

CHAPTER 14

IN-PERMITS AND TRANSFER OF GOVERNMENT-OWNED PROPERTY TO NAVY

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CHAPTER 14

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SECTION I - GENERAL

1. PURPOSE AND SCOPE

This chapter prescribes the policy and procedures in acquiring real property for Navy use through permits and transfers of Government-owned real property. When used in this chapter, "property" refers to real property.

2. REFERENCES

- (a) 10 U.S.C. § 2852
- (b) DOD Directive 4165.06 of 13 Oct 2004
- (c) 10 U.S.C. § 2696(a)
- (d) SECNAVINST 11011.47B of 12 Jan 2009
- (e) 10 U.S.C. § 2662
- (f) Federal Property and [Administrative Services Act of 1949, as amended](#) (41 U.S.C. §§ 471-535)
- (g) [Federal Management Regulation \(41 C.F.R. Chapter 101\)](#)
- (h) Navy Facility Assets Data Base Management System Procedures Manual, NAVFAC P-78
- (i) USD Defense Environmental Restoration Program Memorandum of 28 Sep 2001

3. DEFINITION

Within the Federal Government, the term "permit" refers to a real estate document between Federal entities, and that is the subject of this chapter. However, a license is used by one Federal entity when dealing with persons or entities outside the Federal Government, including states and their political subdivisions. The granting of a license is treated in Chapter 20 of the P-73. There are several definitions of the term "permit," but it is essentially a right to occupy real property whose use would otherwise be considered trespassory. There are certain essential elements that legally indentify a permit. These elements are that permits (a) are revocable at will or in accordance with their terms; (b) terminate upon the death of either party or the transfer of title to the real property; (c) grant personal privileges that are not assignable; and (d) do not grant, create, or convey any estate in the real property.

4. USE OF PERMITS, GENERAL

Permits will typically be used only when the contemplated use is of a temporary nature and no detriment to the Government will result from its revocation. Since a permit contains no warranty of title, it is necessary before making use of property under a permit that the Facilities Engineering Command (FEC) determines that the permittor has sufficient interest in the land to be able to issue the permit. This is a matter of utmost significance in those cases in which construction is contemplated. The general policy guidance in [reference \(b\)](#) applies.

5. MILITARY CONSTRUCTION PROJECTS ON LAND NOT OWNED BY THE GOVERNMENT

Under [reference \(a\)](#), the Secretary of a military department may determine that a military construction project may be undertaken on land that is held in other than fee simple when he/she determines that the estate or interest to be acquired in the land is sufficient for the purposes of the project. This is equally applicable to lands used by the Government under a permit as it is to lands used under a lease.

SECTION II - PERMITS

6. RIGHT-OF-ENTRY PERMITS

Permits granting a right-of-entry are appropriate for purposes of appraising, surveying, making test borings and soil examinations, and otherwise inspecting the property. These will normally be obtained in connection with the planning of a project. Since damages to the property will not ordinarily occur, no consideration will normally be paid for this right. If, however, damages are anticipated, but the amount cannot be determined in advance, the permit will set forth the criteria for their subsequent determination and allow for their payment.

7. PERMITS IN LIEU OF EASEMENTS

In those cases in which easements for fuel, water, sewer, or gas pipelines, electric conduits or power lines, roads, or other utilities are required, easements ordinarily will be obtained, unless the use is temporary. However, in some states there is no authority except by legislative act for public entities or its subdivisions to grant easements

over or across roads and highways. Likewise, some railroad and public utility companies lack the authority to grant easements over their land not held in fee. In this situation, the choice is between condemning an easement against the state, or a subdivision of it, or the utility company, or accepting a lesser right in the land. When a condemnation proceeding is going to be filed against a fee or other interest, include the required easement in it. If this is not the case, submit the matter to NAVFACENGCOM as required by [Paragraph 11](#) below.

8. OTHER TYPES OF PERMITS

In addition to permits for right-of-entry and in place of easements, permits for the following purposes may be utilized: office space, pole attachments, obstruction lights or markers, sewer connections, maintenance of signs, bus shelters, spoil or dredger tailings, removal of material and drainage, and for other short-term or temporary uses.

9. PERMITS FROM OTHER DEPARTMENTS AND AGENCIES

Permits from other Federal Government departments and agencies differ from licenses, or right of occupancies, obtained from individuals, corporations, or states and their subdivisions. Licenses are not permits in the strict sense because they require two legal parties while with the intra-Federal instrument, called a permit by General Services Administration (GSA), there is only one, the United States. Second, a license obtained from an individual, corporation, or state, may have a stated term, or an indefinite period. Where construction is planned on lands under permit from other Federal Government departments and agencies, the FEC must determine the real property interest held by the other Federal Government department or agency since the issuing department may only lease the land or hold a permit for its use. In those cases, the requirement stated in [reference \(a\)](#) for a determination by the Secretary of the military department that the United States has sufficient interest in land held in less than fee title for siting of military construction projects applies. Further, the terms and conditions of the document may limit the use of the property, thus prohibiting the use intended by the Department of the Navy (DON). Navy typically will have to agree to most of the terms and conditions of the permittor's document, although negotiation should be attempted to ameliorate a perceived harshness of some language.

10. DELEGATION OF AUTHORITY

Authority is hereby delegated to Commanders/Commanding Officers of Facilities Engineering Commands (FECs) to negotiate, execute or accept, renew, modify, and terminate permits and other agreements of a similar nature from other departments and agencies of the Federal Government and from states or their subdivisions, corporations, and other persons for the use of real property by DON. This delegation is subject to the requirements of [Paragraphs 11, 12 and 13](#), below. This authority may be redelegated.

11. APPROVALS REQUIRED FOR PERMITS

In those cases in which the acceptance of a permit is appropriate to facilitate the planning or in the execution of a military construction project, no further approvals are required. It is assumed that these approvals have been obtained when the project was approved if the permit is from another department or agency of the Federal Government. If the property is not owned by the United States and no construction is involved, obtain the approval of the Commanding Officer of the using activity. If use of property not owned by the United States is involved and construction is proposed, the FEC will obtain the approvals of the Commanding Officer of the using activity and the cognizant Command or Commands up to and including the region (consult with COMNAVFACENGCOM re: Commander, Navy Installation Command (CNIC)), or mission component command approval). The FEC will obtain these approvals before submitting the proposed permit to the Commander, Naval Facilities Engineering Command, requesting a determination by the Secretary of the military department involved that the United States holds sufficient interest on land held in less than fee title for siting of military construction projects pursuant to [reference \(a\)](#).

12. REVIEW BY COUNSEL

Permits and other agreements will be approved by FEC Counsel for legal form and sufficiency before execution or acceptance by the FEC.

13. DISTRIBUTION OF PERMITS

a. Upon FEC acceptance of a permit, the FEC will make distribution as follows:

Original	FEC Files
Executed Copy	Permitter
Executed Copy	Appropriate FEC Finance Office
Conformed Copy	Cognizant Command, Bureau or Office/Region
Conformed Copy	Commanding Officer or Head of Using Activity

b. In those cases in which there is no actual payment, the original document need not be transmitted to the appropriate FEC Finance Office. However, the FEC must retain the original document for future transmission in the event a claim arises out of the permit. Distribute the executed copy to the permitter by mail or personal delivery. Distribute modifications and amendments of permits in the same manner as the basic permit. Update the activity's Real Property Inventory and its Real Estate Summary Map promptly as [P-73 Chapter 27](#) describes.

SECTION III - TRANSFERS

14. TRANSFER OF GOVERNMENT-OWNED REAL PROPERTY TO THE DEPARTMENT OF THE NAVY

Transfers of Federal Government-owned real property among departments and agencies of the Federal Government fall into two categories.

- (a) Transfers from other military departments, including transfers from the U. S. Coast Guard,
- (b) Transfers from all other departments or agencies.

15. AUTHORITY TO TRANSFER AMONG THE ARMED FORCES AND THE U.S. COAST GUARD

a. Authority to accomplish the transfer of real property from a military department to DON without compensation is contained in [reference \(c\)](#).

b. DON, as the transferee military component, will be responsible for managing environmental restoration (ER) actions at the transferred property as required by [reference \(i\)](#). This responsibility should be transferred at a time agreed upon by both military components. The transferor military component will provide Total Obligational Authority (TOA) funding to DON for ER activities planned for the property in the Future Years Defense Program (FYDP). Additional agreements between the two military components must be formalized in writing between the Deputy Assistant Secretary of the Navy (Installations and Facilities) DASN (I&F) and the other military component counterpart with a copy to the Office of the Deputy Under Secretary of Defense (Installations and Environment) ODUSD(I&E).

16. INITIATION OF TRANSFERS

Initiate transfers to the Navy either through the screening process of excess property or by direct request by the Secretary of the Navy when a requirement for the real property of another armed force (military department) or the Coast Guard arises. If a Navy requirement for the property exists, the FEC is to take action to notify the military department or the Coast Guard controlling the property of the Navy's requirement and to request further excessing action be held in abeyance until all approvals required by the Navy are obtained.

17. APPROVALS REQUIRED

a. [Reference \(d\)](#) authorizes the COMNAVFACECOM to take all necessary action to accomplish the transfer of real property that is excess to the needs of the other military departments and other Federal agencies. The FEC will obtain the approvals of the cognizant command, bureau, or office and the region (consult with COMNAVFACECOM re: CNIC or mission component command approval), or the Commandant of the Marine Corps for Marine Corps projects, before submission to NAVFACECOM. A request for transfer of real property from other military departments, including the Coast Guard, GSA, and other Federal agencies will be forwarded to DASN (I&F). If DASN (I&F) concurs in the transfer, it will send a letter to the appropriate military department requesting the transfer. If the estimated value of the real property exceeds the statutory dollar limitation contained in [reference \(e\)](#) (\$750,000), a report to the Armed Services Committees (ASC) of Congress will be prepared for transfers involving military departments. Reports to the

ASCs require the concurrence of DASN (I&F) prior to submission. The FEC will prepare a preliminary draft of the report and forward it to NAVFACENGCOM with the request for transfer. For transfer actions related to the INFADS follow the procedures outlined in [reference \(b\)](#).

b. All land acquisitions involving the purchase, withdrawal from the public domain, lease, or permit from individuals or Government entities, or any other type of use agreement that exceeds 1,000 acres, or land whose estimated purchase price or annual lease price exceeds \$1 million, require the approval of DUSD (I&E) prior to issuing formal public notice of the transaction. The FEC will prepare a justification for the acquisition and submit it to NAVFACENGCOM with the request for approval.

18. AUTHORITY FOR TRANSFER FROM NON-MILITARY DEPARTMENTS AND AGENCIES

a. [Reference \(f\)](#), as implemented by the Federal Management Regulations of the General Services

Administration (GSA) ([reference \(g\)](#)), lays out the procedures and approvals necessary for the transfer of real property from non-military departments and agencies to the DON. GSA normally executes or authorizes these transfers according to provisions of [reference \(g\)](#).

b. Requests for transfer of property reported as excess to GSA must be made on the appropriate GSA Form. If the acquiring activity determines not to make reimbursement for the property, the request for transfer must accompany a written request from and signed by the head of the agency for exception from the 100 percent reimbursement requirement. Accordingly, activities requesting transfers of this type will forward the request to the FEC via the chain of command including the region (consult with COMNAVFACENGCOM re: CNIC or mission component command). The FEC will prepare the justification for exception from the 100 percent reimbursement requirement for the real property involved. The FEC will forward the justification to COMNAVFACENGCOM to obtain the requisite additional approvals and prepare the required written statement of non-payment of reimbursement. The approvals of the Assistant Secretary of the Navy (Installations and Environment) and the Office of Management and Budget are also required. If approved, NAVFACENGCOM will send the FEC the required

documentation and authorize it to submit the documentation with the GSA transfer form (GSA Form 1334) to the appropriate Regional Office of GSA, requesting the transfer. GSA Form 1334 may be accessed on GSA's website at <http://rc.gsa.gov/ResourceCenter/Forms/GS1334/PDF/GS1334.PDF>

c. DON will not accept property from other Federal departments or agencies unless the other departments or agencies provide the environmental restoration certifications and supporting documentation specified in reference (i).

19. ACTION DURING SCREENING PROCESS

When another Federal agency reports real property excess to its needs, GSA screens the other Federal agencies including the Department of Defense, to determine whether there is a Federal requirement for the property. The Department of Defense (DOD) screens the Navy through NAVFACENGCOM. If screening discloses a Navy requirement, DOD is advised and requested to inform GSA of the Navy's requirement. Usually, this is a preliminary action and delays disposal by GSA until the requirement can be fully developed and all approvals obtained (See [reference \(g\)](#)). The approvals required to accomplish this type of transfer are the same as those stated in [Paragraph 17](#) above. However, clearance under [reference \(e\)](#) is not required even if the estimated value of the real property exceeds the current statutory dollar limitation (\$750,000).

20. REQUEST FOR TRANSFER BY FACILITIES ENGINEERING COMMAND (FEC)

When all approvals have been obtained, NAVFACENGCOM will so advise the FEC and will also inform whether the transfer will be made with or without reimbursement. If with reimbursement, the acquiring activity will make the appropriate arrangements to provide the required funds. If the transfer has been approved without reimbursement according to [Paragraph 18](#) above, the FEC will, upon receipt of the above advice, submit the [GSA Form 1334](#) with any appropriate documentation to the cognizant GSA Regional Office.

21. TRANSFER AND ACCEPTANCE OF CUSTODY

When all approvals have been obtained, NAVFACENGCOM will make a formal request for the transfer of the real

property required by the Navy. Upon receipt of the document evidencing the transfer (release) of that property to the Navy, the FEC will arrange for the acceptance of custody and control and jurisdiction over the property by the activity having the requirement. Concurrently, the FEC will offer appropriate guidance and assistance to the activity in updating its Real Property Inventory to reflect acquisition of the transferred Class II property. Promptly thereafter and as described in [P-73 Chapter 27](#), the FEC will (a) modify the activity's Real Estate Summary Map to reflect acquisition of the transferred property; (b) obtain the applicable muniments of title; and (c) document the applicable jurisdiction. The FEC, upon receipt of the transfer document, will arrange to have the naval activity accept physical custody of the property and to include that Class I property in the Navy plant account.