

CHAPTER 18

RESPONSIBILITY OF REAL PROPERTY MANAGEMENT

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## CHAPTER 18

### RESPONSIBILITY OF REAL PROPERTY MANAGEMENT

#### SECTION I - GENERAL

##### 1. PURPOSE

This chapter is an introduction to the management portion of this manual. It describes policy and the authority of the Commander, Naval Facilities Engineering Command (COMNAVFACENGCOM) for outgrants of DON-controlled real property. It describes some general considerations which apply to some or all types of outgrants. This chapter also prescribes procedures for some actions that do not fall into the major categories of management actions, such as outleasing and the granting of easements. Those major categories are described in the following chapters of this manual.

##### 2. SCOPE

This chapter and the following four chapters relate primarily to the use of Department of the Navy (DON) real property by persons or organizations outside the DON. They apply to all types of transactions for the use of DON-controlled real property by other than DON components except:

- a. Leases of industrial reserve property for industrial purposes.
- b. Use of real property provided in accordance with the Federal Acquisition Regulation (FAR) ([reference \(a\)](#)) as an incident to performance of a Government contract for the procurement of supplies, services, construction, utilities, or other commodities.
- c. Civil Aircraft Landing Permits issued pursuant to [reference \(b\)](#).
- d. Agreements for U.S. Postal Service facilities provided in accordance with U.S. Navy Postal Instruction, [reference \(c\)](#).

e. Cross-servicing agreements for use of storage and warehousing facilities by other military departments, in accordance with NAVSUP Manual, Vol. II, paragraphs 27015 and 27165 through 27169 (reference (d)) and NAVSUPINST 4450.21A (reference (e)).

f. Oral or written authorizations granted by or under the authority of the head of an installation as an incident of day-to-day command and administration, such as for visitors and tradesmen doing business with installation officers and personnel and for activities of the Naval Sea Cadet Corps.

### 3. REFERENCES

- (a) [Federal Acquisition Regulation \(FAR\)](#)
- (b) [SECNAVINST 3770.2A of 15 Mar 06](#)
- (c) [OPNAVINST 5112.6D of 19 Mar 07](#)
- (d) NAVSUP Manual, Vol. II
- (e) NAVSUPINST 4450.21A of 15 Jun 78
- (f) [SECNAVINST 11011.47B of 12 Jan 09](#)
- (g) [10 U.S.C. § 2662](#)
- (h) [10 U.S.C. § 2667](#)
- (i) [Federal Management Regulation, as amended, \(41 C.F.R. Chapter 102, pts. 74 and 75\)](#)
- (j) Navy Comptroller Manual
- (k) [Real Property Inventory Procedures Manual \(NAVFAC P-78\)](#)
- (l) [OPNAVINST 11000.16A of 28 APR 87](#)
- (m) [DoD Directive 4165.06 of 13 Oct 04](#)
- (n) [Stewart B. McKinney Homeless Assistance Act, as amended, \(42 U.S.C. § 11411\)](#)
- (o) ASN(I&E) Memorandum of 22 Dec 93-Department of the Navy Environmental Procedures Applicable to Non-BRAC Real Estate Actions
- (p) [SECNAVINST 7010.7 of 6 Dec 99](#)
- (q) [20 U.S.C. § 107](#)
- (r) [10 U.S.C. § 2695](#)
- (s) [12 U.S.C. § 1770](#)
- (t) [Federal Property and Administrative Services Act of 1949, as amended, \(40 U.S.C. §§ 521-593\)](#)
- (u) [30 U.S.C. §§ 351-360](#)
- (v) [30 U.S.C. §§ 181-184a](#)
- (w) 43 U.S.C. §§ 1701-1785 (Federal Land Policy and Management Act)
- (x) [43 U.S.C. §§ 1331-1356a](#)
- (y) [OPNAVINST 3100.5E of 17 Nov 88](#)
- (z) [DODD 4700.3 of 28 Sep 83](#)
- (aa) [SECNAVINST 11011.48 of 6 Jul 84](#)

(bb) 10 U.S.C. § 2566

When used in this Chapter, "property" refers to real property.

## SECTION II - REAL PROPERTY MANAGEMENT ISSUES

### 4. UTILIZATION OF REAL PROPERTY

a. The installation Commanders/Commanding Officers have authority over the installation's land holdings as an incident of their day-to-day command. Thus, basic responsibility for the administration, management, utilization, and physical security of real property under their control rests with installation Commanders/Commanding Officers. This responsibility includes, but is not limited to, the oversight of visitors; tradespersons doing business with the installation's tenant activities; base personnel.

b. In contrast, COMNAVFACENGCOM and the Facilities Engineering Commands (FECs) have a technical responsibility for real estate actions at the request of the property-holding activities. They do not have general responsibility for real property management, except for the lands of installations under their command. Further, COMNAVFACENGCOM does not have direct responsibility for administering those lands not yet assigned to the plant account of an installation, or those reserved or contingent rights in lands that have been disposed of and are not assigned to the plant account of any installation.

### 5. RESPONSIBILITY FOLLOWING VESTING OF TITLE

When title to property acquired by the DON vests in the United States, it is the responsibility of the DON to manage that property. If the property is not needed immediately for governmental purposes, it may be desirable for the former owner, or another party, to remain in possession until the property is needed. In this event, a landlord-tenant relationship has been created and it should be formalized by an appropriate real estate instrument, such as a lease. This requirement does not arise when right to possession is covered by the implicit or explicit right to a reasonable

time to vacate, or where continued right of possession is provided for in the purchase contract, or under a court order in a condemnation proceeding.

## **6. OUTGRANT POLICIES**

a. The Secretary of the Navy (SECNAV) holds real property for DON to fulfill the Navy and Marine Corps military missions. As such, the Secretary is responsible for policy matters relating to DON real property. Allowing use of Navy property by others, even for short periods of time, may have consequences that are detrimental to fulfilling the Navy and Marine Corps missions. Accordingly, it is important to carefully consider the effects of that use on military requirements before entering into agreements for non-Naval use of DON real property. Per reference (f):

(1) DON real property may only be made available for compatible non-Navy uses when it can be clearly demonstrated that:

(a) It is not excess property as defined in [reference \(t\)](#).

(b) Its use by others will not interfere with the accomplishment of the activity's mission, or with the Department's present or foreseeable use of the property, or with other Departmental activities in the vicinity; and

(c) The use will be at minimal expense to DON.

(2) The user of DON real property will be required to use, maintain, protect, and preserve the property in accordance with sound management practices and the terms of the outgrant.

(3) Non-Federal users of DON property, except state, county, or local government agencies that are precluded by law from assuming liability, will assume, when appropriate, liability for loss of or damage to the real property, and for third party bodily injury and property damage. When these liabilities are imposed, the user will be required to demonstrate sufficient financial responsibility to assume these liabilities, or, at the user's own expense, to procure and maintain sufficient

insurance to cover them. This requirement for insurance may be waived for voluntary, non-profit associations chartered to operate on DON installations. Except where a license is issued for use of an entire building, the licensee will be required to procure and maintain an all-risk commercial general liability policy.

(4) Prior to making property available for non-Federal use, the COMNAVFACENGCOM will screen the property for use by other Department of Defense (DOD), and Federal agencies, in accordance with [references \(i\)](#) and [\(m\)](#). In accordance with 41 C.F.R. § 102-75.1165, Federal landholding agencies are required to report to HUD real property designated by them as either unutilized, underutilized, excess, or surplus. 41 C.F.R. § 102-76.1065(b) lists property that are not subject to reporting to HUD.

(5) Prior to making property available to other users outside DON, the installation commander/commanding officer or the regional commander for Navy properties will prepare an environmental condition of property report in accordance with reference (o).

(6) Since it is inappropriate for the military departments to directly create competition with private enterprise, particularly in the third-party lodging and food service industries, the outgranting or otherwise making available of DON-controlled real property for these or related type uses except for DOD-sponsored programs under [reference \(p\)](#) should be avoided.

(7) In authorizing the operation of vending facilities, including restaurants and cafeterias on DON property, priority shall be given to blind persons licensed by a state agency as provided in [reference \(q\)](#).

(8) DON will not authorize the construction or display of commercial billboards or similar signs promoting private commercial or political interests on DON-controlled property. Any existing commercial billboards or signs on DON property may remain until the present lease expires or other arrangements are made. Renewal options may not be exercised.

(9) Since it could be construed as a political endorsement by DON, space on DON property will not be made available, either by lease or other agreement, for use by a Member of Congress for a district Office or other political use.

b. Consideration and Reimbursement of DON Expenses.

(1) Non-Federal users of DON real property will be required to:

(a) Reimburse DON for administrative expenses incurred in entering into the transaction, as allowed by [reference \(r\)](#). These expenses will include the costs of surveys, environmental studies, appraisals, and the time of DON personnel, both at the activity and the contracting office. This requirement may be waived when the amount is less than the cost of collecting the reimbursement. It may also be waived if the activity on which the property is located agrees that a waiver benefits the activity and the user further agrees to be responsible for paying all of the above administrative costs, including reimbursing the contracting office for the time of its personnel.

(b) Reimburse DON, in accordance with applicable statutes and regulations, for the cost of any utilities and services furnished. This requirement may be waived:

(1) When the amount is nominal.

(2) For credit union operators under a license for utilities, such as heat, lighting, and air conditioning in accordance with [reference \(s\)](#). Janitorial services, fixtures, and maintenance may also be provided without reimbursement subject to budget or manpower constraints.

(3) For The Navy-Marine Corps Relief Society in accordance with reference (bb).

(2) In addition to the payment of administrative expenses and utilities, non-Federal users will be charged consideration (cash or in-kind) in an amount not less than the fair market value of the property being used. (In-kind consideration is encouraged in any action for leases only). This payment may be waived:

(a) In the case of easements for a grant in connection with a Federal-aid highway project or a defense access road.

(b) In the case of a license for the use of government space by credit unions in accordance with [reference \(s\)](#).

(c) To the extent of demonstrable benefits to the Government, except in the case of leases issued under the authority of [reference \(h\)](#).

(d) Licenses generally have little or no value because the licensee has no contractual right to remain on the property. Except for those entities that have been exempted from payment by statute, such as the Red Cross (reference xxx), the Boy Scouts (reference yyy), and the Navy and Marine Corps Relief Society (reference zzz), licensees should be charged fair market value if the license has more than nominal value because of its agreed upon terms. Payments for licenses will be deposited into the special account in the Treasury ([reference \(h\)](#)).

(3) Other non-DOD Federal agencies will be charged for their share of the operation and maintenance expenses and utility costs required for the use of DON space. Exceptions to this policy are:

(a) Real property and related services provided to an organization that solely supports or substantially benefits the installation's mission (e.g., a permit to an FAA Air Controller on an air base, or a permit to the Federal Communications Commission (FCC) for a communications tower).

(b) Use by the U.S. Forest Service is limited to actual expenses of DON according to the Master Memorandum of Understanding between DOD and U.S. Department of Agriculture.

**7. DELEGATION OF OUTGRANT AUTHORITY TO COMMANDER, NAVAL FACILITIES ENGINEERING COMMAND**

[Reference \(f\)](#) authorizes the Commander, Naval Facilities Engineering Command (COMNAVFACENGCOM) to grant, execute, amend, administer, and terminate all instruments granting the use of Navy-controlled real property to departments, agencies, organizations, and persons outside DON. This authority is granted subject to the reporting requirements of [reference \(g\)](#), , and is executed under the direction of the Chief of Naval Operations (CNO) for Navy property, and as requested by the Commandant of the Marine Corps (CMC) for Marine Corps property. This authority may be redelegated with the authority to further re-delegate.

**8. EFFECT OF VARIOUS DISPOSAL ACTIONS ON CONTINUED NAVY  
AUTHORITY TO GRANT LEASES, LICENSES, AND EASEMENTS**

a. P-73, Chapter 23 prescribes the procedures to be followed in effecting the transfer and disposal of real and related personal property that has been determined to be excess. The use of those procedures may result in consecutive changes in the property status and in the continued legal authority of the Navy to lease, license, and grant easements on it. A summary of the effects of changes in the status of excess property follows.

(1) Determination that property is excess to DON has no effect on Navy authority to lease, license, or grant easements. (Note: This relates solely to legal authority, not to the wisdom, desirability, or feasibility of those outgrants.)

(2) Transfer of property to another military department terminates all lease, license, and easement authority of the Navy as of time of transfer. That authority then vests in the transferee department.

(3) Determination that property is excess to DOD, and satisfaction of the approval and reporting requirements of [reference \(g\)](#), means the property is "excess property" as defined in [reference \(t\)](#). This action terminates the Navy's authority to lease, with the exception contained in subsection (f)(1) of [reference \(h\)](#). This provision allows the leasing of real and related personal property that has been determined excess as the result of a military installation to be closed or realigned under a base closure law to state or local governments pending the final disposition of the property; provided that SECNAV determines that that action would facilitate state or local economic adjustment efforts. Prior to taking the action, the Secretary should consult with the Administrator of the Environmental Protection Agency to determine the environmental advisability of leasing the property, and must enter into an appropriate joint memorandum of understanding.

(4) SECNAV retains authority to grant easements over, and to issue licenses permitting use of, "excess property" until the property is actually reported to the General Services Administration in accordance with [reference \(i\)](#).

### SECTION III - ADMINISTRATION/MAINTENANCE

#### 9. FINANCIAL ADMINISTRATION OF REAL ESTATE CONTRACTS

a. Responsibilities. Collection of contract debts to the Government, including interest, arising from all real estate transactions is the responsibility of the contracting officer and will be made by the contracting officer or by the authorized representative specified in the contract to receive payments of amounts due. To ensure compliance, the Field Engineering Commands (FEC) will:

(1) Include in all new contracts for sale or use of real estate, the "Interest" clause set forth in the General Provision section of the Navy General Purpose Lease. When the "interest" clause is used for documents other than leases, change the words "lease" and "lessee" as appropriate.

(2) Establish necessary controls to reflect creation of any contract indebtedness to the Government.

(3) Upon determination that an amount is due the Government, take appropriate action to ensure prompt collection and deposit in accordance with subparagraphs 9. b. and c. below.

b. Collection Procedures. Upon determining that a contract debt is due to the government, the FEC will take immediate steps to insure prompt collection. Although Subpart 32.6 of [reference \(a\)](#) prescribes procedures to follow for collection of contract debts, it specifically applies to supplies or services contract debts, but does not apply to debts arising from outlease agreements. Outlease debt collection procedures are as follows:

(1) If full payment has not been received within 30 days from the due date specified in the lease, the lessee must be promptly contacted and payment requested, including interest. Contact may be in writing, by phone, or by visit. Document all contacts in the lease file. Second and third requests may be necessary, as determined by the FEC and should also be documented.

(2) If after reasonable collection efforts, the FEC determines that the debt is uncollectible, it will promptly transfer the case for collection to the Defense Finance and

Accounting Service (DFAS), Columbus Center, Code FD; PO Box 182317; Columbus, Ohio 43218-3317. If the FEC receives a request for deferral of payment, it should promptly transfer the case for collection to DOD, Office of the Comptroller; Office of Financial Management Systems, The Pentagon, Room 4E768, Code NCF; Washington, DC 20350-1100.

(a) Uncollectible aggregate debts of less than \$600 may be processed according to Paragraph 039220 of [reference \(j\)](#) rather than transferred.

(b) Transfers to DFAS above should not be made unless a written request has been delivered to the lessee for payment that fully explains the indebtedness and interest requirements and is allowed an appropriate time for response. Transfers must also be fully supported with identifying and explanatory information including relevant memoranda and correspondence, accounting data, and amounts and dates of any collections.

c. Deposit Procedures. Forward remittances promptly for deposit as set forth below. Except as provided in Paragraph 043132 of [reference \(j\)](#), the contracting officer will forward remittances within the continental United States to the Defense Finance and Accounting Service; Defense Finance Office (DFAS)/CL; Attention Code BJB; 1931 Jefferson Davis Highway; Arlington, VA 22240-5280 for deposit. This will be accomplished by preparation of a NAVCOMPT Form 2277, "Voucher for Disbursement and /or Collection," and by attaching all checks as indicated on the form. Provide a copy of each NAVCOMPT Form 2277 to NAVFACENCOM Code 914. Indicate on the form amounts and appropriate accounting data for each category of funds forwarded (e.g., rents, interest, performance securities).

(1) DFAS is the accounts receivable office and requires copies of all contracts and amendments to ensure records are current.

(2) Except as provided in Paragraph 043132 of [reference \(j\)](#), remittances outside the continental United States will be forwarded to the local disbursing officer for deposit. All remittances will be deposited to the appropriate Navy general fund receipt account unless the contracting officer or authorized representative specified in the contract requests that funds be held in a suspense account pending final disposition.

## 10. DOCUMENTATION OF REAL ESTATE ACTIONS

a. Failure to document real estate actions and to maintain adequate controls has proven costly to the Government. Enforcement of some claims against lessees has failed because of a lack of adequate records and the subsequent inability of the Government to establish its claim. [P-73, Chapter 19](#) prescribes procedures for documentation of outleasing transactions, joint inspection and condition reports at the start of outleases, inspections during the lease term, and upon termination of the lease. These records will enable the Government to establish a factual basis for enforcing claims against defaulting lessees.

b. Although leasing is the most obvious situation where a condition report is needed, it is also needed in some other outgrant situations. Where it is anticipated that the physical condition of an outgrant area will be disturbed and restoration will be required, evidence of the original condition is essential. A pipeline easement is an example of the type that may require that information. Since the need for a condition report will vary depending on the individual cases, no rules for obtaining condition reports in outgrant situations are set forth, except for outleases. The FECs should use their own discretion and judgment to determine when evidence of the original condition is required and of what type. Experience indicates that photographs or video tapes are the most useful type of evidence. In addition, all Navy and Marine Corps outgrants with a term exceeding one year must be promptly recorded into the iNFADS using the procedures set forth in [reference \(k\)](#).

#### **11. ADMINISTRATION OF REVERSIONARY INTERESTS**

There are many minor interests in real property under the jurisdiction of the DON over which COMNAVFACECOM has direct administrative responsibility. These rights, which are essentially reversionary in character, have arisen in various ways, from disposals subject to rights of recapture, through disposals subject to conditions that when breached result in reversion, to the granting of an easement. The FECs have the responsibility to protect these outstanding rights that upon their recapture or reversion to the Government will be under the jurisdiction and control of DON.

#### **12. MAINTENANCE OF REGISTER OF REVERSIONARY RIGHTS**

a. The Commander/Commanding Officer of each FEC will maintain a register containing information of all those interests in lands, not now under the possession and control of DON, under or through which the DON may in the future (1) regain control and possession, or (2) have the right to regain control and possession. The FEC will maintain this register as a permanent part of the Cadastral Records. This register should include the following data:

(1) The name of the installation.

(2) A description of the property in sufficient detail for its full identification.

(3) Identification of the document by which the property was conveyed or transferred, its date, and the authority for it.

(4) The precise interest retained by the Government.

(5) The precise duties and obligations of the grantee to the Government.

(6) The most recent data from which a determination was made that the grantee has fulfilled its duties and obligations or otherwise met the conditions of the grant.

**13. ADMINISTRATION OF REVERSIONARY RIGHTS BY THE FACILITIES ENGINEERING COMMAND (FEC)**

a. The Commander/Commanding Officer of each FEC will determine, at least once a year and more often if circumstances indicate, that the terms, conditions, duties, and obligations under each grant and conveyance having a possibility of reversion have been fully met and satisfied. In the event a breach is disclosed, the Commander/Commanding Officer will initiate action to fully protect the rights of the Government.

b. The Commander/Commanding Officer will review the requirement for the retained right once a year. When the requirement is no longer valid, the FEC will forward recommendations via appropriate Command echelons for its disposal.

c. If any properties of this type, except those

transferred to another department or agency, are occupied in whole or in part by a component of the Federal Government, all pertinent related facts should be ascertained and entered into the register. The relationship of this arrangement to the duties and obligations of the grantee should be carefully considered to determine if any action is necessary to fully protect the interests of the Government.

#### **14. REASSIGNMENTS**

a. Reference (k) states that it is Navy policy to avoid reassignments that fragment and complicate plant account and planning processes.

b. Reassignments should generally conform to the following criteria:

(1) The accepting activity in a reassignment must be a reporting activity. Proposed reassignments that do not conform to this requirement cannot be consummated.

(2) Reassignments of Class 1 property will normally include the Class 2 property located on it.

(3) Reassignments should be avoided that would result in the encirclement or isolation of a relatively small "island" of property in one activity's RPI by the property in another activity's RPI.

(4) When a contemplated reassignment will not accomplish the objectives indicated in (2) and (3), every consideration should be given to the alternatives of establishing a host-tenant relationship under an Intraservice Support Agreement.

### **SECTION IV - MINERAL LEASING ON NAVY LANDS**

#### **15. BACKGROUND**

a. General. The Department of the Interior, Bureau of Land Management (BLM) is the agency responsible for granting and administering mineral leases on military lands. Prior to any mineral leasing, however, BLM must obtain the approval and conditions under which leasing will be allowed from the military department that controls the property. With some exceptions, the Secretary of the Interior has full discretion in administering mineral leases. As a rule, BLM allows non-competitive leasing to the first qualified

applicant, except where the lands are in a known geological resource area, in which case leasing must be carried out on a competitive basis. Non-competitive leases may be offered on a first come-first serve basis for new areas, or on a lottery basis for previously leased areas. Competitive leases are issued for five-year terms while non-competitive leases can be made for 10 year terms. Leases may be extended if they are still producing in commercial quantities at the end of the term.

b. Leasing on Acquired Lands. The specific mineral leasing laws generally distinguish between acquired military lands and lands withdrawn or reserved from the public domain for military purposes. Mineral leasing on acquired lands is governed by the 1947 Mineral Leasing Act for Acquired Lands ([reference \(u\)](#)). The Act authorizes the Secretary of the Interior to lease all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur that are owned by the United States and within acquired lands of the United States. There are certain exceptions to this provision such as lands acquired specifically for development of mineral deposits; minerals within surplus lands; minerals within lands within incorporated cities and towns; and minerals within national parks, etc. The exceptions used to include lands set aside for military or naval purposes. However, the Coal Leasing Act Amendments of 1975 (90 Stat. 1083) modified the 1947 Mineral Leasing Act by deleting this exception. The law now includes all acquired military and naval lands subject to the consent of the Secretary of Defense.

(1) With regard to leasing of acquired military lands for coal development, 43 C.F.R. § 3400.3-2 limits leasing to a governmental entity that:

(a) produces electrical energy for sale to the public;

(b) is located within the state in which the leased lands are located; and

(c) has production facilities in that state, and will use the coal produced from the lease within the state.

(2) There are no existing authorities for exploration or extraction of minerals other than those discussed above on military acquired lands. The Military

Leasing Act ([reference \(h\)](#)) expressly excludes leasing of oil, mineral, and phosphate lands.

c. Leasing on Public Domain Lands. Mineral leasing within lands withdrawn or reserved from the public domain is governed by the Mineral Leasing Act of 1920 ([reference \(v\)](#)). This law authorizes the Secretary of the Interior to lease deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semi-solid bitumen, bituminous rock or gas on public domain lands containing those deposits subject to certain exclusions that are similar to those for the 1947 Mineral Leasing Act ([reference \(u\)](#)). The original act excluded all military and naval lands, but a 1946 amendment deleted this exclusion. In 1958, the Engle Act ([43 U.S.C. §§ 154-158](#)) dictated that all existing and future DOD withdrawals and reservations of public domain lands, except for naval petroleum, oil shale, or coal reserves, will be subject to the condition that all minerals in those lands, including oil and gas, are under the jurisdiction of the Secretary of the Interior and that all disposition and exploration of those minerals will be done under the public mining and leasing laws. This substantiated the authority of the Secretary of the Interior to lease military public domain lands pursuant to the Mineral Leasing Act of 1920. The Engle Act further provides, however, that no disposition or exploration of any minerals in those lands will be made where the Secretary of Defense, after consultation with the Secretary of the Interior, determines that the disposition or exploration is inconsistent with military use of the lands.

(1) The Geothermal Steam Act of 1970 ([10 U.S.C. §§ 2292 a and b](#) and [2917](#)) authorizes the Secretary of the Interior to issue leases for the development and utilization of geothermal steam and geothermal resources in public domain lands withdrawn or reserved for military purposes. Prior to enactment of the Geothermal Steam Act, there was no authorization for geothermal leasing since development of geothermal steam was not included as a leasable mineral under existing laws. The Geothermal Steam Act has now been amended to allow the Secretary of each military department to develop geothermal resources on public lands as well as acquired lands under his/her jurisdiction for the use or benefit of DOD.

(2) Besides the mentioned laws, the Mining Act of 1872 provides that locators of all mining locations on

public domain lands have the exclusive right of possession of the surface included within the lines of their location, together with all veins, lodes, or ledges under them. This mining law generally allows any person to enter upon and explore upon public domain lands for most minerals not covered under the mineral leasing laws. The Act is quite complicated and has varied applications according to mineral types and land types or states. Fortunately, lands withdrawn or reserved for military purposes as a rule are closed to mining under the mining laws (certain leasable minerals may, however, be extracted by mining activities). The Navy's only problem involves acquisition of outstanding mining interests that predate the land withdrawal or reservation. [P-73, Chapter 15](#) discusses acquisition of these interests.

(3) A large percentage of public domain lands withdrawn or reserved by the military contain language in the withdrawal orders that also closes the lands to leasing under the Mineral Leasing Act of 1920, for some or all minerals, to geothermal development under the Geothermal Steam Act of 1970, and to mining under the Mining Act of 1872. As previously stated, the intention of these restrictions is to safeguard military operations from incompatible uses. The withdrawals or reservations may have to be amended if the lands will be opened to any of the leasing and mining laws. Under section 204(1) of [reference \(w\)](#), BLM must review all land withdrawals within the twelve western states, including those of the military, and in all likelihood will recommend to Congress that many of these lands be opened to mineral and geothermal leasing as well as mining.

d. Leasing of Outer Continental Shelf Lands. DON is a significant user of offshore public lands, which in this context includes the airspace, surface, and subsurface waters above the seabed, as well as the seabed and subsoil of the Continental Shelf. Under the [United Nations Convention on the Law of the Sea](#), the name continental shelf was given a legal definition as the stretch of the seabed adjacent to the shores of a particular country to which it belongs. Those shores are also known as [Territorial waters](#). The shelf area is commonly subdivided into the inner continental shelf, mid continental shelf, and outer continental shelf. 43 U.S.C. § 1331 defines "outer Continental shelf" to mean all submerged lands lying seaward and outside of the area of lands beneath navigable waters ...,

and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control. The Federal Government controls commercial exploration for, and exploitation of, these resources in the U.S. Continental Shelf, except in state-controlled waters. The individual states control the use of the waters and seabed within the three nautical mile territorial sea, except Florida and Texas that control exploration and exploitation rights to a distance of nine nautical miles from their respective shorelines. The Outer Continental Shelf Lands Act of August 7, 1953 ([reference \(x\)](#)) authorizes the Secretary of the Interior to issue, on a competitive basis, leases for oil, gas, sulphur, and other minerals in submerged lands of the Outer Continental Shelf. These lands are administered by the BLM, but the Secretary of Defense, with the approval of the President, may designate certain areas required for national defense purposes that will be restricted from mineral exploration and operation. Under [reference \(y\)](#), the Chief of Naval Operations assigns subordinate Commanders administrative responsibility for coordination of Continental Shelf use within geographic operating areas. COMNAVFACENGCOM is not included in this assignment, but may provide technical support upon request.

e. Permits. Apart from actual leasing of Navy lands, parties may request permits for specific types of exploratory studies and tests to determine the mineral content of those lands. Those permits may be issued by the Navy or, on request, may be issued by the BLM in unusual circumstances. No actual subsurface mineral exploration and no mineral extraction may be allowed under a permit.

## **16. MINERALS EXPLORATION AND EXTRACTION POLICY**

a. [References \(z\)](#) and ([aa](#)) both allow DON lands to be made available for mineral exploration and extraction to the maximum extent possible consistent with military operations and national defense activities. Exclusion of lands from exploration and extraction must be justified and supported. In support of this policy, the Office of the Assistant Secretary of the Navy (I&E) has, on occasion, directed reconsideration of applications to evaluate the possibility of off-site slant drilling in situations where the chain of command has recommended disapproval of on-site drilling at an installation. This policy excludes:

(1) lands situated within incorporated cities, towns, and villages (these lands are prohibited from leasing

under the Federal mineral leasing laws);

(2) tidelands and submerged lands;

(3) hard rock minerals under the Mining Act of 1872; and

(4) sand and gravel.

**17. LEASING AND PERMITTING PROCEDURES.** DOD and the Department of the Interior have signed a Memorandum of Understanding that establishes procedures to facilitate coordination of mineral leasing and permitting efforts between the agencies. These procedures are incorporated with DOD/Navy procedures set forth below.

a. Leasing. Navy procedures for mineral leasing (excluding Outer Continental Shelf leases) on acquired and public domain lands are essentially the same. All lease requests should be received and processed by the local BLM office. Requests that are sent directly to the Navy should be referred to BLM before any further action is taken.

(1) Upon receipt of a lease application BLM will:

(a) Determine whether the lands in question are within areas previously designated by the Navy as incompatible with mineral exploration and extraction;

(b) Require applicants to specify the name of the installation and the acquisition tract number of the land covered by the application to simplify Navy title search;

(c) Prepare a categorical exclusion environmental assessment or otherwise ensure compliance with NEPA;

(d) Forward the lease application to the appropriate FEC requesting consent to lease and title reports; and

(e) Forward one copy of each executed lease to the FEC.

(2) Upon receipt of a lease application the FEC will:

(a) Forward it to the affected activity Commanding Officer;

(b) Provide technical assistance in the review of the application. This may include assistance in drafting special lease provisions and stipulations. The FEC should also make sure the Commanding Officer is fully apprised of DON mineral leasing policy and of the general scope of the requested lease;

(c) Upon final review of the lease application, respond to BLM on behalf of the Navy (or as requested by Marine Corps activities), providing, as appropriate, lease consent and conditions of use or lease denial and justification for denial;

(d) Furnish available environmental, endangered species, and cultural information on the lease area to BLM upon request. As the lead agency, BLM must obtain or prepare all environmental and cultural documentation before deciding to lease; and

(e) Deliver to BLM available title information on acquired lands. BLM title records will be relied upon for withdrawn public lands, except the FEC will provide outstanding rights and interests, such as Navy-issued licenses and easements. When title information is incomplete, BLM must be so advised.

(3) Upon receipt of a lease application, the affected activity Commanding Officer will review it and submit comments and recommendations to the Deputy Assistant Secretary of the Navy (I&F) via the chain of command, COMNAVFACENGCOM, and the Chief of Naval Operations or the Commandant of the Marine Corps for Marine Corps property. The submission should include full justification for any lease or portion of a lease where disapproval is recommended.

(4) Issuance of a lease does not confer a right to explore or extract minerals until a plan of operations or application for drilling permit has been approved by the U.S. Geological Survey and DON.

(a) Upon receipt of a plan of operations or application for drilling permit, BLM is responsible to:

(1) Forward one copy to the FEC for Navy review;

(2) Schedule an onsite inspection of the operations area with the lessee and DON representatives;

(3) Obtain a bond from the lessee, in an amount agreed to by DON, to ensure compliance with all terms and conditions of the plan or permit.

(4) Approve the plan or application (or obtain U.S. Geological Survey approval) with stipulations supplied by DON.

(5) Supervise operations to ensure compliance with lease terms, regulations, and conditions, and immediately advise the DON POC of instances of non-complying actions.

(b) Upon receipt of a plan or application, the FEC will:

(1) Forward it for review to the affected activity Commanding Officer.

(2) Provide technical assistance in the review of the plan or application. This may include assistance in drafting additional stipulations and conditions of use.

(3) On request, participate in onsite inspections of the operations area.

(4) Upon final review of the plan or application, respond to BLM on behalf of the Navy, or as requested for Marine Corps activities, providing, as appropriate, concurrence and conditions of use or denial and justification for denial.

(5) Furnish available environmental, endangered species and cultural information on the operations area to BLM upon request.

(c) Upon receipt of a plan or application the affected activity Commanding Officer will:

(1) Review the plan or application, determine if it is acceptable and include additional terms and conditions, if required.

(2) Coordinate the plan or application

as appropriate with the chain of command including the mission component command/region or the Commandant of the Marine Corps for Marine Corps property.

(3) Participate with BLM and lessee in onsite inspections of the operations area.

(4) Forward the plan or application to the FEC together with consent or denial, conditions of use, and other comments. Include justification for all denials or changes to the proposed plan or application.

b. Permits

(1) Upon receipt of a request for access to Navy lands to perform studies or tests to determine mineral content of the lands, the affected activity Commanding Officer shall:

(a) Review the request and determine whether and under what conditions it may be allowed.

(b) Coordinate, as appropriate, with the chain of command including the mission component command and the Commandant of the Marine Corps for Marine Corps property.

(c) Approve the request or forward requests that cannot be approved together with comments and recommendations to the Deputy Assistant Secretary of the Navy (I&F) via the chain of command, COMNAVFACENGCOM, the Chief of Naval Operations, or the Commandant of the Marine Corps for Marine Corps property.

(d) Upon a final determination, forward the request to the FEC for continuing action. For approved permits, sufficient environmental documentation should also be forwarded.

(2) Upon receipt of an approved or disapproved permit request the FEC will:

(a) Issue approved permits (a license will actually be issued using the format in [P-73, Chapter 20](#)), including appropriate conditions and stipulations. User changes are permissible. In unusual circumstances, permits may be referred to BLM for issuance.

(b) For Navy activities, and as requested for Marine Corps activities, notify applicants of disapproved requests and state the reasons for the disapproval.

**18. AMMUNITION, EXPLOSIVES, AND CONTAMINATED AREAS**

a. DOD Explosives Safety Board published a memorandum dated 10 January 1984, that contains the following policy guidance for mineral activities within ammunition and explosive storage and operating areas and for contaminated lands.

(1) Mineral exploration and drilling activities must be separated from ammunition and explosives operating and storage facilities by public traffic route explosives safety distances; provided (1) there will not be any occupancy of the site by personnel when the exploration or drilling is completed; and (2) separated by inhabited building explosives safety distances if occupancy will continue when exploration or drilling is completed. If toxic chemical agents or munitions are present, public exclusion distances must be maintained for the exploration or drill activities. Examples of exploration activities are seismic or other geophysical tests. Examples of drilling activities are those for exploration or extraction of oil, gas, and geothermal energy.

(2) Mining activities must be separated from ammunition and explosives operating and storage facilities by inhabited building explosives safety distances. If toxic chemical agents or munitions are present, public exclusion distances must be maintained for the mining activities. Examples of mining activities are strip, shaft, open pit, and placer mining that normally require the presence of operating personnel.

(3) Exploration, drilling, and mining are prohibited on the surface of explosives or toxic chemical agent contaminated lands. Exploration and extraction are permitted by directional (slant) drilling at a depth greater than fifty (50) feet beneath the explosives contaminated land surface or by shaft mining at a depth greater than one hundred (100) feet beneath the land surface.

b. DON-approved requests for mineral exploration or extraction (by lease or permit) that do not comply with the policies in [subparagraph 18.a.](#) must be forwarded to the Chair, DOD Explosives Safety Board for safety review and

approval. This includes lands that are suspected of being contaminated with explosives. Submission will move from COMNAVFACENCOM via COMNAVSEASYS COM (SEA 06H) and CNO (OP-411F) according to 3-6b of DOD 5154.4S (DOD Ammunition and Explosives Safety Standards).

**19. PROTECTIVE ACTION AGAINST DRAINAGE OF OIL AND GAS  
IN NAVY LANDS**

a. Take appropriate and timely action to protect the property rights of the Federal Government where oil and gas in lands under the control of DON (acquired or public domain) may be drained by drilling operations on adjacent privately owned land. FECs should be alert to oil and gas drilling activities in proximity to Navy installations. Enlist the assistance of Commanding Officers so that these operations may become known at the earliest possible time.

b. When it is suspected that wells drilled on lands adjacent to Navy lands may cause drainage of oil or gas from the Navy lands, the FEC will request the local Office of the Geological Survey, Department of the Interior, to conduct an investigation of actual or potential oil and gas development in the vicinity to determine whether any action is necessary to protect the interests of the Government in those mineral deposits. When, as a result of an investigation, or if alerted by other sources, it appears that wells drilled outside Navy land are causing, or threaten to cause, drainage of oil or gas from beneath Navy lands, the FEC will promptly advise the local BLM office. The FEC will then develop, in coordination with the BLM office and the Commanding Officer of the activity concerned, full information about the character and scope of the existing or threatened drainage and recommend taking action that will most effectively protect the Government's interests in the deposits. If leasing is requested by BLM, lease procedures under [Paragraph 17](#) apply.

**20. GEOTHERMAL LEASING**

Requests for a lease for geothermal development or for a license for exploration purposes on Navy property should be coordinated with the Commander, Naval Weapons Center (NWC), China Lake, California (266) who administers the Navy's geothermal energy program. It should be noted that if a lease is granted and geothermal energy is produced in usable quantities, the lessee will likely request a license

for construction of an electric generating plant on the leased premises. This license must be Navy approved. FECs and activity commanding officers should be alert to potential drainage of geothermal steam from Government lands by wells on adjacent lands as with oil and gas development. If drainage is suspected, the Commander, Naval Weapons Center, China Lake (266) should be contacted regarding Navy property. Subject to NWC China Lake direction, protective leasing procedures should be similar to those for oil and gas.

**SECTION V - FORMS**

21. Voucher for Disbursement and/or Collection..... \*

\* See Forms System

([RETURN TO CHAPTER INDEX](#))