

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)

Real Estate

Management of Title and Granting Use of Real Property



Togo D. West, Jr.
Secretary of the Army

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

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.

Contents (Listed by paragraph and page number)

Chapter 1

General, page 1

Purpose • 1–1, page 1

References • 1–2, page 1

Explanation of abbreviations and terms • 1–3, page 1

Authority to grant use of real property • 1–4, page 1

Chapter 2

Responsibilities, page 1

The Secretary of the Army (SA) • 2–1, page 1

The Assistant Secretary of the Army (Installations, Logistics and Environment) (ASA(I,L&E)) • 2–2, page 1

The Deputy Assistant Secretary of the Army (Installation and Housing) (DASA(I&H)) • 2–3, page 1

The Assistant Secretary of the Army (Civil Works) (ASA(CW)) • 2–4, page 1

The Assistant Chief of Staff for Installation Management (ACSIM) • 2–5, page 1

The Chief, National Guard Bureau (NGB) or the Chief, Army Reserve (OCAR) • 2–6, page 1

The Chief of Engineers (COE) • 2–7, page 1

The Commanding General, U.S. Army Corps of Engineers (CG, USACE) • 2–8, page 1

Commanders of Major Army Commands (MACOMs) • 2–9, page 2

Commander, U.S. Army Reserve Command (USARC) • 2–10, page 2

Commanders, U.S. Army Corps of Engineer (USACE) Division • 2–11, page 2

Commanders, U.S. Army Corps of Engineers (USACE) Districts • 2–12, page 2

Installation Commanders (IC) • 2–13, page 2

Commanders, U.S. Army Reserve Regional Support Commands (USAR RSC) and U.S. Property and Fiscal Officers (USP&FO) • 2–14, page 2

Commander, Tenant Activity • 2–15, page 3

Chapter 3

Delegations of Authority, page 3

Delegation • 3–1, page 3

Required Approvals of Availability • 3–2, page 3

Additional Redlegation • 3–3, page 3

Revocation of prior delegations • 3–4, page 4

Chapter 4

Policy, page 4

Section I

General Outgranting, page 4

*This regulation supersedes AR 405–80, dated 17 February 1979.

Contents—Continued

General • 4-1, *page 4*
Identification of potentially available real property • 4-2, *page 4*
Non-Army users of real property • 4-3, *page 4*
Availability • 4-4, *page 4*
Installation disposition-inactive or closed • 4-5, *page 4*
Required Congressional report • 4-6, *page 4*
Lands containing dangerous materials, ammunition, explosives or chemicals or hazardous, toxic or radioactive waste (HTRW) • 4-7, *page 5*
Environmental, cultural and historical factors • 4-8, *page 5*
Storage of toxic and hazardous materials • 4-9, *page 5*

Section II

Management of Title and Unauthorized Uses, page 5
Abandonment of railroad, road or other rights-of-way • 4-10, *page 5*
Encroachment and Trespass • 4-11, *page 5*
Claims involving damage to real property or arising under outgrants • 4-12, *page 5*
Boundary line or title disputes • 4-13, *page 5*
Withdrawal Review Program. • 4-14, *page 5*

Section III

Special Outgrants or Uses, page 5
Requests to search for treasure trove • 4-15, *page 5*
Mineral leasing • 4-16, *page 5*
Non Department of Defense Federal agencies • 4-17, *page 6*
Sanitary landfills • 4-18, *page 6*
Use of space and buildings by Army exchange activities • 4-19, *page 6*
Private organizations on Army installations • 4-20, *page 6*
Hunting, trapping, and fishing on Army installations • 4-21, *page 6*
Post Offices • 4-22, *page 6*
Rental quarters and trailer sites • 4-23, *page 6*
Motion pictures, TV and video productions • 4-24, *page 6*
Airfields • 4-25, *page 6*
Utility contracts and easements • 4-26, *page 6*
Consent to Easement or to Structure within Easement • 4-27, *page 6*
Industrial facilities • 4-28, *page 6*
Property provided under a Federal Acquisition Regulation (FAR) Contract • 4-29, *page 7*
Construction Contract - Permission to erect structures • 4-30, *page 7*
Memorandums of Agreement, Memorandums of Understanding, or Interservice Support Agreements • 4-31, *page 7*
Special purpose licenses • 4-32, *page 7*
Short-term Installation Licenses • 4-33, *page 7*
Foreign Countries • 4-34, *page 7*
Educational Use • 4-35, *page 7*

Appendixes

- A. References, *page 8*
- B. Statutory Authorities, *page 8*
- C. Management Control Review Checklist, *page 8*

Glossary

Index

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 Redelegation

a. The Director of Real Estate will establish qualifying standards for redelegation 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 than 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.

Index

This index is organized alphabetically by topic and by subtopic within a topic. Topics and subtopics are identified by paragraph number.

Abandonment

Railroad, rights-of-way, 4-10

Airfields, 4-11, 4-25

Archaeological and artifact

Search, 4-15

Authority for outgrant

Delegations, 3-1, 3-3

General, 1-4, 4-1

Installations, 2-9

MACOM, 2-8, 3-3

Availability

Approvals, 3-2

Determination of Availability, 3-2, 4-2, 4-4

Identification, 4-2

Report of Availability, 4-4

Easements, 4-4

License, 4-4

Base realignment, 4-5

Boundary line, 4-13

Consents, 4-27

Claims, 4-12

Coastal Zone, 4-8

Congressional reports, 4-6, 4-25

Consideration

General, 4-1

Non-DOD Federal agencies, 4-17

Contamination, 4-7

Hazardous substances, 4-7, 4-9

Storage, 4-9

Contractor use, 4-29, 4-30

Damage claims, 4-12

Determination of Availability, 3-2, 4-2, 4-4

District of Columbia, 2-10

Encroachment, 4-11

Environmental, 4-1, 4-5, 4-8, 4-28

Exchange activities, 4-19

Federal Agencies, 4-17

Historic property, 4-8, 4-15

Hospital facilities, 2-12

Installation License, 2-9, 4-32

Interservice Support Agreement, 4-31, 4-17

Industrial facilities, 3-2, 4-9, 4-28

Landfill, 4-19

MOU, MOA, 4-31

Motion pictures, 4-24

Mineral Leasing, 4-16

Non-Army Use, 4-3, 4-17

Post offices, 4-22

Private organizations, 4-20

Public Domain Lands, 3-2, 4-14, 4-16

Sanitary Landfill, 4-18

Shipwrecks, 4-15

Treasure search, 4-15

Title, disputes, 4-13

Trespass, 4-11

Utility contracts, 4-26

Withdrawal Review, 4-14

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.

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.

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,

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.

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.

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)

MANAGEMENT CONTROL EVALUATION CERTIFICATION STATEMENT For use of this form, see AR 11-2; the proponent agency is ASA(FM).		1. REGULATION NUMBER
		2. DATE OF REGULATION
3. ASSESSABLE UNIT		
4. FUNCTION		
5. METHOD OF EVALUATION <i>(Check one)</i>		
<input type="checkbox"/> a. CHECKLIST		<input type="checkbox"/> 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