may be prepared for the purpose of making a preliminary determination of whether a necessary utility or facility modification should be classified as a relocation in a REP. Regardless of whether a preliminary opinion or more formal work product was utilized for the purpose of preparing an REP, a Final Attorney's Opinion of Compensability must be prepared in writing for each proposed utility or facility relocation in accordance with the requirements contained below in this paragraph.

b. Timing.

(1) For cost shared projects where a non-Federal sponsor has the responsibility to perform or assure the performance of relocations, a Final Attorney's Opinion of Compensability must be prepared for each proposed relocation as follows:

(a) A Final Attorney's Opinion of Compensability must be prepared during Planning, Engineering and Design (PED) and prior to the execution of a PCA for the project for each relocation that has an estimated cost of \$250,000

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or more, including the value of additional real estate that may be required to perform the relocation, and for other relocations where determined by the District to be required due to the need for additional certainty or other reason.

(b) For all other relocations, a Final Attorney's Opinion of Compensability must be prepared in a timely manner prior to the Government's formal notice to the non-Federal sponsor of the relocations that it must perform, or for which it must assure performance, as determined by the Government to be necessary for construction, operation and maintenance of the project. See Article III.C. of the Model PCA for Structural Flood Control (March 1994) and see Article III.C. of the Model PCA for Commercial Navigation Harbor Projects (May 1996).

(2) For all other projects, a Final Attorney's Opinion of Compensability must be prepared for each proposed relocation prior to the Government entering into a relocation agreement with the owner of the utility or facility.

c. Contents. A Final Attorney's Opinion of Compensability must contain the following information:

(1) A complete record that adequately presents relevant factual and background information including the identity of the project, whether the Government or a non-Federal sponsor has the responsibility to perform or assure the performance of relocations for the project, a description of the utility or facility at issue, and the general nature of the impact to the utility or facility that is attributable to the construction, operation or maintenance of the project.

(2) A description of whether utility or facility modifications will occur in place or whether the current location of the utility or facility, or an identified part thereof, must be changed to facilitate construction, operation or maintenance of the project.

(3) A statement indicating whether the owner of the utility or facility has a duty to continue the operation of the utility or facility either as a matter of law or practical necessity.

(4) The attorney's opinion, supported by appropriate legal analysis, as to whether the owner of the utility or facility has a compensable interest in real property together with a description of such interest. Muniments of title must be utilized in reaching this conclusion and must be identified in the opinion.

(5) The attorney's opinion, supported by appropriate legal analysis, as to whether fair market value or payment based on the cost of providing a functionally equivalent facility is the proper measure of just compensation for the real property interest that must be acquired from the owner of the utility or facility. For all public facilities, the analysis supporting such opinion should include statements regarding whether it is of a type

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commonly bought and sold on the open market, whether the fair market value thereof is ascertainable, and whether providing fair market value rather than a substitute facility would result in manifest injustice as that term is used in relevant case law. See, for example, *United States v. 50 Acres of Land*, 469 U.S. 24 (1984).

(6) As appropriate, citations to the legal authority of the owner of the affected utility or facility to vacate, abandon, or convey the necessary interests in real property or to accept the conveyance of a substitute facility.

d. Acquisition by Relocation Agreement or Condemnation. Utilities and public facilities are normally acquired through execution of a relocation agreement. The agreement includes the engineering details of the relocation work as well as a right-of-entry for construction and provisions regarding exchange of the required real property interests. After construction of the relocation is completed in accordance with the agreement, deeds are exchanged to convey to the Government, or the non-Federal sponsor as the case may be, the real property interest required to support the project and to convey to the utility or public facility owner an interest in any additional land that was required for the relocation. If a relocation agreement cannot be negotiated with the utility or public facility owner, condemnation may be necessary to obtain the required real property interest on that tract. Cemeteries are always acquired by condemnation through the filing of a complaint only (rather than a complaint with Declaration of Taking),

#### SECTION V. ACQUISITION ACTIVITIES

12-23. General. This section describes acquisition activities which apply to both full Federal and cost shared projects, unless otherwise noted.

12-24. Public Meetings.

a. General. The real estate activities of USACE or the non-Federal sponsor are extremely sensitive, since they can disrupt peoples lives through the acquisition of their homes, farms and businesses. Therefore, it is important to keep landowners and others having an interest in the land informed of the land acquisition program. Timely dissemination of accurate information about the acquisition program and process is intended to avoid rumors and to permit affected landowners to plan for the future.

b. Public meetings are required by Section 302 of the Land Acquisition Policy Act of 1960, Public Law 86-645 (33 U.S.C. 597). Within six months after the date Congress authorizes construction of a water resources project, USACE or the non-Federal sponsor must advise owners and occupants in and adjacent to the project area as to the requirements for, and probable timing of, the acquisition of lands for the project. Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, USACE or the non-Federal sponsor shall conduct public

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meetings at locations convenient to owners and tenants to be displaced by the project in order to advise them of the proposed plans for acquisition and to afford them an opportunity to comment. The Congressional delegation of the district or districts in which the project is located should be invited to attend. Normally, the public meetings should be scheduled prior to the commencement of the land acquisition program.

c. At a minimum, information regarding the following matters should be disseminated at the public meeting:

- (1) factors considered in making the appraisals;
- (2) desire to purchase property without going to court;
- (3) legal right to submit to condemnation proceedings;
- (4) payments for moving expenses or other losses not covered by appraised market value;
- (5) occupancy during construction;
- (6) removal of improvements;
- (7) payments required from occupants of Government-acquired land;
- (8) withdrawals by owners of deposits made in court by the Government or non-Federal sponsor;
- (9) use of land by owner when easement is acquired; and
- (10) all other information that will assist landowners and tenants in understanding USACE's or non-Federal sponsor's real estate procedures such as acquisition schedules; the type of land interests to be acquired; the general policies that control land acquisition; approximate acquisition lines; and management of the project, etc.

d. Inquiries, comments of landowners and tenants, and problems developed at the landowners meetings should be recorded, video-taped, or, at least, a detailed written record should be made. The Division and CERE-AP should be informed as to the outcome of these meetings. Effective follow-up to supply any information not available at the meeting, or to consider any particular problems presented, is essential to realize the full advantage of the public relations program.

e. In addition to the foregoing, pamphlets containing this information and the information brochure explaining the benefits to landowners under P.L. 91-646 will be given wide distribution at approximately the same time the landowners meeting program is initiated. Copies will be furnished to the appropriate Congressional delegation.



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12-25. Timing of Acquisition for Fish and Wildlife Mitigation and for Recreation.

a. Fish and Wildlife Mitigation. As required by Section 906(a) of WRDA 86, in the case of any water resources project which is authorized to be constructed before, on, or after 17 November, 1986, construction of which has not commenced as of such date, and which necessitates the mitigation of fish and wildlife losses, LER required to support mitigation must be acquired before commencement of construction of the project or it must be acquired concurrently with the LER required to support the basic project purpose, whichever the Secretary of the Army, or his designee, determines is appropriate.

b. Recreation. As required by Section 926(a) of WRDA 86, in the case of any water resources project which is authorized to be constructed before, on, or after 17 November 1986, construction of which has not commenced before such date, and which involves the acquisition of LER for recreation purposes, such LER must be acquired along with the acquisition of LER for the basic project purpose.

12-26. Certification of Availability of Real Estate for Solicitation of Construction Contracts.

a. For either a full Federal or cost shared project, prior to issuance of the solicitation for a construction contract that requires real property interests, the District Chief of Real Estate is required to certify in writing to the district element responsible for such solicitation that sufficient real property interests are available to support construction pursuant to the contract.

b. In making this certification, the District Chief of Real Estate may base his or her conclusion on examination and evaluation of such records as are appropriate under the circumstances including:

(1) if the project is cost shared, the non-Federal sponsor's Authorization for Entry and Certificate of Authority (see paragraph 12-32 of this chapter and Appendix 12-F);

(2) copies of recorded deeds of conveyance;

(3) copies of Orders of Possession entered in eminent domain proceedings; or

(4) other documents deemed adequate by the Chief of Real Estate.

c. In exceptional circumstances, a right-of-entry that has been approved by the District Chief of Real Estate as sufficient for construction purposes may be utilized for the purpose of certifying the availability of real property interests that are required to support issuance of a solicitation and award of a construction contract. However, if a right-of-entry is used for this purpose, acquisition of any real property interest for the tract at issue that is required to support operation or maintenance must be finalized prior to completion of construction pursuant to such contract.

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d. If sufficient real property interests are not available to support construction at the time of the request for the certification, the District Chief of Real Estate should advise the requesting office as to the status of the required acquisition effort together with his or her estimate of time required to complete acquisition and certify real property availability.

12-27. Solicitation of Construction Contracts Without Availability of Real Estate. Solicitations for construction contracts should not be publicized until the District Chief of Real Estate has certified in writing that sufficient real property interests are available to support construction in accordance with paragraph 12-26 of this chapter. A decision by Project Management to proceed contrary to this general policy should be made only after full risk assessment. Real Estate input should include the status of acquisition, identification of all activities that must occur to complete acquisition, realistic schedules for such activities, and advice on the probability of finalizing acquisition in a timely manner.

SECTION VI. LAND ACQUISITION AND RELOCATION PERFORMANCE  
FOR COST SHARED PROJECTS

12-28. General. This section describes general land acquisition processes and procedures applicable to cost shared projects.

12-29. LER and Relocations Required for the Project.

a. Determination of Requirements. Because the non-Federal sponsor generally must provide the LER and perform the facility/utility relocations required for the project and because acquisition and performance by the non-Federal sponsor will generally be in accordance with state law and procedure, it is important that District Real Estate - with Engineering and PM participation - and the non-Federal sponsor agree upon an acceptable process by which LER requirements can be developed through exchange of information and ongoing consultation. After consultation with the non-Federal sponsor, the Government shall determine the LER required for the construction, operation, and maintenance of the project, including those required for relocations, borrow materials, and dredged or excavated material disposal.

b. Distinction Between LER Required and LER Provided. After the Government determines what LER is required for the project, it generally is the responsibility of the non-Federal sponsor to provide those LER. See Sections 101(a) and 103(a) and (I) of WRDA 86. However, it is important to distinguish between LER "required" for the project and that which the non-Federal sponsor must "provide." For example, although lands located within the navigation servitude may be "required", the non-Federal sponsor should not be instructed to acquire and "provide" such land if it is otherwise available for project purposes through exercise of the navigation servitude rights by the Government. See paragraph 12-7 of this chapter for additional information regarding the navigation servitude. Further, Federal lands managed by USACE may be available for use by the project without the need for transfer to the non-Federal sponsor. As a third example, another Federal agency may be

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authorized to allow USACE, but not a non-Federal entity, to use Federal land it manages for the project without payment of compensation or transfer of interest. Accordingly, in all such circumstances, although required for the project, the non-Federal sponsor would not be required to provide a real property interest regarding that land and its value therefore would not be included in total project costs and credit would not be afforded.

12-30. Notice to Proceed with Acquisition and Performance. Following execution of the PCA, the district must provide the non-Federal sponsor with general written descriptions, including maps as appropriate, of the LER and the facility/utility relocations that the Government has determined the non-Federal sponsor must provide and perform for the construction, operation, and maintenance of the project. The LER descriptions must include specific estate, acreage, location and schedule requirements in detail sufficient to enable the non-Federal sponsor to fulfill its obligations to provide the LER in a timely fashion. Similarly, the relocation descriptions must include sufficient detail so as to enable the non-Federal sponsor to perform its relocation responsibilities in a timely fashion. In addition, the district must provide the non-Federal sponsor with a written notice to proceed with acquisition of such LER and performance of such relocations.

12-31. Acquisition Prior to PCA Execution. Although it should not be encouraged by the district, there may be instances when the non-Federal sponsor chooses to acquire land it anticipates will be required for the project prior to the execution of the PCA or prior to the Government's formal notice to proceed with acquisition after PCA execution. The district must formally advise the non-Federal sponsor in writing of the risks associated with acquisition under such circumstances and that the non-Federal sponsor assumes full and sole responsibility for any and all costs, responsibility, or liability arising out of the acquisition effort. Generally, these risks include, but may not be limited to, the following:

- (1) Congress may not appropriate funds to construct the proposed project;
- (2) the proposed project may otherwise not be funded or approved for construction;
- (3) a PCA mutually agreeable to the non-Federal sponsor and the Government may not be executed and implemented;
- (4) the non-Federal sponsor may incur liability and expense by virtue of its ownership of contaminated lands, or interests therein, whether such liability should arise out of local, state, or Federal laws or regulations including liability arising out of CERCLA, as amended;
- (5) the non-Federal sponsor may acquire interests or estates that are later determined by the Government to be inappropriate, insufficient, or otherwise not required for the project;

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(6) the non-Federal sponsor may initially acquire insufficient or excessive real property acreage which may result in additional negotiations and/or benefit payments under P.L. 91-646 as well as the payment of additional fair market value to affected landowners which could have been avoided by delaying acquisition until after PCA execution and the Government's notice to commence acquisition and performance of LERRD; and

(7) the non-Federal sponsor may incur costs or expenses in connection with its decision to acquire or perform LERRD in advance of the executed PCA and the Government's notice to proceed which may not be creditable under the provisions of Public Law 99-662 or the PCA.

12-32. Authorization for Entry for Construction. After the non-Federal sponsor completes its acquisition effort and prior to issuance of the solicitation for each construction contract, an informed, authorized, and accountable official of the non-Federal sponsor must execute and provide the district a written Authorization for Entry to all LER that the Government determined the non-Federal sponsor must provide for that contract. The authorization form must also recite that the non-Federal sponsor is vested with sufficient title and interest in such LER. Further, the non-Federal sponsor must also provide the district with a Certificate of Authority that recites that the official signing the Authorization for Entry form on behalf of the non-Federal sponsor has the authority to furnish such right to the Government. A sample Authorization for Entry with Certificate of Authority form is attached as Appendix 12-F of this chapter.

12-33. Completion of Acquisition by the Non-Federal Sponsor. Prior to the end of the period of construction, as that period is defined in the project PCA, the non-Federal sponsor must complete acquisition, perform or ensure performance of all facility/utility relocations, and provide all LER that the Government required of the non-Federal sponsor as described in the written descriptions discussed above in paragraph 12-30. As typically required as an item of cooperation and expressed in the project PCA, the non-Federal sponsor must ensure for so long as the project remains authorized that the LER that the Government determined to be required for the operation and maintenance of the project and that were provided by the non-Federal sponsor are retained in public ownership for uses compatible with the project. In addition, the non-Federal sponsor must provide the Government with a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal sponsor owns or controls for access to the project for purposes of inspection, and if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the project. Typically, this right is provided to the Government in the PCA and no separate written form is therefore required. Management of project LER by the non-Federal sponsor cannot interfere with this right.

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12-34. Government Acquisition of LER and Performance of Relocations on Behalf of Non-Federal Sponsors.

a. As discussed in paragraph 12-29 of this chapter, the provisions of WRDA '86, as amended, assigned to non-Federal sponsors the responsibility of providing the lands, easements and rights-of-way and of performing the facility/utility relocations required for cost shared projects. Thus, it is not only the costs of the project that are shared with the Government, but the performance responsibilities are also shared including the risks that attach thereto. Accordingly, if a non-Federal sponsor has the capability to acquire and provide LER and to perform the relocations required for the project in a reasonable and timely fashion, performance responsibility should remain with the non-Federal sponsor.

b. However, there may be circumstances where a non-Federal sponsor cannot acquire LER required for the project in a timely fashion and requests the Government to acquire LER on its behalf. In such event, the decision to acquire LER on behalf of the non-Federal sponsor lies within the sole discretion of the Government.

c. So long as no tract to be acquired is known or suspected to be contaminated with CERCLA regulated materials, not more than five Federal condemnation actions are anticipated, and the district has sufficient available resources to perform in a timely fashion while completing its other real estate missions, the District Commander, acting through the District Chief of Real Estate, may agree to a non-Federal sponsor's written request for the Government to acquire LER on behalf of that non-Federal sponsor under one or more of the following circumstances:

(1) the non-Federal sponsor lacks the professional capability to acquire LER required for the project and cannot reasonably obtain contract services from sources other than the Government;

(2) although the non-Federal sponsor has sufficient general acquisition authority, it lacks legal authority to acquire particular tracts and its request to the Government is limited to acquisition of such tracts; or

(3) the non-Federal sponsor lacks "quick-take" authority and reasonable acquisition schedules therefore cannot be met (see 40 U.S.C. §258a regarding the Government's quick-take authority).

d. Written request for the Government to acquire LER on behalf of a non-Federal sponsor under all circumstances other than as described in subparagraph c of this paragraph must be forwarded by the District, through Division, to HQUSACE (ATTN: CERE-A) for coordination and decision. Each written request must be accompanied by written justification and recommendation.

e. Acquisition by the Government on behalf of non-Federal sponsors will be conducted in accordance with Federal law, policies, practices and procedures, including those contained in Chapters 4 and 5 of this regulation. The value of LER acquired by the Government, including incidental and administrative costs, will be based on actual costs incurred by the Government. See Section VII below on Credits for LERRD.

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f. Condemnation.

(1) The Secretary of the Army may cause condemnation proceedings to be instituted in Federal court in the name of the United States on behalf of a non-Federal sponsor for acquisition of real estate interests required for the project. General project authority will be cited as the authority of the United States to acquire title in its name and to reconvey title to the non-Federal sponsor at the conclusion of the condemnation proceeding.

(2) Whenever condemnation is proposed, condemnation assemblies will be prepared and forwarded through Division to CERE-AP for processing in the manner prescribed by Chapter 5 of this regulation. The non-Federal sponsor must furnish such sums of money to the District Chief of Real Estate as are necessary to pay any award that may be made in any such condemnation proceedings, including any awards made pursuant to the Equal Access to Justice Act (Public Law 96-481, title II, October 21, 1980, 94 Stat. 2325, as amended; 5 U.S.C. §504, 15 U.S.C §634b, 28 U.S.C. §2412, 42 U.S.C. §1988). In addition, the non-Federal sponsor must pay such legal and administrative costs and expenses of USACE and the Department of Justice (DOJ) as may be required that are incident to filing and prosecuting the proceedings. District Chiefs of Real Estate will determine the amounts needed to assure continued availability of sufficient funds for processing and trying each case. Such funds will be made available by the sponsor prior to the commencement of work by the Government. Further, the non-Federal sponsor must promptly pay any deficiency and interest beyond the original amount furnished should any such deficiency and interest occur, as well as additional amounts that may be required during the course of the proceedings.

g. If the Government approves a request of a non-Federal sponsor to acquire LER on its behalf, the Government and the non-Federal sponsor must agree in writing on the applicable terms and conditions which must include that the non-Federal sponsor will pay to the Government all estimated acquisition costs (including administrative costs) in advance of the actual work being performed and including that either party may terminate the agreement by first providing 60 days notice in writing to such effect. Moreover, all terms and conditions must be consistent with those contained in the PCA for the project. Where only a small number of tracts are to be acquired with no complex appraisal or acquisition issues contemplated, a formal Memorandum of Agreement (MOA) is not required. However, care must be exercised to otherwise reduce the terms and conditions of the agreement to writing. For all other circumstances, a written MOA must be entered into prior to the Government's commencement of acquisition services. Until such time that a Model MOA for this purpose is approved and distributed for use, a draft MOA must be forwarded to HQUSACE (ATTN: CERE-AP) for coordination, review, and approval prior to execution by either the district or the non-Federal sponsor.

h. In the event that a non-Federal sponsor requests in writing that the Government perform facility/utility relocations necessary for the project on behalf of the non-Federal sponsor, the decision to perform such relocations lies within the sole discretion of the Government. If the Government elects to perform the services requested, or any portion thereof, the terms and

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conditions must be in writing and be consistent with the provisions of the PCA for the project. The non-Federal sponsor remains responsible for all costs of the relocations work and must pay the Government in advance of the Government incurring costs for performance of such work. For elaboration on performance of relocations on behalf of the non-Federal sponsor, see ER 1165-2-131, LOCAL COOPERATION AGREEMENTS FOR NEW START CONSTRUCTION PROJECTS.

SECTION VII. CREDITS FOR LANDS, EASEMENTS AND RIGHTS-OF-WAY  
AND RELOCATIONS FOR COST SHARED PROJECTS

12-35. General.

a. Title I of WRDA 86 describes the general cost sharing responsibilities of non-Federal sponsors for many types of civil works water resources projects. As discussed in paragraph 12-29 of this chapter, such responsibilities include that a non-Federal sponsor must provide the LER and must perform or ensure the performance of relocations required for the project. As described in Sections 103(a) and (I) of WRDA 86 for flood control and other purposes and as described in Section 101(a) of WRDA 86, as amended, for harbor or inland harbor commercial navigation projects, the non-Federal sponsor is entitled to credit against its share of project costs for the value of LER it provides and the value of relocations that are required for the project. Generally, the amount of credit afforded will directly effect the amount of the non-Federal sponsor's cash contribution otherwise required for construction of the project.

b. Generally, for the purpose of determining the amount of credit to be afforded, the value of LER is the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, that the non-Federal sponsor provided for the project as required by the Government. Generally, the fair market value is determined by, or is based upon, an appraisal prepared by a qualified appraiser. A more detailed description of the valuation and crediting process, including exceptions to this general rule, is presented in the following paragraphs of this section. In addition, the specific requirements relating to valuation and crediting contained in the executed PCA for a project must also be reviewed and applied.

c. Generally, for the purpose of determining the amount of credit to be afforded, the value of facility/utility relocations other than a highway is the portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items. For a relocation of a highway, the value is the portion of relocation costs necessary to accomplish the relocation in accordance with the design standard that the state where the highway is located would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items. For elaboration on policies pertaining to credits for relocations, see ER 1165-2-131, LOCAL COOPERATION AGREEMENTS FOR NEW START CONSTRUCTION PROJECTS.

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d. In reviewing requests for credit from the non-Federal sponsor, Real Estate must be aware of its fiscal responsibilities to both the non-Federal sponsor and the Government. In order to provide for uniform and consistent treatment of non-Federal sponsors concerning the crediting of LER for cost shared projects, procedures in this section should be followed to the greatest extent practicable. Requests for deviation from the policies described in this section, or requests for guidance on unique or unusual categories of LER credit claims not addressed herein, should be forwarded through Division to HQUSACE, (ATTN: CERE-AP), for appropriate coordination and final determination.

12-36. Value of Lands, Easements, and Rights-of-Way (LER).

a. Date of Valuation.

(1) The fair market value of LER owned by the non-Federal sponsor on the effective date of the PCA for the project is the fair market value of the real property interests as of the date the non-Federal sponsor provides the Government with authorization for entry thereto for construction purposes.

(2) The fair market value of LER acquired by the non-Federal sponsor after the effective date of the PCA for the project is the fair market value of the real property interests at the time the interests are acquired.

(3) For LER owned by the non-Federal sponsor on the effective date of the PCA for the project that are required for the construction of work by the non-Federal sponsor that is authorized under Section 104 of WRDA 86, as amended, the fair market value is the value of the real property interests as of the date the non-Federal sponsor awards the first construction contract for the Section 104 work, or, if the non-Federal sponsor performs the construction with its own labor, the date that the non-Federal sponsor begins construction of the Section 104 work. The same principles apply to construction efforts by the non-Federal sponsor approved pursuant to authorities other than Section 104 including Section 215 of the Flood Control Act of 1968, as amended, Section 204 of WRDA 86, as amended, and Section 211 of WRDA 96.

b. General Valuation Procedure. For each real property interest, the non-Federal sponsor must obtain an appraisal that is prepared by a qualified appraiser who is acceptable to the Government. See Chapter 4 of this regulation. The appraisal must be prepared in accordance with applicable rules of just compensation, as specified by the Government. The fair market value of the real property interest is the amount set forth in the non-Federal sponsor's appraisal if that appraisal is approved by the Government. In the event that such appraisal is not approved by the Government, the non-Federal sponsor may obtain a second appraisal, and the fair market value is the amount set forth in the second appraisal if that appraisal is approved by the Government. In the event that the Government does not approve the non-Federal sponsor's second appraisal, or the non-Federal sponsor does not choose to obtain a second appraisal, or otherwise fails to provide the second appraisal in a timely fashion, the Government must obtain an appraisal and the fair market value is the amount set forth in the Government's appraisal if such



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appraisal is approved by the non-Federal sponsor. In the event that the non-Federal sponsor does not approve the Government's appraisal, the Government, after consultation with the non-Federal sponsor, shall consider the Government's and the non-Federal sponsor's appraisals and determine an amount based thereon which shall be deemed to be the fair market value.

c. Applicable Rules of Just Compensation. Although State rules will typically control the appraisal process for acquisition and crediting purposes by a non-Federal sponsor, application of Federal rules of just compensation may be required as a matter of policy for crediting purposes. For discussion on this issue, see paragraph 12-37.c of this chapter; and Chapter 4, Appraisal, of this regulation. Also see 33 U.S.C. §595 regarding the Federal special benefits rule and 33 U.S.C. §595.a regarding the Federal rule for partial takings of lands adjacent to navigable waters.

d. Payments Exceeding Approved Appraised Amount.

(1) Approval Process. If the amount paid or proposed to be paid by the non-Federal sponsor to a landowner for the real property interest exceeds the amount determined pursuant to subparagraph b of this paragraph to be fair market value, the Government, at the request of the non-Federal sponsor, must consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the non-Federal sponsor, may approve in writing an amount greater than the amount determined pursuant to subparagraph b of this paragraph but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the non-Federal sponsor, but no less than the amount determined pursuant to subparagraph b of this paragraph. See 49 C.F.R. §24.102(I) regarding administrative settlements as a part of the acquisition process.

(2) Approval Authority. Division Commanders and their Chiefs of Real Estate and District Commanders and their Chiefs of Real Estate can determine fair market value in accordance with subparagraph d.(1) of this paragraph up to the amounts and percentages set forth in their respective written delegations of authority for acceptance of offers to sell for Federal acquisitions. A copy of the general written delegation of authority to divisions is included as Appendix 12-G to this chapter. If a division has redelegated a portion of its delegated authority as authorized in Appendix 12-G, its districts will have a written redelegation of authority that describes the extent of its approval authority for acceptance of offers for Federal acquisitions. For determinations that exceed the amount of delegated or redelegated authority, a request must be submitted by the district, together with recommendation, to the division, or through division to CERE-A as the case may be, for determination.

(3) Redelegation to Non-Federal Sponsors. U.S. Army District Commanders and their Chiefs of Real Estate may redelegate their authority provided by subparagraph d.(2) of this paragraph, in whole or in part, to a non-Federal sponsor as follows:

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(a) Factors that should be weighed in determining whether to exercise this discretionary authority include the experience, qualifications, and overall professional capability of the non-Federal sponsor as well as the nature and extent of the relationship established between the non-Federal sponsor and the district including the Chief of Real Estate.

(b) Redelegated approval authority cannot exceed the amounts or percentages that are contained in the specific written redelegation of authority for acceptance of offers to sell for Federal acquisitions that has been provided to that U.S. Army District Commander and Chief of Real Estate from its respective U.S. Army Division Commander and Chief of Real Estate.

(c) Limits to and conditions of redelegated authority as established by the District Chief of Real Estate must be fully discussed with the responsible non-Federal sponsor representative and the nature and extent of the redelegated authority must be reduced to writing prior to its application.

(d) Redelegation to non-Federal sponsors is intended to expedite the acquisition process where, during negotiations with a landowner, a non-Federal sponsor desires credit assurances for proposed payments to a landowner in excess of the amount set forth in the non-Federal sponsor's appraisal that has previously been approved by the Government. Accordingly, redelegated authority to non-Federal sponsors does not apply to value determinations where acquisition has been completed on the subject tract.

e. Valuation Procedure for Condemnations.

(1) For LER acquired through condemnation proceedings instituted after the effective date of the PCA for the project, the non-Federal sponsor must, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute the proceedings together with an appraisal of the specific real property interests to be acquired.

(2) After receipt of the written notice and appraisal, the Government has 60 days to review the appraisal. If the Government has previously approved the appraisal by application of the process discussed in subparagraph b of this paragraph, or provides written approval of, or takes no action on, the appraisal within this 60-day period, the non-Federal sponsor must use the amount set forth in the appraisal as the estimate of just compensation for the purpose of instituting its eminent domain proceeding.

(3) If the Government provides written disapproval of the appraisal to the non-Federal sponsor within the 60-day period, the Government and non-Federal sponsor must consult in good faith to promptly resolve the issues or areas of disagreement identified in the Government's written disapproval. If, after good faith consultation, the Government and the non-Federal sponsor agree as to an appropriate amount, then the non-Federal sponsor must use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. However, if, after good faith consultation, no agreement can be reached as to an appropriate amount, then the non-Federal sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

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(4) Fair market value for LER acquired by eminent domain proceedings in accordance with the above procedures shall be either the amount of the court award for the real property interests taken to the extent that the Government determined such interests are required for the construction, operation, and maintenance of the project or the amount of any stipulated settlement or portion thereof that the Government approves in writing. To the greatest extent practicable, the Government and the non-Federal sponsor should consult and cooperate prior to a settlement conference in an effort to reach advance agreement on an amount, or range of amounts, for which the non-Federal sponsor would be entitled to credit if settlement was reached during that conference in such amount, or within such range.

(5) U.S. Army Division Commanders and their Chiefs of Real Estate and U.S. Army District Commanders and their Chiefs of Real Estate can determine fair market value by approving stipulated settlements in condemnation actions initiated by the non-Federal sponsor in accordance with subparagraph e.(4) of this paragraph up to the amounts set forth in their respective written delegations of authority for approval of settlement offers in Federal condemnation actions. A copy of the general written delegation of authority to divisions is included as Appendix 12-G. If a division has redelegated a portion of its delegated authority as authorized in Appendix 12-G, its districts will have a written redelegation of authority that describes the extent of its approval authority for settlement offers in Federal condemnation actions. For stipulated settlement amounts that exceed the amount of delegated or redelegated authority, a request for determination must be submitted by the district, together with recommendation, to the division, or through division to CERE-A as the case may be, for determination.

(6) For LER acquired by a non-Federal sponsor through condemnation proceedings instituted prior to the effective date of the PCA for the project, the valuation procedures discussed in subparagraphs b and d of this paragraph will apply once the PCA is executed.

f. Incidental Costs.

(1) For LER acquired by a non-Federal sponsor within a five-year period preceding the effective date of the PCA for the project, or at any time after the effective date of that PCA, the value of the real property interests also will include the documented incidental costs of acquiring such interests, as determined by the Government, subject to an audit to determine the reasonableness, allocability, and allowability of costs. See OMB Circular A-87, Cost Principles for State and Local Governments for applicable principles. These incidental costs include, but are not necessarily limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps and mapping costs, as well as the actual amounts expended for payment of P.L. 91-646 relocation assistance benefits as required for compliance with law and implementing regulations.

(2) These incidental costs may also include payments made for personal property, loss of business or good will, or other payments, that are generally recognized as compensable, and required to be paid, by applicable State law due to the acquisition of a real property interest required for the project as

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determined by the Government. Credit requests for payments made for personal property, loss of business or good will, or other payments, must be submitted with sufficient documentation, as determined by the Government, to show that the non-Federal sponsor was required to make payment therefor under State law.

(3) Credit afforded for incidental costs shall not include any amount that is excluded from credit eligibility by application of the policies expressed in paragraphs 12-37c and 12-38 of this chapter.

12-37. Special Considerations.

a. Rights-of-Entry. Generally, a right-of-entry is not an interest in real property and has no market value. Therefore, no credit can be afforded for a market value of a right-of entry for construction provided by a non-Federal sponsor. However, costs incurred by the non-Federal sponsor in the process of obtaining the right-of-entry may be treated as incidental costs and credited when the real property interest required for that tract is later acquired by the non-Federal sponsor. In the rare event that the Government has determined that a formal real property interest is not required and that a right-of-entry is sufficient, the District Chief of Real Estate may approve a credit amount for a right-of-entry as based upon the reasonable, allocable, and allowable costs incurred by the non-Federal sponsor in obtaining the right-of-entry.

b. Donations by Non-Federal Sponsor. Although a non-Federal sponsor may want to provide LER without claiming credit therefor, the value of all LER required for the project that must be provided by the non-Federal sponsor must be included as a part of project costs with credit afforded in such amount except as otherwise stated in paragraph 12-38 of this chapter.

c. Application of Federal Appraisal Principles. In addition to when the Government acquires LER on behalf of the non-Federal sponsor as discussed in paragraph 12-34 of this chapter, Federal appraisal principles must be applied to determine market value for crediting purposes in the following circumstances:

(1) For LER owned by the non-Federal sponsor prior to the date of Congressional authorization of a specifically authorized project or prior to the date of the Division Commander's approval of the project for continuing authority projects; and

(2) For Shore Protection Projects, lands subject to shore erosion that are required for project purposes and that must be provided by the non-Federal sponsor must be appraised for crediting purposes considering special benefits in accordance with relevant Federal statutes and Department of Justice regulations. For private land holdings, the non-Federal sponsor must receive credit for the LER value, if any, that results from application of this special benefits analysis. For public land holdings, any credit amount proposed must first be approved by HQUSACE through a request forwarded, through Division, to HQUSACE (ATTN: CERE). For additional discussion, see Memorandum from the Director of Civil Works, Revision to Policy Guidance Letter No. 11, Credit for Lands, Easements, and Rights-of-Way (LER) at Shore Protection Projects, dated 21 April 1989.

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d. **Informal Value Estimates.** As provided in 49 CFR Part 24.102(c), an appraisal is not required for acquisition purposes if (1) the landowner is donating the property and releases the acquiring agency from this obligation, or (2) the acquiring agency determines that an acquisition appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at \$2500 or less, based on a review of available data. Where no acquisition appraisal has been prepared by the non-Federal sponsor pursuant to either of these circumstances, and where the value estimate does not exceed \$2500, the non-Federal sponsor may submit, and the District Chief of Real Estate may approve, the non-Federal sponsor's informal value documentation and conclusions for the purpose of affording credit. Upon approval, the informal value documentation submitted shall be considered to be an appraisal for the limited purpose of compliance with the appraisal requirements in the PCA for the tract at issue. For all other tracts, credit appraisals must be submitted with approval authority commensurate with delegated authority amounts for appraisal approvals generally.

e. **Multi-Purpose Projects.** Where a project will be constructed to serve more than one authorized purpose, it is important that the LER requirements for each purpose are clearly identified so that the respective values can be properly assigned among the purposes with appropriate credit afforded toward the non-Federal sponsor's share of the costs of each project purpose. This is particularly important when the purposes have different cost sharing formulas or when there are different non-Federal sponsors for construction and Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) of the project purposes. For example, if the LER required for a flood control project consists of standard permanent levee easements, those interests must be so identified, valued, and assigned to the basic flood control project purpose. Additional estates on the same tracts that are required to support recreation must be separately identified with the incremental additional values assigned to the recreation project purpose. In no event can the value for the flood control easement combined with that of the additional interest required to support recreation on the same tract exceed the fee value for that tract. Once the values have been properly assigned among purposes, those values will be included in total project costs for the respective purposes and credit will be afforded in such amounts. For additional discussion, see CECW Policy Guidance Letters No. 30, Recreation Cost Sharing Credit For Increased Real Estate Interest for Recreation Development at Non-Reservoir Projects, dated 6 December 1991 and 36, Recreation Development at (Non-Lake) Structural Flood Control and Harbor Projects, dated 21 October 1992.

f. **Impact of Project Changes.** Where a non-Federal sponsor acquires an interest in real property after PCA execution and receipt of the Government's written notice to proceed with acquisition but subsequent project changes (e.g. design change) eliminate the need for such interest, the amount of credit afforded (or to be afforded as the case may be) must be reduced in accordance with consistent with the following principles:

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(1) If the acquired real property interest has a market value, credit and total project costs must be reduced by the lesser of the market value of the interest credited to the sponsor or the reasonable sales proceeds received by the non-Federal sponsor if such interest is sold to a third party in a timely fashion in an arms length transaction.

(2) Credit must still be afforded for the amount of the approved incidental costs of acquiring such interest pursuant to the terms of the PCA (including P.L. 91-646 benefit payments) as well as for the documented incidental costs, if any, of selling such interest subject to an audit to determine reasonableness, allocability and allowability.

(3) Application of these principles are not intended to penalize a non-Federal sponsor for acquiring real property as requested by the Government. Accordingly, it is acknowledged that many estates acquired by non-Federal sponsors for USACE projects have no market value (e.g. levee easements, temporary construction easements). In such cases the credit reduction principles are not applicable. It is further acknowledged that application of these principles may not under all circumstances produce an acceptable result as it relates to credit reduction. In such cases, and pursuant to a request by the non-Federal sponsor, a written request for deviation from application of such principles together with a full explanation of the circumstances and a recommendation for decision should be transmitted through division to CERE-AP for appropriate coordination, consideration and decision.

g. Hazardous, Toxic, and Radioactive Wastes (HTRW). As used in ER 1165-2-132, HAZARDOUS, TOXIC, AND RADIOACTIVE WASTE (HTRW) GUIDANCE FOR CIVIL WORKS PROJECTS, and as used in this chapter, the term "hazardous, toxic, and radioactive waste", or "HTRW", means any material listed as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §9601 et seq. (CERCLA). See 42 U.S.C. §9601(14). For crediting purposes, LER required for the project that is contaminated with CERCLA regulated materials shall be appraised with the assumption that the lands are no longer contaminated; that is, that an appropriate response action has occurred. Notwithstanding that an appropriate response action has been completed, the market value of the tract may be lessened due to the stigma that arises from its history of contamination. See Chapter 4, Appraisal, of this regulation; Real Estate Policy Guidance Letter No.1--Appraisal of Lands Containing Hazardous and Toxic Wastes, dated 19 November 1990; and Project Management Guidance Letter No.8--Appraisal of Lands Containing Hazardous & Toxic Wastes on Local Cooperation Projects, dated 5 November 1990.

h. Other Contaminants. The policy explained above in subparagraph g is limited to LER contaminated with CERCLA regulated materials. For crediting purposes, LER required for the project that is contaminated with materials not regulated by CERCLA shall be appraised for crediting purposes as it exists on the applicable date of valuation.

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12-38. Exceptions to LER Credit. As a matter of policy, a non-Federal sponsor will not be afforded credit for the following categories of LER required for a project. Further, for projects that include LER value as a part of shared total project costs, the value amount that is non-creditable must be excluded from total project costs. Requests for exceptions to this policy together with persuasive rationale must be forwarded through Division to HQUSACE (ATTN: CERE-AP) for coordination and final determination.

a. Previously Provided as an Item of Cooperation. The non-Federal sponsor shall not receive credit for the value of any LER, including incidental costs, that have been provided previously as an item of cooperation for another Federal project.

b. Federal Funds. The non-Federal sponsor shall not receive credit for the value of LER, including incidental costs, to the extent that they were provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

c. Federal Lands. The non-Federal sponsor shall not receive credit for the value of LER acquired from Federal agencies if the acquisition of same was accomplished at no cost other than incidental costs. However, credit may be afforded for the non-Federal sponsor's documented incidental costs of acquiring such interests subject to an audit to determine reasonableness, allocability, and allowability. USACE will cooperate and, where possible, facilitate the non-Federal sponsor's effort to secure land for project use that is managed by a Federal agency.

d. Excessive Interests. Except as otherwise provided in paragraph 12-36f of this chapter, if the non-Federal sponsor acquires LER in excess of the requirements of the project as determined by the Government, only the value of the acreage or interest required to support the project as determined by the Government shall be eligible for credit.

e. Section 14 Projects. The valuation of LER for crediting purposes for continuing authority projects constructed pursuant to Section 14 of the Flood Control Act of 1946, as amended, 33 U.S.C. §701r, is the same as for other projects except for cases in which the required LER is part of the tract of land that includes the facility or structure being protected. In such cases, the non-Federal sponsor shall not receive credit for the value of LER it provides that:

(1) are part of the tract of land on which the facility or structure to be protected is located; and

(2) are owned by either the non-Federal-sponsor or the owner of the facility or structure when the PCA for the project is executed.

f. Navigation Servitude. In no event shall credit be afforded for lands that are available to the project through exercise of the navigation servitude.

g. Contingencies. In no event shall credit be afforded for contingency values designated in reconnaissance estimates, Gross Appraisals, M-CACES cost estimates, or other planning estimates of LER values.

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12-39. Stipulating to Credit Amount in PCA.

a. Section 14 Projects. Where the cost of appraising LER that is eligible for credit for a Section 14 continuing authority project is estimated to exceed the market value of such interest, or interests, the non-Federal sponsor and Government may stipulate in the PCA for the project that the value of, and the credit amount for, the required interest, or interests, that are to be provided by the non-Federal sponsor is zero thereby avoiding the necessity and expense of the appraisal for such interest or interests. It must be noted, however, that use of such a stipulation is a deviation from Model PCA provisions and additional PCA approval may therefore be required.

b. Other Circumstances. Other than as discussed above, all proposals for stipulating to value and credit amounts in the PCA for some or all LER required for the project that must be provided by the non-Federal sponsor will be considered on a case-by-case basis. Such proposals must be agreed to by the non-Federal sponsor and must be submitted in writing together with justification to HQUSACE (ATTN: CERE-AP) for coordination and approval. Proposals for all stipulations in an amount greater than \$2500 must be based upon an appraisal approved by the Government that has been prepared in accordance with Chapter 4 of this regulation. Generally, submittal and approval of the proposal must occur prior to submittal of the draft PCA to CECW-AR for review so as to not delay PCA processing and approval.

12-40. Process and Procedures.

a. Timing of Credit Requests.

(1) Market Value of LER. To facilitate affording of credit for the market value of LER in a timely manner, the non-Federal sponsor should submit its credit request with supporting documents within 180 days after it provides the Government authorization for entry for such LER.

(2) Incidental Costs. For all other creditable items associated with the acquisition of LER, such as P.L. 91-646 relocation assistance payments or other documented acquisition costs, the non-Federal sponsor should submit its credit request with supporting documentation as soon as practicable but not less than on an annual basis.

(3) Reasonable Effort To Comply. Although these time frames for submission of credit requests may not be achievable in all events due to complexities in negotiations, condemnations, or other reasons, reasonable compliance efforts should be made so that project costs are appropriately and timely apportioned between the parties consistent with PCA accounting provisions and sound fiscal procedures.

b. Credits and Project Accounting Records. After Real Estate has preliminarily approved a LER credit amount in accordance with delegated authority policies, this amount should be reviewed and discussed with the PM. Real Estate should make available to the PM all information necessary for the PM to review the non-Federal sponsor's credit request. Once the LER credits are finally approved, it is the PM's responsibility to assure that credit amounts are recorded in project accounting records.



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c. No Credit Request. If a non-Federal sponsor does not submit a credit request, or sufficient documentation therefor in a timely manner, the District Chief of Real Estate should document actions taken in trying to obtain the credit request or documentation and provide such information to the PM for further action.

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REFERENCES

1. Public Law 91-611, Rivers and Harbors and Flood Control Act of 1970
2. Public Law 91-646, The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Public law 100-17
3. Public Law 93-251, The Water Resources Development Act of 1974
4. Public law 99-662, The Water Resources Development Act of 1986
5. Public Law 100-676, The Water Resources Development Act of 1988
6. Public Law 101-640, the Water Resources Development Act of 1990
7. Public Law 102-580, the Water Resources Development Act of 1992
8. Public Law 104-303, the Water Resources Development Act of 1996
9. 49 CFR Part 24, Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs
10. OMB Circular A-87, Cost Principles for State and Local Governments
11. ER 5-1-11, Program and Project Management
12. ER 37-2-10, Accounting and Reporting Civil Works Activities
13. ER 405-1-12, Real Estate Handbook, Chapters 2, 4, 5, 6, 13 and 14
14. ER 500-1-1, Natural Disaster Procedures
15. ER 1105-2-100, Guidance for Conducting Civil Works Planning Studies
16. ER 1110-2-1150, Engineering and Design for Civil Works Projects
17. ER 1110-2-1302, Civil Works Cost Engineering
18. ER 1150-2-301, Local Cooperation Policies and Procedures
19. ER 1165-2-30, Acceptance and Return of Required, Contributed or Advanced Funds for Construction or Operation.
20. ER 1165-2-131, Local Cooperation Agreements for New Start Construction Projects
21. ER 1165-2-132, Hazardous, Toxic and Radioactive Waste (HTRW) Guidance for Civil Works Projects
22. Civil Works Work Breakdown Structure, 30 November 1993

GLOSSARY

A

AFB: Alternative Formulation Briefing  
art: Article  
ATTN: Attention

B

BCE: Baseline Cost Estimate  
BCERE: Baseline Cost Estimate for Real Estate

C

CERE: Corps of Engineers, Real Estate Directorate  
CERE-A: Corps of Engineers, Real Estate - Acquisition  
CERE-AP: Corps of Engineers, Real Estate - Acquisition Div., Civil Branch  
CERCLA: Comprehensive Environmental Response, Compensation and Liability  
Act, 42 U.S.C. § 9601-9675, as amended  
C.F.R.: Code of Federal Regulations  
CG: Comptroller General Decision  
CONST.: U. S. Constitution

D

DOJ: Department of Justice  
DPR: Detailed Project Report

E

ER: Engineer Regulation

F

FCSA: Feasibility Cost Sharing Agreement  
FRC: Feasibility Review Conference

G

GDM: General Design Memorandum  
GRR: General Reevaluation Report

H

HQUSACE: Headquarters, U. S. Army Corps of Engineers  
HTRW: Hazardous, Toxic and Radioactive Waste

I

IWR: Institute for Water Resources

L

LER: Lands, Easements and Rights-of-Way  
LERRD: Lands, Easements, Rights-of-Way, Relocations and Dredged Material  
Disposal Areas

M

M-CACES: Micro-Computer Aided Cost Estimating System  
MFR: Memorandum For Record

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APPENDIX 12-B  
GLOSSARY

N

NED: National Economic Development

O

O&M: Operation and Maintenance

OMB: Office of Management and Budget

OMRR&R: Operation, Maintenance, Repair, Replacement and Rehabilitation

P

PCA: Project Cooperation Agreement

PGM: Planning Guidance Memorandum

P.L.: Public Law

PM: Project Manager

PMP: Project Management Plan

PSP: Project Study Plan

R

RCRA: Resource Conservation Recovery Act

REDM: Real Estate Design Memorandum

REP: Real Estate Plan

S

stat: Statute

T

TM: Technical Manager

U

USACE: U.S. Army Corps of Engineers

U.S.C.: U.S. Code

W

WBS: Work Breakdown Structure

WRDA: Water Resources Development Act

APPENDIX 12-C  
DEPARTMENT OF THE ARMY  
RIGHT-OF-ENTRY FOR SURVEY AND EXPLORATION

\_\_\_\_\_  
*Project, Installation or Activity*

\_\_\_\_\_  
*(Tract Number or Other Property Identification)*

The undersigned, hereinafter called the "Owner," hereby grants to the UNITED STATES OF AMERICA, hereinafter called the "Government," a permit or right-of-entry upon the following terms and conditions:

1. The Owner hereby grants to the Government an irrevocable right to enter upon the lands hereinafter described at any time within a period of ( ) months from the date of this instrument, in order to survey, make test borings, and carry out such other exploratory work as may be necessary to complete the investigation being made of said lands by the Government.

2. This permit includes the right of ingress and egress on other lands of the Owner not described below, provided such ingress and egress is necessary and not otherwise conveniently available to the Government.

3. All tools, equipment, and other property taken upon or placed upon the land by the Government shall remain the property of the Government and may be removed by the Government at any time within a reasonable period after the expiration of this permit or right-of-entry.

4. If any action of the Government's employees or agents in the exercise of this right-of-entry results in damage to the real property, the Government will, at its option, either repair such damage or make an appropriate settlement with the owner. In no event shall such repair or settlement exceed the fair market value of the fee interest of the real property at the time immediately preceding such damage. The Government's liability under this clause may not exceed appropriations available for such payment and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Owner may have to make a claim under applicable laws for any other damages than provided herein.

5. The land affected by this permit or right-of-entry is located in the State of \_\_\_\_\_, County of \_\_\_\_\_, and is described as follows:

*FOR ILLUSTRATION PURPOSES ONLY*  
*Local reproduction authorized*

WITNESS MY HAND AND SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

UNITED STATES OF AMERICA

BY \_\_\_\_\_  
(Title)

APPENDIX 12-D

DEPARTMENT OF THE ARMY  
RIGHT-OF-ENTRY FOR CONSTRUCTION

\_\_\_\_\_  
*(Project, Installation or Activity)*

\_\_\_\_\_  
*(Tract Number or Other Property Identification)*

The undersigned, hereinafter called the "Owner," in consideration of the total compensation to be paid by the UNITED STATES OF AMERICA, hereinafter called the 'Government,' for all land or easement rights hereinafter described, to be determined by subsequent agreement between the Owner and the Government, or by judicial proceedings, hereby grants to the Government, a permit or right-of-entry upon the following terms and conditions:

1. The Owner hereby grants to the Government an irrevocable right to enter upon the lands hereinafter described at any time within a period of ( ) months from the date of this instrument, in order to erect buildings or any other type of improvements and to perform construction work of any nature.
2. This permit includes the right of ingress and egress on other lands of the Owner not described below, provided that such ingress and egress is necessary and not otherwise conveniently available to the Government.
3. All tools, equipment, buildings, improvements, and other property taken upon or placed upon the land by the Government shall remain the property of the Government and may be removed by the Government at any time within a reasonable period after the expiration of this permit or right-of-entry.
4. The Government shall have the right to patrol and police the lands hereinafter described during the period of this permit or right-of-entry.
5. If aircraft flights over said lands, or entry upon the land by means of helicopter or other type aircraft, are necessary, the Government shall inform the Owner, in advance, of each such flight or entry.
6. In the event that the Government does not acquire title or other necessary interest in said land prior to the expiration of this permit or right-of-entry, or other renewal thereof, the parties agree that, if any action of the Government's employees or agents in the exercise of this right-of-entry results in damage to the real property, the Government will, at its option, either repair such damage or make an appropriate settlement with the Owner. In no event shall such repair or settlement exceed the fair market value of the fee interest of the real property at the time immediately preceding such damage. The Government's liability under this clause may not exceed appropriations available for such payment and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Owner may have to make a claim under applicable laws for any other damages than provided herein. If the Government does acquire such title or other necessary interest, damages would be limited to the decrease in the fair market value of the owner's remainder caused by such damage.

The land affected by this permit or right-of-entry is located in the County of \_\_\_\_\_ State of \_\_\_\_\_, and is described as follows:

*FOR ILLUSTRATION PURPOSES ONLY*

*Local reproduction authorized*

WITNESS MY HAND AND SEAL this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_  
WITNESS:

\_\_\_\_\_  
(SEAL)

\_\_\_\_\_  
(SEAL)

UNITED STATES OF AMERICA

BY \_\_\_\_\_  
*(Title)*

APPENDIX 12-E

ASSESSMENT OF NON-FEDERAL SPONSOR'S  
REAL ESTATE ACQUISITION CAPABILITY

I. Legal Authority:

- a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes? (yes/no)
- b. Does the sponsor have the power of eminent domain for this project? (yes/no)
- c. Does the sponsor have "quick-take" authority for this project? (yes/no)
- d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? (yes/no)
- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? (yes/no)

II. Human Resource Requirements:

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended? (yes/no)
- b. If the answer to II.a. is "yes," has a reasonable plan been developed to provide such training? (yes/no)
- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? (yes/no)
- d. Is the sponsor's projected in-house staffing level sufficient considering its other work load, if any, and the project schedule? (yes/no)
- e. Can the sponsor obtain contractor support, if required in a timely fashion? (yes/no)
- f. Will the sponsor likely request USACE assistance in acquiring real estate? (yes/no) (If "yes," provide description)

III. Other Project Variables:

- a. Will the sponsor's staff be located within reasonable proximity to the project site? (yes/no)
- b. Has the sponsor approved the project/real estate schedule/milestones? (yes/no)

IV. Overall Assessment:

- a. Has the sponsor performed satisfactorily on other USACE projects? (yes/no/not applicable)
- b. With regard to this project, the sponsor is anticipated to be: highly capable/fully capable/moderately capable/marginally capable/insufficiently capable. (If sponsor is believed to be "insufficiently capable," provide explanation)

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V. Coordination:

- a. Has this assessment been coordinated with the sponsor? (yes/no)
- b. Does the sponsor concur with this assessment? (yes/no) (If "no," provide explanation)

Prepared by:

\_\_\_\_\_  
[typed name]  
[title]

Reviewed and approved by:

\_\_\_\_\_  
[typed name]  
Chief, Real Estate Division



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APPENDIX 12-F  
AUTHORIZATION FOR ENTRY FOR CONSTRUCTION

I, (name of accountable official), (title) for (name of non-Federal sponsor), do hereby certify that the (name of non-Federal sponsor) has acquired the real property interests required by the Department of the Army, and otherwise is vested with sufficient title and interest in lands, to support construction of (project name, specifically identified project features, etc.). Further, I hereby authorize the Department of the Army, its agents, employees and contractors, to enter upon (identify tracts) to construct (Project name, specifically identified project features, etc.) as set forth in the plans and specifications held in the U.S. Army Corps of Engineers' \_\_\_\_\_ District Office, (City and State).

WITNESS my signature as (title) for (name of non-Federal sponsor) this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_ .

BY: \_\_\_\_\_  
          (name)  
          \_\_\_\_\_

ATTORNEY'S CERTIFICATE OF AUTHORITY

I, (name), (title of legal officer) for (name of non-Federal sponsor), certify that (name of non-Federal sponsor) has authority to grant the above Authorization for Entry; that said Authorization for Entry is executed by the proper duly authorized officer; and that the Authorization for Entry is in sufficient form to grant the authorization therein stated.

WITNESS my signature as (title) for (name of non-Federal sponsor), this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_ .

BY: \_\_\_\_\_  
          (name)  
          \_\_\_\_\_

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APPENDIX 12-G

DELEGATION OF AUTHORITY  
TO  
U.S. ARMY DIVISION AND DISTRICT ENGINEERS  
AND  
CHIEFS OF REAL ESTATE DIVISIONS  
TO  
ACQUIRE REAL PROPERTY AND INTERESTS THEREIN

1. Pursuant to the authority vested in the Chief of Engineers and his Director of Real Estate under a delegation of authority from the Secretary of the Army dated 20 August 1976 made in accordance with 10 U.S.C. § 3012 (subsequently redesignated as 10 U.S.C. § 3013) and the Uniform Relocation Assistance and Real property Acquisition Policies Acts of 1970, P.L. 91-646, as amended, (42 U.S.C. § 4601 *et seq.*), I hereby redelegate to U.S. Army Division Engineers and their Chiefs of Real Estate authority to take the following actions consistent with the provisions of Title III of P.L. 91-646, as amended, and the Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs, 49 C.F.R. Part 24:

a. To accept offers to sell and approve administrative settlements as follows:

(1) To accept an offer to sell in the amount of the approved appraisal;

(2) To approve any administrative settlement and accept any offer to sell in an amount in excess of the approved appraisal but which does not exceed \$200,000.00 if it is reasonable, prudent, and in the public interest; and

(3) To approve any administrative settlement and accept any offer to sell in an amount in excess of \$200,000.00 which does not exceed 115 percent of the amount of the approved appraisal and which does not exceed \$1,150,000.00 if it is reasonable, prudent, and in the public interest.

b. To approved any settlement offer in a condemnation action which does not exceed \$1,000,000., if it is reasonable, prudent, and in the public interest.

c. To make findings, determinations, and payments as authorized by Sections 301, 302, 303, 304 and 305 of P.L. 91-646, as amended.

2. U.S. Army Division Engineers may redelegate to U.S. Army District Engineers and their Chiefs of Real Estate authority to take the following actions:

a. To accept offers to sell and approve administrative settlements as follows:

(1) To accept any offer to sell in the amount of the approved appraisal;

(2) To approve any administrative settlement and accept any offer to sell in an amount in excess of the approved appraisal but which does not exceed \$100,000.00 if it is reasonable, prudent, and in the public interest; and

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APPENDIX 12-G

(3) To approve any administrative settlement and accept any offer to sell in an amount in excess of \$100,000.00 which does not exceed 115 percent of the amount of the approved appraisal and which does not exceed \$1,150,000.00 if it is reasonable, prudent, and in the public interest.

b. To approve any settlement offer in a condemnation action which does not exceed \$500,000.00 if it is reasonable, prudent, and in the public interest.

c. To make findings, determinations and payments as authorized by Sections 301,302, 303, 304 and 305 of P. L. 91-646, as amended.

3. Regardless of the amount of monetary consideration involved, any administrative settlement, offer to sell or settlement offer in a condemnation action will be forwarded to Headquarters for approval if the acquisition is controversial, precedential, or involves a novel legal issue.

"Signed"

Date: 6 October 1995

B. J. Frankel  
Director of Real Estate

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FORMAT OF AGREEMENT

Use of the following format of agreement is authorized for local cooperation agreements, except those referenced in paragraph 12-7. If substantial variation is to be made from such format, a draft shall be forwarded to HQDA (DAEN-REA-P) WASH DC 20314, for approval prior to execution:

AGREEMENT BETWEEN

THE UNITED STATES OF AMERICA

AND

(Name of Non-Federal Interests)

FOR LOCAL COOPERATION AT

(Name of Project)

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_ by and between the UNITED STATES OF AMERICA (hereinafter called the "Government"), represented by the Contracting Officer executing this agreement, and \_\_\_\_\_, (hereinafter called \_\_\_\_\_), " \_\_\_\_\_ " WITNESSETH THAT:

WHEREAS, construction of the \_\_\_\_\_ (hereinafter called the "Project") was authorized by (Name of Act), approved \_\_\_\_\_, (Public Law \_\_\_\_\_, \_\_\_\_\_ Congress \_\_\_\_\_; and

WHEREAS, the (State) hereby represents that it has the authority and capability to furnish the non-Federal cooperation required by the Federal legislation authorizing the Project and by other applicable law.

\* Insert "State", "County", or term as appropriate. Wherever the term "State" has been used in brackets, hereafter in this format, it is used for clarity, but the appropriate term must be inserted.

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NOW, THEREFORE, the parties agree as follows:

1. The (local sponsor) agrees that, upon notification Government will commence construction of (identify the project) substantially in accordance with Federal legislation authorizing such project, (identify the statute and section thereof), the (local sponsor) shall, in consideration of the Government commencing construction of such project, fulfill the requirements of non-Federal cooperation specified in such legislation, to wit:

(set forth the conditions of non-Federal cooperation as set forth in project document, Public Law 91-646, and other pertinent statutes.\*)

2. \*\*The (local sponsor) hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls, for access to the project for the purpose of inspection. If such inspection shows that the (local sponsor) for any reason is failing to (complete) (repair and maintain) the project in accordance with the assurances hereunder and has persisted in such failure after a reasonable notice in writing by the Government delivered to (name of official), the government shall have the further right, as stated above, to enter upon the land for the purpose of (completing) (operating) (repairing and maintaining) the project. (Completion) (Operation) (Repair and maintenance) by the Government in such event shall not operate to relieve the (local sponsor) of responsibility to meet its obligations as set forth in paragraph 1 of the Agreement, or to preclude the Government from pursuing any other remedy at law or equity.

\* In a multi-purpose project, it must be made clear that the assurances apply only to the purpose(s) to which this agreement is intended to apply and that the other required assurances will be the subject of separate contracts.

\*\* Include only if non-Federal interests have an obligation to complete, operate, repair or maintain. This paragraph can be adapted to meet those situations wherein there are both Federal and non-Federal interests having an obligation to complete, operate, repair or maintain portions of the project.

Figure 12-1a

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\* IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

THE (LOCAL SPONSOR)

APPROVED:

BY \_\_\_\_\_  
(Grade) Corps of Engineers  
(District) (Division) Engineer  
Contracting Officer

BY \_\_\_\_\_  
Title

FOR THE SECRETARY OF THE ARMY

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

Figure 12-1b

\*

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\*

CERTIFICATE OF AUTHORITY

I, \_\_\_\_\_ (typed or printed name), do hereby certify  
 that I am the \_\_\_\_\_ (title) of \_\_\_\_\_ (local sponsor)  
 that the \_\_\_\_\_ (local sponsor) is a legal constituted  
 public body with full authority and capability to perform the terms of  
 the agreement between the United States of America and \_\_\_\_\_ (local sponsor)  
 in connection with \_\_\_\_\_ (name of project), and to pay damages,  
 if necessary, in the event of the failure to perform in accordance with  
 Section 221 of Public Law 91-611 and that the person(s) who have executed  
 the contract on behalf of \_\_\_\_\_ (local sponsors) have acted with  
 in their statutory authority.

In Witness Whereof, I have made and executed this Certificate this  
 \_\_\_\_\_ day of \_\_\_\_\_.

(Seal, if necessary)

\_\_\_\_\_  
 Typed or Printed Name and Title

(Acknowledgement, if necessary)

Figure 12-2

\*

\*

**CHANNEL RIGHT OF WAY EASEMENT**

*PERPETUAL*

This deed made this . . . . . day of . . . . . 19. . . . . between . . . . .  
. . . . . of . . . . . County, . . . . . party of the first  
part, and the United States of America, party of the second part, WITNESSETH:

WHEREAS, in the River and Harbor Act of Congress approved . . . . . , provision  
was made for the improvement of . . . . . in accordance with a project set  
forth in House Document (or Rivers and Hudson Committee Document) No. . . . . Congress,  
subject to the condition that local interests furnished free of cost to the United States all lands,  
easements, and rights-of-way needed for the improvement, and

WHEREAS, The party of the first part is the owner in fee simple of a tract of land situated in  
. . . . . County, State of . . . . . , more particularly described as follows:

**(Formal Description)**

AND WHEREAS, the said tract of land is needed in connection with the aforesaid improvement,  
NOW THEREFORE, In consideration of the sum of one dollar (\$1.00), the receipt of which is  
hereby acknowledged and the benefits to the party of the first part that will result from the proposed  
improvement of the . . . . . the party of the first part does hereby grant, bargain, sell, and  
convey unto the party of the second part, and its assigns, the perpetual and assignable right and ease-  
ment to enter upon, dig, or cut away and remove any or all of the hereinbefore described tract of land  
including the right to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush,  
buildings, improvements and/or other obstructions therefrom, and to place on any portion not so cut  
away and removed, dredge or spoil material, earth and water carrying same and for such other pur-  
poses as may be required for the construction and maintenance of the aforesaid work of improvement  
or any enlargement thereof, and to maintain the portion cut away and removed as a part of the  
navigable waters of the United States. RESERVING HOWEVER, to the party of the first part,  
his/her heirs and assigns, all such rights and privileges in said tract of land as may be used and en-  
joyed without interfering with or abridging the rights and easements hereby conveyed to the party of  
the second part.

TO HAVE AND TO HOLD the said rights and easements unto the party of the second part, the  
United States of America, and its assigns, for the purposes aforesaid, forever. And the said party of  
the first part, for himself/herself and for his/her heirs and assigns, does hereby covenant with the  
party of the second part that he/she is lawfully seized in fee of the aforegranted premises; that the  
said premises are free from all encumbrances; that he/ she has good right to sell and convey the same  
as aforesaid; and that he/she will warrant and defend the title of the same to the said party of the se-  
cond part, and its assigns, against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, the said . . . . . , party of the first part,  
has set hereto his/her hand and seal on the day and year above written.

. . . . . (SEAL)  
. . . . . (SEAL)  
. . . . . (SEAL)

**ACKNOWLEDGEMENT**

\*

Figure 12-3



## CHAPTER 13

Real Estate  
AUDIT

## SECTION I. GENERAL

13-1. Purpose. This chapter establishes the criteria and prescribes the procedures on real estate audit activities by the Corps of Engineers field elements in the United States, the Canal Zone, Puerto Rico and the Virgin Islands for Department of the Army-Civil Works projects, Department of the Army-Military, Department of the Air Force, Dartment of Engery, National Aeronautics and Space Administration and such other agencies of the Federal Government, states, political subdivisions thereof, private or quasi-Governmental organizations for which the Chief of Engineers is assigned or through agreements other arrangements undertakes, real estate acquisition and disposal programs.

13-2. Applicability. This chapter is applicable to all Division and District Engineers having responsibility for real estate.

13-3. General Procedures and Criteria.

a. Real estate audits will be accomplished on an audit-as-you-go-basis. As each tract is acquired, all actions pertaining to verification and authentication of the acquisition of said tract will be completed. As to real estate actions (such as relocations, extinguishing of outstanding rights, land interchanges, acquisition or subordination of third party interests, deficiency awards, disposal actions, etc.), the verification and recordation of such actions as prescribed in this pamphlet will be accomplished as each action is completed. In addition to maintaining the Acquisition Docket Sheet (Field) (ENG Form 1069), a work-copy of the Tract Register (ENG Form 1019) with entries which agree with information contained in the final acquisition instrument(s) should also be maintained. When verification of data is completed, the entry should be annotated to indicate that the tract data has been audited. Concurrently, graphic and statistical data appearing on the Preliminary Project Map (ENG Form 1456a) should be

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revised. When this procedure has been applied to all authorized acquisition, the final tract register and the final map can be completed and readied without undue delay for submission to OCE as part of the audit assembly prescribed in section II of this Chapter. These procedures establish the basis for development of permanent realty historical files, compilation of historical records, retirement of residual data and construction of audit assemblies concurrently with completion of the individual actions.

b. Audit assemblies will be prepared by installations or projects and furnished for approval to HQDA (DAEN-REP-S) WASH DC 20314. The assemblies will include all lands acquired for an installation or project comprising the real property estates or interests covering fee, easements, public domain, other lesser interests such as licenses, permits (federal and private) and leaseholds. Military audit assemblies will be prepared and submitted for COE approval when, in accordance with the criteria set forth in the succeeding subparagraphs, the major portion of land for an installation has been acquired pursuant to authorizing directives. Once the major portion of an installation has been audited and approved, supplemental audit assemblies may be submitted in order of completion of directives without regard to chronological sequence of issuance. Also in this connection, when disposal has been accomplished on lands included in an incomplete acquisition directive, a preliminary audit assembly for that directive will be submitted together with a final map reflecting the disposal in order that disposal statistics may be properly shown against the related acquisition statistics. The preliminary assembly will be made "final" when complete information becomes available. Audit assemblies for civil works projects (including audits of real estate acquired for other Federal agencies) will be submitted for COE approval when all authorized acquisition for the project has been completed.

c. Assemblies will be prepared and submitted when the following actions have been accomplished.

(1) All deeds to the United States for lands acquired by purchase (or donation) have been delivered, deeds recorded and consideration paid, and final opinions have been rendered by the Division/District Engineer in compliance with the Delegation of Authority issued by the Assistant Attorney General; or, if applicable, title papers have been submitted to the Department of Justice for a final opinion by the Attorney General.

(2) Awards in condemnation cases have been made and all monies including deficiencies have been deposited and final judgment entered.

(3) Transfers are accomplished by publication of public land orders or Executive orders. In the case of rights-of-way over the public domain, the written acknowledgment is received from the Department of the Interior that a requested withdrawal has been noted on that department's records.

(4) A copy of memorandum or other communication from the Secretary of the transferring Department, or his delegate, to the Secretary of the receiving Department, or his delegate, has been received; or, when copy of formal transfer papers executed by the Secretary authorized to so transfer has been received. (The "formal transfer papers" is intended to mean transfer of jurisdiction, not accountability.)

(5) A copy of letter permit (use permit) from the permitting agency has been received whether at department level or below.

(6) A copy of the memorandum or other official directive authorizing reassignment is received. Care should be taken to distinguish between the authorizations which merely direct the use of areas at established installations (where the property accountability remains with the host installation) and a bona fide reassignment entailing the transfer of accountability to the command whose jurisdiction extends to the reassigned area. The establishment of U.S. Army Reserve Center facilities at existing installations is particularly susceptible to misinterpretation in this connection.

(7) Authorization is received in the case of transfers between Army-Military and Army-Civil Works. The term "reassigned" used in the authorization is construed as "transferred" for audit purposes.

(8) Leaseholds are acquired by negotiation or condemnation, or by transfer from another Federal agency.

(9) Easements have been reserved in the disposal of fee lands.

(10) Disposal of real estate is accomplished.

d. Installations will be designated in accordance with names assigned and established by General Orders, Directories and or other official publications. In the case of Army National Guard facilities, the geographic location should be shown first, i.e., Shopville Army National Guard Facility. Civil works projects will be designated in accordance with name indicated in the current Annual Report of the Chief of Engineers, Acts of Congress, or other official documents. Minor projects such as cut-offs, bank protection sites, channel rectifications, etc., will be identified with the local geographical name as well as with the name of the waterway affected. Designation of real property acquired for other Government agencies will be obtained from the project representative of the regional, zone, or other designated office of that agency.

\*

\*

e. Dams and lakes are readily identified as civil works projects. Project designations for audit purposes for extensive waterway improvements will be determined locally, being generally based

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on definitive construction phases in the overall development program, or other logical determinations. Lands acquired for other civilian Government agencies, or quasi-Governmental organizations will be considered a project whether acquired in conjunction with existing facilities of such bodies or for the establishment of a new facility.

## SECTION II. AUDIT ASSEMBLY

13-4. Assembly Elements. The audit assembly will consist of the following elements:

- a. Tract Register, ENG Form 1019 (dupe).
- b. Ozalid print of Final Project Map.
- c. Resettlement Tract Register, ENG Form 2150 (if applicable), or statement that no relocation costs are involved.
- d. Copies of directives or acquisition authorizations issued at field level and other documents pertaining to licenses, permits, leases, etc., as described in Section X, this chapter, will be furnished to complete the realty records maintained in OCE.
- e. Summary Statement of the Status of Jurisdiction (in duplicate), if applicable. Negative statements may consist of only the word "negative." \* Where the status of jurisdiction cannot be readily ascertained from the summary statement, it is desirable to include a map depicting the Federal legislative jurisdiction with the statement. Additional instructions for \* the preparation of statements are contained in paragraph 13-35c.
- f. Completed ENG Form 1603, Realty Control File Summary (original and two copies). Submission of this element also applies to reaudit for supplemental acquisition and/or disposal. Examples of the form illustrating the manner of completion under various commonly occurring situations, together with general instructions, are included in Figures 13-1 through 13-10.

## SECTION III. TRACT REGISTER

13-5. Form and Source Data. A Tract Register (ENG Form 1019) will be prepared for each military real estate directive issued and each civil works acquisition authorization. In the case of civil works Department of the Army acquisition, the Act of Congress authorizing the project is considered the acquisition authorization. Acquisitions covered by each military directive will be combined when supplemental directives are issued authorizing additional funds; when tracts are included in two or more directives but combined

in a single declaration of taking; when a single tract involving severance as to the remainder of the tract is included in two or more directives, and the latter directives include the remainder of, or a portion of the remainder of, the "parent" tract, and both parcels are acquired in one transaction as a single tract. Acquisition on general directives (signed by the Director of Real Estate, Office of the Chief of Engineers) issued in connection with acquisition of additional tracts will be combined with the data for the related real estate directives. Appurtenant easement, licenses, and permits acquired under the authority delegated by COE will be reflected on the Tract Register enumerating the tracts for which the lesser interests were acquired. Acquisition Docket Sheet (Field), ENG Form 1069, will be the source document in the preparation of the Tract Register. Completed ENG Form(s) 1019 will be reduced by photographic reproduction to 8" X 12 1/2" (trim size) prior to submission to HQDA (DAEN-REP-S). WASH DC 20314.

13-6. Type. The Tract Register submitted will be checked "Final" only when the "Last Action Step Taken" column is complete as to all tracts.

13-7. Project and Purpose. The blocks captioned "Project" (official name) and "Purpose," which are self-explanatory, will be completed.

13-8. Directives or Authorizations. The blocks pertaining to directive and dates thereof will be completed as follows:

a. Military. Cite numbered or unnumbered specific directives and dates thereof, originating at all levels of authority including those written pursuant to the authority delegated in Chapter 2. For minor acquisitions accomplished pursuant to delegated authority for which no specific written directives exists, cite "Del. Auth." and the date of the instrument acquired thereunder. If more than one instrument, cite the date of the earliest instrument.

b. Army Civil Works--Department of the Army Acquisition. Enter the title and date of the Act of Congress authorizing the acquisition, the date(s) of approval of the design memoranda by the Chief of Engineers and the Division Engineer, if applicable under the provisions of Chapter 2, and the date(s) of indorsements(s) from the Assistant Secretary of the Army approving exchanges of land. Also report in this category, those lands acquired for local interests. In such cases, the authority for the acquisition will be the OCE letter and date thereof, transmitting an executed copy of the declaration

of taking to the District or Division Engineer for filing in the court.

c. Army Civil Works--Local Acquisition Projects--Later Conveyance to the U.S. Where lands are furnished by local interests for Civil works projects, enter the term "Del. Auth." and the date of the Division or District's letter to the local interest accepting the assurance. A copy of such letter should accompany the audit assembly in each instance. Include the title and date of the Act(s) of Congress authorizing the acquisition.

d. Army Military--Army Civil Works (Transfers). The directive for acquisition of lands by transfer between Army military and Army civil works is the memorandum or other formal paper signed by the Assistant Secretary of the Army approving the transfer from military account to civil account or vice versa. This document is also the excess authority for the transferor, and the date thereof should be cited as the effective date of the transfer unless another date is stated in the text. For audit purposes, Army military and Army civil works are treated as if separate agencies.

e. Military-Civil Works--Retention of Lesser Interests in Fee Disposals. The authorization for "acquisition" of lesser interests reserved in the disposal of fee lands for the same Department will be the document and date thereof declaring the fee land excess to the needs of the Department having control of the land or, in the absence thereof, the disposal document and date thereof conveying the fee land. The authorization for "acquisition" of lesser interests reserved in the disposal of fee lands for another Department will be the reply to the screening letter from the Department having control of the land or, in the absence thereof, the disposal document and date thereof conveying the fee land. General instructions pertaining to mapping of reserved easements, etc. are illustrated by Figures 3-2 and 3-2a, Chapter 3.

f. Court Action Instituted by Landowners. For lands or interest therein acquired as a result of court action instituted by landowners, cite the Act of Congress under which the claim is allowed and the acquisition completed as the directive and the date of judgment as the directive date.

13-9. Tract Numbering. Tracts will be numbered in accordance with procedure outlined in Chapter 3 except as provided in paragraph 13-13b below. In a Tract Register showing all real property acquisitions, tracts, alphabetically designated, covering lands acquired by transfer from other Government agencies or by reassignment from other installations or projects will be listed first. Leased tracts will be listed last.

13-10 Landowner's Name. The name of the vendor will be shown as the former owner of record. In instances where several persons have an

interest in the same land, the Tract Register will show the first person named in the deed of conveyance followed by "et al," "et ux," or "et vir," as applicable. In condemnation cases the name of the owner(s) of record will likewise be indicated. Where lands are reassigned from one installation or project to another within the same Department, show that Department as the vendor. The specific installation or project from which acquired will be noted in the "Remarks" Column. Lands acquired from other Government agencies will reflect the transferring department name and bureau, if known, as the landowner (vendor). Transferred leases are an exception to the foregoing in that the lessor's (landowners's) name will be shown. The landowner's name for reserved easements or other rights will be the name of the party to whom fee title was conveyed.

13-11. Acreage.

a. Determination and reporting of accurate tract areas in the acreage column is essential. Before reaching the final determination to list the required tract acreage, all source material such as surveys (if available), maps, and instruments of conveyance should be examined.

b. In computing and reporting public domain lands acquired by Executive Orders, public land orders, etc., care should be taken that only the Government-owned land acreage is reported. Perimeter descriptions of such transferred acres often include nonpublic (as well as Federally-owned) lands, the acreage of which should be deleted from the gross area described. When variations between the published acreages (Federal Register) and the actual acreages acquired occur, explanations should be made in the "Remarks" column.

13-12. Price.

a. The actual amount of money paid for a tract will be shown in the "Price" column. Option contract, deeds, or other instruments of conveyance, Attorney's Payment and Closing Sheets and related papers should be referred to in arriving at the proper cost of a tract. Allowance made involving deductions at the time of closing, wherein value of crops or salvage of buildings is withheld from original option contract price, should be taken into consideration in arriving at the net cost. Appropriate notes concerning such items will appear in the "Remarks" column opposite the tracts. In condemnation proceeding, where interest is included as part of the cost of a tract, the amount thereof should be noted in the "Remarks" column opposite the tract. If exact costs of fee and lesser interest areas acquired by a single option, declaration of taking, etc., are not stated in the acquisition instrument, estimated costs based on best available information will be shown in the "Price" column.

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b. Tracts for which nominal consideration is set forth and no payment is made, will show the word "nominal" in the "Price" column. If payment is made, the amount actually disbursed will be shown.

c. The per annum rental for leased tracts will be shown in the "Price" column.

d. The cost of tracts acquired by the United States with funds furnished by other Government agencies, states, or other political subdivisions will be recorded in the "Remarks" column only, opposite the appropriate tracts. The cost, if determinable, of transferred tracts or areas will be treated likewise unless the transferring agency is reimbursed, in which case normal procedure will be followed. In connection with involuntary acquisitions, where the judgment provides for payment of interest in addition to the amount of the award, the amount of interest will be obtained by the District offices by direct correspondence with the Director, Transportation and Claims Division, U.S. General Accounting Office, Washington, DC 20548.

e. The original cost of tracts or areas acquired by reassignment will be shown in the "Price" column and explained in the "Remarks" that price represents cost of the land when acquired for the reassigning installation.

f. No cost will be shown for lands acquired by an exchange unless in addition to the lands conveyed, the Government pays a sum of money. This amount will then be shown in the "Price" column, and the tract conveyed identified in the "Remarks" column. Where portions of tracts are conveyed, the proportionate original costs of the severed tracts will be tabulated and identified in the "Remarks" column opposite the acquired tract(s). Exception: Where lands aquired in an exchange are for another project, show the cost in the "Price" column, the amount being the cost of the lands conveyed in the exchange.

g. The cost of extinguishing third-party interests will be shown in the price column and explained in the remarks.

#### 13-13. Estate.

a. The applicable symbol indicated in footnote 1/ of the tract Register (ENG Form 1019) will be used to denote the estate acquired. Where the estate may not be specifically mentioned in the amended judgment on tracts acquired by court action, the final judgment should be carefully examined to determine the title, interest or temporary use decreed by the court. Provisions of the use specified in the decree may indicate the estate to be lease, or merely refer to it as



"for damages only." In either instance, the "estate" will be considered a "leasehold" and be so recorded with brief notation on the nature of the action shown in the "Remarks" column. In those cases where title is revested in former owners (as of the date of taking) and no damages are awarded or payment, made, the tracts(s) and landowner(s) will be identified in the usual manner but all other columns left blank except that the circumstances concerning the revestment will be set out briefly in the "Remarks" column.

b. The actual estate acquired will be shown in the "Estate" column for lands acquired by permanent transfer from other Federal Government departments or agencies, reassigned from one installation to another within the same department, or transferred from military to civil account or vice versa within the Department of the Army. Where mixed interests are acquired, all fee interests included in the reassignment or transfer will be consolidated and assigned a single alphabetical designation. Each easement tract will be considered a parcel and assigned an alphabetical designation with a numeric suffix. Licenses, permits (not use permits) and other lesser interests will be treated in the same manner. For example, should a transfer include several fee tracts, and more than one easement, license and permit, the fee tracts should be considered one tract and designated as Tract A; the easement tracts would be designated BE-1, BE-2, BE-3, etc.; the license tracts would be designated CL-1, CL-2, CL-3, etc.; and the permit tracts would be designated DP-1, DP-2, etc. Single alphabetical tract designations (preferably the same as assigned when acquired for the transferring installation) will be assigned to lands acquired by use permit and withdrawal and later reassigned or transferred to another installation. If the original tract identification cannot be used (because the letter has been previously assigned to another tract at the installation) the "Remarks" column will identify the designation by which the tract was formerly known. "F" would be shown in the "Estate" column for the fee tracts, "E" for the easement tracts, "PE" for the permit tracts, and "LI" for the license tracts. The "Method" column for all tracts would show "T", and the remarks for each easement, license, and permit tract would reflect the date of transfer and describe the purpose for which the tract was originally acquired, the original tract number and the term of the easement, permit, or license. The landowner's name for lesser interest tracts would be the transferring agency with parenthetical reference to the owner of the fee (such as "Department of the Army (Fred L. Jones)"). The above is not applicable to transferred leased tracts which will be numbered in accordance with Chapter 3. Statistics for transferred leased tracts will not be combined. The estate will be shown as "Leasehold" and the method as "T".

c. Transfer of a portion of the public domain by Executive Orders, public land orders, use permits, agreements, etc., whether permanent or temporary, will be indicated by the use of the symbols "PD" in the

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"Estate" column of the Tract Register (ENG Form 1019). On the final map, such lands will be shown in the "Transferred" column of the Tract Register and in the appropriate line of the "Acquisition" block of the "Statistical" column. No estate will be shown for the temporary use of Government lands by use permit not involving the public domain. However, such lands will be shown in the line indicated in the "Statistical" column of the Final Project Map.

d. When the public domain land, over which a right-of-way has been noted on the public land records, is patented reserving an easement, there will be no disposal of public domain, but the necessary changes in landowners name, estate, method, last action step taken, and remarks will be made to the original tract. Renumbering of the tract will not be required as reference to the original acquisition by notation will be included under "Remarks."

e. In the past, it has been the policy not to show permits between the Department of the Army and the Department of the Air Force as acquisition. However, in order that the full scope of an installation may be correctly depicted, all use permits involving land from any Federal agency will be treated as an acquisition for the receiving agency and so reported and mapped. Although the area will be shown as an acquisition for the permitted agency, it will not be shown as a disposal for the permitter agency.

f. Acquisitions concerning nonexclusive use will be in accordance with instructions prescribed in Chapters 3 and 12.

g. Agreements (including easements, licenses, and permits), which have recurring renewals or recurring rental will be listed as leases (Section \_\_\_\_\_, Chapter 12.

13-14. Method. The applicable symbols indicated in footnote 2 / of the Tract Register (ENG Form 1019) will be used to indicate the method by which lands were acquired. In this connection, for donations, tracts acquired for nominal consideration and not actually paid will be designated by "D" for donation; if payment was made, such tracts will be designated by "P" for purchase; or, in the event of \$1.00 deposit in court, they will be shown by "D/T" for declaration of taking. The symbol "T" is to be used to designate all rights, temporary or otherwise, transferring from other Federal agencies, civil works projects or military installations. The symbol "RES" is to be used to designate easements and other rights reserved in disposals of fee. In connection with tracts acquired as a result of court action instituted by landowners, enter an asterisk in the "Method" column reference to the directive citation and explain the circumstances of the acquisition, including the source of the funds, in the "Remarks" column.

13-15. Last Action Step Taken.

a. For tracts acquired from other Federal agencies, military installations or civil works projects, indicate (whether by use permit, public land order, Executive order, or other form of agreement) the number involved and date of action.

b. For fee tracts acquired by direct purchase and condemnation, indicate the final title opinion by: "Final Opinion dated\_\_\_\_\_."

c. For lesser interests acquired by direct purchase and condemnation, indicate the final title opinion by: "Final Opinion dated\_\_\_\_\_."

d. For all lesser interests and those low-cost easement tracts acquired prior to June 1944 by direct purchase, indicate the type of instrument and date thereof.

e. For low-cost easement tracts acquired subsequent to June 1944, indicate: "Low Cost Easement Title Opinion dated \_\_\_\_\_." "Attorney's Memorandum Opinion dated \_\_\_\_\_" "Attorney's Final Certificate of Title dated \_\_\_\_\_" or "Final Certificate of Title," whichever is applicable.

f. For easements reserved in disposal actions, cite the deed and date thereof.

\* g. It is recognized that when an installation or project is eligible for audit completion as prescribed in paragraph 13-3c above, certain "Last Action Steps" will not have been accomplished. Particularly, tracts in condemnation may be awaiting final title opinions by the Attorney General. The dates of final title opinions not available at the time of the audit completion will be furnished as supplemental information as it becomes available and will so continue to be furnished until all "Last Action Steps" for all tracts have been accounted for. At that time, the Tract Register (ENG Form 1019) will be marked "Final." \*

13-16. Remarks. Indicate in this column:

a. Any clarifying information or other explanations deemed significant.

b. Terms of easements, leases and lesser interests.

c. Descriptive items, such as types of easements, licenses, etc.

d. Brief statement, opposite each fee or permanent easement tract, indicating specific type(s) of outstanding right(s), if acquired subject

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thereto. This applies to permanently-transferred areas except those involving the public domain.

e. Notations as to amounts of interests, refunds, or deficiencies in excess of initial deposits.

f. Citation of civil action numbers opposite tracts, when applicable.

g. For fee tracts, date of deed, date of filing of Declaration of Taking, and for tracts taken by straight condemnation, date of final judgment.

h. For reserved easements: " (type) \_\_\_\_\_ easement reserved over entire area of (tracts(s)), " or (type) \_\_\_\_\_ easement reserved over (number) acres of (tract) \_\_\_\_\_ and (number) \_\_\_\_\_ acres of (tract), " etc. Similar cross-reference remarks may be shown opposite the fee tracts.

13-17. Total. At the end of the individual listing of tracts on the Tract Register (ENG Form 1019) for each military real estate directive and civil works authorization, totals will be shown for tract, acreages and price. Rental payments (leases) will be excluded from the price total. Do not include in the tract count those tracts where title is revested in former owners as of the date of taking and no damages are awarded or payments made. For civil works projects involving more than one county, a recapitulation of the statistics for each county will be made, and the grand total will be shown for tracts, acreages and price (other than rentals) in the space provided.

\*

#### SECTION IV. RESETTLEMENT TRACT REGISTER

13-18. Resettlement Act, 10 U.S.C. 2680. When applicable, a Resettlement Tract Register, ENG Form 2150, will be prepared for each directive or authorization issued. Where two or more directives have been combined, pursuant to circumstances as outlined in Section III, this chapter, the Resettlement Tract Register will be submitted on the same basis as ENG Form 1019. The data required by this form are indicated by the self-explanatory captions of the various blocks and columns.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646). Payments to landowners and tenants pursuant to Title II, Public Law 91-646 will be recorded on ENG Form 2150, Resettlement Tract Register. Such payments may be recorded on the same ENG Form 2150 as is used for Resettlement Act payments but will be identified as payments under Public Law 91-646 by asterisk with footnote at the end of the register. Where tract entries contain both owner and tenant or tenant only, identification will be made by (O) or (T) after the name, as appropriate. Dollar amounts paid to individual claimants will be combined into one sum regardless of the type or purpose of payments.

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SECTION V. OUTSTANDING RIGHTS

13-19. Recording of Outstanding Rights. Examination should be made to determine whether individual fee or permanent easement tracts were taken subject to any outstanding rights. If so, such facts should be briefly noted in the "Remarks" column on the Tract Register (ENG Form 1019) opposite each tract affected. To eliminate repetition where numerous tracts within an installation or project are subject to the same outstanding

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right or rights, the outstanding rights may be listed at the end of the Tract Register (ENG Form 1019) keyed to a symbol such as 1/L, 2/L, etc., which symbol would also be entered in the "Remarks" Column opposite each tract subject to that particular outstanding right.

13-20. Recording of Extinguishment of Outstanding Right. Where tracts acquired subject to outstanding rights that are later extinguished pursuant to the terms of a relocation contract, note such action by a brief explanation in the "Remarks" column of the Tract Register, ENG Form 1019. For example, should a power line easement that traverses a tract (or several tracts) be extinguished by a quitclaim deed from the power company, merely note: "Power line easement ext. by QCD dated \_\_\_\_." Extinguishments involving the use of real estate funds should also be noted in the aforesaid "Remarks" Column with the additional information that the cost of the tract includes the amount of the cost of the extinguishment. In instances where extinguished easement or right traversed several tracts and the cost cannot be determined on a tract basis, the lump-sum cost for all tracts should be placed in the "Price" column of the Tract Register, ENG Form 1019 (as one of the last items), and statement inserted in the "Remarks" column enumerating the tracts involved. Where mineral rights have been subordinated or extinguished, instruments relating thereto will be identified and the recordation data included in the statement.

#### SECTION VI. RELOCATIONS

13-21. Review of Conveyances. A careful review of conveyances by the Government to others should be made for the purpose of determining that the interest conveyed is the same as the interest acquired. That is, that an easement conveyed pursuant to a relocation contract was the sole interest acquired over that same land. An easement conveyed for purposes of relocation over lands acquired in fee is merely an outgrant, not a true disposal.

13-22. Acquisition for Later Conveyance. The acquisition of lands or interests therein by the United States, although for the purpose of later conveyance, will be reported, mapped, and otherwise treated as an orthodox acquisition.

#### SECTION VII. MERGER OF ESTATES

13-23. Merger of Easements in Fee Taking. Where subsequent directives are issued authorizing this greater taking of tracts in which lesser interest were previously taken, the directives relating to the same tracts

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should be combined and all adjustments made on the tract register reflecting the greater interest when prepared for audit purposes. Should this type of action occur subsequent to the approval of the earlier acquisition, the tract register for that acquisition will be revised to include the later taking. The Realty Control File Summary (ENG Form 1603) and first sheet of the final project map will likewise be adjusted to reflect the net lesser taking, if any, finally acquired. The tract register on the final map will be adjusted by the deletion of the lesser taking acreage where the entire tract was merged in the greater taking or the reduction of the lesser taking tract area by that much of the acreage merged into the greater interest. A brief explanation will be entered in the "Remarks" column of the map tract register as well as on the revised ENG Form 1019. Care should be taken that the cost of the lesser taking is included with the cost of the greater interest tract and explained on that Tract Register, ENG Form 1019.

13-24. Merger of Leasehold Interests Into Greater Estate. Where leasehold interests merge into a greater estate, the annual rental is not to be included in the cost of the greater taking except where lands are leased with the option to purchase and the contract provides for rental to be applied to purchase price when option is exercised.

#### SECTION VIII. RETENTION OF LANDS AT FORMER AIR FORCE FACILITIES

13-25. Background. The Department of the Air Force was established as a separate Department in 1947. Subsequently, Joint Army and Air Force Bulletin No. 17 dated 4 June 1948 was issued. This bulletin, resulting from the Secretary of Defense's Transfer Order 14, transferred, effective 1 July 1948, from the Department of the Army to the Department of the Air Force, all real property (except industrial real property previously transferred) used by the Air Force. By this action all active (and inactive) installations designated Air Force property were so declared and the realty records of such in the District and Division Engineer offices as well as those in the Office of the Chief of Engineers were automatically considered Air Force records. At the same time, all surplus Air Force installations (whether completely disposed of or in the process of disposal) were also considered Air Force property, and jurisdiction, where any existed, was also transferred as of the effective date of the Transfer Order 14, namely, 1 July 1948. The withdrawal from the disposal agency (then War Assets Administration) by the Air Force of all or a portion of an installation was treated as though it had never been surplus but was transferred along with the other active or inactive installations.

13-26. Audit Requirement. A withdrawal of a portion of a former Air Corps installation (declared surplus prior to 1 July 1948 and withdrawn prior to 1 July 1948) for Army use was considered a reassignment within

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\* the Department of the Army effective as of 1 July 1948. The retention of a portion of a former Army Air Corps installation for Army use has a similar effect. In either instance, the withdrawal or retention has the effect of establishing a new Army installation, and if the interest retained (or \* withdrawn) is an auditable one, a separate Army audit assembly is required.

## SECTION IX. REACQUISITION

13-27. Background. Many installations have been disposed of and subsequently reacquired in whole or in part. In some instances, the Government has exercised rights of repossession included in provisions contained in disposal deeds. In other instances, the property was reacquired even though the disposal documents did not provide for repossession by the Government. Occasionally, the reacquisition was by the retransfer of title to the Government. Frequently, leasehold or other agreements were entered into which allowed the Government the reuse of the property.

\* 13-28. Audit Requirement. Where an auditable installation has been disposed of and reacquired by any method, a supplement to the original audit, or a completely new audit, is required. The use made of the reacquired areas will be the controlling factor in deciding whether to reaudit or submit a new audit. If reacquired for the same purpose as the original acquisition and for use by the same Department, a reaudit \* will be submitted. If the area is reacquired, and used for purposes other than that for which originally acquired, or by another department, a new audit will be submitted. The assembly will include as many of the audit elements as may be necessary. A reacquisition, whether in the form of a reaudit or new audit, will require the submission of all audit elements. In most instances, the original existing map may be utilized to form the basis of the map reflecting the recaptured or reacquired area. Upon submission and approval of the assembly reflecting the reacquisition, the original map should be marked: "See subsequent map No. \_\_\_\_\_ dated \_\_\_\_\_ showing (recapture or reacquisition)." and retained in the map exhibit of the audited realty historical file. The revision box of the new map should indicate that it was prepared to show reacquisition of the installation and refer to the original map by date and number for information on original tract data. The audited installation number originally assigned will apply, unless a new audit is established, in which case a new audit number will be assigned. In those instances where portions of installations have been disposed of and reacquired, the reacquisition should be audited in the same manner as any supplemental acquisition.



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## SECTION X. OTHER MATERIAL TO BE FURNISHED

13-29. Lesser Interest Instruments. Copies (one each) of licenses, permits, franchises, etc., together with copies of use permits and other forms of agreements except leases acquired at field level are required for the realty historical file maintained in the Office of the Chief of Engineers and should accompany the audit assembly when submitted.

13-30. Directives and Authorizations. Copies of leasing directives for wholly-leased installations and copies of directives or acquisition authorizations issued at field level and not previously furnished should accompany the audit assembly. Copies of superseding instruments should be furnished HQDA (DAEN-REP-S) WASH DC 20314 as acquired, together with updated audit elements.

## SECTION XI. OFF-BASE AIR FORCE INSTALLATIONS

13-31. Special Instructions. Along with major Air Force installations listed in U.S. Air Force Installations Directory are many off-base facilities which have been designated "Installations." Separate audits are not required for these operational facilities where overlapping of real estate interests or other considerations make such action infeasible. Generally, such facilities as marker sites, beacon sites, radar and radio annexes will be audited with the parent base. Such facilities when so audited will be listed in the "Title" block of the final project map under the parent base name, using small scale lettering. Inserts drawn to larger scale and properly identified will be used to indicate detail when necessary. If the parent base is drawn to scale, adequately showing detail, the facility name will be indicated opposite the appropriate tracts on the tract register. However, if a facility contiguous to or abutting a parent base is under the jurisdiction of a different command from the main base, it will be audited as a separate installation. Rent-free leased building space provided by General Services Administration and occupied by Air Force elements, although designated installations in a Directory, will not be audited.

13-32. Off-Base Facilities Previously Audited. Off-base facilities heretofore audited and approved as separate installations need not conform to the above instructions. However, district offices are authorized to combine previously audited off-base facilities with the main base where expansion of land holdings cause overlapping of interests or, if for other reasons determined advisable. Cancellations of previously assigned audit numbers should be reported to HQDA (DAEN-REP-S) WASH DC 20314 and revised audit elements submitted for approval to assure uniformity of land records.

## SECTION XII. REALTY HISTORICAL FILE

13-33. Establishment. Upon approval of an audit assembly, permanent realty historical file folder(s) will be established in the office of

- \* record and all papers, maps, documents, and related items will be identified by the assigned audit number. It will not be necessary to affix the audit number to every sheet of multiple page documents, except for maps and ENG Form 1603. \*

13-34. Realty Control File Summary. The contents of the file folder(s) will be separated into exhibits by dividers designated alphabetically A thru F. The exact number of divisions or exhibits will depend upon the scope in each case. The contents of the entire record will be indexed and the statistics and data summarized on the Realty Control File Summary (ENG Form 1603). The captions of the various blocks and boxes above "Land Ownership and Cost Data" indicate the type of information to be inserted therein (Figures 13-11 and 13-11a). Other information concerning the ENG Form 1603 is as follows:

a. The first block under the heading "Land Ownership and Cost Data" will contain the gross acreage acquired, broken down by the various estates in tabular form, and totaled under the subheading "Area." The applicable modified Department of Defense land Category code numbers, (Figures 13-11a) will be inserted opposite the statistics for each separate estate, under the subheading "DOD" Category Code." The gross cost of each estate will be tabulated opposite the "Area" and "Code" entry to which applicable, and totaled. Except for Air Force, codes will not be entered on ENG Forms 1603 covering lands acquired for other Federal agencies.

b. The second block will contain the disposal data similar to that outlined above. In some cases, a discrepancy exists between an acreage as acquired (and/or the cost thereof) and that cited in a report of excess on Standard Form 118 for the same area. If the discrepancy is not of sufficient magnitude to have warranted the submission of a corrected report of excess, a statement should be signed by a responsible Real Estate officer. This statement should affirm that the disposal of area is substantially the same as acquired (or explain the differences in calculating the cost) and should accompany the audit assembly.

c. Third block will be completed by deducting the area and costs shown in block 2 from the area and costs in block 1. The "Net" area should again be reflected in tabular form identified with the applicable modified DOD Land Category Code.

d. The "Remarks" section of the form will be used for notes pertinent to acquisition and disposal actions such as from whom transferred land was acquired and the disposal notations outlined in Chapter 3.

13-35. Exhibits in the Realty Historical File.

a. Acquisition Documents, Exhibit A. A tab or labeled sheet marked "Exhibit A" will be inserted in the folder as the second item,

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and there will be filed thereunder copies of acquisition papers and instruments of permanent value. Such papers are:

(1) Real Estate directives establishing military necessity and authorizing acquisition; Acts of Congress authorizing specific acquisitions; OCE authorizations to proceed with civil works acquisitions; agreements with local bodies relating to local cooperation in civil works projects and assurances relating thereto; and other authorizations or directives which form the basis for acquisition.

(2) Final Acquisition Progress Report, ENG Form 2440, RCS DAEN-RE-1(R2).

(3) Tract Register (ENG Form 1019) and, where applicable, Resettlement Tract Register (ENG Form 2150).

(4) Reference sheet for civil works projects stating where the definite project report or general design memorandum may be found upon retirement, and the citation of Act(s) under which the acquisition was financed.

(5) Real Estate planning Report (Real Estate Design Memo), or in lieu thereof, a reference sheet indicating where such a report is maintained in the office of record.

(6) Executive orders, public land orders, Presidential proclamations, and use permits relating to the acquisition of land from other Government agencies.

(7) Deeds of fee and easements (all types), declarations of taking with judgments thereon and any amendments thereto; deficiency judgments on excess awards; final judgments; orders of distribution; final title opinions; Department of the Army Attorney's certificate of title, final certificates of title obtained from commercial title companies, and other documents of conveyance to the United States, including all lesser interests except leases.

(8) These papers will be arranged by groups commencing with the earliest directive or authorization followed by the ENG Form 2440 and ENG Form 1019 pertaining thereto. For civil works projects, the consolidated ENG Form 2440 will be filed as the first item in the Exhibit. Directly beneath the ENG Form 1019 will be filed the papers and instruments relating to the individual tracts in the same order as they are listed on the ENG Form 1019. In condemnation cases, it is authorized to file suit files intact in separate volumes, with locator reference sheets inserted in Exhibit A in lieu of acquisition documents. The groups will be arranged so that the group pertaining to the earliest "area" acquisition will be at the bottom of the exhibit and latest at

the top. Upon reacquisition of a disposed of installation, the papers relating to the reacquisition will be filed as above, under a new acquisition exhibit to be designated "Exhibit A-1." This exhibit, relating to the latest acquisition, will be filed on top of Exhibit A.

b. Disposal Documents, Exhibit B. The makeup of Exhibit B will also be on a chronological basis, filed from bottom to top, by authorization, and all papers concerning a given disposal action will be grouped beginning with the earliest disposal authorization and continuing until that specific disposal has been consummated. That is, a second disposal authorization even though issued prior to the consummation of the disposal action under the first authorization, will be the nucleus for a succeeding segment of the disposal exhibit and all papers pertaining thereto will be grouped together chronologically culminating with the last action document, such as quitclaim deeds or transfer papers. Disposal records of a permanent nature are set forth below:

(1) Real property Disposal Report, ENG Form O-836, as furnished by OCE, representing final status.

(2) Classification papers such as directives, general orders, etc., placing an installation in inactive, or surplus (excess) status.

(3) Orders of reassignment, letters of relinquishment, together with letters of intent to relinquish and/or letters of retransfer, letters of transfer, revoking public land orders, SF 118 or equivalent, transfer documents of custody and accountability assumption by disposal agency.

(4) Letters of assignment by General Services Administration to other agencies for disposal; copies of Transfer and Acceptance of Military Real Property, DD Form 1354; copies of quitclaim deeds, grants, or other instruments of conveyance.

(5) Upon completion of all disposal actions for an installation or project, OCE will furnish the office of record a copy of the final ENG Form O-836 itemizing the disposal actions for that installation or project. This report will be filed immediately under the tab or labeled sheet marked "Exhibit B." Upon the disposal of a required installation, a newly established Exhibit B-1 will contain all papers (as above) relating thereto.

c. Jurisdiction, Exhibit C. Under this exhibit will be filed copies of all papers relating to the extent of Federal jurisdiction over the lands acquired by the United States for military purposes or for civil works purposes within the several states. This will include

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such documents as deeds of cession, letters of notice to the state of acceptance of jurisdiction by the United States, approved annexation documents, retrocession documents, and related papers. Offices of record will prepare and submit to HQDA (DAEN-REP-S) WASH DC 20314 a current Summary Statement of the Status of Jurisdiction as part of the audit assembly. The summary will be in the style of those previously furnished by this headquarters except that negative statements need consist of simply the word "negative." Where jurisdiction to any extent has been ceded to the United States, cite the general or specific state statute rather than codified identification. In connections with the acquisitions of transferred fee lands, where jurisdictional information cannot be obtained locally from the transferring agency, OCE should be advised prior to submission of the audit in order that such information may be obtained at department level. In order that the summary may be kept current, in cases where Federal jurisdiction has been acquired for an installation, the jurisdiction summary should be revised after each acquisition or disposal action. The revised summary should be submitted concurrently with the revised audit assembly.

d. Relocation, Exhibit D. This exhibit will contain copies of all papers of a permanent value relating to relocation such as utilities relocation contracts or agreements (quitclaim deed (s) related thereto), road relocation closing or vacation documents, and cemetery relocation final reports. They will be filed in an orderly fashion, chronologically segregated.

e. Miscellaneous, Exhibit E. This exhibit will contain extract sheets relating to all claims arising out of the use and occupancy of real property showing the name of claimant, officer's recommendation, regulations under which processed, and final disposition. There will also be included in this exhibit a copy of any unusual or clarifying papers or documents which do not clearly belong under any of the preceding exhibits.

f. Final Project Map, Exhibit F. Under this exhibit there should be included a folded print of the audit-approved final Project Map. If bulk makes this impracticable, the prints may be kept in a flat file separate from the realty historical file with a reference sheet inserted under this exhibit indicating where prints are located. At the discretion of the District or Division Engineer, ENG Forms 3861 with microfilm attached may be substituted for the folded print of the approved final Project Map.

13-36. Deviation Authority. Authority is granted to the District or Division Engineer to deviate from strict adherence to the filing system outlined above if, in his judgment, the substituted procedure materially simplifies record maintenance and/or facilities locating the desired items. This applies to rearrangement of items within the separate exhibits and does not authorize acquisition papers (Exhibit A), for example, to be filed in another exhibit.

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13-37. Division Office Historical Files. A skeleton realty historical file may be maintained in the division offices where the responsibility for real estate has been decentralized to district offices. This file will be limited to copies of documents listed below:

- a. Realty Control File Summary, ENG Form 1603.
- b. Copy of documents listed in subparagraphs 13-35a(1), (2), (3), (6), b (1), c and f above.

13-38. Disposition of Real Estate Files. Disposition of real estate files will be in accordance with AR 340-18-15.

#### SECTION XIII. DREDGING, EROSION, AND ACCRETION

13-39. Method of Treatment--Dredged and Eroded Areas. Land dredged away will not be treated as a disposal. Land lost due to erosion will not be treated as a disposal unless adjacent fast lands are disposed of by normal methods. In such circumstances:

- a. The eroded acreage, even though omitted from the disposal document, will be considered as having been included therein.
- b. If the adjacent fast land is transferred between military departments or to a civil works project, the total area, including the eroded portion, will be considered as having been acquired by the receiving installation. The ENG Form 1019 and ENG Form 1603 will explain that a certain portion of the area involves eroded lands.

13-40. Method of Treatment--Accreted Areas. Accreted areas will be treated as acquisitions. However, audited records will not be revised to reflect this type of "acquisition" until circumstances arise that necessitate a revision of the records for other purposes. The accreted area will be considered part of the tract to which it attaches.

#### SECTION XIV. WHERRY HOUSING PROJECTS

13-41. On-Base Acquisitions. Upon completion of directives authorizing the acquisition of sponsor's equity in Wherry Housing projects built on Government-owned land (on base), the documents relating thereto, together with the final ENG Form 2440, prepared in accordance with Chapter 14, will be made a part of the permanent historical record (realty historical file) as a segment of the acquisition Exhibit A and filed in the manner prescribed in paragraph 13-35a above.

13-42. Off-Base Acquisitions. Upon completion of directives authorizing the acquisition of the sponsor's equity in Wherry Housing projects

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together with the underlying land, audit assemblies will be prepared and submitted in accordance with procedures outlined in this chapter. Since the cost of land is generally inseparable from the gross sum paid the former sponsor, the price column will remain blank, and the gross cost (to acquire the land and the sponsor's equity in the building(s)) will be reflected in the "Remarks" column of the ENG Form 1019.

13-43. Directives. The authorization for the acquisition of Air Force Wherry Housing, both off-base and on-base, is contained in applicable memorandum to the Under Secretary of the Air Force from the Assistant Secretary of Defense specifically authorizing acquisition in each instance. OCE will furnish District offices copies of these directives together with acquisition documents and related papers. Issuance and distribution of Army directives will follow established procedure.

#### SECTION XV. ACCOUNTABILITY

13-44. Accountability Document--Prior to Audit Approval. ER 735-2-1 prescribes Acquisition Docket Sheet (Field), ENG Form 1069, as the accountability document for civil works lands prior to approval of real estate audits by Office of the Chief of Engineers.

13-45. Accountability Document--Subsequent to Audit Approval. ER 735-2-1 prescribes Tract Register, ENG Form 1019, as the accountability document for civil works lands subsequent to the approval of real estate audits by Office of the Chief of Engineers.

#### SECTION XVI. PROCEDURAL INQUIRIES

13-46. To Office of the Chief of Engineers. Due to the varied and numerous transactions, as well as legal and regulatory complexities, inherent in land acquisition and disposal programs, circumstances not specifically covered in this chapter may be encountered in the real estate audit process. Such specific or unusual circumstances, problems, or inquiries should be referred through the Division Engineer for determination and supplemental instructions by HQDA (DAEN-REP-S) WASH DC 20314.

13-47. To Office of the Division Engineer. Inquiries or problems relating to priority, timing, local procedures, and implementation of land audit activities should be referred to the Division Engineer for guidance, recommendations, or interpretation. Where the Division Engineer determines that the inquiry falls within the categories referred to in paragraph 13-46 above, the matter will be referred for resolution as indicated therein.

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TABLE 13-1

TABLE OF REFERENCES

AR 340-18-15

AR 405-10

AR 405-80

AR 405-90

ER 405-1-1015

ER 735-2-1

13-23

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Sample - Preparation of ENG Form 1603  
(Acquisition and Disposal)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	ACCT. NO.	
RESERVATION NAME BENTON AIR FORCE STATION (Z-30)		20 October 1970 BALT-3-0002		
LOCATION PENNSYLVANIA. In Sullivan County, 20 miles N of Benton and 3 miles SE of Lopez				
DISTRICT Baltimore	DIVISION North Atlantic			
OFFICIALLY DESIGNATED BY: DAF S.O. G-82 dated 3 July 1963	TYPE: <input type="checkbox"/> ARMY MIL <input checked="" type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (Specify)		PURPOSE Air Force Station	
JURISDICTION Exhibit "C"	MAP Exhibit "F"	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
ACQUISITION (Exhibit A)	AREA	DOD CATEGORY CODE	COST	RENTAL
	645.78 Fee	911	\$119,679.12	
	0.00 Li(11)	913b	0.00	
	0.00 Pe	913b	0.00	
	3.17 E	921	850.00	
6.95 Lease	922		\$240.00	
	655.90 Total Acres		\$120,529.12	\$240.00
DISPOSAL (Exhibit B)	49.57 Fee	911	\$ 9,103.73	
	0.00 Li(7)	913b	0.00	
	0.00 Pe	913b	0.00	
	0.45 E	921	0.00	
	6.95 Lease	922		\$240.00
	56.97 Total Acres <u>1/</u>		\$ 9,103.73	\$240.00
NET	596.21 Fee	911	\$110,575.39	
	0.00 Li(4)	913b	0.00	
	2.72 E	921	850.00	
	598.93 Total Acres		\$111,425.39	
REMARKS				
<p><u>1/ Disposal Actions:</u>                      6.95 Acres, Lease, terminated 30 June 1955.                      8.87 Acres, Fee, reported excess to GSA (SF 118) 26 September 1956 who conveyed to George Smith by Quitclaim Deed dated 30 September 1957.                      40.70 Acres, Fee, reported excess to GSA (SF 118) 16 December 1957, who conveyed to Myra Williams by Quitclaim Deed dated 10 February 1958.                      0.45 of an Acre, Easement, reported excess to GSA (SF 118) 23 September 1958 who conveyed to former owner by Quitclaim Deed dated 16 December 1958.                      0.00 of an Acre, Licenses, terminated 16 January 1959.                      0.00 of an Acre, Permit, terminated 2 February 1959.</p>				

ENG FORM 1603 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050) U.S. GOVERNMENT PRINTING OFFICE

Figure 13-1

Sample - Preparation of ENG Form 1603  
(Acquisition, Complete Disposal and Reacquisition)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
ACQUISITION (Estimate A)	AREA	DOD CATEGORY CODE	COST	RENTAL
	2,595.77 Fee	911	\$545,455.00	
	1,280.00 P.D. 1/	912	0.00	
	26.40 E	921	3,318.27	
	<u>3,902.17 Total Acres</u>		<u>\$548,773.27</u>	
DISPOSAL (Estimate B)	2,595.77 Fee	911	\$545,455.00	
	1,280.00 P.D.	912	0.00	
	26.40 E	921	3,318.27	
	<u>3,902.17 Total Acres 2/</u>		<u>\$548,773.27</u>	
	NET			
REMARKS				
<p>1/ <u>Acquisitions (Transfers/Reassignments):</u> 1,280.00 Acres, P.D., transferred from Department of the Interior by PLO No. 910 dated 7 August 1952.</p> <p>2/ <u>Disposal Actions:</u> 2,595.77 Acres, Fee, reported excess to GSA (SF 118) 15 September 1955 who conveyed to John Brown by Quitclaim Deed dated 1 May 1956. 1,280.00 Acres, P. D., relinquished to Department of the Interior 15 August 1955, PLO 910 revoked by PLO 1820 10 June 1957. 26.40 Acres, Easements, terminated 30 June 1955.</p>				

ENG FORM 1603 JAN 68 REPLACES EDITION OF : MAY 55 WHICH IS OBSOLETE. (ER 405-1-1050)

Figure 13-2

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REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)				DATE OF (RE)AUDIT	AUDIT NO.
RESERVATION NAME			LOCATION		
DISTRICT			DIVISION		
OFFICIALLY DESIGNATED BY:			TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS		MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA					
ACQUISITION (Exhibit A)	AREA	DDO CATEGORY CODE	COST	RENTAL	
	2,155.00 Fee (REACQUIRED)	911	\$484,875.00		
DISPOSAL (Exhibit B)					
NET					
REMARKS					

ENG FORM 1603  
JAN 68

REPLACES EDITION OF 1 MAY 59, WHICH IS OBSOLETE. (ER 405-1-1050)

U.S. GOVERNMENT PRINTING OFFICE

Figure 13-2a

Sample - Preparation of ENG Form 1603  
(Acquisition, Partial Disposal and Reacquisition of Same Estate.)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
	AREA	DDO CATEGORY CODE	COST	RENTAL
ACQUISITION (Exhibit A)	20,000.00 P.D. <u>1/</u>	912	\$0.00	
DISPOSAL (Exhibit B)	1,000.00 P.D. <u>2/</u>	912	\$0.00	
NET	19,000.00 P.D.	912	\$0.00	
REMARKS				
<p><u>1/ Acquisitions (Transfers/Reassignments):</u> 20,000.00 Acres, P.D., transferred from the Department of the Interior by PLO No. 810 dated 17 August 1952.</p> <p><u>2/ Disposal Actions:</u> 1,000.00 Acres, P.D., relinquished to the Department of the Interior 20 December 1952, retransferred by PLO No. 891 dated 25 August 1953.</p>				

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 52 WHICH IS OBSOLETE. (ER 405-1-1050) U.S. GOVERNMENT PRINTING OFFICE: 1967 O - 307-100 Figure 13-3

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REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
ACQUISITION (Reimb/A)	AREA	DOD CATEGORY CODE	COST	RENTAL
	Brought Forward: 19,000.00 P.D.	912	\$0.00	
	26.24 P.D. 3/	913a	0.00	
	19,026.24 Total Acres			
DISPOSAL (Reimb/B)				
NET				
REMARKS				
3/ 26.24 Acres, P.D., transferred from the Department of the Interior by Use Permit dated 28 September 1955. (This is a portion of Tract "A" which had been retransferred to the Department of the Interior by PLO No. 891 dated 25 August 1953.)				

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 68 WHICH IS OBSOLETE. (ER 405-1-1050) U.S. GOVERNMENT PRINTING OFFICE: 1967 300-261 (A7)

Figure 13-3a

ER 405-1-12  
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Sample - Preparation of ENG Form 1603  
(Acquisition, Partial Disposal and Reacquisition of Different Estate):

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)				DATE OF (RE)AUDIT	AUDIT NO.
RESERVATION NAME			LOCATION		
DISTRICT			DIVISION		
OFFICIALLY DESIGNATED BY:			TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS		MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA					
	AREA	DOD CATEGORY CODE	COST	RENTAL	
ACQUISITION (Exhibit A)	1,307.75 Fee	911	\$752,461.00		
	0.00 Li(1)	913b	0.00		
	511.78 E	921	79,270.00		
	1,819.53 Total Acres		\$831,731.00		
DISPOSAL (Exhibit B)	170.00 E 1/	921	\$ 26,420.00		
NET	1,307.75 Fee	911	\$752,461.00		
	0.00 Li(1)	913b	0.00		
	341.78 E	921	52,850.00		
	1,649.53 Total Acres		\$805,311.00		
REMARKS					
<p>1/ Disposal Actions: 170.00 Acres, Easement, conveyed to fee title owner by Quitclaim Deed dated 15 March 1955.</p>					

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050) \* U.S. GOVERNMENT PRINTING OFFICE

Figure 13-5

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REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
ACQUISITION (Exhibit A)	AREA	DOD CATEGORY CODE	COST	RENTAL
	Brought Forward:	1,307.75 Fee 911	\$752,461.00	
		0.00 L1(1) 913b	0.00	
		341.78 E 921	52,850.00	
		170.00 Lease 2/ 922		\$2,500.00
		<u>1,819.53 Total Acres</u>	<u>\$805,311.00</u>	<u>\$2,500.00</u>
DISPOSAL (Exhibit B)				
NET				
REMARKS				
2/ Covers same area previously acquired and disposed of as easements.				

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58, WHICH IS OBSOLETE. (ER 405-1-1080)

Figure 13-4a

Sample - Preparation of ENG Form 1603  
(Acquisition, Partial Disposal with Retention of Easements  
over Fee Land Disposed of)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
ACQUISITION (Exhibit A)	AREA	DOD CATEGORY CODE	COST	RENTAL
	1,880.00 Fee	911	\$26,870.00	
	40.00 E	921	1,220.00	
	<u>2,320.00 Total Acres</u>		<u>\$28,090.00</u>	
DISPOSAL (Exhibit B)	120.00 Fee <u>1/</u>	911	\$ 1,800.00	
NET	1,760.00 Fee	911	\$25,070.00	
	480.00 E	921	1,220.00	
	<u>2,240.00 Total Acres</u>		<u>\$26,290.00</u>	
REMARKS				
<p><u>1/ Disposal Actions:</u> 120.00 Acres, Fee, reported excess to GSA (SF 118) 9 April 1955 who conveyed to Fred Smith by Quitclaim Deed dated 10 August 1955 reserving to U. S. an easement over 40 acres, which is included in the "Net" easement acreage.</p>				

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050)

\* U.S. GOVERNMENT PRINTING OFFICE: 1968 X-30-026 (107)

Figure 13-5



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Sample - Preparation of ENG Form 1603  
(Acquisition and Partial Disposal with Retention of Easements Over  
Disposed of Fee Land and Which Easements are Later Disposed of)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (Specify)	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
ACQUISITION (Exhibit A)	AREA	DDO CATEGORY CODE	COST	RENTAL
	940.00 Fee	911	\$13,435.00	
	220.00 E	921	610.00	
	1,160.00 Total Acres		\$14,045.00	
DISPOSAL (Exhibit B)	60.00 Fee <u>1/</u>	911	\$ 900.00	
NET	880.00 Fee	911	\$12,535.00	
	240.00 E	921	610.00	
	1,120.00 Total Acres		13,145.00	
REMARKS				
<p><u>1/ Disposal Actions:</u></p> <p>60.00 Acres, Fee, reported excess to GSA (SF 118) 10 May 1955 who conveyed to Adam Smith by Quitclaim Deed dated 21 June 1956, reserving to U. S. an easement over 20 acres, which is included in the "Net" easement acreage.</p>				

ENG FORM 1603  
JAN 68

REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050)

U.S. GOVERNMENT PRINTING OFFICE: 1968 348-342 (14/1)

Figure 13-6

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REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)				DATE OF (RE)AUDIT	AUDIT NO.
RESERVATION NAME		LOCATION			
DISTRICT		DIVISION			
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____		PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS		
LAND OWNERSHIP AND COST DATA					
ACQUISITION (Exhibit A)	AREA	DOD CATEGORY CODE	COST	RENTAL	
	Brought Forward:	880.00 Fee 911	\$12,535.00		
		240.00 E 921	610.00		
		1,120.00 Total Acres	\$13,145.00		
DISPOSAL (Exhibit B)	20.00 F 2/	921	\$ 0.00		
NET	880.00 Fee	911	\$12,535.00		
	220.00 E	921	610.00		
	1,100.00 Total Acres		\$13,145.00		
REMARKS					
2/ 20 Acres, Easement, reserved to U. S. in Quitclaim Deed dated 21 June 1956 to Adam Smith, conveyed to fee title owner by Quitclaim Deed dated 6 May 1959.					

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050)

U.S. GOVERNMENT PRINTING OFFICE: 1968 308-026 (237) Figure 13-6a

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Sample - Preparation of ENG Form 1603  
(Civil Works Prior and Subsequent Acquisition, with Third party  
Disposal to Numerous Grantees)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME  (A CIVIL WORKS PROJECT)		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
	AREA	DDO CATEGORY CODE	COST	RENTAL
ACQUISITION (Bunk/fe A)	2,541.52 Fee	911	\$10,422.83	
	3,043.33 P.D. 1/	912	0.00	
	5,316.09 E	921	9,250.00	
	<u>10,900.94</u> Total Acres as of 1-1-43		<u>\$19,672.83</u>	
	0.40 P.D. 1/ Total Acres after 1-1-43		0.00	
	10,901.34 Total Acres		<u>\$19,672.83</u>	
DISPOSAL (Bunk/fe B)	1,425.22 Fee 2/	911	\$ 2,341.10	
NET	1,116.30 Fee	911	\$ 8,081.73	
	3,043.73 P.D.	912	0.00	
	6,741.31 E	921	9,250.00	
	<u>10,901.34</u> Total Acres		<u>\$17,331.73</u>	
REMARKS				
<p>1/ Acquisitions (Transfers/Reassignments):                      3,043.33 Acres, P.D., transferred from Department of Interior for flowage purposes by E.O.'s dated 3 April 1891, 2 April 1899, 19 December 1901, and 22 March 1905.                      0.40 of an Acre, P.D., transferred from Department of Interior by PLO No. 1592 dated 28 February 1958.</p> <p>2/ Disposal Actions:                      1,425.22 Acres, Fee, reported excess to GSA (SF 118) on 1 July 1955, who conveyed 1,425.22 acres, fee, to various grantees (attached sheet) by Quitclaim Deeds, reserving perpetual flowage easements over fee disposal, which is included in the "Net" easement acreage.</p>				

Sheet 1 of 2

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16 Apr 76

Audit No. C-615

(NAME OF CIVIL WORKS PROJECT)

REMARKS: (Disposal Actions (Cont.))

<u>ACREAGE</u>	<u>GRANTEE</u>	<u>DATE OF SALE</u>	<u>FLOWAGE EASEMENT RESERVATION AREA</u>
5.00 Fee	Luther H. & Florence M. Todd	29 OCT 1958	5.00 acres
29.00 Fee	Luther H. & Florence M. Todd	16 DEC 1958	29.00 acres
10.00 Fee	Ruth M. Sather	16 DEC 1958	10.00 acres
158.00 Fee	Earl M. & Florence L. Smith	16 DEC 1958	158.00 acres
5.00 Fee	Carl F. Ekelund	16 DEC 1958	5.00 acres
358.55 Fee	Ignatius J. & Hattie Suchovsky	16 DEC 1958	358.55 acres
28.00 Fee	Paul R. & Margret G. Knutson	16 DEC 1958	28.00 Acres
66.00 Fee	John Peter & George Peter Boosalis	16 DEC 1958	66.00 acres
9.00 Fee	Clark O. & Mabel M. Wotring	22 DEC 1958	9.00 acres
101.75 Fee	John A. Sweeney	22 DEC 1958	101.75 acres
32.00 Fee	Jerome Francis Peplinski, et al	22 DEC 1958	32.00 acres
3.00 Fee	Elmer A. Gelhar	22 DEC 1958	3.00 acres
5.00 Fee	Jessee & Ingo T. Markeson	9 JAN 1959	5.00 acres
13.00 Fee	Ted J. & Ellen D. Staib	9 JAN 1959	13.00 acres
55.00 Fee	Charles H. Whitney	28 JAN 1958	55.00 acres
399.76 Fee	John P. Boosalis, et al	12 FEB 1959	399.76 acres
7.00 Fee	Ted J. & Ellen D. Staib	23 APR 1959	7.00 acres
21.25 Fee	Ruth M. Sather	17 NOV 1959	21.25 acres
20.00 Fee	Richard Gordon Johnson	30 NOV 1959	20.00 acres
18.00 Fee	Oliver H. & Clemance B. Carrier	30 NOV 1959	18.00 acres
2.00 Fee	M. J. Ward & Earl P. Lambert	4 MAY 1959	2.00 acres
<u>78.91</u> Fee	State of Minnesota	8 DEC 1959	<u>78.91</u> acres
1,425.22 Fee			<u>1,425.22</u> acres <u>2</u>

Sheet 2 of 2

Figure 13-7a

Sample - Preparation of ENG Form 1603  
(Prior and Subsequent Acquisition with Numerous Acquisition and Disposal Notations, Including Exchange of Lands)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (Specify)	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
	AREA	DOO CATEGORY CODE	COST	RENTAL
ACQUISITION (Reimburse A)	<u>2,233.08</u> Fee, as of 7-1-40	911	<u>\$280,000.00</u>	
	434.83 Fee 1/	911	\$ 16,750.00	
	0.01 Li (1)	913b	0.00	
	117.81 UP 1/	913b	0.00	
	0.01 E	921	0.00	
	<u>552.66</u> Total Acres After 7-1-40		<u>\$ 16,750.00</u>	
	2,785.74 Total Acres		\$296,750.00	
DISPOSAL (Reimburse B)	277.99 Fee	911		
	<u>0.01</u> UP	913b		
	278.00 Total Acres 2/			
NET	2,389.92 Fee	911	\$296,750.00	
	0.01 Li (1)	913b	0.00	
	117.80 UP	913b	0.00	
	<u>3.28</u> E	921	0.00	
	2,511.00 Total Acres		\$296,750.00	
REMARKS				
<p>1/ <u>Acquisitions (Transfers/Reassignments):</u>                      77.29 Acres, Fee, transferred from Federal Works Agency by letter dated 2 March 1942, original cost to FWA: \$9,625.00 not included above.                      200.70 Acres, Fee, transferred from Department of Army by Memo dated 9 March 1956, original cost to Department of Army: \$25,000.00 not included in above.</p>				

Sheet 1 of 2

ER 405-1-12  
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(NAME OF MILITARY INSTALLATION AND LOCATION)

REMARKS: (Acquisitions (Transfers/Reassignments)(Cont.)):

0.01 of an Acre, Use Permit, from Department of Navy dated 17 July 1944.  
0.01 of an Acre, Use Permit, from Department of Navy dated 16 November 1960.  
0.01 of an Acre, Use Permit, from Department of Navy dated 15 March 1961.  
0.05 of an Acre, Use Permit, from Department of Navy dated 14 November 1961.  
0.17 of an Acre, Use Permit, from Department of Army dated 28 March 1957, as amended 6 February 1962.  
7.33 Acres, Use Permit, from Department of Army, dated 25 February 1958, as amended 10 April 1959, 28 March 1960 and 17 November 1960.  
0.16 of an Acre, Use Permit, from Department of Army, dated 28 October 1958  
30.00 Acres, Use Permit, from Department of Army, dated 16 June 1959.  
57.01 Acres, Use Permit, from Department of Army, dated 28 March 1960, as amended 4 December 1961 and 11 June 1962.  
0.11 of an Acre, Use Permit, from Department of Army, dated 24 May 1961.  
22.95 Acres, Use Permit, from Department of Army, dated 16 March 1962.

2/ Disposal Actions:

97.13 Acres, Fee, conveyed to the Territory of Hawaii by Quitclaim Deed dated 5 February 1942 in exchange for Territorial lands for use of five (5) installations.  
9.87 Acres, Fee, transferred to the Department of Army by Memo dated 5 March 1956.  
170.99 Acres, Fee, conveyed to the State of Hawaii by Quitclaim Deed dated 12 May 1960, reserving Rights of Way over 3.27 Acres (which is included in the "Net" easement acreage) in fee disposal, in exchange for 156.84 Acres, Fee, which cost the Government \$31,804.82.  
0.01 of an Acre, Use Permit, deleted by Amendment No. 1 dated 4 December 1961 to revocable permit from Department of Army dated 28 March 1960.

Sheet 2 of 2

Figure 13-8a

Sample - Preparation of ENG Form 1603  
(Disposal by Reassignment and Acquisition by Reassignment)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF PREAUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
	AREA	DDO CATEGORY CODE	COST	RENTAL
ACQUISITION (ESM/1/A)	2,247.00 Fee	911	\$450,665.00	
DISPOSAL (ESM/1/B)	2,247.00 Fee <u>1/</u>	911	\$450,665.00	
NET				
REMARKS				
<p><u>1/ Disposal Actions:</u>                  2,242.00 Acres, Fee, reported excess to GSA (SF 118) on 10 June 1955 who conveyed to Smith-Brown Co. by Quitclaim Deed dated 12 August 1955.                  5.00 Acres, Fee, reassigned to U.S.A.R.C., Johnstown, on 6 April 1955.</p>				

ENG FORM 1603  
JAN 68

REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050)

U.S. GOVERNMENT PRINTING OFFICE

Figure 13-9

ER 405-1-12

16 Apr 76

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.
RESERVATION NAME (A MILITARY INSTALLATION ) (ESTABLISHED BY REASSIGNMENT)		LOCATION	
DISTRICT		DIVISION	
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS
LAND OWNERSHIP AND COST DATA			
ACQUISITION (Exhibit A)	AREA	DOD CATEGORY CODE	COST
	5.00 Fee <u>1/</u>	911	\$1,002.80 <u>2/</u>
DISPOSAL (Exhibit B)			
NET			
REMARKS			
<p><u>1/</u> Acquisitions (Transfers/Reassignments): 5.00 Acres, Fee, reassigned from Johnstown Ordnance Plant on 6 April 1955.</p> <p><u>2/</u> Represents cost of land when acquired for Johnstown Ordnance Plant.</p>			

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (SR 405-1-1080)

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Figure 13-9a



ER 405-1-12

16 Apr 76

Sample - Preparation of ENG Form 1603  
(Acquisition and Partial Disposal - Wholly  
Leased Installation)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
	AREA	DOD CATEGORY CODE	COST	RENTAL
ACQUISITION (Exhibit A)	208.00 Lease	922		\$600.00
DISPOSAL (Exhibit B)	100.00 Lease *	922		\$100.00
NET	108.00 Lease	922		\$500.00
REMARKS				
* Lease No. DACA-27-5-69-17, 100.00 acres lease terminated 31 October 1973.				

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 53 WHICH IS OBSOLETE. (ER 405-1-1030)

Figure 13-10

General Instructions and Modified DOD Category Code  
(ENG Form 1603)

1. Date of (Re)Audit. Enter date the file was audited or revised due to supplemental acquisition or disposal.
2. Audit No. Enter the audit number previously assigned by OCE or a number assigned in accordance with paragraph 3-53, Chapter 3.
3. Reservation Name. Fill in name of installation or project.
4. Location. Insert state(s) name(s) first, in upper case, followed by county (parish or judicial division where applicable) and vicinity location. Examples:
  - a. MICHIGAN. In Wayne County, in the City of Detroit.
  - b. ALASKA. In the Fourth Judicial Division, 50 miles SE of Big Delta.
  - c. LOUISIANA. In Rapides Parish, 10.5 miles SW of Alexandria.
  - d. INDIANA AND ILLINOIS. In Vigo County, Indiana, and Clark County, Illinois, 13.5 miles SW of Terre Haute, Indiana.
5. District. Fill in the name of current district having real estate responsibility. It is not necessary to repeat the word "District."
6. Division. Fill in the name of division. It is not necessary to repeat the word "Division."
7. Officially Designated By.
  - a. Military. Cite the general or special order officially naming the installation. Use the order, by date, citing current designation. If no general or special order designates current installation name, leave space blank. Abbreviations should be used due to space limitations, such as:
    - (1) Department of the Army: DA G.O. #10 dated 2 March 1961.
    - (2) Department of the Air Force:
      - (a) Headquarters, United States Air Force: DAF G.O. #10 dated 10 January 1962.
      - (b) Strategic Air Command: SAC S.O. #G-27 dated 12 March 1962.
      - (c) Alaskan Air Command: AAC S.O. #G-22 dated 19 April 1962.

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b. Civil. Cite the Act of Congress naming the entire project. Otherwise, leave space blank.

8. Type. An "X" will be placed in the appropriate block provided to designate the using agency (not using service).

9. Purpose.

a. Military. Insert a brief description of the general use of the installation, such as Cemetery, Recreation Center, Army Reserve Center, SAC Base, Depot, Aircraft Plant, Air Force Station, Training Site, etc. Do not attempt to show all the purposes carried on a series of Tract Registers, ENG Forms 1019.

b. Civil. In most instances, the purpose will be either Flood Control or Rivers and Harbors. However, there may be other purposes, such as Office, Casting Plant, etc.

c. Other. Use insertion similar to military above.

10. "Exhibit" Blocks. Enter "Exhibit F" in the "Map" block. All other exhibit blocks (Jurisdiction, Relocations, and Miscellaneous) will be completed, if applicable.

11. Land Ownership and Cost Data.

a. When there are no disposals, do not fill in the "Net" block.

b. Although reassignments are not true disposals, the area, estate, and cost will be shown in the "Exhibit B" block, with an explanation under "Remarks."

c. Modified DOD Category Code. The code should be shown for Army, Civil Works, and Air Force installations only. Do not enter codes for installations acquired for other Federal agencies. However, the footnotes 1/, 2/, and 3/ may be applicable to all installations.

CODE

ESTATE

911 Fee by purchase, condemnation, donation, reassignment or transfer. (Footnotes 1/ and 3/ following.)

912 Public Domain withdrawn by public land order, Act of Congress, or Executive Order, or by notation on the Public Land Records under provisions of 44 LD 513. (Footnotes 2/ and 3/ following.)

913a Public Domain by use permit from the Department of the Interior or other Federal government agencies. (Footnote 3/ following.)

Figure 13-11a

<u>CODE</u>	<u>ESTATE</u>
913b	Use Permit. Government lands other than Public Domain. Includes "licenses" from the Department of the Navy, Tennessee Valley Authority, Memorandum of Agreements, etc. (Footnote <u>3/</u> following.)
913b	Licenses from other than Federal government agencies. (Footnote <u>3/</u> following.)
913b	Permits from other than Federal government agencies. (Footnote <u>3/</u> following.)
914	This code to be used only for the audit of Hawaii Territorial lands acquired and disposed of prior to statehood.
921	Easements by purchase, condemnation, reservation, reassignment by permanent transfer. Does not include rights of way <u>granted</u> by other Federal agencies. (Footnote <u>3/</u> following.)
922	Leasehold acquisition by purchase, condemnation, reassignment or <u>permanent</u> transfer. (Footnote <u>3/</u> following.)

- 1 / The original cost of transferred land is to be included in the acquisition note under "Remarks" only, unless the transferring agency is reimbursed. The cost of purchased or condemned lands paid for with funds furnished by cities, states, other government agencies, etc., will also be included under "Remarks" only. The cost of reassigned lands will be included in the "Exhibit A" block of the ENG Form 1603 with appropriate explanation under "Remarks."
- 2 / The cost of extinguishing third-party interests, such as mining claims, etc., will be shown under "Cost" and explained briefly in the acquisition note under "Remarks."
- 3 / Although the gross acreage broken down by estate is required under the heading "Land Ownership and Cost Data," each acquisition of an estate(s) by a single action is reportable under "Remarks" for all estates acquired by transfer or reassignment, all public domain lands, and all use permits from other Federal government agencies. The exclusion of joint-use leases with total acreage should also be noted under "Remarks." When footnotes are required, the 1/, 2/, etc., system will be used.

Figure 13-11b

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16 Apr 76

d . Reports of Excess Real Property, Standard Forms 118, often include, in addition to fee, permanent easements, etc., certain lesser interests that automatically terminate after a specified period of non-use. If General Services Administration has disposed of and/or assumed custody and accountability of all land interests except the lesser interests with non-use termination conditions, such rights will be presumed to have expired at the end of the non-use period running from the date of the Report of Excess Real Property. In addition, any non-assignable licenses, permits, etc., reported to GSA together with fee, etc., are considered terminated effective the date the land which they serve is conveyed by GSA or their designated disposal agency.

Figure 13-11c

ER 405-1-12  
16 Apr 76

TABLE 13-1

TABLE OF REFERENCES

AR 340-18-15

AR 405-10

AR 405-80

AR 405-90

ER 405-1-1015

ER 735-2-1

13-23

Next page is 13-25

Sample - Preparation of ENG Form 1603  
(Acquisition and Disposal)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	ACCT. NO.	
RESERVATION NAME BENTON AIR FORCE STATION (Z-30)		20 October 1970 BALT-3-0002		
LOCATION PENNSYLVANIA. In Sullivan County, 20 miles N of Benton and 3 miles SE of Lopez				
DISTRICT Baltimore	DIVISION North Atlantic			
OFFICIALLY DESIGNATED BY: DAF S.O. G-82 dated 3 July 1963	TYPE: <input type="checkbox"/> ARMY MIL <input checked="" type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (Specify)		PURPOSE Air Force Station	
JURISDICTION Exhibit "C"	MAP Exhibit "F"	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
ACQUISITION (Exhibit A)	AREA	DOD CATEGORY CODE	COST	RENTAL
	645.78 Fee	911	\$119,679.12	
	0.00 Li(11)	913b	0.00	
	0.00 Pe	913b	0.00	
	3.17 E	921	850.00	
6.95 Lease	922		\$240.00	
	655.90 Total Acres		\$120,529.12	\$240.00
DISPOSAL (Exhibit B)	49.57 Fee	911	\$ 9,103.73	
	0.00 Li(7)	913b	0.00	
	0.00 Pe	913b	0.00	
	0.45 E	921	0.00	
	6.95 Lease	922		\$240.00
	56.97 Total Acres <u>1/</u>		\$ 9,103.73	\$240.00
NET	596.21 Fee	911	\$110,575.39	
	0.00 Li(4)	913b	0.00	
	2.72 E	921	850.00	
	598.93 Total Acres		\$111,425.39	
REMARKS				
<p><u>1/ Disposal Actions:</u>                      6.95 Acres, Lease, terminated 30 June 1955.                      8.87 Acres, Fee, reported excess to GSA (SF 118) 26 September 1956 who conveyed to George Smith by Quitclaim Deed dated 30 September 1957.                      40.70 Acres, Fee, reported excess to GSA (SF 118) 16 December 1957, who conveyed to Myra Williams by Quitclaim Deed dated 10 February 1958.                      0.45 of an Acre, Easement, reported excess to GSA (SF 118) 23 September 1958 who conveyed to former owner by Quitclaim Deed dated 16 December 1958.                      0.00 of an Acre, Licenses, terminated 16 January 1959.                      0.00 of an Acre, Permit, terminated 2 February 1959.</p>				

ENG FORM 1603 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050) U.S. GOVERNMENT PRINTING OFFICE

Figure 13-1

Sample - Preparation of ENG Form 1603  
(Acquisition, Complete Disposal and Reacquisition)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
ACQUISITION (Estimate A)	AREA	DOD CATEGORY CODE	COST	RENTAL
	2,595.77 Fee	911	\$545,455.00	
	1,280.00 P.D. 1/	912	0.00	
	26.40 E	921	3,318.27	
3,902.17 Total Acres			\$548,773.27	
DISPOSAL (Estimate B)	AREA	DOD CATEGORY CODE	COST	RENTAL
	2,595.77 Fee	911	\$545,455.00	
	1,280.00 P.D.	912	0.00	
	26.40 E	921	3,318.27	
3,902.17 Total Acres 2/			\$548,773.27	
NET				
REMARKS				
<p>1/ Acquisitions (Transfers/Reassignments): 1,280.00 Acres, P.D., transferred from Department of the Interior by PLO No. 910 dated 7 August 1952.</p> <p>2/ Disposal Actions: 2,595.77 Acres, Fee, reported excess to GSA (SF 118) 15 September 1955 who conveyed to John Brown by Quitclaim Deed dated 1 May 1956. 1,280.00 Acres, P. D., relinquished to Department of the Interior 15 August 1955, PLO 910 revoked by PLO 1820 10 June 1957. 26.40 Acres, Easements, terminated 30 June 1955.</p>				

ENG FORM 1603 JAN 68 REPLACES EDITION OF : MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050)

Figure 13-2



ER 405-1-12

16 Apr 76

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)				DATE OF (RE)AUDIT	AUDIT NO.
RESERVATION NAME			LOCATION		
DISTRICT			DIVISION		
OFFICIALLY DESIGNATED BY:			TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS		MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA					
ACQUISITION (Exhibit A)	AREA	DOD CATEGORY CODE	COST	RENTAL	
	2,155.00 Fee (REACQUIRED)	911	\$484,875.00		
DISPOSAL (Exhibit B)					
NET					
REMARKS					

ENG FORM 1603  
JAN 68

REPLACES EDITION OF 1 MAY 59, WHICH IS OBSOLETE. (ER 405-1-1050)

U.S. GOVERNMENT PRINTING OFFICE

Figure 13-2a

Sample - Preparation of ENG Form 1603  
(Acquisition, Partial Disposal and Reacquisition of Same Estate.)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
	AREA	DDO CATEGORY CODE	COST	RENTAL
ACQUISITION (Exhibit A)	20,000.00 P.D. <u>1/</u>	912	\$0.00	
DISPOSAL (Exhibit B)	1,000.00 P.D. <u>2/</u>	912	\$0.00	
NET	19,000.00 P.D.	912	\$0.00	
REMARKS				
<p><u>1/ Acquisitions (Transfers/Reassignments):</u> 20,000.00 Acres, P.D., transferred from the Department of the Interior by PLO No. 810 dated 17 August 1952.</p> <p><u>2/ Disposal Actions:</u> 1,000.00 Acres, P.D., relinquished to the Department of the Interior 20 December 1952, retransferred by PLO No. 891 dated 25 August 1953.</p>				

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 52 WHICH IS OBSOLETE. (ER 405-1-1050)

Figure 13-3

ER 405-1-12  
16 Apr 76

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.
RESERVATION NAME		LOCATION	
DISTRICT		DIVISION	
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS
LAND OWNERSHIP AND COST DATA			
ACQUISITION (Reimb/A)	AREA	DOD CATEGORY CODE	COST
	Brought Forward: 19,000.00 P.D. 912		\$0.00
	26.24 P.D. 3/ 913a		0.00
19,026.24 Total Acres			
DISPOSAL (Reimb/B)			
NET			
REMARKS			
3/ 26.24 Acres, P.D., transferred from the Department of the Interior by Use Permit dated 28 September 1955. (This is a portion of Tract "A" which had been retransferred to the Department of the Interior by PLO No. 891 dated 25 August 1953.)			

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 68 WHICH IS OBSOLETE. (ER 405-1-1050) U.S. GOVERNMENT PRINTING OFFICE: 1967 O-360-081 (17)

Figure 13-3a

ER 405-1-12  
16 Apr 76

Sample - Preparation of ENG Form 1603  
(Acquisition, Partial Disposal and Reacquisition of Different Estate):

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
	AREA	DOD CATEGORY CODE	COST	RENTAL
ACQUISITION (Exhibit A)	1,307.75 Fee	911	\$752,461.00	
	0.00 Li(1)	913b	0.00	
	511.78 E	921	79,270.00	
	1,819.53 Total Acres		\$831,731.00	
DISPOSAL (Exhibit B)	170.00 E 1/	921	\$ 26,420.00	
NET	1,307.75 Fee	911	\$752,461.00	
	0.00 Li(1)	913b	0.00	
	341.78 E	921	52,850.00	
	1,649.53 Total Acres		\$805,311.00	
REMARKS				
<p>1/ Disposal Actions: 170.00 Acres, Easement, conveyed to fee title owner by Quitclaim Deed dated 15 March 1955.</p>				

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050) \* U.S. GOVERNMENT PRINTING OFFICE

Figure 13-5

ER 405-1-12  
16 Apr 76

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
ACQUISITION (Exhibit A)	AREA	DOD CATEGORY CODE	COST	RENTAL
	Brought Forward:	1,307.75 Fee 911	\$752,461.00	
		0.00 L1(1) 913b	0.00	
		341.78 E 921	52,850.00	
		170.00 Lease 2/ 922		\$2,500.00
		<u>1,819.53 Total Acres</u>	<u>\$805,311.00</u>	<u>\$2,500.00</u>
DISPOSAL (Exhibit B)				
NET				
REMARKS				
2/ Covers same area previously acquired and disposed of as easements.				

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58, WHICH IS OBSOLETE. (ER 405-1-1080)

Figure 13-4a

Sample - Preparation of ENG Form 1603  
(Acquisition, Partial Disposal with Retention of Easements  
over Fee Land Disposed of)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
ACQUISITION (Exhibit A)	AREA	DOD CATEGORY CODE	COST	RENTAL
	1,880.00 Fee	911	\$26,870.00	
	40.00 E	921	1,220.00	
	<u>2,320.00 Total Acres</u>		<u>\$28,090.00</u>	
DISPOSAL (Exhibit B)	120.00 Fee <u>1/</u>	911	\$ 1,800.00	
NET	1,760.00 Fee	911	\$25,070.00	
	480.00 E	921	1,220.00	
	<u>2,240.00 Total Acres</u>		<u>\$26,290.00</u>	
REMARKS				
<p><u>1/ Disposal Actions:</u> 120.00 Acres, Fee, reported excess to GSA (SF 118) 9 April 1955 who conveyed to Fred Smith by Quitclaim Deed dated 10 August 1955 reserving to U. S. an easement over 40 acres, which is included in the "Net" easement acreage.</p>				

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050)

Figure 13-5

\* U.S. GOVERNMENT PRINTING OFFICE: 1968 O-326-026 (147)

ER 405-1-12  
16 Apr 76

Sample - Preparation of ENG Form 1603  
(Acquisition and Partial Disposal with Retention of Easements Over  
Disposed of Fee Land and Which Easements are Later Disposed of)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify)	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
ACQUISITION (Exhibit A)	AREA	DDO CATEGORY CODE	COST	RENTAL
	940.00 Fee	911	\$13,435.00	
	220.00 E	921	610.00	
	1,160.00 Total Acres		\$14,045.00	
DISPOSAL (Exhibit B)	60.00 Fee 1/	911	\$ 900.00	
NET	AREA	DDO CATEGORY CODE	COST	RENTAL
	880.00 Fee	911	\$12,535.00	
	240.00 E	921	610.00	
	1,120.00 Total Acres		13,145.00	
REMARKS				
<p>1/ Disposal Actions:</p> <p>60.00 Acres, Fee, reported excess to GSA (RF 118) 10 May 1955 who conveyed to Adam Smith by Quitclaim Deed dated 21 June 1956, reserving to U. S. an easement over 20 acres, which is included in the "Net" easement acreage.</p>				

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050)

U.S. GOVERNMENT PRINTING OFFICE: 1966 JAN-68 (1611)

Figure 13-6

ER 405-1-12

16 Apr 76

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)				DATE OF (RE)AUDIT	AUDIT NO.
RESERVATION NAME		LOCATION			
DISTRICT		DIVISION			
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____		PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS		
LAND OWNERSHIP AND COST DATA					
ACQUISITION (Exhibit A)	AREA	DOD CATEGORY CODE	COST	RENTAL	
	Brought Forward:	880.00 Fee 911	\$12,535.00		
		240.00 E 921	610.00		
		<u>1,120.00 Total Acres</u>	<u>\$13,145.00</u>		
DISPOSAL (Exhibit B)		20.00 F 2/ 921	\$ 0.00		
NET		880.00 Fee 911	\$12,535.00		
		220.00 E 921	610.00		
		<u>1,100.00 Total Acres</u>	<u>\$13,145.00</u>		
REMARKS					
2/ 20 Acres, Easement, reserved to U. S. in Quitclaim Deed dated 21 June 1956 to Adam Smith, conveyed to fee title owner by Quitclaim Deed dated 6 May 1959.					

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050)

U.S. GOVERNMENT PRINTING OFFICE: 1968 308-026 (237)

Figure 13-6a



ER 405-1-12  
16 Apr 76

Sample - Preparation of ENG Form 1603  
(Civil Works Prior and Subsequent Acquisition, with Third party  
Disposal to Numerous Grantees)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME  (A CIVIL WORKS PROJECT)		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
	AREA	DDO CATEGORY CODE	COST	RENTAL
ACQUISITION (Basis A)	2,541.52 Fee	911	\$10,422.83	
	3,043.33 P.D. 1/	912	0.00	
	5,316.09 E	921	9,250.00	
	<u>10,900.94</u> Total Acres as of 1-1-43		<u>\$19,672.83</u>	
	0.40 P.D. 1/ Total Acres after 1-1-43		0.00	
	10,901.34 Total Acres		<u>\$19,672.83</u>	
DISPOSAL (Basis B)	1,425.22 Fee 2/	911	\$ 2,341.10	
NET	1,116.30 Fee	911	\$ 8,081.73	
	3,043.73 P.D.	912	0.00	
	6,741.31 E	921	9,250.00	
	<u>10,901.34</u> Total Acres		<u>\$17,331.73</u>	
REMARKS				
<p>1/ Acquisitions (Transfers/Reassignments):                      3,043.33 Acres, P.D., transferred from Department of Interior for flowage purposes by E.O.'s dated 3 April 1891, 2 April 1899, 19 December 1901, and 22 March 1905.                      0.40 of an Acre, P.D., transferred from Department of Interior by PLO No. 1592 dated 28 February 1958.</p> <p>2/ Disposal Actions:                      1,425.22 Acres, Fee, reported excess to GSA (SF 118) on 1 July 1955, who conveyed 1,425.22 acres, fee, to various grantees (attached sheet) by Quitclaim Deeds, reserving perpetual flowage easements over fee disposal, which is included in the "Net" easement acreage.</p>				

Sheet 1 of 2

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16 Apr 76

Audit No. C-615

(NAME OF CIVIL WORKS PROJECT)

REMARKS: (Disposal Actions (Cont.))

<u>ACREAGE</u>	<u>GRANTEE</u>	<u>DATE OF SALE</u>	<u>FLOWAGE EASEMENT RESERVATION AREA</u>
5.00 Fee	Luther H. & Florence M. Todd	29 OCT 1958	5.00 acres
29.00 Fee	Luther H. & Florence M. Todd	16 DEC 1958	29.00 acres
10.00 Fee	Ruth M. Sather	16 DEC 1958	10.00 acres
158.00 Fee	Earl M. & Florence L. Smith	16 DEC 1958	158.00 acres
5.00 Fee	Carl F. Ekelund	16 DEC 1958	5.00 acres
358.55 Fee	Ignatius J. & Hattie Suchovsky	16 DEC 1958	358.55 acres
28.00 Fee	Paul R. & Margret G. Knutson	16 DEC 1958	28.00 Acres
66.00 Fee	John Peter & George Peter Boosalis	16 DEC 1958	66.00 acres
9.00 Fee	Clark O. & Mabel M. Wotring	22 DEC 1958	9.00 acres
101.75 Fee	John A. Sweeney	22 DEC 1958	101.75 acres
32.00 Fee	Jerome Francis Peplinski, et al	22 DEC 1958	32.00 acres
3.00 Fee	Elmer A. Gelhar	22 DEC 1958	3.00 acres
5.00 Fee	Jessee & Ingo T. Markeson	9 JAN 1959	5.00 acres
13.00 Fee	Ted J. & Ellen D. Staib	9 JAN 1959	13.00 acres
55.00 Fee	Charles H. Whitney	28 JAN 1958	55.00 acres
399.76 Fee	John P. Boosalis, et al	12 FEB 1959	399.76 acres
7.00 Fee	Ted J. & Ellen D. Staib	23 APR 1959	7.00 acres
21.25 Fee	Ruth M. Sather	17 NOV 1959	21.25 acres
20.00 Fee	Richard Gordon Johnson	30 NOV 1959	20.00 acres
18.00 Fee	Oliver H. & Clemance B. Carrier	30 NOV 1959	18.00 acres
2.00 Fee	M. J. Ward & Earl P. Lambert	4 MAY 1959	2.00 acres
<u>78.91</u> Fee	State of Minnesota	8 DEC 1959	<u>78.91</u> acres
1,425.22 Fee			<u>1,425.22</u> acres <u>2</u>

Sheet 2 of 2

Figure 13-7a

Sample - Preparation of ENG Form 1603  
(Prior and Subsequent Acquisition with Numerous Acquisition and Disposal Notations, Including Exchange of Lands)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (Specify)	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
	AREA	DOD CATEGORY CODE	COST	RENTAL
ACQUISITION (Reimburse A)	<u>2,233.08</u> Fee, as of 7-1-40	911	<u>\$280,000.00</u>	
	434.83 Fee <u>1/</u>	911	\$ 16,750.00	
	0.01 Li (1)	913b	0.00	
	117.81 UP <u>1/</u>	913b	0.00	
	0.01 E	921	0.00	
	<u>552.66</u> Total Acres After 7-1-40		<u>\$ 16,750.00</u>	
2,785.74 Total Acres		\$296,750.00		
DISPOSAL (Reimburse B)	277.99 Fee	911		
	<u>0.01</u> UP	913b		
	278.00 Total Acres <u>2/</u>			
NET	2,389.92 Fee	911	\$296,750.00	
	0.01 Li (1)	913b	0.00	
	117.80 UP	913b	0.00	
	<u>3.28</u> E	921	0.00	
	2,511.00 Total Acres		\$296,750.00	
REMARKS				
<p><u>1/ Acquisitions (Transfers/Reassignments):</u>                      77.29 Acres, Fee, transferred from Federal Works Agency by letter dated 2 March 1942, original cost to FWA: \$9,625.00 not included above.                      200.70 Acres, Fee, transferred from Department of Army by Memo dated 9 March 1956, original cost to Department of Army: \$25,000.00 not included in above.</p>				

Sheet 1 of 2

ER 405-1-12  
16 Apr 76

(NAME OF MILITARY INSTALLATION AND LOCATION)

REMARKS: (Acquisitions (Transfers/Reassignments)(Cont.)):

0.01 of an Acre, Use Permit, from Department of Navy dated 17 July 1944.  
0.01 of an Acre, Use Permit, from Department of Navy dated 16 November 1960.  
0.01 of an Acre, Use Permit, from Department of Navy dated 15 March 1961.  
0.05 of an Acre, Use Permit, from Department of Navy dated 14 November 1961.  
0.17 of an Acre, Use Permit, from Department of Army dated 28 March 1957, as amended 6 February 1962.  
7.33 Acres, Use Permit, from Department of Army, dated 25 February 1958, as amended 10 April 1959, 28 March 1960 and 17 November 1960.  
0.16 of an Acre, Use Permit, from Department of Army, dated 28 October 1958  
30.00 Acres, Use Permit, from Department of Army, dated 16 June 1959.  
57.01 Acres, Use Permit, from Department of Army, dated 28 March 1960, as amended 4 December 1961 and 11 June 1962.  
0.11 of an Acre, Use Permit, from Department of Army, dated 24 May 1961.  
22.95 Acres, Use Permit, from Department of Army, dated 16 March 1962.

2/ Disposal Actions:

97.13 Acres, Fee, conveyed to the Territory of Hawaii by Quitclaim Deed dated 5 February 1942 in exchange for Territorial lands for use of five (5) installations.  
9.87 Acres, Fee, transferred to the Department of Army by Memo dated 5 March 1956.  
170.99 Acres, Fee, conveyed to the State of Hawaii by Quitclaim Deed dated 12 May 1960, reserving Rights of Way over 3.27 Acres (which is included in the "Net" easement acreage) in fee disposal, in exchange for 156.84 Acres, Fee, which cost the Government \$31,804.82.  
0.01 of an Acre, Use Permit, deleted by Amendment No. 1 dated 4 December 1961 to revocable permit from Department of Army dated 28 March 1960.

Sheet 2 of 2

Figure 13-8a

Sample - Preparation of ENG Form 1603  
(Disposal by Reassignment and Acquisition by Reassignment)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF PREAUDIT	AUDIT NO.	
RESERVATION NAME		LOCATION		
DISTRICT		DIVISION		
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE	
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA				
	AREA	DDO CATEGORY CODE	COST	RENTAL
ACQUISITION (ESM/16 A)	2,247.00 Fee	911	\$450,665.00	
DISPOSAL (ESM/16 B)	2,247.00 Fee <u>1/</u>	911	\$450,665.00	
NET				
REMARKS				
<p><u>1/ Disposal Actions:</u>                      2,242.00 Acres, Fee, reported excess to GSA (SF 118) on 10 June 1955 who conveyed to Smith-Brown Co. by Quitclaim Deed dated 12 August 1955.                      5.00 Acres, Fee, reassigned to U.S.A.R.C., Johnstown, on 6 April 1955.</p>				

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (ER 405-1-1050)

Figure 13-9

ER 405-1-12

16 Apr 76

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)		DATE OF (RE)AUDIT	AUDIT NO.
RESERVATION NAME (A MILITARY INSTALLATION ) (ESTABLISHED BY REASSIGNMENT)		LOCATION	
DISTRICT		DIVISION	
OFFICIALLY DESIGNATED BY:		TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF <input type="checkbox"/> ARMY-CIVIL <input type="checkbox"/> OTHER (specify) _____	PURPOSE
JURISDICTION	MAP	RELOCATIONS	MISCELLANEOUS
LAND OWNERSHIP AND COST DATA			
ACQUISITION (Exhibit A)	AREA	DOD CATEGORY CODE	COST
	5.00 Fee <u>1/</u>	911	\$1,002.80 <u>2/</u>
DISPOSAL (Exhibit B)			
NET			
REMARKS			
<p><u>1/</u> Acquisitions (Transfers/Reassignments): 5.00 Acres, Fee, reassigned from Johnstown Ordnance Plant on 6 April 1955.</p> <p><u>2/</u> Represents cost of land when acquired for Johnstown Ordnance Plant.</p>			

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 58 WHICH IS OBSOLETE. (SR 405-1-1080)

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Figure 13-9a

ER 405-1-12

16 Apr 76

Sample - Preparation of ENG Form 1603  
(Acquisition and Partial Disposal - Wholly  
Leased Installation)

REALTY CONTROL FILE SUMMARY (Land Acquisitions and Disposals)				DATE OF (RE)AUDIT	AUDIT NO.
RESERVATION NAME			LOCATION		
DISTRICT			DIVISION		
OFFICIALLY DESIGNATED BY:			TYPE: <input type="checkbox"/> ARMY MIL <input type="checkbox"/> AF		PURPOSE
			<input type="checkbox"/> ARMY-CIVIL		
			<input type="checkbox"/> OTHER (specify)		
JURISDICTION	MAP	RELOCATIONS		MISCELLANEOUS	
LAND OWNERSHIP AND COST DATA					
	AREA	DOD CATEGORY CODE	COST	RENTAL	
ACQUISITION (Exhibit A)	208.00 Lease	922		\$600.00	
DISPOSAL (Exhibit B)	100.00 Lease *	922		\$100.00	
NET	108.00 Lease	922		\$500.00	
REMARKS					
* Lease No. DACA-27-5-69-17, 100.00 acres lease terminated 31 October 1973.					

ENG FORM 1603 JAN 68 REPLACES EDITION OF 1 MAY 53, WHICH IS OBSOLETE. (ER 405-1-1030)

Figure 13-10

13-43

Next page is 13-45

General Instructions and Modified DOD Category Code  
(ENG Form 1603)

1. Date of (Re)Audit. Enter date the file was audited or revised due to supplemental acquisition or disposal.
2. Audit No. Enter the audit number previously assigned by OCE or a number assigned in accordance with paragraph 3-53, Chapter 3.
3. Reservation Name. Fill in name of installation or project.
4. Location. Insert state(s) name(s) first, in upper case, followed by county (parish or judicial division where applicable) and vicinity location. Examples:
  - a. MICHIGAN. In Wayne County, in the City of Detroit.
  - b. ALASKA. In the Fourth Judicial Division, 50 miles SE of Big Delta.
  - c. LOUISIANA. In Rapides Parish, 10.5 miles SW of Alexandria.
  - d. INDIANA AND ILLINOIS. In Vigo County, Indiana, and Clark County, Illinois, 13.5 miles SW of Terre Haute, Indiana.
5. District. Fill in the name of current district having real estate responsibility. It is not necessary to repeat the word "District."
6. Division. Fill in the name of division. It is not necessary to repeat the word "Division."
7. Officially Designated By.
  - a. Military. Cite the general or special order officially naming the installation. Use the order, by date, citing current designation. If no general or special order designates current installation name, leave space blank. Abbreviations should be used due to space limitations, such as:
    - (1) Department of the Army: DA G.O. #10 dated 2 March 1961.
    - (2) Department of the Air Force:
      - (a) Headquarters, United States Air Force: DAF G.O. #10 dated 10 January 1962.
      - (b) Strategic Air Command: SAC S.O. #G-27 dated 12 March 1962.
      - (c) Alaskan Air Command: AAC S.O. #G-22 dated 19 April 1962.



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b. Civil. Cite the Act of Congress naming the entire project. Otherwise, leave space blank.

8. Type. An "X" will be placed in the appropriate block provided to designate the using agency (not using service).

9. Purpose.

a. Military. Insert a brief description of the general use of the installation, such as Cemetery, Recreation Center, Army Reserve Center, SAC Base, Depot, Aircraft Plant, Air Force Station, Training Site, etc. Do not attempt to show all the purposes carried on a series of Tract Registers, ENG Forms 1019.

b. Civil. In most instances, the purpose will be either Flood Control or Rivers and Harbors. However, there may be other purposes, such as Office, Casting Plant, etc.

c. Other. Use insertion similar to military above.

10. "Exhibit" Blocks. Enter "Exhibit F" in the "Map" block. All other exhibit blocks (Jurisdiction, Relocations, and Miscellaneous) will be completed, if applicable.

11. Land Ownership and Cost Data.

a. When there are no disposals, do not fill in the "Net" block.

b. Although reassignments are not true disposals, the area, estate, and cost will be shown in the "Exhibit B" block, with an explanation under "Remarks."

c. Modified DOD Category Code. The code should be shown for Army, Civil Works, and Air Force installations only. Do not enter codes for installations acquired for other Federal agencies. However, the footnotes 1/, 2/, and 3/ may be applicable to all installations.

CODE

ESTATE

911 Fee by purchase, condemnation, donation, reassignment or transfer. (Footnotes 1/ and 3/ following.)

912 Public Domain withdrawn by public land order, Act of Congress, or Executive Order, or by notation on the Public Land Records under provisions of 44 LD 513. (Footnotes 2/ and 3/ following.)

913a Public Domain by use permit from the Department of the Interior or other Federal government agencies. (Footnote 3/ following.)

Figure 13-11a

<u>CODE</u>	<u>ESTATE</u>
913b	Use Permit. Government lands other than Public Domain. Includes "licenses" from the Department of the Navy, Tennessee Valley Authority, Memorandum of Agreements, etc. (Footnote <u>3/</u> following.)
913b	Licenses from other than Federal government agencies. (Footnote <u>3/</u> following.)
913b	Permits from other than Federal government agencies. (Footnote <u>3/</u> following.)
914	This code to be used only for the audit of Hawaii Territorial lands acquired and disposed of prior to statehood.
921	Easements by purchase, condemnation, reservation, reassignment by permanent transfer. Does not include rights of way <u>granted</u> by other Federal agencies. (Footnote <u>3/</u> following.)
922	Leasehold acquisition by purchase, condemnation, reassignment or <u>permanent</u> transfer. (Footnote <u>3/</u> following.)

- 1 / The original cost of transferred land is to be included in the acquisition note under "Remarks" only, unless the transferring agency is reimbursed. The cost of purchased or condemned lands paid for with funds furnished by cities, states, other government agencies, etc., will also be included under "Remarks" only. The cost of reassigned lands will be included in the "Exhibit A" block of the ENG Form 1603 with appropriate explanation under "Remarks."
- 2 / The cost of extinguishing third-party interests, such as mining claims, etc., will be shown under "Cost" and explained briefly in the acquisition note under "Remarks."
- 3 / Although the gross acreage broken down by estate is required under the heading "Land Ownership and Cost Data," each acquisition of an estate(s) by a single action is reportable under "Remarks" for all estates acquired by transfer or reassignment, all public domain lands, and all use permits from other Federal government agencies. The exclusion of joint-use leases with total acreage should also be noted under "Remarks." When footnotes are required, the 1/, 2/, etc., system will be used.

Figure 13-11b

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16 Apr 76

d . Reports of Excess Real Property, Standard Forms 118, often include, in addition to fee, permanent easements, etc., certain lesser interests that automatically terminate after a specified period of non-use. If General Services Administration has disposed of and/or assumed custody and accountability of all land interests except the lesser interests with non-use termination conditions, such rights will be presumed to have expired at the end of the non-use period running from the date of the Report of Excess Real Property. In addition, any non-assignable licenses, permits, etc., reported to GSA together with fee, etc., are considered terminated effective the date the land which they serve is conveyed by GSA or their designated disposal agency.

Figure 13-11c

## CHAPTER 14

## RECORDING AND REPORTING

\*

SECTION I. REAL ESTATE SCHEDULE/COST AND PERFORMANCE,  
RCS DAEN-RE-10(R5), ENG Form 4564-R

14-1. General. This report is designed to reflect both scheduled and actual performance of real estate activities in Divisions and Districts, thereby providing a quarterly comparison of actual performance against planned activities. It is automated as part of the Performance Analysis of Costs, Units and Manpower System (PACUMS) (see paragraph 14-4). Activity descriptions and work units have been developed for purposes of uniformity in scheduling and reporting and to reflect realistic Corps-wide workload statistics for analysis. They are listed below in the order in which they appear on ENG Form 4564-R (Figure 14-17).

a. Line Item 1a, Pre-authorization Planning.

(1) Activity Description - Includes all efforts (except appraisal) directly associated with real estate planning during pre-authorization stages of a project including: preparation and review of real estate data in survey reports, feasibility studies, etc.; preparation of real estate planning reports and supplements thereto; preparation of Available Site Identification and Validation (ASIV) reports.

(2) Work Unit - The unit of measurement is each report or supplement completed by the Real Estate Division and each real estate section in reports prepared by others.

b. Line Item 1b, Post-authorization Planning.

(1) Activity Description - Includes all effort, except appraisal, directly associated with real estate planning during post-authorization stages of a project, including: preparation of real estate design memoranda and supplements thereto; preparation and review of real estate data in general and feature design memoranda; preparation and review of real estate data in master plans, operational plans, supplements and appendices; preparation of cemetery relocation plans; survey of potential replacement housing (Public Law 91-646); public meetings.

\*

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Change 27

1 Oct 88

\*

(2) Work Unit - The unit of measurement is each real estate design memorandum, cemetery relocation plan, survey of potential replacement housing (Public Law 91-646), or supplement completed; also each real estate section in general and feature design memoranda, master plan, supplement or appendix, and each public meeting requiring real estate participation.

c. Line Item 2a, Acquisition - Attorney's Opinions.

(1) Activity Description - Includes all effort directly associated with the preparation of attorney's opinion of compensability incorporated in relocation design memoranda or other reports and preparation of final title opinions.

(2) Work Unit - The unit of measurement is each compensability interest opinion completed and each final title opinion submitted for approval.

d. Line Item 2b, Acquisition - All other.

(1) Activity Description - Acquisition (except leaseholds, local cooperation agreements and temporary permits): Includes all effort (except appraisal), both staff and contractual services, directly incident to acquisition of real property and interests therein by purchase, condemnation, donation, exchange, reassignment, transfer from other Federal agencies, permit, and options, such as:

(a) Mapping, Surveying, and Tract Ownership Data: Effort in connection with tract ownership data, surveys, writing descriptions, and mapping for real estate acquisition purposes.

(b) Title Evidence: Effort in connection with obtaining title evidence.

(c) Negotiations and Closing - Effort in connection with all negotiations conducted for acquisition of real property or interests therein by purchase, donation, exchange, reassignment or transfer; closing land purchase cases; title curative work; recording of deeds, delivery of checks to landowners; negotiating relocation agreements; and filing claims for water rights. Also includes work related to acquisition of options.

(d) Pre-condemnation - Effort in connection with preparation of condemnation and assemblies, including declaration of taking and the processing thereof up to and including the filing of the case.

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(2) Work Unit - The unit of measurement is each tract acquired, each subordination or acquisition of an outstanding mineral interest, each tract on which a water right is filed, and each tract on which an option to purchase is acquired. Units will be counted when the offer to sell or exchange is accepted, the check is issued for filing of a declaration of taking, possession is obtained under a relocation agreement, transfer from other Federal agencies is completed, and permits or options are obtained. An additional unit will not be counted when the option is exercised.

e. Line Item 3, Condemnation.

(1) Activity Description - Includes all effort (except preparation or update of appraisals) involved in completing condemnation cases such as court exhibits, preparation for trials, testifying, stipulated settlement proposals, revestment actions, and other assistance to the Department of Justice.

(2) Work Unit - The unit of measurement is each tract on which final judgment is entered.

f. Line Item 4a, Inleasing - Recruiting Facilities Program.

(1) Activity Description - All effort (except appraisal) including contractual services, associated with the recruiting facilities program provided to the Army, Navy, Air Force, and Marine Corps either jointly with the General Services Administration or independently by the Corps of Engineers. Effort includes new leases, renewals, supplements, relocations, expansions, upgrades and service contracts. Also includes preparation of plans, specifications and estimates for initial alterations to leased facilities.

(2) Work Unit - The unit of measurement is each new lease agreement, supplement or renewal, space request to GSA, written agreement for upgrade or initial alteration by other than the lessor; each new service contract; and each restoration agreement.

g. Line Item 4b, Inleasing - Non-Recruiting.

(1) Activity Description - All effort (except appraisal), including contractual services, directly involved in the acquisition of leaseholds by negotiations, condemnation or assignment from GSA (except for recruiting facilities). Includes ownership data, preparation of maps and descriptions, negotiations and related work for new leases; supplemental agreements or renewals; restoration under lease provisions; condemnation petitions and declarations of taking; and space requests to GSA. Also includes preparation of plans, specifications

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and estimates for initial alterations to leased facilities.

(2) Work Unit - The unit of measurement is each new lease agreement, supplement or renewal thereof, space request to GSA, condemnation case filed and extensions thereof, agreement for initial alterations or upgrade action by other than lessor, each new service contract and each agreement providing for restoration.

h. Line Item 5a, Appraisal - Staff.

(1) Activity Description - All effort involved in completing in-house appraisal reports and cost estimates, such as: inspecting the subject property, compiling and analyzing market, cost and income data, reviewing court house records, obtaining necessary information from other governmental agencies, preparing appraisal exhibits and appraisal review. Includes appraisals for the following purposes: acquisition disposal, inleasing, outgranting, mineral reports, timber cruises, gross appraisals, damage claims, homeowners assistance, planning, encroachments, market analysis/feasibility reports.

(2) Work Unit - The unit of measurement is each appraisal report, supplement, update, revision, cost estimate, market analysis/feasibility report and Public Law 91-646 assistance report completed.

i. Line Item 5b, Appraisal - Contract.

(1) Activity Description - All effort by contractor personnel involved in completing appraisal reports. Also includes in-house effort involved in contract appraisal review and each contract or purchase order for appraisal services such as: inspection of property and comparable sales, review and/or inspection of comparative income and cost information, selection of potential contract appraisers, negotiation of contracts and contract administration, and provision of technical assistance and advice to contract appraisers.

(2) Work Unit - The unit of measurement is each appraisal report, supplement, update, revision, and cost estimate completed and each appraisal reviewed under LCA contracts.

j. Line Item 6a; Relocation Assistance (Public Law 91-646).

(1) Activity Description - Includes all effort except appraisal incident to providing relocation assistance and advisory services to

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displaced owners and/or tenants, including processing of applications for relocation payments and processing appeals.

(2) Work Unit - The unit of measurement is each application or appeal processed.

k. Line Item 6b, Homeowners Assistance Program.

(1) Activity Description - Includes all effort (except appraisal) expended under the Homeowners Assistance Program.

(2) Work Unit - The unit of measurement is each application or appeal processed.

l. Line Item 6c, Department of the Army Relocation Services for Employees (DARSE) Program (NAB, ORL, SPK and SWF only).

(1) Activity Description - Includes preliminary data collection, coordination and liaison between employees and contractor, review and appeal or complaint process.

(2) Work Unit - The unit of measurement is each relocation order placed with the contractor and each appeal processed.

m. Line Item 7a, Compliance Inspection, Major.

(1) Activity Description - Includes all effort incident to performing inspections of property granted to others for purposes such as commercial concessions, industrial uses, public park and recreation, quasi-public and group camp use, fish and wildlife habitat management, selected agricultural and grazing uses, complex/extensive outgrants resulting from relocation contracts, and reconveyance clauses/restrictions in deeds normally requiring at least annual inspections to assure compliance with terms and conditions of the grant. Includes preparation of reports, determination of compliance after vacation of property subsequent to expiration, relinquishment or revocation of grant, and corrective measures where non-compliance is noted.

(2) Work Unit - The unit of measurement is each inspection performed and recorded in writing or noted on prescribed inspection forms.

n. Line Item 7b, Compliance Inspection, Minor.

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(1) Activity Description - Includes all effort incident to performing inspections of property granted or reserved to others for purposes such as roads, streets, water lines, power lines, and communication lines, rights-of-way and other uses covered by easements, licenses, and permits that do not normally require an annual inspection to assure compliance with terms and conditions of the grant. Includes preparation of reports, determination of compliance after vacation of property subsequent to expiration, relinquishment or revocation of grant, and corrective measures where non-compliance is noted.

(2) Work Unit - The unit of measurement is each inspection or survey completed and recorded in writing in prescribed format.

o. Line Item 8a, Utilization Inspection, Major.

(1) Activity Description - Includes all effort incident to performing inspections of real property under control of or subject to service agreements with the Corps of Engineers where changes in utilization are known to occur frequently and substantially so as to require an annual determination of property utilization. Includes EO 12512 and EO 12411 surveys, and BLM withdrawal reviews, as applicable, and preparation of such reports and other reports related to property utilization.

(2) Work Unit - The unit of measurement is each inspection or survey completed and recorded in writing in prescribed format.

p. Line Item 8b, Utilization Inspection, Minor.

(1) Activity Description - Includes all effort incident to performing inspections of recruiting offices, stream gage stations, radio operator sites, and all other real property under the control of the Corps of Engineers, as well as property subject to utilization inspections under memorandums of agreement with other Federal agencies where utilization inspections are normally required on a less than annual basis.

(2) Work Unit - The unit of measurement is each inspection completed and recorded in writing in prescribed format.

q. Line Item 9a, Outgrants, Major.

(1) Activity Description - All efforts (except appraisal), including contractual services, directly related or incident to granting, or denying, the use of real or personal property to others

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for purposes such as commercial concessions, industrial uses, public parks and recreation, quasi-public and group camp use, fish and wildlife management, complex agricultural and grazing uses, military maneuver operations, roads and utilities associated with relocation contracts and situations where availability determinations must be made and mineral lease review. Includes environmental, historical and archaeological review, survey and recommendation; preparation of management plans, review of master plans, supplements and appendices; screening with other Government agencies where appropriate; advertising, preparation and distribution of bids/proposals, mapping, legal descriptions, negotiations, preparation and execution of outgrants, renewals, extensions, and cancellation and termination documents; review of development plans and third party subgrants; responses to requests for use of real or related personal property; review of recreation cost-share, water supply or water storage contracts and applications for mineral leases. Encroachments cured by outgrants will be reported on Line Item 14, Encroachments.

(2) Work Unit - The unit of measurement is each new grant, supplemental agreement, renewal, extension, written denial or cancellation/termination instrument and each application for mineral lease processed.

r. Line Item 9b, Outgrants, Minor.

(1) Activity Description - All efforts (except appraisal) directly related or incident to granting, or denying, the use of real or personal property to others for purposes such as water lines, power lines, communication lines, hay and grazing purposes, roads, streets and any other uses where formal advertising is waived or considered not beneficial to the Government, as well as requests to drill for oil or gas on Government-owned property where no oil or gas lease is required. Includes environmental review unless categorically excluded, survey and recommendation; mapping, legal descriptions, negotiations, preparation and execution of outgrants and renewal, extension, cancellation and termination documents and responses to requests for use of real or related personal property. Encroachments occurred by outgrants will be reported on Line Item 14, Encroachments.

(2) Work Unit - The unit of measurement is each new grant, supplemental agreement, renewal, extension, written denial or cancellation or termination instrument, and each consent to drill for oil or gas on Government-owned property where an oil or gas lease is not required.

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s. Line Item 10, Disposals.

(1) Activity Description - All efforts (except appraisals), including contractual services, involved in planning and accomplishing the disposition of real property and components thereof by sale, transfer, etc. Includes environmental, historical, and archaeological review, survey, and recommendation; preparation of maps, screening, advertising or waiver thereof, preparation and distribution of bid documents, negotiations, preparation and execution of disposal documents; sales contract administration; responses to requests for disposal of real property or components thereof. A disposal unit will not be counted where ingrats or outgrants are renewed upon expiration. Encroachments cured by disposals will be reported on Line Item 14, Encroachments.

(2) Work Unit - The unit of measurement is each disposal transaction completed, denied in writing, or rescinded, identified as:

(a) Disposal of parcel (by sale, transfer, exchange, inlease termination, etc.)

(b) Disposal bid item; e.g., buildings, crops, gravel, etc., or groups of these items if included in one disposal transaction.

(c) Each parcel in report of excess to GSA or amendment thereto.

t. Line Item 11, Local Cooperation.

(1) Activity Description - Includes all effort (except appraisal) incident to preparation and processing agreements of local cooperation and rendering assistance to and monitoring the activities of local interests in procuring lands and interests to meet project requirements.

(2) Work Unit - The unit of measurement is each local cooperation agreement negotiated and each tract acquired by local interests and made available for project purposes.

u. Line Item 12, Timber Harvesting.

(1) Activity Description - Includes all effort (except appraisal) incident to sale of forest products under the timber harvesting program including timber cruises, processing invitations for bid, the awarding and administration of contracts, supervision and inspection of production and harvesting of timber, and other forest products.

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(2) Work Unit - The unit of measurement is the number of bid items in each contract. Every twenty-five firewood sales and other small sales will be recorded as one work unit.

v. Line Item 13, Temporary Permits.

(1) Activity Description - Includes all effort (except appraisal) incident to obtaining real estate use rights by permit for conducting military maneuvers, surveys, exploration, obtaining rights of entry for construction, and other short term use. Includes procurement of ownership data, mapping, legal descriptions, negotiations, the filing of condemnation, if necessary, and damage settlements.

(2) Work Unit - The unit of measurement is each permit, right of entry, renewal or other right obtained and each settlement of damages thereunder.

w . Line Item 14, Encroachments.

(1) Activity Description - All effort (except appraisal), including contractual services, involved in resolving encroachment on project lands. An encroachment is defined as a permanent or semi-permanent structure or improvement placed on project lands or easement areas without authority. Efforts include field investigations, surveys associated with individual encroachment cases, negotiating agreements and processing of conveyance instruments for execution, preparation of boundary line agreements, preparation of reports of litigation, providing information to and assisting the Department of Justice and/or the U.S. Attorneys. All resolved encroachments on Government land will be reported on this line, not with the associated method which ultimately cured the encroachment. Any Government encroachment resolved will be reported on other appropriate line items.

(2) Work Unit - The unit of measurement is each action which cures, corrects, or resolves an encroachment on Government lands.

x. Line Item 15, Real Estate Audits.

1) Activity Description - All effort directly involved in the preparation of real estate audit assemblies. Includes verification and Authentication, by tract, of each real estate activity required in connection with acquisition, relocation, extinguishment of outstanding rights, land interchange, acquisition or subordination of third party interest, deficiency awards, disposal, etc.

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(2) Work Unit - The unit of measurement is each tract audited for acquisition or disposal. Units will be counted when each tract audit is completed and recorded under the "audit as you go" concept.

y. Work units are not applicable to the following activities:

(1) Line Item 16, Other Activities. All Real Estate effort of a general nature, not chargeable to Line Items 1 through 15 above, such as replies to Congressional and public inquiries of a general nature; investigating and processing claims for damages; processing permanent change of station applications; evaluations of requests for acquisition of exclusive legislative jurisdiction; participation in mobilization exercises; review of Public Notices; recurring and special reports; maintenance of real estate records; programming (real estate schedules, budgets, manpower projections, cost and performance); office administration; personnel matters; training; time and labor distribution reports; organization and management studies; and other general functions and expenses internal to a District or operating Division Real Estate Office or Real Estate Project Office. Includes all technical indirect costs.

(2) Line Item 17, District Overhead. Pro-rata District office overhead includes general overhead costs but not technical indirect cost.

(3) Line Item 18a, Land Payments. Payments made from Construction, O&M or other funds for negotiated purchase of real property or interest therein; transfer from other Government agencies with reimbursement; payments to U.S. District Courts for acquisition by Declaration of Taking (DT), including deficiency judgments, interest payments, stipulated settlements, and judgments in straight condemnation; costs and expenses arising under Sections 303 and 304, PL 91-646; dollar costs at time negotiated offer (option) accepted; checks issued for filing of DT or payment of deficiency; or reimbursement to other agencies.

(4) Line Item 18b, Relocation Assistance Payments (Public Law 91-646) and Homeowners Assistance Program (HAP) Payments. Payments to owners and tenants for relocation expenses and other losses and damages incurred as a direct result of moving occasioned by acquisition of land; other payments or expenses incurred under Sections 205, 206, and 215 of Public Law 91-646. HAP costs under accounts 2100, 2230 and 2240 will be reported. Dollar costs will be reported when the payments accrue.

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(5) Line Item 18c, Damage Payments for claims arising from use and occupancy of real property in and to which fee, easements, or lesser interests were not acquired; payments for damage settlements under rights of entry. Dollar costs will be reported when the payments accrue.

(6) Line Item 18d, Rents, Initial Alterations, and Restorations. Payments by the Corps to lessors or their legally constituted representatives for use of real property by DA under lease, including Army National Guard, USACE space, GSA costs and rents, or GSA costs for DOD recruiting space. Payments only of predetermined amounts for suspending the rights of third parties, pursuant to Act of Congress approved 9 July 1942, 43 USC 315q, 56 Stat. 654 (rights of ranchers to graze cattle on certain areas of public domain); costs of construction of initial alterations of leased facilities effected by the lessors or their legally constituted representatives to meet the needs of the using service; costs of restoration effected by the Government, payments for the restoration of lease facilities effected by lessors or their legally constituted representatives, or payments in lieu of restoration. Dollar costs will be reported when the payments accrue.

#### 14-2. Real Estate Schedule.

a. Real estate schedules will be prepared for Army, Air Force, Civil Works and other programs for which real estate services are expected to be provided during the projected fiscal year.

b. Divisions and Districts that have Army funded reimbursable programs--timber harvesting and agriculture grazing--should prepare separate schedules for each of these programs. Scheduled units in these programs should not be included in the schedules for the direct Army program.

c. Divisions and Districts that have Air Force Timber Harvesting, Agriculture Grazing, AICUZ or Civil Works Timber Harvesting programs, should prepare separate schedules for any of these programs that require significant real estate resources, or as needed by the Divisions and Districts for management.

d. Divisions and Districts should prepare separate schedules for any other programs that require significant real estate resources, or as needed by the Divisions and Districts for management.

e. Work assigned to other Districts/Divisions by DA Form 2544 will be scheduled and reported by the assigning District/Division.

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f. Reports for Army and Air Force will include, for current year appropriations only, obligations applicable to the current fiscal year; for no-year appropriations include only cost incurred in the current year and exclude refunds of prior fiscal year condemnation payments or other types of credits involving prior year transactions.

g. The schedule will include all current uncompleted directives, including new starts for which funds are expected to be made available during the projected year. Close coordination must be exercised with project planning and construction to produce realistic civil works real estate schedules, recognizing the capability to meet the schedules within the personnel and fund resources available.

h. The civil works report will include the fiscal year costs for all real estate administrative activities expense in Real Estate Administration and for all real estate payments financed from General Investigations; Construction General; Operation and Maintenance General; Flood Control and Coastal Emergencies; Mississippi River and Tributaries; Revolving Fund and all other Civil Works appropriations.

i. Real Estate scheduled units for the upcoming two fiscal years will be entered in PACUMS around April prior to the first fiscal year for which they are being projected. For this submission, PACUMS allows the entry of scheduled units (non-cumulative) for each quarter or for the fourth quarter alone using cumulative information. This information will be used for manpower planning. Updated scheduled units and dollars by quarter (non-cumulative) for the upcoming fiscal year will be entered around September. An additional update for units and dollars will be permitted after the final budget is established. CERE-PR will provide the specific timetable each year for this information.

#### 14-3. Real Estate Cost and Performance.

a. Actual accomplishments in work units and dollars will be entered into PACUMS non-cumulatively each quarter for all activities for which schedules were submitted. Actual information is due at HQUSACE (CERE-PR) WASH DC 20314-1000 not later than the 20th of the month following the reporting period.

b. The actual dollar amounts should correspond to the obligations incurred in connection with performing the specific activities. Cost accounts for real estate activities are outlined in ER 37-2-10 (civil works) and ER 37-345-10 (military).

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14-4. Format.

a. PACUMS provides the option of producing the ENG Form 4564-R report either non-cumulatively or cumulatively from the beginning of the fiscal year.

b. Dollar amounts will be rounded to the nearest thousand dollars. However, PACUMS will accept and report dollar amounts to the nearest tenth of a thousand if required by Divisions/Districts.

c. Real Estate Payments (Line Items 18a-18d). Identifiable amounts for deficiency payments will not be included in the estimated requirements for land payments during the fiscal year but will be footnoted in the "Remarks" section of the PACUMS submission.

14-5. Deviation Report.

a. The purpose of deviation report is to provide a composite of Real Estate performance as well as a District/Division evaluation. Specific and detailed information is absolutely essential for the development of the Quarterly Command Management Review with the CG/DCG and to address off-schedule areas in Program Performance and Budget Execution Review System (PPBERS) and Goals and Objectives. A complete explanation of deviation (over or under) from scheduled activities will be furnished in narrative form to CDR USACE (CERE-P), WASH DC 20314-1000 with the Real Estate Cost and Performance report not later than the 20th of month following close of quarter. This report should include the following information:

(1) Line item and specific work unit that is off-schedule.

(2) Complete explanation.

(3) Action taken to repair schedule, including prognosis.

(4) Impact upon customer/project.

(5) A summary including no more than three or four areas of major concern.

b. Criteria to determine a reportable deviation are: difference between schedule and actual of 25 or more work units for any activity line item or \$100,000 or more at any one project for land acquisition payments. Reportable deviation is 25 percent when there are fewer than 100 units scheduled for an activity or when less than \$400,000 in payments is scheduled for a project.

14-6 Reserved.

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SECTION II. REAL ESTATE PERSONNEL/REAL ESTATE ADMINISTRATION  
 ACTIVITIES, RCS DAEN-RE-9(R7), ENG Form 1685-R

14-7. General. This report reflects personnel utilized in the performance of real estate administration activities. It constitutes the manpower segment in the integrated management structure established for real estate activities under the general heading of "Real Estate Administration Activities." It is automated as part of the PACUMS.

a. Input to PACUMS will be made quarterly as of the last day of the reporting period and will reflect real estate manpower utilization in the performance of Military (Army, Air Force) and Civil Works real estate administrative activities. The report will also reflect, as appropriate, work done for other agencies, such as NASA, NPS, DOE, etc. and other categories such as Homeowners Assistance Program. Enter the data in PACUMS no later than 20 calendar days after the end of the reporting period.

b. For each of the activities, except District Overhead, in the columns under "Equivalent Personnel of Total Manhours Worked," Division and District Commanders will report the average personnel equivalent expended cumulatively through the reporting period. The average personnel equivalent will be determined by the following formula:

$$\frac{\text{Total hours expended on activity through 1st quarter}}{439 \text{ (effective work hours in 1st quarter per employee)}} = \text{Average personnel equivalent through reporting period}$$

Through 2d quarter - the divisor will be 878

Through 3d quarter - the divisor will be 1316

Through 4th quarter - the divisor will be 1755

Personnel equivalent data will be reported to the nearest tenth, e.g., 1.2, 0.1, 0.9, etc. The divisors represent the total hours available for one employee less the hours for leave and holidays.

(1) Direct labor hours, regular and overtime, for each activity will be taken from Finance and Accounting elements. In addition hours of borrowed labor from other than Real Estate personnel should be included.

(2) For those offices using pre-determined rate method of distributing Real Estate indirect costs, the "Other Activities" (formerly Administrative Activities) hours worked can be provided by F&A offices.

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14-8 Instructions.

a. Lines 1 through 15 and 17 of ENG Form 1685-R (Figure 14-18) are self-explanatory using the above formula.

b. Line 16 will account for personnel not reflected elsewhere in the report.

c. Line 17 statistics will be the personnel equivalent charged to overhead and will be determined by dividing the average annual labor cost of overhead employees into the salary portion of the overhead dollars charged through the reporting period. Average annual labor cost for overhead employees should be obtained from the local Manpower Control Officer.

d. The "Authorized Spaces and Actual Strength" portions (Sections III and IV) will be completed to reflect actual conditions as of the end of the quarterly reporting period. Only full time permanent (FTP) personnel should be included. Average salary figures will be based on pay and benefits costs of Real Estate personnel.

e. "Remarks" section will be used to explain difference in equivalent personnel vs. authorized spaces (under or over utilization) and differences in actual strengths vs. authorized spaces. This section will include, but is not limited to, the following supplementary information:

(1) Existing vacancies.

(2) Non-effective time (equivalent personnel of total hours not worked, i.e., greater than normal leave usage, LWOP.

(3) Number and type of other than FTP personnel on board.

(4) The workyear equivalents of borrowed labor and overtime included in each category for which labor is reported.

(5) Workyear equivalents of work performed for other USACE FOAs.

f. This report is used for upward reporting and as such its input should have the approval of Chief, Real Estate Division.

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\* SECTION III. INSTALLATION CLOSURE POTENTIAL IMPACT REPORT, RCS  
DAEN-RE-21

14-9. General. This report is designed to provide information for use in anticipating future Homeowners Assistance program requirements incident to general program administration and development of annual budget and financial plans. Section 1013(d) of the Development Cities and Metropolitan Development Act of 1966, Public Law 89-754 (80 Stat. 1255, 1290), approved 3 November 1966, Public Law 89-754 (80 Stat. shall be in the Treasury a fund which shall be available to the Secretary of Defense for the purpose of extending the financial assistance provided therein. Among other things, the Secretary of Defense delegated to the Secretary of the Army the responsibility to prepare annual budget and financial plans and report on the operation of the Homeowners Assistance Fund, Defense. Pursuant this report has been established to obtain information necessary for preparation of annual cost estimates and other financial data with final review vested in the ASA(IL&FM).

14-10. Applicability. This reporting instruction is applicable to Divisions/Districts having military real estate responsibility.

14-11. Instructions.

a. A narrative letter report will be submitted to HQDA (DAEN-REH-0) WASH DC 20314 within 60 days from the date of public announcement of a new base closure or reduction action.

b. The report will comprise the following information:

(1) Estimated number of military and civilian Personnel affected, segregated by rank or grade level.

(2) Estimated number of homeowners in each category.

(3) Estimated number of personnel involved in routine transfers affected by closure or realignment action.

(4) Real Estate market conditions.

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\* SECTION IV. HOMEOWNERS ASSISTANCE SUMMARY REPORT  
(ACTIVITY UNDER PUBLIC LAW 89-754, AS AMENDED),  
RCS DAEN-RE-12(R-1), ENG FORM 4153-R.

14-12. Purpose. This report summarizes, by installation, action taken by Division/District offices after receipt of a homeowners assistance application.

14-13. Applicability. These reporting instructions apply to commanders of field operating activities (FOA) with responsibility for military real estate.

14-14. Frequency and Submission. Submit semiannual reports to CDR USACE (DAEN-REP-S) WASH 20314-1000 by the third workday following the end of the reporting period.

14-15. Preparation. ENG Form 4153-R, Homeowners Assistance Summary Report (Activity under Public Law 89-754) (Figure 14-3) will be used to provide summary data for each department and installation for which there is reportable activity.

14-16. Instructions. Complete ENG Form 4153-R as follows:

a. Section I. Base Closure Information: name the bases or installation associated with applications currently being processed.

b. Section II. Application/Payments: report types of applications and payments made.

c. Remarks: Use a separate form for each base or installation closure. Then summarize all bases or installations for each department on one sheet; such summaries will be cumulative for one fiscal year. Report payments to the nearest dollar, report FHA application numbers, and comments.

14-17. Reserved

14-18. Reserved

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\* SECTION V. RELOCATION ASSISTANCE SUMMARY REPORT  
(ACTIVITY UNDER PUBLIC LAW 91-646)  
RCS DAEN-RE-18(R1), ENG FORM 4890-R

14-19. Purpose This report summarizes information on persons displaced from their homes, businesses, or farms by Federal projects of the Department of the Army (military and civil works), the Department of the Air Force, and Federal agencies which use the real estate services of the Corps of Engineers.

14-20. Applicability. These reporting instructions apply to commanders of field operating activities (FOA) with responsibility for real estate.

14.21. Frequency and Submission. Submit semiannual reports to CDR USACE (DAEN-REP-S) WASH DC 20314-1000 by the fifth working day following the end of the reporting period.

14-22. Preparation. Summarize data on ENG Form 4890-R, Relocation Assistance Summary Report (Activity under Public Law 91-646) (Figure 14-4). Prepare a form for each department with reportable activity.

14-23. Instructions. The following data will be supplied:

a. Part 1. Applications Processed. This section will report only applications processed during the reporting period. Break out items by type of applicant, number, total amount claimed, and amount paid to new applicants. Report money in dollars only.

b. Part 2. Summary of Payments Made by Type.

(1) In this section, show payments made during the fiscal year, according to type. Include payments made during the current fiscal year for those applications received in a previous year.

(2) If a dwelling applicant chooses a dislocation allowance, show the total amount of the dwelling payment and break out the amount of dislocation allowance. Do not include the figures in brackets in the totals under item 10. \*

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\* Summary of Progress.

(1) Applications Pending. Include applications from previous reporting periods but not yet resolved.

(2) New Applications. Include applications received during the reporting period (Part 1 above).

(3) Applications Completed. Include all applications completed during the reporting period, regardless of when they were received.

(4) Applications Pending. Include all applications not completed by the end of the reporting period, regardless of when received.

14-24. Reserved.

14-25. Reserved.

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SECTION VI. RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION ACTIVITIES  
AT FEDERALLY-ASSISTED PROJECTS, RCS DAEN-RE-22, ENG Form  
4660-R

14-26. Purpose. The report required by this section is designed to provide summary statistical data pertaining to land and relocation assistance payments made by local interests at federally-assisted projects under the provisions of Titles II and III of Public Law 91-646.

14-27. Applicability. These reporting instructions are applicable to all Divisions/Districts having real estate responsibility.

14-28. Frequency and Submission. One copy of the report will be dispatched annually in sufficient time to reach HQDA (DAEN-REH-0) WASH DC 20314 by 1 November of each year.

14-29. Reporting Instructions. Detailed instructions for completing ENG Form 4660-R are included on reverse side of the form (Figure 14-6). \*

## SECTION VII. ACQUISITION PROGRESS REPORT

RCS DAEN-RE-1(R2), ENG FORM 2440

14-30. Purpose. This report provides data on land (and improvements thereon) in the United States, its possessions, and the Commonwealth of Puerto Rico, acquired by the Corps of Engineers for the Department of the Army (military and civil works), Department of the Air Force, Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and other Federal agencies for which the Corps acts as agent.

14-31. Applicability. These reporting instructions apply to commanders of field operating activities (FOAs) having real estate responsibility.

\* 14-32. Frequency and Submission. Submit quarterly reports to CDR USACE (DAEN-REP-S) WASH DC 20314-1000 by the eighth day of the month following \* the end of the reporting period.

14-33. Preparation.

a. Format.

(1) Acquisition Progress Report, ENG Form 2440, will be furnished. Preparation instructions are included in paragraph 14-35.

(2) Update card images of acquisition data may be transmitted by telecommunication transfer direct to the U.S. Army Engineer Automation Support Activity computer in Washington, D.C. Technical details of the transfer are included at Figure 14-16.

(3) FOAs not using the electronic transmission method above will furnish acquisition data by submission of punched cards accompanied with an 80/80 double-spaced proof listing. Instructions for punch cards are included in paragraph 14-36, and an annotated ENG Form 2440 is included at Figure 14-7.

b. Reportable Actions. The following types of land and methods of acquisition are reportable:

(1) Fee simple title by purchase, condemnation, donation, exchange relocation contract and vacation proceedings.

(2) Federally-owned lands involving transfer of jurisdiction by executive order, public land order or proclamation, or transfer of right by permit, agreements or otherwise.



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(3) Easements, regardless of consideration paid or length of term acquired, except that for for local cooperation projects only permanent easements and temporary rights which may be used upon completion of the project, or which involve consideration, are reportable. Exceptions are not required to be reported, audited or mapped.

(4) Licenses and other lesser interests. This includes permits and other use privileges acquired from states, counties, and other political subdivisions, as well as from private landowners.

(5) Leaseholds of land areas by negotiations, condemnation proceedings or transfer from other Federal agencies.

c. Types of Reports. An Initial report will be included in the earliest regular submission after a Real Estate Directive is issued or the first Real Estate Design Memorandum is approved. Thereafter, Recurring reports will be furnished when reportable actions occur during the reporting period, or if a previously submitted report requires correction. However a letter report will be furnished if all reports of a District/Division are negative. When all acquisition has been completed, a Final report will be furnished.

14-34. Data Source and Records Maintenance.

a. Project Offices.

(1) The source record for the data reported on ENG Form 2440 will be the Acquisition Docket Sheet (Field), ENG Form 1069, which shall be used as the official working control record on real property acquisition,

(2) As soon as the individual ownerships have been determined for an authorized acquisition, the basic data relating to each tract will be entered on the Acquisition Docket Sheet.

(3) ENG Form 1069 Will be used for the posting of acquisition progress on all regular (direct Federal) acquisition performed by the Corps of Engineers (i.e., Army-Military, Civil Works, Air Force, DOE, etc). Where local cooperation acquisition is involved (acquisition by local interests in the first instance with subsequent conveyance to the United States), the docket sheet will, be changed or adapted to conform with the action steps taken for the various types of acquisition.

(4) The progress of each transaction for each tract will be recorded chronologically on ENG Form 1069 as each action step is taken.

b. District offices. The only action record required in District offices is the maintenance of a file of all ENG Forms 2440 being currently submitted by the project offices. However, where acquisition is performed directly out of a District office, that office will maintain the record on ENG Form 1069.

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\* c. Division Of Offices. The only action record required in Division offices is the maintenance of a file of all ENG Forms 2440 currently submitted by project and/or District offices. However, where acquisition is performed directly out of a Division office, that office will maintain the record otherwise kept by the project and/or District offices.

14-35. Instructions for ENG Form 2440. For the purpose of these instructions, the terms "installation" and "project" are synonymous and will be used to refer to military installations, civil works projects, and those properties acquired for other Federal agencies.

a. General - Military and Other Agency. ENG Forms 2440 for Army-Military, Air Force, DOE, NASA, and other agencies for which the Corps of Engineers acts as agent will be prepared as follows:

(1) A separate record will be maintained and separate reports will be submitted on each real estate directive issued, except in those cases where directives merely provide additional funds. Where lands in two or more directives are merged in the same court proceeding or option, or where a lesser interest is merged into a greater interest, the records and reports will be combined. However, in those instances where one directive covers more than one installation, a separate report will be prepared for each installation. The funds authorized by the directive will be broken down so that the appropriate funds for each installation will be shown on the applicable report. Appropriate explanation will be made in "Remarks" block.

(2) Where lands in more than one installation are included in one court proceeding or option, separate reports are required for each installation and only the statistics pertinent to each will be reported thereon. If one ownership is involved in more than one installation, the acre and dollar statistics should be prorated and one tract shown for each installation.

(3) When a directive number is succeeded by an alphabetical suffix, such as 1023A, 1023B, etc., it does not necessarily mean it should be entered on the ENG Form 2440 covering the original directive number RE-D 1023. If the directive with the alphabetical suffix amends or supplements the original directive of that number, it should be reported on the same report.

(4) An "X" will be placed in the space provided to designate the status of the report (Initial, Recurring, Final and Revised Final).

(5) The purpose for which the acquisition is being accomplished will be indicated in the "Purpose" block.

(6) The real estate directive number(s) and date(s) thereof will be entered in the blocks provided. Cite directives originating at all

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\* levels of authority. The Directive Number block will show the real estate directive number or, if unnumbered, the identification of the authority such as "1st Ind DE", "1st Ind AFRCE", or "Letter from OCE". For minor acquisitions where no such specific written authority exists, the term "Del. Auth." and the date of the acquisition instrument may be cited. If there is more than one instrument, show the date of the first instrument.

(7) An "X" will be placed in the space provided to designate the using agency. When Air Force or Army Materiel Development and Readiness Command (DARCOM) acquisition is involved, the initials of the Air Force or DARCOM command having jurisdiction (such as SAC, ADC, DRC-ARRC, DRC-ERDC, etc.) will be entered in parenthesis. When acquisition for others (as agent) is involved, enter the name of the other Federal agency immediately above the words "Other Federal Agency".

(8) The number of tracts, acres, and dollars shown on line 2 of Initial and Recurring reports will be as recited in the directive and will equal subsidiary line totals on lines 2A through 2F. The number of tracts, acres, and dollars on line 2 of Final reports will equal subsidiary line totals on lines 2A through 2F, which lines will in turn equal corresponding entries in the Progress to Date section of the report. The dollar entry on line 2 will include only the amounts authorized for land payments, including amounts from construction funds, operations and maintenance funds, funds authorized by Air Force Regional Civil Engineers, and all other authorizations regardless of administrative level of authority. It will not include amounts authorized for administrative and relocation assistance expenses and amounts authorized for restoration of lands occupied by right-of-entry and not actually acquired.

b. General - Civil Works. ENG Forms 2440 for Army Civil Works will be prepared as follows:

(1) When more than one type of acquisition is involved, a separate report will be prepared for each type. Types of acquisition are classified as:

(a) Department of the Army acquisition

(b) Local acquisition- Later conveyance to U.S. - Reimbursement by U.S. \*

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\* (c) Local acquisition - Later conveyance to U.S. - No reimbursement by U.S.

(2) The reports will be prepared on a project basis broken down by type, as indicated in paragraph b(1) above. Where two or more areas (dam site, reservoir area, etc.) have been authorized for acquisition in connection with the same project, they will be consolidated into one report. The report will include all acquisition prior to 1 January 1943 (excepting lands disposed of prior to 1 January 1943) and the cost (estimated, if necessary) thereof, together with all acquisition accomplished after 1 January 1943. In those cases where information is not available for line-by-line reporting on the ENG Form 2440, the report will show an asterisk in the left margin beside line 2 referring to a remark that the report does not include the acres and cost audited under Civil Audit No. \_\_\_\_\_. The statistics reported in "Remarks" will be included on line 1 (Estimated Total to Complete Project), but will be omitted from all other lines of the report.

(3) If, after an acquisition report becomes Final, an additional acquisition of the same type is authorized, the Final report will be reactivated to include the additional authorization and progress thereof.

(4) In the "Type of Acquisition" block under "Entire project", insert an "X" in appropriate boxes, depending on the number of types of acquisition involved in acquiring the entire project. In the "Type of Acquisition" block under "This Report", insert an "X" only in the block designating the appropriate type of acquisition covered in the report. A separate report will be submitted for each type of acquisition involved (see paragraph b(1) above).

(5) The "Title and Date of Congressional Authority" block of the report will contain the title and date of the Act of Congress authorizing the acquisition.

(6) Date(s) of approval of the design memorandum by the Office of the Chief of Engineers (OCE) or the Division Engineer and identity of the area covered by the design memorandum will be entered in the space provided:

(7) Reports for local acquisition-later conveyance to U.S. will show the date of the Division or District's letter(s) to the local interests accepting the assurance.

(8) Line 1, "Estimated Total to Complete Entire Project", will \*

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\* include all land acquisition requirements estimated for the project as approved in the General Design Memorandum or equivalent report. These requirements will be adjusted periodically to conform to revised or refined total project estimates as determined during the course of acquisition. If more than one type of acquisition is involved, requiring more than one Acquisition Progress Report, total requirements for each type will be shown, as applicable.

(9) Line 2, "Present Acquisition (civil)", will include all acquisition contained in approved real estate design memorandums and supplements thereto and will equal subsidiary line totals on lines 2A through 2F.

c. General - All Departments. The following general instructions apply to preparation of ENG Form 2440 for all acquisitions.

(1) When reporting acquisition by transfer from military to civil accounts, or vice versa, each will be considered a separate Federal "agency".

(2) The "Name and Location of Project" block will contain the official name of the project and name of the city(s) and state(s) in which the authorized area is located.

(3) Funds authorized for relocation assistance payments will be entered under "Remarks".

(4) Records will be maintained on a fractional acreage and dollar basis; however, totals thereof will be rounded to the nearest acre or dollar in preparing the ENG Form 2440 report (0.50 acre will be reported as an additional acre; 50 cents will be reported as an additional dollar). Further, the total acres and cost will be properly rounded out for reporting on line 2. The statistics on lines 2A through 2F, and the statistics reported in the "Progress to Date" section under the purchase, condemnation, lease, permanent transfer, withdrawal from public domain and temporary use blocks, will be adjusted to agree therewith, if necessary, and the appropriate explanation made under "Remarks". The decision in this matter should be made by the reporting office and be based on the size of the fractions involved.

(5) The sums of the tract and acre statistics on lines 2A through 2F will equal the totals reported on line 2 (except in the case of lesser interests being merged into greater interests -- see paragraph i below).

(6) The sum of the dollar statistics on lines 2A, 2B, and 2C will equal the total dollars reported as authorized on line 2. When the acquisition of one of the estates (fee, easements and other lesser \*  
\*

\* interests, or public domain) is completed, the amounts actually expended will be reported. Where more than one type of interest is being acquired, upon completion of any one type, that portion of the report will be balanced statistically as for a final report. For example, if the directive covers fee and lesser interests, and acquisition of the lesser interests is completed, the dollars on line 2B will be adjusted to agree with the sum of the statistics. on lines 19, 25, and 29 of the lesser interest column, although the fee acquisition is uncompleted. The dollars on line 2 will be adjusted to equal the total of subsidiary lines (2A, 2B, 2C).

d. Line-By-Line Requirements. Following are itemized instructions for line-by-line reporting not explained elsewhere in this Section.

(1) Line 2A - Fee By Purchase, Condemnation or Transfer. Record all tracts authorized for acquisition in fee by purchase, donation, condemnation, exchange or by permanent transfer from other Federal agencies. (When relocation agreements or contracts result in the Government's acquiring fee title, the tracts will be shown on this line and on all other applicable lines in the report).

(2) Line 2B - Lesser Interests By Purchase, Condemnation or Transfer. Record the number of tracts involved in all lesser interests authorized for acquisition by purchase, condemnation, donations exchange or permanent transfer from other Federal agencies. "Lessor Interests" include permanent easements, licenses, permits (including informal permits issued by letter), agreements, resolutions, franchises, glide angle permits, clearance (formerly avigation) easements and temporary easements. Upon acquisition, instruments covering glide angle permits and clearance easements will be carefully reviewed in order to determine whether actual areas are acquired or if merely tree topping or similar rights are involved and the authorized acreage adjusted if entered differently at the time of authorization. Right-of-entry permits taken in connection with acquisition are not to be included under lesser interests.

(3) Line 2C - Public Domain Lands by Withdrawal. Record all lands authorized to be acquired by withdrawal from the public domain or by notation on the public land records, if this is the final acquisition action to be taken.

(4) Line 2D - Public Domain Lands by Temporary Use Permit. Record all public domain lands authorized to be acquired by use permits from other Federal agencies.

(5) Line 2E - Other Public Lands by temporary Use Permit. Record all land (other than public domain lands) authorized to be \*

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\* acquired by use permits from other Federal agencies.

(6) Line 2F - Leaseholds. Record leaseholds authorized to be acquired by the United States, either by voluntary lease, condemnation proceedings or by permanent transfer of leases from other Federal agencies, whether from private parties, states or other political subdivisions. Short term leases for rights-of-entry in connection with acquisition are not to be included. Include all leases for the installation even if they are now disposed of or in process of disposal.

(7) Lines 3 - 17. The data reported on lines 3 through 17 ("Current Period - Estate Acquired") will conform with the requirements set out for lines 18 through 32 ("Progress to Date"), except that current actions, rather than cumulative data, will be reported.

(8) Line 18 - Options Accepted. Enter the total number of tracts, acres and dollars for which options have been accepted, including those acquisitions which do not follow the regular acquisition procedure steps, such as licenses, permits and donations. Include a brief statement in "Remarks" in those instances.

(9) Line 19 - Closings Completed. Include the total number of tracts, acres and dollars for which payments and closing have been completed.

(10) Line 20 - Complaints Filed. Include all tracts and acres for which complaints (condemnation petitions) have been filed.

(11) Line 21 - Order of Possession Entered. Include all tracts and acres for which possession is available by court order. Tracts obtained without court order will not be included on line 21, except for those tracts transferred from purchase to condemnation where possession was obtained while in purchase status.

(12) Line 22 - Declaration of Taking Filed. Include the number of tracts, acres and dollars for all lands covered by declaration of taking filed in Federal court. If amounts originally deposited are reduced because of over deposit, dollar amounts will be reduced accordingly. A statement in "Remarks" will reflect the original amount deposited and identify the amount refunded.

(13) Line 23 - Deficiencies Deposited on Awards and Stipulations for D/T. Include stipulations and/or awards on declarations of taking. The tracts and acres reported on this line will be those also reported on line 22 which require deficiency deposits; the dollars will be the total amount of deficiencies deposited. \*

\*

(14) Line 24 - Awards and Stipulations Deposited for Straight Condemnation. Include those tracts upon which awards have been deposited on straight condemnation cases (no declaration of taking filed). These statistics will not be included on lines 22 or 23.

(15) Line 25 - Final Judgment Entered. Include all tracts, acres and dollars in condemnation on which final judgment has been entered.

(16) Lines 26 and 27 - Lease - Acquired by Negotiation and Acquired by Condemnation. As the lands are acquired by lease, the number of tracts and acres will be entered on line 26 or 27, as applicable. Those leased lands acquired by permanent transfer from another Federal agency will be reported on lines 28 and 29 in the "Lease - Use Permit" columns.

(17) Line 28 Permanent Transfer - Possession Obtained. Include all lands to which right-of-entry has been obtained pending permanent transfer from another Federal agency. The date right-of-entry was obtained and the name of the transferring agency will be noted in "Remarks". When permanent transfer is completed, the pertinent statistics will not be deleted from this line.

(18) Line 29 - Permanent Transfer - Acquisition Completed. Include all lands acquired by permanent transfer from another Federal agency. If reimbursement is made to the transferring agency, the amount will be reported in the "Dollars" column. The original cost of land to the transferring agency will be determined and entered in "Remarks" together with the effective date of transfer and the name of the transferring agency. When an effective date of transfer is not specifically indicated, the date of the transfer instrument executed by the transferring agency will be used.

(19) Line 30 - Withdrawal from Public Domain - Possession Obtained. As soon as a notation of withdrawal has been entered on the public land records, the pertinent statistics will be reported. The date of notation on the public land records will be entered in "Remarks". When the withdrawal has been accomplished, the pertinent statistics will not be deleted from this line. If the request for withdrawal is cancelled prior to the accomplishment of the withdrawal, the pertinent statistics will be deleted from line items 15 and 30 with a remark explaining the action taken and the number of tracts and acres involved.

(20) Line 31 - Withdrawal from Public Domain - Acquisition Completed. When the withdrawal is accomplished, the pertinent data will be reported. If the notation on the public land records is the \*



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\* final acquisition action to be taken, this will be considered as acquisition completed for reporting on this line. The "Dollars" column will show the amount expended for third party interest, if applicable. The effective date of withdrawal and the agency from which acquired will be entered in "Remarks", together with an explanation of any third party interests acquired. For report purposes, all lands withdrawn by one document will be considered one tract. A single document withdrawing lands for more than one installation will be reported as one tract for each installation involved. State lands, if described in the withdrawal document, will not be included on this line.

(21) Line 32 - Temporary Use Obtained. Include all lands acquired by use permit from another Federal agency. All lands, except public domain lands, will be reported in the "Lease-Use Permit" columns. The public domain lands will be reported in the "Public Domain" columns. The effective date of temporary use will be entered in "Remarks", together with the agency from which acquired. A use permit involving both public domain land and non-public domain land will be considered as two tracts, one tract being the public domain lands and one tract for the remaining lands.

e. Active Reports. An active report (Initial or Recurring) will be prepared as follows:

(1) Lines 18 through 32 will be increased progressively as the acquisition action is accomplished. The "Current Period" statistics (lines 3 through 17), when added to the corresponding lines of the previous "Progress to Date" statistics (lines 18 through 32), should equal the current "Progress to Date" cumulative entries. Any variance should be explained in "Remarks".

(2) The number of tracts, acres, or dollars reported in the "Progress to Date" section will not exceed the authorized amounts shown on lines 2A through 2F, as follows:

(a) Data appearing on lines 18, 22, 24, and 28 of ENG Form 2440 will not exceed the authorized amounts appearing on lines 2A and B.

(b) Data on line 30 of ENG Form 2440 will not exceed the authorized amount on line 2C.

(c) Data on line 32 of ENG Form 2440 will not exceed the authorized amount on lines 2D or E.

(d) Data on line 26 of ENG Form 2440 will not exceed the authorized amount on line 2F.

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(3) Care will be taken so that unacquired acreage will be accompanied by tract statistics. If such is the circumstances, an explanation will be noted in "Remarks". Unacquired acreage is the difference between the authorized and the possession obtained statistics.

(4) Every effort will be made to report the acquisition action in the "Current Period" portion of the report covering the period in which the action was taken. However, if the action is initially reported in a later report, and if that later report covers the same fiscal year in which the action was taken, the statistics will be reported in the "Current Period" column of that report with an asterisk referring to a remark stating: "Includes action on (No.) tracts, (No.) acres and (dollars) taken in the \_\_\_\_\_ quarter of the fiscal year". If the action is not reported until the next fiscal year after the action was taken, the entire action, including number of tracts, acres and dollars, will be reported under "Remarks". The explanation will also identify the fiscal year in which the action was taken.

(5) Additions or deletions necessitated by corrections or other adjustments will be explained under "Remarks", along with the words "This fiscal year" or "Prior to this fiscal year", which will serve to indicate the date the original data affected was reported. For example, order of possession was entered on one tract consisting of 300 acres and reported as current action on the report covering the fourth quarter of fiscal year 1978. During the second quarter of fiscal year 1979, a resurvey was completed, and it was determined that the acreage should be 310 acres. The 10-acre increase would be reported in the second quarter of fiscal year 1979 and explained in "Remarks" with the words "Prior to this fiscal year" since the order of possession on that tract was entered in a prior fiscal year.

(6) Minus figures will not be reported in the "Current Period" portion.

(7) All tracts transferred from purchase to condemnation will be deducted from the affected "Purchase" lines 18 and 19 and reported on the applicable "Condemnation" lines 5 through 10 and 20 through 25. All tracts transferred from condemnation to purchase will be deducted from the affected "Condemnation" lines 20 through 25 and reported on "Purchase" lines 3 and 4 and 18 and 19.

(8) If exact costs of fee and lesser interest areas acquired by a single option, declaration of taking, etc., are not stated in the acquisition instrument, estimated cost based on best available information (appraisals, where possible) will be entered in appropriate cost columns of the report. At the time of real estate audit \*

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\* (Chapter 13), cost data on ENG Form 2440, the Acquisition Tract Register (ENG Form 1019) and the Realty Control File Summary (ENG Form 1603) must be in agreement.

(9) The tracts under lease will be identified in "Remarks" by contract numbers, tract numbers and acreages.

(10) Completed transactions not involving condemnation which do not follow regular acquisition procedure steps (such as license, permits and donations) will, for report purposes, be shown on purchase lines 18 and 19, and will be identified by appropriate footnote showing interest acquired and number of tracts. Where no actual acreage is involved, as in the case of informal agreements to top trees, only tract and dollar data will be reported.

(11) Only costs borne by the Departments of the Army (military and civil works) and Air Force, DOE, NASA, and others for which the Corps of Engineers acts as agent will be entered on the reports. Funds furnished by cities, states, etc., will be shown under "Remarks" with an appropriate note including the source of the funds.

(12) The nominal amount of one dollar as cost of land will not be entered on the report unless actually paid.

(13) Cumulative refunds, broken down into amounts refunded on fee acquisition and amount refunded on lesser interest acquisition, will be included in "Remarks" each reporting period.

(14) Refunds are not applicable to the "Purchase" block of the report. If the option provides for removal of improvements or crops by the vendor, the cost thereof will be excluded from all lines of the "Purchase" block. If the option did not provide for this removal, the option cost will be entered on all lines of the "Purchase" block, in which case the removal of improvements or crops will be considered a disposal and will be reported on the appropriate disposal report. If, after an option has been accepted, certain lands are excepted from the areas covered in the option, the acreage and dollars pertaining thereto will be deleted from the "Purchase" block. These dollars will not be considered as a refund since this represents return of land rather than reduction in cost of land actually acquired.

(15) Accreted lands will be reported on the ENG Form 2440 which includes the tract to which the accreted land attaches. Place an asterisk in the right margin beside line 2 and in "Remarks" show "\*Does not include (No.) acres increased to accretion".

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f. Acquisition by "Reassignment".

(1) The tracts, acres and the original cost of real estate reassigned from one installation to another within the jurisdiction of the same Department (Army-Military, Army-Civil Works, Air Force, DOE, NASA, etc.) will be reported on lines 2 through 2F, 13, 14, 28 and 29. A statement will be entered in "Remarks" showing the date of reassignment and the name of the installation from which the property was withdrawn. The date of reassignment will be the effective date indicated in the memorandum, disposition form or other document authorizing the reassignment. If no effective date is cited, the date of the authorization will be the date of reassignment.

(2) Areas made available for use by the Reserves or National Guard on installations are not considered as having been reassigned unless reassignment is specifically indicated in a formal document from higher authority. These areas should be considered as on-post activities of the host installation as long as the installation on which they are located exists. In the event of complete disposal of the installation, the on-post activities such as Reserve Corps, National Guard or other miscellaneous activities, including Post Cemeteries, will be considered as "reassigned" in order to close out the records of the host installation and facilitate identification of the newly created installation. The date of reassignment will be the effective date recited in the general order discontinuing the host installation or, in the absence thereof, date of disposal of the last remaining excess area. ENG Form 2440 will be prepared on the Reserve or National Guard activity when the reassignment becomes effective.

g. Reservations of Easements in Fee Disposals. Reports will be furnished for easements reserved in disposal deeds and transfer documents. Reservations in deeds will be reported on lines 2, 2B, 3, 4, 18 and 19 as if acquired through negotiation. Lesser interests reserved in transfers to another Federal agency will be considered as acquisition by permit from that agency and reported on lines 2, 2E, 17 and 32. Tract and acreage data will be reported. Cost will not be reported. The excess authority for disposal will be considered the authority for these "acquisitions".

h. Revestment of Title. Where title to land is revested in former owner by judgment in a condemnation case, the following procedures will apply:

(1) When damages and/or rental is paid to the owner, the tracts and acreage on which the damages and/or rental was paid will be \*

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\* considered as leased land, and the pertinent tracts acreage and rental statistics will be included on lines 2, 2F, 12 and 27 only. The dollar amount paid for damages will be noted in "Remarks".

(2) If no damage or rental is paid to the owner, the pertinent statistics will be deleted from the body of the report with a remark explaining the action taken and the number of tracts, acres and dollars involved.

i. Merger of Interests. Lesser interests merged into a greater interest, such as leases merged into lesser interests or fee; lesser interest merged into fee; or temporary use permit merged into permanent transfer or withdrawal from the public domain, will be reported as follows:

(1) When a directive is issued authorizing acquisition of a greater interest in land already under control of the Department of the Army (military and civil works) and Air Force, DOE, NASA or other Federal agencies, the directive will be combined on the acquisition progress report with the directive which authorized the original acquisition of the lesser interest. If the report covering the original acquisition has been made "Final," the report will be reactivated.

(2) The statistics pertinent to the area being acquired will be added to totals on lines 1 and/or 2, and on lines 2A, 2B, or 2C, as applicable.

(3) The statistics pertaining to the lesser interest will remain on all appropriate lines of the report until such time as options are accepted or order of possession is entered in condemnation (or declaration of taking filed, if no order of possession is entered) for the greater interest. At that time, the tract and acreage statistics will be deleted. The cost of the lesser interest will be transferred from the "lesser interest" column to the equivalent line of the "fee" column, regardless of the method of acquisition of the fee. To illustrate, if the lesser interest has been acquired by purchase and the fee by condemnation, the total cost will be divided since cost of the lesser interest will be transferred to the fee purchase lines and cost of the fee will be shown under the condemnation lines. If the estates were taken by reverse methods, the same procedure would apply. Where both estates are taken by the same method, the cost of the fee would be combined on the appropriate method line.

(4) In cases where a portion of a lesser interest tract is merged into a greater interest, instructions in preceding subparagraphs (2) and (3) will also apply. However, the cost of the area so merged may be determined on a pro rata basis. The area and cost of the lesser interest will be reduced and the greater interest increased accordingly. \*

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(5) If, subsequent to obtaining a temporary use permit, a permanent transfer or a withdrawal from the public domain is to follow, the statistics should not be reported on line 13 or 15 as possession obtained during the current period. The statistics should be included on line 28 or 30 and deleted from line 32 with an explanation of the action shown in "Remarks". When the action has been completed, the statistics should be reported on lines 14 and 29, or lines 16 and 31, as applicable,

j. Exchange of Land. Report exchange of land as follows:

(1) For an even exchange, where no monetary consideration is involved, show the tracts and acres but no cost in all purchase steps. An explanation will be made in "Remarks" by stating: "Acquisition of (No.) tracts of (No.) acres (estate) accomplished by exchange for (No.) acres (estate) which cost the Government (dollars)".

EXCEPTION: Where lands acquired in an exchange are for another project, tracts, acres and dollars will be reported in the line item purchase steps for that project. The dollars will be the cost of the lands conveyed.

(2) For an exchange where the Government gave land and money, show the tracts, acres and actual money expended. An explanation will be made in "Remarks" by stating: "Acquisition of (No.) tracts of (No.) acres (estate) was accomplished by payment of (dollars) and transfer to vendor of (No.) acres (estate) which cost the Government (dollars)".

(3) For an exchange where the Government received land and money, show the tracts and acres but no cost. An explanation will be made in "Remarks" by stating: "(No.) tracts of (No.) acres (estate) plus a consideration of (dollars) were acquired in exchange for (No.) acres (estate) which cost the Government (dollars)".

(4) When applicable, the aforementioned explanation(s) will be entered on each report, including the Final report.

k. Joint Use. Report joint use lands as follows:

(1) Where Federal lands are occupied under use permit, memorandums of understanding or agreements (other than leases), etc., which provide for joint use with others, report the total statistics covered by the instrument in the appropriate line items of the \*

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\* report and explain in "Remarks" that the area is used jointly with others. If the instrument provides that certain areas are for exclusive use and other areas are to be used jointly, report the total statistics in the appropriate line items but explain in "Remarks" the area under each type of use.

(2) Where joint use only is acquired in leased land, show the number of tracts in the appropriate line items and cite the acreage in "Remarks". If the lease provides for both exclusive and joint use, report the exclusive use tracts and acres and joint use tracts in the line items and cite the additional joint use area in "Remarks".

1. Court Action By Landowner. Court action instituted by landowners will be reported as follows:

(1) Show the Act Of Congress under which the court action was instituted by the landowner in the "Directive Numbers" block.

(2) Show the date of the judgment in the "Directive Dates" block.

(3) The money paid pursuant to the judgment will be reported in "Remarks". The source of the funds will be indicated, together with a clarifying remark of the action taken.

(4) The acquisition action will be reported similar to a straight condemnation action.

m. Reacquisition. Report reacquisition as follows:

(1) The statistics pertaining to a reacquired area will be reported on an ENG Form 2440 covering the directive authorizing the reacquisition.

(2) The statistics pertaining to the original acquisition will remain on the original ENG Form 2440, and the disposal thereof will remain on the Real Property Disposal Report, ENG Form 0-836 (RCS: DAEN-RE-6).

(3) Since the ENG Forms 2440 for civil works projects are prepared on a project basis rather than by directive, the statistics pertinent to the reacquired area will be included on all appropriate line items. A remark will be made indicating the number of tracts and acres reacquired and cost thereof, if applicable.

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\* n. Overlapping of Interests. Report overlapping of real estate interests as follows:

(1) When an overlapping interest is acquired, a tract will be shown but only the acreage, if any, extending beyond the limits of the underlying tract(s) will be reported.

(2) Acreage will not be duplicated even when more than one installation is involved unless one installation is of a different department.

o. Wherry Housing Acquisitions.

(1) ENG Form 2440 will be submitted for each named Wherry Housing development, e.g., Rose Terrace (which may contain one or more numbered project), covered in a directive which authorizes acquisition of a sponsor's equity by the Department of the Army or the Department of the Air Force. However, only that portion of the ENG Form 2440 above the caption "Complete Project Requirements" and "Remarks" section will be completed in cases involving on-base acquisitions (where title to the underlying land previously has been vested in the U.S.). The "Remarks" section will be used to indicate the following information for each numbered project within a named development:

(a) The amount authorized to acquire the former sponsor's equity in the project (as recited in the directives or in the case of directives covering multi-housing acquisition, in the planning report).

(b) The total indebtedness assumed by the United States (unpaid balance on the mortgage).

(c) When the report becomes Final, the amount actually paid to acquire the sponsor's equity in the project.

(d) The method of acquisition (purchase or condemnation).

(e) The number of units in each numbered project.

(f) Date acquisition of each numbered project is completed.

(2) On-base and off-base Wherry projects acquired by and for the Air Force will not be reported on ENG Form 2440 until receipt of acquisition documents from OCE. At that time an "Initial and Final" report will be submitted. \*



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(3) In the case of acquisition of off-base Wherry projects (which include the acquisition of land and construction), applicable lines of the report will be completed. However, only tracts and acres will be reported, since the cost of land is generally inseparable from the gross sum paid the former sponsor. Information pertaining to the buildings, as required by subparagraph (a) through (f) above, will be furnished in "Remarks".

p. Final Reports. Prepare Final reports as follows:

(1) A Final report will show the last action steps taken in the "Current Period" section. The report will be dated to correspond with the ending date of the regular reporting period in which the last reportable action was taken, regardless of the date of submission of the report to OCE. The renewal or extension of a use permit, lease, or other temporary use is not considered additional acquisition and does not require a revised ENG Form 2440.

(2) If the report becomes Final due to a cancellation of the remaining acquisition, no entry is required in the "Current Period" section. However, a note in "Remarks" should explain the cancellation. The report will be dated for the reporting period in which the acquisition was cancelled.

(3) A Final report will be balanced statistically by tracts, acres, and dollars as follows:

(a) The "Progress To Date" section of line 2 will equal the sum of lines 2A through 2F.

(b) Line 2A will equal the sum of lines 19, 25 and 29 in the "fee" columns.

(c) Line 2B will equal the sum of lines 19, 25 and 29 in the "lesser interest" columns.

(d) Line 2C will equal the statistics on lines 29 and 31 in the "public domain" columns.

(e) Line 2D will equal line 32 in the "public domain" columns,

(f) Line 2E will equal line 32 in the "lease-use permit" columns.

(g) Line 2F will equal the sum of lines 26, 27 and 29 in the "lease-use permit" column.

\*

\* (h) The statistics reported on lines 18 and 19 will be identical.

(i) The tracts and acres reported on line 20 will equal the sum of the tracts and acres reported on lines 22 and 24. Also, the tracts and acres on line 20 will equal the tracts and acres reported on line 25.

(j) The sum of the dollars reported on lines 22, 23 and 24 will equal the dollars on line 25.

q. Revised Final Report.

(1) A Revised Final report may be submitted to correct a reporting error or to correct statistics due to review or audit. The report will show the last reportable action in the "Current Period" section if such information was previously reported or is readily available, and will continue to show the same date as the original Final report. The date of revision should be shown directly under the date of report and be so identified.

(2) If, at the time of audit of an installation or project, it is necessary to revise a Final report, the aforementioned instructions will be followed, but the report will be furnished separately through regular reporting channels (not as part of the audit assembly) as soon as practicable, rather than holding it until submission of the quarterly reports.

14-36. Instructions for Punch Cards. ENG Form 4605 (an annotated copy is at Figure 14-8) will be used as the key punch transcript, and will be completed as follows:

a. Keyword:

(1) Data contained in card columns (cc) 1 through 24 constitute the "keyword". The keyword must be punched in every card submitted as this is the principal means of computer identification of a record on the ADP master file.

(2) No two records on the master file can have the same keyword. Once a keyword is established, the data associated with it in cc 25-79 can be changed as often as circumstances dictate. The contents of the keyword itself cannot be altered by the submission of a change action. That will require a delete action and a plus action. (Change code descriptions are covered in Figure 14-9.)

b. Division/District: Enter in cc 1-2 the appropriate code from the division/district code table at Figure 14-1. \*

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\*

c. Department: Enter in cc 3 the appropriate code from the table at Figure 14-9 to represent the department for whom the Corps is acting as real estate agent.

d. State: Enter in cc 4-5 the appropriate code from the state code table at Figure 14-2 to represent the state where the area authorized for acquisition is located. In cases where the authorized area is located in two or more states, enter the code for the state that is generally considered to be the project location.

e. Installation Number: Enter the installation number in cc 6-8. Installation numbers for existing installations or projects may be obtained from the ADP print-out entitled "Acquisition Control Listing." Numbers for installations or projects that have never been reported will be assigned as follows:

(1) Army Military--Use the last three digits of the installation number in the annual "Inventory of Army Military Real Property" publication if the installation has been established. If it is a new installation, obtain a number from DAEN-REP-S.

(2) All Other Departments--Assign any three position number in the Acquisition Control Listing in such a fashion as to arrange projects alphabetically within states for each department.

f. Directive Number: Enter the number of the real estate directive in cc 9-12 for Army-Military and Air Force projects. If the number is three digits in length, precede the entry with a zero. Leave this field blank for civil works projects and other agency acquisitions unless a directive number has been assigned. If the directive number has an alphabetical suffix, do not punch the suffix if it amends or supplements the original directive number. If the suffix has no connection with the original directive number, enter the number and suffix in cc 9-13. Treat the action as a new directive and report an authorized line item (paragraph i below).

g. Directive Date: The date of the real estate directive or date of approval of real estate design memorandum (REDM) will be entered in day-month-year order in cc 14. For civil works projects, the date of the original REDM will continue to be reported regardless of any supplemental directives that may be issued.

h. Type of Estate: Enter in cc 20 a code from the table at Figure 14-9 to represent the type of estate or interest being acquired. A separate card must be punched for each type of estate or interest being acquired at an installation or project.

\*

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\* i. Method of Acquisition: Enter in cc 21-22 a code from the table at Figure 14-9 to represent the method of acquisition. A separate card must be punched with code 00 in cc 21-22 to report the amount of tracts, acres, or dollars authorized for each type of estate or interest to be acquired as shown the "progress to date" portion of lines 2A through F of ENG Form 2440 as follows:

<u>Form 2440 Line Number</u>	<u>Types of Estate Code (cc 20)</u>	<u>Method of Acquisition Code (cc 21-2)</u>
2A	1	00
B	6 (or 5)	00
C	2	00
D	3	00
E	4	00
F	7	00

Separate cards must also be punched for each method of acquisition (purchase, condemnation, lease, etc.) within each type of estate or interest (fee, lesser interest) if tracts, acres, or dollars are reported on lines 3, 7, 8, 9, 11, 12, 13, 15 or 17 of ENG Form 2440. Entries on those lines will require the following Method of Acquisition Code:

<u>Form 2440, Line Number</u>	<u>Method of Acquisition Code (cc 21-22)</u>
3	01
7	02
8	04
9	03
11	01
12	02
13	05 or 06
15	07 or 08
17	08

j. Fiscal Year: Enter in cc 23-24 the last two digits of the fiscal year in which the acquisition occurred. If the acquisition occurred prior to June 1966, enter 00. When amounts authorized for acquisition are being reported (Method of Acquisition code 00) , enter 00 for the fiscal year. \*

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- \* k. Number of Tracts: Enter the number of tracts in cc 25-30. See paragraph r below for guidance. Right justify entries. Do not zero fill if the entry does not take all spaces.
- l. Number of Acres: Enter the number of acres in cc 31-37. See paragraph r below for guidance. Right justify entries. Do not zero fill if the entry does not take all spaces.
- m. Option Price, Deposit, or Deficiency Award: Enter in cc 38-46 the dollar amount of the accepted option, the amount deposited in court if a declaration of taking was filed, or the amount of an award or deficiency in a condemnation proceeding. See paragraph r below for guidance. Right justify entries. Do not zero fill if the entry does not take all spaces.
- n. Agency From Which Acquires: Make an entry in cc 47-49 only when the Method of Acquisition code in cc 21-22 is Ø5 or Ø6 (transfers), Ø7 (withdrawal), or Ø8 (use permit). Enter a three-character abbreviation to indicate the agency from which the property is being acquired.
- o. Installation/Project Name: Make an entry in cc 50-73 only when reporting amounts authorized for acquisition (Method of Acquisition code ØØ in cc 21-22). Enter the name of the installation or project. Left justify entries. Do not zero fill if the entry does not take all spaces.
- p. State(s) or Country: Make an entry in cc 74-79 only when reporting amounts authorized for acquisition (Method of Acquisition ØØ in cc 21-22). Enter an alphabetic abbreviation for the state where the installation or project is located. This entry must correspond with the state code reported in cc 4-5. Left justify entries. Do not zero fill if the entry does not take all spaces.
- q. Change Code: Enter in cc 80 a code from the table at Figure 14-9 to indicate the type of action being taken to a record on the computer master file.
- r. Guidance: Punch card entries for paragraphs k, l, and m above (tracts, acres, and dollars) will be determined as follows:
- (1) ENG Form 2440 is to be used in conjunction with the ADP report entitled "Acquisition Master Listing". The Master Listing reflects acquisition activity at projects by fiscal year for each method of acquisition; it is the output product from the punched cards.
- (2) Data appearing in the "current period" section of ENG Form 2440 on lines 3, 7, 8, 9, 11, 12, 13, 15, or 17 will be added to the corresponding line item on the Master Listing for the method \*

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\* of acquisition for that fiscal year. That new total will be entry to report on the punched card.

Hypothetical Case:

A recurring ENG Form 2440 dated 31 March 1980 reflects the following fee acquisition on line 3: 5 tracts, 100 acres, \$156,340.

The corresponding line item in the Master Listing for negotiated fee acquisition in FY 1980 is: DOD Category 1; Acquisition Method 01; FY 1980. The hypothetical entry reflects 241 tracts, 3,586 acres, \$7,773,458,

The tracts, acres, and dollars to report on the punch card in cc 25-46 would be: 246 tracts, 3,686 acres, \$7,929,798.

(3) The new entry reported on the punch card plus the total of all prior year amounts for that method of acquisition on the Master Listing must agree with the amount reflected in the appropriate "progress to date" section of ENG Form 2440.

s. Key Punch Instructions are as follows:

\*



SECTION VIII. GSA PERIODIC REPORT OF FEDERAL REAL PROPERTY  
RCS GSA-1005, GSA FORMS 1166 and 1209

14-37. Purpose. This report provides real property inventory data on civil works installations required by the General Services Administration (GSA) as set forth in Subpart 101-3.2 of the Federal Property Management Regulations (41 (CFR 101-3.2)).

14-38. Applicability. These instructions apply to commanders of field operating agencies having accountability for civil works real property.

\* 14-39. Frequency and Submission. Reports will be forwarded to CDR USACE (DAEN-REP-S) WASH DC 20314-1000 NLT 20 October each year. \*

14-40. Preparation. GSA Form 1166, Annual Report of Real Property Owned by the United States, will be used to provide the required data for each new civil works installation or changes to previously reported installations. Summary data will be provided on GSA Form 1209, Summary of Number of Installations Owned by the United States.

14-41. General Instructions for GSA Form 1166.

a. The reporting entity will be a civil works project (hereinafter referred to as "installation"). A single report will include all land and owned improvements at a specific location, usually within a common boundary, under the control of the Corps of Engineers for civil works functions. Where an installation is located in more than one state, the portion located in each state will be treated as a separate installation with a separate installation number and submitted as a separate report. (NOTE: Where land records have been audited, the owned land identified under a single audited installation number, within each state, together with the improvements thereon, will be reported as an installation.) Reports will also be prepared for installations comprised solely of easements, permits, licenses, leases, etc.

b. A complete report covering the entire installation will be submitted for: (1) each newly acquired or previously omitted installation, (2) each installation transferred from another Federal agency which is not merged with an existing installation, (3) each installation declared excess or surplus, (4) each previously reported installation having any change in cost of \$1,000 or more for any item, and (5) each previously reported installation having any change in data, such as a name change or a change in date or method of acquisition of the property, in acreage in any category of land, in the number or area of buildings, the predominant use of land, buildings, structures, or facilities. The revised report will be a complete restatement reflecting all realty changes at the installation,



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\* such as acquisitions, disposals, new construction, and corrections of errors or omissions from the previous report.

c. New acquisitions of land and improvements thereon are reportable at the end of the reporting period in which the following actions are completed (1) acreage is withdrawn from public domain, (2) transfers from other federal agencies are completed, (3) possession is obtained in a condemnation proceeding by a declaration of taking or by an order of possession, (4) options are accepted, or (5) leases, licenses, permits, or other acquisition documents are executed.

d. A report without entries in Blocks 11 through 25 of GSA Form 1166 will be submitted for the disposal of a complete installation or the transfer of a complete installation to another Federal agency. (Accountability will be retained and reports submitted until disposal is completed or property is transferred to another Federal agency.) An appropriate notation for the foregoing transactions or revisions will be made in Block 26, "Remarks".

e. Reports are not required for previously reported installations in which no changes have occurred.

14-42. Specific Instructions for GSA Form 1166.

a. Heading.

(1) Block 1 - Report as of. Enter the effective date of the report.

(2) Block 2 - Agency Control No. Enter the audited installation number where assigned or "None" if the installation has not been audited.

(3) Block 3 - GSA Control No. The GSA Control Number consists of two parts, separated by a dash. The first four digits - 9600 - are constant and identify the Army as the holding agency. The second part, comprised of five digits, is the installation number assigned by GSA for all new installations. For previously reported installations, numbers should be entered by the reporting office, if known. For new installations, reported for the first time, this block will not be filled in by the reporting office.

(4) Block 4 - Name of Installation. Enter the official designation. Use the name approved on audit, if available. For machine processing purposes, abbreviate so that this entry will not exceed 23 spaces, including spaces between letters and words.

(5) Block 5 - Reporting Agency. Enter "DA CofE - Civil".

(6) Block 6 - Bureau or Other Major Organization. Enter the name of Division and District. \*

\*

b. Location.

(1) Block 7 - State or Continent. Enter the name of the state, possession, territory, or commonwealth.

(2) Block 8 - City or Town. Enter the name of the city or town in which, or near which, the installation is located, provided: (a) the installation is located in one county only, (b) the designed city or town is in the same county as the headquarters of the installation. When these circumstances do not apply, enter "No City Identification".

(3) Block 9 - County or Parish. Enter the name of the county or counties (or parish or parishes) in which the installation is located. If necessary, the county or parish listing may be continued in Block 26, "Remarks".

(4) Block 10 - Street Address. Enter the street address, RFD, Route No., or other local designation.

(5) Geographical Code Block. Enter the appropriate numerical code for the location of the installation in the following sequence: state (two digits), city or town (four digits), and county (three digits). Codes will be obtained from the publication "Worldwide Geographical Location Codes" issued by GSA. When the location cannot be identified with the city reported in Block 8, the code "9999" will be entered. When the installation is located in more than one county (Block 9), code "999" will be entered under "County".

c. Land. Report all acreage under the control of the Corps of Engineers for civil works purposes as of the inventory date. In Blocks 11 through 16 include data on all land for which title is vested in the United States for Department of the Army civil works purposes. Report area, cost and other data on land held under easement, lease, license, permit or other temporary agreement in Block 26, "Remarks". All donated fee and easement acres should be reported separately. Acres in all instances should be reported to the nearest tenth of an acre.

(1) Block 11 - Usage Code and Classification.

(a) In the (A) portion of this block ("Code") enter the numeric code, selected from the list below, which best describes the present predominant use of the land. (Entire list as shown in GSA Regulations is included - use applicable codes.) Significant secondary usages may be listed in Block 26, "Remarks".

(b) In the (B) portion of Block 11 enter the classification (written out) which corresponds with the numeric code listed in (A). For example, if the entry in (A) is "18", enter "Flood Control (Land)" in part (B). If applicable, also show in the (B) portion of Block 11 a line entry to indicate \*

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- \* the type of costs incidental to acquisition such as appraisals, surveys, removal and relocation of property of others, removal of structures purchased but not used, legal fees, etc. There will be a separate line item for each of these three land categories: public domain, fee (purchase, condemnation, exchange or transfer), fee donation.

<u>Code</u>	<u>Classification</u>
01	<u>Agricultural.</u> Land under cultivation for production of food and fiber.
04	<u>Grazing.</u> Lands primarily administered for the Preservation, protection, management and development of grass and other forage resources suitable for livestock.
07	<u>Forest and Wildlife.</u> Land administered for the preservation, Protection, management and development of timber, wildlife, watershed, and recreation resources.
08	<u>Parks and Historic Sites.</u> Land administered for national parks, historical parks, monuments, military parks, battlefield sites, historical sites, memorials, cemeteries, parkways, recreation areas, and national capital parks.
10	<u>Office Building Locations.</u> Land on which office buildings are located or are to be constructed.
11	<u>Military (Except Airfields).</u> Land under the control of the Department of Defense (military functions) which cannot be classified elsewhere.
12	<u>Airfields.</u> Land used for military air bases or stations and military or civilian land fields.
13	<u>Harbor and Port Terminals.</u> Land used for harbor and port facilities.
15	<u>Power Development and Distribution.</u> Land used for power development and distribution projects.
16	<u>Reclamation and Irrigation.</u> Land used for reclamation and irrigation projects.
18	<u>Flood Control and Navigation.</u> Land used for flood control and navigation projects.
19	<u>Vacant.</u> Land not being utilized.

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*	<u>Code</u>	<u>Classification</u>
	20	<u>Institutional.</u> Land used for institutional purposes such as hospitals, prisons, schools, libraries, chapels, and museums.
	30	<u>Housing.</u> Land used primarily for public housing project, military personnel quarters, and dwellings for other Federal personnel.
	40	<u>Storage.</u> Land used primarily for supply depots and other storage areas.
	50	<u>Industrial.</u> Land used for industrial plants engaged in the production and manufacture of ammunition, aircraft, ships, vehicles, electronic equipment, chemicals, aluminum, magnesium, etc.
	70	<u>Research and Development.</u> Land used directly in basic or applied research in the sciences (including medicine) and in engineering.
	80	<u>Other Land.</u> Land which cannot be classified elsewhere.
	90	<u>Trust Land.</u> All land held in trust by the reporting Agency.

(2) Block 12 - Method of Acquisition. Enter the code number for each method of acquisition as shown in the list below:

<u>Code</u>	<u>Method of Acquisition</u>
1	Reservation or transfer from public domain (withdrawals) by Executive Order, Act of Congress, Public Land Order, or notation on land records.
2	Purchase, donation, exchange, transfer, or other method of acquisition, where title is vested in the United States.

(3) Block 13 - Date(s) Acquired. Enter the year in which the land was originally acquired by the Department of the Army for each method of acquisition set forth in Block 12. If various portions were acquired at different dates, indicate the range thereof, such as "1910 - 1921", if breakdown with appropriate date is not feasible. \*

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\* (4) Blocks 14 and 15 - Area -- Urban and Rural. For each item in Block 11, enter the area of land to the nearest tenth of an acre. If acreage to be reported is a whole number, enter "0" to the right of the decimal point, e.g., 10.0. If acreage to be reported is less than a whole number enter "0" to the left of the decimal point, e.g., 0.4. If acreage to be reported is less than 0.1 of an acre, enter the letter "N" (negligible).

(a) Block 14 - Urban. Land will be classified as urban when:  
(1) located in an incorporated place of 2,500 inhabitants or more;  
(2) in a densely settled unincorporated place of 2,500 inhabitants or more;  
or (3) in a densely settled urban fringe area around a city of 50,000 inhabitants or more. Enter in this block the area of urban land, to the nearest tenth of an acre, acquired by each method of acquisition reported in Block 12.

(b) Block 15 - Rural. Classify as rural all properties not classified as urban. Enter in this block the area of rural land to the nearest tenth of an acre for each method of acquisition reported in Block 12.

(5) Block 16 - Cost. Land costs will be reported to the nearest thousands of dollars on all items of land in Block 11 in Acquisition Code "2" (purchase, donation, exchange, etc.). If cost is less than \$500, enter "N" (negligible). A cost will be reported for each land category shown in Block 11. The cost will be entered on the first line and will be the amount actually paid to the landowner for the land. If costs of transferred or exchanged lands are not of record, enter an estimated cost followed by an "E". Show also an estimated cost for donated land followed by "DE". The estimated cost should represent the amount the government would have had to pay for the property at the time of acquisition.

(a) For "Costs Incidental to Acquisition" enter on the second or subsequent lines the total cost of all appraisals, surveys, plats, damage payments, removal and relocation of property of others, removal of structures purchased but not used, legal fees, etc.

(b) For public domain land (code 1 in Block 12), enter a zero. Costs of land improvements to public domain land will be reported under "Other Structures and Facilities - All Other" (code 80), Blocks 23 and 24 identified as such in "Remarks", Block 26. Do not report in Block 16 the cost for extinguishment of rights on public domain areas. Report this cost under usage code 80 in Block 24, and make an explanatory footnote in Block 26.

(c) Do not report in Block 16 the cost of buildings acquired with land. Prorate the cost of land and that of the buildings and other improvements. Report the land cost as prescribed above. Report the prorated cost of the buildings in Block 22 and that of other improvements in Block 24. Make an explanatory footnote in Block 26. \*

\*

d. Buildings. Report all Federally-owned buildings completed and available for service as of the inventory date. A temporary building (not demountable) on a concrete foundation will be reported as real property. However, temporary buildings set up for purposes related to construction will not be reported. Do not report portable buildings. For purposes of this inventory, include buildings being acquired under the Public Buildings Purchase Contract Program or Lease-Purchase Agreements, Public Law 519, 83rd Congress, (68 Stat 518) approved 22 July 1954, as amended. Buildings will be reported upon completion of construction.

(1) Block 17 - Usage Code and Classification. The present predominant use of a building will govern its classification. The various usage categories are shown in this block. Select the applicable code from the following list (entire GSA list is included use only applicable code). Significant secondary usages may be listed in Block 26, "Remarks",

<u>Code</u>	<u>Classification</u>
10	<u>Office.</u> Buildings used primarily for office space.
21	<u>Hospital.</u> Buildings used primarily for furnishing in-patient diagnosis and treatment under the supervision of physicians and which have 24-hour-a-day registered graduate nursing services. Include medical laboratories used in routine testing. Exclude buildings used directly in basic or applied research in medicine which should be reported as Research and Development.
22	<u>Prison.</u> Buildings under the jurisdiction of the Department of Justice used for the confinement of Federal prisoners.
23	<u>School.</u> Buildings used primarily for formally organized instruction; such as, schools for dependent children of Federal employees, Indian schools, and military training buildings.
29	<u>Other Institutional Uses.</u> Buildings used for institutional purposes other than schools, hospitals, and prisons. Include libraries, chapels, museums, out-patient clinics, etc.
30	<u>Housing.</u> Buildings used primarily for dwelling purposes; such as, apartment houses, single or row houses, and barracks. Includes public housing, housing for military personnel, housing for personnel in various Federal agencies, and housing for institutional personnel.

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*	<u>Code</u>	<u>Classification</u>
	40	<u>Storage.</u> Buildings used for storage purposes; such as, warehouses, ammunition storage and covered sheds. Also include in this category, garages used primarily for storage of vehicles or materials. Do not include such facilities as water reservoirs and oil storage tanks, which are to be reported as Other Structures and Facilities, Blocks 23 and 24.
	50	<u>Industrial.</u> Buildings specifically designed and used primarily for production or manufacturing. Include buildings used for the production or manufacture of ammunition, aircraft, ships, vehicles, electronic equipment, chemicals, aluminum, and magnesium. Also, include laboratories used for routine testing of industrial products.
	60	<u>Service.</u> Buildings used in connection with service activities; such as, maintenance and repair shops, laundry and dry cleaning plants, post exchanges, stores, and airport hangars. Also include garages used primarily for vehicle maintenance and repair.
	70	<u>Research and Development.</u> Buildings used directly in basic or applied research in the sciences (including medicine) and in engineering. Include buildings used in the design, development, and testing of prototypes and processes such as chemistry, physics, and medical laboratories and observatories for meteorological research. Do not include medical or industrial laboratories used in routine testing which should be reported as Hospital and Industrial, respectively.
	80	<u>All Other.</u> Buildings which cannot be classified elsewhere. Whenever this classification is utilized, give a brief description of usage in Block 26, "Remarks".
	99	<u>Trust Building.</u> All buildings held in trust by the reporting agency. Whenever this classification is utilized, give a brief description of usage in Block 26, "Remarks".

(2) Block 18 - Number of Buildings. Enter the number of buildings for each applicable usage classification printed in Block 17. \*

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(3) Block 19 - Date(s) Acquired. Enter the year the building was originally acquired by the Federal Government. When several buildings of the same classification were acquired in different years and are being reported as a single line item, enter the range of years, e.g., "1930-1942". When a building previously reported has undergone a major expansion, e.g., the addition of a new wing, both the year of the original acquisition and the year of expansion should be included in the range of years.

(4) Block 20 - Gross Floor Area - Total Square Feet. Enter the total gross floor area (applies to outer dimensions of the building) in square feet for each class of building reported. Include the total floor area of the building(s) regardless of any secondary usage or occupancy by another agency.

(5) Block 21 - Gross Floor Area - Percent Occupied. Enter the estimated percentage of occupancy or use by the Federal-Government for each applicable class of building reported in Block 17. For buildings which are out leased 100 percent, enter the letters "OL" in this column. When only a portion of a building is outleased or granted to non-federal entities, the percent occupied will be the percentage used by the Federal Government. A brief statement regarding the outlease should be included in Block 26, "Remarks".

(6) Block 22 - Cost. Enter in this block the total cost to the Federal Government for each classification of building reported. Costs of \$500 and over should be rounded to the nearest thousands of dollars. If cost is less than \$500, enter the letter "N" (negligible).

(a) For purposes of reporting Federally-owned real property, the cost of each building will include the cost of such fixtures and equipment as is normally required for its functional use. For example, include plumbing, heating and lighting fixtures, elevators, air conditioning systems, as well as safes and vaults which are built into the building or are permanently affixed thereto, the removal of which would materially damage the structure. However, the cost of machinery and processing equipment, as well as furniture, laboratory equipment, and special use items which are not part of the realty, will not be included.

(b) The cost of buildings will include the cost of all capital improvements incurred subsequent to date of original acquisition by the Government. Capital improvements, as prescribed in the GSA Policy and Procedures Manual, Section 7030, paragraph 30, are defined as: "Betterments or improvements to realty are capitalized when they: (a) constitute an enlargement of a structure, (b) provide additional or enlarged facilities, or (c) constitute a major renovation or other substantial improvement which materially increases the usefulness, productivity or other value of real property, or substantially extends the useful life of the real property." \*



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(c) Cost of Federally-owned buildings located on land not owned by the Government; e.g., land under lease or other right of occupancy, will be reported. In the absence of any recorded data as to cost, it will be estimated and noted by the letter "E" after the amount. Estimates will be based on cost at date of original acquisition by the Government, adjusted for subsequent capital changes.

(d) Estimate, if not known, the cost of the buildings acquired through donation, exchange, devise, forfeiture, or judicial process. The estimated cost should represent the amount the Government would have had to pay for the buildings if purchased at the date of original acquisition. Enter "DE" after the cost of donated buildings and an explanation in Block 26, "Remarks".

(e) The cost of any buildings being acquired under the Public Buildings Purchase Contract Program or Lease-Purchase Agreements, Public Law 519, 83rd Congress (68 Stat 518) approved 22 July 1954, as amended, will be recorded at purchase price (total amount of principal payments), plus all other capitalized costs, such as: drawings and specifications; architectural, engineering and inspection fees; and miscellaneous project costs. For identification purposes, the letter "P" should be inserted after the amount and a brief explanation given in Block 26, "Remarks".

(f) Report the prorated cost of buildings acquired with land on the appropriate usage line in Block 22, "Cost". Furnish an explanatory footnote in Block 26, "Remarks".

e. Other Structures and Facilities. Include only owned structures and facilities completed and available for service as of the reporting date. Do not include buildings in this portion of the report.

(1) Block 23 - Usage Code and Classification. The various usage categories are shown in this block. The coverage of each of these usage categories is described in the following list (most of the GSA list is included - use only applicable code):

<u>Code</u>	<u>Classification</u>
12	<u>Airfield Pavements.</u> Include runways, helicopter landing pads, taxiways, and aprons.
13	<u>Harbor and Port Facilities.</u> Include docks, piers, jetties, and breakwaters.
15	<u>Power Development and Distribution.</u> Include hydroelectric and other power development projects which produce power for resale (generally consisting of dams and powerhouses). Transmission lines which are an integral part of Federal power development systems will also be included even though the power is produced by another Federal agency. *

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*	<u>Code</u>	<u>Classification</u>
	16	<u>Reclamation and Irrigation.</u> Include canals, pumping stations, storage, and diversion dams.
	18	<u>Flood Control and Navigation.</u> Include river improvements, revetments, dikes, dams and locks.
	40	<u>Storage (Other than Buildings).</u> Include storage tanks, silos, igloos, underground vaults, and open storage areas (improved only).
	50	<u>Industrial (Other than Buildings).</u> Include structures and facilities (other than buildings) used for production or manufacturing; such as, sliding shipways, retaining basins, and pipelines.  <u>Service (Other than Buildings).</u> Include structures used for maintenance and repair; such as, underground fueling systems, vehicle washing and greasing facilities, aircraft boresight ranges, guided missile maintenance facilities and ship repair.  <u>Research and Development (Other than Buildings).</u> Include structures and facilities used directly in basic or applied research in the sciences (including medicine) and in engineering; such as, facilities used in design, development, and testing of prototypes and processes. Do not include facilities used in routine testing which should be reported as Hospital and Industrial respectively.
	71	<u>Utility Systems (Heating, Sewage, Water and Electrical Systems).</u> Including heating, sewage, water and electrical systems when they serve several buildings and/or other structures of an installation. When they serve a single building which is reported separately, the cost of such utility systems will be included in the cost of the buildings. The usage category for "utility systems" include heating plants and related steam and gas lines; sewage disposal plants, storm and sanitary sewer lines; water treatment plants, wells, pump houses, reservoirs, and pipelines; and electrical sub-stations, standby and auxiliary power plants, lighting structures, and conduits. Structures and facilities utilized by an installation in the production of its own power requirements (not for resale) will be included in this category. Report actual buildings and data *

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*	<u>Code</u>	<u>Classification</u>
		pertaining thereto in Blocks 17 through 22. If a building is a segment of a system, report the building in Blocks 17 through 22 and the remainder of the system in Blocks 23 and 24.
	72	<u>Communications Systems.</u> Include telephone and telegraph lines and radio towers.
	73	<u>Navigation and Traffic Aids.</u> Include structures, other than buildings, which provide for aircraft and ship navigation and traffic aids; such as, beacon lights, antenna systems, ground control approach systems, and obstruction lighting.
	76	<u>Roads and Bridges.</u> Include Federally-owned highways, roads, related culverts, and connecting bridges. Also include roads within national parks and forests and other Federal installations.
	77	<u>Railroads.</u> Include tracks and bridges, tunnels, and fuel and Water stations servicing railroads.
	78	<u>Monuments and Memorials.</u> Include all Federal monuments, memorials, and statues.
	79	<u>Miscellaneous Military Facilities.</u> Not applicable to civil works installations.
	80	<u>All Other.</u> Include sidewalks, parking areas, fences, and trails, which cannot be readily classified under the above categories. Include also, improvements to public domain lands, such as, drainage, grading and landscaping, and the cost of extinguishment of rights on public domain lands.

(2) Block 24 - Cost. Enter in this block the total cost to the United States for each classification of "Other Structures and Facilities" reported. Cost of \$500 and over should be rounded to the nearest thousands of dollars. If cost is less than \$500, enter the letter "N" (negligible). Costs will include any capital improvements (as defined under Block 22) incurred subsequent to the date of acquisition. The cost of Government-owned structures and facilities located on land not owned by the Government, e.g., leased land, will be included.

(a) In the absence of any recorded data, costs will be estimated and noted by the letter "E" after the amount. Estimates will be based on costs at date of original acquisition by the Government, adjusted for subsequent capital changes.

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- \* (b) Estimate, if not known, the cost of structures and facilities acquired through donation, exchange, devise, forfeiture, or judicial process. The estimated cost should represent the amount the government would have had to pay for the structures or facilities if purchased at the date of original acquisition. Enter "DE" after the cost of donated structures and facilities and an explanation in Block 26.

f. Block 25 - Total Cost: Land, Buildings, and Other Structures and Facilities. Enter the sum of the totals of Blocks 16, 22 and 24.

g. Block 26 - Remarks.

(1) Enter in this block any notation necessary to clarify or expand any entry in the report such as: from whom property was acquired, to whom property was sold (public, state, city, etc.), any unusual or significant feature regarding acquisition, omission, transfer, disposal or revision. Reasons for changes in a report for an installation previously reported should be especially noted, e.g., capital improvements, correction of error, refinement of data, etc. Explain any significant change in cost or area.

(2) Indicate in this block when an installation is excess to the needs of the reporting agency, in whole or in part. Include the GSA control number assigned to Standard Form 118, Report of Excess Real Property, where applicable.

(3) Also enter in Block 26 acreage and costs or annual rental (if leased) of all lands leased or acquired for use by easement, license or permit. A separate entry should be made for each type of acquisition. If easement or permit land has been donated, so indicate, and enter estimated costs.

(4) Identify donated fee area by acreage and tract number.

(5) Report cost of extinguishment of rights on public domain land.

(6) Report acquisitions and disposals subsequent to previous report. Do not go beyond the previous report unless it is necessary to clarify a correction.

(7) If there is insufficient space in Block 26, continue entries on the reverse of the form.

h. Block 27 - Type of Transaction. Check the appropriate box to reflect the nature of the real property change between the current and the prior inventory report. When practicable, include in "Remarks", Block 26, a short notation giving an explanation of the change. Descriptions of the various types of transactions follow: \*

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<u>Code</u>	<u>Descriptions</u>
1	<u>New Acquisition.</u> Include newly acquired installations obtained by purchase, construction, or other means. Do not include transfers from other Federal agencies or additions to installations previously reported.
2	<u>Omission.</u> Include only complete installations erroneously omitted from the inventory for the prior fiscal year.
3	<u>Transfer-In.</u> Include only installations transferred from other Federal agencies or major organizational units within the agency which are not merged with existing installations. (Transfers-in which become part of an existing installation shall be coded 6).
4	<u>Disposal.</u> Include only complete installations disposed of by the Federal Government through sale, donation, exchange, or other disposition to private citizens and organizations or to state and local governments. Do not include transfers to other Federal agencies or major organizational units within the agency.
5	<u>Transfer-Out.</u> Include only complete installations transferred to other Federal agencies or major organizational units within the agency.
6	<u>Revision.</u> Include all changes not covered by one of the above codes. These changes include additions to installations previously reported, capital improvements, write-offs, and corrections to prior years reports.

i. Block 28 - Prepared By. Type in the name and title of the official responsible for the preparation of this report.

j. Block 29 - Signature. The official designated in Block 28 will sign in this block.

k. Block 30 - Date. Enter the date on which the report was prepared.

14-43. Instructions for GSA Form 1209.

a. General Instructions. Each commander of a division or district having accountability for civil works real property will prepare and furnish a summary on GSA Form 1209 of the number of installations whether or not inventory changes occurred since the pervious report. \*

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b. Specific Instructions.

(1) Summary Identification. Enter the effective date of the report. Place a check in the appropriate box to indicate geographic coverage.

(2) Reporting Agency. Enter in this block "DA CofE - Civil"

(3) Bureau or Other Major organizational Element. Enter the name of the Division and District.

(4) Item A - Instalations ay End of Prior Year. Enter the number of installations previously reported as of the end of the prior fiscal year.

(5) Item B - New Installations Acquired Since Prior Report. Enter in columns c and d the number of installations acquired since the prior report. Do not include omissions (Item C) or transfers from other Federal agencies or major organizational units of the same agency (Item D).

(6) Item C - Complete Installations Omitted from Prior Reports. Enter in columns c and d the number of complete installations erroneously omitted from the inventory in the prior fiscal year.

(7) Item D - Installations Transferred from Other Federal Agencies. Enter in columns c and d the number of reports representing transfers of either complete or partial installations from other Federal agencies.

(8) Item E - Complete Installations Disposed of Since Prior Report. Enter in columns c and d the number of complete installations disposed of by the Federal Government since the prior report. Transfers to other Federal agencies or major organizational units of the same agency will be reported separately in Item F.

(9) Item F - Complete Installations Transferred to Other Federal Agencies. Enter in columns c and d the number of reports representing the transfer of complete installations to other Federal agencies or major organizational units of the same agency.

(10) Item G - Reports Adjusting Those Submitted in Prior Years. Enter the number of reports affecting installations previously reported and still in the inventory for which changes have occurred during the fiscal year. Include all revised reports not specifically provided for in Items B through F, above.

(11) Item H - Installations at End of Current Year. Enter the sum of Items A, B, C, and D less the sum of Items E and F. This figure represents the total number of installations controlled by the reporting agency as of the inventory date. \*

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\* (12) Item I - Total Number of GSA Forms 1166 Submitted. Enter the sum of Items B, C, D, E, F, and G. This figure represents the total number of GSA Forms 1166 currently being submitted.

(13) Remarks. Enter a brief summary statement of all major or significant changes in the division or district real property inventory during the fiscal year. Summary may include changes in acreage, buildings, floor area, costs, predominate usages of land, buildings, and other structures and facilities. Cite examples of changes and identify by GSA control numbers.

(14) Prepared By Signiature and date. Type in the name and title of the official responsible for the preparation of the report. Report is required to be signed and dated. \*

## SECTION IX. INVENTORY OF ARMY MILITARY REAL PROPERTY RCS ENG-242

14-44. Purpose. This report provides real property inventory (RPI) data of Army military installations to meet the requirements of DOD Instruction 4165.14.

14-450 Applicability. These reporting instructions apply to commanders of field operating agencies having custody and accountability for entire Army installations.

\* 14-46. Frequency and Submission. The reporting requirement is found in AR 405-45. Semiannual reports will be forwarded in sufficient time to reach CDR USACE (DAEN-REP-S) WASH DC 20314-1000 not later than 15 calendar days after the end of the reporting period. \*

14-47. Instructions. Detailed instructions for reporting the installation inventory of Army military real property are in Chapter 2 of AR 405-45. The following additional instructions apply:

a. To provide for orderly continuation of reported data, commanders will, upon assuming accountability of an installation, request the former using service or command to provide a copy of the RPI for the installation showing all changes since the previous report. Conversely, when an installation held by the Corps of Engineers in a management status is transferred to another command, the commander will furnish the RPI for the installation, updated to the time of transfer, to the gaining command. (See paragraph 2-2a(7), AR 405-45. )

b. Excess portions of installations under custody of the Corps of Engineers in a management status for transfer or for disposal will be included in separate RPI reports only when the commander was required to assume accountability for the excess portion and it is not desirable to continue reporting the property with the installation from which it was excessed. Any such reports will be initially submitted for the reporting period during which accountability was assumed, and will be updated semiannually as changes occur. A new installation number will be obtained for the excess portion being separately reported (see paragraph 2-2b(3), AR 405-45). The commander should coordinate reporting actions with the command of the installation from which the portion was excessed to assure that areas are not duplicated in their respective reports.



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SECTION X. REAL PROPERTY DISPOSAL REPORT  
RCS DAEN-RE-6 ENG Forms 836 and 836a

14-48. Purpose. This report provides data on the disposal of inactive, excess and surplus real property at military installations (Army and Air Force) and civil works projects in the United States, its possessions and the Commonwealth, of Puerto Rico, and installation of the Department of Energy (DOE), National Aeronautics and Space Administration (NASA) and other Federal agencies for which the Corps of Engineers acts as real estate agent.

14-49. Applicability. These reporting instructions apply to commanders of field operating activities (FOAs) having real estate responsibility.

\* 14-50. Frequency and Submission. Submit quarterly reports to CDR USACE (DAEN-REP-S), WASH DC 20314-1000 by the fifth day of the month following the end of the reporting period. \*

14-51. Preparation.

a. Format.

(1) Real Property Disposal Report, ENG Forms 836 and 836a, will be furnished. Preparation instructions are included in paragraph 14-53.

(2) Update card images of disposal data may be transmitted by telecommunication transfer direct to the U.S. Army Engineer Automation Support Activity computer in Washington, D.C. Technical details of the transfer are included at Figure 14-16.

(3) FOAs not using the electronic transfer method mentioned above will furnish disposal data by submission of punched cards accompanied with an 80/80 double-spaced proof listing. Instructions for punched cards are included in paragraph 14-55.

b. Reportable Actions. The following types of real property disposal actions are reportable:

(1) Sale by Department of the Army of surplus real property, excluding buildings and other improvements. (This includes sales made under authority delegated by the General Services Administration (GSA) or its predecessors.)

(2) Reporting to the GSA or assignment to the Department of Health and Human Services (HHS) of excess real property. The Preliminary Report of Excess Real Property, Standard Form (SF) 118, is not reportable on ENG Form 836. When the SF 118 is finalized, the ENG Form 836. When the SF 118 is finalized the ENG Form 836 then will show the property reported to GSA as of the date the SF 118 is finalized.

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\* (3) Retransfer of Federally-owned lands to the Government department or agency from which originally transferred.

(4) Permanent transfer of excess real property to another Government department or agency, including transfer with rights of reversion.

(5) Termination or disposal of easements, licenses, and permits.

(6) Cancellation, termination, or expiration of leasehold interests, including condemnation leaseholds, covering land areas which comprise all or part of an installation or project.

(7) Placing installations, or portions thereof, in an inactive status.

14-52. General Instructions.

a. Date of report will be the current reporting period date, not necessarily the date of the last disposal action.

b. Acres and dollars will be rounded to the nearest acre or dollar (.50 acre will be reported as one acre and 50 cents will be reported as one dollar). Less than half an acre will be reported with no acreage shown as will land interests acquired involving no area.

c. Entries in Total Acreage at Installation will be rounded to the nearest acre for each estate even though this may result in the total acres for all estates to be an acre or two off from the actual installation total. If acquisition is still in progress at the installation, report the acreage of the entire installation when possession is obtained by order of possession entered or title vested by filing declaration of taking in condemnation and acceptance of option in cases of direct purchase.

d. Transfers between Army-Military and Army-Civil Works will be considered as disposals. The date of approval of transfer by the Secretary of the Army will be the date of disposal.

e. An installation which is partially command and partially industrial will be reported as two installations, one command and one industrial.

f. If an installation is completely disposed of and a reacquisition is effected, the second disposal thereof will be shown as an initial action on a report for the reacquired installation. The installation name will be followed by an (R) to designate recapture or reacquisition. However, if an installation is not disposed of in its entirety and a reacquisition is accomplished, the reacquired area will be added to the total acreage on the already established report. In this case, the installation name will be followed by a (D) to designate a duplication of acreage. This method of reporting will not be adverse to audit reporting since the net area in each instance will be in agreement.

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\* g. When reporting disposal of reacquired area, only additional cost of the land, if any, and cost of improvements constructed on the land after the reacquisition will be reported.

h. Inactive or excess items will be listed on the ENG Form 836 in chronological sequence, by effective date, and assigned reference numbers in numerical and/or alphabetical sequence.

i. Reassignments.

(1) The date of assignment of lands from one installation to another within the same Department will be the effective date indicated in the Memorandum Disposition Form or other document authorizing the reassignment. If no effective date is cited, the date of the authorization will be the date of reassignment. Reassignments will be reported even though no other part of the installation or project is excess or inactive.

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(2) Entries pertaining to areas reassigned will show the following:

- (a) Status column will show an "R".
- (b) Reference Number will show a single alphabetical designation.
- (c) Effective date will be the date of reassignment.
- (d) Acreages will be shown in the appropriate columns.
- (e) No entry will be made in the Disposal Unit column.
- (f) Number of Buildings will be entered.
- (g) Cost will be entered.

(h) The name of the installation to which the reassignment was made will be printed in the last six columns of the report form.

(3) Reassigned properties will be the last entries on the report form and will be printed three lines below the last inactive or excess entry. Any additional inactive or excess entries will be added in the spaces above the reassignment entry.

j. SF 118, without the accompanying schedules A, B, and C, furnished to GSA for information purposes only in accordance with Section 101-47.202-2(a) of the Federal Property Management Regulation, will not be shown on the ENG Form 836 as "reported to GSA". However, the disposal action employed by the Corps of Engineers to dispose of this property will be reported. In those instances where GSA is requested to perform the disposal function and a statement of this fact is included in block 18 of the SF 118, the pertinent data will be reported on the ENG Form 836.

k. When a "Withdrawal", "Correction" or "Amendment" to the SF 118 is reported to GSA, the acreage, cost and/or number of buildings previously reported will be revised accordingly. The original date reported and number of disposal units will remain unchanged. However, if the withdrawal covers the entire property reported, the disposal unit will be deleted from the "GSA/HHS" column and the "In Process" column will be revised accordingly. If the entire property is withdrawn from excess, as well as being withdrawn from GSA, the line item will be deleted. If, after the disposal has been completed, it is determined that an error in area and/or cost to the Government was made on the SF 118, and a corrected form is unnecessary, a statement explaining the discrepancy will be entered on the reverse of the Report of Change copy of ENG Form 836.

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\* 1. Transfers to GSA or to HHS for use of these agencies, rather than for further disposal, will be reported as disposed of by transfer.

m. On relinquishments, there is usually a considerable time lapse between the relinquishment date and the custody date and frequently the receiving agency does not assume custody formally. Therefore, the effective date cited in the relinquishment letter, or the date of the letter if no effective date is cited, will be shown as the date of transfer. When a letter of intent to relinquish is written to the Department of the Interior, the effective date or date of the letter will be reported as the disposal date.

n. On transfers, the effective date will be entered as the disposal date. If there is no effective date shown, the date of the document issued by the transferring agency will be reported.

o. In reporting disposal of cottage sites at civil works projects, a tabulation will be prepared and attached to the ENG Form 836 showing the following for each deed:

- (1) Acreage (showing the acreage rounded off to the nearest whole acre)
- (2) Cost to the Department of the Army
- (3) Date of disposal
- (4) Lot number, if applicable.

p. The date of execution of a deed will be used for the disposal completed date rather than the date the deed is delivered.

q. The cost of leased area cancelled will include only the cost of improvements transferred to the lessor in lieu of restoration. Improvements removed from the leased area and disposed of separately from the land will be reported as a separate disposal unit(s). Restoration costs will not be reported.

r. When land under control of the Department of the Army, Air Force, or DOE through acquisition of a lease or lesser interest is subsequently merged into acquisition of a greater interest (lease merged into fee or a lesser interest, or a lesser interest merged into fee), the "termination" of the original interest will not be reported as a disposal. However, the total area in "total acres at installation" will be revised by deleting the merged area from the lesser interest previously held and by adding it to the greater interest acquired. However, if the lesser interest is merged into a greater interest in another installation of the same department, the lesser interest will be reported as a reassignment, and not added to "total acreage at installation". If the lesser interest is merged into a greater interest in another installation of a different department, the lesser

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\* interest will be reported as a disposal by transfer, and not added to "total acreage at installation". An explanation of this action will be entered on the reverse of the report form.

s. If upon disposal of a lesser interest, a lesser interest for a different purpose is retained over the entire area, the report will show a disposal unit, cost (if applicable), and date of disposal. No additional area will be added to the total lesser interest in "total acreage at installation". An explanation of this action will be reported.

t. If upon the disposal of a lesser interest, a lesser interest for a different purpose is retained over a portion of the area, the report will show a disposal unit, the net area disposed of, cost (if applicable), and date of disposal. No additional area will be added to the total lesser interests in the "total acreage at installation". An explanation of this action will be reported.

u. If upon disposal of fee land a lesser interest is retained, disposal of the fee area will be shown. The area retained will be added to the total lesser interests in "total acreage at installation". An explanation of this action will be reported.

v. If upon disposal, a lesser interest is reserved for another installation, the entire area will be reported as a disposal with an explanation that \_\_\_\_\_ acres lesser interest were reserved for (name of installation). The lesser interests will not be reported as a reassignment or transfer. The reserved area will be added to the total acreage of the installation for which it was reserved.

w. An area within an installation which is made available for use of the Reserves, the National Guard, or for NIKE purposes is considered an on-post activity. These on-post activities will be considered as "reassigned" upon complete disposal of the host installation. The date of reassignment will be the date of the General Order, or the effective date therein, discontinuing the host installation. In the absence of a discontinuing General Order, the date of disposal of the last remaining area of the host installation will be used.

x. Data pertaining to two or more disposal dates will not be combined in a single entry.

y. Decreases in acreage due to abandonment will be reported as a disposal. Such a decrease will be considered as having no disposal unit. The effective date and disposal date will be shown as the date of abandonment. The acreage involved and cost to Government will be reported.

z. Erosion is not considered a method of disposal and will not be reported as such. However, decreases to land areas resulting from erosion will be reported at the time the adjacent fast land is determined to be \*

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excess. For reporting purposes, the eroded area will be considered as disposed of with the adjacent fast land, even though omitted from the disposal document, and the statistics will be adjusted accordingly. An explanation of the adjustment will be reported on the reverse of the report form.

aa. When the disposal of easements is suspended by the Corps of Engineers for reasons set out in paragraph 11-128e of this EP, or by GSA for similar reasons, report the action on ENG Form 836 as follows:

(1) Disposal Suspended by CE: Action Code, 33; Method of Disposal, DORM; Date of Disposal, N/A

(2) Disposal Suspended by GSA: Action Code, 40; an entry in Date Reported or Assigned; Method of Disposal, CUST; Agency or Transferee, GSA; Date of Disposal, this will be the date of advice from GSA that the easements have been recalled from surplus and placed in their inactive inventory.

ab. Exchange of Lands.

(1) To report a disposal of land by exchange, show the disposal unit and acres but no cost to the Government.

(2) Upon disposal of land which was acquired through exchange, the cost of the land which was released in exchange for the presently held land will be reported as the cost to the Government.

ac. Disposals of sand, gravel, crops and timber will not be reported on ENG Form 836.

ad. Revestment of title to land in former owner by judgment in a condemnation case does not constitute a disposal action unless damages and/or rental is paid. If damage and/or rental is paid, the land is considered leased and the lease will be shown as cancelled. The damages paid will not be considered as cost to the Army, Air Force or DOE. The date of disposal will be the date the land is returned to the former owner.

14-53. Preparation Instructions.

a. Initial Reports. Initial reports will be established for installations when notice is received that real property has been placed in an inactive or excess status. Once a report is established for an installation it will be updated as other excessing and disposal actions occur. The initial report for the installation will be prepared on ENG Form 836a showing the information in subparagraphs (1) through (7) below:

(1) Key Word: This is a series of codes showing the Division and District (obtained from Figure 14-1), the installation number (assign the next available 3-digit number since the last initial report), the state

code (obtain from Figure 14-2), and the department and status code (obtain from Figure 14-10).

(2) Complete the following blocks: Division Name, Installation Name, Audit Number, District Name, and City and State in which the installation is located.

(3) Kind of Report. Enter "Initial".

(4) Department Type. Place an "X" in the appropriate blocks to indicate the Federal agency responsible for the reported installation: Army or Air Force (also "X" in the Command or Industrial block as applicable); Civil Works; or DOE. If another department applies, use the DOE block-cross out "DOE" and enter the name.

(5) Installation Status. Place an "X" in the appropriate blocks to indicate whether the entire installation or a portion has been placed in an inactive or excess status. If a portion of an installation has been declared excess and a portion inactive, the report should so reflect.

(6) Total Acreage at Installation. Enter the amount of acreage, by estate, at the installation.

(7) Enter the appropriate columns across the form the data pertaining to the real property placed in an inactive or excess status. Status and action codes are listed in the Legend along the right-hand edge of the form.

b. Recurring Reports. Reports already established for installations will be updated as excessing and, disposal actions occur, as follows:

(1) Additions, corrections and deletions will be annotated on the "Report of Change" copy of ENG Form 836, furnished by DAEN-REP-S. Statistics being revised will be lined out and the revised figure entered directly above. The date of the report will be revised to show the current reporting period. The Installation Master Listing provided periodically by DAEN-REP-S should be checked to assure that the current, correct keyword is on the Report of Change copy being updated. If the Master Listing differs from the key word on the Report of Change copy, always use the key word from the Master Listing.

(2) Kind of Report. Indicate one of the following:

(a) Recurring - A report showing property in process of disposal. \*



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\* (b) Suspended - A report covering an installation which is partially excess and/or partially inactive where disposal of the excess area has been completed.

(c) Final - A report covering an installation which is entirely excess and the disposal of the entire area has been completed.

(3) Revise action codes as required.

(4) Status. If an excess authorization is being reported enter "E" in the Status column; enter "I" for inactive authorities; enter "R" for reassignment authorities. If more than one line is required for a single authorization, repeat the status code on the second and succeeding line.

(5) Reference Number. Use four spaces to report Reference Numbers. The first two spaces are used to identify inactive and excess authorities; the last two spaces are used to break out disposal actions thereunder. A numeric system is used for this purpose except where the number of authorities exceed 99, in which case double alphabetical designations will be used in sequence as AA, AB thru AZ, BA, BB thru BZ, etc. Thus, the first excess or inactive authority will be numbered "01", the second "02", the ninety-ninth "99", the one-hundredth "AA", etc., followed by "01" if all disposal action associated with that authority is shown on one line. If an excess authority results in more than one disposal action, consecutive numbering will be used. Each reassignment (regardless of effective date) will be given a single alphabetic symbol beginning with "A". Sample coding shown below:

<u>Status</u>	<u>Ref. No.</u>	<u>Eff. Date</u>	<u>Status</u>	<u>Ref. No.</u>	<u>Eff. Date</u>
E	0101	011581	E	AA01	121281
E	0201	021881	E	AB01	122281
E	0202	021881	R	A	010181
I	0301	021881	R	B	010181
E	0401	040181	R	C	050681
	thru				
E	9901	120281			

(6) Effective Date. Report the effective date of inactive or excess status or the effective date of reassignment. If more than one line item is required for a single authority, the date will be repeated on each line.

(7) Disposal Acreage. Show the amount of acreage, by estate, included in the action being reported.

(8) Disposal Units. This is a count of the number of final disposal transactions involved in disposing of excess properties. Each report to GSA (excluding corrections to original report), each letter of assignment to HHS, each relinquishment letter or each transfer letter or instrument reducing the area in a lease, each lesser interest terminated, each bid item

\*

\* in an invitation for bid, and each contract of sales will be considered a disposal unit. Disposal units will be reported as follows:

(a) In the "GSA/HHS" column, show the number of units applicable to action by the Corps through a disposal agency. Do not show number of actions by the disposal agency.

(b) In the "CE" column, show the disposal actions by the Corps, other than reporting to a disposal agency.

(c) When property is reported to a disposal agency and the Corps of Engineers is designated disposal agent for the entire property reported, one disposal unit will be shown in the "GSA/HHS" column, and one disposal unit will be shown in the "CE" column for each final disposal action taken by the Corps.

(d) When property is reported to a disposal agency and the Corps of Engineers is designated disposal agent for a portion of the property reported, break out that portion on one or more additional lines, as required, and enter a disposal unit in the "CE" column for each action to be taken. The remaining portion for which the Corps has not been delegated disposal agent will continue to show the disposal unit in the "GSA/HHS" column.

(e) When the exact number of disposal actions to be taken is unknown, an estimated number will be shown. The number of disposal units may be revised as the disposal action progresses.

(f) Each completed disposal action will be reported as it occurs. This will, in many instances, require an established entry to be broken down into additional line items. In cases where property is reported to a disposal agency and only one disposal unit is applicable, leave the disposal unit with the portion still in process of disposal.

(g) Areas or portions of areas which are excess on more than one date will not be combined when reporting the disposal actions taken. If one disposal unit covers properties excess by more than one authority, thereby involving more than one reference number, enter the date of disposal on each applicable line entry; show one disposal unit for the entry with the earliest excess date and leave the disposal unit column blank for the remaining line entries involved in that disposal unit.

(9) Number of Buildings. Report the number of buildings included in the disposal action. Water towers, bridges and other miscellaneous structures are not considered buildings, even though they may be identified by a designated number. Buildings and/or improvements demolished, included in a construction contract, returned to the installation commander for disposal, abandoned, or destroyed by fire or wind will be excluded from the report. \*

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\* (10) Cost to Army, AF, or DOE. Report only those costs borne by the present controlling agency. The costs will include both land and improvements but not related personal property. If there was no cost to the Army, AF, or DOE, leave the column blank. Costs of buildings and improvements which were acquired with the land, thereby being included in the land cost, will not be separately reported. If the exact cost is unknown, an estimated cost, based on the best available information, will be reported. Headquarters, U.S. Air Force, has directed all major commands to enter the cost to the Government for each item listed on the AF Form 300 in the "Nomenclature" column. If the AF Form 300 does not show the cost, it should be returned to the preparing office requesting the cost be entered.

(11) Use of the Property. Identify the use of the property. Do not use the words LAND or BLDGS since the entries in the "Acreage" and "No. of Bldgs." columns will indicate this. Enter HOUSING if the reported property was used for housing. This column may remain blank if the property has no specific identity.

(12) In Process--Method of Disposal, and Completed--Method of Disposal. Show the methods as indicated in the Legend printed on the report form. Do not report the method as "undetermined" unless that is the situation.

(13) In Process--Date Reported or Assigned. Show the date the action is reported or assigned to a disposal agency. If it becomes necessary to break an entry down into more than one line entry, this date will be repeated for each entry.

(14) Agency or Transferee. Show the disposal agency or, if transferred by the Corps, the name of the transferee. The name of the transferee will be entered as soon as it is known even though the transfer has not been completed. Refer to Figure 14-11 for agency identifications.

(15) Completed--Date of Disposal. Show date of final disposal by the disposal agent or by the Corps, as applicable.

14-54. Records in District and Division Offices. A complete file of ENG Forms 836, compiled and published quarterly by DEAN-REPS-S from data reported on the Report of Change copy, will be maintained in District and Division offices. These offices will also maintain a current copy of the Report of Real Property in Process of Disposal and the Report of Disposals Completed for the current fiscal year prepared and distributed by DAEN-REP-S.

14-55. Instructions for Punch Cards.

a. General.

(1) There are six 80-column update card formats in the Real property Disposal system. The cards are identified by numbers 0, 1, 2, 3, 4, and 5.

\*

(2) Cards 0, 1 and 2 are used to update header (general information) records in the master file. Card 0 is used to change only department and/or status code(s) of the key word. Data contained in card columns (cc) 1 through 9 constitute the key word. The key word must be punched in every card submitted as this is the principal means of computer identification of a record on the ADP master file.

(3) Cards 3, 4, and 5 are used to update detail records on the master file.

(4) There are three change categories in the Disposal System:

(a) Additions -- Change Code P.

1. To add a new header record to the master file, cards 1 and 2 must be used. Entries must be made in all fields except those acreage fields where amounts are less than an acre. Enter "P" in cc 79 of both cards and the applicable card number in cc 80.

2. To add a detail item to the master file, two cards must be used. For detail items with status code "E" (excess) or "I" (inactive) in cc 77, cards 3 and 4 are necessary. For detail items with status code "R" (reassigned), cards 3 and 5 are necessary. Make entries in all fields in both cards. Enter "P" in cc 79 of both cards and the applicable card number in cc 80.

(b) Modifications -- Change code M.

1. To change the department or status codes in the key word, card 0 is used. Enter the old key word in cc 1-9 as it appears on the printed listing. Enter the new key word in cc 14-22, "A" in cc 79 and 0 in cc 80. All other fields are blank. Do not submit an "0" card because the key word on the Report of Change copy does not agree with the key word on the Master Installation Listing. Update using the key word as shown on the Installation Listing.

2. To change the key word and other header or detail data, card 0 and the additional applicable card(s) are used. Prepare card 0 as described above, and enter the old key word on the additional applicable cards. To change header information other than the key word, cards 1 or 2 (or both) will be used depending on what data is to be modified on an existing record. Select the card(s) containing the field to be altered. Enter the modified data as well as all other fields as they appear in the printed listing regardless of whether they are to be changed or not. Enter "M" in cc 79 of each card used and the applicable card number in cc 80.

3. To change individual detail information (other than reference number) card 3, 4, or 5, or a combination of cards 3 or 4 or cards 3 and 5, will be used. Select the card(s) containing the field to be altered.

\*

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- \* Enter all fields as they are to appear in the printed listing. Enter "M" in cc 79 of each card used and the applicable card number in cc 80.

4. To change the reference number of a detail record, delete the present record and add a new record with the new reference number.

(c) Deletion -- Change Code D.

1. To delete an entire installation from the master file, use card 1. Enter the key word in cc 1-9, change code "D" in cc 79, and "1" in cc 80. All other columns are left blank.

2. To delete a single detail line item, use card 3. Enter the keyword in cc 1-9, the reference number of the detail line item to be deleted in cc 10-13, change code "D" in cc 79, and "3" in cc 80. Deletion of a reference number followed by an addition of the same reference number to correct the detail information during the same quarter will produce an error. Do not delete if a modification will suffice.

(5) ENG Form 4782-R (Keypunch Transcript For Real Property Disposal Report) (Figure 14-12) may be used as the keypunch transcript.

b. Keypunch Instructions are as follows:

\*















SECTION XI. REAL ESTATE OUTGRANT REPORT  
(RCS: DAEN-RE-3(R3))

14-56. Purpose. This report provides data on land outgranted to federal, state or local government agencies, private organizations, and individuals.

14-57. Coverage. Includes land outgranted at Army and Air Force installations and civil works projects in the United States, its possessions and the Commonwealth of Puerto Rico, and installations of the Department of Energy, National Aeronautics and Space Administration and other federal agencies for which the Corps of Engineers acts as a real estate agent.

14-58. Definition. Outgrant is a general term covering rights and uses made available to others over real property of the Government in the following manner:

a. Leases for agricultural, grazing, industrial, commercial, housing and other purposes.

b. Easements and licenses over lands owned by the Government and under the jurisdiction of the granting agency including those outstanding at the time real estate was acquired.

c. Permits granted to another Federal department or agency for the temporary use of real property owned or leased by the granting agency.

14-59. Applicability. These instructions apply to commanders of field operating activities (FOA) having real estate responsibilities.

\* 14-60. Frequency and Submission. Submit quarterly reports to CDR USACE (DAEN-REP-S) WASH DC 20314-1000 by the 10th day of the month following the end of the reporting period. \*

14-61. Preparation.

a. Update card images of outgrant data may be transmitted by telecommunication transfer direct to the U.S. Army Engineer Automation Support Activity computer in Washington, D.C. Technical details of the transfer are included at Figure 14-16.

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\*

b. FOAs not using the electronic transfer method mentioned above will furnish outgrant data by submission of punched cards accompanied with an 80/80 double-spaced proof listing. Real Estate Outgrant Punch Card Format, ENG Form 4476-R, Figure 14-15, may be used as the key punch transcript.

c. Grant Record Card, ENG Form 364, may be prepared for each new or renewed outgrant if such an individual record card is desired by FOA's. This card may also be used as a source document for the preparation of punched cards.

14-62. Special Reporting Procedures for Wherry Acquisition. The Federal Government does not cancel the leases or easements to the sponsor by reason of the Wherry acquisition, but rather, acquires the interest of the sponsor. The three-part agreement between the Federal Housing Administration, the mortgagee and the military provides as follows: "That, notwithstanding the operation of law with respect to merger of the aforesaid leasehold.

\*

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- \* interest with the fee, the leasehold interest will be treated as not having merged with the fee so long as the mortgagee has any interest in the mortgage property under the mortgage above referred to; provided however, that the Department shall not be required to comply with any terms of said lease where the obligation thereunder is not applicable." Therefore, these leases and easements are in force and effect, and will be retained in the outgrant records until the mortgage is satisfied. The grantee will be shown as "Army-Wherry" or "Air Force Wherry", as applicable, and the annual rental will be deleted. The following grants will also be considered in effect, and will also be retained for record purposes and reported as outgrants: permits, easements or leases issued by the former sponsor will be reported as licenses. Capehart leases will be reported in a similar manner. When the housing project is completed and turned over to the Government for operation, the name of the grantee will be changed to "Army-Capehart" or "Air Force-Capehart" as appropriate.

14-63. Instructions for Punch Cards.

a. General.

(1) There are two 80-column punch card formats in the Real Estate Outgrant System. Card number 1 is for installation or project header information and card number 2 is for detail information on each outgrant at the installation.

(2) The only time card number 1 need be submitted is to report an installation or project not on the current master file or to modify installation header data now appearing on the master file.

(3) Once an installation header is established on the current master file, submit as many number 2 cards as are necessary to report data on each outgrant at the installation.

b. Key Word. Data contained in card columns (cc) 1 through 47 of each card are the key word. The key word must be punched in every card submitted as this is the principal means of computer identification of a record on the computer master file. Data for subparagraphs (1) through (3) below are key word data common to both cards number 1 and 2.

(1) Department Code. Enter in cc 1 the appropriate code from Figure 14-14 to represent the department in control of the land.

(2) Division/District Code. Enter in cc 2 and 3 the appropriate code from the table at Figure 14-1.

(3) Installation or Project Number. Enter the installation or project number in cc 9-13. If a number has not been assigned, obtain one from DAEN-REP-S. \*

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\* c. Card Number. Enter the appropriate card number (1 or 2) in cc 14.

d. Change Code. Enter in cc 48 the appropriate code from Figure 14-14 to indicate the kind of action being taken to a record on the computer master file.

e. Card Number 1.

(1) Installation or Project Name. Enter the official name of the installation or project in cc 15- 47. Do not use the "+" or "&" symbols; the hyphen is acceptable.

(2) Type of Installation. This field is applicable for outgrants at all installations except civil projects. Enter in cc 49 a code from Figure 14-14 to indicate whether the installation is command or industrial.

(3) Using Service. Enter in cc 50-51 a code from Figure 14-13 to represent the using service of the installation or project.

f. Card Number 2.

(1) Name of Grantee. Enter the name of the grantee in cc 15-33. Abbreviate if necessary, but do not use punctuation. The most prominent noun should be shown first. Examples:

SMITH JOHN L  
 BEXAR COUNTY  
 TEXAS STATE OF  
 MISS CONSV DEPT  
 BLUE LIGHT CAB CO

(2) Contract Number. Enter the contract number in cc 34-47 according to the following samples:

Sample Contract Number	Column No.				
	34-35	36-39	40	41-42	43-47
DACW69-1-67-1	DA	CW69	1	67	00001
DA 29-005 Civ Eng 66-125	29	0005	c	66	00125
NOy (R) 3397	00	0000	N	00	03397
DA 25-066 Eng 1234	25	0066	E	00	01234
Control number assigned to an instrument (not a lease)	DA	CA69 CW69	9*	00	00002

\*A 9 in the column will indicate a consent.

\*

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- \* (3) Type of Grant. Enter in cc 49 a code from Figure 14-14 to indicate the type of outgrant as designated by the outgrant instrument.
- (4) State or Country Code. Enter in cc 50-51 a code from Figure 14-2 for the state or country where the outgranted property is located.
- (5) Purpose. Enter in cc 52 a code from Figure 14-14 to indicate the purpose for which the land was outgranted.
- (6) Effective and Termination Dates. Enter the effective date of the outgrant in cc 53-58 and the termination date in cc 59-64. Entries must be in YYMMDD order. If the outgrant is perpetual or runs for an indefinite term, enter IDEF as the termination date, beginning in cc 59, leaving cc 64 blank.
- (7) Acres. Enter in cc 65-72 the number of acres outgranted. Zero fill any unused columns; e.g., 758.7 acres would be entered as 00007587 and 00001120 would be entered for 112.0 acres.
- (8) Annual Rental Received. Enter in cc 73-78 the amount of the annual or term rental specified in the outgrant. Zero fill any unused columns; e.g., 000180 would be entered for \$180.
- (9) Recreation Code. If recreational leases (purpose codes K, L, M, or N) include a cost-sharing clause, enter "6" in cc 79.
- (10) Payment Code. If the outgrant specifies a term rental or a one-time payment, enter "T" in cc 80. If the outgrant specifies that a benefit other than rental will pass to the government, enter "B" in cc 80.

g. Key Punch Instructions are as follows:

\*







TABLE 14-1. REGULATORY REFERENCES

\* SECTION I

43 USC 315q  
PL 91-646  
EO 12512  
EO 12411  
ER 37-2-10  
ER 37-345-10

SECTION III

80 Stat. 1255, 1290 (PL 89-745)

SECTION IV

PL 89-754

SECTION V

PL 91-646

SECTION VI

PL 91-646

SECTION VIII

Federal Property Management Regulations, Subpart 101-3.2 (41 CFR  
101.3-2)

SECTION IX

DOD Instruction 4165.14  
AR 405-45

SECTION X

Federal Property Management Regulations, 101-47

SECTION XI

PL 86-423

Next page is 14-201

\*

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\*

## DIVISION AND DISTRICT CODES

<u>CODE</u>	<u>ABBREVIATION</u>	<u>DIVISION/DISTRICT</u>
BØ	LMVD	LOWER MISSISSIPPI VALLEY DIVISION
B1	MEMP	Memphis District
B2	NORL	New Orleans District
B3	ST L	St. Louis District
B4	VICK	Vicksburg District
CØ	MRD	MISSOURI RIVER DIVISION
C1	K C	Kansas City District
C2	OMAH	Omaha District
DØ	NED	NEW ENGLAND DIVISION
EØ	NAD	NORTH ATLANTIC DIVISION
E1	BALT	Baltimore District
E3	N Y	New York District (CONUS)
E4	NORF	Norfolk District
E5	PHIL	Philadelphia District
E6	NFDL	New York District (Outside CONUS)
FØ	NCD	NORTH CENTRAL DIVISION (CONUS)
F4	R IS	Rock Island District
F6	NCCA	North Central Division (Outside CONUS)
GØ	NPD	NORTH PACIFIC DIVISION
G1	ALS	Alaska District
G2	PORT	Portland District
G3	SEAT	Seattle District
G4	WAWA	Walla Walla District
HØ	ORD	OHIO RIVER DIVISION
H1	HUNT	Huntington District
H2	LOW	Louisville District
H3	NASH	Nashville District
H4	PITT	Pittsburgh District
JØ	POD	PACIFIC OCEAN DIVISION
J1	FE	Far East District
J2	JAP	Japan District
KØ	SAD	SOUTH ATLANTIC DIVISION
K2	CHAR	Charleston District
K3	JAX	Jacksonville District (CONUS)
K5	MOBL	Mobile District (CONUS)
K6	SAV	Savannah District
K7	WILM	Wilmington District
K8	J/SJ	Jacksonville District (San Juan)
K9	M/CP	Mobile District (Canal Zone and Panama) *

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Figure 14-1

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\*

<u>CODE</u>	<u>ABBREVIATION</u>	<u>DIVISION/DISTRICT</u>
LØ	SPD	SOUTH PACIFIC DIVISION
L1	LOSA	Los Angeles District
L2	SACR	Sacramento District
MØ	SWD	SOUTHWESTERN DIVISION
M1	ALB	Albuquerque District
M2	FT W	Fort Worth District
M3	GALV	Galveston District
M4	L RK	Little Rock District
M5	TULS	Tulsa District

NOTE: The "Ø" character appearing in the Division/District code(s) must be numeric. \*

Figure 14-1a

\*

STATE AND COUNTRY CODES AND ABBREVIATIONS  
For Real Estate Reporting Systems

<u>Name</u>	<u>Abbreviation</u>	<u>Code</u>	<u>Name</u>	<u>Abbreviation</u>	<u>Code</u>
Alabama	AL	01	Missouri	MO	29
Alaska	AK	02	Montana	MT	30
Arizona	AZ	03	Nebraska	NE	31
Arkansas	AR	04	Nevada	NV	32
California	CA	05	New Hampshire	NH	33
Colorado	CO	06	New Jersey	NJ	34
Connecticut	CT	07	New Mexico	NM	35
Delaware	DE	08	New York	NY	36
District of Columbia	DC	09	North Carolina	NC	37
Florida	FL	10	North Dakota	ND	38
Georgia	GA	11	Ohio	OH	39
Hawaii	HI	12	Oklahoma	OK	40
Idaho	ID	13	Oregon	OR	41
Illinois	IL	14	Pennsylvania	PA	42
Indiana	IN	15	Rhode Island	RI	44
Iowa	IA	16	South Carolina	SC	45
Kansas	KS	17	South Dakota	SD	46
Kentucky	KY	18	Tennessee	TN	47
Louisiana	LA	19	Texas	TX	48
Maine	ME	20	Utah	UT	49
Maryland	MD	21	Vermont	VT	50
Massachusetts	MA	22	Virginia	VA	51
Michigan	MI	23	Washington	WA	53
Minnesota	MN	24	West Virginia	WV	54
Mississippi	MS	25	Wisconsin	WI	55
		26	Wyoming	WY	56

## OUTSIDE THE UNITED STATES

<u>Name</u>	<u>Abbreviation</u>	<u>Code</u>
Canada	CN	CA
Canal Zone	CZ	PQ
Guam	GU	GQ
Japan	JA	JA
Puerto Rico	PR	RQ
Samoa	SM	AQ
Virgin Islands	VI	VQ

\*

Figure 14-2

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12 Jun 86

HOMEOWNERS ASSISTANCE SUMMARY REPORT (ER 405-1-12)		REPORTING PERIOD FOR FY _____ _____ MARCH _____ SEPTEMBER		RCS: DAEN-RE-12(R1)
THRU	TO CDR, USACE (DAEN-REP-S) 20 MASSACHUSETTS AVE, NW WASH DC 20314-1000	FROM	DATE	
DEPARTMENT <input type="checkbox"/> ARMY <input type="checkbox"/> NAVY <input type="checkbox"/> DSA <input type="checkbox"/> AIR FORCE <input type="checkbox"/> MARINE CORPS <input type="checkbox"/> OTHER _____ (Specify)				
SECTION I - BASE CLOSURE INFORMATION				
NAME OF BASE	STATE	BASE CLOSURE DATE	DATE OF ECONOMIC IMPACT STUDY	APPLICATIONS IN PROCESS
SECTION II - APPLICATIONS/PAYMENTS				
PRIVATE SALE CASE	NUMBER OF APPLICANTS	NUMBER OF PAYMENTS	TOTAL PAID	
GOVERNMENT PURCHASE CASES	EQUITY PAYMENTS NUMBER OF APPLICANTS	NUMBER OF _____	AMOUNT PAID	
	MORTGAGES ASSUMED NUMBER	_____	TOTAL TRFD TO FHA	
	MORTGAGE _____ NUMBER OF _____	NUMBER OF PAYMENTS	AMOUNT PAID	
FORECLOSURES	_____	NUMBER OF PAYMENTS	AMOUNT PAID	
SECTION III - STATUS OF APPLICATIONS				
NUMBER OF APPLICANTS	START OF PERIOD	_____		
NUMBER OF APPLICANTS	RECEIVED DURING PERIOD	_____		
TOTAL APPLICATIONS TO BE ACCOUNTED FOR: _____				
NUMBER OF APPLICATIONS FINALIZED WITH PAYMENT _____				
NUMBER OF APPLICATIONS FINALIZED WITHOUT PAYMENT _____				
NUMBER OF REJECTIONS _____				
NUMBER OF APPLICATIONS PENDING (not including appeals) _____				
NUMBER OF APPEALS IN PROCESS _____				
TOTAL APPLICATIONS ACCOUNTED FOR: _____				
REMARKS				

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ENG FORM 4153-R, Apr 85 EDITION OF 1 OCT 78 IS OBSOLETE. REPLACES ENG O-4153A DATED 1 OCT 78 WHICH IS OBSOLETE

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#### DATA REQUIRED

GENERAL: A separate form is required for each department and for each installation. (Explanation- If there is more than one base closure reported, each base or installation will be reported on a separate sheet, then one sheet will be summarized by the department of the installations.)

Report payments to the nearest dollar.

These summaries will be cumulative for a Fiscal Year only.

SECTION I – Base Closure Information: Name the bases associated with current applications being processed.

SECTION II – Status of Applications/Payments: Report type of applications and payments made.

SECTION III – Status of Applications.

REMARKS – Report FHA application numbers, comments, etc.



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<b>RELOCATION ASSISTANCE SUMMARY REPORT</b> <i>(Activity Under Public Law 91-646)</i> <b>(ER 405-1-12)</b>		REPORT PERIOD ENDING <input type="checkbox"/> MARCH <input type="checkbox"/> SEPTEMBER FOR FISCAL YEAR _____	RCS: DAEN-RE-18(R1)	
<b>SEE INSTRUCTIONS ON REVERSE</b>				
THRU:	TO: CDR USACE (DAEN-REP-S) WASH DC 20314-1000	FROM:		
THIS REPORT COVERS: <input type="checkbox"/> ARMY (Military) <input type="checkbox"/> AIR FORCE <input type="checkbox"/> NPS <input type="checkbox"/> OTHER <input type="checkbox"/> ARMY (Civil) <input type="checkbox"/> DOE <input type="checkbox"/> NASA <span style="float: right;"><i>(Specify)</i></span>				
<b>PART I – APPLICATION PROCESSED</b>				
TYPE OF APPLICANTS	NEW APPLICATIONS CURRENT PERIOD			REMARKS
	NO. OF APPLICANTS	AMOUNT CLAIMED	AMOUNT PAID	
1. RESIDENTIAL				
2. BUSINESS W/DWELLING				
3. BUSINESS W/O DWELLING				
4. FARM W/DWELLING				
5. FARM W/O DWELLING				
6. BUSINESS & FARM W/DWELLING				
7. BUSINESS & FARM W/O DWELLING				
TOTALS				
<b>PART II – SUMMARY OF PAYMENTS MADE BY TYPE</b> <i>(Cumulative for Fiscal Year)</i>				
	NO. OF PAYMENTS	AMOUNT PAID		
1. MOVING PAYMENTS <i>(Actual)</i>				
a. DWELLING				
b. BUSINESS				
c. FARM				
2. MOVING PAYMENTS <i>(Fixed)</i>				
a. DWELLING				
b. DISLOCATION ALLOWANCE				
c. BUSINESS				
d. FARM				
3. DIRECT LOSS				
a. BUSINESS				
b. FARM				
4. SEARCHING P				
a. BUSINESS				
b. FARM				
5. REPLACEMENT HOUSING PAYMENTS				
6. INCREASED INTEREST COSTS				
7. CLOSING COSTS				
8. RENTAL PAYMENTS				
9. DOWN PAYMENTS				
10. TOTAL NUMBER OF APPLICANTS PAID				
<b>PART III – SUMMARY OF PROGRESS</b>				
1. _____ NUMBER OF APPLICATIONS PENDING FROM PREVIOUS REPORTING PERIODS.				
2. _____ NUMBER OF NEW APPLICATIONS RECEIVED THIS REPORTING PERIOD <i>(from Part I above)</i>				
3. _____ NUMBER OF APPLICATIONS COMPLETED THIS REPORTING PERIOD.				
4. _____ NUMBER OF APPLICATIONS PENDING AT END OF THIS REPORTING PERIOD.				
TYPED NAME AND TITLE	SIGNATURE	DATE		

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EXPLANATION OF REQUIRED DATA

General Instructions: 1. A separate form is needed for each department.  
2. Report monies in dollars only.

Part 1, Applications Processed: This section will show only those applications processed during the reporting period. Breakout will be by type of applicant, by number, total amount claimed, and amount paid to the new applicants during the reporting period.

Part 2, Summary of Payments Made By Type: This section will show payments made during the fiscal year summarized by type. Monies paid to applicants during the fiscal year will be shown whether the application was received during the fiscal year or in a prior year,

Part 3, Summary of Progress:

- 1, Applications Pending, Including those on hand from previous reporting periods,
2. New Applications. Include those received during the reporting period (from Part 1 above).
3. Applications Completed, Include all applications finalized during the reporting period regardless of when the application was received.
4. Applications Pending. Include all applications regardless of when received, that have not been finalized by the end of the reporting period,

\*

ANNUAL REPORT ON RELOCATION AND REAL PROPERTY ACQUISITION ACTIVITIES--FEDERALLY ASSISTED PROJECTS (UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--PL 91-646) For use of this form, see ER 405-1-11 and EP 405-1-2.		REQUIREMENTS CONTROL SYMBOL DAEN-RE-22 REPORT FOR FY 19____	
THRU:	TO: HQDA (DAEN-REH-O) WASH DC 20314	FROM:	
<b>SECTION I -- RELOCATION ASSISTANCE PAYMENTS AND EXPENSES</b>			
	ITEM	NUMBER OF CLAIMS PAID (a)	AMOUNT PAID (b)
1	Payments for expenses of moving individuals and families.	Actual expenses (Sec. 202(a))	\$
2		Fixed payment including dislocation allowance (Sec. 202(b))	
3	Payments for searching and moving expenses for displaced businesses, farms and non-profit organizations.	Actual expenses (Sec. 202(a))	
4		Payment in lieu of actual expenses (Sec. 202(c))	
5	Replacement housing payments for homeowners (Sec. 203)		
6	Rental assistance payments (Tenants and certain others)(Sec. 204(l))		
7	Down payment assistance (Tenants and certain others)(Sec. 204(2))		
8	Last resort housing (Sec. 206(a))		
9	Subtotal (Sum of lines 1 thru 8)		
10	Administrative costs in carrying out relocation program (Including cost of relocation advisory services provided under Section 205 of the Act)		
11	TOTAL (Sum of lines 9 and 10, column (b) only)		
12	TOTAL AMOUNT PAID FROM FEDERAL FUNDS THIS FISCAL YEAR		
13	TOTAL AMOUNT PROJECTED FOR NEXT FISCAL YEAR		
14	TOTAL AMOUNT PROJECTED FOR NEXT FISCAL YEAR TO BE PAID FROM FEDERAL FUNDS		
<b>SECTION II -- REAL PROPERTY ACQUISITION SETTLEMENTS COMPLETED</b>			
	ITEM	NUMBER OF PARCELS (a)	COMPENSATION PAID (b)
15	Acquired by negotiation <sup>1/</sup>		\$
16	Acquired by condemnation <sup>2/</sup>		
17	TOTAL (Sum of lines 15 and 16)		
18	TOTAL AMOUNT PAID FROM FEDERAL FUNDS		\$
<sup>1/</sup> Negotiated tracts include all tracts acquired by any method other than condemnation for reason of price disagreement.		<sup>2/</sup> Include only tracts condemned because of price disagreement.	
REMARKS  <b>FOR ILLUSTRATION PURPOSES ONLY</b> (Local reproduction authorized -- blank masters available from local FMO)			

\*

ER 405-1-12  
Change 5  
16 Oct 78

\*

## INSTRUCTIONS

**Section I - Relocation Assistance Payments and Expenses.** For each of the types of assistance or payments shown in lines 1 through 8, report the total number of claims paid in column (a) and the amounts thereof in column (b). Descriptions for lines 1 through 5 and 7 through 9 are considered adequate for completion without further instructions. For line 6, report total rental assistance claims paid including rental assistance to former homeowners who elect to rent in lieu of receiving a replacement housing payment authorized by Section 203 of the Act. In the case of claimants who elect to have their rental assistance payment in installments, the total amount of the rental assistance entitlement should be reported during the reporting year in which the first installment is paid. In line 10, report the total amount of Administrative costs incurred in carrying out the relocation program including the cost of relocation assistance advisory services provided under Section 205 of the Act. Descriptions in lines 11 through 14 are considered to be adequate without further instructions.

**Section II - Real Property Acquisition Settlements Completed.** Report the number of parcels column (a) and the compensation paid column (b) for real property acquired and paid for during the reportable year. On line 15, report the total number of parcels and compensation paid for real property acquired by any method other than condemnation for reason of price disagreement. On line 16, report in the appropriate columns only tracts condemned because of price disagreement. Line descriptions for lines 17 and 18 are adequate for completion without further instructions. It is understood that this section will only include settlements completed. It excludes the reporting of parcels acquired by condemnation where settlements have not been completed. Such parcels should be reported when settlement has been completed.

\*

ER-405-1-2  
Change 11  
12 Aug 80

<b>ACQUISITION PROGRESS REPORT</b> (ER 405-1-11 and EP 405-1-2)		TO: HQDA (DAEN-REP-S) WASH DC 20314		DIVISION <b>CC 1</b>		REQUIREMENTS CONTROL SYMBOL (DAEN-RE-1(R1))						
				DISTRICT <b>CC 2</b>		AS OF DATE <b>CC 23-24</b>						
TYPE OF REPORT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVIL		<input type="checkbox"/> INITIAL <input type="checkbox"/> RECURRING		<input type="checkbox"/> REV. FINAL <input type="checkbox"/> FINAL ← <b>CC 80</b>		NAME AND LOCATION OF PROJECT <b>CC 4-5, 50-73, AND 74-79</b>						
MILITARY ACQUISITION				CIVIL ACQUISITION								
DIRECTIVE NUMBERS <b>CC 9-13</b>		DIRECTIVE DATES <b>CC 14-19</b>		TYPE OF ACQUISITION <b>CC 3</b>		ENTIRE PROJECT <input type="checkbox"/> THIS REPORT <input type="checkbox"/>						
				DA ACQUISITION <input type="checkbox"/>		LOCAL ACQUISITION—LATER CONVEYANCE TO U.S.—REIMBURSEMENT BY U.S. <input type="checkbox"/>						
				LOCAL ACQUISITION—LATER CONVEYANCE TO U.S.—NO REIMBURSEMENT BY U.S. <input type="checkbox"/>								
PURPOSE				TITLE AND DATE OF CONGRESSIONAL AUTHORITY								
				DESIGN MEMORANDA								
				DATE		AREA AUTHORIZED (Dam site, Reservoir Area)						
				DATE		AREA AUTHORIZED (Dam site, Reservoir Area)						
ACQUISITION FOR: <b>CC 3</b> <input type="checkbox"/> ARMY <u>Command</u> <input type="checkbox"/> AIR FORCE <u>Command</u> <input type="checkbox"/> Other Federal Agency				DATE OF LETTER TO LOCAL INTEREST ACCEPTING ASSURANCE (Local coop only)								
COMPLETE PROJECT REQUIREMENTS												
				CURRENT PERIOD		PROGRESS TO DATE						
				TRACTS	ACRES	DOLLARS (Land only)	TRACTS	ACRES	DOLLARS (Land only)			
1. ESTIMATED TOTAL TO COMPLETE ENTIRE PROJECT (Civil)												
2. TOTAL AUTHORIZED (Military)—PRESENT ACQUISITION (Civil)												
A. FEE BY PURCHASE, CONDEMNATION OR TRANSFER							100 00					
B. LESSER INTERESTS BY PURCHASE, CONDEMNATION OR TRANSFER							600 00					
C. PUBLIC DOMAIN LANDS BY WITHDRAWAL							200 00					
D. PUBLIC DOMAIN LANDS BY TEMPORARY USE PERMIT							300 00					
E. OTHER PUBLIC LANDS BY TEMPORARY USE PERMIT							400 00					
F. LEASEHOLDS							700 00					
<b>CC 21-22</b> ↓ <b>CC 25-46</b>				CURRENT PERIOD—ESTATE ACQUIRED								
				FEE <b>CC 20</b>		LESSER INTEREST <b>CC 20</b>		LEASE—USE PERMIT <b>CC 20</b>		PUBLIC DOMAIN <b>CC 20</b>		
				TRACTS	ACRES	DOLLARS	TRACTS	ACRES	DOLLARS	TRACTS	ACRES	DOLLARS
PURCHASE												
3. OPTIONS ACCEPTED				101 80			601 80					
4. CLOSINGS COMPLETED												
CONDEMNATION												
5. COMPLAINTS FILED												
6. ORDER OF POSSESSION ENTERED												
7. DECLARATION OF TAKING FILED				102 80			602 80					
8. DEFICIENCIES DEPOSITED ON AWARDS AND STIP. FOR D/T				104 80			604 80					
9. AWARDS AND STIP. DEPOSITED FOR STRAIGHT CONDEMNATION				103 80			603 80					
10. FINAL JUDGMENT ENTERED												
LEASE												
11. ACQUIRED BY NEGOTIATION									701 80			
12. ACQUIRED BY CONDEMNATION									702 80			
PERMANENT TRANSFER												
13. POSSESSION OBTAINED				105 80								
14. ACQUISITION COMPLETED												
WITHDRAWAL FROM PUBLIC DOMAIN												
15. POSSESSION OBTAINED										207 80		
16. ACQUISITION COMPLETED												
TEMPORARY USE												
17. TEMPORARY USE OBTAINED									408 80	308 80		
				PROGRESS TO DATE								
PURCHASE												
18. OPTIONS ACCEPTED				101			601					
19. CLOSINGS COMPLETED												
CONDEMNATION												
20. COMPLAINTS FILED												
21. ORDER OF POSSESSION ENTERED												
22. DECLARATION OF TAKING FILED				102			602					
23. DEFICIENCIES DEPOSITED ON AWARDS AND STIP. FOR D/T				104			604					
24. AWARDS AND STIP. DEPOSITED FOR STRAIGHT CONDEMNATION				103			603					
25. FINAL JUDGMENT ENTERED												
LEASE												
26. ACQUIRED BY NEGOTIATION									701			
27. ACQUIRED BY CONDEMNATION									702			
PERMANENT TRANSFER												
28. POSSESSION OBTAINED				<b>105-WITHIN DOD 106-OUTSIDE DOD 605-WITHIN DOD 606-OUTSIDE 05 OR 06</b>								
29. ACQUISITION COMPLETED												
WITHDRAWAL FROM PUBLIC DOMAIN												
30. POSSESSION OBTAINED										207		
31. ACQUISITION COMPLETED												
TEMPORARY USE												
32. TEMPORARY USE OBTAINED									408	308		
REMARKS:												
Annotations above indicate the following:												
1. Numbers reflect codes for the type of estate and method of acquisition; i.e., 10180 means a fee estate being acquired by negotiation in FY 1980.												
2. "cc" numbers correspond to the data element card column location on the punch card.												



EP 405-1-12  
 Change 11  
 12 Aug 80

CODES USED FOR ACQUISITION PROGRESS REPORT

\*

<u>Element</u>	<u>Term</u>	<u>Code</u>
Department Code (cc 3)	Army - Military	1
	Army - Civil Works:	
	Corps Acquisition	2
	Local Acquisition, Later Conveyance to US, Reimbursement by US	3
	Local Acquisition, Later Conveyance ,to US, No Reimbursement by US	4
	Air Force	5
	Energy Research and Development Administration (ERDA)	6
	National Aeronautics and Space Administration (NASA)	7
	National Science Foundation	8
	Other Agencies	Ø
	Department of Energy	A
	Department of Defense	B
	Type of Estate (cc 20)	Fee
Public Domain Lands by Withdrawal		2
Public Domain Lands by Temporary Use Permit		3
Temporary Use (other Federal land)		4
Temporary Use (private land)		5
Easement		6
Inlease		7

Figure 14-9a

ER 405-1-12  
Change 11  
12 Aug 80

<u>Element</u>	<u>Term</u>	<u>Code</u>	
Method of Acquisition (cc 21-22)	Authorized for Acquisition	ØØ	
	Negotiated Purchase	Ø1	
	Condemnation/Declaration of Taking Filed	Ø2	
	Condemnation/Straight	Ø3	
	Condemnation/Deficiency Payment Involved	Ø4	
	Transferred from within DOD	Ø5	
	Transferred from outside DOD	Ø6	
	Withdrawal from Public Domain	Ø7	
	Use Permit	Ø8	
	Reassignment within same Department	Ø9	
	Reservation of Easement	1Ø	
	Change Code (cc 80)	Plus. Used to add a new installation or project (a new keyword) to the master file. Punch all applicable data fields on the card.	F
		Change. Used to change data in cc 25-27 on a record (line item) for an installation or project already on the master file. Punch the keyword in cc 1-24, all of the remaining applicable data fields on the balance of the card, and the "C" change code in cc 80.	C
		Delete. Used to delete records (line items) from the master file. Punch the keyword in cc 1-24 and the "D" change code in cc 80.	D
Final. Used to finalize reporting when all acquisition activity is completed (including closings completed and final judgments rendered) at an installation or project. Punch a card containing the keyword in cc 1-24 and the "F" change code in cc 80 for each record (line item) on the master file for that installation or project.		F *	

Figure 14-9b



ER 405-1-12  
 Change 17  
 30 Apr 82

\*

DISPOSAL REPORT CODES FOR KEY WORD

<u>Department Code</u>	<u>Department Type</u>
1	Army Industrial
2	Army Command
4	Civil Works
5	Air Force Industrial
6	Air Force Command
8	Department of Energy
9	National Aeronautics and Space Administration
<u>Status Code</u>	<u>Installation Status</u>
1	Entire Installation Inactive
2	Portion of Installation Inactive
3	Entire Installation Excess
4	Portion of Installation Excess
5	Portion of Installation Inactive and a Portion Excess

Examples:

An Army industrial report showing a portion inactive will be coded 12.

An Army command report showing a portion of the installation inactive and a portion excess will be coded 25.

\*

Figure 14-10

14-216

\*

Agency - Transferee Identification for Disposal Reporting

AC/W - Department of Army, Civil Works  
AF - Department of the Air Force  
AGRI - Department of Agriculture  
ARMY - Department of the Army, Military  
COMM - Department of Commerce  
DC - District of Columbia  
DOE - Department of Energy  
FAA - Federal Aviation Administration  
FHA - Federal Housing Administration  
GSA - General Services Administration  
HHS - Department of Health and Human Services  
INT - Department of the Interior  
JUST - Department of Justice  
NASA - National Aeronautics and Space Administration  
NAVY - Department of the Navy  
ST - Department of State  
TREA - Department of the Treasury  
TVA - Tennessee Valley Authority  
USCG - United States Coast Guard  
USMC - United States Marine Corps  
VA - Veterans Administration

Figure 14-11

\*



FOR REAL ESTATE REPORTING SYSTEMS -- LEASE AND ALLOCATIONS, OUTGRANT, DISPOSAL

DEPARTMENT OF THE ARMY

<u>CODE</u>	<u>ABBREVIATION</u>	<u>NAME</u>
33	ABMDO	Ballistic Missile Defense Systems Command
15	HQDA	Department of the Army, Headquarters
38	DCSP-MP	Deputy Chief of Staff for Personnel, Military Police Operating Agency
21	DCSP-LEM	Deputy Chief of Staff for Personnel, Office of Army Law Enforcement
24	MTMC	Military Traffic Management Command
12	ARMY NG	National Guard Bureau - Army
13	ARMY RES	Office Chief of Army Reserve
40	S/GEN	Surgeon General
01	ADJ GEN	The Adjutant General
25	AG-MEM	The Adjutant General, Casualty and Memorial Affairs Directorate
29	IG-AAA	The Inspector General and the U.S. Army Audit Agency
20	JAGC	The Judge Advocate General
42	CARA	U.S. Army Civilian Appellate Review Agency
22	USACC	U.S. Army Communications Command
31	USACSC	U.S. Army Computer Systems Command
17	ENGR-CIV	U.S. Army Corps of Engineers, Civil Works
30	USACER	U.S. Army Corps of Engineers, Coastal Engineering Research Center
18	ENGR-MIL	U.S. Army Corps of Engineers, Military
41	CIC	U.S. Army Criminal Investigation Command
32	FORSCOM	U.S. Army Forces Command
23	HSCOM	U.S. Army Health Services Command
34	INSCOM	U.S. Army Intelligence and Security Command
* 04	AMC-HQ	U.S. Army Materiel Command
08	AMC-ARRC	AMC, Armament Materiel Readiness Command
02	AMC-ARDC	AMC, Armament Research and Development Command
36	AMC-ALMS	AMC, Automated Logistics Management Systems Agency
37	AMC-AVRD	AMC, Aviation Research and Development Command
05	AMC-CERC	AMC, Communications and Electronics Materiel Readiness Command
11	AMC-DESC	AMC, Depot System Command
03	AMC-ERDC	AMC, Electronic Research and Development Command

\*

ER 405-1-12  
 Change 24  
 12 Jun 86

<u>CODE</u>	<u>ABBREVIATION</u>	<u>NAME</u>
* 15	AMC-ILCM	AMC, International Logistics Command
06	AMC-MICR	AMC, Missile Materiel Readiness Command
28	AMC-NRDC	AMC, Natick Research and Development Command
07	AMC-TARC	AMC, Tank Automotive Materiel Readiness Command
10	AMC-TEC	AMC, Test and Evaluation Command
09	AMC-TSAR	AMC, Test Support and Aviation Materiel Readiness Command
26	MEPCOM	U.S. Army Enlistment Processing Command
14	USMA	U.S. Army Military Academy
19	MDW	U.S. Army Military District of Washington
27	RC-DOD	U.S. Army Recruiting Command, DOD Recruiting
35	TRADOC	U.S. Army Training and Doctrine Command
39	WESTCOM	U.S. Army Western Command

\*

DEPARTMENT OF THE AIR FORCE

<u>CODE</u>	<u>ABBREVIATION</u>	<u>NAME</u>
52	AFC	Accounting and Finance Center
51	ADC	Air Defense Tactical Air Command
62	AFRC	Air Force Reserve
63	ROTC	Air Force Reserve, Officers' Training Corps
56	ANG	Air National Reserve
57	ATC-GEN	Air Training Command, Other than Recruiting Housing
58	ATC-R/HS	Air Training Command, Recruiting Family Housing
60	AAC	Alaskan Air Command
53	AFCS	Communications Center
71	SEC	Electronic Security Command
54	AFLC	Logistics Command
65	MAC	Military Airlift Command
72	PAF	Pacific Air Forces
68	SAC	Strategic Air Command
55	AFSC	Systems Command
73	IND	Systems Command - Industrial
66	TAC	Tactical Air Command
69	AFAC	USAF Academy
70	AFHQ	USAF Headquarters - General
67	AFS	USAF Space Command

\*

OTHER DEPARTMENTS AND AGENCIES

<u>Code</u>	<u>Abbreviation</u>	<u>Name</u>
81	DCA	Defense Communications Agency
85	DCAA	Defense Contract Audit Agency
83	DIA	Defense Intelligence Agency
77	DIS	Defense Investigative Service
84	DLA	Defense Logistics Agency
82	DNA	Defense Nuclear Agency
98	DOD-MISC	Department of Defense, Miscellaneous
80	DOE	Department of Energy
90	STATE	Department of State
88	NASA	National Aeronautics and Space Administration
89	NSF	National Science Foundation
87	NSA	National Security Agency
99	NWS	National Weather Service
95	USCG	U.S. Coast Guard
96	USMC	U.S. Marine Corps
97	NAVY	U.S. Navy

\*

14-221

Figure 14-13 - Continued

ER 405-1-12  
 Change 19  
 20 Jan 83

\* CODES USED FOR REAL ESTATE OUTGRANT REPORT

Department Code (cc 1, cards #1 and #2)

1	Army - Military
2	Army - Civil Works
3	Air Force
4	Department of Energy
5	National Aeronautics and Space Administration
6	Other

Change Code (cc 48, cards #1 and #2)

P	Addition. This code is used to add a new header or a new detail record to the file of active outgrants. When change code "P" is used, all applicable data fields in the card must be punched.
M	Modification. This code is used to modify data on active outgrants previously reported in cc 15-51 of card number 1 and cc 49-80 of card number 2 only. When change code "M" is used, all applicable data fields in the card must be punched.
T	Termination. This code is used to transfer a number 2 card entry from the active to the terminated file when an outgrant expires according to its own terms. When change code "T" is used, data cannot be changed; the code merely drops an entry from the active file and places it in the terminated file. When change code "T" is used, only cc 1-48 need be punched.
W	Withdrawal. This code is used to change data in cc 49-80 of card number 2 and to simultaneously transfer the corrected entry to the terminated file. The termination date should reflect when the outgrant was terminated. When change code "W" is used, all applicable data fields in the card must be punched.
D	Deletion. This code is used to delete a detail entry or an entire installation from the active or terminated file. This code is used only with card number 2. If an entire installation is to be deleted, each individual detail entry under the installation must be deleted. This will automatically delete the installation header record. When change code "D" is used only cc 1-48 need be punched.

\*

Type of Installation Code (cc 49, card #1)

1	Command installation
2	Industrial installation

\* Type of Grant Code (cc 49, card #2)

- 1 Lease
- 2 Easement
- 3 License (also includes consents)
- 4 Permit (to another government agency)

Purpose Code (cc 52, card #2)

- A Agriculture. Grants for agricultural use including the growth of hay.
- R Banking. Grants issued in connection with the operation of a bank, branch bank, or banking facility.
- B Education. Grants for educational purposes.
- C Fish and Wildlife. Grants to federal or state agencies for fish and wildlife conservation.
- D Grazing. Grants of grazing rights.
- E Housing. Grants for housing.
- F Industrial-Private Manufacturing. Grants of industrial facilities for industrial or manufacturing purposes.
- G National Guard. Grants to states for National Guard training, activities.
- M Public Park and Recreation. Grants to the government, states, counties, or other political subdivision that permit the public to use the granted area for public park and recreation purposes (Priority 1, ER 405-2-835).
- K Recreation, Commercial. Grants to profit making organizations for commercial recreation purposes (Priority 1, ER 405-2-835).
- L Recreation, Private. Grants for private recreation (Priority 4, ER 405-2-835).
- N Recreation, Quasi-Public. Grants for recreational purposes to nonprofit organizations, such as the Boy Scouts, Girl Scouts, Camp Fire Girls, churches, etc., that restrict the use of the granted area to the grantee or members of the grantee's organization.
- H Rights-of-Way. Grants of easements and licenses permitting the use of federally-controlled land for road, utility, and other rights-of-way. \*

Figure 14-14 - continued



ER 405-1-12  
Change 19  
20 Jan 83

\* P Storage. Grants for storage purposes.

Z Other. All other grants.

Recreation Code (cc 79, card #2)

6 A recreation lease that includes a cost-sharing clause.

Payment Code (cc 80, card #2)

T The outgrant specifies a term rental or a one-time payment.

B A benefit other than rental will pass to the government. \*

Figure 14-14 - continued

14-224

REAL ESTATE OUTGRANT PUNCH CARD FORMAT — (ER 405-1-11 and EP 405-1-2)																																																RCS: DAEN-RE-3(R3)																															
DATA COMMON TO CARDS 1 & 2														INSTALLATION OR PROJECT NAME																																																																	
DEPT. CODE	DIVISION/ DISTRICT CODE	INSTL. OR PROJECT NUMBER	CARD 2	CARD 1	NAME OF GRANTEE														CONTRACT NUMBER				CHANGE CODE	GRANT TYPE	INSTL STATE OR USING COUNTRY SERVICE CODE	PURPOSE	EFFECTIVE DATE				TERMINATION DATE				ACRES	TENTHS	ANNUAL RENTAL RECEIVED	RECR CODE	PAYMT CODE																																								
					IDENTIFIER	TYPE	FY	CASE NO.	Y	M	D	I	Y	M	D	I																																																															
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80
<p><b>FOR ILLUSTRATION PURPOSES ONLY</b>                      (Local reproduction authorized - blank masters available from local FMO)</p>																																																																															

14-225

USACE\_ESMTO07943  
Figure 14-15

ER 405-1-12  
Change 19  
20 Jan 83

ER 405-1-12  
 Change 21  
 1 Nov 83

\*

REAL ESTATE REPORTING BY ELECTRONIC DATA TRANSFER

1. The periodic changes to each HQUSACE Real Estate status reporting system may be submitted electronically to the U.S. Army Engineer Automation Support Activity (EASA) computer.
2. Coordination between each Real Estate reporting office and its associated computer center will be required to establish local procedures to accomplish the data transfer. Since FOA computer centers have previously sent files to EASA for other HQUSACE systems, the procedure should be familiar. However, a sample JCL (Job Control Language) is shown at paragraph 5. Techniques for creating the files to be sent should be determined locally, but use of an appropriate text-editing routine for direct data entry is recommended.
3. A listing of the card images transmitted should be printed at the sending office. EASA will print a copy of the file received for HQ USACE. Each transmission must have a header card containing the Division or District code; Quarter Date, (YYMMDD); System Abbreviation; and the Transmission Date, (YYMMDD). See sample below.
4. Files have been established at EASA to store the input for the five systems. The system names, abbreviations, and catalog file streams are:

<u>System</u>	<u>System Abbreviation</u>	<u>Catalog File Stream</u>
Real Estate Outgrants	GR	P5GRPD/DATA/xx
Acquisition Progress Report	AC	P5AcPD/DATA/xx
Real Property Disposal	DP	P5DPPD/DATA/xx
Homeowners Assistance Program	HA	P5HAPD/DATA/xx
Relocation Assistance Payments	RE	P5REPD/DATA/xx

Replace XX with the appropriate reporting Division or District Code as shown in Figure 14-1.

Figure 14-16

\*

14-227

ER 405-1-12  
 Change 21  
 1 Nov 83

- \* 5. A sample JCL for accomplishing the file transfer follows:

```

$      SNUMB
$      USERID  PASSWORD
$      IDENT   PASSWORD,REALESTAT, OUTGRANTS JAN 82
$      CONVER
$      DATA  IN
*HEADER* /B1/821231/GR/830105
FIRST UPDATE CARD IMAGE
SECOND UPDATE CARD IMAGE
THIRD UPDATE CARD IMAGE, ETC.
$      FILE    OT,D1S,5L
$      UTL2
$      FILE    D1,DIR
$      FILE    D3,D3R,10L
$      PRMFL   D2,W,SP5,GRPD/DATA/B1
FDEF D1,GFRC.
FDEF D2,GFRC.
FDEF D3,GFRC.
PROC REW D1 AND D2 AND D3.
PROC MCOPY D1 TO D3 IF. MCOPY D2 TO D3 1F.
PROC REW D1 AND D2 AND D3.
PROC COPY D3 TO D2 IF. REW D3.
PROC SDUMP D1 1F.
PROC CLOSE D1 AND D2 AND D3.
$      SYSOUT P*
$      ENDJOB
  
```

Change the underlined entries to your office codes, the system abbreviation, and date.

\*

Figure 14-16  
 Continued

FOR ILLUSTRATION PURPOSES ONLY

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\*

TO		REAL ESTATE SCHEDULE/COST AND PERFORMANCE - FISCAL YEAR 19 (ER 405-1-12)												REQUIREMENTS CONTROL SYMBOL DAEN-RE-10(R5)																
FROM		1st QUARTER				2nd QUARTER				3rd QUARTER				4th QUARTER				AS OF DATE												
CDR USACE (CERE-PR) WASH DC 10314-1000		UNITS				DOLLARS				UNITS				DOLLARS				UNITS				DOLLARS								
ACTIVITY		SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	
1	a																													
	b																													
2	a																													
	b																													
3	a																													
	b																													
4	a																													
	b																													
5	a																													
	b																													
6	a																													
	b																													
7	a																													
	b																													
8	a																													
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	b																													
13	a																													
	b																													
14	a																													
	b																													
15	a																													
	b																													
16	a																													
	b																													
17	a																													
	b																													

Page 1 of 2 Pages

EDITION OF AUG 86 IS OBSOLETE

PROPOSED CERE-PR

ENG FORM 4564-R, Oct 88

Figure 14-17

ER 405-1-12  
 Change 27  
 1 Oct 88

\*

REAL ESTATE SCHEDULE/COST AND PERFORMANCE - FISCAL YEAR 19									
ITEM NO	ACTIVITY	1st QUARTER		2nd QUARTER		3rd QUARTER		4th QUARTER	
		UNITS SCHEDULED	DOLLARS ACTUAL	UNITS SCHEDULED	DOLLARS ACTUAL	UNITS SCHEDULED	DOLLARS ACTUAL	UNITS SCHEDULED	DOLLARS ACTUAL
a	PAYMENTS								
b	LAND								
c	RELOCATION ASSISTANCE								
d	DAMAGES								
e	RENTS								
REMARKS									

Page 2 of 2 Pages

Figure 14-17 (Cont'd)

(Reverse of ENG FORM 4564-R)

\*

FOR ILLUSTRATION PURPOSES ONLY

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(Local reproduction authorized - blank masters available from local FMO) 1 Oct 88

REAL ESTATE PERSONNEL REAL ESTATE ADMINISTRATION ACTIVITIES (ER 405-1-12)		SECTION II - EQUIVALENT PERSONNEL OF TOTAL MANHOURS WORKED (CUMULATIVE)						RC5: DAEM-RE-9(R7) QUARTER ENDING:	
TO: CDR USACE (CERE-PR) WASH DC 20314-1000		FROM: (Division or District)							
ITEM NO.	SECTION I - ACTIVITY	ARMY	AIR FORCE	SUB-TOTAL	CIVIL WORKS	*	*	*	GRAND TOTAL
1	PROJECT PLANNING								
a	PRE-AUTHORIZATION								
b	POST-AUTHORIZATION								
2	ACQUISITION								
a	ATTORNEY'S OPINIONS								
b	ALL OTHER								
3	CONDEMNATION								
4	INLEASING								
a	RECRUITING								
b	NON-RECRUITING								
5	APPRAISAL								
a	STAFF								
b	CONTRACT								
6	RELOCATION ASSISTANCE								
a	PL 91-646								
b	HOMEOWNERS ASSISTANCE PROGRAM								
c	EMPLOYEE RELOCATION ASSISTANCE								
7	COMPLIANCE INSPECTIONS								
a	MAJOR								
b	MINOR								
8	UTILIZATION INSPECTIONS								
a	MAJOR								
b	MINOR								
9	OUTGRANTS								
a	MAJOR								
b	MINOR								
10	DISPOSALS								
11	LOCAL COOPERATION								
12	TIMBER HARVESTING								
13	TEMPORARY PERMITS								
14	ENCROACHMENTS								
15	REAL ESTATE AUDITS								
16	OTHER ACTIVITIES								
17	DISTRICT OVERHEAD								
(CONTINUED ON REVERSE)									
TOTAL									

\* Personnel not accounted for elsewhere in the report.

EDITION OF JAN 87 IS OBSOLETE.

ENG FORM 1685-R, Oct 88

(Proponent: CERE-PR)

Page 1 of 2 Pages

Figure 14-18

\*

ER 405-1-12  
 Change 27  
 1 Oct 88

REAL ESTATE PERSONNEL REAL ESTATE ADMINISTRATION ACTIVITIES (Continued)										
SECTION III - AUTHORIZED SPACES			SECTION IV - ACTUAL STRENGTH							
			REAL ESTATE EXEC OFFICE	ACQUISITION BRANCH	APPRAISAL BRANCH	LEASING BRANCH	MANAGEMENT & DISPOSAL BRANCH	PLANNING & CONTROL BRANCH	FIELD AND/OR PROJECT OFFICES "	TOTAL
18	ARMY, DIRECT (O&MA)									
19	ARMY, REIMB (TIMBER-O&MA)									
20	AIR FORCE (MCA)									
21	CIVIL WORKS									
22	OTHER									
REMARKS										

14-232

USACE\_ESM1007949

\*

Figure 14-16 (Cont'd)



TABLE 14-1. REGULATORY REFERENCES

\* SECTION I

43 USC 315q  
PL 91-646  
EO 12512  
EO 12411  
ER 37-2-10  
ER 37-345-10

SECTION III

80 Stat. 1255, 1290 (PL 89-745)

SECTION IV

PL 89-754

SECTION V

PL 91-646

SECTION VI

PL 91-646

SECTION VIII

Federal Property Management Regulations, Subpart 101-3.2 (41 CFR  
101.3-2)

SECTION IX

DOD Instruction 4165.14  
AR 405-45

SECTION X

Federal Property Management Regulations, 101-47

SECTION XI

PL 86-423

Next page is 14-201

\*

ER 405-1-12  
Change 3  
25 Jul 78

\*

## DIVISION AND DISTRICT CODES

<u>CODE</u>	<u>ABBREVIATION</u>	<u>DIVISION/DISTRICT</u>
BØ	LMVD	LOWER MISSISSIPPI VALLEY DIVISION
B1	MEMP	Memphis District
B2	NORL	New Orleans District
B3	ST L	St. Louis District
B4	VICK	Vicksburg District
CØ	MRD	MISSOURI RIVER DIVISION
C1	K C	Kansas City District
C2	OMAH	Omaha District
DØ	NED	NEW ENGLAND DIVISION
EØ	NAD	NORTH ATLANTIC DIVISION
E1	BALT	Baltimore District
E3	N Y	New York District (CONUS)
E4	NORF	Norfolk District
E5	PHIL	Philadelphia District
E6	NFDL	New York District (Outside CONUS)
FØ	NCD	NORTH CENTRAL DIVISION (CONUS)
F4	R IS	Rock Island District
F6	NCCA	North Central Division (Outside CONUS)
GØ	NPD	NORTH PACIFIC DIVISION
G1	ALS	Alaska District
G2	PORT	Portland District
G3	SEAT	Seattle District
G4	WAWA	Walla Walla District
HØ	ORD	OHIO RIVER DIVISION
H1	HUNT	Huntington District
H2	LOW	Louisville District
H3	NASH	Nashville District
H4	PITT	Pittsburgh District
JØ	POD	PACIFIC OCEAN DIVISION
J1	FE	Far East District
J2	JAP	Japan District
KØ	SAD	SOUTH ATLANTIC DIVISION
K2	CHAR	Charleston District
K3	JAX	Jacksonville District (CONUS)
K5	MOBL	Mobile District (CONUS)
K6	SAV	Savannah District
K7	WILM	Wilmington District
K8	J/SJ	Jacksonville District (San Juan)
K9	M/CP	Mobile District (Canal Zone and Panama) *

14-201

Figure 14-1

ER 405-1-12  
 Change 3  
 25 Jul 78

\*

<u>CODE</u>	<u>ABBREVIATION</u>	<u>DIVISION/DISTRICT</u>
LØ	SPD	SOUTH PACIFIC DIVISION
L1	LOSA	Los Angeles District
L2	SACR	Sacramento District
MØ	SWD	SOUTHWESTERN DIVISION
M1	ALB	Albuquerque District
M2	FT W	Fort Worth District
M3	GALV	Galveston District
M4	L RK	Little Rock District
M5	TULS	Tulsa District

NOTE: The "Ø" character appearing in the Division/District code(s) must be numeric. \*

Figure 14-1a

ER 405-1-12  
Change 17  
30 Apr 82

\*

STATE AND COUNTRY CODES AND ABBREVIATIONS  
For Real Estate Reporting Systems

<u>Name</u>	<u>Abbreviation</u>	<u>Code</u>	<u>Name</u>	<u>Abbreviation</u>	<u>Code</u>
Alabama	AL	01	Missouri	MO	29
Alaska	AK	02	Montana	MT	30
Arizona	AZ	03	Nebraska	NE	31
Arkansas	AR	04	Nevada	NV	32
California	CA	05	New Hampshire	NH	33
Colorado	CO	06	New Jersey	NJ	34
Connecticut	CT	07	New Mexico	NM	35
Delaware	DE	08	New York	NY	36
District of Columbia	DC	09	North Carolina	NC	37
Florida	FL	10	North Dakota	ND	38
Georgia	GA	11	Ohio	OH	39
Hawaii	HI	12	Oklahoma	OK	40
Idaho	ID	13	Oregon	OR	41
Illinois	IL	14	Pennsylvania	PA	42
Indiana	IN	15	Rhode Island	RI	44
Iowa	IA	16	South Carolina	SC	45
Kansas	KS	17	South Dakota	SD	46
Kentucky	KY	18	Tennessee	TN	47
Louisiana	LA	19	Texas	TX	48
Maine	ME	20	Utah	UT	49
Maryland	MD	21	Vermont	VT	50
Massachusetts	MA	22	Virginia	VA	51
Michigan	MI	23	Washington	WA	53
Minnesota	MN	24	West Virginia	WV	54
Mississippi	MS	25	Wisconsin	WI	55
		26	Wyoming	WY	56

## OUTSIDE THE UNITED STATES

<u>Name</u>	<u>Abbreviation</u>	<u>Code</u>
Canada	CN	CA
Canal Zone	CZ	PQ
Guam	GU	GQ
Japan	JA	JA
Puerto Rico	PR	RQ
Samoa	SM	AQ
Virgin Islands	VI	VQ

\*

Figure 14-2

ER 405-1-12  
 Change 24  
 12 Jun 86

HOMEOWNERS ASSISTANCE SUMMARY REPORT (ER 405-1-12)		REPORTING PERIOD FOR FY _____ _____ MARCH _____ SEPTEMBER		RCS: DAEN-RE-12(R1)
THRU	TO CDR, USACE (DAEN-REP-S) 20 MASSACHUSETTS AVE, NW WASH DC 20314-1000	FROM	DATE	
DEPARTMENT <input type="checkbox"/> ARMY <input type="checkbox"/> NAVY <input type="checkbox"/> DSA <input type="checkbox"/> AIR FORCE <input type="checkbox"/> MARINE CORPS <input type="checkbox"/> OTHER _____ (Specify)				
SECTION I - BASE CLOSURE INFORMATION				
NAME OF BASE	STATE	BASE CLOSURE DATE	DATE OF ECONOMIC IMPACT STUDY	APPLICATIONS IN PROCESS
SECTION II - APPLICATIONS/PAYMENTS				
PRIVATE SALE CASE	NUMBER OF APPLICANTS	NUMBER OF PAYMENTS	TOTAL PAID	
GOVERNMENT PURCHASE CASES	EQUITY PAYMENTS NUMBER OF APPLICANTS	NUMBER OF _____	AMOUNT PAID	
	MORTGAGES ASSUMED NUMBER	_____	TOTAL TRFED TO FHA	
	MORTGAGE _____ NUMBER OF _____	NUMBER OF PAYMENTS	AMOUNT PAID	
FORECLOSURES	_____	NUMBER OF PAYMENTS	AMOUNT PAID	
SECTION III - STATUS OF APPLICATIONS				
NUMBER OF APPLICANTS	START OF PERIOD	_____		
NUMBER OF APPLICANTS	RECEIVED DURING PERIOD	_____		
TOTAL APPLICATIONS TO BE ACCOUNTED FOR: _____				
NUMBER OF APPLICATIONS FINALIZED WITH PAYMENT _____				
NUMBER OF APPLICATIONS FINALIZED WITHOUT PAYMENT _____				
NUMBER OF REJECTIONS _____				
NUMBER OF APPLICATIONS PENDING (not including appeals) _____				
NUMBER OF APPEALS IN PROCESS _____				
TOTAL APPLICATIONS ACCOUNTED FOR: _____				
REMARKS				

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ENG FORM 4153-R, Apr 85 EDITION OF 1 OCT 78 IS OBSOLETE. REPLACES ENG O-4153A DATED 1 OCT 78 WHICH IS OBSOLETE

ER 405-1-12  
Change 24  
12 Jun 86

#### DATA REQUIRED

GENERAL: A separate form is required for each department and for each installation. (Explanation- If there is more than one base closure reported, each base or installation will be reported on a separate sheet, then one sheet will be summarized by the department of the installations.)

Report payments to the nearest dollar.

These summaries will be cumulative for a Fiscal Year only.

SECTION I – Base Closure Information: Name the bases associated with current applications being processed.

SECTION II – Status of Applications/Payments: Report type of applications and payments made.

SECTION III – Status of Applications.

REMARKS – Report FHA application numbers, comments, etc.

ER 405- 1 -12  
Change 24  
12 Jun 86

<b>RELOCATION ASSISTANCE SUMMARY REPORT</b> <i>(Activity Under Public Law 91-646)</i> <b>(ER 405-1-12)</b>		REPORT PERIOD ENDING <input type="checkbox"/> MARCH <input type="checkbox"/> SEPTEMBER FOR FISCAL YEAR _____		RCS: DAEN-RE-18(R1)	
<b>SEE INSTRUCTIONS ON REVERSE</b>					
THRU:		TO:		FROM:	
		CDR USACE (DAEN-REPS) WASH DC 20314-1000			
THIS REPORT COVERS: <input type="checkbox"/> ARMY (Military) <input type="checkbox"/> AIR FORCE <input type="checkbox"/> NPS <input type="checkbox"/> OTHER <input type="checkbox"/> ARMY (Civil) <input type="checkbox"/> DOE <input type="checkbox"/> NASA    _____ <span style="float: right;"><i>(Specify)</i></span>					
<b>PART I – APPLICATION PROCESSED</b>					
TYPE OF APPLICANTS		NEW APPLICATIONS CURRENT PERIOD			REMARKS
		NO. OF APPLICANTS	AMOUNT CLAIMED	AMOUNT PAID	
1. RESIDENTIAL					
2. BUSINESS W/DWELLING					
3. BUSINESS W/O DWELLING					
4. FARM W/DWELLING					
5. FARM W/O DWELLING					
6. BUSINESS & FARM W/DWELLING					
7. BUSINESS & FARM W/O DWELLING					
TOTALS					
<b>PART II – SUMMARY OF PAYMENTS MADE BY TYPE</b> <i>(Cumulative for Fiscal Year)</i>					
		NO. OF PAYMENTS	AMOUNT PAID		
1. MOVING PAYMENTS <i>(Actual)</i>					
a. DWELLING					
b. BUSINESS					
c. FARM					
2. MOVING PAYMENTS <i>(Fixed)</i>					
a. DWELLING					
b. DISLOCATION ALLOWANCE					
c. BUSINESS					
d. FARM					
3. DIRECT LOSS					
a. BUSINESS					
b. FARM					
4. SEARCHING P					
a. BUSINESS					
b. FARM					
5. REPLACEMENT HOUSING PAYMENTS					
6. INCREASED INTEREST COSTS					
7. CLOSING COSTS					
8. RENTAL PAYMENTS					
9. DOWN PAYMENTS					
10. TOTAL NUMBER OF APPLICANTS PAID					
<b>PART III – SUMMARY OF PROGRESS</b>					
1. _____ NUMBER OF APPLICATIONS PENDING FROM PREVIOUS REPORTING PERIODS.					
2. _____ NUMBER OF NEW APPLICATIONS RECEIVED THIS REPORTING PERIOD <i>(from Part I above)</i>					
3. _____ NUMBER OF APPLICATIONS COMPLETED THIS REPORTING PERIOD.					
4. _____ NUMBER OF APPLICATIONS PENDING AT END OF THIS REPORTING PERIOD.					
TYPED NAME AND TITLE		SIGNATURE		DATE	

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ER 405-1-12  
Change 24  
12 Jun 86

EXPLANATION OF REQUIRED DATA

General Instructions: 1. A separate form is needed for each department.  
2. Report monies in dollars only.

Part 1, Applications Processed: This section will show only those applications processed during the reporting period. Breakout will be by type of applicant, by number, total amount claimed, and amount paid to the new applicants during the reporting period.

Part 2, Summary of Payments Made By Type: This section will show payments made during the fiscal year summarized by type. Monies paid to applicants during the fiscal year will be shown whether the application was received during the fiscal year or in a prior year,

Part 3, Summary of Progress:

- 1, Applications Pending, Including those on hand from previous reporting periods,
2. New Applications. Include those received during the reporting period (from Part 1 above).
3. Applications Completed, Include all applications finalized during the reporting period regardless of when the application was received.
4. Applications Pending. Include all applications regardless of when received, that have not been finalized by the end of the reporting period,

14-206a

Figure 14-4



\*

ANNUAL REPORT ON RELOCATION AND REAL PROPERTY ACQUISITION ACTIVITIES--FEDERALLY ASSISTED PROJECTS (UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970--PL 91-646) For use of this form, see ER 405-1-11 and EP 405-1-2.		REQUIREMENTS CONTROL SYMBOL DAEN-RE-22 REPORT FOR FY 19____
THRU:	TO: HQDA (DAEN-REH-O) WASH DC 20314	FROM:

**SECTION I -- RELOCATION ASSISTANCE PAYMENTS AND EXPENSES**

	ITEM	NUMBER OF CLAIMS PAID (a)	AMOUNT PAID (b)
1	Payments for expenses of moving individuals and families.	Actual expenses (Sec. 202(a))	\$
2		Fixed payment including dislocation allowance (Sec. 202(b))	
3	Payments for searching and moving expenses for displaced businesses, farms and non-profit organizations.	Actual expenses (Sec. 202(a))	
4		Payment in lieu of actual expenses (Sec. 202(c))	
5	Replacement housing payments for homeowners (Sec. 203)		
6	Rental assistance payments (Tenants and certain others)(Sec. 204(l))		
7	Down payment assistance (Tenants and certain others)(Sec. 204(2))		
8	Last resort housing (Sec. 206(a))		
9	Subtotal (Sum of lines 1 thru 8)		
10	Administrative costs in carrying out relocation program (Including cost of relocation advisory services provided under Section 205 of the Act)		
11	TOTAL (Sum of lines 9 and 10, column (b) only)		
12	TOTAL AMOUNT PAID FROM FEDERAL FUNDS THIS FISCAL YEAR		
13	TOTAL AMOUNT PROJECTED FOR NEXT FISCAL YEAR		
14	TOTAL AMOUNT PROJECTED FOR NEXT FISCAL YEAR TO BE PAID FROM FEDERAL FUNDS		

**SECTION II -- REAL PROPERTY ACQUISITION SETTLEMENTS COMPLETED**

	ITEM	NUMBER OF PARCELS (a)	COMPENSATION PAID (b)
15	Acquired by negotiation <sup>1/</sup>		\$
16	Acquired by condemnation <sup>2/</sup>		
17	TOTAL (Sum of lines 15 and 16)		
18	TOTAL AMOUNT PAID FROM FEDERAL FUNDS		\$

<sup>1/</sup> Negotiated tracts include all tracts acquired by any method other than condemnation for reason of price disagreement.

<sup>2/</sup> Include only tracts condemned because of price disagreement.

REMARKS

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ER-405-1-2  
Change 11  
12 Aug 80

<b>ACQUISITION PROGRESS REPORT</b> (ER 405-1-11 and EP 405-1-2)		TO: HQDA (DAEN-REP-S) WASH DC 20314		DIVISION <b>CC 1</b>		REQUIREMENTS CONTROL SYMBOL (DAEN-RE-1(R1))	
				DISTRICT <b>CC 2</b>		AS OF DATE <b>CC 23-24</b>	
TYPE OF REPORT <input type="checkbox"/> MILITARY <input type="checkbox"/> CIVIL		<input type="checkbox"/> INITIAL <input type="checkbox"/> RECURRING		<input type="checkbox"/> REV. FINAL <input type="checkbox"/> FINAL ← <b>CC 80</b>		NAME AND LOCATION OF PROJECT <b>CC 4-5, 50-73, AND 74-79</b>	
MILITARY ACQUISITION				CIVIL ACQUISITION			
DIRECTIVE NUMBERS <b>CC 9-13</b>		DIRECTIVE DATES <b>CC 14-19</b>		TYPE OF ACQUISITION <b>CC 3</b>		ENTIRE PROJECT <input type="checkbox"/>	
				DA ACQUISITION LOCAL ACQUISITION—LATER CONVEYANCE TO U.S.— REIMBURSEMENT BY U.S. <input type="checkbox"/>		THIS REPORT <input type="checkbox"/>	
				LOCAL ACQUISITION—LATER CONVEYANCE TO U.S.— NO REIMBURSEMENT BY U.S. <input type="checkbox"/>		<input type="checkbox"/>	
PURPOSE				TITLE AND DATE OF CONGRESSIONAL AUTHORITY			
DESIGN MEMORANDA				DATE		AREA AUTHORIZED (Dam site, Reservoir Area)	
				DATE		AREA AUTHORIZED (Dam site, Reservoir Area)	
ACQUISITION FOR: <b>CC 3</b> <input type="checkbox"/> ARMY <u>Command</u> <input type="checkbox"/> AIR FORCE <u>Command</u> <input type="checkbox"/> Other Federal Agency				DATE OF LETTER TO LOCAL INTEREST ACCEPTING ASSURANCE (Local coop only)			
COMPLETE PROJECT REQUIREMENTS							
		CURRENT PERIOD			PROGRESS TO DATE		
		TRACTS	ACRES	DOLLARS (Land only)	TRACTS	ACRES	DOLLARS (Land only)
1. ESTIMATED TOTAL TO COMPLETE ENTIRE PROJECT (Civil)							
2. TOTAL AUTHORIZED (Military)—PRESENT ACQUISITION (Civil)							
A. FEE BY PURCHASE, CONDEMNATION OR TRANSFER							100 00
B. LESSER INTERESTS BY PURCHASE, CONDEMNATION OR TRANSFER							600 00
C. PUBLIC DOMAIN LANDS BY WITHDRAWAL							200 00
D. PUBLIC DOMAIN LANDS BY TEMPORARY USE PERMIT							300 00
E. OTHER PUBLIC LANDS BY TEMPORARY USE PERMIT							400 00
F. LEASEHOLDS							700 00
<b>CC 21-22</b> ↓ <b>CC 25-46</b> →		CURRENT PERIOD—ESTATE ACQUIRED					
		FEE <b>CC 20</b>		LESSER INTEREST <b>CC 20</b>		LEASE—USE PERMIT <b>CC 20</b>	
		TRACTS	ACRES	DOLLARS	TRACTS	ACRES	DOLLARS
PURCHASE							
3. OPTIONS ACCEPTED		101 80			601 80		
4. CLOSINGS COMPLETED							
CONDEMNATION							
5. COMPLAINTS FILED							
6. ORDER OF POSSESSION ENTERED							
7. DECLARATION OF TAKING FILED		102 80			602 80		
8. DEFICIENCIES DEPOSITED ON AWARDS AND STIP. FOR D/T		104 80			604 80		
9. AWARDS AND STIP. DEPOSITED FOR STRAIGHT CONDEMNATION		103 80			603 80		
10. FINAL JUDGMENT ENTERED							
LEASE							
11. ACQUIRED BY NEGOTIATION							701 80
12. ACQUIRED BY CONDEMNATION							702 80
PERMANENT TRANSFER							
13. POSSESSION OBTAINED		105 80					
14. ACQUISITION COMPLETED							
WITHDRAWAL FROM PUBLIC DOMAIN							
15. POSSESSION OBTAINED							207 80
16. ACQUISITION COMPLETED							
TEMPORARY USE							
17. TEMPORARY USE OBTAINED							408 80
							308 80
PROGRESS TO DATE							
PURCHASE							
18. OPTIONS ACCEPTED		101			601		
19. CLOSINGS COMPLETED							
CONDEMNATION							
20. COMPLAINTS FILED							
21. ORDER OF POSSESSION ENTERED							
22. DECLARATION OF TAKING FILED		102			602		
23. DEFICIENCIES DEPOSITED ON AWARDS AND STIP. FOR D/T		104			604		
24. AWARDS AND STIP. DEPOSITED FOR STRAIGHT CONDEMNATION		103			603		
25. FINAL JUDGMENT ENTERED							
LEASE							
26. ACQUIRED BY NEGOTIATION							701
27. ACQUIRED BY CONDEMNATION							702
PERMANENT TRANSFER							
28. POSSESSION OBTAINED		<b>105-WITHIN DOD 106-OUTSIDE DOD 605-WITHIN DOD 606-OUTSIDE 05 OR 06</b>					
29. ACQUISITION COMPLETED							
WITHDRAWAL FROM PUBLIC DOMAIN							
30. POSSESSION OBTAINED							207
31. ACQUISITION COMPLETED							
TEMPORARY USE							
32. TEMPORARY USE OBTAINED							408
							308
REMARKS: Annotations above indicate the following:  1. Numbers reflect codes for the type of estate and method of acquisition; i.e., 10180 means a fee estate being acquired by negotiation in FY 1980.  2. "cc" numbers correspond to the data element card column location on the punch card.							



EP 405-1-12  
 Change 11  
 12 Aug 80

CODES USED FOR ACQUISITION PROGRESS REPORT

\*

<u>Element</u>	<u>Term</u>	<u>Code</u>
Department Code (cc 3)	Army - Military	1
	Army - Civil Works:	
	Corps Acquisition	2
	Local Acquisition, Later Conveyance to US, Reimbursement by US	3
	Local Acquisition, Later Conveyance ,to US, No Reimbursement by US	4
	Air Force	5
	Energy Research and Development Administration (ERDA)	6
	National Aeronautics and Space Administration (NASA)	7
	National Science Foundation	8
	Other Agencies	Ø
	Department of Energy	A
	Department of Defense	B
	Type of Estate (cc 20)	Fee
Public Domain Lands by Withdrawal		2
Public Domain Lands by Temporary Use Permit		3
Temporary Use (other Federal land)		4
Temporary Use (private land)		5
Easement		6
Inlease		7

Figure 14-9a

ER 405-1-12  
Change 11  
12 Aug 80

<u>Element</u>	<u>Term</u>	<u>Code</u>	
Method of Acquisition (cc 21-22)	Authorized for Acquisition	ØØ	
	Negotiated Purchase	Ø1	
	Condemnation/Declaration of Taking Filed	Ø2 Ø3	
	Condemnation/Straight Condemnation/Deficiency Payment Involved	Ø4	
	Transferred from within DOD	Ø5	
	Transferred from outside DOD	Ø6	
	Withdrawal from Public Domain	Ø7	
	Use Permit	Ø8	
	Reassignment within same Department	Ø9	
	Reservation of Easement	1Ø	
	Change Code (cc 80)	Plus. Used to add a new installation or project (a new keyword) to the master file. Punch all applicable data fields on the card.	F
		Change. Used to change data in cc 25-27 on a record (line item) for an installation or project already on the master file. Punch the keyword in cc 1-24, all of the remaining applicable data fields on the balance of the card, and the "C" change code in cc 80.	C
		Delete. Used to delete records (line items) from the master file. Punch the keyword in cc 1-24 and the "D" change code in cc 80.	D
		Final. Used to finalize reporting when all acquisition activity is completed (including closings completed and final judgments rendered) at an installation or project. Punch a card containing the keyword in cc 1-24 and the "F" change code in cc 80 for each record (line item) on the master file for that installation or project.	F *

Figure 14-9b

ER 405-1-12  
 Change 17  
 30 Apr 82

\*

DISPOSAL REPORT CODES FOR KEY WORD

<u>Department Code</u>	<u>Department Type</u>
1	Army Industrial
2	Army Command
4	Civil Works
5	Air Force Industrial
6	Air Force Command
8	Department of Energy
9	National Aeronautics and Space Administration
<u>Status Code</u>	<u>Installation Status</u>
1	Entire Installation Inactive
2	Portion of Installation Inactive
3	Entire Installation Excess
4	Portion of Installation Excess
5	Portion of Installation Inactive and a Portion Excess

Examples:

An Army industrial report showing a portion inactive will be coded 12.

An Army command report showing a portion of the installation inactive and a portion excess will be coded 25.

\*

Figure 14-10

14-216

\*

Agency - Transferee Identification for Disposal Reporting

AC/W - Department of Army, Civil Works  
AF - Department of the Air Force  
AGRI - Department of Agriculture  
ARMY - Department of the Army, Military  
COMM - Department of Commerce  
DC - District of Columbia  
DOE - Department of Energy  
FAA - Federal Aviation Administration  
FHA - Federal Housing Administration  
GSA - General Services Administration  
HHS - Department of Health and Human Services  
INT - Department of the Interior  
JUST - Department of Justice  
NASA - National Aeronautics and Space Administration  
NAVY - Department of the Navy  
ST - Department of State  
TREA - Department of the Treasury  
TVA - Tennessee Valley Authority  
USCG - United States Coast Guard  
USMC - United States Marine Corps  
VA - Veterans Administration

Figure 14-11

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FOR REAL ESTATE REPORTING SYSTEMS -- LEASE AND ALLOCATIONS, OUTGRANT, DISPOSAL  
 USING SERVICE CODES AND ABBREVIATIONS

DEPARTMENT OF THE ARMY

<u>CODE</u>	<u>ABBREVIATION</u>	<u>NAME</u>
33	ABMDO	Ballistic Missile Defense Systems Command
15	HQDA	Department of the Army, Headquarters
38	DCSP-MP	Deputy Chief of Staff for Personnel, Military Police Operating Agency
21	DCSP-LEM	Deputy Chief of Staff for Personnel, Office of Army Law Enforcement
24	MTMC	Military Traffic Management Command
12	ARMY NG	National Guard Bureau - Army
13	ARMY RES	Office Chief of Army Reserve
40	S/GEN	Surgeon General
01	ADJ GEN	The Adjutant General
25	AG-MEM	The Adjutant General, Casualty and Memorial Affairs Directorate
29	IG-AAA	The Inspector General and the U.S. Army Audit Agency
20	JAGC	The Judge Advocate General
42	CARA	U.S. Army Civilian Appellate Review Agency
22	USACC	U.S. Army Communications Command
31	USACSC	U.S. Army Computer Systems Command
17	ENGR-CIV	U.S. Army Corps of Engineers, Civil Works
30	USACER	U.S. Army Corps of Engineers, Coastal Engineering Research Center
18	ENGR-MIL	U.S. Army Corps of Engineers, Military
41	CIC	U.S. Army Criminal Investigation Command
32	FORSCOM	U.S. Army Forces Command
23	HSCOM	U.S. Army Health Services Command
34	INSCOM	U.S. Army Intelligence and Security Command
* 04	AMC-HQ	U.S. Army Materiel Command
08	AMC-ARRC	AMC, Armament Materiel Readiness Command
02	AMC-ARDC	AMC, Armament Research and Development Command
36	AMC-ALMS	AMC, Automated Logistics Management Systems Agency
37	AMC-AVRD	AMC, Aviation Research and Development Command
05	AMC-CERC	AMC, Communications and Electronics Materiel Readiness Command
11	AMC-DESC	AMC, Depot System Command
03	AMC-ERDC	AMC, Electronic Research and Development Command

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<u>CODE</u>	<u>ABBREVIATION</u>	<u>NAME</u>
* 15	AMC-ILCM	AMC, International Logistics Command
06	AMC-MICR	AMC, Missile Materiel Readiness Command
28	AMC-NRDC	AMC, Natick Research and Development Command
07	AMC-TARC	AMC, Tank Automotive Materiel Readiness Command
10	AMC-TEC	AMC, Test and Evaluation Command
09	AMC-TSAR	AMC, Test Support and Aviation Materiel Readiness Command
26	MEPCOM	U.S. Army Enlistment Processing Command
14	USMA	U.S. Army Military Academy
19	MDW	U.S. Army Military District of Washington
27	RC-DOD	U.S. Army Recruiting Command, DOD Recruiting
35	TRADOC	U.S. Army Training and Doctrine Command
39	WESTCOM	U.S. Army Western Command

\*

DEPARTMENT OF THE AIR FORCE

<u>CODE</u>	<u>ABBREVIATION</u>	<u>NAME</u>
52	AFC	Accounting and Finance Center
51	ADC	Air Defense Tactical Air Command
62	AFRC	Air Force Reserve
63	ROTC	Air Force Reserve, Officers' Training Corps
56	ANG	Air National Reserve
57	ATC-GEN	Air Training Command, Other than Recruiting Housing
58	ATC-R/HS	Air Training Command, Recruiting Family Housing
60	AAC	Alaskan Air Command
53	AFCS	Communications Center
71	SEC	Electronic Security Command
54	AFLC	Logistics Command
65	MAC	Military Airlift Command
72	PAF	Pacific Air Forces
68	SAC	Strategic Air Command
55	AFSC	Systems Command
73	IND	Systems Command - Industrial
66	TAC	Tactical Air Command
69	AFAC	USAF Academy
70	AFHQ	USAF Headquarters - General
67	AFS	USAF Space Command

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OTHER DEPARTMENTS AND AGENCIES

<u>Code</u>	<u>Abbreviation</u>	<u>Name</u>
81	DCA	Defense Communications Agency
85	DCAA	Defense Contract Audit Agency
83	DIA	Defense Intelligence Agency
77	DIS	Defense Investigative Service
84	DLA	Defense Logistics Agency
82	DNA	Defense Nuclear Agency
98	DOD-MISC	Department of Defense, Miscellaneous
80	DOE	Department of Energy
90	STATE	Department of State
88	NASA	National Aeronautics and Space Administration
89	NSF	National Science Foundation
87	NSA	National Security Agency
99	NWS	National Weather Service
95	USCG	U.S. Coast Guard
96	USMC	U.S. Marine Corps
97	NAVY	U.S. Navy

\*

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Figure 14-13 - Continued

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\* CODES USED FOR REAL ESTATE OUTGRANT REPORT

Department Code (cc 1, cards #1 and #2)

1	Army - Military
2	Army - Civil Works
3	Air Force
4	Department of Energy
5	National Aeronautics and Space Administration
6	Other

Change Code (cc 48, cards #1 and #2)

P	Addition. This code is used to add a new header or a new detail record to the file of active outgrants. When change code "P" is used, all applicable data fields in the card must be punched.
M	Modification. This code is used to modify data on active outgrants previously reported in cc 15-51 of card number 1 and cc 49-80 of card number 2 only. When change code "M" is used, all applicable data fields in the card must be punched.
T	Termination. This code is used to transfer a number 2 card entry from the active to the terminated file when an outgrant expires according to its own terms. When change code "T" is used, data cannot be changed; the code merely drops an entry from the active file and places it in the terminated file. When change code "T" is used, only cc 1-48 need be punched.
W	Withdrawal. This code is used to change data in cc 49-80 of card number 2 and to simultaneously transfer the corrected entry to the terminated file. The termination date should reflect when the outgrant was terminated. When change code "W" is used, all applicable data fields in the card must be punched.
D	Deletion. This code is used to delete a detail entry or an entire installation from the active or terminated file. This code is used only with card number 2. If an entire installation is to be deleted, each individual detail entry under the installation must be deleted. This will automatically delete the installation header record. When change code "D" is used only cc 1-48 need be punched.

\*

Type of Installation Code (cc 49, card #1)

1	Command installation
2	Industrial installation

\* Type of Grant Code (cc 49, card #2)

- 1 Lease
- 2 Easement
- 3 License (also includes consents)
- 4 Permit (to another government agency)

Purpose Code (cc 52, card #2)

- A Agriculture. Grants for agricultural use including the growth of hay.
- R Banking. Grants issued in connection with the operation of a bank, branch bank, or banking facility.
- B Education. Grants for educational purposes.
- C Fish and Wildlife. Grants to federal or state agencies for fish and wildlife conservation.
- D Grazing. Grants of grazing rights.
- E Housing. Grants for housing.
- F Industrial-Private Manufacturing. Grants of industrial facilities for industrial or manufacturing purposes.
- G National Guard. Grants to states for National Guard training, activities.
- M Public Park and Recreation. Grants to the government, states, counties, or other political subdivision that permit the public to use the granted area for public park and recreation purposes (Priority 1, ER 405-2-835).
- K Recreation, Commercial. Grants to profit making organizations for commercial recreation purposes (Priority 1, ER 405-2-835).
- L Recreation, Private. Grants for private recreation (Priority 4, ER 405-2-835).
- N Recreation, Quasi-Public. Grants for recreational purposes to nonprofit organizations, such as the Boy Scouts, Girl Scouts, Camp Fire Girls, churches, etc., that restrict the use of the granted area to the grantee or members of the grantee's organization.
- H Rights-of-Way. Grants of easements and licenses permitting the use of federally-controlled land for road, utility, and other rights-of-way. \*

Figure 14-14 - continued

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\* P Storage. Grants for storage purposes.

Z Other. All other grants.

Recreation Code (cc 79, card #2)

6 A recreation lease that includes a cost-sharing clause.

Payment Code (cc 80, card #2)

T The outgrant specifies a term rental or a one-time payment.

B A benefit other than rental will pass to the government. \*

Figure 14-14 - continued

14-224

REAL ESTATE OUTGRANT PUNCH CARD FORMAT - (ER 405-1-11 and EP 405-1-2)																																																RCS: DAEN-RE-3(R3)																															
DATA COMMON TO CARDS 1 & 2														INSTALLATION OR PROJECT NAME																																																																	
DEPT. CODE	DIVISION/DISTRICT CODE	INSTL. OR PROJECT NUMBER	CARD 2	CARD 1	NAME OF GRANTEE														CONTRACT NUMBER			CHANGE CODE	GRANT TYPE	INSTL STATE OR COUNTY CODE	USING SERVICE CODE	PURPOSE	EFFECTIVE DATE				TERMINATION DATE				ACRES	TENTHS	ANNUAL RENTAL RECEIVED	RECR CODE	PAYMT CODE																																								
																			IDENTIFIER	TYPE	FY						CASE NO.	Y	M	D	I	Y	M	D						I																																							
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80
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ENG FORM 4476-R, Oct 82

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(Proponent: DAEN-REP-S)

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USACE\_ESM/T007972  
 Figure 14-15

ER 405-1-12  
 Change 19  
 20 Jan 83

ER 405-1-12  
 Change 21  
 1 Nov 83

\*

REAL ESTATE REPORTING BY ELECTRONIC DATA TRANSFER

1. The periodic changes to each HQUSACE Real Estate status reporting system may be submitted electronically to the U.S. Army Engineer Automation Support Activity (EASA) computer.
2. Coordination between each Real Estate reporting office and its associated computer center will be required to establish local procedures to accomplish the data transfer. Since FOA computer centers have previously sent files to EASA for other HQUSACE systems, the procedure should be familiar. However, a sample JCL (Job Control Language) is shown at paragraph 5. Techniques for creating the files to be sent should be determined locally, but use of an appropriate text-editing routine for direct data entry is recommended.
3. A listing of the card images transmitted should be printed at the sending office. EASA will print a copy of the file received for HQ USACE. Each transmission must have a header card containing the Division or District code; Quarter Date, (YYMMDD); System Abbreviation; and the Transmission Date, (YYMMDD). See sample below.
4. Files have been established at EASA to store the input for the five systems. The system names, abbreviations, and catalog file streams are:

<u>System</u>	<u>System Abbreviation</u>	<u>Catalog File Stream</u>
Real Estate Outgrants	GR	P5GRPD/DATA/xx
Acquisition Progress Report	AC	P5AcPD/DATA/xx
Real Property Disposal	DP	P5DPPD/DATA/xx
Homeowners Assistance Program	HA	P5HAPD/DATA/xx
Relocation Assistance Payments	RE	P5REPD/DATA/xx

Replace XX with the appropriate reporting Division or District Code as shown in Figure 14-1.

Figure 14-16

\*

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ER 405-1-12  
 Change 21  
 1 Nov 83

- \* 5. A sample JCL for accomplishing the file transfer follows:

```

$      SNUMB
$      USERID  PASSWORD
$      IDENT   PASSWORD,REALESTAT, OUTGRANTS JAN 82
$      CONVER
$      DATA  IN
*HEADER* /B1/821231/GR/830105
FIRST UPDATE CARD IMAGE
SECOND UPDATE CARD IMAGE
THIRD UPDATE CARD IMAGE, ETC.
$      FILE    OT,D1S,5L
$      UTL2
$      FILE    D1,DIR
$      FILE    D3,D3R,10L
$      PRMFL   D2,W,SP5,GRPD/DATA/B1
FDEF D1,GFRC.
FDEF D2,GFRC.
FDEF D3,GFRC.
PROC REW D1 AND D2 AND D3.
PROC MCOPY D1 TO D3 IF. MCOPY D2 TO D3 1F.
PROC REW D1 AND D2 AND D3.
PROC COPY D3 TO D2 IF. REW D3.
PROC SDUMP D1 1F.
PROC CLOSE D1 AND D2 AND D3.
$      SYSOUT P*
$      ENDJOB
  
```

Change the underlined entries to your office codes, the system abbreviation, and date.

\*

Figure 14-16  
 Continued

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TO		REAL ESTATE SCHEDULE/COST AND PERFORMANCE - FISCAL YEAR 19 (ER 405-1-12)												REQUIREMENTS CONTROL SYMBOL DAEN-RE-10(R5)							
FROM		1st QUARTER				2nd QUARTER				3rd QUARTER				4th QUARTER				AS OF DATE			
CDR USACE (CERE-PR) WASH DC 10314-1000		UNITS		DOLLARS		UNITS		DOLLARS		UNITS		DOLLARS		UNITS		DOLLARS		UNITS		DOLLARS	
ACTIVITY		SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL	SCHED	ACTUAL
1	a																				
	b																				
2	a																				
	b																				
	c																				
3	a																				
	b																				
4	a																				
	b																				
5	a																				
	b																				
	c																				
6	a																				
	b																				
	c																				
7	a																				
	b																				
8	a																				
	b																				
9	a																				
	b																				
10	a																				
	b																				
11	a																				
12	a																				
13	a																				
14	a																				
15	a																				
16	a																				
17	a																				

(Proprietor: CERE-PR)

Page 1 of 2 Pages

EDITION OF AUG 86 IS OBSOLETE

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Figure 14-17

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ER 405-1-12  
 Change 27  
 1 Oct 88

\*

REAL ESTATE SCHEDULE/COST AND PERFORMANCE - FISCAL YEAR 19									
ITEM NO	ACTIVITY	1st QUARTER		2nd QUARTER		3rd QUARTER		4th QUARTER	
		UNITS SCHEDULED	DOLLARS ACTUAL	UNITS SCHEDULED	DOLLARS ACTUAL	UNITS SCHEDULED	DOLLARS ACTUAL	UNITS SCHEDULED	DOLLARS ACTUAL
a	PAYMENTS								
b	LAND								
c	RELOCATION ASSISTANCE								
d	DAMAGES								
e	RENTS								
REMARKS									

Page 2 of 2 Pages

Figure 14-17 (Cont'd)

(Reverse of ENG FORM 4564-R)

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TO:		FROM: (Division or District)		RCs: DAEM-RE-9(R7) QUARTER ENDING:				
REAL ESTATE PERSONNEL REAL ESTATE ADMINISTRATION ACTIVITIES (ER 405-1-12)		SECTION II - EQUIVALENT PERSONNEL OF TOTAL MANHOURS WORKED (CUMULATIVE)		GRAND TOTAL				
ITEM NO.	SECTION I - ACTIVITY	ARMY	AIR FORCE	SUB-TOTAL	CIVIL WORKS	*	*	*
1	PROJECT PLANNING							
a	PRE-AUTHORIZATION							
b	POST-AUTHORIZATION							
2	ACQUISITION							
a	ATTORNEY'S OPINIONS							
b	ALL OTHER							
3	CONDEMNATION							
4	INLEASING							
a	RECRUITING							
b	NON-RECRUITING							
5	APPRAISAL							
a	STAFF							
b	CONTRACT							
6	RELOCATION ASSISTANCE							
a	PL 91-646							
b	HOMEOWNERS ASSISTANCE PROGRAM							
c	EMPLOYEE RELOCATION ASSISTANCE							
7	COMPLIANCE INSPECTIONS							
a	MAJOR							
b	MINOR							
8	UTILIZATION INSPECTIONS							
a	MAJOR							
b	MINOR							
9	OUTGRANTS							
a	MAJOR							
b	MINOR							
10	DISPOSALS							
11	LOCAL COOPERATION							
12	TIMBER HARVESTING							
13	TEMPORARY PERMITS							
14	ENCROACHMENTS							
15	REAL ESTATE AUDITS							
16	OTHER ACTIVITIES							
17	DISTRICT OVERHEAD							
(CONTINUED ON REVERSE)								
TOTAL								

\*Insert agency for whom work is being performed  
\*Insert name of office and strength in "Remarks" on reverse.

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Personnel not accounted for elsewhere in the report.

\*

\*

ER 405-1-12  
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REAL ESTATE PERSONNEL REAL ESTATE ADMINISTRATION ACTIVITIES (Continued)										
SECTION III - AUTHORIZED SPACES			SECTION IV - ACTUAL STRENGTH							
			REAL ESTATE EXEC OFFICE	ACQUISITION BRANCH	APPRAISAL BRANCH	LEASING BRANCH	MANAGEMENT & DISPOSAL BRANCH	PLANNING & CONTROL BRANCH	FIELD AND/OR PROJECT OFFICES "	TOTAL
18	ARMY, DIRECT (O&MA)									
19	ARMY, REIMB (TIMBER-O&MA)									
20	AIR FORCE (MCA)									
21	CIVIL WORKS									
22	OTHER									
REMARKS										

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Figure 14-16 (Cont'd)

CHAPTER 15

Real Estate Resource Management

SECTION I. GENERAL

\*

15-1. Introduction

a. Purpose. This chapter provides an overview of the requirements of the Department of Defense Planning, Programming and Budgeting System (PPBS) and describes Real Estate budget formulation and execution within that context.

b. Scope. The information and procedures covered by this Chapter apply to activities funded by military appropriation or through reimbursable agreements with other agencies. The portion describes manpower addresses resources that emanate from the Civil Works program as well.

c. Applicability. This regulation is applicable to the Headquarters, U.S. Army Corps of Engineers (HQUSACE), and to the U.S. Army Corps of Engineers Divisions and Districts having real estate responsibilities.

d. References.

(1) Federal Property Management Regulations, Sub-chapter D, Section 101-21.

(2) AR 37-100-89, The Army Management Structure.

(3) AR 405-1 (being incorporated into AR 405-xx), Reimbursement for General Services Administration Space, Services and Facilities Outside the NCR.

(4) AR 405-5, Army and Air Force Basic Real Estate Agreements.

(5) AR 420-74, Natural Resources: Land, Forest and Wildlife Management.

SECTION II. PROCEDURES

15-2. Budget Formulation and Execution

a. Background. The budget for Real Estate activities is an expression of financial resources required to support this portion of

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USACE's mission and programs for a fiscal year. The budget evolves through a series of planning and programming actions that begin many years prior to execution year. Throughout that time, the program and budget is subject to change for a variety of reasons as it undergoes review at various levels. The budget finally presented is prepared in accordance with guidance from the Office of Management and Budget (OMB), the Office of Secretary of Defense (OSD), and the Department of Army (DA) and represents the best balance of programs that can be obtained at the level of resources made available. The process is dynamic but disciplined by a structured series of events that recur on an annual basis. Many of these events do not require input from the field; however, they are included in this section when necessary to clarify the environment in which the budget is formulated.

b. Formulation.

(1) The budget cycle (for USACE-controlled programs) begins with Army Guidance in August. This document is a broad statement of policy and strategy for a five-year period. In October, Program and Budget Guidance (PBG) issued to major commands (MACOMS) by HQDA provides parallel long range resource guidance that is used in preparation of the Program Analysis and Resources Review (PARR). The PARR is prepared at MACOM Headquarters level and is submitted to HQDA as part of the Program Objective Memorandum (POM). The POM covers the five outyears and provides the mechanism whereby resources for new initiatives and changes to existing programs can be introduced into the program and budget resourcing cycle. After all PARRs are considered by HQDA, resource guidance is issued to USACE based on DA corporate decisions reached during the POM building. During the year, there may be changes in these resource levels based on revised decision by OSD, DA, Congressional action, or other events that affect the size of the Federal and Department of Defense (DOD) Budget.

(2) Annually in May-June, the Field Operating Activities (FOAs) become involved when a request is sent to each Division/District for a three-year budget called the Command Operating Budget (COB). The three years covered are the current year, budget year and program year. (The program year is the first of the five POM outyears.) Refined PBG from DA will provide resource guidance to USACE and this is transmitted to the field along with instructions for COB preparation. Districts/Divisions prepare the COB and forward it to the Resource Management Directorate (CERM) who sends the Real Estate portion to the Programs Division, Directorate of Real Estate (CERE-P), where it is examined, analyzed and consolidated prior to presentation to CERM where further incorporation will take place for all USACE requirements prior to submission to DA.

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c. Execution.

(1) Actions that began many years earlier come into clear focus as the new fiscal (execution) year approaches. Prior to 1 October CERM requests CERE-P to provide proposed Annual Funding Program (AFP) distribution for the FOAs along with recommendations for quarterly allocation. This allocation is issued to the FOAs on a quarterly basis by Funding Authorization Document (FAD). Any requests for quarterly allocation adjustments are sent through Comptroller channels to CERM while requests for AFP are submitted through Real Estate channels to CERE-P. Requests should be submitted in writing with full justification.

(2) FOAs are encouraged to work closely with their supporting Finance and Accounting Office to ensure obligations are reported promptly and accurately and to become familiar with accounting data that supports the Integrated Command Accounting Report (ICAR) and the Data Element Management Accounting Report (DELMAR). These reports are used by CERE-P to monitor obligations, determine funding shortages/excesses, compare actual to plan, and for other management indicators. AFP is reviewed at mid-year on a corporate basis and any reprogramming takes place at this time. During the second half of execution year, a close check is kept on obligations. Any projected surplus is to be identified and reported to prevent the loss of expiring funds.

(3) Often, the Congress has been unable to erect enabling legislation prior to 1 October. In those cases, temporary authority is given in the form of a "Continuing Resolution Authority" (CRA). During the period of a CRA, fund use may be restricted. A CRA may state a rate or limit on spending, a time limitation, and may prohibit "new starts." However, lease contracts and real estate new program have not been restricted and may be obligated. The Real Estate program, including new program actions, is considered a continuing program rather than a "new start."

d. Conclusion. The preceding paragraphs provide a basic explanation and non-technical description of the cycle of events that influence most Real Estate funded activities. CERE-P is involved with this process to varying degrees depending on the level and depth of responsibility. Variations to this cycle of events and other unique aspects of each program are addressed below. Timing of events and requirements may be somewhat modified from year to year as dictated by OSD and HQDA.

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15-3. Real Estate Programs.

a. The Real Estate Directorate has financial responsibility for the following programs. AR 37-100-89 should be consulted if there are any questions regarding purpose of Army funds provided.

Title	Appropriation symbol	Program Element
RPMA - Army Real Estate Administration	21.2020	722894.M7
BASOPS Leases - GSA Rent	21.2020	722896.A
BASOPS Leases - Recruiting Station Leases	21.2020	871996.A
GSA delegated buildings	47x4542	N/A
RPMA - Harvesting & Disposal of Timber	21.2020	728012.27
RPMA - Agricultural & Grazing leases	21.2020	722894.K
Homeowners Assistance Fund	97X4090	2100/2200 2300/3200
Air Force RE Administration	57.3400	404970
Minor Construction Air Force	57.3300	321/351
Army National Guard Leases	21.2065	52589.M
Reimbursable agreements with other agencies	Various	N/A

b. These programs are briefly described below.

(1) Army Real Estate Administration: This account encompasses management and administration of real estate. It covers salaries and expenses of real estate personnel; project planning; real property acquisition expenses (mapping, appraising, title evidence, negotiation etc.); compliance inspections; utilization inspections; inleasing; outgranting; disposal activities; and miscellaneous real estate activities. The program provides for real estate administrative support for the DOD Recruiting Program, US Army Reserve, Army National Guard, and Army installations.

(2) BASOPS Leases (GSA Rent, formerly SLUC): This account provides funds for General Services Administration (GSA)-managed leases for those Corps activities located outside an Army installation. Cost of leasing GSA space includes a standard charge which is the direct cost of GSA leased space and associated services based on the Fair Appraisal Rating System (FAR) plus recurring reimbursable costs (the costs of non-standard items such as keeping the building open longer than normal business hours and guards). The FOA pays for GSA recurring reimbursables directly from funds received from HQUSACE. Tenant-requested modifications are considered non-recurring reimbursable costs and are paid out of mission funds. Additional details are at figure 15-1.

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(3) BASOPS Leases (Recruiting): CERE-P is responsible for budgeting and justifying the DOD recruiting facilities program. Estimates for the program are submitted by the FOAs on the Interactive Inleasing System (IIS) (or its successor). The IIS contains all inleasing records for the districts. These estimates are coordinated with the Acquisitions Division, Directorate of Real Estate (CERE-A), who contacts the four branches of the service to determine their requirements and reviews estimates from the FOAs. These estimates are combined with those for the GSA portion of the recruiting leasing program and submitted to CERM for inclusion in the PARR. Payment of the GSA Rent portion of the DOD recruiting leasing program is made by HQUSACE. The FOA pays for non-GSA leases, service contracts and GSA reimbursables (recurring and non-recurring) directly from funds received from HQUSACE.

(4) GSA delegated buildings. GSA has delegated maintenance and management of certain buildings to various DOD agencies including USACE. CERE-P is responsible for budgeting and paying full Rent to GSA for these buildings. Additional details are at figure 15-2.

(5) Harvesting & Disposal of Timber: This account encompasses administrative expenses of district and division offices designated to execute tinter-related actions including disposal of timber, standing timber, and timber products, as well as contract administration, inspection, staff supervision of harvesting of timber, and related personnel training costs. The timber harvest program is for Army only. Monies received from the sale of timber and lumber products are used to finance expenses incurred related to the economic production and sale of lumber and timber products. States share 40% of the net proceeds from installations located within their boundaries. Requirements to pay for expenses incurred are identified as "funded reimbursements." Beginning with the budget developed in fiscal year (Fy) 89, quarterly estimates for expenses and income will be identified by the FOAs and submitted to CERE-P in accordance with guidance provided by DA. Funding is provided FOAs on an annual basis by FAD.

(6) Agricultural Leasing and Grazing: The Corps is responsible for leasing of Army land for agricultural and grazing purposes. Monies received from leases for agricultural and grazing purposes may be used by military departments to cover administrative expenses for leasing and for financing of multiple land use programs. These receipts may also be used for maintenance, protection, repair or restoration work on leased land (erosion control, reseeding). Requirements to fund expenses are identified as "funded reimbursements." Beginning with the budget developed in FY 89, quarterly estimates for expenses and income will be identified by the FOAs and submitted to CERE-P in accordance with guidance provided by DA. Funding is provided FOAs on an annual basis by FAD.

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(7) Homeowners Assistance Fund, Defense: This fund provides assistance to DOD military and civilian employee homeowners by reducing their losses incident to the disposal of their homes when the military installation(s) at which they are employed are ordered to be closed or the scope of operations is reduced. The Homeowners Assistance Program (HAP) operates under a two-year biennial budget cycle. In May, CERE-P requests the districts to provide information on any known base closures/realignments and to submit estimates for any known HAP programs. Requests for information are also sent to the secretaries of Army, Navy and Air Force. The HAP budget is formulated based on this information and submitted to OSD through DA. Funds are issued annually, not quarterly, by CERE-P. All requests for increases should be directed to CERE-P. Funds are not normally provided for HAP under the CRA; therefore, FOAs should not obligate funds until a HAP FAD is received. Funds are distributed to districts based on requirements identified by districts in budget estimates provided in May.

(8) Air Force RE Administration: This account finances real estate administration expenses of district offices in connection with Air Force real estate activity and includes acquisition, management and disposal operations. Work is financed on a reimbursable basis. Funds are budgeted by Air Force based on information contained in the HQUSACE COB and knowledge extracted from Real Estate Planning Reports (REPR) submitted by the districts. During execution, FOAs are requested to submit the Current Year (CY) quarterly requirements which are consolidated and provided to Air Force. A Military Interdepartmental Purchase Request (MIPR) is then issued by the Air Force on a quarterly basis. The MIPR is accepted by CERM and sent to CERE-P for preparation of distribution to the FOAs. The FOA distribution is put directly on the Air Force MIPR. The MIPR is returned to CERM for transmittal to the FOAs. Requests for changes in both AFP and allocation should be sent to CERE-P. Surplus funds should be reported immediately and all unobligated funds should be returned at the end of the year. Adjustments to obligations that generate surpluses should be identified as they occur, with funds promptly returned.

(9) Minor Construction, Air Force: This account finances payments for land, deficiency judgments, settlement reimbursements, and damage payments for property acquired by the USACE for the Air Force. Upon Air Force request, the FOAs submit a REPR on property Air Force is interested in obtaining. The REPR is submitted directly to the Air Force with a copy to CERE-A. The Air Force then issues a real estate directive requesting the USACE to obtain this property at a specified price. The Directive is sent to CERE-A who sends copies to the FOA and CERE-P. The Air Force then provides funding through comptroller channels. When funding is received a FAD is sent to the FOA. Funds are for a period of five years at which time they are revoked if no

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obligations have been incurred. FOAs should insure that surplus funds are returned to CERE-P as soon as they are identified. If project funding expires before completion of the project or if initial estimates were incorrect, additional funds should be requested through CERE-A. Obligations are monitored by CERE-P on a quarterly basis. If funds are required for an upward adjustment to an expired account, FOAs have the authority to process the adjustment using "M" account funds without specific Air Force approval. FOAs should go through their F&AO for "M" account adjustments.

(10) Army National Guard: Army National Guard (ANG) funds are provided by direct allocation from the Comptroller of the Army (SAFM) to finance rental payments for national guard leases for approved buildings and land. The budget is developed by ANG although FOAs input estimates as a notation in the COB. Prior to the beginning of the FY, HQUSACE provides ANG with a copy of the "Corps Army National Guard Records" produced from the IIS which reflects current ANG leases. Based on this listing and any anticipated acquisitions/deletions ANG provides funding information to SAFM. This funding is provided to CERM quarterly on a FAD. Based on FAD, CERE-P prepares distribution of funds to FOAs and submits to CERM for distribution. FDA AFP is based on COB estimates and information contained in the IIS lease detail by FOA. Surplus funds should be returned to CERE-P as soon as they are identified. Funding requests for other than leases must be identified separately, forwarded to CERE-P, and approved individually by ANG.

(11) Reimbursable agreements with other agencies: When an interagency agreement is signed which provides funding in advance, the agency involved will send a check and a reverse SF1080 directly to FOA in the amount of the agreement. This is the preferred method of reimbursement but actual details may vary according to the individual agreement.

#### 15-4. Allocation of Manpower Authorizations

a. The manpower allocation process begins in the spring of the CY with final recommended allocations provided prior to the beginning of the new fiscal year.

b. The primary tool used by CERE-P is ENG Form 4564 input, both historical and projected. Because there are many activities for which work is performed but no work units are counted, districts are given the opportunity to state requirements for administrative activities separately.

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c. Scheduled work units are processed through the Manpower Distribution Report feature of the Performance Analysis of Costs, Units, and Manpower System (PACUMS), which produces total manpower requirements. These numbers are compared across fiscal years to determine manpower changes. ENG Form 1685 report is used to identify current actual utilization. Utilization for the current fiscal year is verified by reviewing remaining workload and schedule accomplishments. Manpower changes from the Manpower Distribution Report are then applied to current year utilization. For the Civil Works program, output from the Force Configuration (FORCON) model is an important indicator of manpower requirements. Details of FORCON are available from your local Programs Management Office (PMO). Divisions and Districts are expected to work closely with PMOs to develop input for the annual FORCON submission and ensure that ENG Form 4564 input is fully consistent with FORCON. Unusual situations are discussed with HQUSACE Real Estate personnel and Division Planning and Control (P&C) Chiefs to validate requirements. Based on this analysis, a recommended staffing level is proposal for OMA, MCA and Civil Works. These figures are coordinated with Division P&C Chiefs and then provided to CERM.

d. If the total recommended allocation is less than or equal to current levels, the recommended allocation becomes final and is incorporated into vouchers prepared by CERM. If the recommended allocation is greater than current levels, the difference is negotiated within the HQUSACE Resource Management Advisory Committee.

e. Vouchers provided to Division offices do not separately identify the recommended distribution to Real Estate. Those decisions are made by Division and District Commanders consistent with their priorities for mission accomplishment. CERE-P will provide the recommended distribution to division offices for information purposes.

f. All spaces for support functions outside of Real Estate at districts and operating divisions are either CW or MCA and controlled by CW and E&C Directorates. For that reason those spaces are not included in the distribution provided by CERE-P to Division offices.

g. The current system used by the Real Estate community to establish manpower requirements will continue to be used until a manpower staffing standard has been approved by HQDA for the USACE Real Estate function.

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## FIGURE 15-1

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## Formulation and Execution of BASOPS Leases (GSA Rent)

## a. Formulation.

(1) CERE-P is responsible for budgeting and justifying GSA Rent for the military portion of the USACE under this program element. National Guard and the European Command are also budgeted by CERE-P. All other Army MACOMs and agencies budget and justify their requirements separately. Each year GSA issues Rent estimates based on space currently assigned (as of March 15) to the USACE. These estimates are developed 18 months prior to execution year and are used as the base for computing budgetary requirements for space and related services. At the same time, GSA provides information to assist CERE-P in developing estimates for any requirements not included in the GSA Rent estimate.

(2) They also provide inflation factors which enable CERE-P to estimate charges for recurring and non-recurring reimbursable services. This information is itemized by building and includes the classification of the space, square footage, rent rate per square foot and total estimated cost for the year. (The GSA rate-setting system provides an appeal procedure if the USACE determines rates to be inaccurate or excessive. The procedures are specifically addressed in Federal Property Management Regulations.) The cost of the current space assignments is guaranteed not to increase in the budget year. The cost of projected requirements is not guaranteed because the actual rate can only be established after the building in which the space will be provided has been identified. CERE-P send a copy of the Rent Estimate to the FOAs and requests information on increases/decreases to existing leases and anticipated additions/deletions in space requirements. Based on the GSA information and data provided by the FOAs, CERE-P develops an estimate for GSA Rent and related services which is submitted to CERM for inclusion in the COB.

## b. Execution.

(1) Although CERE-P programs and budgets only for its portion of GSA rent as stipulated in the preceding paragraph the Headquarters is responsible for payment of the entire GSA rent bill for all Army activities. Army MACOMs will provide funds for their portion of the Rent bill. They must pay for all reimbursable services. Rent bills are issued quarterly, in advance, with adjustments in arrears. In addition, there is a year-end reconciliation billing which is prepared ten days before the end of the fiscal year to make final adjustments For the fiscal year. Rent bills contain the same level of detail as the Rent Budget Estimate. Bills and payments should not be adjusted to \*

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correct errors in estimates or actual costs. GSA Form 2972 should be used to request adjustments to GSA quarterly bills. If adjustments are not made within two quarters, GSA Form 2992 should be submitted to withhold payment.

(2) Civil-funded USACE leases are financed by FOAs.

(3) The Ft Worth District has the responsibility for the financial mechanics of the Rent program and makes all collections as well as payments directly to GSA on behalf of HQUSACE. CERE-P receives a computer tape and three hard copies of the GSA quarterly Rent bill. The tape is sent via computer to the FOAs who retrieve data pertinent to them. FOAs send an SF#1080 for the Civil portion to Ft Worth along with a summary listing showing the allocated charge between military and civil. A copy of the summary listing is sent to CERE-P along with copies of any forms sent to GSA for correction to the bill. Following are some commonly used GSA form which are available from the Regional GSA Public Building Service office:

- GSA 2957 - Used to request recurring or non-recurring type services from GSA. Form contains fund cite and certification of fund availability. Form is sent to GSA. GSA estimates cost and returns the form to the FOA where the amount is certified as a valid obligation and sent back to GSA

- GSA 2970 - Used for adjustments or corrections of the agency/bureau code, billed office address code, and the agency/bureau name.

- GSA 2972 - Used to request adjustments to space and dollars on the quarterly bills. The original is sent to GSA region with a copy to CERE-P.

- GSA 2992 - Used to withhold payment when adjustments have not been made by GSA. The original is forwarded to CERE-P along with information to support non-payment.

- GSA 2992-A Used by GSA to reply to GSA 2992.

(4) Requests for increased GSA space must have prior approval from the Director of Real Estate (CERE-ZA). Requests should be submitted in writing with full justification to CERE-ZA.

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FIGURE 15-2

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Formulation and Execution for GSA Delegated Buildings

a. Formulation: In March/April GSA requests an estimate of costs for delegated buildings. This request is transmitted to the KY CERE-P. The FOAs respond and this information is analyzed and consolidated for reply to GSA.

b. Execution.

(1) Funds will be provided by GSA through an allocation account established at the Department of Treasury. These funds will be received by CERM-B and distributed to the FOAs based on information provided by CERE-P. Funds are available for obligation as follows:

Real Property Operations - one fiscal year  
Rental of Space - one fiscal year  
Recurring Repairs - Available until obligated  
but any end-of-year unobligated balance will be  
reapportioned and made available in subsequent year.

(2) HQUSACE will be required to submit monthly reports to GSA which reflect expenditures by activity (SF 133, Report on Budget Execution) as well as an end of year report (TFS 2108 Year-End Closing Statement). FOAs will submit information to HQUSACE who will consolidate and report to GSA.

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## FIGURE 15-1

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(2) They also provide inflation factors which enable CERE-P to estimate charges for recurring and non-recurring reimbursable services. This information is itemized by building and includes the classification of the space, square footage, rent rate per square foot and total estimated cost for the year. (The GSA rate-setting system provides an appeal procedure if the USACE determines rates to be inaccurate or excessive. The procedures are specifically addressed in Federal Property Management Regulations.) The cost of the current space assignments is guaranteed not to increase in the budget year. The cost of projected requirements is not guaranteed because the actual rate can only be established after the building in which the space will be provided has been identified. CERE-P send a copy of the Rent Estimate to the FOAs and requests information on increases/decreases to existing leases and anticipated additions/deletions in space requirements. Based on the GSA information and data provided by the FOAs, CERE-P develops an estimate for GSA Rent and related services which is submitted to CERM for inclusion in the COB.

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Real Property Operations - one fiscal year  
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CHAPTER 16

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REAL PROPERTY ACCOUNTABILITY

SECTION I. GENERAL

16-1. Purpose. This chapter provides policy and procedures for the accountability of civil and military real property under the control of the U.S. Army Corps of Engineers (USACE). It does not pertain to the financial accounting of real property or to the use, condition, care, custody, or safekeeping of real property.

16-2. Applicability. This chapter applies to USACE Commands assigned a real estate mission.

16-3. References. Policy and procedures in this chapter are based on guidance contained in AR 420-17, Real Property and Resource Management, and AR 735-5, Basic Policies and Procedures for Property Accounting. This chapter should be used in conjunction with those regulations since they provide the basic policy guidance from which USACE policy and procedures are developed.

16-4. Explanation of Terms.

a. Accountability. Accountability is the obligation of a designated person to keep an accurate record of property. It is primarily concerned with maintaining formally prescribed records.

b. Real Property. Real property consists of lands and capital improvements to land. It includes, but is not limited to, land; lesser interests in land; buildings, other than portable ones; structures; roads; railways; permanent utility systems. \*

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\* c. USACE-Controlled Real Property.

(1) Civil. Real property acquired or constructed for USACE civil works activities.

(2) Military. Military real property under the administrative control of USACE.

(a) Space acquired for DOD recruiting facilities is considered USACE-controlled military real property for the purposes of this chapter.

(b) Real property acquired or constructed for a military command is accounted for by that command, except as stated in paragraph 16-6b. The using service or command retains custody and accountability of excess real property until it is disposed, as stated in AR 405-90. Exceptions to that policy must be approved by HQUSACE (CERE-M). In those instances when excess military real property is transferred to USACE pending disposal, it is considered USACE-controlled military and the district's real property accountable officer would account for it until its disposal.

16-5. Accountability and Responsibility. Accountability pertains to maintaining formally prescribed property records. It is an obligation officially assigned to a specific person. Responsibility results from the possession of property. It involves a basic obligation for the proper use, care, custody, and safekeeping of property.

## SECTION II. POLICY

### 16-6. Policy.

a. All USACE-controlled real property will be accounted for; i.e., all fee, easement, and leasehold interests as well as permanently affixed structures and other capital improvements acquired for the civil and military activities of USACE. Leasehold interests with an annual rental less than \$1,000 need not be accounted for, except leases for land only.

b. USACE, in its capacity as executive agent for the DOD Recruiting Facilities Program, will account for real property acquired for recruiting offices and main stations of the military services.

c. The accountability will be maintained by the Real Estate Division in the USACE Command assigned the real estate mission for the area where the property is located. It will be continuous from the time of acquisition or acceptance of the real property by USACE until disposal or transfer by USACE. \*

\* 16-7. Real Property Accountable Officer (RPAO).

a. The USACE commander assigned a real estate mission will designate in writing a person from the Real Estate Division, other than the Chief of Real Estate, to serve as the real property accountable officer. The appointing commander may determine any qualifications felt necessary for the position.

b. The RPAO will maintain the records designated in this chapter and such other records as may be necessary to account for USACE real property or to support record entries.

### SECTION III. RECORDS

16-8. Records.

a. DD Form 1354, Transfer and Acceptance of Military Real Property, will be used by the Real Estate Division to accept accountability of real property transferred from Army or Air Force military to USACE-controlled civil or military. It will be the accountability document for such property. DD Form 1354 will also be used by the Real Estate Division to transfer accountability of USACE-controlled real property to Army or Air Force military or to other federal agencies. DD Form 1354 is prescribed in AR 420-17.

b. ENG Form 1069, Acquisition Docket Sheet, will be the accountability document for USACE-controlled land prior to approval of the real estate audit. After audit approval, ENG Form 1019, Tract Register, will be the accountability document for USACE-controlled land. Both forms are prescribed in Chapter 13 of this regulation. An automated equivalent of either form may be used. Prior to usage, the automated equivalent must be submitted to the local forms management officer (FMO) for approval.

c. ENG Form 5012-R, Real Property Record, Figure 16-1, will be used by the RPAO to record data pertaining to all USACE-controlled real property other than land. It will be the accountability document for such property. A separate form will be completed for each individual building, structure, and facility. A single form may be used, if desired, for multiple items of an identical nature at a project; e.g., anchored picnic tables, trailer pads, pumphouses, etc. Data for each real property record may be maintained in an automated format if desired (e.g., REMIS/RFMIS) rather than on ENG Form 5012-R. An automated equivalent of the form may be used provided it is submitted to the local FMO for approval prior to use. Instructions for ENG Form 5012-R are in paragraph 16-10.

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\* 16-9. Inventory.

a. AR 735-5 specifies that real property must be physically inventoried at least once every three years.

(1) An inventory should be performed by the RPAO to initially establish the accountability records. The RPAO should ensure the results of the inventory are reconciled with the financial accounting records.

(2) Utilization inspections of civil works real property, surveys under Executive Order 12512, and utilization inspections of facilities and office space, specified in paragraphs 8-12, 8-13, and 8-14 of this regulation, may be subsequently used to satisfy the periodic inventory requirement of AR 735-5 for accountability purposes. Similarly, acquisitions and disposals of land may be verified through the real estate audit procedures specified in Chapter 13 of this regulation.

(3) The RPAO should be satisfied that the accountability records accurately reflect the real property holdings of the USACE Command.

b. A physical inventory of USACE-controlled real property should be performed when there is a change of RPAO. The incoming RPAO will sign a certification indicating he or she has received the property accountability records from the outgoing RPAO and has accepted accountability for the property so listed. The original of the certification will be retained in the files of the Real Estate Division.

16-10. Instructions for ENG Form 5012-R.

a. Real property will be recorded at acquisition or construction cost, or best estimate if necessary, subject to reconciliation with the financial accounting records. Changes as a result of such reconciliation may be posted as a separate line entry if desired.

b. A detailed listing of installed fixtures and equipment necessary for the functional use of a building is not required; however, the capitalized cost of such items must be included in the cost of a building. Subsequent capital improvements and decreases will be posted. Non-capitalized repairs or replacements will not be posted.

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\* c. Complete the form as follows:

(1) Real Property Account Number: The RPAO will assign a real property account number to each project or activity. The number applies to the project or activity; it is not changed when there is a change of personnel.

(2) GSA Control Number: Enter the number for the project or installation that is reported in Block 10 of GSA Form 1166, Annual Report of Real Property Owned By or Leased To The United States.

(3) District: Enter the name of the USACE district responsible for the project or installation.

(4) Project: Enter the name of the project or installation.

(5) Description of Property: Enter a descriptor of the item of real property being reported on this record; e.g., Administration Building; Storage Building; Powerhouse; Roads and Bridges; etc.

(6) Classification of Property: If the item of real property being reported is a building, check the "Building" block and enter a code from Block 36 of GSA Form 1166 that best describes the building. If the item is a structure or facility, enter an identifying name using those listed in Block 45 of GSA Form 1166 as a guide.

(7) Part II, Acquisition: Enter information pertaining to the acquisition of the item of real property being reported on this record; e.g., Building constructed and accepted for occupancy; 1960; \$32,000. Roof replaced (capital improvement); 1980; \$10,000.

(8) Part III, Disposal: Enter information pertaining to the disposal of the item of real property being reported on this record; e.g., Building sold and removed from property; Sale; 1990; \$42,000.

(9) Part IV, Summary of Cost: Self explanatory.

(10) Part V, Dates: Self explanatory.

d. ENG Form 5012-R may be destroyed two years after disposal of the item of real property being reported on the record.

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<b>REAL PROPERTY RECORD</b> <i>(ER 405-1-12)</i>		REAL PROPERTY ACCOUNT NUMBER	GSA CONTROL NUMBER <i>(From GSA Form 1166)</i>	
<b>PROJECT IDENTIFICATION</b>				
DISTRICT	PROJECT			
<b>REAL PROPERTY DATA</b>				
<b>PART I - DESCRIPTION</b>				
DESCRIPTION OF PROPERTY				
CLASSIFICATION OF PROPERTY <i>(From GSA Form 1166)</i>				
<input type="checkbox"/> BUILDING CODE _____ <input type="checkbox"/> OTHER FACILITY _____				
<b>PART 11- ACQUISITION</b>				
ITEM <i>(Continue on reverse if necessary)</i>		YEAR	COST	
<b>PART III- DISPOSAL</b>				
ITEM <i>(Continue on reverse if necessary)</i>		METHOD	YEAR	COST
<b>PART IV- SUMMARY OF COST</b>			<b>PART V- DATES</b>	
TOTAL PART II	\$ _____	_____ THIS FORM PREPARED		
LESS PART III	\$ _____	_____ RECONCILED WITH FINANCE		
REPORTABLE COST	\$ _____	_____ AND ACCOUNTING RECORDS		
		_____ LAST PHYSICAL INVENTORY		
REMARKS				
<p><b><i>FOR ILLUSTRATION PURPOSES ONLY</i></b></p> <p><b>(Local reproduction authorized - blank masters available from local FMO)</b></p>				

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Figure 16-1. Real Property Record

DEPARTMENT OF THE ARMY  
U.S. Army Corps of Engineers  
Washington, DC 20314-1000

ER 405-1-12  
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CERE-R

Regulation  
No. 405-1-12

15 May 2000


Real Estate  
**REAL ESTATE HANDBOOK**

This change to ER 405-1-12, 20 November 1985, provides a revision of Chapter 7,  
Homeowners Assistance Program.

Remove Pages  
7-1 through 7-49

Insert Pages  
7-1 through 7-74

FOR THE COMMANDER:



RUSSELL L. FUHRMAN  
Major General, USA  
Chief of Staff

ER 405-1-12  
Change 34  
15 May 2000

CHAPTER 7  
HOMEOWNERS ASSISTANCE PROGRAM  
SECTION I. GENERAL

7-1. Purpose. This chapter sets forth the rules and procedures to be followed in the administration of the Department of Defense (DOD) Homeowners Assistance Program (HAP). The HAP is a special relief program available to eligible military and civilian employee homeowners. It provides some financial assistance to these homeowners when they are unable to sell their homes under reasonable terms and conditions because the closure, partial closure or reduction in scope of operations (hereafter referred to as closure) at a military installation so adversely affects the real estate market. HAP is neither a procurement program nor a land acquisition program. Although HAP does provide for acquisition of dwellings under certain circumstances, there is no governmental need for this property and the government must resell the property. HAP is not a claims program in an adversary sense and there is no provision for judicial review. Therefore, in order to carry out the intent of Congress, it is essential every effort be made to ensure that each applicant is treated fairly and receives the maximum benefit as quickly as practicable and with a minimum expenditure of time and money for administration. Reasonable doubts should be resolved in favor of the applicant.

7-2. Applicability. These procedures are applicable to Headquarters United States Army Corps of Engineers (HQUSACE), all major subordinate commanders and district commanders having military real estate responsibilities. This program has worldwide application; however, no properties in foreign countries may be acquired except certain property located on a base or installation. HAP applies to members of the Armed Forces of the United States, Federal civilian employees, other employees of a non-appropriated fund instrumentality who are U.S. citizens, and Coast Guard members, who meet the eligibility requirements. Temporary employees and independent contractors and their employees are not eligible.

7-3. Authority. Public law 89-754, Section 1013, (80 Stat. 1255, 1290), as amended, authorizes the Secretary of Defense, under specified conditions, to acquire title to, hold, manage, and dispose of, or, in lieu thereof, to reimburse for certain losses upon private sale of, or foreclosure against, any property improved with a one-/or two-family dwelling which is situated at or near a military base or installation which the Department of Defense has, subsequent to 1 November 1964, ordered to be closed in whole or in part. AR 405-16 delegates and authorizes the Chief of Engineers (COE) to administer, manage, and execute the HAP in accordance with applicable laws and regulations and further delegates authority to the COE to redelegate this authority to MSC and District Commanders and to their respective Chiefs of Real Estate. Such authority has been redelegated to the MSCs and Districts and their respective Chiefs of Real Estate.

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#### 7-4. Responsibilities.

a. ODCSRE. The Deputy Chief of Staff for Real Estate, (DCSRE), acting for the Chief of Engineers, has been delegated authority and responsibility for the administration of HAP. The Military Division, Office of the Deputy Chief of Staff for Real Estate (ODCSRE), as the central office for HAP, is responsible for supervision, interagency coordination, development of procedures, policy guidance, and acting as a congressional liaison. The Realty Services Division is responsible for development of policy and processing of appeals forwarded from the districts and Major Subordinate Commands (MSCs).

b. Major Subordinate Commands. MSCs have been delegated the authority to perform oversight and review of district program management, and based upon that review, or in response to specific requests, to provide local policy guidance to the districts and recommend program changes to ODCSRE. MSCs also are responsible for review of appeals that have not been resolved at district level, or forwarding those appeals to ODCSRE, if resolution cannot be reached at MSC level.

c. Districts. Districts designated by ODCSRE, and the Chiefs of their real estate divisions, have been delegated the authority to administer, manage and execute the HAP on behalf of all claimants in accordance with the provisions of this regulation. It is contemplated that the district will dispose of all cases, except appeal cases on which agreement cannot be reached with the applicant. Such appeal cases will be forwarded, in turn, to the MSC and ODCSRE for consideration, and if necessary, forwarded by ODCSRE to the Deputy Assistant Secretary of the Army for Installations and Housing (DASA(I&H)) for final decision.

#### 7-5. Funding.

a. Revolving Fund Account. The following special revolving fund accounts have been established: 97x4090 – Homeowners Assistance Fund, Defense, and 97x4090.0100 – Allocation to Army. Definitive instructions and requirements are contained within Finance and Accounting regulations.

b. Appropriation, Receipts and Allocation. This fund contains money appropriated in accordance with the Military Construction Act, and receipts from the management, rental, or sale of the properties acquired. Funds required for administration of the program will be made available by DOD to the Department of the Army (DA), for reallocation to ODCSRE. Funds provided will be used for purchase or reimbursement as provided herein, and to defray expenses connected with the acquisition, management, and

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disposal of acquired properties, including payment of principal, interest, and mortgages or other indebtedness thereon, as well as the cost of staff services, contract services, insurance, and other indemnities.

c. **Obligation of Funds.** The purpose of this paragraph is to briefly outline how the requirements for commitments and obligations of funds are fulfilled for HAP. Funds will be committed for a period not to exceed 45 days when the government's offer to purchase the applicant's property is conveyed to the applicant. The obligation will occur upon receipt of the accepted offer returned by the applicant. Commitments for government purchase are valid for only 45 days, the length of the offer. If the government purchase is not completed, funds are to be decommitted/deobligated under HAP and made available to fund other government acquisitions.

d. **Assumptions.** If the government is assuming a mortgage, the amount of the outstanding mortgage(s) must be processed for obligation through Resource Management Office (RMO) after the deed is executed, but before the deed is released for recording. However, prior to this stage, verify the current available balance for mortgage assumption authority with the Real Estate Program Office and RMO servicing the district. The total mortgage balance of homes assumed cannot exceed the ceiling on the district Fund Authorization Document (FAD). Mortgage assumption authority is a separate limitation on the district Finance and Accounting office and is not included in any other obligation authority. Any questions concerning mortgage assumption should be directed to HQUSACE (CERM-B). The obligation to complete the acquisition takes place at the time of settlement.

#### 7-6. Provision of Information and Assistance.

a. **Secretaries of the Military Departments.** The Secretaries of the Military Departments and the Directors of Defense Agencies are responsible for disseminating information on the program, rendering assistance to applicants, receiving and verifying statements regarding employment, and forwarding applications to the appropriate district after the program is approved. The personnel officers of other Federal agencies having custody of an applicant's personnel records will verify statements regarding employment. If personnel files are not readily available, documentation such as PCS orders, discharge orders, SF50s, or other official documents may be used to establish eligibility.

b. **Applications.** Applications for Homeowners Assistance, DD Form 1607, have been distributed to DOD installations and activities. The application explains the objective of the program, eligibility requirements, benefits available, and procedures to be followed in seeking assistance. DD Form 1607 is used to submit essential data needed to obtain requested assistance.

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7-7. Overseas Bases. Personnel employed at or near overseas installations are eligible to receive HAP benefits. For property located off-post, one is eligible to receive private sale benefits after the property is sold. For housing located on-post, whether it is sold or not, one is entitled to receive financial compensation based on a specific statutory formula, even though government acquisition is not an option.

## SECTION II. DEFINITIONS

7-8. Definitions. Unless otherwise defined in this chapter, the following terms and phrases are defined:

a. The Act. The “Act” refers to Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89 754 (80 Stat. 1255, 1290), approved 3 November 1966, as amended.

b. Base Closure Action “In Part.” A base closure “in part” is defined as an action announced publicly by DOD or a component thereof, which involves one of the following: (1) termination of a separate and distinct mission or function at an installation, or (2) permanent relocation of a military unit from an installation, other than from an installation which includes in its basic mission the support or “homeporting” of various military units and has historically experienced repeated and sharp fluctuations in aggregate personnel strength.

c. Base Closure Action “In Whole.” A base closure “in whole” is defined as an action announced publicly by the DOD or a component thereof, which involves the complete closing of an military base or installation, or termination of all existing functions (other than caretaker functions) at an installation.

d. Closure or Reduction Action. A closure or reduction action, as contemplated by the Act, is defined as a publicly announced action by DOD, or a component thereof, which involves complete or partial closure of an installation, or reduction in the scope of operations.

e. District Commander. The term “district commander” means any district commander or his chief of real estate.

f. Employment Near the Installation. For otherwise eligible personnel whose place of duty is not on the installation, employment or assignment within a normal commuting distance of an installation will be considered to be “near” an installation.

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g. Equity. The remaining interest belonging to an applicant who has secured debt(s) with his/her dwelling, or the surplus of value which may remain after the dwelling has been disposed of for the satisfaction of such debt, or the amount or value of the dwelling above the total secured debt.

h. Housing Market Area. The housing market area is a geographic area in which the supply/demand of dwelling units is in competition based on available transportation facilities, local commuting habits, and the pattern of urban development. Location of the employees dwellings affected by the announced action should be considered in determining the market area.

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

j. Liquidation. Satisfaction of the applicant's primary mortgage and such other eligible debts secured by the applicant's dwelling so that title is passed to the government with no money encumbrances.

k. Location of Dwelling Property "at or near" the Installation. Dwellings located within the normal commuting distance of an installation will be considered to be "at or near" that installation.

l. Market Impact Zone. The market impact zone is defined as a residential district, neighborhood, or subdivision within the housing market area, or a category of dwellings by price, which is sufficiently impacted by an announced action to enable homeowners to qualify for assistance. The market impact zone should normally be a finite geographic area. Applicant dwellings which fall outside a predetermined market impact zone may be included depending on individual factors and circumstances, but may require an amendment to the original impact study. It is recognized that in many cases only a portion of a market area, or dwellings in a certain price bracket, will be adversely affected by an announced action. An approved market impact zone is identified in the program approval letter.

m. Normal Commuting Distance. Normal reasonable commuting distance is to be determined from all relevant factors including, but not limited to, geography, commute patterns, demographics and availability of local transportation and will be defined in each program approval letter.

n. Public Announcement Date. The public announcement date is the date the

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Secretary of Defense or the Secretary of the military department concerned notifies the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives of the proposed closing or realignment of an installation under 10 U.S.C. 2687. It is also the date that a partial closure, which includes a reduction in scope of operations, has been announced by DOD or a component thereof. In some instances, multiple announcement dates may be required due to multiple reductions in force, or DOD announcements and subsequent Base Realignment and Closure Commission recommendations. Any requests for multiple public announcement dates must be submitted to ODCSRE for determination.

o. Realignment. A realignment includes any action which both reduces and relocates functions and personnel positions, but does not include a reduction in force resulting from work-load adjustments, reduced personnel or funding levels, skill imbalances, or other similar causes.

p. Reasonable Effort to Sell. Terms, such as “reasonable effort to sell,” or similar phrases, relate to the amount of time available to the applicant (by direction of the employer or by personal choice) to sell the dwelling. Applicants should not be encumbered by a requirement to market the property beyond a reasonable time. This permissive definition of “reasonable effort to sell” is not to be construed as encouragement for private sale below apparent market value. Evidence of the applicant’s efforts to sell should include a signed statement detailing his/her efforts to sell the house privately, along with a copy of receipts for advertisements placed in local newspapers or a copy of the listing agreement with a real estate broker. The applicant accepts the burden of demonstrating that when an offer is rejected it is because the offer was not reasonable.

q. Reduction in the Scope of Operations. A significant reduction in the scope of operations is defined as an action publicly announced by DOD, or a component thereof. This involves the permanent elimination of military or Federal civilian personnel from an installation, but does not necessarily involve, as in the case of a closure, termination of any mission or function, permanent relocation of any military unit, or permanent closing of all or part of the physical plant. A Reduction-In-Force, as defined in AR 5-10, Reduction and Realignment Actions, is a reduction in the scope of operations.

r. Sale. The term “sale” means an executed exchange of title and possession of real property for consideration of determinable value. A private sale is deemed to have occurred once legal title and equitable title have passed to the buyer.

s. Program approval letter. A program approval letter is prepared by ODCSRE and submitted for approval by the DASA (I&H). It will set forth the applicable closure



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date(s), market impact zone, and affected installations. Such letters will normally provide that amendments to the letter may be made by the Deputy Chief of Staff for Real Estate or his designated representative.

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### SECTION III. ECONOMIC IMPACT

#### 7-9. Announcement of Base Closure or Reduction.

a. Initial Actions. As soon as possible after a public announcement of a closure or realignment of an installation within its jurisdiction, the district will send a letter to the Commander of the installation briefly explaining HAP benefits, how a program is implemented, and information the district will need from the installation. A point of contact within the district should also be included. Follow up telephone calls to the installation's personnel officer (IPO), public affairs office (PAO) and directorate of engineering and housing (DEH) should be made.

b. Collection of Real Estate Market Data. The district should begin to gather and assemble real estate market data on pre-announcement market activity in the general geographic area of the potentially affected installation. Such data may be obtained from the installation housing office, local Board of Realtors' multiple listing service (MLS), real estate agents, real estate appraisers, mortgage brokers, local tax assessors, county courthouse records and utility companies. Individual appraisals will not be required until the district determines that an adverse market impact has begun or appears imminent.

c. Record of Potential Impact. Districts will maintain a file documenting potential impacts from the date of announcement to the date a HAP is approved or denied. The file must include documentation of the district's actions in monitoring the market. Newspaper articles or press releases from DOD and/or the installation should be requested from the PAO in order to establish a public announcement date.

d. Potential Impact Report (PIR). Within 30 days after the announcement, a PIR will be submitted to ODCSRE estimating the resulting impact on the real estate market. PIRs will include:

- (1) Total installation population and affected area population;
- (2) Estimated number of military and civilian personnel affected, listed by rank/grade level; including contractors and other personnel who will not be eligible applicants but would contribute to adverse market conditions;
- (3) Estimated number of homeowners in each category, military and civilian;
- (4) Estimated number of personnel involved in routine transfers each year;
- (5) Current and projected real estate market conditions;

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(6) Average price of houses in the affected area;

(7) Other proposed actions by private and/or Federal employers that might also affect the impact or increase the number of applications;

(8) The estimated impact; and

(9) If the installation has prepared an Economic Impact Study (EIS) or Environmental Assessment (EA), a copy should be included.

(10) The estimated cost. (See Addendum 1).

e. PIR Updates.

(1) If the district finds the announced action will probably not adversely impact the market, the district will continue monitoring the market with annual reports to ODCSRE until relieved of this requirement by ODCSRE.

(2) If it is determined the announced action may have an adverse impact in the area, the district will prepare a Market Impact Study (MIS) within 90 days in lieu of PIR updates.

f. Market Impact Study (MIS). See Addendum 2 for format. District will forward the report, along with a recommendation for approval or denial of a program, to ODCSRE within 90 days of identifying a potential program. If no impact has been shown for the installation, updates to the MIS will be furnished not later than every six months until an impact is evident, or ODCSRE directs otherwise. The report, must address the following:

(1) Element No. 1: The data gathered must support a conclusion that affected personnel will be unable to sell their homes upon reasonable terms and conditions. This conclusion will include part or all of the following information:

(a) A decline of at least 5 percent in the market value of houses in areas where personnel affected by the announcement reside as measured by one or more market indicators.

(b) Appraisals of at least six houses in market areas with a population under 50,000, and 12 houses in market areas over 50,000, in a cross section of prices and areas, will be necessary to gauge the effect on market value. The appraisals should estimate the

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fair market value (FMV) of each house before the announcement (six to twelve months prior), on or immediately before the public announcement date, and current appraisal date;

(c) A significant increase in inventory of unsold houses after the announcement as compared to the same months or quarters in the previous four years prior to the announcement;

(d) A significant increase in area foreclosures, particularly Department of Veterans Affairs (DVA) loans, as compared to four years prior to the announcement;

(e) A decrease in the number of home sales when compared to the same months or quarters in the previous four years prior to the announcement;

(f) An increase in the average number of days a house remained on the market after the announcement as compared to the same time in the previous four years;

(g) Number of building permits issued for new homes compared to same period in the previous four years prior to the announcement, and

(h) The inability of affected personnel to sell their homes for the amounts of existing mortgages. Complete a Multiple Regression Analysis for large metropolitan areas comparing the current data to same time periods in the four years prior to the announcement.

(2) Element No. 2: There must be a causal relationship between the announced closure or reduction and the adverse market conditions. Although the closure or reduction may not be the only reason for the current market conditions, the data collected must clearly reflect an incremental downward trend in the market as a direct result of the announced actual closure or reduction.

(3) The above two elements together should prove or disprove a market impact; however, there are other statistics and information that may support approval or denial of a HAP. The following should be addressed in the MIS:

(a) Number of affected personnel and homeowners in relation to area population;

(b) Rental occupancy rates; on the increase or decline;

(c) Unemployment rates;

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(d) Number or percent of new homes for sale;

(e) Whether a rise in interest rates or availability of mortgage money relates to the significant decline in the market;

(f) Any other factors affecting the real estate market, i.e., sales/resales; sales of dwellings that sold near the announcement date as compared to the resale of the same dwelling at the current date.

(4) In addition to a discussion of the factors demonstrating an adverse impact, charts should be furnished showing the timing of adverse market conditions as related to the public announcement date, and where appropriate, the effect of the actual closure or reduction on the market.

(5) Based on the data compiled for the MIS, the normal commuting distance for homeowners at the installation should be addressed and furnished as part of the report.

(6) Estimated cost of a program should accompany the MIS. This estimate should follow the budgeting format provided separately by CERM-B. This estimate should be based on factual information; i.e., number of estimated homeowners, as well as the average price of homes owned by affected personnel.

g. Market Impact Reports. A Market Impact Report (MIR) may be used to expand the area of eligibility for HAP applicants who reside outside the market impact zone of an approved MIS.

(1) Districts will make a determination regarding the normal commuting distance for each installation under their purview. The normal commute should be identified in miles or time from an installation. A normal commute may be dependent upon a number of factors. The factors include, but are not limited to, geography, commute patterns, demographics and availability of local transportation. The District Chief of Real Estate is authorized to approve the normal commuting distance for each affected installation. Each District must provide the normal commuting distance for each currently active program to CERE-A.

(2) For individuals assigned and commuting on a daily basis to the affected installation, whose dwellings are outside of the pre-approved market impact area, but within the normal commuting distance of the installation, eligibility should be considered if there has been at least a five percent decline between the prior fair market value and the current fair market value, and this decline was the result of the actual or pending closing of such base or installation. The decline in value will be determined by appraisals of the

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individual homes. The causal relationship must be shown by at least one of the criteria as identified in the MIS criteria. A MIR may be used to approve multiple units at one time. The District Chief of Real Estate has authority to approve eligibility for such individuals.

(3) A MIR establishing the causal relationship of a market decline must be completed for groups of individuals, (more than five); however, prior to completing the MIR, appraisals must establish that the dwellings declined in value at least five percent between the prior fair market value (PFMV) and the current fair market value (CFMV). The district must make a finding of the direct causal relationship between the announced closure or realignment (DOD action) and the adverse market conditions.

(4) A MIR must prove two factors:

(a) The causal relationship between the installation closure and realignment and the decline in real estate values in a specific area, and

(b) A decline of at least five percent in the market value of an applicant's dwelling.

(5) A MIR must include a statement that the DOD announcement of closure or realignment caused, or contributed substantially to the decline in market values in the area, and include the following:

(a) A description of the area and its boundaries;

(b) Distance from the installation;

(c) Number of affected homeowners in the area, if known, and

(d) A minimum of one of the criteria as found in Section III(1)(a) through (g) of the MIS criteria, and any other factors as found in Section III(3)(a) through (g) affecting the real estate market.

(6) A minimum of one property must be appraised in the area, and ordinarily that property will be the one owned by the applicant who initiated the MIR. The appraisal should estimate the prior fair market value of the dwelling on or immediately before the announcement date, and the current fair market value.

h. Announcement of Program Approval, Denial, Extension, or Termination. Announcement of such actions should be coordinated with the installation and the appropriate congressional delegation prior to release.

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#### SECTION IV. ELIGIBILITY

7-10. Requirements. An applicant must meet the requirements set forth below to be eligible for benefits under an approved HAP:

a. Type of Employment or Service. The applicant must be a member of the Armed Forces; a Federal employee; or an employee of a Non-appropriated Fund Instrumentality (NAFI) operated at, or in connection with, the affected installation, who is a U.S. citizen. Temporary employees serving under a time limitation, including reservists serving less than 180-consecutive day tours (10 U.S.C. section 101 (d)(6)(a)), and private contractors and employees of private contractors are not included.

b. Place of Employment. The applicant must have been:

(1) a member of the Armed Forces assigned at or near the installation;

(2) a Federal employee employed at, near, or in connection with the affected installation;

(3) an employee of a Non-appropriated Fund Instrumentality (NAFI), operated at or in connection with the installation, or

(4) a civilian employee, or NAFI employee who is a U.S. citizen, serving overseas at the time of the announcement, who is entitled to reemployment rights at the affected installation.

c. Time of Employment. The applicant must have been:

(1) assigned to, or employed at, near, or in connection with the installation at the time of the announcement;

(2) transferred, or terminated as a result of a Reduction-In-Force, within six months prior to the public announcement;

(3) transferred from the installation or activity on an overseas tour within three years prior to public announcement of the closure action;

(4) a member of the Armed Forces transferred from the installation within three years prior to the public announcement, and in connection with the transfer, informed of a future, programmed reassignment to the installation, or

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(5) serving overseas as a Federal employee, with existing reemployment rights to the affected installation at the time of the announcement.

d. Owner-Occupant.

(1) At the time of the public announcement, or at the time of transfer or termination giving rise to eligibility, the applicant must have been either: the owner and occupant of property improved with a one- or two-family dwelling, situated within a normal commute of the affected installation; or, have vacated the owned dwelling as a result of being ordered into on-post housing within six months prior to the announcement.

(2) Spousal ownership is allowed, where either the applicant or a spouse is the fee simple owner of the property. Applicant must have been married to spouse at the time of the announcement.

(3) Where the applicant has an ownership interest with someone other than a spouse, the remaining owners must deed their interest to the applicant prior to government acquisition.

(4) When the applicant has an ownership interest with someone other than a spouse, private sale benefits will be paid in accordance with the amount of interest the applicant has in the property.

(5) Applicants must hold fee simple title or have a contract to purchase in fee simple a qualifying residential dwelling, unless the dwelling is part of a cooperative association. Members of the Armed Forces or Federal civilian employees may be considered owners of property without regard to the technical form or description by which an ownership interest is evidenced: provided, that, consistent with local practices and procedures, the applicant can be shown substantially to have the rights and duties of a person with an ownership interest in the property, e.g., depending on relevant circumstances an applicant who holds title to a long-term ground lease rather than to the fee.

(6) Ownership interest in a cooperative home ownership association will be recognized under the cooperative home ownership laws of the State where the affected property is located. Ownership of a mobile home constitutes home ownership if the mobile home is affixed to the land in accordance with local and state laws and regulations, and the underlying realty is held in either fee simple, long-term lease (27.5 years or longer), or contract-to-purchase. The interest of a mere security holder, whether by mortgage, deed of trust, or other security instrument, does not constitute an ownership



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interest for purposes of HAP.

(7) An applicant who was the owner, but not the occupant at the time of announcement, due to temporary absence i.e., a valid governmental purpose such as temporary duty, is considered eligible if the applicant would have returned to the house after the temporary absence.

(8) An applicant may meet the owner-occupancy requirement for a dwelling in the market impact zone of an approved program, while meeting the employment requirement of a different approved program, provided that the applicant commutes from the dwelling for which compensation is sought on a daily basis to the affected installation. The prior fair market value is to be determined from the public announcement date of the HAP where the dwelling is located.

e. Relocation or Financial Hardship. As a consequence of the closure, an applicant must relocate because of military transfer or acceptance of employment, or be unemployed, not as a matter of personal choice, and able to demonstrate such financial hardship. Additionally, for reasons other than the closure action, one may be eligible for benefits if they relocate, due to transfer, reassignment or involuntary termination of employment.

(1) For purposes of satisfying the relocation requirement, the applicant must relocate because of military transfer or acceptance of employment beyond a normal commuting distance from the dwelling for which compensation is sought. The new place of residence must result in a decreased commute distance as identified in the Joint Travel Regulation (JTR). The distance from the new place of residence to the new place of employment must be a shorter distance than the distance from the dwelling for which compensation is sought to the new place of employment. However, districts have the discretion to determine distances based upon local commuting patterns. (See paragraph 7-8f.(5)).

(2) Financial Hardship. As a consequence of the closure or realignment, the applicant's employment or service must have been terminated. The applicant need not relocate in order to be eligible under this subparagraph, but must meet the following additional requirements:

(a) As a result of such termination, the applicant must be unemployed, not by personal choice, and be able to demonstrate financial hardship, and unable to meet the mortgage payments and related expenses. Financial hardship due to unemployment in the area of the affected installation is a determination that must be made by the district. The applicant may be considered unemployed even though he/she was offered a

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comparable position at another location beyond normal commuting distance. In support of the hardship allegation, the applicant is required to state why employment is not available or has not been accepted, the amount and frequency of all income, amount of debts, number and amount of all installment payments, including mortgage payments in arrears. Where current income for the 90-day period preceding the date of application is less than the current enforceable obligations against the applicant, including mortgage payments, it may be determined that unemployment and financial hardship, as required by the Act, have been established. Determination of hardship is to be based upon the relationship between income and obligations prior to and after termination of employment. Obligations incurred after termination of employment will not be included in the computations to establish hardship. The financial worth of the applicant need not be taken into account. In making the hardship determination, doubtful cases should be resolved in favor of the applicant.

(b) Applicants requested to furnish supporting information to establish financial hardship will be given sufficient notification of the provisions of the Privacy Act of 1974

f. Termination or Transfer. The definition of termination or transfer varies according to whether it is a consequence of the closure, or it is for reasons other than the closure. In either case, the applicant must relocate beyond a normal commuting distance from the dwelling for which compensation is sought.

(1) Personnel Affected by the Closure Action. If the installation is closing entirely, all personnel will be affected eventually as a consequence of the closure as all positions will be terminated. If there is less than an entire closure, only certain personnel will be affected. The issue is whether one's position has been or will be terminated because of the closure action. If this is the case, one may elect to retire or not to reenlist; voluntarily or involuntarily resign from a position; elect to accept other employment, i.e., through normal rotation, reassignment or transfer.

(2) Personnel Not Affected by the Closure Action. If one's position at an installation is not affected by the closure action, one may transfer, be reassigned or have their employment involuntarily terminated. This includes normal rotations and involuntary retirements, which are not a result of the announced action.

g. Employees who retire and relocate beyond a normal commuting distance will be presumed to have relocated in order to seek employment and, therefore, will be eligible for benefits.

## SECTION V. BENEFITS

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7-11. Types of Benefits.

a. Private Sale.

(1) For dwellings privately sold, eligible applicants may be compensated for the difference between 95 percent of the appraised fair market value (FMV) of the property prior to the announcement date, and the appraised FMV of property at the time of sale, or the sales price, whichever is greater. Closing costs are reimbursable for private sales occurring after 5 October 1994. Closing costs reimbursable under chapter 14 of the Joint Travel Regulation (JTR) are eligible for reimbursement under the HAP. Payment of closing costs may be made to individuals who elect to sell their homes privately, but do not receive a cash payment under the private sale option. However, if the program implementation letter advises that applicants must suffer a loss to receive benefits, this loss must occur to receive reimbursement for closing costs for private sale benefits.

(2) When the applicant has sold their property for less than the mortgage balance (a short sale), and the mortgagee forgives any remaining obligation, private sale benefits will be calculated in an amount not to exceed the difference between 95 percent of the appraised FMV prior to the date of the announcement date and the total of the short sale plus the amount of the forgiven obligation. Reimbursement for closing costs will be calculated under paragraph 7-29, below. If the difference between the sales price and the remaining obligation is covered by a promissory note, payment should be made directly to the mortgagee. If the benefit payment is not sufficient to satisfy the promissory note, the applicant must pay the difference. The mortgagee must be paid and a release of liability obtained prior to any benefit payment directly to the applicant. (See paragraph 7-29 a. and b.).

(3) Benefits available in connection with off-base overseas property are limited to private sale relief. In the case of private sale of property located on an overseas installation, the formula set forth in paragraph b(4) below is applicable, except that in computing benefits due, the sale price of the property will be added as a deduction under part (ii) of the formula.

(4) Where the district determines that improvements on the subject property have been destroyed or damaged by 75 percent or more by acts of God, theft or vandalism, fire, flood, and/or other like casualty, after the date of the public announcement, the applicant will be entitled only to private sale benefits. The government will not purchase the applicant's land. Benefits will be computed as follows:(a) Determine the prior fair market value (PFMV) of the land and improvements in an undamaged condition.(b) Determine the current value of the land and improvements in an undamaged condition.(c) Multiply the prior undamaged value, (a), by 95 percent and deduct the current value (b);

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this is the amount of benefits to be paid to the applicant. Applicants will also be reimbursed for closing costs in accordance with subparagraph a(1) above.

(5) Where the district determines that the improvements have been damaged after the announcement to the extent of 25 percent or less by acts of God, theft or vandalism, fire, flood, or other like casualty, the applicant will be notified that they may elect to receive benefits on the basis of a private sale, as computed above, or sell the property to the government on the following basis: Multiply the PFMV by 75 percent and deduct the amount or percent of damage calculated on the current value in the undamaged condition less the amount of insurance payments received by applicant for the loss. Applicant may sell to the government for the amount of the outstanding mortgages, provided that the damages are repaired, or if insured, assignment of any insurance recovery for repairs may be made to the government.

(6) Where the district determines that the improvements have been damaged after the announcement by acts of God, theft or vandalism, fire, flood, or other like casualty, more than 25 percent but less than 75 percent, the applicant will be notified that they may receive benefits on the basis of a private sale, as computed above. Purchase of this property by the government will require the approval of ODCSRE. If the applicant desires to sell their property to the government, the district will prepare a disposal plan for submission to ODCSRE.

b. Government Purchase.

(1) An eligible applicant may elect to sell the property to the government and receive, as the purchase price, an amount not to exceed 75 percent of the FMV prior to the date of the announcement, or the current total amount of outstanding mortgages, whichever is greater. Mortgages refinanced after the announcement date are accepted if, at the time of government acquisition, the balance does not exceed what it was at the time of refinancing. Eligible applicants may also be reimbursed for mortgage interest, property insurance and taxes, from the date of receipt of the application, or the date the dwelling is vacated, or the date of program approval, whichever is later through the date of acquisition. (See paragraph 7-29d.)

(2) Junior mortgages or equity loans secured by the premises which are existing and current at the time of the public announcement are subject to the same limitations as primary mortgages.

(3) When the improvements are damaged, whether undiscovered or undisclosed, after determination of benefits under a government purchase, but before the closing, the purchase will be recalculated using the formulas set out in paragraphs 7-11a(4)(5)(6).

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Applicant may repair, or assign any insurance proceeds sufficient to cover the cost of repairing the damage to the government prior to being entitled to government acquisition.

(4) Eligible owners of property located on an overseas installation who are unable to find a purchaser for the property may surrender their interest in the property to the government and be paid the following amount: 90 percent of the sum of the purchase price of the dwelling and improvements thereon, and all costs of ownership, including interest on notes, and cost of utilities, service, maintenance and insurance; less the amount equal to the total of all housing allowances received from the government during ownership and occupancy of the dwelling, plus rents or other benefits collected. However, the maximum compensation shall not exceed 90 percent of the unamortized portion of the cost of the property, including improvements, at the time ownership is terminated, as reflected in the amortization schedule, relating to such property. The government may not acquire overseas off-post property.

(5) For refinanced mortgages refer to paragraph 7-29g.

c. Foreclosure or Deeds in Lieu of Foreclosure.

(1) If foreclosure proceedings have commenced, an applicant may elect to receive either foreclosure benefits or private sale benefits. Foreclosure benefits may be paid directly to the applicant to reimburse for foreclosure costs paid by the applicant, or paid to third parties on the applicant's behalf. These costs may include direct costs of judicial foreclosure, expenses and enforceable liabilities according to the terms of the mortgage or promissory notes, and the amount of debts, if any, established against the applicant by a Federal agency for loans made, guaranteed, or insured by such agency following liquidation of the security for such loans. Any foreclosure entered into after the program approval date must have an enforceable liability in order for the applicant to receive benefits. Benefits may be paid to restore VA eligibility.

(2) Conveyance of a residence by deed in lieu of foreclosure is considered a private sale. However, if an applicant is required to execute a promissory note as a condition precedent to acceptance of a deed in lieu of foreclosure, and foreclosure proceedings have commenced, the applicant can elect between private sale and foreclosure benefits. Outstanding judgment liens, encumbrances of a personal nature, or junior mortgages acquired after the announcement date, will not be paid.

(3) Foreclosure benefits are not available in foreign countries; however, foreclosures or a procedure similar to a deed-in-lieu of foreclosure may be considered a private sale and computed as such.

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(4) In situations where the insuring agency indicates the foreclosure is a “No Bid,” the agency does not reacquire the dwelling, but makes a partial settlement with the lien holder. It is possible that the sale of the dwelling by the lien holder will not completely satisfy the balance on the mortgage. In “No Bid” situations, a settlement with the insuring agency and the lien holder may be necessary, with a release obtained from each.

(5) If private sale benefits have not been paid, an applicant may request foreclosure assistance. If the time period for filing has elapsed, the case will be forwarded to ODCSRE for approval to reopen the file. If private sale benefits were paid, the beneficiary may not later apply for foreclosure benefits in the event that he/she is liable upon the purchaser’s foreclosure.

(6) The foreclosure must have commenced on or after the public announcement date. The date of commencement of foreclosure is to be determined under applicable state law.

(7) VA Compromise sales, where the applicant signs a promissory note, will be treated as foreclosures for the purpose of paying benefits. The veteran and the VA agree to a sale of the property to another party at the current fair market value, as determined by a VA appraisal. VA will pay off the mortgagee to eliminate the veteran’s obligation to the mortgagee. The difference between the sale price and the remaining obligation is covered by a promissory note. The HAP benefit will be the pay off of this note. If VA waives payment of the promissory note, the applicant may elect to receive private sale benefits but the amount of the debt waived is added to the sale price of the property.

#### 7-12. Property Subject to Mortgages.

a. Grant of Release. If the applicant is due compensation for private sale losses, the district must obtain written documentation that the mortgagee has released the applicant from their liability. Applicants will be advised that private sale benefits or reimbursement for closing costs cannot be made until the mortgagee is paid off. Documentation, such as a full reconveyance or letter from the mortgagee, releasing the applicant from any liability under the mortgage is required. This is a statutory requirement for Federally insured mortgages and is a matter of policy for other mortgages.

b. VA Loans. For VA loans made prior to 1 March 1988, the Department of Veteran’s Affairs issues the release. For loans made on or after 1 March 1988, the mortgagee issues the release.

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## SECTION VI. APPLICATION PROCESSING PROCEDURES

7-13. Acceptance of Applications. The district will accept applications for HAP benefits. Application numbers may be assigned, but applications will not be processed until DASA (I&H) has approved a program. Potential applicants should be advised that in the early stages of a closure or realignment action, adverse housing market impact may not be immediate. Indicators such as sales prices, increased inventory and decreased sales, may initially be inconclusive as to whether the closure or realignment has caused a depressed or stagnant market. The applicant's experience in trying to sell his/her property may be the best early indication of the lack of a market. The applicant must be advised that the government cannot acquire the property or process any application for benefits until a determination of adverse economic impact has been made and a program has been approved. The applicant should further be informed that the public announcement date, not the date of the finding of applicability, will be used retroactively to set eligibility.

7-14. Application Form (DD Form 1607). If the DD Form 1607 does not provide all of the information required to process an application, the applicant may be requested to provide supplemental information. Addendum 3 is a Privacy Act Information Statement that should be furnished to the applicant whenever information is requested.

7-15. Filing Period. Applications for HAP benefits should be presented to the appropriate district within the time frame authorized by the directive approving the program at the installation. Districts may receive late applications submitted up to six months after the approved time period with appropriate justification. MSCs may receive late applications for six months after the district's extended approval period with appropriate justification. Any application filed after this time must be submitted to ODCSRE, WASH DC 20314-1000, with an explanation and justification for late filing. ODCSRE will make determinations, on an individual basis, as to whether late applications may be accepted. Only ODCSRE may disapprove late applications.

7-16. Review of Application. After a determination has been made that the applicant meets the appropriate eligibility requirements stated in Section IV of this chapter, the district will verify the applicant's employment. Incomplete applications will be returned in a timely manner for proper completion.

7-17. Ineligibility. When an applicant fails to meet any of the eligibility requirements (see Section IV), no further action will be taken on the application except to notify the applicant in writing of his/her ineligibility, and of the procedure for appeal.

7-18. Certified Mail. In sending official notifications to applicants, districts may use

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certified mail, return receipt requested, for delivery of decisions that may be disputed. Use of overnight mail is authorized for delivery of deeds, closing documents, and payments.

7-19. Withdrawn, Closed, and Reopened Applications.

a. **Failure to Accept Benefit Amount.** After the district advises the applicant of the benefit amount, the applicant will be given 45 days to either accept the benefit or appeal. If there is no action within the 45-day period, the application will be considered withdrawn.

b. **Applicant's failure to respond to Requests for Information.** Where an applicant has failed to respond after 45 days to requests for additional information, the district shall advise the applicant in writing that the application is considered withdrawn. Applicant will also be informed of the specific time limitation within which an application, or request to reopen a file, must be made.

c. **Ineligibility.** If it is determined that an applicant is ineligible for benefits, or that a private sale applicant is eligible under the program but is not entitled to benefits, and no appeal has been filed within 180 days from the date of delivery of written notice of such decision to the applicant's last known address, the case will be considered closed.

d. **Private Sale after Application for Government Acquisition.** If the applicant elects government acquisition and then sells the house privately before government acquisition occurs, the application may be processed as a private sale, regardless of the time limitations for filing. The applicant must notify the district in writing of this decision, and furnish necessary documentation of the sale.

e. **Withdrawal of Application to Pursue Private Sale.** An eligible applicant may decide to withdraw their application to pursue a private sale. They may later decide to sell the house to the government as long as the request to reopen the file is made before the program expires. Requests to reopen files will be processed in accordance with paragraph 7-13 above.

f. **Action Taken Following Determination of Appeal.** If an appeal has been filed, the case will be considered closed once action has been taken in conformity with the final decision made on appeal, as prescribed in the appeal procedures. See Section X.

g. **Reopening of Settled Cases.** Applications, which have been settled with benefits, in accordance with the Act and this regulation, will not be reopened or reviewed for the purpose of applying a different benefit formula, without the prior specific



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approval of ODCSRE. Closed cases settled without benefits may be reopened if the applicant is eligible for foreclosure benefits.

h. Reopening of Withdrawn Cases. Withdrawn applications may be reopened by written request from the applicant within the time period allowed for filing applications in accordance with paragraph 7-15, above. The date the file is reopened will be considered the date of the application.

i. Long-term Leases Entered After Application. Applicants should be advised to enter only into month-to-month leases, after submission of the application. Otherwise the application may be made inactive pending the end of the lease term. At that time, the application will be reactivated.

7-20. Records/HAPMIS. Each application received must be entered in HAPMIS, and reflect its current status as Active, Appeal, Complete, Withdrawn, Denied, or Suspended.

a. Active. Active cases are those in the process of being paid or denied, including foreclosure cases where the enforceable liabilities have not been established.

b. Appeal. Appeal cases are those that have been listed as any of the other categories, including, but not limited to, Active, Complete, or Denied, that have been appealed on any grounds. These cases will ultimately become Active, Suspended, Denied, or Complete, depending on the outcome of the appeal.

c. Complete. Completed applications are cases in which either payment or payments have been made to the applicant and/or third party or applicants for private sale benefits, or those for which the applicants have sold their homes for more than 95 percent of PFMV (therefore receiving a zero benefit).

d. Withdrawn. A withdrawn application is one that has been withdrawn by written request of the applicant, or if the applicant has failed to respond to a request for additional information. Those applications that have been withdrawn by written request of the applicant, or the applicant has failed to respond to a request for additional information. A written request from the applicant for reinstatement must be received before the end of the program date. After the program has ended, only an approved request to reopen a withdrawn file would necessitate changing the status code to Active. The date the file is reopened will be considered the date of the application.

e. Denied. Denied status is reserved only for those applicants who do not meet the program eligibility requirements.

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f. Suspended. Suspended cases are those cases which have been placed on the Suspended list due to an undue delay in processing caused by an action, or lack of an action, by the applicant. These cases include, but are not limited to, applicants whose permanent change of station orders have not been issued, applicants with tenants remaining in the property, applicants who have requested a delay to pursue a possible private sale, and applicants who wish to remain in the property until after the completion of a school year. Applicants for private sale benefits who are unable to furnish a release of liability are also placed in Suspended status. A written notification from the applicant is required to change the application status. An application may be suspended indefinitely. Any application still in Suspended status at the end of the program date will be changed to Withdrawn. Only an approved request to reopen the file would necessitate changing the status to Active.

7-21. Application Numbers.

a. Assignment of Application Numbers. When a district receives an application, they will assign the application a number and will develop and maintain an individual file for each property. Applications for programs located in another district will not be assigned a number but will be forwarded immediately to the district having jurisdiction. A number, once assigned, will not be reassigned, regardless of the disposition of the application. Reactivation or reopening of a withdrawn application does not require a new application or application number.

b. Method of Assignment. Applications will be numbered in the following manner:

(1) Agency code to indicate the Federal agency accountable for the installation being closed:

- 1 – Army
- 2 - Air Force
- 3 – Navy
- 4 - Marine Corps
- 5 - Defense Agencies
- 6 - Non-Defense Agencies

(2) District Code. Refer to ER 405-1-12, Figure 14-1.

(3) Military/Civilian Code: 1 for Civilian or 2 for Military.

(4) State/Country Code: Refer to ER 405-1-12, Figure 14-2 for numeric state code

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or alpha country code.

(5) Installation Number: The last three digits of the installation number reflected in the Army and Navy/USMC Real Property Inventory publication, preceded by a zero, will be used to identify Army, Navy, and USMC installations. The four-letter code in the USAF Installations Directory will be used to identify USAF installations. Installation numbers may be obtained from ODCSRE. Installation numbers for Coast Guard installations will be obtained from ODCSRE.

(6) Applicant Number: Sequential beginning with 0001.

EXAMPLE: 2 E 3 2 3 3 S Z D T 0 0 0 1

Air		Mil										
Force		N.H.										Applicant #
		Pease AFB										
NY Dist												

## SECTION VII. PROPERTY VALUATION

### 7-22. Real Estate Appraisals.

a. Preparation of Individual Appraisals. Individual real property appraisals will be prepared by staff or contract appraisers as guides to the determinations of fair market values (FMV), except as set out in paragraph e.(2) below. An appraisal will be prepared by a staff or contract appraiser to determine the FMV of the property prior to the announcement, and at the time of the sale of the property. Appraisals may be waived where foreclosure benefits only are to be paid. (See Addendum 4 for a general information sheet on HAP appraisals). Care should be exercised to avoid the expense of appraisals that are elaborate or more detailed than necessary for HAP appraisals. Existing valid appraisals may be used in lieu of ordering new appraisals. As an exception to Chapter 4 of this regulation, FNMA Form 1004, with attachments as required by said form, or a reasonable variation, may be used. The purchase price and the selling price should be made available to the appraiser. Substantial differences between the “before” appraisal and the applicant’s purchase price should be fully explained, as well as substantial differences between the “after” appraisal and the applicant’s selling price, if an amount other than the selling price is used to determine benefits.

b. Provision of Appraisal Information to Applicant. Applicants will be notified of the determinations of value made for their property. Appraisals will not be provided to

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applicants beyond the same level provided in other proceedings (e.g., acquisitions under Chapter 5).

c. Contract Appraisers. District offices should acquire contract appraisers once a program has been approved for a location. Contracts, in accordance with the Federal Acquisition Regulation, or blanket purchase agreements with several contract appraisers, should be negotiated when circumstances warrant. The contract should establish a firm deadline for return of completed appraisals. The district will monitor contract performance under Corps guidelines and establish a tracking system to ensure appraisals are completed in a professional and timely manner.

d. References. See Chapter 4 of this regulation.

e. Determination of Fair Market Value (FMV). The district will make determinations of FMV using the real estate appraisal report, loan commitment documents, and any pertinent information contained in records on the value of this property.

(1) Date of Determination of Prior Fair Market Value, (PFMV). The PFMV will be determined as of the date of the announcement or immediately prior to the date of announcement. For programs with multiple announcement dates, the prior fair market value will be determined as of the purchase date for purchases between program dates.

(2) Fair Market Value Determined by Private Sale. If the applicant has made a reasonable effort to sell his/her property and there is no reason to believe that the transaction misrepresents the FMV of the applicant's property at the time of the transaction, then the sales price should be used as the "after" value. Reasonable doubts should be resolved in favor of the applicant. Although the sales price normally will be used as the "after" value, it must be recognized that some applicants may make poor bargains and sell their dwellings at prices well below the current market value for comparable properties. Individual appraisal of current FMV should be used as a guideline to ensure that private sale payments are reasonable. If the appraised value exceeds the sales price by ten percent or more, the reviewing appraiser will review the appraisal for completeness and accuracy. After the reviewing appraiser confirms the appraisal report, the appraised FMV may be substituted for the sales price in calculating the benefits. However, if the applicant has made a reasonable effort to obtain the highest value available, the benefit of the doubt should be accorded the applicant and the sales price may be used as the after value. All records should accurately and fully document the reasons supporting substitution of the appraised value.

7-23. Residential Property.

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a. **Property To Be Included.** A one- or two-family dwelling, which is located on a farm or on many acres, only includes land as would reasonably constitute a residential property within the area. Land owned by the applicant that does not adjoin his residence will not normally be considered a part of the property. Whether an adjoining lot should be included as part of the residential premises will depend on whether it is, a part of the residential premises and was used as such, and if it can be readily severed and disposed of economically without affecting the disposal of the residential premises. The method generally used in the market for selling and purchasing residential premises will be considered. Applicants should not be left with a lot which is less than the size required for a dwelling, similar to those in the area, or which would be considered unmarketable except as part of the residence. These are judgment factors to be determined and applied to individual cases by the district.

b. **Dwelling Unit.** The Act refers to “any property improved with a one- or two-family dwelling”. Therefore, the property must include a dwelling unit as of the date of the public announcement. The dwelling must be, or have been, an integral part of the property. Individual units in condominiums or cooperatives qualify. Mobile homes will qualify if the mobile home is affixed to the land in accordance with local and state laws and regulations, and the underlying realty is held in either fee simple, long-term lease (27.5 years or longer), or contract-to-purchase.

c. **Permanent Structures on Leased Land.** Buildings on leased land or on land not owned by the owner of the buildings will be considered real estate and are entitled to private sale benefits only.

## SECTION VIII. ACQUISITION - CLOSING PROCEDURES

7-24. **Acquisition Limitations.** The procedures set forth in Chapter 5, Section I of this regulation should be used for acquisition of HAP properties, except as otherwise provided herein, or where the procedure is clearly not necessary for HAP; i.e., Negotiator’s Report, Notification Letters required by Public Law 91-646, etc. The applicant should be made aware of the following:

a. **Procedures.** An eligible applicant should be advised of the acquisition procedures, conditions of a sale to the government, and the estimated time to complete the acquisition.

b. **Time Limitation.** Election to sell one’s dwelling to the government is voluntary. The decision must be made within 45 days after the applicant has been advised of the FMV or the application will be considered withdrawn. The government

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will take title only by a direct purchase transaction since condemnation is not authorized.

c. **Benefit Determination by Government.** The government will determine benefits. All efforts will be made to afford the full benefits authorized by the Act.

d. **Balance on Public Announcement Date.** HAP benefits paid by the government will be limited to the outstanding mortgage existing on the day of the public announcement. (See paragraph 7-8n.).

e. **Government Purchase is not Displacement.** Government purchase of the property is not considered displacement under Public Law 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970) since the government does not require the property.

f. **Deteriorated Properties.** The district commander may decide not to acquire a home where the applicant has allowed the home to deteriorate beyond normal wear and tear. If the property has been abused, the applicant should be given an opportunity to rectify the deficiencies.

7-25. **Environmental Inspection.** The requirement to perform an Environmental Baseline Survey (EBS) has been waived. Inspections for defective paint and friable asbestos will no longer be a part of the acquisition process. Dwellings will be acquired “as-is”, unless there is something readily apparent which would make the properties difficult to market for disposal. In those cases, guidance from ODACSRE should be expeditiously obtained. Either the Corps or another agency will accomplish mitigation after acquisition. Routine inspections will identify any lead-based paint as defined in Addendum 5 and any friable asbestos. Although the Corps is not required to inspect or test for other contaminants, the inspector should document any observed or suspected contaminants or environmental hazards. (See Addendum 5).

a. **Method of Performance.** The inspection may be performed by qualified district personnel or by contractors.

b. **Format and Use.** No particular format is required for the reports, which become part of the application file.

c. **Other Environmental Inspections.** Any inspections or certifications required by state law or by local custom, such as radon screening or well water certification, will be obtained prior to government acquisition.

7-26. **Acquisition Procedures.**

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a. **Conditions of Sale.** The applicant will be advised in writing of the prior market value, his/her options under HAP, and the conditions under which the government will purchase his/her property. Applicant must then respond in writing within 45 days whether he/she wishes to withdraw his/her application, appeal the appraised value(s) or request that the government purchase his/her dwelling. Both applicant and spouse should sign the request and state that they understand the conditions of sale.

b. **Preparation and Processing of Deed and Closing Documents.** Upon receipt of the request from the applicant, the deed and other closing documents will be prepared and sent to the applicant with a cover letter explaining the financial details, including tax liabilities, and specific instructions on completing and returning the documents.

c. **Pre-Closing Inspection.** Prior to closing, a pre-closing inspection of a property being acquired will be made.

7-27. Outstanding Rights.

a. **Rights of Third Parties in Property.** Rights of third parties in the property, such as easements for public highways and utilities, will be left outstanding, provided that this is consistent with good real estate practices in the community and will not prejudice the marketability of the property. Mineral and water rights may also fall within this category. Restrictive covenants must be satisfied or removed by the owner unless they are of a nature which will not prejudice the marketability of the property.

b. **Waiver of Outstanding Rights.** District Commanders, and/or MSC Real Estate Chiefs, will determine whether any outstanding right or interest in the property should be administratively waived.

7-28. Assumption of Primary Mortgage. When the applicant's dwelling is purchased, the primary mortgage may be assumed by the government and other mortgages existing on the public announcement date will be paid off as part of the closing of the purchase transaction. Where the government has assumed the mortgage indebtedness, the benefits accorded by the Act are considered fulfilled, even though the primary mortgage is left outstanding. The Office of the Secretary of Defense has authorized liquidation of mortgages in those cases where the district considers it to be in the public interest. Each case will be considered on its individual merits. Loan assumption fees and any other costs incident to assumption of mortgages should also be considered in determining whether to liquidate.

7-29. Closing and Settlement Costs - Government Purchase.

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a. Release of Liability. When the government assumes a mortgage, it must release the applicant from liability in the event of a subsequent foreclosure.

b. Release of Mortgages. All mortgages, which the government has agreed to pay, will be released of record after delivery of the deed conveying the property to the United States. The applicant is ineligible for direct purchase unless unpaid judgments, liens, encumbrances, and pending public improvement assessments are satisfied and a release obtained.

c. Costs Paid by the Government. The government will pay closing and settlement costs. That portion of the sellers closing costs which represent the normal closing costs required to be paid by the seller at closing are a taxable benefit and must be separately identified as such.

d. Reimbursements. The government will reimburse the applicant for mortgage interest (not principal payments), taxes, and hazard insurance premiums that have been paid for the period from the date of receipt of the application for benefits, the date of vacation of the premises, or the date the program is approved, whichever is later through to the date the government acquires the property. A determination of the pro rata share of taxes and insurance premiums should be based on information received from the tax assessor and insurance company for the actual amounts payable or paid, without reference to payments to the escrow account, which will eventually be returned to the applicant. Districts should advise the applicant of the projected closing date, and that he/she will not be reimbursed for interest or other expenses incurred by delays in closing, if such delays were caused by, or at the request of, the applicant, and if such delays were unreasonable. If an applicant has previously withdrawn an application, settlement and closing costs will be prorated only from the date an applicant reapplies for benefits. The applicant must be fully informed that the consequence of withdrawal of a government acquisition application is loss of reimbursable expenses from the date of the application. The applicant is responsible for all mortgage payments, including interest, to the date of closing and the government will not assume any responsibility to avert a foreclosure.

e. Rental Income. Income received by the applicant for rental of the property during the period from the date of receipt of his/her application, the date of vacation of the premises, or the date the program is approved, whichever is later, will be deducted from the closing and settlement costs. HAPMIS will compute these payments when the necessary dates, interest, etc., are entered.

f. Amount of Outstanding Mortgages. The amount of the outstanding mortgages as contemplated by Section 1013(c) of the Act will be the total amount which the



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applicant, as the mortgagor, owes pursuant to the mortgage agreement(s). This will include taxes, hazard insurance, and interest and penalty charges which have accrued and have been added to the total indebtedness, adjusted to provide for the costs for which the applicant is responsible, as set forth in subparagraph c. above. Outstanding mortgages include equity loans and other open-line-of-credit loans that are secured by the subject dwelling. The assumption or payoff of the outstanding mortgage balance of equity loans is limited to the balance due and owing as of the public announcement date.

g. **Refinanced Mortgages.** Refinanced mortgages will be acceptable if, at the time of government acquisition, the principal balance does not exceed the mortgage balance of the superseded mortgage. Homeowners who incorporate the costs of refinancing into the mortgages will have to “buy-down” the principal balance before government acquisition.

h. **Property Taxes.** Property taxes are prorated at the time of acquisition. Sometimes the amount collected is greater than that owed. All property tax refunds belong to the government.

#### 7-30. Title Evidence.

a. **Procurement of Title Evidence.** For purposes of this chapter, districts may contract with a title company to record the deed after making a title update. Districts are responsible for verifying that the deed is properly recorded. If a survey showing the location of the buildings on the property is available from the lender or other source at little or no cost, it should be included as part of the title evidence. Where reasonable grounds exist to believe that some irregularity in title might be disclosed by a survey, the district should obtain a survey.

b. **Use of Preliminary Title Evidence.** When a determination is made that an applicant is eligible for assistance by government acquisition, preliminary title evidence for the property may be obtained from the applicant or the mortgagee, and furnished to the title company in an effort to reduce the costs by requesting the re-issue rate.

#### 7-31. Hazard Insurance.

a. **Prior to Closing.** Properties to be acquired by the United States will usually be covered by hazard insurance. Owners should be advised that improvements on the land remain their property until title has been vested in the United States. Loss or damage to the property caused by fire, acts of God, flood, theft, or vandalism, will be borne by the applicant, subject to verification by inspection of the property before vesting title.

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b. After Closing. After title has vested in the United States, losses to improvements not caused by the willful act or gross negligence of the former owner will be borne by the United States. The government will not carry insurance of any nature on the property except to the extent explained in paragraph 7-30c. The time and method of cancellation, and negotiation for refund of premiums paid, will be the responsibilities of the former owner.

c. Insurance for Mortgagee's Benefit. Upon assumption of a mortgage by the government, the mortgagee will be advised that the insurance coverage should be canceled and that the United States does not intend to carry insurance of any nature on the property. If the mortgagee will not agree, a property insurance policy in an amount equivalent to the unpaid balance of the mortgage assumed by the government will be purchased at DOD expense. The mortgagee may then cancel the existing property insurance policy or release it to the former owner for cancellation. Any unearned premiums will be the property of the former owner. Insurance claims arising after closing must be assigned to the government.

7-32. Occupation of Property. Generally, the applicant should arrange for tenants to vacate the property before the pre-closing inspection is made. Prior arrangements must be made if the District chooses to allow the tenants to stay after the government's acquisition. A lease authorizing the occupancy will be completed in accordance with the guidance in Chapter 8 of this regulation and will require the tenant to carry a personal and liability insurance policy for the term of the lease. If the property is acquired with the tenant in occupancy, the tenant must sign a "disclaimer" agreeing to vacate the premises upon demand.

## SECTION IX. MANAGEMENT AND RESALE

7-33. Purpose. This section governs the management and resale of properties that have been acquired by the Department of Defense under the Homeowner Assistance Program, and sets forth responsibilities, procedures, methods and guidance for the management and resale activities for these properties. The sale of HAP homes will be in accordance with accepted real estate practices and procedures within the State where said properties are located, unless where prohibited by Federal law. Districts may use this section to develop a management and resale program to provide for the required activities. The purpose of the property management and resale program is to reduce the inventory of acquired properties in a manner that maximizes the net return to the government while mitigating the adverse impact on the affected residential areas and communities.

7-34. Basic Policies. The following guidelines are the basic policies for the management and resale of HAP properties.

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a. Competition. Unless otherwise permitted herein, competition is required to provide an equal opportunity for all to purchase HAP properties through an open bidding process.

b. Contracting. All contracting will be accomplished in accordance with applicable laws and regulations.

c. Bidding. HAP properties will be sold to the general public through the open bidding process unless the District determines that advertising and open bidding will not serve a useful purpose. Then, direct sales may be negotiated. Sales authorized to other Federal, state and local governments may be directly negotiated, as provided in this section, without an open bidding process when determined appropriate by the district, when bidding would not serve any useful purpose, or when it is no longer in the best interests of the government.

d. Price. All initial list prices will be no less than the current fair market value as determined by the district. In establishing the price, consideration should be given to the necessity to expedite resale of the property. List prices may be periodically adjusted without appraisals, taking into consideration the necessity for rapid sales, based on the market where the property is located.

e. Distribution of Listings. Sales brokers approved to submit bids will be furnished copies of all listings concurrently to allow each broker an equal time allotment for selling the properties.

f. Advertising. All advertising will be accomplished through the local Multiple Listing Service (MLS) and/or news media to ensure the greatest practical readership and to provide as many buyers as possible in the market for such properties an equal opportunity to bid. Brokers may and are encouraged to advertise the listed properties at their own expense, but at no cost to the government. Properties may not be advertised for sale until they are officially listed for sale by the government.

g. Eligible Brokers. Brokers must sign a nondiscrimination certification and a participation agreement acknowledging that they are aware of and will adhere to the laws and regulations pertaining to the HAP. All participating brokers must be licensed real estate brokers in the state where the properties are located.

h. Ineligible Buyers. Government employees associated with the HAP, or those who would otherwise have an advantage over the general public, are prohibited from purchasing properties under this program. No member of or delegate to Congress is

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eligible to buy or benefit from a purchase of a government-owned property acquired under the HAP program. No sales will be approved that may show a conflict of interest.

i. For Sale Signs. No signs will be placed on the property except those supplied or authorized by the Corps of Engineers.

j. Warranty. All properties are sold “as is”, and no warranty whatsoever will be provided regardless of method of sale. The government does not make any guaranty or warranty, express or implied, with respect to the property as a quantity, quality, character, or condition, size or kind, or that the property is in condition or fit to be used for the purpose intended by the buyer. Properties having known environmental contamination, historical significance, located in flood plains, in an airport clear zone, or other significant matters or potential impediments or conditions to resale will be advertised to reflect these issues. The Corps will make no repairs to the property, except as identified in paragraph 7-35q., after execution of the contract unless stated in the contract and/or required by the lending institution as a condition of the loan.

k. Responsibility of Bidder.

(1) The failure of any bidder to inspect, or to be fully informed regarding the condition and location of all or any portion of the property, or negligence, or mistake on the part of the bidder in preparing the bid, will not constitute grounds for any claim or demand for adjustment or withdrawal of a bid. This and the following condition, or conditions that are substantially the same, will be a part of the sales contract submitted as a bid by the broker.

(2) It is the duty of each bidder and the broker to ensure that the bid is delivered by the time and at the place prescribed in the advertisement or announcement.

l. Financing. All properties are sold for cash. Certified checks, cashier’s checks, electronic funds transfer, or checks drawn upon the mortgage company’s escrow account are forms of acceptable payment. Loan financing is the responsibility of the broker and the buyer. Financing is open to all legally authorized loan institutions. Government insured loans are acceptable.

m. Conveyance Document. All conveyance documents will be by quitclaim deed, unless prohibited by state and/or local laws. Conveyance documents other than by quitclaim deed must be forwarded to ODCSRE for approval by the Department of Justice. The district Chiefs of Real Estate are authorized to execute both quitclaim deeds and leases of HAP properties on behalf of the government.

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n. Exemptions. The HAP resale and management program is exempt from the following programs:

(1) The law authorizing HAP grants an exception to the reporting requirements of Title 10, U.S.C., Section 2662, for properties acquired, managed, and sold under the HAP. This includes both sales and rentals of properties.

(2) Screening HAP properties by HUD for possible use by the homeless in accordance with provisions of the McKinney Act.

(3) Federal Property and Administrative Services Act of 1949.

(4) Real property accountability requirements of AR 735-5 and those of chapter 16 of this regulation.

o. Deposit and Expenditure of Funds. All receipts and expenditures in connection with the HAP management and resale program will be deposited and processed in the Homeowners Assistance Fund, Defense account in accordance with DA PAM 37-100-XX, as may be modified from time to time by the Corps of Engineers Resource Management element. This includes all receipts and expenditures from sales, rental collections, repairs, contract payments, earnest money deposits, etc. associated with this program. Funds may not be used for programs other than HAP.

p. Property Accountability. Properties will be accounted for through use of the Homeowners Assistance Program Management Information System (HAPMIS).

#### 7-35. General Requirements and Procedures for Administering All Management and Resale Methods.

a. Nondiscrimination Policy. All contracting, occupancy, rental, and sales activities referred to in this section must be conducted without regard to race, color, creed, religion, sex, national origin, age, familial status, or handicap. Contractors are required to agree to and execute a nondiscrimination certification.

b. Environmental Requirements and Standards. Sales, leasing and management of properties acquired under the HAP are not subject to Preliminary Assessment Screening requirements. However, actions will be taken to satisfy legal requirements for properties containing contamination by lead-based paint, friable asbestos and other contaminants. Radon testing will be appropriately performed and evaluated where it is customary for the specific program area. Properties known to be contaminated will be managed and remedial actions taken prior to resale in accordance with applicable laws

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and regulations.

c. Lead-based Paint Poisoning Prevention. Properties constructed before 1978 are subject to the lead-based paint poisoning prevention requirements contained in 24 CFR part 35 and 40 CFR part 745. Purchasers of properties with potential lead-based paint hazards will be required to complete an Addendum to Sales Contract which will assure the purchaser is notified of and the risks of potential hazards of lead-based paint and that all required disclosures to the purchasers have been made.

d. Net Offer Bid. The net offer is the amount of the bid minus all deductible expenses to be paid by the government. Such deductions may include, but are not limited to: customary closing costs; cash bonuses; sales commission; repairs to property; taxes; title insurance; attorney's fee; termite inspection fee; etc. If requested by the purchaser in the bid, the government may pay all or a portion of the financing and loan closing costs not to exceed the percentage as determined appropriate by the lender. The broker's sales commission will not exceed the percentage of the purchase price which is customary for the area, except for cash bonuses as described herein. The amount requested by the purchaser to be paid by the government will be deducted from the amount bid for the property to determine the net offer. Where the actual financing and loan closing costs exceed the amount determined appropriate by the lender, the amount in excess must be paid by the purchaser and is not included in the deduction from the bid in determining the net offer.

e. Cash Bonuses. Cash bonuses may be awarded to brokers as determined necessary for purposes of accomplishing sales in hard-to-sell market areas. Any cash bonus offered to brokers by the government for the sale of hard-to-sell properties is an amount in addition to the sales commission, and is included with the commission and deducted from the amount bid for the property to determine the net offer. Districts may award cash bonuses of \$1,000 and MSCs may approve those between \$1,000 and \$2,000. All cash bonus requirements over \$2,000 will be forwarded to ODCSRE for prior approval.

f. Acceptable Bid. Criteria for determining an acceptable bid must be determined prior to the public opening of bids. Minimum amounts for accepting net offers should be established so bidders may be informed at the time of the bid opening whether their bid is acceptable. The definition of an acceptable bid will vary from program to program depending on the market conditions and other variables. The district will accept the most responsible bid producing the greatest acceptable net offer, as defined above, to the government and otherwise meeting the terms of the government's listing of the property. A net offer tie will be settled by a drawing.

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g. Bid Period. Bid periods are to be established by the districts to ensure fair and equal competition and to maximize execution of the HAP. Ten days after the property is publicly advertised is the recommended bid period in most cases and the bid opening should follow on the eleventh day or the next business day. After properties are initially advertised, bids are accepted for a specified period, with all offers received during that period considered to have been received simultaneously, except for “full list price offers” which may be accepted as described in the following paragraph. Offers received on a property before the specified bidding period begins will be returned for resubmission during the advertised bidding period. Offers received after the period will not be considered at the bid opening, but will be considered during the extended listing period if no acceptable bid was received during the specified period. If no acceptable bids are received after all reasonable efforts have been made to advertise, direct negotiated sales are authorized and, as last resort, leasing of properties may be necessary in the best interests of the government.

h. Full List Price Offers. The Corps district offices may operate under a “full list price offer” program by opening offers periodically at specified times, predetermined and publicly announced, during a specified bidding period. A full price offer is an offer for the full price listed minus the broker’s sales commission, the government’s customary closing costs, related fees that would be paid for any and all bidders and are customary for payment by the government in the program area, and, if applicable, minus the broker’s cash bonus. If an offer for the full list price or greater than list price offer and otherwise meeting the terms of the listing is received, it will be accepted at the time of the opening and the remainder of the bid period canceled. A backup offer representing the next highest offer may be accepted and held pending closing of a transaction. Districts utilizing this program will establish procedures to ensure fair and equitable treatment to all bidders and sales brokers. Brokers should be instructed to label the envelope containing the offer as a “Full List Price Offer” when applicable.

i. Extended Listing Period. Properties not sold during a specified time for bidding may remain available for an extended listing period. All bids received on each day of the extended listing period will be considered as being received simultaneously, and will be opened together at the next scheduled bid opening. If no acceptable bids are received after a reasonable period of time, the property will be reanalyzed and managed according to the determinations after the review. The list price and conditions of the property listing will be adjusted to obtain expeditious resale of the property while also maintaining the best interests of the government. If a property fails to generate an acceptable bid or offer during the specified bidding period, it may remain on the market as an extended listing until it is either sold or readvertised under different terms, or alternative management becomes necessary.

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j. Bid Requirements.

(1) All bids submitted, whether during the specified bid period or the extended listing period, must be in the form of a fully completed sales contract, in a form provided to all participating brokers as prescribed by the district, and be signed by both the submitting real estate broker or authorized agent and the prospective purchaser. The bid must be submitted with deductions from the offering price, resulting in a net offer to the government. If the purchase is to be financed by an insured mortgage, a district office may also require that supporting exhibits for mortgage credit analysis pre-qualified by the broker accompany the initial submission of the bid.

(2) Bids submitted during the scheduled bid period must be received in a sealed envelope and must properly indicate the property for which the bid is being submitted by being marked with the property number, address, and return address of the broker. The envelope may contain any other markings considered necessary by the district for absolute identification.

(3) Bids received during an extended bid period may be submitted and processed by facsimile.

(4) Noncomplying bids will be returned to the broker with an explanation as to why the bid was considered to be in noncompliance and information about whether the property is still available and, if still available, the terms for resubmitting an offer.

k. Earnest Money Deposits.

(1) The amount of earnest money deposit will be that amount which is customary for the area as determined by the district. In determining the amount of earnest money deposits, a district should consider comparable practice in the locality, area real estate market conditions, the type of offers generally received, and the ability of the area's typical buyers to secure financing. The district to each participating real estate broker will furnish information on the amount of the required earnest money deposit.

(2) All bids must be accompanied by earnest money deposits in the form of a cashier's or certified check or money order made payable to the appropriate Corps of Engineers finance and accounting office, or a certification from the real estate broker that the earnest money has been deposited in an escrow account. If a bid is accepted by the district, the earnest money deposit will be credited to the purchaser at closing; if the bid is rejected, the earnest money deposit will be returned.

(3) To the extent practicable, districts will establish an earnest money certification



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system with participating brokers. Such a system is to allow brokers to hold the earnest money until bid rejection or closing which will eliminate the cumbersome requirement for the Corps finance and accounting office to process these payments when received by the district.

l. Forfeiture of Earnest Money Deposits. Failure to Close Transaction. The failure by a purchaser to close on the sale of property within the allowable time period, including any extensions granted by the government, will result in the total or partial forfeiture of the earnest money deposit, except where the purchaser presents documentation to the government that one of the special circumstances described below:

(a) In those instances where, despite good faith efforts by the purchaser, there is an inability to obtain a mortgage loan from a recognized mortgage lender.

(b) For other good cause, as determined by the district office.

m. Multiple Bids by One Buyer. Real estate brokers may submit unlimited numbers of bids on an individual property provided each bid is from a different prospective buyer. If a buyer submits multiple bids on the same property, only the bid producing the best net offer to the government will be considered. A buyer may be asked to indicate a priority for properties when submitting multiple bids thus allowing the district to award the first acceptable net offer based on the bidder's priority list. If an offeror submits a bid on more than one property, the first of those bids that produces the best net offer to the government will be accepted and all other bids from that offeror will be eliminated from consideration. If the prospective owner-occupant purchaser submits the only acceptable bid on another property, without providing a priority list, then that bid must be accepted as if the bidder wishes to purchase all properties for which a bid was submitted. All participating brokers must be made aware of this policy.

n. Opening Bids.

(1) All sealed bids will remain sealed and safeguarded until the specified public opening date, which normally is the first business day following the specified listing period. The bids will be opened publicly at a time and place designated by the district office. A public bid opening is defined as a bid opening available for attendance by the general public and may be at a location within a district office or at other places deemed appropriate by the district.

(2) Each bid will be announced when opened, and acknowledgment made of the apparent highest net offer to the government. Successful bidders will be notified through their real estate brokers by mail, telephone, or other means. Official acceptance of a bid

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is final and effective only upon the government's execution of the sales contract and mailing of a copy of the executed contract to the successful bidder or the bidder's agent. Formal government bid acceptance and certified mail procedures should be established to ensure proper and effective notification to successful bidders.

(3) All bids not accepted will be promptly returned to the broker by mail. The earnest money deposit will also be returned, either by the district office or the broker, as applicable. Copies of all bids will be retained by the district for purposes of record keeping and to provide a means for communication with unsuccessful bidders should the successful bidder for any reason fail to close on a particular property or to notify bidders of additional properties available for HAP resale.

o. Counteroffer. In cases where all bids received on a property are unacceptable, a district office may, after rejecting and returning all bids and earnest money deposits, notify all bidders or their brokers, including any bidders who have submitted unacceptable bids during the listing period, that the government would be willing to accept an offer equaling a predetermined net acceptable price. Bidders must submit an acceptable offer before the newly established bid cut-off period, to be determined by the district office. The highest acceptable offer received within the specified period of time, including any offer received from a bidder who did not submit a bid during the original bid period, will be accepted, thus terminating the counteroffer negotiations. In case of identical bids, awarding a sales contract will be determined by a drawing. All drawings to determine the successful bidder will be open to the public during the bid opening. Written notification of the successful offer will be provided to all bidders.

p. Closing.

(1) Time Allowed for Closing the Sale. The number of days allowed to close the sale of a property generally will not exceed 60 days from the date of acceptance of the offer to purchase, and will be set by the district office depending on the amount of time necessary in the area to obtain financing.

(2) Extensions. In the event a scheduled closing cannot be met for reasons beyond the control of the purchaser, an extension period will be appropriately granted where the district has reason to believe the sale will close within a reasonable time. A request for an extension must be submitted in writing.

(3) Closing Agent.

(a) The government will provide a closing agent with qualifications as required by state and local laws to ensure the government's interests are protected. The closing agent

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may be a district employee or bonded representative as set forth in this section.

(b) Although it may be legally acceptable in some jurisdictions for the closing agent to represent both purchaser and seller, purchasers may, at their own costs, obtain representation if desired.

(c) If required by the district, the closing agent's functions may include reviewing and ordering title information; preparing and recording deeds and related documents; explaining all closing papers and documents to the purchaser; administering requests for closing extensions; providing an estimate of closing costs; and collecting and disbursing funds related to the sale.

(4) All assessments, including improvement assessments that are available for payment without interest or penalty for advance payment, taxes, rent, and ground rent, if any, will be prorated between the government and the purchaser as of the date of the closing. On assessments for which a payment plan has been approved, only assessment amounts required to be paid during the current tax year will be prorated, with the following years' payments to be the responsibility of the purchaser.

q. Property Damage After Sale, Before Closing. The government assumes the risk of any damage or loss to the property occurring after acceptance of the sales contract and before closing, provided the damage or loss is not the fault of the purchaser. Any substantial damage after the effective date of the sales contract but before closing may be authorized for immediate repair, at the government's option; or the government may reduce the sale price as a result of the damage. The purchaser has the option to cancel the sales contract, with all earnest money deposits refunded.

r. Occupancy Before Closing.

(1) General Policy. Occupancy of the property by the purchaser before closing is prohibited, except where authorized on a case-by-case basis under the following circumstances:

(a) When failure to permit occupancy would create an extreme hardship on the purchaser;

(b) Where permission to occupy is necessary to meet competition; or

(c) Where occupancy would protect against vandalism and theft.

(2) Occupy Under Lease Agreement.

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(a) If occupancy before closing is permitted because it would protect the property against vandalism and theft, occupancy will be rent-free or at a nominal rate in exchange for caretaker services that the purchaser agrees to perform.

(b) If occupancy before closing is permitted solely to meet the needs of the purchaser, full market rent will be required, and the purchaser will be required to assume the risk of loss in the event there is damage to the property before closing.

s. Rental of Acquired Property.

(1) General Policy - Leases. Leasing of acquired property will be as a last resort in determining management of HAP resales. However, it is an authorized management option when the district determines that it is in the best interest of the government or as local market conditions warrant. Leases may include an option to purchase in appropriate circumstances. Situations where the government will lease property include, but are not limited to, the following:

(a) A sales closing is delayed at length;

(b) Occupancy is essential to prevent vandalism or rapid deterioration of the property;

(c) The inventory in an area exceeds sales market absorption capability for an extended period of time;

(d) The property is a one or two family dwelling and occupancy would improve marketability;

(e) The property is leased as temporary housing for disaster victims;

(f) The property is leased by other government agencies for defense, law enforcement, or other purposes, or

(g) The property is leased by a nonprofit organization or governmental entity, including a public housing authority.

(2) Tenant Selection. In selecting tenants for any lease program, discrimination by race, color, religion, sex, national origin, age, familial status, or handicap is prohibited.

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(3) Preparation of Leases. Leases will be prepared in accordance with local requirements as well as applicable Federal laws and regulations. Rental will be appropriately charged and clearly cited in the lease document and receipts will be deposited in the HAP account. Public Law 89-754 is the leasing authority.

(4) Conditions of Occupancy.

(a) Lease Term and Rent. The lease term and the amount of the rent is dependent on the circumstances under which the property is leased. The fair market rental value will be the basis for charge. Appropriate other forms of compensation in lieu of the fair market value are also authorized on a case-by-case basis when it will prove beneficial to the government. Terms will generally be on a month-to-month basis and revocable at will by providing a 30-day notice.

(b) Continued Occupancy.

- Occupancy of acquired property is temporary in all cases and is subject to termination when necessary to facilitate preparing the property for sale and completing the sale.

- The government will notify the occupant to vacate the property and, if necessary, will take appropriate eviction action, in any of the following situations:

- Failure of the tenant to execute a lease, or to comply with the lease;
- Failure of the tenant to allow reasonable access to the property upon proper notice;
- Necessity to prepare the property for sale; or
- Assignment of the property by the government to a different use or program.

t. Competitive Sales Procedure.

(1) General. Properties are sold to the general public on a competitive bid offer basis through local real estate brokers. Properties are advertised in the area in which they are located through appropriate media. If a property fails to generate an acceptable bid or offer, during the specified bidding period, it will remain on the market for an extended listing period, as described in this section.

(2) Qualified Purchaser.

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(a) Anyone, regardless of race, creed, color, religion, sex, national origin, familial status, age, or handicap may offer to buy a government-owned property acquired under the HAP program; and

(b) Except as provided below, tenants in occupancy will not be offered the right of first refusal to purchase the property. They may submit an offer, or bid, to purchase the property when it is publicly listed, which will be treated in the same manner as other offers received from other prospective purchasers during the listing period.

(c) Tenants in occupancy will be offered the right of first refusal to purchase the property where:

- The tenant has a recognized ability to acquire financing and a good rent-paying history, and has made a request to Corps to be offered the right of first refusal; or

- State or local law requires that tenants be offered the right of first refusal.

(3) List Price.

(a) All initial list prices will be no less than the current fair market value as determined by the district. In establishing the price, consideration should be given to the necessity to expedite resale of the property. List prices may be periodically adjusted without appraisals, taking into consideration the necessity for rapid sales, based on the market in the market impact zone.

(b) Properties that fail to sell within a reasonable market period as determined by the district, should be reanalyzed and the price may be reduced by the district.

(4) Financing. The purchaser is entirely responsible for obtaining financing for purchasing a property.

(5) Open Listings. Properties may be sold on an open listing basis with participating real estate brokers. Any real estate broker who has agreed to comply with DOD regulations and requirements may participate in the sales program. Purchasers participating in the competitive sales program must submit bids/offers through a participating broker. Offers for groups of properties available for bulk sales may be submitted directly to the district.

u. Closing Agent Contract. District offices may contract for the services of a closing agent. This contract must include the following elements:

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(1) Liquidated Damages. A provision calling for an established daily amount of liquidated damages for each day the sales closing package is delivered beyond the date specified in the sales contract. There must also be a damages provision involving the late delivery of the sales proceeds due the government. If either or both of the liquidated damages provisions become effective for a specific case, the closing agent shall attach to that closing package their check for the full amount(s) due.

(2) Bonding. The closing agent is required to obtain bonding in an amount equal to the value of the cases assigned by the government during a normal two-month period. The bond may be surety or fidelity, provided the government is fully protected against acts involving misappropriation of funds by the principal, employees of the contractor, and any subcontractor the closing agent may be utilizing. The bonding is required to be in place prior to contract award.

(3) Closing Date. The district office or closing agent shall establish a firm closing date within the time specified in the sales contract. For extensions of closing date see paragraph 7-35p. 2.

(4) Preparing the Closing Package.

(a) District offices should provide the closing agents with all necessary documents and information needed to close a sale, including the following, in sufficient time to permit preparation for closing:

- Title evidence.
- Executed deed from the government.
- Tax Information.
- Copy of lease, if applicable.
- Rental status, if applicable.
- Utility bills, if applicable.

(b) Closing documents should, whenever possible, be picked up personally by the closing agent. If closing documents must be mailed, the appropriate government procedures must be followed. Method of transmittal must be used that provides positive proof of receipt.

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(5) Closing Agent Responsibilities.

(a) Completion of Documents by Closing Agent. The closing agent shall complete all documents in accordance with the contract requirements. These documents may include but are not limited to:

- Settlement Statement
- Promissory Note
- Trust deed or mortgage

(b) Establishment of Escrow Account. The closing agent shall establish a separate escrow account for all proceeds in the name of the closing agent, with the restriction "As Trustee for the United States of America". The escrow account must be established in a Federally insured bank that gives credit for the deposited check immediately upon clearance. Exceptions to this requirement are:

- Infrequent closing in remote areas
- Closing being handled by district staff
- Where formal contracts for closing services are not required.

(c) Accounting Records. The closing agent shall maintain complete and accurate accounting records which, as a minimum, include a cash receipts and disbursement register. This register will be reconciled monthly to the bank account. For each receipt and disbursement, the register must identify, by address and case number, each property to which the receipt or disbursement applies and the purpose for each disbursement. Review of the register will be performed by the district office during each on-site review.

(d) Status Report of Cases Assigned to Closing Agent. The closing agent is required to provide a status report as required by the district.

(e) Purchaser's Inspection. The completed Settlement Statement must be made available to the purchaser for inspection, upon request, on the business day preceding settlement.

(f) Receipt of Deposits of Payments. The closing agent is responsible for obtaining from the purchaser the amount due to close the sale at the time of closing. All



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funds paid by the purchaser must be in cash, certified funds, cashier's check, or check drawn upon a mortgage lender or attorney's escrow account made payable to the closing agent. The closing agent shall deposit these funds in the escrow account on the day of closing or the next banking day.

(g) Authorized Payments from Proceeds. Payments for the following expenses are to be made from the closing agent's escrow account. If funds are not available from the proceeds to pay any of the authorized expenses, the closing agent is to submit an invoice for each individual expense to the district office along with the closing documents.

- Sales commissions in the amount specified in the Sales Contract and any authorized bonus to the sales broker. Reflect this payment on the Settlement Statement.

- Accrued utility bills of former owners or tenants if the bills are or will become liens against the property or if restored and continued service is contingent on payment.

- Refunds. Payments made by purchasers for closing extensions may be refunded in accordance with the terms specified by the district.

- Credits. Credits given to the purchaser for services, repairs, or other items negotiated between the district and the purchaser.

- Miscellaneous closing expenses such as closing agent's fee, unless paid under other arrangements and any other such expense agreed to or approved by the district office.

(h) Transfer of Sales Proceeds. No later than the next banking day after sales closing, the closing agent must send all funds to the district office, either by hand delivery, express mail, or electronic transfer. Closing agents must obtain confirmation.

(i) Forwarding Closing Documents. A facsimile of the executed closing documents must be received in the district on the day of closing. All original closing documents must be forwarded to the district office within the time frames stated in the closing agent's contract. Such time frames must conform to the overall requirement that the certified closing documents be received by the district office within 14 calendar days from the date of closing.

(j) Recording Sales Documents. The closing agent must ensure that the deed, note, deed of trust (mortgage), and all other documents that require recording are recorded immediately following closing.

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(k) **Monitoring of Closing Agents' Contracts.** The district office must carefully monitor closing agents to ensure that closing occurs within the proper time frames; that all documents are completed accurately; that sales proceeds are sent to the district office in an accurate and timely manner and that closing documents are forwarded to the district office within the time required by the contract.

- **Review of Assigned Closing Status Report.** Review the report to ensure that closing agents are properly closing sales and whether any delay or failure to close is the responsibility of the closing agent.

- **Delayed Deposit of Proceeds.** When the district office learns that funds for a closed case were not sent promptly, the closing agent should be contacted immediately. Determine the cause for the delay, verify that the mailing has taken place, remind the closing agent of the contractual requirements and, where appropriate, demand the applicable liquidated damages. If the situation is not resolved satisfactorily within a short time, do not assign additional closings to the agent until the problem has been resolved. Where appropriate, contact the district office counsel, Inspector General and bonding company, advising them of the situation.

- **Delayed Transmission of Closing Documents.** When the district office does not receive the closing documents within the time specified by the contract, contact the closing agent to determine the cause of the delay.

- **Corrective Action.** Appropriate corrective action and measures must be taken to ensure closing agent compliance with all contractual responsibilities.

- **Periodic Reviews.** Periodic on site reviews of each closing agent's records and procedures will be conducted. A checklist for monitoring closing agents during each review will be completed. The review findings will be maintained in the district office file.

- **Retain Review Records.** The district office responsible for audit and litigation must retain copies of all documents pertaining to performance by the closing agent, including periodic status reports, reviews and correspondence.

(l) **Review and Approval of Closing Documents.** All closing documents are to be reviewed, corrected and certified by the district office as soon as possible after their receipt. In conducting the review the district office shall assure that:

- All applicable closing documents show the correct HAP case number.

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- The sales price, earnest money deposit, sales commission, settlement costs, and any additional costs authorized by the government sales contract are accurately recorded on the settlement statement.

- If the earnest money was deposited in the district office, the full amount of such deposit was shown on the settlement statement.

- The full amount of any extension fee and the amount of any refund are to be shown on the settlement statement.

7-36. Management and Resale Options. The specific procedures for management and resale of acquired properties should be tailored to the particular requirements of individual projects and the resources available to the district to accomplish the mission. The Corps of Engineers will manage and sell acquired properties or contract for such services in a manner consistent with, but not limited to, the following: transfer to other government agencies and direct sales; management and resale by Corps of Engineers; and management and resale by private contractors.

7-37. Transfer to Other Government Agencies or Direct Sales. Transfers to other government agencies may be necessary for certain projects as required by law or special legislation and to provide relief to or in cooperation with other government projects. Direct sales may be pursued, at discounts, to other entities listed below for purposes of providing assistance to local communities or to expedite sales of hard-to-sell properties.

a. Transfer. Transfer of acquired properties to Federal agencies will be in accordance with agreements, if any, between the Department of Defense and the respective Federal agency. Transfer of acquired properties will not be made to governmental agencies without prior approval from ODCSRE. Full justification and plans for transfers will be submitted for approval.

b. Direct Sales. At the discretion of the district, direct sales may be authorized for the following:

(1) Direct sales to Federal agencies, private nonprofit organizations, state and local governments, and public agencies, may be accomplished for use in HUD and local housing or homeless programs. Sale discounts will be determined on a case by case basis in accordance with the particular program authorizing the conveyance. The amount of the discount will be that amount necessary to expedite sales in depressed markets and to reduce the governments inventory of HAP properties.

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(2) Direct sales to displaced persons.

(a) At the discretion of the district office, properties may be offered for direct sale, at a discount, to displaced persons that will occupy the properties. Properties offered will be only those in the general area in which the displacement is occurring.

(b) For purposes of this section, “displaced person” means any household (family or individual) that moves permanently and involuntarily as a direct result of:

- Acquisition, rehabilitation, demolition or code enforcement for a government (Federal, state or local) project or government-assisted project;
- A determination that the income of the household exceeds the limitations for the government-assisted housing that the household occupies; or
- A major disaster, as declared by a state or Federal Government.

7-38. Management and Resale by Corps of Engineers.

a. Management by the Corps of Engineers. Management of acquired properties may be performed by contract. Districts have been delegated the authority to utilize Corps of Engineers or installation personnel to perform maintenance and management functions if, in the opinion of the District Engineer, such utilization is in the best interests of the mission. Such management functions may include, but are not limited to:

- (1) Participation in joint inspections,
- (2) Security and winterizing of properties,
- (3) Installation of signs and warning notices,
- (4) Coordination with local utilities, homeowners associations, local law enforcement authorities, and other agencies as required by law or regulation,
- (5) Care, maintenance, and repair of the property,
- (6) Rental of properties prior to resale,
- (7) Periodic inspection of property, at least monthly,
- (8) Other management functions as determined by the District Engineer.

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b. Rental of Acquired Property.

(1) Leases. The authority for leasing is Public Law 89-754, 42 U.S.C. 3374 (d). See paragraph 7-35s.

(2) Management of Rental Properties. Management of rental properties, unless in small quantities or otherwise infeasible, may be by property management contractors obtained through an invitation for bids/proposals process. No contract will be awarded to businesses otherwise associated with the resale of HAP properties because of the conflicts it will present in selling versus rental by the same contractor. A contractor wishing to slow the resale program to continue receiving funds under a rental management contract may impede the government's goal of a fast resale.

c. Resale by Corps of Engineers.

(1) Sales through Real Estate Brokers. The Corps of Engineers is charged with the responsibility of obtaining the maximum recovery of its investment in all properties. HAP properties may be sold to the general public on a competitive basis through participating real estate brokers. All licensed real estate brokers in the program area will be notified that they may, by directing a letter to the district office, with a photocopy of their broker's license, and by signing a nondiscrimination agreement, be placed on the district mailing list for sales of all properties in their area of interest. Brokers will be furnished keys or other method of access upon their approval and execution of a participation agreement. Brokers will be required to sign a participation agreement detailing whom they represent and the requirements and obligations of all parties. A home sales guide will be developed by the district for each project and furnished to each participating broker to be used as a reference in implementing the resale program.

(2) Open Listings. Properties sold through an open listing program will be available to all brokers approved for participation.

(3) Notification of Listing. A complete listing of all properties available for sale is mailed simultaneously to all participating brokers on a nonexclusive listing basis as the properties are acquired. All brokers have an equal opportunity to inspect, show, and submit offers to purchase. The district will notify all participating brokers of the dates the properties will be advertised, dates for accepting bids, the bid opening dates and locations of bid openings.

(4) Advertising. The Corps will solicit bids by actively and publicly advertising all available properties to ensure the broadest practicable coverage via newsprint, posting

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of notices in public places and/or other media the district deems appropriate. Participating brokers may advertise HAP properties at their expense without cost to the government. Any broker advertising in newspapers or elsewhere shall not use wording that would tend to indicate distressed sales or foreclosed loans. The phrase "Equal Housing Opportunity" must be inserted in every advertisement of HAP properties for sale. If a property fails to generate an acceptable bid or offer, during the specified bidding period, it may remain on the market for an extended listing period. The length and conditions of the extended listing period will be as determined appropriate by the district for accomplishing the HAP resale mission.

7-39. Management and Resale by Private Contractor. This paragraph sets forth responsibilities, procedures, methods and guidance for the contracting of management and resale services for acquired HAP properties. Districts may use this paragraph to develop a management and resale program to provide for contracting for part or all of the required services to accomplish the HAP mission.

a. Property Management by Contract.

(1) Policy. The Corps of Engineers may contract for the management of all acquired HAP properties. The terms Property Manager (PM) and Management Broker (MB), as used herein, are synonymous. Instructions in this chapter regarding either the PM or MB apply equally.

(2) Determination of Need and Area. The district office must recognize situations which dictate the need for contracting management/broker services and comply with the Federal Acquisition Regulations (FAR) and this chapter in obtaining these services.

(3) Training of Management Brokers. Within 30 days of contract award, the MB must be trained and/or provided instructions on at least the following:

- (a) Contract services the MB is to perform or obtain.
- (b) Preparation and submission of all required forms.
- (c) Policies and methods of disposition.
- (d) Procurement of supplies, materials, repairs, and services.
- (e) Policies and requirements of repair programs.
- (f) Determination of property values.

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- (g) Determination of property condition.
- (h) Accounting procedures and requirements.
- (i) Causes for contract termination.

(4) Property Manager's Responsibilities. The property manager will be required to perform services which include managing one-/or two-family homes (including condominiums) and all improvements located on the property assigned by the district, including maintenance, repairs, and reporting. Management objective is to maintain the acquired properties, keeping them clean and ready for sale in the local real estate market.

(5) Supervision and Monitoring of MBs. The overriding responsibility of the district is to supervise and monitor the activities of the MB. To properly fulfill this responsibility and to ensure that the government is receiving proper return for its management contract expenditure, the following must be performed on a continual basis:

(a) Review Documents Submitted by the MBs. Determine that each form required of the MB is submitted on a timely basis, contains essential and accurate information, and that recommended prices and methods of sale are reasonable and in keeping with current policy.

(b) Inspection of Properties. Conduct field inspections, as warranted, of properties assigned to the contractor. It is recommended that a minimum of ten percent of the properties receive these inspections. Increase inspection, up to 100 percent, if necessary, where it is found that the contractor's performance is deficient.

(c) Review of MB.

- Quarterly. The MB's office records and procedures must be reviewed on a quarterly basis. Each review must include individual property files, and fiscal documentation and records. Based on performance, the review may include adequacy of staff, supplies, facilities, inventory controls, status records, follow-up systems, comparable data, and general office conditions. Problem areas/deficiencies are discussed with the MB and a follow-up on previous deficiencies is conducted.

- Annually. The district is to perform an in-depth evaluation of each MB annually.

- As Warranted. As the district is directly responsible for ensuring proper and

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adequate MB performance, the district must visit and work with the MB when inadequate or deteriorating performance is noted. It is extremely important that each such visit be documented.

- Review Monthly Accounting Reports:

- Determine that broker's figures agree with totals of collections and disbursements.
- Check cash reconciliation for accuracy and correctness.
- Verify correctness of voucher.
- Forward payment request within four days.

- Document Unsatisfactory Performance.

- Document inadequate performance, including incorrect or incomplete forms. Place documentation in the District's MB's file.
- Compare MB's performance to other MB's working for the district at other locations.
- Discuss deficiencies personally with MB. District file should contain documentation of any instruction, guidance or monitoring provided each MB.
- Provide written documentation to MB regarding unsatisfactory performance items and corrective measures to be taken by the MB. Retain copy for MB's file.
- Follow-up on previously noted deficiencies.
- Provide additional training as necessary.

- Termination of MB Contract. When the MB, after reasonable time and assistance, fails to correct unsatisfactory performance, it will be necessary to terminate the contract. It is vital to any termination effort that the documentation highlighted above is maintained and that it reflects the efforts put forth to achieve a turnaround of the MB's performance. Documentation should reflect that the MB received proper notice by personal discussion and by letter detailing performance deficiencies and prescribing a schedule for correction. Unacceptable performance must be reflected in inspection



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reports, letters to the MB, documentation of discussions, and work sheets measuring performance. It is the responsibility of the district to bring to the attention of the contracting officer those instances of continued or repeated non-compliance by the MB and to recommend actions to be taken, including termination where deemed appropriate. The decision to terminate will be made in accordance with the terms of the contract. Appropriate use will be made of administrative sanctions in the property disposition program in strict accord with 24 CFR Part 24. Areas of concern for irregularities include any procurement contract for goods and services between the government and MBs, repair contractors, selling brokers and purchasers.

b. Management and/or Resale by Contractor.

(1) A district office may invite firms experienced in property sales and management to compete for contracts that provide for an exclusive right to manage and/or list specified properties in a given area. This procedure is in lieu of management and resale by the Corps of Engineers as it will provide for administration of property management and resale by contract. In determining whether to enter into an exclusive contract, the district office will consider its staff resources, local market conditions, and location of properties.

(2) The contractor will provide a variety of management and/or resale services to assist the government in managing the properties prior to sale. The duties of the contractor may include: selling the properties, advertising the properties in a manner approved by the government, showing the properties to prospective purchasers, helping purchasers prepare and submit purchase offers and qualify for mortgages, explaining to purchasers the steps required to close the sale, providing the district office with a report on the reasons the properties have not sold after a reasonable period on the market, submitting bids/offers to the government on behalf of prospective purchasers for acceptance or rejection, coordinating closings, and managing rental properties. A competitive process is required as in other resale methods to offer the general public the right to make offers in a fair and equitable manner.

(3) In areas where a broker has an exclusive right to list properties, a purchaser may use a broker of his or her choice. At the District's option the purchaser's broker must submit the bid/offer to the government directly or through the exclusive broker.

7-40. Other Sale Procedures.

a. Razing for Lot Sales. The government will raze property and sell the vacant lot if required by local ordinance or agreement, or if it is determined to be in the best interest of the government. As an alternative, the government may sell the property with

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a requirement that the purchaser raze the property after the sale. Specific requirements for demolition of improvements will be included in the sales contract in such cases. Properties may be razed for sale of the vacant lots if one or more of the following conditions exist:

- (1) The property has already been unsuccessfully offered for sale in its “as is” condition.
- (2) A local ordinance or agreement prohibits “as is” sales of such properties.
- (3) The property must immediately be razed to remove a health or safety hazard.
- (4) Damage beyond repair or the cost of repairs exceeds the value.
- (5) It is determined by the district to be in the best interest of the government to raze the property for a sale of the property.

b. Bulk Sales. The government may occasionally make groups of properties available for bulk sales in “as is” condition. Bulk sales of properties may be limited to governmental entities and private nonprofit organizations for a specific purpose. The terms and conditions for a particular bulk sale will be described fully in any public notice of the sale.

(1) General Features. Designed to boost sales in weak markets, the all cash, “as is”, bulk sales program features:

- (a) The option to publish or not to publish the listing price.
- (b) The requirement for purchasers to provide their own financing.
- (c) Offers may be submitted directly to the district.

(2) Property Selection. Eligible properties include “as is” properties and vacant lots. Generally, properties should be marketed individually prior to being offered in bulk. However, this is not always practical. A bulk offering containing properties that have proven to be hard-to-sell could logically include new acquisitions which are comparable with regard to location and physical characteristics, but which have not been offered individually. This rationale may reasonably be extended to broader areas; e.g., to specific neighborhoods. In addition, better properties may be included in a bulk package of predominantly less attractive properties, if doing so would enhance the properties overall marketability.

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c. Auctions. Districts may sell properties at public auction in lieu of other resale methods. In determining whether to hold an auction, consideration should be given to: the type and number of properties to be sold; property value; location; anticipated public interests; and administrative costs. Terms and conditions of the auction sales will be announced in the public notices of the sales. Auction sales may be accomplished by a contractor licensed in accordance with laws and regulation in the state and local community in which the property is located, or by qualified Corps of Engineers employees. Procedures for holding public auctions by Corps personnel will be in the spirit of fair competition and within applicable guidelines for the open bidding process. Auctions by contractors will be governed by the following:

(1) General. A professional auctioneer may be contracted by the government to hold an auction for resale of HAP properties. If the auctioneer is a licensed broker in the jurisdiction of the properties to be sold, he/she may function in that capacity. If the auctioneer is not a licensed broker, he/she must enter into an agreement with a licensed broker who will act in the auctioneer's behalf to show properties prior to the date of the auction and perform such other functions only a licensed broker may perform. To the extent that other selling brokers are used, it is the responsibility of the auctioneer to compensate them.

(2) Contract with Auctioneer. All services performed by the auctioneer must be set forth in a contract.

(3) Soliciting Auctioneers. Auctioneers must be solicited in accordance with the FAR.

(4) Bid Basis. If bid basis is percentage of sales, inform all prospective auctioneers the approximate total value of the offering. Where competitive negotiation is permitted, the fee should not exceed eight percent of the total received. It must be clear in the solicitation whether the auctioneer must pay advertising costs out of his commission or whether the government will provide an allowance for that and other expenses.

(5) Broker Compensation. The sales commission will be paid under the provisions of the contract. If the auctioneer permits the participation of other brokers, it is his/her responsibility to establish the terms for this participation and to compensate the brokers.

(6) Advertisement. Auctioneers may arrange for, procure and/or place all forms of advertising, subject to government approval. Advertisements should have all essential

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information, such as, how the property may be shown, time, date and location of auction, list of properties, earnest money requirements, a statement as to whether properties are being offered individually or in bulk, the terms and conditions of sale and essential rules of the auction, a statement that the property must be viewed through a local broker, and a statement that the government reserves the right to reject any offer unless the auction is absolute.

(7) Costs. All costs, including advertising and fees for auction personnel should be included in the price ultimately arrived at in the contract. However, the district office may elect to extract the advertising costs, providing a separate allowance for it. A cost or price analysis will be made prior to execution of the contract along with a determination that the contract price is reasonable.

(8) Competition at Auctions. The contract must provide that the auctioneer cannot use unduly restrictive procedures or standards that tend to limit competition at the auctions. The auctioneer, as part of the contract agreement, must sign a nondiscrimination certification.

## SECTION X. APPEALS

7-41. Appeals Policy. Section 1013(f) of the Act provides that the provisions of the Act will be administered in conformity with the requirements contained therein and under such conditions and regulations as the Secretary of Defense may prescribe, and that all determinations and decisions made pursuant to such regulations shall be final and conclusive and will not be subject to judicial review. The Administrative Procedure Act does not apply.

7-42. Authority. The Secretary of Defense delegated to the Secretary of Army the authority to establish an appeals procedure, with responsibility for final action assigned to a designated component of the Department of the Army. Accordingly, the appeal procedure in this section has been established. Authority to take final action on appeals has been vested in the DASA(I&H).

7-43. Notification to Applicant.

a. Notification of Decision. Each applicant will be notified of the decision made on his/her application and the reasons for such action.

b. Information to Be Included. The letter to the applicant providing notice of the decision should contain the following minimum information:

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(1) References to the appropriate sections of the Act and the regulation under which the decision has been reached and the rationale for the decision.

(2) Notification of the applicant's right to question the district's decision, to then object to the decision, to have the MSC review the district's decision, and then file an appeal of the MSC decision. Applicants must be advised that an objection must be written and state the basis for the objection. Applicants should further be informed that if the issue is one of value they may submit a professional appraisal paid for by the applicant.

7-44. Objection Procedure.

(a) A written question regarding the applicant's case will not be considered an appeal. The district will reply to the applicant and explain the government's decision and the basis for that. [Note the restriction on appraisals in 7-22b above.] This reply will explain that the Applicant has a right to object to the district's decision and have it reviewed by the MSC or accept the district's decision. A second appraisal will not be obtained unless an objection is received, forwarded to the MSC and the MSC decides to request a second appraisal.

(b) The applicant may request that the MSC review the district's decision. The MSC will review the objection with supporting documentation and reply to the applicant. The reply will explain that the applicant may file an appeal from the MSC's decision(s) regarding (1) benefits payable and/or (2) eligibility. Applicants should be advised that an appeal will be considered by the district commander, the MSC commander, and ODCSRE. If favorable action cannot be taken by one of those, the appeal will be submitted to the DASA(I&H) for final decision.

7-45. Appeal Process.

(a) An appeal must be submitted in writing to the district within 180 days from the date of notice of the MSC's decision. The appeal must state the decision the applicant is objecting to and the basis for the objection with supporting documentation. The applicant may be represented by an attorney or other person if applicant so chooses.

(b) The district will review the applicant's appeal, and prepare an appeals package with recommendation to be submitted to the MSC.

(c) Appeals will be considered at the district level, and will be reviewed at MSC level. A determination will be made at each level as to whether or not favorable action can be taken. An appeal which has been forwarded to a higher level of review may not

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be settled at a lower level without the concurrence of the highest level to which the appeal has been transmitted.

(d) If favorable action cannot be taken, the appeal will be forwarded by ODACSRE to the DASA(I&H) for further review and for final decision.

7-46. Appeals Procedure.

a. Investigation. Any decision objected to by the applicant will be investigated by the district.

(1) The investigation will be as extensive as necessary to clearly define the basis for the objection/appeal and to produce information required for its consideration.

(2) Upon completion of the investigation, the information submitted with the application will be reconsidered, together with the information obtained as a result of the investigation, and a determination will be made as to whether favorable action can be taken.

(3) For appeals, a signed report of the investigation and consideration will be prepared which will include the following tabbed headings:

(a) Applicant's Claim: A brief outline of the basis of the application for assistance, the initial decision by the district, the applicant's objection, and the MSC's decision from which the applicant has appealed, and the basis for the applicant's appeal. Copies of the benefit sheet and settlement sheet should be included, if applicable.

(b) Issue: A brief statement of the matter to be resolved;

(c) Findings and Decision: The scope of the investigation and consideration of the appeal; pertinent information necessary to determine the merits of the appeal; an Attorney's Opinion for eligibility appeals, the decision on the appeal;

(d) Besides review and certification of the appraisals for the appeal, an analysis of the applicant's appraisal issues should be included in the review; and

(e) Recommendations.

(4) Applicants will be notified by the district when an appeal has been forwarded to higher authority for review.

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b. Forwarding of Appeals. If favorable action on an appeal cannot be taken by the district, a tabbed appeal assembly will be prepared in sufficient copies to provide one copy for the next higher level of review and two copies (including original papers where available) for submission to ODCSRE. A copy of the appeal containing the original papers will be returned to the district after a decision on the appeal has been reached. The appeal assembly will have a jacket cover of heavy paper backing with a suitable fastener at the top. It will consist of the following items, assembled in the order shown below, with such variations or additions as circumstances require:

- (1) Investigation and consideration report;
- (2) Written appeal and amendments;
- (3) Application with attachments;
- (4) Appraisal reports, if appropriate;
- (5) Settlement sheet for appraisal issues;
- (6) Pertinent correspondence in chronological order;
- (7) the District's Attorney's Opinion; and
- (8) Any other documents or information which have a significant bearing on applicant's claim for assistance.

7-47. Review of Appeal by MSC. This review is to ensure the following:

- a. Compliance. The initial decision is in accord with the facts, the provisions of the Act, and existing regulations;
- b. Notification. The applicant was properly notified as to the reason that favorable action could not be taken on his/her application; that he/she has filed an appeal from this decision and has submitted all of the information he/she intends to submit in support thereof;
- c. Decision. The district engineer's decision on the appeal is supported by the record; and
- d. Necessary Information. The appeal assembly contains the necessary information in support of the decision and has been assembled as stated in this section.

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7-48. Action on Appeal by the MSC. Action by the MSC will be taken as expeditiously as possible. If the MSC concurs with the recommendation, additional comments and recommendations together with the reasons, and supporting documents if appropriate, will be forwarded to ODCSRE. If the MSC does not concur with the district engineer's recommendation, the matter will be returned to the district engineer for further consideration or with a directed solution. If the appeal is forwarded to ODCSRE for further review, the MSC will notify the District.

7-49. Action on Appeal by ODCSRE. ODCSRE may either:

- (a) return the appeal for further consideration or with a directed solution or
- (b) forward the package, and a proposed letter to the applicant denying the appeal, to the DASA(I&H) with the recommendation that it be signed and sent to the applicant.

7-50. Action by the DASA(I&H). Final decision on an appeal will be made by the DASA(I&H) based on recommendation from ODCSRE. In the event the recommendation is not approved, the appeal will be returned to ODCSRE for further consideration. If the recommendations are approved, the letter to the applicant will be signed by the DASA(I&H) and sent to the applicant.

7-51. Final Action by ODCSRE. If the DASA(I&H) has not approved ODCSRE recommendations on the appeal, the matter will be reconsidered and, if possible, objections will be resolved at ODCSRE level. Otherwise, the appeal will be returned to the MSC with appropriate instructions for further action. If the DASA(I&H) has approved the recommendations, copies of the letter to the appellant and the memorandum opinion, including a copy of the appeal assembly with original papers, will be sent to the MSC and the case will be closed.

7-52. Dissemination of Decisions. Copies of HAP appeal decisions by the DASA(I&H) are not disseminated by ODCSRE Corps-wide. A digest of decisions may be made available to any district. The district may refer to such decisions but may not disclose them to applicants.

## SECTION XI. INCOME TAX

7-53. Tax Consequences. HAP benefits are considered to be payments attributable to employment and are, therefore, taxable as gross income. All HAP benefits are taxable including benefit options in which payments are made to a third party on the beneficiary's behalf. No taxes will be withheld the calendar year following death of an



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applicant.

7-54. FICA Withholding - Applicability and Exemptions. HAP benefits are subject to Federal Insurance Contribution Act (FICA) withholding. The amount of withholding, if any, is determined by the applicant's employment status when they became eligible to receive benefits. FICA is not withheld from members of the armed forces since they pay taxes only on their basic pay. Civilian employees who belong to the Civil Service Retirement System are subject only to Medicare withholding, and are not subject to the OASDI portion of FICA taxes. Civilian employees who belong to the Federal Employee Retirement System are subject to withholding for both the OASDI and Medicare elements of FICA. If a member of the armed forces is eligible for HAP benefits because of active duty status, no FICA is withheld even if the benefit is received after the member retires. Any outstanding employee contributions for FICA must be paid prior to the time of closing of a government purchase or prior to a benefit payment on a foreclosure. This may be done by withholding reimbursable funds or direct payment by the employee prior to closing or prior to foreclosure payment. FICA withheld should not exceed the maximum annual limit.

7-55. Disclosure. Applicants should be informed that there are tax consequences of HAP benefits. Districts are responsible for providing complete disclosure to applicants on the taxability of HAP benefits, commencing with town hall meetings and continuing throughout the processing of applications or appeals.

7-56. Calculation of Taxable Benefit.

a. Private Sales. For private sales, the taxable benefit is the amount actually disbursed to the applicant.

b. Foreclosures and VA Compromises. For foreclosures, the taxable benefit is the amount actually disbursed, whether to the applicant or to third parties, to discharge the applicant's foreclosure related liabilities.

c. Mortgage Assumptions. Mortgage assumptions are taxed in the same manner as government acquisitions.

d. Acquisitions. The difference between the purchase price and the current fair market value is taxable as income to the applicant at the appropriate tax rate. Reimbursements for taxes, interest, and insurance premiums paid by the applicant, as well as closing costs paid by the government, are also taxed as income to the applicant at the appropriate tax rate. If the current fair market value is more than the purchase price, this will not be considered a negative benefit and only the reimbursements paid the

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applicant will be taxed.

e. **Taxable Liability.** For mortgage assumptions and government acquisitions, the applicant should be notified of the taxable liability for the transaction.

7-57. **Payment of Tax Obligation.** Federal income tax and FICA (when applicable) will be withheld or collected in the following manner:

a. **Withholding from Benefit Payment.** Taxes due must be deducted from any benefit payment made to the applicant. When the payment to the applicant is insufficient to meet the overall tax and FICA liability, the amount of the FICA will be withheld first from the payment. The applicant must pay the entire FICA portion of the taxes due prior to closing or paying off enforceable liabilities.

b. **Reporting of Taxable Benefit.** The amount of the taxable benefit will be reported to the IRS and to the applicant.

7-58. **Reporting.** HAP entitlement received directly or indirectly by the applicant will be included in gross income on a W-2, Wage and Tax Statement. The total value of benefits will be shown in boxes 10 and 16 of the W-2. A separate W-2 reflecting only HAP benefits may be provided in lieu of including HAP benefits on the beneficiary's regular W-2. A Form 1099-S must be provided to the applicant and the IRS.

## SECTION XII. FILES AND REPORTS

7-59. **Policy.** District offices will use a standard filing procedure that can be easily audited. The procedure must facilitate up-to-date records for district office actions based on thorough documentation, retrieval of specific information in the event of a dispute or complaint, or review by MSC and Headquarters' staff. All HAP personnel must be knowledgeable of the filing system.

7-60. **Manual Property Records and Files.**

a. **Individual Property File.** Correspondence, forms and related material must be filed in chronological order. A strict sign-out control system must be maintained for property case files.

b. **File Maintenance.** Active files must be maintained by property address, name, or by application number. Once completed the acquisition and Management & Resale files will be merged and filed by application number.

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c. File Disposition. Files will be maintained with the Modern Army Record Keeping System (MARKS). The MARKS number for HAP is 405.

d. Files on Contractors. Contract files will contain the contracts, amendments, payments and related correspondence.

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## ADDENDUM 1

## PRELIMINARY COST ESTIMATE

BASIC INFORMATION	
Installation Population	7,043
Expected Applicants (Instl Pop X 20% X 50%)	704
Average home value (Avg home val near instl)	\$55,000
PROGRAM COST ESTIMATE	
Pvt Sale Est (Dif between 95% of PFMV & sales price)	
Est # of Pvt Sales (19% X expected applicants)	134
Est cost of Pvt Sales (8% X avg home value) X (Est # Pvt Sales)	\$589,600
Govt Acq Estimate (Higher of existing mort. or 75% PFMV)	
Est # of Govt Acq (80% X expected applicants)	563
Est cost of Govt Acq (# acq X avg home value)	\$30,989,200
Est cost of reimb (e.g., tax, interest, etc.) (Avg monthly mort pmt X 3 months X # govt acq) + (1% avg home value X 25% X # govt acq)	\$774,730
Foreclosure Estimate (Amount of indebtedness)	
Est # foreclosures (1% of expected applicants)	7
Est cost of forecl. (Avg indebt. X # of forecl)	\$19,368
Administrative Estimate (Travel, Salaries, Title, Travel, etc.) (\$3,500 per applicant)	\$2,465,050
Property Management & Disposal Estimate (Interest, Taxes, Insurance, Sales, Maintenance) (15% of Acquisition Cost)	\$4,465,050
Total Cost Prior to Resale	\$39,302,998
Recovered from Resale (75% of Acq Costs)	\$23,241,900
<b>Total Estimated Program Cost</b>	<b>\$16,061,098</b>

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## ADDENDUM 2

### MARKET IMPACT STUDY (SAMPLE)

1. **PURPOSE:** A description of the announced closure/reduction; the date of the announcement or study; the recommended "public announcement date"; the effective date of the closure/reduction; and the installation functions affected.
2. **INSPECTION:** The date of neighborhood inspections and source of information; e.g., realtors, appraisers, Chamber of Commerce, local government planning agencies, and installation personnel.
3. **SCOPE OF STUDY:** A description of the types and locations of properties included in the study with an attached area map.
4. **DESCRIPTION OF AREA:** An overall discussion of the environmental, economic and location factors of the area, including cities and communities affected by the announcement. Economic factors such as plant closings and other adverse economic impacts must be addressed.
5. **REDUCTION OR REALIGNMENT:**
  - a. The total number of installation personnel, and the number of personnel affected by the reduction segregated by officers, enlisted personnel, and civilian personnel;
  - b. The estimated number of homeowners affected by the reduction;
  - c. A discussion of the future of the installation population and housing, including new assignments which may offset the reduction;
  - d. Installation payroll, before and after the reduction, along with the effect on the services provided by or to the community.
6. **OVERALL ECONOMIC CONDITIONS:** Use the economic data to measure the effect, both actual and potential, of the closure on the labor force, population, and payroll of the communities around the base. This section describes the adverse conditions which have impacted the area prior to and as a result of the installation closure or reduction. Interest rates, available mortgage funds, and their effect on the market should be discussed.

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7. REAL ESTATE MARKET CONDITIONS: See paragraph 7-8f of ER 405-1-12 for the criteria that must be included.

a. Discuss the appraisals provided with the report and their significance. (See paragraph 7-21 for instructions on appraisals.) Normally the appraisals of individual houses should be obtained by contract with a local certified appraiser, who is a member of the local multiple listing service and one who has considerable experience appraising local residential properties.

b. Discuss local real estate listings, sales, average prices and whether they are increasing or declining, average days on the market, and building permits issued during the last four years. Include charts tracking these changes, where appropriate.

c. Include a discussion of the effect of the closure/reduction on the rental market. Indicate whether foreclosures are increasing or declining, efforts by agencies to avoid defaults, and efforts to market foreclosure houses.

d. Comments from brokers and/or applicants.

8. CONCLUSIONS: A summary of the data supporting your recommendation.

NOTE: Confidentiality: Market impact studies prepared as pre-decision documentation for potential HAP implementation must be treated as privileged information, and should not be routinely released to the press or the public until the HAP decision is made. Release of HAP information is sensitive and should be coordinated with the Public Affairs Staff.

Date of report                      Name and title of preparer

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Change 34  
15 May 2000

### ADDENDUM 3

#### PRIVACY ACT INFORMATION FOR HOMEOWNERS ASSISTANCE PROGRAM APPLICANTS

The Homeowners Assistance program was authorized by Section 1013 of the Demonstration Cities and Metropolitan Development Act of 1966, Public Law 89-754 (80 Stat. 1255, 1290), as amended. The Corps of Engineers administers the Homeowners Assistance Program. Individuals seeking benefits under the Act must file an application form (DD Form 1607) and, in addition, may be requested to furnish supplemental information to support their applications. The information requested will be used to identify the number of homeowners affected by the announced closure/realignment, and to determine the impact on the market, eligibility, and entitlement to specific program benefits. The application and supporting information will be retained for three years, except in appeal cases where the record is considered permanent. Information disclosed by applicants will be treated on a confidential basis and will not be disclosed except to personnel in the Department of Defense who have a need for the information. Sale of the property to the government and the amount thereof is also reported to the Internal Revenue Service (IRS). Deeds of conveyance to the government, which may contain data on mortgages assumed, and other documents relating to sufficiency of title, are furnished to the Department of Justice for review. Information contained in the application form and supporting documents is furnished voluntarily; however, if all required information is not furnished, eligibility for benefits may be affected and benefits

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may be denied. Benefits under this program are considered "wages" for tax purposes.

The Social Security Number on the application is for identification purposes and is used to report to IRS the sale of the property to the government and to report withholding for Federal income tax, FICA and Medicare purposes. Its non-disclosure may or may not affect payment of benefits.

Date:

---



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15 May 2000

#### ADDENDUM 4

##### INFORMATION TO APPRAISERS REGARDING THE HOMEOWNERS ASSISTANCE PROGRAM

1. The Homeowners Assistance Program (HAP) is authorized by an Act of Congress which provides that federal employee homeowners may be entitled to reimbursement for some of the real estate losses they incur when their job is transferred or terminated and they have to relocate due to an installation being closed or realigned.
2. If the homeowner is unable to sell his/her home, the government will acquire it. However, this is not an acquisition in the usual sense as there is no Federal requirement for the houses and the acquisition is solely for the benefit of the homeowners. There is no condemnation in this program, nor is there any judicial review of the determinations made.
3. In this program, fair market value appraisals of houses, one to two-family residences and condominiums will be needed to determine benefits to be paid to the applicant or to a third party on his/her behalf. For instance, where an applicant has sold his/her home, we take an amount equal to 95 percent of the FMV prior to the public announcement date that the installation is being closed, subtract the FMV at the time of the sale from the 95 percent figure, and pay the difference to the applicant. Where an applicant is unable to sell the house himself/herself, he/she may sell the house to the government for the amount of the outstanding mortgages or for 75 percent of the FMV prior to the public announcement date.
4. Although the government purchases the house at 75 percent of the prior FMV or the amount of the outstanding mortgages, we must also know the after value of the house for determining the applicant's tax liability.
5. The appraiser will invite the owner or his/her representative to accompany him in the detailed inspection of the property and give careful attention to all information and comments given by the owner. During owner contact, no commitments will be made as to valuation estimates.
6. Each appraisal report will contain, as a minimum, the following:
  - a. A completed residential appraisal report, FNMA Form 1004.
  - b. A floor plan sketch of each subject property.

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c. Photographs of each subject property; front view, rear view, and street scene. Photographs of other major improvements and significant deferred maintenance or damage; front view of each comparable sale used.

d. For condominiums or two family residences, the appraisal will use FNMA Form 1073 or FNMA Form 1025, as appropriate.

e. For the prior FMV, include a brief discussion of the value in relation to original acquisition costs.

f. For after value appraisals, include a brief discussion of value in relation to the subject property's sale price or the foreclosure sales prices.

g. The contributory value of all improvements added by the owner/applicant will be considered and included in both the prior and after value appraisals. Capital improvements existing at the time of the property inspection must be utilized in both the prior and after value appraisals even if they did not exist at the time of the prior value appraisal or public announcement date. Any improvements made by a subsequent purchaser/owner, after a private sale or foreclosure, must be omitted in each the prior and after appraisal.

h. A general sales map showing the location of the subject and each comparable will be included in each report.

i. Other items as appropriate, particularly a narrative discussion of any item or factor that cannot be adequately covered or explained in a form report.

7. Each report shall be typed and submitted with an original and the number of copies needed depending on the dollar amount of the appraisal.

8. Delivery of the appraisals by a contractor should take no more than 21 days and the contract shall provide for liquidated damages for each day of delay, except when the delay arises from causes beyond the control or without fault or negligence on the part of the contractor.

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## ADDENDUM 5

### SCREENING FOR ENVIRONMENTAL HAZARDS IN DWELLINGS ACQUIRED

1. Required Screening/Inspections. Two screening inspections must be performed after acquisition of a dwelling:

a. Lead-Based Paint (LBP) screening required by the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821 et seq.;

b. Asbestos screening.

2. Methods of Performance. The method of performance of the screenings, i.e. whether performed by Crops personnel or by contractor, is at the district's discretion. If warranted by the volume of the program, the district may choose to have a contractor perform both screenings. However, LBP screening and asbestos screening should not be contracted for separately as LBP screening requires no special training or expertise and can be performed by any individual performing the asbestos screening.

3. Format of Reports. No particular form is required for reporting the results of LBP or asbestos screening.

4. Lead-Based paint Screening. The most recent law pertaining to the abatement of LBP in housing units is Public Law 102-550, Title X; commonly known as the Residential Lead-Based Paint Hazard Reduction Act of 1992. This Act broadly regulates LBP in housing units. Additionally, the Department of housing and Urban Development has not yet promulgated the requisite guidance and regulations called for by the Act.

a. Until the provisions of the 1992 Act take effect, the sale of Army-controlled houses which contain LBP will continue to be governed by the 1978 Lead-Based Paint Poisoning Prevention Act, Public Law 91-965.

b. The current Army policy for the elimination of LBP hazards in properties covered by BRAC actions is based substantially on the 1978 Act. Although directed at BRAC properties, it is prudent to apply the same policies to HAP acquired houses even though HAP properties are not acquired for an Army mission, but only for the convenience of the HAP applicants.

c. Accordingly, the Army has committed itself to ensure properties sold for residential habitation are free of immediate LBP hazards. A visual inspection of all

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applicable surfaces in houses constructed prior to 1978 is required. All surfaces where the paint is cracking, scaling, chipping peeling, or loose, are termed a “defective paint surface”, are assumed to be immediate LBP hazards and must be covered or removed.

d. Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns), chemicals, or replacement of the painted building component. Machine sanding, dry hand sanding, and use of propane or gasoline torches are not permitted. Washing and repainting without thorough removal or covering is not considered adequate treatment.

e. If no immediate LBP hazard exists, a prospective purchaser must be notified prior to the purchase (1) that the property was constructed prior to 1978 and that it may contain LBP; (2) of the hazards of LBP; (3) of the symptoms and treatment of LBP poisoning; (4) of the precautions to be taken to avoid LBP poisoning; and (5) of all results of inspection, assessment, or testing for LBP and LBP hazards.

5. Asbestos Screening. Asbestos screening will initially be accomplished by a determination of whether or not friable asbestos is suspected. If there is no crumbling or pulverized insulation, tiles, roofing, shingles or other construction materials which may contain asbestos, it may be assumed no friable asbestos is present. If, however, there is reason to suspect friable asbestos is present, an inspection will be performed by a qualified inspector, either Corps or contractor, proficient in asbestos detection and DA/DOD asbestos policy.

# Exhibit 3

Department of the Army  
Omaha District, Corps of Engineers  
6014 U.S. Post Office and Courthouse  
Omaha, Nebraska 68102

DM 405-2-1

MROOP/MRORE

Memorandum  
No. 405-2-1

1 October 1980

Real Estate  
ENCROACHMENTS

1. Purpose. Prescribes policy and procedures for surveillance and safe-guarding of Government-owned fee and easement lands to prevent new encroachments and prescribe the actions necessary to remove or resolve existing encroachments.

2. Applicability. This memorandum shall be applicable to all water resource development projects administered by the Omaha District Corps of Engineers in behalf of the Chief of Engineers and to those lands on which an easement has been acquired by the Corps of Engineers.

3. References.

- a. MRD Encroachment Action "Handbook," June 1978
- b. Title 36 (36 CFR § 327, 1979)
- c. Section 10 (33 USC § 403)
- d. Section 404 (33 USC § 1344)
- e. AR 405-70
- f. AR 405-80
- g. EP 405-1-2
- h. ER 405-1-750
- i. ER 1130-2-405
- j. ER's 405-1-800, 830, 840, 860, and 875
- k. DM 1130-2-7
- l. ER 1130-2-406
- m. ER 405-2-835

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4. Definitions.

a. Encroachment, as used in this memorandum, is the term applied to all unauthorized uses whether they are trespasses or any other violation stemming from illegal or unauthorized entry on and/or use of Government-owned fee or easement land where use or implied possession by individual(s) or other entities violates the rights held by Government in the land.

(1) Minor Encroachment. This refers to violations which do not create visual damage or destruction and removal would not result in damages to the Government. Something that can usually be resolved at the local level with one or two contacts.

(2) Major Encroachment refers to a higher degree of the violation of the rights held by the Government. It also refers to the complexity and extent of land modification, damages or destruction, possession and occupation of Government-owned lands. Usually will require formal contact and District coordination.

b. District or District Elements refers to any subunit of the Omaha District, Corps of Engineers within the entire District area.

5. Policy. The general policy is to protect the resource base of the project and the integrity of project lands by preventing new encroachments and by resolving existing ones by fair and consistent use of all available remedies. Remedial actions shall be legal and reasonable, yet will be directed toward alleviating encroachment situations which affect the project environment or interfere with the enjoyment, health, safety, or welfare of project visitors. Since encroachment prevention is more desirable than remedial measures, every effort must be made to prevent encroachments from developing and the following actions will be accomplished as soon as possible:

a. Insure that all project boundaries are surveyed and monumented to the extent necessary to clearly delineate those boundary lines. Survey and monumenting of operating Lake Project area boundaries must be given high priority, especially in those areas where adjacent landowners are developing home and/or recreation sites; or are engaged in agricultural row-crop or stock feeding endeavors which are difficult to control without fencing.

b. Identify and report those areas where boundary markers cannot be located or have been destroyed. Requests for re-establishment of boundary markers should be made to Engineering Division, Surveys and Mapping Section immediately upon discovery of the removal, destruction, or damage to boundary markers.

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1 Oct 80

c. Intensify training on the rules, regulations, and policies concerning encroachments to appropriate personnel directly involved with project management activities both in the Omaha District office and in the field offices.

d. Each project shall establish a plan and program to notify adjacent landowners and make them aware of their responsibilities in regard to fee title and flowage easement lands. The plan or program should emphasize the flowage easement projects held by the Government in each project area.

e. Construction Policy in Flowage Easements. Where easements prohibit human habitation no construction for human habitation will be allowed. The general rule is that use of fill in flowage easements violates Government rights, however, in unique situations proposals for filling in flowage easements may be submitted to the District Engineer for review. All other proposed appurtenances or structures within a flowage easement should be submitted to the District Engineer for review and approval prior to construction. Plans for improvements or appurtenances by third parties shall be submitted to the District Engineer for review. If approved, Real Estate Division will grant formal consent before construction begins.

6. Encroachment Identification.

a. Project Personnel. All lake project personnel shall familiarize themselves with project boundaries, flowage easements, elevations, contour lines, in order to prevent the various types of encroachments which can occur within each project. Both Real Estate Field Office and Project Office personnel shall make a concerted effort to identify encroachments on each project. These efforts shall be fully coordinated.

b. District Personnel. All Real Estate personnel who visit project lands in the course of compliance and utilization inspections, or for other purposes, shall actively search for encroachments during such visits or inspections. Real Estate personnel shall coordinate their trip with the Lake Project Manager and take along sufficient reference data to identify the Government property lines of the lands scheduled for inspection. When possible, a project employee shall accompany the Real Estate personnel on such inspections. Any encroachment discovered will be discussed with the Lake Project Manager to determine if that individual is aware of it and what action has been taken or is proposed. All other District personnel who in the course of their normal duties, visit, inspect, or are regularly employed on civil works projects shall also be responsible for identifying and reporting encroachments to Lake Project personnel.



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7. Encroachment Reporting.

a. All encroachments, immediately upon discovery, will be reported to the Lake Project Manager. Most encroachments are citable violations under Title 36, however, some violations are also subject to prosecution under other statutes. Such offenses are a matter of law enforcement concern and should be reported, through the appropriate offices, to the District Office of Counsel and/or Federal law enforcement officials. In cases of major encroachments, the Lake Project Manager shall coordinate with the Real Estate Field Office at least informally, prior to taking any action to resolve the encroachment. Other than minor encroachments which are resolved on-site, the course of action selected by the Lake Project Manager to resolve an encroachment must be coordinated with the appropriate element of the District Office so as not to eliminate alternatives or assume the authorities of other staff elements. Major encroachments shall be reported on MRD Form 0877, Encroachment Detection and Action Record, and forwarded to the Chief, Operations Division, or to Chief of Real Estate Division with copies furnished to other District elements as necessary. Minor encroachments should be recorded on MRD Form 0877 and retained in Project Office files. The flow chart (Appendix A) should be utilized as a guide for reporting, resolving and staffing procedures.

b. The Lake Project office shall keep a record of all steps taken to resolve an encroachment problem including records of telephone calls, letter correspondence and personal conversations with the violator, and all communications with other District elements for use with the Recreation Resource Management System (RRMS) annual report, the annual Real Estate Utilization Survey, and for future reference as necessary.

c. When an encroachment is discovered, it should be analyzed in accordance with the following criteria to determine what course of action will be taken in order to resolve the encroachment.

(1) Is it a major or minor encroachment?

(2) Which District element will be involved to the greatest extent in resolving the encroachment?

(3) Does the encroachment involve a violation of either Section 10 or 404 permit programs or a Real Estate outgrant?

(4) Is there a possibility the encroachment may be in conflict with environmental or cultural resources concerns?

(5) Could the encroachment, if continued, develop into more serious or dangerous problems?

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8. Encroachment Resolution.

a. Appendix A, the Encroachment Resolution Flow Chart, outlines the District Policy for staffing encroachment actions in order to resolve the problem or violation.

(1) Emphasis is placed on resolving encroachments in the field and notifying both the Project Office and Real Estate Field Office of any actions taken.

(2) If the encroachment cannot be resolved in the field a coordinated recommendation shall be forwarded to Real Estate or Operations Division (with a copy furnished to the other office), for action. In accordance with the Encroachment Action Handbook, an Action and Detection Record (MRD Form 0877) shall be completed and included with the action being forwarded. It is important that all pertinent information, sketches, maps and photos be included so the office acting on the encroachment will be fully informed.

(3) The District will proceed with the encroachment resolution and keep the field elements fully informed of what actions are being taken.

b. It is important to remember that each action is different and may require different solutions, but the solution should be consistent with District policy. The flow chart is only a guide for staffing and resolving an encroachment.

c. In extreme situations the Project office may determine that a Temporary Restraining Order (TRO) from a court is necessary. The Real Estate Division, Assistant District Counsel should be contacted immediately. This should occur when a cease and desist letter or citation does not work and the situation is critical. This only applies in situations when an activity, if continued, will result in irreparable damage to the Government if the TRO is not issued.

9. Summary.

a. Encroachment prevention is the goal of District policy. Encroachment prevention requires full knowledge of the project and its boundary. It is Corps policy to identify and resolve all existing encroachments by 1985 and prevent new encroachments by intensified land use management.

b. It is important to have proper reporting and record keeping of each encroachment because it helps resolve the problem. An encroachment when discovered should be analyzed to determine the steps necessary for its

DM 405-2-1  
1 Oct 80



resolution. Action to solve the problem should begin immediately. The steps necessary to solve the problem may become quite involved, so good notes are important. Remember, minor encroachments may develop into major encroachments.

c. The Encroachment Resolution Flow Chart sets out the suggested procedures for staffing encroachments. The flow chart also demonstrates the various solutions and directions that are involved in resolving an encroachment. The flow chart should be followed as much as possible.

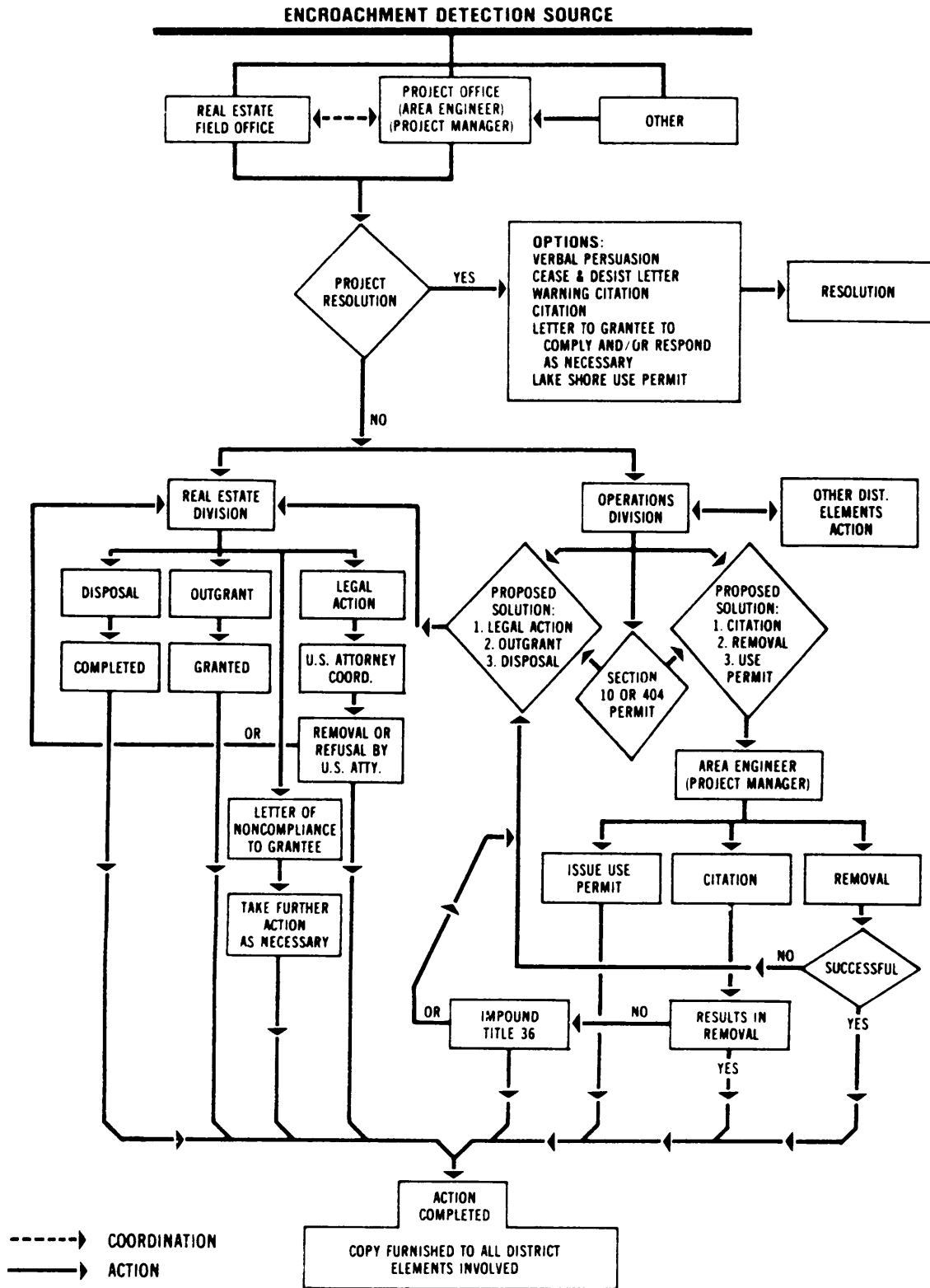
10. Reports. The reporting requirements prescribed in this memorandum are exempted from Management Information Control by paragraph 7-2t, AR 335-15.

1 APP  
APP A - Encroachment  
Resolution Flow Chart

DISTRIBUTION:  
A  
B

   
V. D. STIPO LTC CE  
Colonel, Corps of Engineers  
District Engineer

## APPENDIX A ENCROACHMENT RESOLUTION FLOW CHART



**NOTE:** Normal District staffing procedures for any actions to resolve the encroachment will not be affected by this flow chart. Copies shall be furnished to appropriate district elements whenever appropriate.

# Exhibit 4



REPLY TO  
ATTENTION

**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS, OMAHA DISTRICT**  
1616 CAPITOL AVENUE  
OMAHA NE 68102-4901

Mr. Kevin Schmidt  
Dakota Access Pipeline, LLC  
Energy Transfer Partners  
1300 Main Street  
Houston, Texas 77002  
kevin.schmidt@energytransfer.com

Dear Mr. Schmidt:

As you know, the U.S. District Court for the District of Columbia vacated the easement (DACW45-2-16-8059), the U.S. Army Corps of Engineers, Omaha District (Corps) granted to Dakota Access, LLC under the Mineral Leasing Act, 30 U.S.C. § 185, for a fuel carrying pipeline right-of-way located "over, across, in and upon lands of the United States at and under Lake Oahe and the Corps' Lake Oahe project" in Morton and Emmons Counties, North Dakota. See *Standing Rock Sioux Tribe v. U.S. Army Corps of Eng'rs*, No. 1:16-cv-01534, Memorandum Opinion (D. D.C. July 6, 2020) (ECF No. 546). The purpose of this letter is to notify you that, based on the court's order, the portion of the pipeline subject to the vacated easement is no longer considered by the Corps as an active easement, and its status has been changed to an encroachment on the Corps-managed federal land at Lake Oahe.

The Corps is currently evaluating this matter under its encroachment policies, AR 405-80 (1997), ER 405-1-12, Chap. 8 (1994) and DM 405-2-1 (1980), including the timing and substance of any enforcement action against the encroachment. For the Corps not to take any immediate enforcement action, we require that Dakota Access LLC agree to several conditions as an interim measure while the Corps' evaluation proceeds. Specifically, Dakota Access, LLC, must expressly agree to abide by the conditions contained in the vacated easement that the Corps issued to Dakota Access, LLC on February 8, 2017, DACW45-2-16-8059. Dakota Access, LLC must also agree to provide any information that the Corps requests to inform its decision concerning the encroachment and the Corps' response thereto.

Please acknowledge Dakota Access, LLC's agreement to these non-exclusive, preliminary conditions in a return letter to the Corps by August 21, 2020. The purpose of this notice is to give sufficient opportunity to the Corps to proceed with its evaluation under its encroachment regulations, and it should not be construed in any way as a final decision that the Corps will ultimately allow the encroachment or consent to any future outgrant or easement. I will serve as the point of contact for this action and can be reached at (402) 995-2832 or rick.l.noel@usace.army.mil.

Respectfully,

*Rick L. Noel*

Rick L. Noel  
Acting Chief, Real Estate Division  
Real Estate Contracting Officer.



August 20, 2020

Mr. Rick Noel  
Acting Chief, Real Estate Division  
United States Army Corps of Engineers, Omaha District  
1616 Capitol Avenue  
Omaha, NE 68102-4901

Dear Mr. Noel:

Dakota Access and Energy Transfer have received your letter of August 17, 2020 relating to the Corps' encroachment policies.

As part of interim measures while the Corps' evaluation proceeds, Dakota Access confirms that it: 1) will continue to comply with the easement conditions; and 2) will provide any information the Corps requests "to inform its decision concerning the encroachment and the Corps' response thereto."

Please let me know if you have any additional questions or requests for information.

Sincerely,

A handwritten signature in black ink that reads 'Keegan Pieper'. The signature is written in a cursive style with a horizontal line at the end.

Keegan Pieper  
Associate General Counsel

cc: Kevin Schmidt, Dakota Access  
William Scherman, Gibson Dunn  
Thomas Tracy, District Counsel – Omaha District

# Exhibit 5



GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306  
Tel 202.955.8500  
www.gibsondunn.com

William S. Scherman  
Direct: +1 202.887.3510  
Fax: +1 202.530.9557  
WScherman@gibsondunn.com

David Debold  
Direct: +1 202.955.8551  
Fax: +1 202.530.9682  
DDebold@gibsondunn.com

August 20, 2020

VIA E-MAIL

Jan E. Hasselman,  
Earthjustice  
810 Third Avenue, Suite 610  
Seattle, WA 98104  
jhasselman@earthjustice.org

Nicole E. Ducheneaux  
Big Fire Law & Policy Group LLP  
1404 South Fort Crook Road  
Bellevue, NE 68005  
nducheneaux@bigfirelaw.com

Michael L. Roy  
Hobbs, Straus, Dean & Walker, LLP  
1899 L Street NW, Suite 1200  
Washington, DC 20036  
mroy@hobbsstraus.com

Jennifer S. Baker  
Jeffrey S. Rasmussen  
Patterson Earnhart Real Bird & Wilson LLP  
357 S. McCaslin Blvd., Suite 200  
Louisville, CO 80027  
jbaker@nativelawgroup.com  
jrasmussen@nativelawgroup.com

**Re: Invitation to Discuss Additional Safety Measures at the Lake Oahe Crossing**

Dear Counsel:

As you know, the District Court's August 10, 2020 order directed the parties to undertake good faith discussions of potential "mitigation measures that could lessen the likelihood and severity of any oil leak in or around Lake Oahe." Minute Order of August 10, 2020, *Standing Rock Sioux Tribe et al. v. U.S. Army Corps of Eng'rs*, Case No. 1:16-cv-01534-JEB (D.D.C.). As this issue was previously raised by your clients, we had assumed we would have received specific proposals further to the Court's order. To date, we have not received any suggestions.

Dakota Access stands by the data showing that DAPL is one of the safest oil pipelines in the world. And the portion of DAPL crossing Lake Oahe is even safer still. At the August 10 status conference, Dakota Access advised the Court that it nonetheless is willing to consider other mitigation measures that Plaintiffs believe would be appropriate. We are therefore reaching out in accordance with the Court's August 10 minute order to see if you have any specific proposed mitigation measures that you believe could further enhance DAPL's safety.

## GIBSON DUNN

Jan E. Hasselman  
Nicole E. Ducheneaux  
Michael L. Roy  
Jennifer S. Baker  
Jeffrey S. Rasmussen  
August 20, 2020  
Page 2

In discussing the potential for adding mitigation measures, it is important to keep in mind the comprehensive safety measures already in place. DAPL was designed and constructed with a highest level of safety measures. To reduce the risk of a spill or incident, DAPL was constructed to meet or exceed all applicable pipeline safety regulations. This is particularly true for the segment crossing Lake Oahe, which includes additional safety layers. For example, even though PHMSA regulations only require a pipeline wall thickness of 0.429 inches, DAPL was constructed with a pipe wall thickness of at least 0.625 inches at water crossings such as Lake Oahe—more than 45 percent thicker pipe than required. Similarly, while PHMSA regulations only require 10 percent of mainline girth welds undergo nondestructive testing (“NDT”), Dakota access performed NDT on *100 percent* of mainline welds. DAPL also underwent extended hydrostatic pressure testing above and beyond applicable requirements. Each valve on the Lake Oahe segment contains built-in, state-of-the-art pressure sensors that can help detect leaks of less than one-percent of flow in under an hour. Moreover, the pipeline was installed deep under the lake bed using horizontal directional drilling (“HDD”) which virtually eliminates the possibility that a spill could reach the water of the Lake. In the highly unlikely event that a spill were to occur, oil would have to rise more than 90 feet through low-permeability alluvium, glacial deposits, and sediments accumulated at the bottom of the Lake—a near impossibility. HDD is so safe that from 2010 to 2018, only a single, 1.7 barrel leak was reported on any crude oil pipeline installed using HDD. We have now operated DAPL for more than three years and have never experienced a leak or safety incident on its mainline. *See* July 13, 2020 Declaration of Alan Mayberry, PHMSA Associate Administrator for Pipeline Safety (“PHMSA has not initiated any enforcement actions against the DAPL;” no “safety-related condition reports on DAPL;” and no “releases occurred on the [DAPL] mainline or met the threshold for immediate reporting.”).

DAPL was also designed to quickly detect and minimize the impact of a spill or incident in the highly unlikely event one were to occur. For example, DAPL’s supervisory control and data acquisition (“SCADA”) system monitors the valves and other data for anomalies every six seconds. Backup power ensures that the SCADA system can continue to monitor the crossing even if main power is lost. And the valves are equipped with actuators and controls that allow the valves to be closed remotely, thereby isolating pipeline segments as needed.

Finally, at the August 10 status conference, Judge Boasberg mentioned two specific potential mitigation measures: (1) the installation of backup power that would permit remote actuation of the valves at Lake Oahe if main power were lost, and (2) the deployment of underwater hydrocarbon detection sensors at the crossing.



# Exhibit 6



August 28, 2020

**VIA E-MAIL**

Ben Schifman  
Matt Marinelli  
U.S. Department of Justice  
Environment & Natural Resources Div.  
P.O. Box 7415  
Benjamin Franklin Station  
Washington, D.C. 20044  
*reuben.schifman@usdoj.gov*  
*matthew.marinelli@usdoj.gov*

David Debold  
William S. Scherman  
Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
*ddebald@gibsondunn.com*  
*wscherman@gibsondunn.com*

Re: Standing Rock Sioux Tribe, et al. v. U.S. Army Corps of Engineers / Dakota Access LLC

Dear Counsel:

On behalf of the Standing Rock Sioux Tribe, the Cheyenne River Sioux Tribe, the Oglala Sioux Tribe, and the Yankton Sioux Tribe (collectively “Tribes”), this letter responds to the Court’s order to negotiate interim measures to reduce the risk of harm from pipeline operations. It also responds to the letter dated August 20 from counsel for Dakota Access Pipeline, LLC. That letter primarily sought to reinforce DAPL’s litigation position that the pipeline is already sufficiently safe without additional mitigation measures. Since we have contested those claims for years, we will not engage further in that discussion.

After further assessment following the Court’s order, the Tribes’ position is that the only way to ensure the safety of the pipeline is to shut it down pending a full environmental review. That has not changed. The Tribes expect the Corps to fulfill its trust duty to the Tribes, and its statutory obligations under NEPA and the Mineral Leasing Act, to order the pipeline shut down and emptied pending completion of the court-ordered EIS. Any discussion of, or agreement to, supplementary mitigation measures should not be interpreted to mean that the Tribes have waived their positions in this regard.

The Standing Rock Sioux Tribe’s technical team has advised that in order to have any meaningful discussion about additional safety measures, they need access to additional technical

August 28, 2020

Page 2

information. They have made multiple efforts to obtain information that they believe is necessary to evaluate the safety of the pipeline, either by agreement (*see, e.g.*, ECF 336-6) or court order (*see, e.g.*, ECF 336), without much success. Accordingly, we seek the information listed in Appendix A to this letter prior to any discussion of additional mitigation measures.

As you will see, some of the information we seek relates to DAPL's proposal to double the capacity of the pipeline. It is our understanding that DAPL continues to pursue this proposal, making it highly relevant to the question before the Court.

Finally, we believe that it would be productive for the Corps to take a convening role to bring together technical experts from the Tribe and DAPL, to discuss these matters once the information is provided. We look forward to scheduling that meeting once the requested information has been made available.

Sincerely,

/s/ Jan E. Hasselman

[jhasselman@earthjustice.org](mailto:jhasselman@earthjustice.org)  
*Attorney for Plaintiff Standing Rock Sioux Tribe*

/s/ Nicole E. Ducheneaux

Nicole E. Ducheneaux  
Big Fire Law & Policy Group LLP  
[nducheneaux@bigfirelaw.com](mailto:nducheneaux@bigfirelaw.com)  
*Attorney for Intervenor-Plaintiff Cheyenne River  
Sioux Tribe*

/s/ Michael L. Roy

Michael L. Roy  
Hobbs, Straus, Dean & Walker, LLP  
[mroy@hobbsstraus.com](mailto:mroy@hobbsstraus.com)  
*Attorney for Oglala Sioux Tribe*

/s/ Jennifer Baker

Jennifer S. Baker  
Patterson Earnhart Real Bird & Wilson LLP  
[jbaker@nativelawgroup.com](mailto:jbaker@nativelawgroup.com)  
*Attorney for Plaintiffs Yankton Sioux Tribe, et al.*

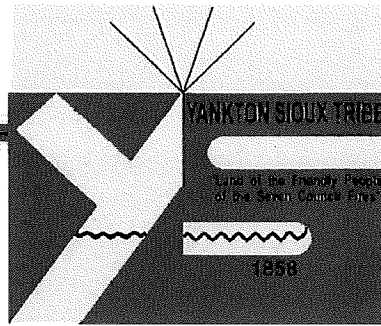
APPENDIX A: REQUESTED TECHNICAL INFORMATION

1. The environmental inspection report dated March 15, 2017 referenced on page 2 of the *Independent Assessment of Dakota Access Pipeline U.S. Army Corps of Engineers Easement Special Conditions*.
2. Dakota Access LLC, Dakota Access Pipeline, *North Dakota Spill Model Discussion Lake Oahe Crossing*, Wood Group Mustang, Document No.: DAPL-WGM-GN000-PPL-STY-0019, Issued for Use 5-3-16.
3. Dakota Access Pipeline, *Facility Response Plan, Dakota Access Pipeline North Response Zone*, April 2017. The version we have of this document is redacted. We require the unredacted version.
4. Energy Transfer corporate-wide leak detection data, metrics and performance goals that are required to be developed under API RP 1175, *Pipeline Leak Detection Program Management* (2015).
5. Energy Transfer's policies and procedures for the implementation of API RP 1173 *Pipeline Safety Management System Requirements* (2015).
6. Energy Transfer's DAPL-specific Integrity Management Plan as required by API RP 1160, *Managing System Integrity for Hazardous Liquid Pipelines*, and PHMSA regulations.
7. Energy Transfer's DAPL-specific Operations and Maintenance Manual as required by PHMSA regulations.
8. The detailed Management of Change documentation for the proposed DAPL capacity increase from 550,000 bpd to 1.1 million bpd pursuant to the requirements of API RP 1173 and API RP 1160.
9. Updated documentation including the updated surge analysis, worst case discharge (WCD), and *North Response Zone Facility Response Plan* (FRP) produced as a result of the proposed DAPL capacity increase.
10. The results of any functional testing of the leak detection system (draw test), the emergency isolation valves (full stroke test), and the surge prevention and protection systems. If no testing has been done, we seek to discuss working together to develop such tests.

# Exhibit 7



800 Main Ave SW  
PO Box 1153  
Wagner, SD 57380



(605)384-3641/384-5979  
(605)384-5687 fax  
www.yanktonsiouxtribe.net

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August 20, 2020

VIA CERTIFIED MAIL & FACSIMILE

Col. Mark R. Himes  
Commander and District Engineer, Omaha District  
U.S. Army Corps of Engineers  
1616 Capitol Ave., Ste. 9000  
Omaha, NE 68102  
Fax: (402) 779-2421

Re: Imperative to Shut Down Dakota Access Pipeline

Dear Col. Himes:

I write this letter on behalf of the *Ihanktonwan Oyate*, the Yankton Sioux Tribe, to call on you to fulfill your duties as a federal official and a Commander of the U.S. Army Corps of Engineers Omaha District to protect the Tribe's interests, particularly its treaty resources, and to protect the water of the Missouri River. Pursuant to these duties, it is your imperative to direct Dakota Access, LLP to empty the Dakota Access Pipeline of oil and to cease operation of the Pipeline indefinitely in accordance with the March 25, 2020 order of the United States District Court for the District of Columbia in *Standing Rock Sioux Tribe, et al. v. U.S. Army Corps of Engineers, et al.*, Case No. 1:16-cv-01534-JEB, granting in part the Tribal Plaintiffs' motions for summary judgment, and the July 6, 2020 order vacating the easement that authorized the Dakota Access Pipeline to cross the Missouri River at Lake Oahe.

The Corps has a federal trust responsibility to protect the Tribe and its interests, particularly its treaty rights. As the Tribe has asserted in state regulatory proceedings and throughout the development of the flawed environmental assessment for the Pipeline, and as it has adamantly maintained throughout the course of this litigation, the Dakota Access Pipeline poses extreme and severe risks to the Tribe's treaty rights within its 1851 Fort Laramie Treaty Territory, including within the vicinity of the Lake Oahe crossing. Tribal members continue to exercise their treaty rights and spiritual practices in this area to this day. An oil spill at Lake Oahe would devastate the Tribe and its members who rely on clean water from the Missouri River – water reserved to them by treaty - for subsistence and ceremonial purposes.

Letter to Col. Mark R. Himes  
Re: Imperative to Shut Down Dakota Access Pipeline  
August 20, 2020  
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Furthermore, the Corps has a statutory duty to protect the waters of Lake Oahe and the Missouri River. As a U.S. Army Corps of Engineers (“Corps”) Colonel, you are charged with ensuring that waters of the United States, including the Missouri River, are restored and that the chemical, physical, and biological integrity of such waters are maintained. 40 C.F.R. § 230.1(a), (c). This is the very reason the Corps’ “general policy is to require removal of encroachments . . .” ER 405-1-12 at 8-12. At this point, because, as the District Court has ruled, proper National Environmental Policy Act analysis has not been conducted for the Dakota Access Pipeline, the potential impacts of the pipeline – and particularly, a spill from the pipeline – are not fully known. This unknown degree of risk precludes you from authorizing the pipeline to continue to operate.

To permit oil to continue to flow is to place private profits above your duties as a public, federal official. The District Court has vacated Dakota Access’ easement; Dakota Access has no right to transport oil across Corps property and Lake Oahe. The only action the Corps can take that would be consistent with the Court order, the federal trust responsibility, and the Corps’ duty to safeguard the water of the Missouri River is to prohibit Dakota Access from continuing to transport oil through its trespassing pipeline while the Corps undertakes its obligations pursuant to the Court order and the National Environmental Policy Act. You must, therefore, employ an enforcement action for Dakota Access’ unlawful encroachment that prohibits the continued flow of oil through the pipeline.

Sincerely,



Robert Flying Hawk, Chairman  
Business and Claims Committee