

CHAPTER 21

GRANTING OF EASEMENTS

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CHAPTER 21

GRANTING OF EASEMENTS

SECTION I - GENERAL

1. NAVAL FACILITIES ENGINEERING COMMAND RESPONSIBILITY FOR EASEMENTS

a. The Naval Facilities Engineering Command (NAVFAC) is responsible for the processing of all proposed grants (outgrants) of easements in real property under the jurisdiction of the Department of the Navy (DON), and has responsibility and authority under [reference \(a\)](#) for the following:

(1) Obtaining required approvals and thereafter granting easements;

(2) Relinquishing legislative jurisdiction in connection with such easements; and

(3) Terminating easements.

b. For acquiring easements (ingrants) for DON use, see [P-73, Chapter 4](#), for authority to acquire low-cost interests in land, and [Section II of Chapter 8 of the P-73](#) for acquisition procedures.

2. REFERENCES

- (a) [SECNAVINST 11011.47B of 12 Jan 2009](#)
- (b) [NAVFACINST 11010.45, Comprehensive Regional Planning Instruction, Site Approval Process \(31 May 2001\)](#)
- (c) 23 U.S.C. § 103
- (d) 23 U.S.C. § 210
- (e) 10 U.S.C. § 2662
- (f) 16 U.S.C. § 470a
- (g) 10 U.S.C. § 2668
- (h) DOD DIR 4165.06 of 13 Oct 04
- (i) SECNAVINST 5430.7N of 9 Jun 05
- (j) Federal Management Regulation (41 C.F.R. pt. 102-75)

- (k) [40 U.S.C. § 1304\(b\)\(1\)-\(3\)](#)
- (l) [16 U.S.C. § 1451](#)
- (m) [ASN\(I&E\) Memo of 5 Jul 06 re: DON Environmental Policy Memorandum 06-06: Streamlined Environmental Procedures Applicable to Non-BRAC Real Estate Actions](#)
- (n) [OPNAV 5090.1B of 1 Nov 94](#)
- (o) [MARCOR Order P-5090.2 of 26 Sep 91](#)
- (p) [16 U.S.C. § 470f](#)

As used in this Chapter, "property" refers to real property unless the context specifies otherwise.

3. POLICY

a. By memorandum dated 28 Jul 2005, the Under Secretary of Defense has stated that the acquisition of a negative easement under [10 U.S.C. § 2684a](#) does not constitute a major land acquisition as defined in [Chapter 13, paragraph 5.f.](#) of the [P-73](#).

b. Any grant of easement restricts to some degree the Navy's right of use in the property for extended periods of time. An easement may adversely affect the Navy's future use of the property or its disposal. Consequently, it is the general policy of the DON to (1) restrict the granting of easements in Navy real property to cases of necessity, and (2) impose whatever limitations on the scope, terms, and conditions of easements that will protect the Government's contiguous or adjoining property and its remaining interest in the easement area.

c. Further, all requests for easements should be processed for site approval as provided in [reference \(b\)](#).

4. DEFINITIONS

a. Easement: For the purposes of this chapter, an easement is defined as a non-possessory interest in land granted for a limited purpose and that is not revocable at will.

b. Federal-aid Highway. A highway forming a part of one of the three Federal-aid systems that are:

(1) The National System of Interstate and Defense Highways (short title: the Interstate System);

(2) The Federal-aid Primary System; and

(3) The Federal-aid Secondary System, all as set forth in [reference \(c\)](#).

c. Defense Access Road. A road constructed for access to a military reservation, or for certain other purposes, as set forth in [reference \(d\)](#).

21. Transfer of lands or interest in lands. A transfer to a state by the Secretary of Transportation (SECDOT), or his/her designee, of fee simple title or lesser interest in Government lands for use as an easement for a Federal-aid Highway or a Defense Access Road, or as a source of materials for the construction or maintenance of that highway or road that is adjacent to lands under the control of DON.

NOTE: The SECDOT effects a transfer of this nature under the authority of [23 U.S.C. § 317](#). As a rule, that transfer would be effected only if a grant of easement or license under the Navy's easement authority of [10 U.S.C. § 2668](#) would not satisfy the requirements of the state. For information on procedures for transfers, see [P-73, Chapter 23](#).

e. Excess property. Navy property that has been determined not to be needed by the Department of Defense, and has met the approval and reporting requirements of [references \(a\) and \(e\)](#).

f. National Register of Historic Places. As defined in [reference \(f\)](#), the National Register of Historic Places is a list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and culture. The Secretary of the Interior (SECINT) is authorized under [reference \(f\)](#) to expand and maintain the Register and to take various steps for the preservation, acquisition, and development of the properties listed in the Register.

SECTION II - EASEMENT AUTHORITIES

5. EASEMENT AUTHORITY OF THE SECRETARY OF THE NAVY

a. The laws and directives listed below have vested in, or delegated to, the Secretary of the Navy (SECNAV)

authority for granting of easements over, across, in, and upon lands under the control of DON:

(1) Reference (g) authorizes the Secretary of a Military Department, when he/she finds that it will not be against the public interest, to grant on terms that he/she considers advisable, easements over, in, and, upon public lands permanently withdrawn or reserved for the use of that Military Department, and other lands under the Secretary's control for the following:

- (1) railroad tracks;
- (2) gas, water, sewer, and oil pipe lines;
- (3) substations for electric power transmission lines and pumping stations for gas, water, sewer, and oil pipe lines;
- (4) canals;
- (5) ditches;
- (6) flumes;
- (7) tunnels;
- (8) dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other improvements relating to fish-culture;
- (9) roads and streets;
- (10) poles and lines for the transmission or distribution of electric power;
- (11) poles and lines for the transmission or distribution of communications signals (including telephone and telegraph signals);
- (12) structures and facilities for the transmission, reception, and relay of those signals; and
- (13) any other purpose that the Secretary considers advisable.

The only statutory limitations on this authority are that the easement may not include any more land than is

necessary and the Secretary may terminate the easement, in whole or in part, for any of the following:

- (1) Failure to comply with the terms of the grant;
- (2) Non-use for a two-year period; or
- (3) Abandonment.

No easement granted under this authority may include more land than is necessary for the easement. Copies of instruments granting easements over public lands under this section must be delivered to SECINT.

(2) By [reference \(h\)](#), the Secretary of Defense delegated to the Secretaries of the Military Departments his statutory and regulatory authorities and responsibilities relating to the acquisition, management, and disposal of real property, to include the granting of easements.

(3) The Secretary of the Navy holds real property for DON. By [reference \(i\)](#), the Assistant Secretary of the Navy (Installations and Environment) (ASN I&E) is responsible for policies and procedures and for overseeing all DON functions and programs related to acquiring, utilizing, managing and disposing of DON real property.

6. AUTHORITY FOR GRANTING EASEMENTS IN EXCESS PROPERTY

SECNAV retains his/her authority to grant easements affecting excess property until the property is reported to the General Services Administration (GSA) in accordance with [reference \(j\)](#). After the reporting, control of the property and the authority to grant easements in it rest with GSA.

7. EASEMENTS FOR ROAD WIDENING UNDER [40 U.S.C. § 1304\(b\)\(1\)-\(3\)](#)

[Reference \(k\)](#) provides that, upon application by a state or a political subdivision of a state in connection with an authorized widening of a public highway, street, or alley, the head of the executive agency having control over the affected real property may convey or otherwise transfer, with or without consideration, any interest in the real property that he/she determines will not be adverse to the interests of the United States. The grant is subject to any terms and conditions that he/she deems necessary to protect the interests of the United States. This law does not authorize the conveyance or other transference of any interest in real property that can be transferred to a state, or any political subdivision, for highway purposes

under [23 U.S.C. § 317](#) that applies expressly to projects constructed on Federal-aid systems. No other statutory limitations are imposed upon easements granted under this authority. This authority should only be used when the authority of [10 U.S.C. § 2668](#) will not satisfy the requirements of the state or political subdivision.

8. PROHIBITION AGAINST EASEMENTS

No easement should be granted solely to serve Navy or Marine Corps activities. In that case, the necessary right or privilege will be granted under the contract for services or supplies, or under a license.

9. DETERMINATION BY THE SECRETARY OF THE NAVY

a. In accordance with [40 U.S.C § 1304\(b\)\(1\)-\(3\)](#) and [reference \(g\)](#), SECNAV has determined that granting of easements for the stated purposes will be in the public interest and will not substantially injure the interests of the United States in the property when the Commander, Naval Facilities Engineering Command, or his designee (COMNAVFACENGCOM), finds that:

(1) The real property involved is the only property that reasonably can be used for the purpose;

(2) An easement is the most appropriate interest for the purpose; and

(3) The policies set forth in [reference \(a\)](#) are followed.

10. DELEGATION OF AUTHORITY TO THE COMMANDER, NAVAL FACILITIES ENGINEERING COMMAND

Pursuant to [reference \(a\)](#), SECNAV has delegated to COMNAVFACENGCOM, with the right to re-delegate, authority to take all necessary action to grant, amend, administer, and terminate easements on Navy-controlled real property to organizations and persons outside DON under the authorities described in [paragraphs 5 and 7](#) above. COMNAVFACENGCOM is further authorized, with the right to re-delegate, to relinquish legislative jurisdiction under [10 U.S.C. § 2683](#) when granting easements pursuant to this chapter. The granting of easements under this chapter is conditioned upon each easement containing certain provisions that are stated in [Paragraph 12](#) below.

11. REDELEGATION OF AUTHORITY TO COMMANDERS/COMMANDING OFFICERS OF FACILITIES ENGINEERING COMMANDS (FECs)

a. Officers commanding FECs are hereby authorized to perform the following, subject to the approval requirements of this Chapter:

(1) Make the findings set forth in [paragraph 9](#) above, and when all such findings are made in writing, grant easements in accordance with [40 U.S.C. § 1304\(b\)\(1\)-\(3\)](#) and [reference \(g\)](#);

(2) Relinquish legislative jurisdiction in accordance with 10 U.S.C. § 2683 in connection with the granting of easements pursuant to subparagraph (1) immediately above;

(3) Grant easements that do not conform to this Chapter, and relinquish jurisdiction in connection therewith, upon specific authorization by COMNAVFACENGCOM.

(4) Amend easements if the easement continues to conform to this chapter or is reviewed for legal sufficiency by FEC Counsel.

(5) Terminate easements according to their terms and conditions.

SECTION III - EASEMENT REQUIREMENTS/PROCEDURES

12. REQUIRED TERMS AND CONDITIONS FOR EASEMENTS

a. Subject to certain exceptions noted below, any easement to be granted must contain the following terms and conditions:

(1) The grantee will be required to maintain the property involved in good condition and promptly make all necessary repairs.

(2) The grantee's use of the property will be subject to reasonable Government regulations to avoid interference with Government activities. However, this provision may be omitted from easements for Federal-aid Highways and Defense Access Roads.

(3) The easement will require the relocation at the grantee's expense of any facilities constructed or installed by the grantee for its purposes if at any time the easement interferes with Government activities, and will reserve to the Government the right to terminate the easement if relocation is not feasible. However, the relocation provision may be omitted when the easement is for a highway, road, or street. It also may be omitted from easements for other purposes when the Deputy Assistant Secretary of the Navy (Installations and Facilities) (DASN(I&F)) determines that waiving the relocation provision will not substantially injure the interests of the United States in the property. (refer to [Paragraph 14](#) below for procedures for making that determination).

(4) The easement shall provide for termination for default, non-use for a period of two consecutive years, or abandonment.

(5) A right in the Government to require the Grantee to remove its improvements and to restore the premises at its expense upon termination of the easement. However, the removal-and-restoration provision may be omitted when the easement is for a highway, road, or street. It also may be omitted from easements for other purposes if it can reasonably be determined under the circumstances that removal and restoration will not be necessary (refer to [Paragraph 15](#) below for procedure for making that determination).

(6) The easement shall also conform to the applicable requirements of [Paragraph 13](#) below.

13. ADDITIONAL TERMS AND CONDITIONS FOR EASEMENTS

a. An easement for a Federal-aid Highway may include provisions that are necessary to release or grant to the state control over access to the highway from adjoining Navy lands. Whenever access rights are released, the easement must reserve the following:

(1) A right in the United States to enter and leave the highway at any point along the abutting Government-owned land during any emergency declared by the President or the Congress. This right shall include the right to construct temporary direct entrances and exits, crossings at grade, or substandard grade-separation

structures, including acceleration and deceleration lanes. Navy will agree that all temporary facilities will, subject to the availability of appropriations, be removed within a reasonable time after official termination of the emergency.

(2) A right in the United States to construct, from time to time, grade-separation crossing structures or pedestrian crossing structures over or under the controlled-access highway at points that may be deemed necessary, together with the additional right to cross over or under the easement area with utility lines and related facilities. Navy will agree, however, that these rights will be exercised according to regulations issued by SECDOT and policies adopted by the Federal Highway Administrator.

b. Easements should not as a rule exceed 50 years unless the circumstances, including legal limitations on the authority of the grantees, require the easements to be for longer terms or in perpetuity.

c. Subject to a special approval requirement in some cases, as set forth in [Paragraph 26](#) below, an easement grantee may be required, at its expense, to relocate or replace Government-owned facilities that will be impaired by the easement, provided the relocated or replacement facilities are of the same category and are required for a continuing military need.

d. Easements may include such additional terms and conditions not inconsistent with [subparagraphs 13.a. through c.](#) herein or [subparagraphs 12.a.\(1\) through \(6\)](#) above, as may be determined to be in the best interest of the Government.

14. PROCEDURES FOR OMISSION OF RELOCATION PROVISION

a. As stated in [Paragraph 12.a.\(3\)](#) above, the relocation provision may be omitted from easements for roads, streets, and highways. Concerning easements for other purposes, it may only be omitted upon approval of DASN(I&F) and under the following conditions:

(1) The prospective grantee has specifically requested the omission.

(2) It can be reasonably determined under the circumstances that relocation of the grantee's improvements will not be necessary, and the Commander/Commanding Officer

of the FEC, with the written concurrence of the affected activity, has made that determination in writing.

Comment: If the relocation provision is omitted, and if future military requirements necessitate the relocation of the grantee's improvements, the cost of the relocation would fall on the Government. Accordingly, the possibility of future expansion of on-station military facilities near the easement area should be carefully examined before any determination is made for the omission of the relocation provision.

15. PROCEDURE FOR OMISSION OF REMOVAL-AND-RESTORATION PROVISION

a. As stated in [subparagraph 12.a.\(5\)](#) above, the removal-and-restoration provision may be omitted from easements for highways, roads, or streets. Regarding easements for other purposes, that provision may be omitted upon approval of the Commander/Commanding Officer of the FEC and only under the following conditions:

(1) The prospective grantee has specifically requested the omission, and

(2) It can reasonably be determined that removal of the grantee's improvements and restoration of the premises will not be necessary, and the Commander/Commanding Officer of the FEC, with the written concurrence of the head of the affected activity, has made that determination in writing. In those cases, the determination and concurrence will be recited when seeking the approvals required by this chapter. Before making that determination, careful consideration should be given to the possible effects of the omission on the Government's use of the property and on other Government activities in the area.

16. REQUIREMENT FOR FAIR MARKET VALUE

a. Consideration (in cash or in-kind) in an amount not less than the fair market easement value is required for a grant of easement, except in those instances noted below. Subsections (c) and (d) of [10 U.S.C. § 2667](#) will apply for in-kind consideration and proceeds received in consideration of a grant of easement in the same manner as those subsections apply to in-kind consideration and money rents received under leases entered into under the authority of [10 U.S.C. § 2667](#).

17. EXCEPTION TO REQUIREMENT FOR FAIR MARKET VALUE

Consideration may be waived when the grant of easement is in connection with a Federal-aid highway project or a defense access road or to the extent of demonstrable benefits to the Government. Credit may be allowed against the fair market easement value to the extent of the value of the benefit to the Government. These values should be established by recognized appraisal practices, as set forth in P-73, Chapter 16. Examples of benefits that may be credited against fair market easement value include:

(1) Improved traffic flow to and from a Government installation resulting from an easement for a public road; and

(2) Improved drainage of a Government installation resulting from an easement for a storm-drainage channel.

18. REIMBURSEMENT OF DON EXPENSES

The Grantee, if a non-Federal entity, will be required to reimburse Navy for administrative expenses it incurs in connection with the grant of easement pursuant to 10 U.S.C. § 2695. These expenses will include the cost of environmental studies, appraisals and the time of Navy personnel, both at the activity and the FEC. 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 it agrees to be responsible for paying all of these administrative costs, including reimbursing the FEC for the time of its personnel.

SECTION IV - PROCEDURES FOR PROCESSING EASEMENT REQUESTS

19. ACTIVITY ACTIONS FOR PROCESSING EASEMENT REQUESTS

a. Upon receipt of a request in writing by the applicant for a grant of easement, the Commander/Commanding Officer in charge of the activity involved will forward the request to the appropriate FEC with its comments and recommendations, including the specific purpose for the easement. In addition, the following information is required for use in processing the proposed easement:

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(1) Three copies of a map delineating the proposed easement area, together with metes and bounds or center line description prepared by a certified land surveyor licensed in the state where the easement will be granted, and other descriptive data that identifies the property and its relation to the activity involved.

(2) A complete set of plans and specifications for any proposed construction on Government-owned land.

(3) The following statements are required:

(a) A statement about whether the real property involved is the only property that reasonably can be used for the purpose.

(b) A statement that an easement is the most appropriate instrument for the purpose rather than a lease, license, or other instrument. An easement may not be granted when the sole purpose is to serve Navy and/or Marine Corps Activities. In those cases, the necessary right or privilege should be provided in a contract for service or supplies or by license.

(c) A statement about whether the granting of an easement will materially interfere with the Government's present or foreseeable use of the property or with Government activities in the vicinity.

(d) A statement about the applicant's capacity to acquire the easement and to comply with its terms.

(e) A statement whether the property covered by the easement is included in the National Register of Historical Places. If it is, a further indication of the compelling circumstances justifying the easement is required.

(f) In the event the proposed easement involves land or water in the coastal zones of a state, furnish the FEC with a certification from the applicant that the proposed usage complies with the state's approved coastal zone management program and that the usage will be consistent with the [reference \(1\)](#).

(4) The estimated fair market value of the easement. In the event the granting of the easement will

benefit the Government, a lesser consideration or no consideration may be charged. Include a detailed list of the tangible benefit(s) that will be derived by the Government in granting the easement and whether the benefit(s) are considered sufficient to grant the easement without a monetary consideration. The requirement for fair market value should not be outweighed by consideration of "public relations," and the tangible benefit(s) to the Government flowing from the grant should be carefully evaluated to determine whether monetary consideration can be reduced or waived.

(5) Any peculiar circumstances in connection with the proposed granting of an easement.

(6) In accordance with [reference \(m\)](#), an Environmental Condition of Property (ECP) document must be completed.

(7) A copy of the National Environmental Policy Act (NEPA) documentation evidencing compliance with NEPA as implemented by [references \(n\)](#) and [\(o\)](#). An environmental impact statement shall be prepared if the assessment indicates that a significant adverse environmental effect will result from granting the proposed easement or if the action is highly controversial regarding environmental effects.

**20. FACILITIES ENGINEERING COMMAND (FEC)
ACTIONS FOR PROCESSING EASEMENT REQUESTS**

a. Preliminary Determinations on Easement Request.
Upon receipt of a request for an easement, the FEC, with the concurrence of the affected activity, will determine the following:

(1) The United States has sufficient estate in the property involved, and DON has sufficient jurisdiction to grant the requested easement.

(2) The property is not encumbered by other rights that would be incompatible with the proposed use. (When making this determination, the possible relevance of [Paragraph 22](#) below should be considered.)

(3) The applicant has the capacity to acquire the easement and comply with its terms.

b. If any of these preliminary determinations cannot be made, advise the applicant of the inability of the Navy to grant the proposed easement and of alternative courses of action, if any. If all the preliminary determinations on an easement request can be made, they should be made in writing and continuing action should be taken as set forth in [Section V](#) below.

21. NAVAL FACILITIES ENGINEERING COMMAND ACTIONS FOR PROCESSING EASEMENT REQUESTS

Easements must be forwarded to COMNAVFACENGCOM for approval under the following circumstances:

a. Easement proposals that, in the judgment of the Commander/Commanding Officer of the FEC, are controversial in nature or would significantly affect future Navy use or disposition of property.

b. The easement will omit the relocation provision or will not include the mandatory provisions listed in paragraph 12 above, which will require the approval of the DASN (I&F).

c. The easement must be reported to the Armed Services Committees of Congress pursuant to [10 U.S.C. § 2667](#) (where in-kind consideration will exceed \$750,000).

Note: All easement requests must be processed in accordance with the policy stated in [Paragraph 3](#) above.

SECTION V - PROCEDURES FOR THE GRANTING, ADMINISTRATION, AND TERMINATION OF EASEMENTS

22. SPECIAL PROCEDURE WHEN PROPERTY LISTED IN NATIONAL REGISTER IS INVOLVED IN AN EASEMENT PROPOSAL

a. [Reference \(p\)](#) states that

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or Federally assisted undertaking in any state and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the

expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act, a reasonable opportunity to comment regarding such undertaking.

b. The granting of an easement involving National Register property should be avoided. However, if there are compelling circumstances justifying a grant, the FEC should so state when seeking easement approvals. Also, the FEC should supply information on whether the proposed easement would create any change in the quality of the historical, architectural, archeological, or cultural character that qualified the property under the National Register criteria for listing in the National Register, and, if so, whether the easement would:

(1) Destroy or alter all or any part of the National Register property;

(2) Isolate it from, or alter, its surrounding environment; or

(3) Introduce visual, audible, or atmospheric elements that are out of character with the property and its setting.

c. Upon receipt of information responsive to [subparagraph b.](#) immediately above, the FEC will take whatever steps that may be required, including coordination with the Executive Director, Advisory Council on Historic Preservation, prior to the further processing of the easement proposal.

23. NEGOTIATION OF EASEMENT TERMS AND CONDITIONS

a. After making the preliminary determinations required by [Paragraph 20](#) above, the Commander/Commanding Officer of the FEC will consult with the officer commanding the affected activity to determine:

(1) The feasibility of granting the requested easement; and

(2) The need, if any, to include in the easement, the Government's interest, terms, and conditions supplementing those of the standard form.

b. If the Commanding Officer of the affected activity favors the granting, the FEC, using the standard easement format will negotiate with the applicant to obtain concurrence in the terms and conditions under which the easement would be granted. The minimum required terms and conditions contained in the standard easement form should be included. However, when necessary, the easement document may contain any deviations that are acceptable to the applicant, the head of the affected activity, and the Commander/Commanding Officer of the FEC, subject to compliance with all statutory requirements and to the approval requirements of this chapter. The proposed grant of easement should also contain a description of the easement area, which will include no more land than is necessary for the purposes of the easement, and should specify the consideration that will be paid to the Government and the length of the easement term.

24. DRAFT OF PROPOSED EASEMENT

The FEC will prepare a final draft of the proposed easement agreement in the form developed by negotiation and will ascertain that the draft is completely acceptable to the head of the affected activity and to the applicant.

25. APPROVALS FOR EASEMENT PROPOSALS

a. A grant of easement must be approved by the Commanding Officer of the affected activity, the Regional Commander and Commander, Navy Installations Command for Navy properties and Commandant, Marine Corps for Marine Corps properties.

NOTE: The Commander/Commanding Officer of the FEC will make the findings specified in [Paragraph 9](#) above.

b. Where an easement proposal is of a controversial nature or would significantly affect future Navy use or disposition of property, in the opinion of the FEC, COMNAVFACENGCOM approval is required.

c. Where the relocation provision will be omitted from an easement other than for road or highway purposes, DASN (I&F) approval is required.

d. Where any of the required easement provisions as noted in paragraph 12 above are omitted, DASN (I&F) approval is required.

e. Where one or more of the determinations specified in [Paragraph 9](#) above cannot be made, Deputy Assistant Secretary of the Navy (Installations and Facilities) approval is required.

f. Where in-kind consideration exceeding \$750,000 will be accepted in connection with a grant of easement, approval of DASN (I&F) is required and reporting to the Armed Services Committees of Congress pursuant to [10 U.S.C. § 2667](#). Following receipt of all approvals and notifications, as appropriate, the Commander/Commanding Officer of the FEC will execute the easement in the form approved and will deliver it to the grantee in exchange for the specified consideration.

26. EASEMENT PROPOSALS REQUIRING REPLACEMENT OF FACILITIES BY GRANTEE

a. When it is proposed, pursuant to [Paragraph 13.c.](#) above, to grant an easement in which the consideration, in whole or part, is the replacement of a facility (that must be of the same category) at an estimated cost of more than \$200,000, the FEC will proceed as follows:

(1) Provide cost data;

(2) Supply information supporting a position that the facilities as relocated or replaced will be of the same category as those that existed immediately prior to relocation or replacement and are required for a continuing military need; and

(3) Develop a master plan layout of the installation in sufficient detail to depict the easement area and the facts on the financial arrangements for new

facilities, including a copy of pertinent agreements and a [DD Form 1391](#) for each affected facility.

27. AMENDMENT OF EASEMENTS

Easements may be amended upon concurrence of both parties. In amending easements, follow the procedures for granting easements to the extent they are practical.

28. ADMINISTRATION OF EASEMENTS

After easements have been granted, Commanders/Commanding Officers of the FECs, in coordination with the heads of the affected activities, will act as necessary to assure that the grantees continuously comply with the terms and conditions of the easement.

29. PROCEDURES FOR THE TERMINATION OF AN EASEMENT BY THE NAVY

The standard easement format provides for the termination of the easement by the Navy upon the failure of the grantee to comply with the terms and conditions of the grant of easement upon abandonment or upon non-use for two consecutive years. If a Commander/Commanding Officer of a FEC, in consultation with the head of the affected activity, considers that the circumstances clearly justify termination of an easement under its terms, he/she may so terminate under the redelegation of authority in [Paragraph 11.a.\(5\)](#). Thereafter, action should be taken to assure that the land records reflect the termination.

30. TERMINATION OF AN EASEMENT BY THE GRANTEE

The grantee may terminate an easement by a termination or release to the United States. However, the fact of termination does not, of itself, relieve the grantee of any obligation under the easement grant for the payment of money due the Government, or for the removal of the grantee's improvements and the restoration of the premises, to the extent directed by the Government. If the grant of easement has not been recorded, the release may be accomplished by the grantee's return of the executed easement with a surrender and release to the United States endorsed on the document by the grantee. If the easement has been recorded, a separate, recordable termination or release to the United States is required.

31. EXECUTION AND DISTRIBUTION

a. Obtain the execution of three duplicate originals. If a grantee that is known to Navy insists on executing only one original, accede to the request, but ask the entity to sign two conformed copies of the executed original. ("I certify that this is a true and correct copy of the original.") Following recording, obtain a recorded copy of the document. It may be prudent to try to take the grantee's duplicate original to the courthouse to assure it gets timely recorded if the grantee is an individual who is not accustomed to real estate transactions. Distribute the instruments and maintain the official records as follows:

(1) One duplicate original to the grantee.

(2) Retain a duplicate original for FEC files. Follow up with the grantee to assure that the FEC receives a recorded copy and place it in the FEC files. When there is a cash consideration, give a recorded copy, or conformed copy, whichever is available, to the appropriate FEC Finance Office.

(3) Send a duplicate original and a recorded copy to COMNAVFACENGCOM, and deliver a recorded copy, or conformed copy, whichever is available, to the headquarters of the primary support command.

(4) Payments: Submit payments to the appropriate Defense Finance Accounting Services (DFAS). Check with the FEC finance office for address.

SECTION VI - AVAILABILITY OF FORMS

- A. Sample Format for Overhead Electric Power and
Communications Lines, etc..... *