

CHAPTER 15

ACQUISITION OF PUBLIC DOMAIN LANDS AND RELATED PRIVATE  
INTERESTS

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SECTION VI - FORMS

Updated forms are being researched and will be added in the future.

## CHAPTER 15

### ACQUISITION OF PUBLIC DOMAIN LANDS AND RELATED PRIVATE INTERESTS

#### SECTION I - GENERAL

##### 1. PURPOSE AND SCOPE

The purpose of Chapter 15 is to provide background, authority, and procedures to be followed in the withdrawal of required lands from the public domain, the use of those lands, and return of the lands to the public domain when no longer required. It also discusses the acquisition of privately owned lands or related interests that may be adjacent or contiguous to the withdrawn public lands, and are required for use in connection with use of the public lands. As used in this chapter, "property" refers to real property.

##### 2. BACKGROUND

Of the approximately 2.3 billion acres of land comprising the United States, over 1.8 billion acres were once part of the Federal public domain. These lands, referred to as public domain lands or simply public lands, were acquired or ceded directly to the United States rather than to the individual states. Public lands do not include land acquired by federal agencies for specific uses. Over time, vast areas of these lands have been transferred to the states or to private ownership. Presently, the overwhelming majority of the remaining hundreds of millions of public lands are located in the western states and in Alaska. These lands are under the jurisdiction of the Department of the Interior's (DOI) Bureau of Land Management (BLM).

##### 3. REFERENCES

- (a) 43 U.S.C. §§ 155-158
- (b) 43 U.S.C. §§ 1331-1356a
- (c) Exec. Order No. 10,355 of May 26, 1952, as amended by Exec. Order No. 12,688 of August 15, 1988
- (d) 43 U.S.C. § 1714
- (e) [43 C.F.R. § 2300 \(DOI Regulations\)](#)
- (f) [DODD 4165.6 of 13 Oct 2004](#)
- (g) [DODD 3100.5 of 16 Mar 1987](#)

- (h) [NAVFAC P-80](#)
- (i) [NAVFAC P-272](#)
- (j) [43 C.F.R. pt. 2920](#)
- (k) [41 C.F.R. § 101-47](#)
- (l) [43 C.F.R. 18](#)
- (m) SECNAVINST 11011.47B, 12 Jan 2009

#### 4. DEFINITIONS

a. "Public Lands" and "Public Domain Lands". These terms are considered synonymous. They are used to designate those lands owned by the United States that are subject to entry, use, sale, or other disposal uses under the Public Lands Laws such as mining, grazing, or small tract leasing. These terms do not include all lands owned by the United States. As used in the Act of Congress, approved February 28, 1958 ([reference \(a\)](#)), the term "public lands" also includes Federal lands and waters of the Outer Continental Shelf. The term "Outer Continental Shelf" is defined in Section 1331 of the Outer Continental Shelf Lands Act ([reference \(b\)](#)). Further, as stated in [reference \(a\)](#), "lands" also includes Federal lands and waters off the coasts of Alaska and Hawaii.

b. "Withdrawal" means that the lands specified in the Public Land Orders are excluded from some or all forms of entry, use, sale, or other disposal under the Public Lands Laws as specified in the Public Land Order, Executive Order, or Act of Congress. This definition is the specific meaning of the term "withdrawal." However, the term "withdrawal" includes withdrawals and reservations.

c. "Reservation" of public lands means those that are made available to a specified agency for a specific public purpose.

d. "Restriction" means that the areas are removed from the operation of the mineral leasing provisions of the Outer Continental Shelf Lands Act ([reference \(b\)](#)).

e. "Segregation" of public lands means those that have been removed from the operation of the Public Lands Laws regarding entry, sale, or other disposal. The temporary segregation of public lands results from the filing of an application for withdrawal. While mining claims may continue to be filed by others as well as the filing of applications for other forms of entry during this temporary segregation, no action is taken on them no vested rights result from them that would be at variance with the requested withdrawal. Permanent segregation results from the actual withdrawal of public lands, either by an Act of Congress, Public Land Order, or by physical appropriation of the lands to the use of the United States. Any applications for entry made on lands that have been permanently segregated will be disallowed by DOI.

f. "Public Land Orders" are the official acts of the Secretary of the Interior under authority delegated by the President. The authority is delegated under provisions of [reference \(c\)](#), withdrawing, reserving, or restricting lands of the public domain for public purposes, or modifying or revoking previous withdrawals, reservations, or restrictions.

g. "Mining Claim" includes millsite and tunnel rights.

## 5. AUTHORITY TO WITHDRAW AND RESERVE PUBLIC LANDS

Before there was any express statute on the subject, the authority of the President was recognized, in the exercise of his inherent power, to withdraw public lands from entry, settlement, and other forms of appropriation and to reserve them for public purposes. To clarify the rights of occupants of certain withdrawn lands, Congress enacted the Pickett Act of June 25, 1910 ([43 U.S.C. § 141](#)), that expressly authorized the President to withdraw public lands. Section 1 of this Act provided:

The President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States, including Alaska, and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress.

This Act did not negate the previously exercised

inherent power to withdraw public lands, but was an addition to it. As a result, Executive Orders and Public Land Orders have been used to withdraw public lands under the authority of that Act and the authority otherwise vested in the President.

b. However, the Pickett Act was repealed by the Federal Land Policy and Management Act of 1976 ([reference \(d\)](#)) that authorizes the Secretary of the Interior "to make, modify, extend, or revoke withdrawals" to the extent authorized therein.

c. Prior to the Pickett Act's repeal, the President delegated his authority to withdraw or reserve public lands to the Secretary of the Interior by reference (c) Executive Order 10355. Public lands, since that date, have typically been withdrawn by Public Land Orders, rather than by Executive Order as was previously the case. Under this Executive Order, all the authority vested in the President to withdraw and reserve lands in the public domain and to modify or revoke existing withdrawals and reservations, was delegated to the Secretary of the Interior. It provides, however, that any disagreement between two or more executive departments or agencies regarding any proposed withdrawal or reservation shall be referred to the Director of the Office of Management and Budget for consideration and adjustment. It further provides that the Director may, in his discretion, submit the matter to the President for a determination. The Secretary of the Interior is also authorized to issue necessary procedural regulations and to re-delegate his authority to certain designated DOI officers.

d. The authority of the President to withdraw public lands was curtailed in certain respects by the Engle Act ([reference \(a\)](#)). Since this is the same authority delegated to the Secretary of the Interior by reference (c), his authority is also curtailed thereby. Essentially, the Engle Act removes from the Executive Department the authority to withdraw public lands in excess of 5,000 acres for defense purposes subject to the exceptions set out in Section 1, and places that authority exclusively in the Congress. The Act will not apply, however, during time of war or national emergency declared by the President or the Congress. Since the enactment of [reference \(a\)](#), DOI Regulations governing the withdrawal of public

lands ([reference \(e\)](#)) have been revised for implementation.

## **6. OFFICE OF THE SECRETARY OF DEFENSE APPROVAL AUTHORITY**

a. In a Secretary of Defense (SECDEF) Memorandum dated 17 November 2002, revised, expanded, and superseded the existing land moratorium policy issued by the Deputy Secretary of Defense (DEPSECDEF) in memoranda dated 13 September 1990 and 1 December 1994 ([See DODI 4165.71, January 6, 2005](#)). No major land acquisition proposals within the Washington, DC area may be made public through (1) a request for proposals; or (2) a notice of intent to perform environmental analysis; or (3) request for legislation or budget line item; or (4) press release; or (5) other official notice, without the approval of SECDEF or DEPSECDEF. All previously approved or announced major land acquisitions within the Washington, DC area for which binding documents have not been executed as of 17 November 2002, may not proceed until approved by SECDEF or DEPSECDEF, after review by the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD (AT&L)). In addition, no major land acquisition proposals outside the Washington, DC, area may be made public, in the manner stated above, without the approval of the USD (AT&L).

b. Additionally, no proposals for relocating within the Washington, DC area that exceed \$500,000 in relocation costs may be made public in the manner stated above without approval by the SECDEF or the DEPSECDEF. All previously approved or announced relocations that have not occurred as of 17 November 2002 may not proceed until approved by SECDEF or DEPSECDEF, after review by the USD (AT&L).

c. A major land acquisition is defined as the purchase, withdrawal from public domain, lease, or permit from individuals or government entities, or any other type of use agreement involving more than 1,000 acres, or land whose estimated purchase price or annual lease price exceeds \$1,000,000. The Washington, DC, area is defined generally as the geographic area within 100 miles of the Pentagon.

d. Exceptions. USD (AT&L) memorandum dated 28 July 2005 stated that the acquisition of a negative, non-possessory easement under 10 U.S.C. § 2684a does not constitute a major land acquisition, and the renewal of existing withdrawals, leases, permits or other use agreements other than those at BRAC bases are not subject to the moratorium.

**SECTION II - PUBLIC LAND WITHDRAWAL/OTHER METHODS AND USES**

**7. PUBLIC LAND WITHDRAWAL PROCEDURES**

a. Establishment of Requirement for Public Lands. The establishment of a requirement for use of public lands occurs at the activity level based on an approved military mission. Accordingly, the Commanding Officer of the activity should initiate the request for withdrawal of public lands and submit the request (along with the required chain of command approvals) to the Facilities Engineering Command (FEC) via the mission component command/Region. This request must clearly indicate the location, scope and justification for the proposed withdrawal. The fact that public lands are Government-owned and no cost is involved, except for private interests in them, should be given no consideration. The requirement for use of public lands should be held to the minimum area required to support the mission, and must be completely justified.

b. Categories of Withdrawals. The provisions of [reference \(a\)](#) and the circumstances pertaining to each withdrawal causes these actions to be typically categorized as follows:

(1) Public land withdrawals exceeding 5,000 acres not involving any private interests;

(2) Public land withdrawals not exceeding 5,000 acres not involving private interests;

(3) Public land withdrawals exceeding 5,000 acres and involving private interests;

(4) Public land withdrawals not exceeding 5,000 acres and involving private interests.

c. FEC Action

(1) Receipt of activity request for withdrawal of public lands. The FEC will review the request to determine

if the proposed action complies with [references \(e\), \(f\), and \(g\)](#). (The request must obtain the required chain of command and mission component command/region approvals.) If the FEC does not consider the submitted request to be completely justified, it will return the request to the activity to furnish the required additional information and data or return the request to the activity as appropriate. If the request is completely supported and justified, the FEC will prepare a proposed application for the withdrawal of the public lands required and initiate action to obtain any required additional approvals (See [Paragraph 9](#) below). Submit requests for additional approvals to NAVFACENCOM with a proposed application for the withdrawal of the required public land that includes the information and data required by [reference \(e\)](#).

(2) Application for Withdrawal. The FEC will prepare a proposed application for the withdrawal of the required public lands. The proposed application will contain all the information required by [reference \(e\)](#). These regulations require that if the withdrawal involves the use of water, the application will state whether the using agency has acquired, or proposes to acquire, rights to that use in conformity with state law and procedures relating to the control, appropriation, use and distribution of water. In all applications filed for the withdrawal of public lands where it is affirmatively stated that it will involve the use of water by the United States, the following language must be used in the application:

The acquisition of rights to the use of water will conform to state laws and procedures relating to the control, appropriation, use, and distribution of water insofar as those laws and procedures are applicable to the United States.

**8. ITEMS TO CONSIDER WHEN PLANNING FOR THE WITHDRAWAL OF PUBLIC LANDS**

Consider the following information and data when planning for the withdrawal of Public Lands:

(1) Characteristics of the Land. Review a description of the general characteristics of the land, e.g., desert, agricultural, mountainous, grazing, mineral, timber, or other general descriptive information. Contact the local office of the Bureau of Land Management (BLM) to determine whether all or any part of the lands have been classified under any law or regulation of DOI. If classified by BLM, the type or types of classification, the applicable date(s), and any other pertinent information concerning the characteristics of the lands must be obtained.

(2) Present and Potential Uses. Consider all present and potential uses to which the land can be put. This will include uses and potential uses authorized by the Public Land Laws and other uses, such as hunting, fishing, and other recreational uses; control of predatory animals; conservation; fire protection; and other lawful uses. Consider the extent and significance to the general area.

(3) Toxic and Hazardous Substances. The Navy could be held responsible for toxic/hazardous wastes or materials left by other parties on property Navy acquired. This concept is known as strict liability and is established under the Comprehensive Environmental Response, Compensation, and Liability Act ([42 U.S.C. § 9601-9675](#)) and the Resource Conservation and Recovery Act ([42 U.S.C. § 6901-6992](#)). The property should be surveyed for the presence or absence of toxic/hazardous materials and any contamination found on the property should be addressed. The contamination may affect the property's fair market value.

(4) Evidence of Physical Possession. Visit the property. Review all evidence of physical possession such as highways, roads, railways, utilities (above and below ground), irrigation and drainage ditches, grazing, mining, and any other evidences of physical possession, indicating that some person may claim a right or privilege in the land. If claimed under a written instrument, obtain a copy of it. If not, gather information as to the period possession has been exercised. Except for mining claims and small tract leases, the names and addresses of claimants and occupants should be obtained.

(5) Patented Mining Claims. In the case of mining claims that have been patented, the Government has conveyed fee title to the lands to their locator, or to his/her heirs or assigns. This situation, therefore, is similar to that of any patented lands, and they should be treated as other privately owned lands.

(6) Unpatented Mining Claims. Estimate: (1) the number of unpatented mining claims within the area proposed for withdrawal; (2) the number of those claims on which assessment work has been performed and affidavits have been currently filed; (3) the number of valid claims; and (4) the total amount of money that will be required to acquire all the outstanding valid claims and possessory interests.

(7) Small Tract Leases. In areas where small tract leases exist, gather information on the date or dates when the lands were classified for this purpose and by what order. Obtain a copy of the order or orders. In addition, list all those leases stating:

- (a) The identifying number;
- (b) The name and address of the lessee;
- (c) Its location;
- (d) Whether it has been surveyed;
- (e) What improvements, if any, have been placed on the land; and
- (f) An estimate of the improvements' value.

(8) Existing Withdrawals or Reservations. Obtain information on all existing withdrawals or reservations within the area proposed for withdrawal. Identify the order making the withdrawal and obtain a copy of it. Fully consider the compatibility or non-compatibility of the existing withdrawal and the proposed Navy withdrawal and recommend the method of achieving the appropriate relationship between them. (See [Paragraph 22](#) below.)

(9) Grazing. If grazing is involved, check: (1) the identity of the grazing district; (2) the acreage in the grazing area; (3) the number and type of stock now grazing; (4) the type or types of stock for which grazing in the area is suitable; and (5) the beginning and ending dates of the grazing seasons. Regarding the rights of possession of a grazing permittee, note the: (1) total area of a ranch; (2) area covered by the permit; (3) area under the permit within the area proposed for withdrawal; (4) location and area of the home ranch, line camps, and any other fee-owned land; (5) use made of the lands within the proposed withdrawal, i.e., winter grazing; (6) severance damage that will result; and (7) an estimate of the amount of payment that may be made under the procedures set out in [Paragraphs 34 and 35](#) below.

(10) Conservation Activities. Gather information concerning conservation activities conducted by Federal, state, or local authorities. These activities include the control of predatory animals and other pests, fire protection, wildlife protection and refuge, preservation of forests and areas of historic, scenic, and cultural significance, and protection of water and similar resources. Determine the extent to which conservation activities will be impeded together with plans to minimize interference with these activities, and plans for further cooperation.

(11) Recreation. The congressional hearings that preceded enactment of [reference \(a\)](#) disclose that consideration was given to recreational uses of public lands with particular emphasis placed on hunting and fishing. Examine the feasibility of permitting recreational uses by the public concurrently with military uses, or use when not actively used by the Navy. This will include pertinent information on the laws concerning seasons for hunting and fishing and plans for cooperation with local authorities for the enforcement of game and conservation laws.

(12) Extent of Withdrawal. Public lands of the United States are subject to entry and use for a wide variety of purposes under the Public Lands Laws. Some of the purposes are mineral exploration, location, and development; homesteading; small tract leasing; grazing; and

reclamation. If the exclusive use of public lands for defense purposes is required, the land should be withdrawn from all forms of settlement, sale, location, or entry, and reserved for the exclusive use of the Navy. A review of the legislative history of [reference \(a\)](#) indicates that it was the intent of the Congress that the public lands withdrawn for defense purposes would be available for all uses permitted under the Public Lands Laws that are not incompatible with the military requirements. Therefore, analyze the military requirement for public lands with present and potential uses of these lands for private purposes under existing Public Lands Laws to determine the precise private uses that are compatible with the military requirements.

(13) Justification for Entire Area. The legislative history of [reference \(a\)](#) further indicates that Congress took particular notice of the large public land holdings of the military departments. It will therefore be necessary to state the fullest possible justification in each proposed withdrawal. Where applicable criteria exists for the proposed type of installation, these should be used as the starting point for the development of a justification. While established criteria may not exist for all types of installations that may require large acreages, there is criteria for the most common types, e.g., air bombing targets and for gunnery areas. These criteria are contained in references (h) [NAVFAC P-80](#) and (i) [NAVFAC P-272](#). It is not always possible to follow criteria exactly for the particular area, and the required acreage may not be available in the specified location without unacceptable relocations, or the configuration may be unacceptable to BLM. Thus, adjustments from the criteria are frequently necessary, but the reasons for it should be fully explained. While the reason for the withdrawal of the entire area must be complete and convincing, give particular attention to fringe or boundary areas. These are the areas that reviewing authorities are most apt to suggest deleting, and the probabilities of those suggestions are measured in proportion to the present potential uses to which those areas are susceptible.

(a) Of equal importance to the justification of the area proposed is the justification for the types of entry from which it is proposed to withdraw the lands and the other types of uses that will be denied. Examine every present and potential use to which the land is susceptible, and whether entry or use for the purpose must be denied or may be limited or permitted. It is quite possible in large withdrawals that different portions of the required area will be susceptible to different uses or that certain uses can, from an operational viewpoint, be permitted in certain portions of the area but not in others. Where those factors exist, make an appropriate breakdown by area identifying the uses that may be permitted or limited, or that must be denied.

(14) Estimated Period of Withdrawal. Permanent or indefinite withdrawals are not favored by the reviewing authorities. Therefore, support recommendations for permanent or indefinite withdrawals by providing full justification of the permanent requirement for the area. Or support it by demonstrating that the character of the land will be changed positively as a result of its use by the Navy, such as permanent contamination or construction of improvements, the scope or character of which would render the land unusable under the Public Lands Laws. It is the intent of Congress to periodically review the uses of public lands withdrawn under [reference \(a\)](#). Drafts of bills to authorize withdrawals, which have been approved by reviewing authorities, have limited withdrawals to a maximum period of 20 years. Periods of withdrawal recommended by the FEC must be based upon a firm need for a specific purpose rather than on a contingency.

(15) Closing and Relocation of Roads, Highways, and Utilities. When a determination has been made that it will be necessary to close or to relocate a railway, utility, canal, ditch, or other similar improvement, examine closely the need for the closing or relocation as well as any proposed method to accomplish it. Through appropriate channels in the FEC, obtain a cost estimate of each necessary relocation. The estimate may be based on the use of Government forces, or the award of a contract, or otherwise. Where it is necessary to close or relocate a road, highway, or street, follow the procedures set forth in [P-73, Chapter 3](#). Those procedures apply to all roads and

are not limited to access roads or other Navy highway needs. It is still necessary to obtain estimates of costs. Doing so facilitates any necessary budget estimates. If it becomes necessary to finance the relocation from funds available for the real property acquisition, the estimates will be used to support it.

(16) Easements to Serve Facilities. Document the requirement for easements over public lands for utilities, access roads, and similar purposes to serve a naval activity to be located on the land to be withdrawn. Public lands for easements for these purposes need not be withdrawn, but follow the procedure stated in [Paragraph 20](#) below.

(17) Requirement for the Use of Water. If water is required to accomplish the purposes of the withdrawal, estimate the total consumption of water together with its precise uses. The source of the required water should be identified with information that is necessary to prove the adequacy of the supply. Explore a plan for discovering or acquiring a sufficient quantity of water if the identified supply is not sufficient. This plan should cite all laws and regulations applicable to the situation.

(18) Contamination of Public Land. If the planned use of the land will result in its contamination, document the type or types of contamination such as unexploded ordnance, radioactivity, or other residual material that would make the land dangerous or less useful for uses permitted under the Public Lands Laws. Delineate the area on a map that may be contaminated and describe the type of contamination. Estimate the acreages of these areas. In every case of anticipated contamination, the feasibility of decontamination will be studied. This study will determine the type of land involved, the extent and type of the anticipated contamination, and the estimated cost of decontamination. Considering this study, the FEC will recommend whether the obligation to decontaminate should be assumed, or if the area that will be contaminated should be permanently withdrawn.

(19) Release of Other Navy Controlled Land. Review whether the proposed withdrawal will enable the Navy to

release or dispose of other land under its control. If land can be released or disposed of, investigate whether public, acquired, or leased land is involved, the annual rent, if applicable, acreage, location, and present Navy use.

(20) Descriptions. Descriptions of areas proposed for withdrawals should be prepared. In most instances, public domain lands proposed for withdrawal will have been surveyed under the Public Land Rectangular Survey System. The description of that land will be made by tabular form, i.e., by township, range, and complete or partial section. Where some or all the lands have been surveyed under this system, the land should be described by a tabular description based on a prolongation of the Rectangular Survey System. If this is not sufficiently precise, it should be accompanied by a perimeter description. Where it is necessary to break down the overall area into two or more separate areas, each separate area should then be assigned a capital letter beginning with the letter "A" for purposes of identification. The descriptions will contain the gross land and water area within the exterior boundaries of the lands and their acreage, the areas within the exterior boundaries that will be excepted and their acreage, and the net land and water acreage proposed for withdrawal. These descriptions will be approved by the local office of the BLM.

(21) Maps. It is recommended that the acquisition map delineate the exterior boundaries; break down the area by describing different types of uses that may be allowed; the areas that will be contaminated; existing easements for road and utility purposes; and the location of required easements. This map will show the townships, ranges, and sections with necessary subdivisions, together with the name of the reference meridian clearly indicated on the map and explained in full. We also suggest the preparation of a vicinity map and a Sectional Aeronautical Chart, if air activities are involved, indicating those activities.

(22) Aerial Photographs. Various Government agencies have made aerial photographs of large sections of the country. Where available, obtain enlargements of aerial views of the real property to be acquired and the immediate vicinity, if desirable. These photographs may be obtained from the County Agricultural Agent or the Defense Mapping Agency. The most desirable enlargement is typically 600 or 660 feet to the inch. Clearly draw the boundaries of the land on the photographs.

## 9. REQUIRED APPROVALS

a. The withdrawal of public lands in excess of 5,000 acres requires Congressional legislation according to provisions of [reference \(a\)](#). This situation occurs when the proposed withdrawal will result in the aggregate of withdrawals for a given activity of more than 5,000 acres since 28 February 1958, or since the last Act of Congress that withdrew lands for the activity ([43 U.S.C. § 156](#)).

b. Approvals for withdrawal of public lands, as indicated in references (e), (f), and (g), will be obtained for the scope of project as indicated below:

### (1) Withdrawals of 1,000 Acres or Less

- (a) Activity Commanding Officer
- (b) Mission Component Command/Region
- (c) Commander, Navy Installation Command (CNIC)/Commandant of the Marine Corps (CMC)

The FEC shall obtain approvals (a) and (b). COMNAVFACENGCOM will obtain approval (c).

### (2) Withdrawals of More than 1,000 Acres

- (a) Activity Commanding Officer
- (b) Mission Component Command/Region
- (c) CNO/CMC
- (d) Assistant Secretary of the Navy (I&E)
- (e) Secretary of Defense, or the Deputy Secretary of Defense within the Washington DC area, the Under Secretary of Defense (AT&L), for major withdrawals

outside the geographic Washington, DC area

The FEC shall obtain approvals (a) and (b).  
COMNAVFACENGCOM will obtain approvals (c), (d), and (e).

(3) Withdrawals of More than 5,000 Acres

- (a) Activity Commanding Officer
- (b) Mission Component Command/Region
- (c) CNO/CMC
- (d) Assistant Secretary Navy (I&E)
- (e) Secretary of Defense, or the Deputy Secretary of Defense within the Washington DC area, the Under Secretary of Defense (AT&L)), for major withdrawals outside the geographic Washington, DC area
- (f) Legislative Authorization by the Congress

The FEC shall obtain approvals (a) and (b).  
COMNAVFACENGCOM will obtain approvals (c), (d), (e), and (f).

**10. FILING OF APPLICATION**

a. Authorization. After all requisite approvals and legislative authorization have been obtained, NAVFACENGCOM will authorize the FEC to file the application for withdrawal at the appropriate BLM Land Office. Notice of the filing of the application will normally be published in the *Federal Register* shortly after filing. The FEC will review the publication of notice to determine if it is fully in accord with the application. If any errors or omissions are noted, the FEC should promptly advise the BLM Land Office and request that a correction notice be published. The FEC should also promptly advise NAVFACENGCOM of (1) the number assigned to the application; (2) the date of filing the notice; (3) the date of its publication in the *Federal Register*; (4) the volume and page number of the *Federal Register* in which the Notice is published; and (5) that the published Notice has been reviewed and is in accordance with the application.

b. File Application to Withdraw in the Appropriate BLM Office. Applications should typically be filed in the BLM office having jurisdiction over the land proposed for withdrawal. [Reference \(e\)](#) contains a listing of BLM state offices. BLM has redelegated authority to its district and area offices for processing certain types of public land disposal and use authorization applications. In that event, applications should be filed with the district or area office having responsibility for the needed public lands. Accordingly, prior to filing an application, FECs should contact BLM's state, district, or area office in their immediate vicinity, or the office having jurisdiction over the geographic area where the proposed public lands are located. A listing of the name, address, and jurisdiction of all BLM district and area offices can also be obtained from [reference \(e\)](#), or from any BLM office.

c. Format of Application for Withdrawal. No specific format or form of application is prescribed, according to [reference \(e\)](#). However, the application must contain the specific information and data stated in [reference \(e\)](#).

d. Effect of Filing an Application. The primary effect of filing an application for the withdrawal and reservation of public lands is that it segregates the land. It also sets the date on which private rights in the lands will be determined, since no further rights will vest in the segregated lands. The filing gives notice of the intention of the Department of the Navy to withdraw the lands covered by the application. In addition, the filing of an application is a required step in the procedure for withdrawing public lands from entry or other disposal under the Public Lands Laws.

#### **11. ACTIONS FOLLOWING PUBLICATION OF NOTICE OF PROPOSED WITHDRAWAL**

For withdrawals involving less than 5,000 acres of land, the public will normally be advised through publication of a notice in the *Federal Register* that all persons who wish to submit comments, suggestions or objections in connection therewith may present their views in writing within a stated period (usually 90 days) from the

date of publication of the notice. The publication will state the address of the BLM office where the application and the case file pertaining to it are available for public inspection and to which the written comments by the public should be sent. The BLM authorized officer considers the factors listed in [reference \(e\)](#) to determine whether a public meeting will be held. If BLM determines that a public meeting is necessary, the meeting will be held at a time and place convenient to the interested public, the applicant, and the BLM authorized officer. A notice stating the time and place of the meeting will be published in the *Federal Register* and in at least one newspaper having a general circulation in the vicinity of the lands involved in the requested action. The notice will be published at least 30 days before the scheduled date of the meeting. The cognizant FEC should contact BLM to obtain copies of any objections or protests that have been filed and advise COMNAVFACENGCOM.

## **12. HEARINGS ON PROPOSED WITHDRAWALS**

The FEC will be responsible for presenting the Navy's position in any hearings held by the BLM on a proposed withdrawal. The FEC must be fully prepared to (1) justify the Navy's requirement for the land; (2) demonstrate why this land best meets the requirement; (3) justify the denial to the public of uses of the land that will be denied; (4) explain what action will be taken concerning any private rights or privileges in the land; and, insofar as is possible, (5) meet any objection that may be made. If the assistance of NAVFACENGCOM personnel at the hearing is desired, the FEC should request their presence in advance. Following a hearing, the FEC will make a full report to NAVFACENGCOM. Whether or not a local hearing is held, the FEC will ascertain when the BLM authorized officer has sent the file on the proposed withdrawal, together with the recommendation, to the BLM Headquarters in Washington, DC. Generally, there will be no local hearings on proposed withdrawals that will require legislation. Hearings held by the Committees on Interior and Insular Affairs of the Senate and House of Representatives will serve as the public hearings.

## **13. ENVIRONMENTAL COMPLIANCE DOCUMENTATION FOR CASE FILES**

After filing the withdrawal application, the FEC will deliver to the BLM authorized officer an environmental assessment, an environmental impact statement, or any other

documents needed to meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4332), and applicable regulations. Reference (e) lists the items required to be included in the assessment or impact statement. The BLM authorized officer uses this environmental information in the development and processing of the case file for submission to the Secretary of the Interior.

#### **14. ISSUANCE OF A PUBLIC LAND ORDER**

Following review and approval within the BLM, a Public Land Order withdrawing and reserving the lands will be issued by the Secretary of the Interior. This Order will be published in the *Federal Register*. Frequently, this is the only notice received of the issuance of a Public Land Order. This Order sets forth the rights and responsibilities of the Navy regarding the lands withdrawn and reserved. It should, therefore, be carefully studied, and the FEC should send a copy to the Commanding Officer of the using activity, the Mission Component Command/Region, the Chief of Naval Operations, CMC for Marine Corps activities, and NAVFACENCOM. Sometimes a Public Land Order will contain provisions that require implementation. In this event, the FEC will promptly submit comments and recommendations to NAVFACENCOM on proposed actions.

#### **15. EFFECT OF A PUBLIC LAND ORDER**

A Public Land Order reserving public lands to the use of the Department of the Navy withdraws such lands from some or all forms of entry under the Public Lands Laws and will thereby segregate the lands concerning the forms of entry. The publication of a Public Lands Order is public notice to all that the covered lands covered have been appropriated to the use of the United States. The Public Land Order, in addition, transfers the administrative jurisdiction over the lands and their related resource uses to the Department of the Navy to the extent not retained and exercised by DOI as specifically set out in the Public Land Order. Public lands withdrawn and reserved for naval uses cease to be a part of the public domain and become subject to the administration and management of the Navy Department, except as reserved in the Public Land Order.

**16. DRAFTING OF PROPOSED LEGISLATION**

For a proposed withdrawal that will require legislation, NAVFACENGCOM will draft a bill covering the proposed withdrawal following the filing of the application by the FEC with the BLM state director. This draft will be submitted to the Office of Legislative Affairs, which will then take the necessary action to have the proposed bill presented to the Congress as a part of the Department of Defense Legislative Program. That Office is responsible for obtaining the appropriate witnesses who will support the proposal before the Congress.

**17. EFFECT OF ACT OF CONGRESS WITHDRAWING PUBLIC LANDS**

The enactment of an Act of Congress withdrawing public lands will have the same effect as the issuance of a Public Land Order by the Secretary of the Interior (See [Paragraph 15](#) above). It will set forth the rights and responsibilities of the Navy regarding the lands withdrawn and reserved. It will also determine the period of the withdrawal within which the withdrawal cannot be revoked except by another Act of Congress or in the manner set forth in the Act. No Public Land Order will be issued when the lands are withdrawn by an Act of Congress.

**18. RIGHTS IN PUBLIC LANDS PRIOR TO WITHDRAWAL**

The Department of the Navy has no rights to use public domain lands greater than those that every citizen possesses, except by permission of DOI or pursuant to an Act of Congress. The filing of an application for withdrawal confers no right to use those covered lands. Unless there is other existing authority, no use should be made of those lands because doing so could seriously prejudice obtaining the requested Public Land Order or the enactment of the necessary legislation. Public domain lands are open to use by the public, subject to existing private rights, and there is no objection to Navy personnel or representatives entering those lands for purposes of inspection or survey.

**19. OTHER METHODS OF OBTAINING USE OF PUBLIC LANDS**

a. As stated above, the effects of a Public Land Order or of legislation withdrawing lands are to segregate them, to give notice to the world that the lands are appropriated to the use of the United States, and to transfer administrative

jurisdiction. In some cases, public lands required by the Navy may have been withdrawn and reserved to some other agency of the Federal Government. All or part of the administrative jurisdiction over these public lands required by the Navy may be obtained through an agreement with the department or agency that previously withdrew and reserved the lands (See [Paragraph 38.c.](#) below). Segregation may also be accomplished through appropriation of the lands to the use of the Navy by construction of improvements on them. Actual notice of this appropriation will be given by the existence of the improvements on the lands.

b. In view of the above, other methods, which should be considered when the use of the public lands is required, fall generally into the following categories:

- (1) Notation on the tract and plat books of BLM;
- (15) Permit from BLM; and
- (3) Agreement with the department or agency for which the required lands are presently withdrawn.

## **20. USE OF PUBLIC LANDS FOR ROADS, PIPELINES, AND UTILITIES**

a. When a requirement exists for a road, pipeline, electric transmission line, telephone line, or other utility line across public lands, the necessary easement may be appropriated under the principles set forth by DOI in its Decisions Relating to the Public Lands/Instructions of January 13, 1916 (44 L.D. 513). That appropriation of the use of the lands is permitted as a necessary incident to effectuating the will of Congress as expressed in the Public Law appropriating the funds for the required facility.

(1) Procedure for Requesting an Easement Over Public Lands. When an easement for a road or utility line is required, advise the BLM state director of the requirement. Give the director with a description of the land needed and a statement of the required use, the Public Law authorizing the construction or appropriating funds, and the date on which it is intended to commence construction. Request the director to grant permission for the necessary construction to begin, to note the easement on BLM's tract and plat books, and to advise of any private or other rights within the easement area that would interfere with its use. The letter to the state director will state that the proposed appropriation is

requested under the principles of DOI Instructions of January 13, 1916 (44 L.D. 513). The letter will also advise that when the road or utility line is constructed, an as-built description will be furnished to BLM.

(2) Effect of Appropriation. Appropriation under the principles of 44 L.D. 513 will be used in all cases to which it is applicable. The procedure is simpler and quicker than the procedures for obtaining a withdrawal; it affects only the actual land involved; and it gives the Navy an irrevocable right in the easement for as long as it is required or used. It is superior to a Public Land Order because this Order can be revoked at any time. The notation of the easement on BLM's tract and plat books will insure that in any patent issued subsequently to the affected public lands, the easement will be reserved to the Government. This is why it is essential that a precise as-built description be furnished to the state director when it is available.

## **21. USE OF LANDS UNDER PERMIT**

a. A permit from BLM will not segregate public lands, will not give notice of appropriation, or will not confer administrative jurisdiction. However, if the use required by the Navy is temporary, is intermittent, or will not interfere with public rights under the Public Land Laws to any significant degree, a permit may be appropriate. Permits authorize uses of public lands for a period not to exceed three years. Permits are issued on a form approved by the Director, BLM, that has been filed by the applicant with the appropriate BLM office. Special Land Use Permits are issued under the regulations contained in [reference \(j\)](#), and those provisions should be followed in applying for those permits. Under these regulations, permits are renewable at the discretion of the authorized officer and may be revoked according to its terms and the provisions of [reference \(j\)](#). This provision should be considered in the decision to apply for a permit; however, the risk involved is typically minimal. Federal use would almost invariably take precedence over a state or private use and under any circumstances that revocation could be appealed to higher authority. Where Government funds have been expended on construction with DOI approval, the permit is for all practical purposes irrevocable.

(1) Construction Under a Permit. In cases where the use of public lands under permit is being considered, the fact that construction on them is contemplated supports the

use of a permit rather than inhibits it. The expenditure of Government funds on the land will have the effect of appropriating them to the use of the United States and will segregate them. These two results, together with the permission of DOI as evidenced by the permit, will frequently give the Navy all the interest it requires. It will not, however, give the Navy any administrative jurisdiction over the lands.

## **22. LANDS WITHDRAWN AND RESERVED FOR ANOTHER AGENCY**

If, when planning for the use of public lands it becomes known that the lands or some of them have already been withdrawn for the use of another Federal agency, consideration should be given to whether a withdrawal and reservation to the Navy is necessary. It is possible that an agreement with the agency having jurisdiction will fully satisfy the requirements of the Navy. The fact that the construction of permanent improvements may be involved is not pertinent in this situation. Since the lands have already been withdrawn, they are already effectively segregated from the operation of the Public Lands Laws. However, in this connection, it must be determined if the lands are actually withdrawn from all forms of entry that would adversely affect use by the Navy. If not, and a satisfactory agreement can be reached with the agency having jurisdiction, BLM should be requested to make suitable notations of the Navy's interest in the lands upon its tract and plat books and to acknowledge that the notation has been done. This step is important to insure that upon a revocation of the withdrawal, the interests of the Navy will not be overlooked. The authority of the FEC to enter into agreements for the use of public lands should be considered as coming within the authority delegated to it by [P-73, Chapter 2](#).

## **SECTION III - OUTER CONTINENTAL SHELF**

### **23. LANDS IN THE OUTER CONTINENTAL SHELF**

[Reference \(a\)](#) states that the term "public land" shall be deemed to include, without limiting its meaning, Federal lands and waters of the Outer Continental Shelf, as defined in the Outer Continental Shelf Lands Act ([reference \(b\)](#)). This would apply to areas seaward of a line three geographical miles distant from the coast line of a state, except where the boundary of a state extended beyond this limit when it became a member of the Union. These areas are

subject to mineral leasing by DOI under [reference \(b\)](#). Mineral operations under these mineral leases may interfere with Navy activities in or under the water of, or in the air space above, these areas. The restriction of mineral leasing is therefore an element in the exercise of control in the Outer Continental Shelf area.

#### **24. RESTRICTING LANDS IN THE OUTER CONTINENTAL SHELF**

When Navy requirements necessitate restricting lands in the Outer Continental Shelf, the action will be handled in a manner similar to the withdrawal of public lands. The FEC will submit appropriate recommendations to NAVFACENGCOM via the appropriate chain of Command. NAVFACENGCOM will thereafter obtain the approval of the Chief of Naval Operations, the Secretary of the Navy, and if more than 1,000 acres are being acquired, the Under Secretary of Defense (AT&L). If more than 5,000 acres are involved, legislation will be required. In this case, NAVFACENGCOM will draft appropriate legislation and take the action necessary to have it submitted to the Congress. It is noted that restriction of lands in the Outer Continental Shelf affects only mineral operations in these areas and has no application to other rights. The rights of navigation in the area are not affected in any degree.

#### **25. PLANNING FOR RESTRICTIONS OF THE OUTER CONTINENTAL SHELF**

A proposal to restrict lands in the Outer Continental Shelf must be supported as fully as are withdrawals from the public domain. Therefore, in all cases involving the restriction of lands in the Outer Continental Shelf from mineral leasing, the FEC will prepare an application. The application will contain all the information required by DOI Regulations ([reference \(e\)](#)). For restrictions involving more than 5,000 acres, the application must contain all the information necessary to support the proposed legislation before the Congress. Thus, in preparing the application and accompanying information, include the following items: (1) a map accompanying the legal description; (2) a statement of the requirement necessitating restricting the area; (3) justification of the entire area based on appropriate criteria; (4) a statement about whether all or any part of the area has been offered for mineral leasing; (5) the date(s) of those offers; (6) a list of all outstanding leases or applications for leases within the area together with the applicable dates; (7) the names and addresses of the lessees

or applicants; (8) descriptions of areas covered by the leases or applications; (9) information about the uses made of the area such as fishing, recreation, and shipping lanes; and (10) other information that may be deemed pertinent.

## **26. APPLICATIONS FOR RESTRICTIONS**

When all necessary departmental clearances have been obtained and prior to submission of legislation to the Congress, if that is required, NAVFACENGCOM will submit the application for the restriction of lands in the Outer Continental Shelf from mineral leasing to BLM.

## **SECTION IV - ACQUISITION OF RELATED PRIVATE INTERESTS**

### **27. ACQUISITION OF PRIVATE RIGHTS**

An Act of Congress or a Public Lands Order withdrawing lands for use by the Department of the Navy will, either by the description of the land or by its terms, exclude all lands within the overall area whose title has passed from the Government. This will include all lands, including mining claims patented to individuals; lands granted to railroads; and state school lands. These state school lands are generally denoted as sections in a surveyed township. It is noted, however, that title to these sections does not vest in the state until they are surveyed and the survey is approved by BLM. Acquisition of those patented lands or of their use will be accomplished in accordance with [P-73, Chapter 13](#), as appropriate. The Act of Congress or the Public Lands Order withdrawing land will make the withdrawal subject to valid existing rights. If these existing rights interfere with the Navy's use of the lands, it will be necessary to acquire them through the payment of just compensation. These rights will be acquired under the procedures set forth in [Paragraphs 28 through 35](#).

### **28. EXCHANGE OF LAND FOR PUBLIC LANDS**

a. In areas where there are large holdings of public lands, frequently the owner of private lands needed by the Navy will suggest an exchange of his/her lands for lands in the public domain outside the area needed by the Navy. There is no authority in the Navy to complete these exchanges. However, DOI does have the authority under the Taylor Grazing Act ([43 U.S.C. §§ 315-315\(o\)](#)). It is a matter of discretion

with the DOI whether to consider these proposals from private parties. DOI must, however, act upon the proposals from a state. Since these exchanges are a matter under the cognizance of another department, they should neither be encouraged nor discouraged. Reasonable assistance may be given the party making the proposal, but it should neither be presented as a proposal of the Navy under any circumstances, nor should the Navy be concerned with the ultimate decision made by DOI. It is noted that DOI generally discourages exchange proposals from private parties because of the administrative costs involved. It is further noted that in cases where exchange proposals are entertained, the procedures are time-consuming.

b. Where large acreages are involved, the consummation of an exchange may take several years. Until a final decision is reached by DOI, Navy must acquire the right to use the land proposed for exchange. This may be accomplished by a negotiated agreement that will grant the use of land to the Government without cost and will be valued as of the date the Government takes possession, if the exchange is not consummated. If an agreement cannot be negotiated, the lands should be included in a condemnation proceeding and an order of possession should be obtained from the court. No Declaration of Taking will be filed in this situation because this would vest title in the Government and the former owner would have nothing to exchange. If, of course, an order of possession cannot be obtained, the filing of a Declaration of Taking would then be necessary.

c. Because of the possibility of exchanges for public land, and because those lands will become public lands when exchanged, legislation and Public Land Orders should be so worded that they will include lands within the exterior boundaries of the lands withdrawn that are or may become public lands. The wording of the application for withdrawal should therefore anticipate this ultimate result.

## **29. ACQUISITION OF UNPATENTED MINING CLAIMS**

a. Of the various possible valid existing rights that may exist in the public lands of the United States, the most important is the unpatented mining claim. While the title to lands covered by an unpatented mining claim remains in the United States, the claim is an interest in real property with all the characteristics of other interests in real property. It may be sold or otherwise alienated and the title to it

will pass to the heirs or personal representatives of the owner. If appropriate affidavits of assessment work have been currently filed, it is presumed to be a valid claim until it is determined to be invalid by appropriate administrative procedures of DOI. Before initiating action to acquire unpatented mining claims, the FEC will assemble a list of all those claims within the area withdrawn or proposed for withdrawal. Mining claims on which no proof of assessment work has been filed for the last year required, unless the work was excused under law or regulation, will be considered invalid and no further action will be taken on them. The following information will be developed for all other mining claims or groups of claims:

(1) The locator or present owner of the claim and his/her address;

(2) A description of the claim as obtained from the local records. A survey for this purpose is not authorized;

(3) A statement noting whether the claim is being worked only to the extent that the required assessment work is being actively developed, or is being commercially pursued;

(4) An opinion about whether the claim is valid or is of doubtful validity, and

(5) An estimate of the value to the claim based on observation and existing records.

### **30. POSSESSORY INTERESTS**

a. Definition of Possessory Interests. "Possessory interests" are those rights of possession and enjoyment of unpatented mining claims held under the provisions of Title 30 of the United States Code according to local laws and customs.

b. Acquisition of Possessory Interests. Acquisition of possessory interests will not be initiated unless the mining claim is considered to be valid as described in [Paragraph 29](#) above. If possessory interests can be acquired by quitclaim deeds, or by lease for a total consideration not exceeding the combined estimated amounts of (1) the cost to the Government of determining their validity; and (2) the cost of appraisals, title evidence, assays, publication of notices, and other expenses for each unpatented mining claim, it is usually in the best interest of the Government

to acquire these interests without incurring the administrative expense of the time involved in obtaining the review of DOI. The exercise of the authority delegated in [Paragraph 29](#) above must be carefully administered.

c. Procedures for Acquisition of Possessory Interests.

When the FEC has been authorized to proceed with the acquisition of private interests in public lands, the FEC will, unless requirements of possession dictate otherwise, commence negotiations with owners of all mining claims in which there were valid possessory interests at the time the lands were segregated. Whenever possible, the FEC will obtain a quitclaim deed from the owners for a consideration as described in subparagraph (b) above. Tenants, parties in possession, and others having an interest in the claims, will execute or join in the execution of quitclaim deeds. The use of an "Agreement for Purchase of Real Property" is not required. If the owners seriously object to the permanent conveyance of their interests and the acquisition of a lesser interest is warranted by the specific circumstances, such as a temporary withdrawal with no contamination or permanent construction contemplated, substantial savings to the Government, or other material considerations, the following clause may be inserted in the quitclaim deed:

It is hereby understood and agreed that whenever the land in which the possessory interest is held is returned to the public domain, that interest shall revert to the party of the first part, his/her heirs, personal representatives, or assigns.

If the owner is unwilling to grant a quitclaim deed, the use of the possessory interest may be acquired by lease. The manner of execution should satisfy the requirements of local law to make the instrument eligible for recordation. Payments will be made on the basis of properly certified vouchers. The quitclaim deeds shall be recorded in the Land Records Office of the county in which the claim is located and distribution made as follows:

- |                    |                                   |
|--------------------|-----------------------------------|
| (1) Original       | FEC Files                         |
| (2) Conformed Copy | Appropriate FEC<br>Finance Office |
| (3) Conformed Copy | NAVFACENGCOM (RE)                 |

The funding and payment procedures, including requests for checks, will be done according to procedures prescribed in [P-73, Chapter 7](#).

d. Procedures for Leasing Possessory Interests. As indicated in subparagraph 30.(c) above, if the owner is unwilling to grant a quitclaim deed, the FEC should proceed with negotiations with the owner to obtain a fixed term lease. The term shall be commensurate with the period of requirement and for a lump sum rent, payable at the end of the first fiscal year. Tenants, parties in possession, and others who or which have an interest in claims, must execute or join in the execution of the leases. If the FEC determines that the specific circumstances require that the instrument be recorded, the manner of execution must satisfy the requirements of local law to make it eligible for recordation. If the space allowed on the form for execution by the lessor and spouse is inadequate, or if the owner is a corporation, partnership, or other entity requiring more space, an additional page may be attached to provide sufficient space for signatures, notary's acknowledgment, and appropriate certificate, if a corporation. Distribute the leases as stated in [P-73, Chapter 13](#).

e. Disclaimers From Parties Without Interest. The FEC shall obtain disclaimers without consideration from tenants or other parties in possession of unpatented mining claims who do not claim an interest in them. Prepare disclaimers in a form satisfactory to FEC counsel, and retain executed disclaimers in the files of the FEC.

f. Validity of Unpatented Mining Claims. All unpatented mining claims on public lands withdrawn for use by the Department of the Navy, in which the possessory interest cannot be acquired by the methods set forth above, will be acquired by condemnation of a leasehold or of full outstanding interest in the property as appropriate. Although the general rule that Government funds may be paid only to compensate owners of a compensable interest applies, acquisition of possessory interests is an exception to this rule based on practical considerations. Thus, before unpatented mining claims are leased or purchased, a determination of the validity of such claims must be made. DOI, as the agency of the Federal Government having jurisdiction over the lands in the public domain, has the ultimate authority to render a decision on the validity of

private rights in these public lands. The only manner in which an unpatented mining claim may be found to be invalid is by a finding made by DOI under its appropriate administrative procedures. Two distinct steps, however, necessarily precede the making of that finding. First, there must be an examination of the claim and an assembly of the evidence to support the claim of invalidity. Second, there must be a presentation of evidence and examination of witnesses at a hearing held for the purpose. The holding of the hearing and the rendering of the final decision about the validity of the claim is necessarily the function of DOI.

g. Adverse Proceedings. Assume that unpatented mining claims are valid until determined to be otherwise. Hearings held by DOI/BLM on the validity of a claim are contests between two parties-in-interest, one asserting that the claim is valid and the other that it is invalid. Presume that the owner of the claim will, if possible, support its validity or at least will not contend that it is invalid. If this is the case, there will be no basis for holding a hearing unless the Navy is able to assemble evidence proving that the claim is invalid. If the evidence assembled by or on behalf of the Navy proves the claim to be valid, it should be so determined and action should then be taken to acquire it.

h. Definition of Validity. An unpatented mining claim is valid if its locator or his/her successor-in-interest has the rights of possession and enjoyment as set forth in [30 U.S.C. § 26](#). These rights depend upon two elements, discovery and the performance of assessment work ([30 U.S.C. §§ 23 and 28](#)). No mineral rights are acquired in public lands without discovery of a valuable mineral. Therefore, to be valid, a mining claim must be based on the discovery of mineral, which gives reasonable evidence of the fact that there is a vein or lode carrying the precious mineral. It is this discovery that would justify a person of ordinary prudence to further expend time and means to develop a paying mine. The amount of assessment work required depends upon local law and regulations, but may not be less than \$100 worth of labor performed or improvements made during each year.

i. Examination of Unpatented Mining Claims. It has been the practice of the Navy to obtain the services of BLM to examine unpatented mining claims and to assemble

evidence as to their validity. This practice should be followed in all cases where there are no strong reasons to the contrary, because BLM is staffed to perform this function. Additionally, DOI's Office of the Solicitor will not ordinarily represent the Navy in an adverse proceeding if its personnel have not examined the claim and assembled the evidence. Therefore, if a decision is made to have parties other than BLM examine unpatented mining claims, the decision must, in part, be based on the availability of qualified personnel to represent the Navy in possible adverse proceedings.

j. Agreement from Examination of Claims. To obtain the services of BLM to examine unpatented mining claims, an agreement will be entered into between the FEC and BLM state director. This agreement will provide for BLM to examine the claims and to assemble evidence about their validity. It also provides for BLM to make recommendations for each separate claim, either that it is valid or that adverse proceedings should be conducted against it. The agreement will also provide for a valuation of the claims that can be used as a basis for lease or purchase. Under the agreement, the Navy will reimburse BLM for its costs. Reimbursement may be made on an incremental basis if BLM so desires.

k. Timing of Agreement With the Bureau of Land Management. The timing for entering into agreements for the examination of unpatented mining claims is of considerable importance. If no action is taken until the withdrawal has concluded, the ability to use the withdrawn land may be delayed for an extended period. When the requirement for use is urgent, the possession of private interests will generally be obtained through the institution of condemnation proceedings. However, in those proceedings, the court may not, in its discretion, grant possession without the filing of a Declaration of Taking. If a Declaration of Taking is filed, there must be some reasonable basis for the deposit of just compensation. Moreover, it is preferable not to include invalid claims in a condemnation proceeding. At the time of the filing of an application for withdrawal, the FEC will advise BLM's state director of the need for determining the private rights existing in the covered public lands. In some instances, it may be possible to get BLM to budget for this examination. Under any circumstances, the FEC must be guided by its discretion in obtaining the examination of unpatented mining claims in a timely fashion so that possession of the lands will not be delayed.

### **31. DELEGATION OF AUTHORITY.**

a. Subparagraph 8(e)(8) of reference (m) delegates authority to COMNAVFACENGCOM to "(a)ccomplish the withdrawal, reservation or restriction of public domain lands when the criteria established in subparagraph 8c(12) have been satisfied." Hence, any action or document needed to undertake and complete the withdrawal, reservation, or restriction of public domain lands is delegated, but subject to compliance with 43 U.S.C. § 1714 and 43 U.S.C. §§ 155-158 under the jurisdiction of DOI (DOI Laws), and subject to subparagraph 8d(4) of reference (m).

b. Subparagraph 8d(4) of reference (m) sets out approvals for acquisitions that must be obtained under the delegation for public lands withdrawal, subject to compliance with DOI Laws. In particular, the approval of the

(i) Regional Commander, CNI, and CNO for Navy use.

(ii) Installation commander/commanding officer and CMC for Marine Corps use.

(iii) Assistant Secretary of the Navy (I&E) (ASN).

(iv) Undersecretary of Defense (AT&L) when more than 1,000 acres are involved.

c. By memo dated 19 Apr 2007, COMNAVFACENGCOM re-delegated the authority in reference (m) to the Commanders/Commanding Officers of FECs for execution/implementation by warranted Real Estate Contracting Officers, without authority to re-delegate.

### **32. REPRESENTATION IN ADVERSE PROCEEDINGS**

Agreements with BLM for the examination and appraisal of unpatented mining claims will not include provisions for representing the Navy in adverse proceedings, since that is a function of the DOI's Office of the Solicitor. Whenever it appears that certain unpatented mining claims are invalid and adverse proceedings should be instituted and the evidence indicating invalidity of the claim has been gathered by BLM, the FEC will forward appropriate recommendations to NAVFACENGCOM. NAVFACENGCOM will enter into an agreement with the Office of the Solicitor, DOI, to represent the Navy in the proposed adverse proceedings.

This agreement will also provide for reimbursement to the DOI for its costs. In the event the examination of unpatented mining claims and the gathering of evidence indicating their validity has been obtained from a source other than BLM, the counsel for the FEC will represent the Navy in the adverse proceedings.

### **33. EXTINGUISHMENT OF SMALL TRACT LEASES**

Upon withdrawal of public lands encumbered with small tract leases, the FEC will immediately seek the advice of the local office of BLM about which leases are in effect. The FEC will then seek to acquire all right, title, and interest in them through negotiations. If no improvements have been placed on the land, just compensation will ordinarily be the cost of the filing plus the cost of survey, if one has been made. Recommendations for condemnation should be forwarded to NAVFACENCOM if negotiations are unsuccessful. Even if only a leasehold interest is going to be obtained in other private rights pertaining to the lands withdrawn, all outstanding right, title, and interest to the small tract leases should ordinarily be acquired. This is because the cost of administering leases on these minor interests would in most cases far outweigh their full value.

### **34. GRAZING PERMITS**

Grazing permits issued by BLM do not grant an interest in real property and are therefore not compensable. However, a section of the Taylor Grazing Act, [43 U.S.C. § 315 q](#), permits payment for losses suffered by their cancellation. This section provides as follows:

Withdrawal of lands for war or national defense purposes; payment for cancellation of permits or licenses. Whenever use for war or national defense purposes of the public domain or other property owned by or under the control of the United States prevents its use for grazing, persons holding permits or licenses and persons whose grazing permits or licenses have been or will be canceled because of such use shall be paid out of the funds appropriated or allocated for such project such amounts as the head of the department or agency so using the lands shall determine to be fair and reasonable for the losses suffered by such persons as a result of the use of such lands for war or national defense purposes. Such payments shall be deemed payment in full for such losses. Nothing contained in this section shall be construed to create any liability not now existing against the United States.

**35. PAYMENT FOR LOSSES UNDER GRAZING PERMITS**

Make every effort to continue grazing permits on the lands withdrawn for Navy use. However, if that use is incompatible with the defense requirement, request the BLM state director to cancel those permits. If the cancellation results in losses being suffered by the holder of the permits, the FEC will negotiate an agreement with the permittee covering the losses incurred. Thereafter, submit the agreement to NAVFACENCOM with full justification. Process a determination from ASN that the amount of reimbursement is fair and reasonable. It is noted that the reimbursement can only cover the period provided for under the existing permit and cannot cover prospective losses based on the assumption that further permits would have been issued. When ASN finding has been made, the agreement will be executed by NAVFACENCOM or the FEC will be authorized to execute it. Thereafter, make distribution as follows:

- |                      |   |
|----------------------|---|
| (1) Original         | FEC Files                               |
| (2) Signed Copy      | Permittee                               |
| (3) Conformed Copy   | Appropriate FEC Finance Office          |
| (4) Conformed Copies | As required for local fiscal accounting |

**SECTION V - NAVY DEPARTMENT MANAGEMENT/DISPOSAL OF WITHDRAWN PUBLIC LANDS**

**36. MANAGEMENT OF WITHDRAWN PUBLIC LANDS BY THE DEPARTMENT OF THE NAVY**

Public lands that have been withdrawn and reserved for Navy use cease to be part of the public domain and become subject to the administration and management of the Navy Department. The Public Land Order or legislation withdrawing the lands may retain or reserve certain elements of administration or management in DOI. However, except for those reserved elements, and only to that extent, the full administrative jurisdiction over the lands passes with the withdrawal and reservation. Administer and manage withdrawn public lands in the same manner as acquired lands. Issue licenses and permits and grant easements over withdrawn public lands following the procedures set forth in P-73, Chapters 20, 21, and 22, except if the action would be

inconsistent with the jurisdiction reserved to DOI in the specific case.

### **37. AUTHORITY TO REVOKE WITHDRAWALS**

Before enactment of the Pickett Act of June 25, 1910, and its subsequent repeal, the right of the President to restore reserved public lands to the public domain was often challenged. However, that Act expressly authorized him to revoke orders of withdrawal or reservation made pursuant thereto. By Exec. Order No. 9,337 of April 24, 1943 (superseded by [reference \(c\)](#)) and Exec. Order No. 10,355 of May 26, 1952, as amended by Exec. Order No. 12,688 of August 15, 1989, this authority of the President was delegated to the Secretary of Interior. Accordingly, the Secretary of Interior has issued procedural regulations governing the restoration of lands to the public domain. These are set forth in [reference \(e\)](#).

### **38. DISPOSAL OF LANDS WITHDRAWN FROM THE PUBLIC DOMAIN**

a. Return to the Public Domain. After the lands that were withdrawn from the public domain for Department of the Navy use have served the intended purpose and are no longer required, the lands should be returned to the public domain. If, however, substantial improvements have been constructed or the lands have been contaminated, the lands may be determined to be unsuitable for return. In this case, the property must be reported as excess to the General Services Administration (GSA) for its disposal.

(1) Required Approvals. Upon receipt of a Report of Excess Real Property involving public lands, the property must be screened to determine if there are any other Department of Defense requirements. Obtain necessary approvals according to provisions of [P-73, Chapter 23](#).

(2) Suitability for Return to the Public Domain. One significant variable in a disposal project involving public lands is whether those lands are suitable for return to the public domain. This determination will ultimately be made by BLM, with the concurrence of GSA if the lands are not returnable. However, the FEC will make a preliminary determination of this matter whenever action is initiated to obtain approvals for the disposal of property involving public lands. In reaching a preliminary determination, the FEC should consult with the BLM state director. If this

preliminary determination concludes that the lands are not suitable for return to the public domain, they will, for the purpose of obtaining approvals, be considered as if they were acquired lands.

(3) Responsibility of the General Services Administration. The Federal Property and Administrative Services Act of 1949 ([40 U.S.C. § 472](#)), defines the word "property" as used in the Act, in part, as

any interest in property except lands withdrawn or reserved from public domain except lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator, determines are not suitable for return to the public domain for disposition under the general Public Land Laws because such lands are substantially changed in character by improvements or otherwise.

As a result of this definition, GSA has certain responsibilities regarding the disposal of reserved public lands. Procedures relating to these responsibilities are set forth in [reference \(k\)](#).

(4) Filing of Notice of Intention to Relinquish. After all necessary approvals have been obtained for the disposal of property, including withdrawn or reserved lands, the FEC will file the approved notice of intention to relinquish those lands in the appropriate BLM Land Office ([reference \(l\)](#)). The FEC will also send a copy of this notice of intention to relinquish to the GSA regional office for the region in which the lands are located.

b. Report of Excess Real Property. When the authorized officer of BLM has determined that the withdrawn or reserved lands to be relinquished are not suitable for return to the public domain and has so advised the appropriate FEC, the FEC will report the property as excess to GSA Services Administration in accordance with the requirements in [references \(e\) and \(k\)](#). If the FEC preliminary determination was that the lands were suitable for return to the public domain, the FEC must re-examine the approvals for the disposal project to ascertain if, in the light of the determination by BLM, Department of Defense approval and a Report to the Armed Services Committees are required and whether that action has been taken.