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withdrawal of availability will be approved at the same level of command as that required for determining the property available for non-Army use. The office responsible for effecting temporary use of the property should be promptly notified of the withdrawal of availability for non-Army use and the latest date the property will be required for military purposes. Termination of the use will be in accordance with the provisions of the grant unless military necessity requires other action. In order to avoid possible claims for damages and in the interest of good community relations and in furtherance of the Army's leasing program, the grantee will be allowed, when practicable, a reasonable time after notice of revocation, to vacate the premises, remove his property and, if required, restore the premises. In controversial cases, or where a claim for damages or litigation is anticipated, HQDA (DAEN-REM) WASH DC 20314, will be notified of the circumstances prior to sending notification of termination of the grant to the grantee.

§ 643.14 Inspection to assure compliance with terms of outgrants.

Commanders will provide general surveillance over areas made available for non-Army use and will advise the DE if and when there are any irregularities. Real estate which is being used for non-military purposes will be inspected at least once each year by the COE, or by his representative, to determine whether grantees or occupants are complyng with the terms of the instruments authorizing use and occupancy, except with respect to easements and licenses for rights-of-way for roads, streets, powerlines, pipelines, underground communication lines and similar facilities. The COE will make compliance inspections for such easements and licenses at least once during each 5-year period. However, the DE will check with installation commanders annually to assure that there are no situations which might need correction prior to the inspection. The installation commander will make interim inspections of all real estate being used for non-military purposes as are necessary for timely observation of the extent of compliance with grant provisions designed to protect and preserve the real estate for military requirements, and will furnish the appropriate DE a copy of a written report of the inspection reflecting findings and recommendations. In order that the grantee's operations not be unreasonably disrupted, the annual compliance inspection made by the DE will be coordinated with the installation commander so that, if feasible, only one inspection will be made. Where necessary, corrective action in accordance with applicable regulations will be taken for the enforcement of the terms of the grant by the responsible officer who granted the use. Overseas commanders are responsible for inspection of real estate under their jurisdiction and necessary corrective action.

§ 643.15 Unauthorized use.

Whenever it is observed that real estate under the control of the DA is being used and/or occupied by private parties without proper authority, corrective action will be taken to cause such unauthorized use to be discontinued or to formalize such use and occupancy by an appropriate grant in accordance with this regulation. In either event, compensation will be obtained for the unauthorized use of such property.

Subpart B—Policy

§ 643.21 Policy—Surveillance.

Installation Commanders will maintain constant surveillance over real estate under their jurisdiction to determine whether any of it is excess to requirements, or may be made available for other Army use, or may be made available for use for other than Army purposes and will process such determinations expeditiously in accordance with the provisions of this regulation. From time to time DOD, DA and GSA surveys will be made pursuant to Executive Order 11954, 7 January 1977, which enunciated a uniform policy for the Executive Branch of the Federal Government with respect to the identification of excess and under-utilized real estate (AR 405–70). Real estate for which is retained for future use will be a requirement which will be disposed of in accordance with AR 405–90. Real estate

which the Army does not currently need but which is retained for future use will be made available to others for use either exclusively or concurrently with the Army. When an installation is in an inactive status, the presumption is that it is available for other military or Federal use or for leasing unless there are cogent reasons that such action should not be taken. The purpose of this rule is to put to beneficial use Federal property, which is not for the time required for its basic use, for the benefit of other Federal agencies, the local economy, or for the benefits accruing to the United States from the income and/or savings of maintenance, protection, repair, or restoration.

§ 643.22 Policy—Public safety: Requirement for early identification of lands containing dangerous materials.

(a) DA will not make available to others any real estate which is contaminated with explosives or with toxic materials or other innately or potentially harmful elements until such elements have been removed or have been rendered harmless, unless the proposed user of the area is aware of the condition of the area and is technically qualified and certified to make use of the area in its contaminated state.

(b) It is imperative that commanders keep records on and have a continuing awareness of the state of contamination of lands by explosives, military chemical or other dangerous materials.

(c) Procedures with respect to action to neutralize or decontaminate the area are set forth in AR 405–90.

§ 643.23 Policy—Preference.

Army real estate under the control of DA which is made available for use for other than Army purposes will be made available for use by other military departments or DOD activities and agencies, other Federal departments, activities or agencies, State or local governmental bodies and other private parties, in that order.

§ 643.24 Policy—Competition.

The use of real estate under the control of DA for private purposes will be granted only after reasonable efforts have been made to obtain competition for its use, through advertising. Advertising is any method of public announcement intended to aid directly or indirectly in obtaining offers on a competitive basis. Advertising may be accomplished by circulating and posting notices and by paid advertising in newspapers and trade journals. The purpose of seeking competition is to afford all qualified persons equal opportunity to bid for the use of the property, to secure for the Government the benefits which flow from competition, and to prevent criticism that favoritism has been shown by officers or employees of the Government in making public property available for private use. Although the lease of Government real estate to civilians employed by the military departments or officers or enlisted personnel of the Armed Forces is not prohibited by law, it is essential that extreme care be exercised to avoid favoritism or the appearance of favoritism. Generally leases to Federal Government personnel will be granted only after competitive bid under the sealed bid method. The provisions of this paragraph do not affect the authority contained in AR 210–10 and 210–50 for furnishing quarters to civilian employees of DA. Also the provisions of this paragraph do not affect the use of Federal facilities by uniformed personnel as may be otherwise provided for. Other exceptions to the advertising policy are as follows:

(a) Granting easements, leases and licenses to public agencies and public utilities.

(b) Granting permits to other Federal agencies.

(c) Leasing cable pairs.

(d) Leases or licenses to utility companies having an exclusive franchise in the area, for space on Government-owned poles for attaching their electric transmission communication lines.

(e) COE is authorized to grant a waiver of competition upon a determination that it will promote the national defense or will be in the public interest or upon a determination that competition is impracticable.

§ 643.25 Policy—Grants which may embarrass the Department of the Army.

The use of property under DA control will not be authorized for any purpose when the proposed use or the revocation thereof might prove embarrassing to the DA.

§ 643.26 Policy—Commercial advertising on reservations.

DA will not authorize the posting of notices or erection of billboards or signs for commercial purposes on property under its control.

§ 643.27 Policy—Environmental considerations.

DA will not authorize the use of real estate, water and other natural resources when such use is not in harmony with the goals and intent of the following legislation and/or similar legislation which establishes a firm Federal policy and provides procedures to enhance the overall environmental quality.

(a) National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4321), (AR 200–1, chapters 1 and 2).

(b) National Historic Preservation Act of 1966 (Pub. L. 89–665, 16 U.S.C. 470–47M, 1970), as amended by 16 U.S.C. 470h, 470i, 470*l*–470n, Supp. 1973).

(c) Federal Water Pollution control Act of 1972, as amended.

(d) Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

(e) Coastal Zone Management Act of 1972 (16 U.S.C. 1451).

(f) Clean Air Act of 1970, as amended, (42 U.S.C. 1857), (AR 200–1, chapter 4).

(g) Marine Protection, Research and Sanctuaries Act of 1972 (16 U.S.C. 1431), (AR 200–1, chapter 3).

(h) Solid Waste Disposal Act, as amended (42 U.S.C. 3251), (AR 200–1, chapter 6).

(i) Federal Insecticide, Fungicide and Rodenticide Act, as amended by the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. 136), (AR 200–1, chapter 6).

(j) Noise Control Act of 1972 (42 U.S.C. 4901), (AR 200–1, chapter 7).

§ 643.28 Policy—Historic and cultural environment.

(a) Executive Order 11593, 36 FEDERAL REGISTER 8921 (Appendix D) provides in part that the Federal Government shall provide leadership in preserving, restoring and maintaining the historic and cultural environment of the Nation; that Federal agencies shall:

(1) Administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations;

(2) Initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures and objects of historical, architectural, or archeological significance are preserved, restored and maintained for the inspection and benefit of the people; and

(3) In consultation with the Advisory Council on Historic Preservation (16 U.S.C. 470i) institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural, or archeological significance (AR 200–1, chapter 8 and App. A).

(b) Outgrants will include conditions to assure protection of real estate as contemplated in paragraph (a) of this section.

§ 643.29 Policy—Archeological surveys.

The SA under the authority of 16, 432, may allow the examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity upon Army lands by institutions which are deemed properly qualified to conduct such examinations, excavations, and gatherings (AR 200–1, chapter 8).

§ 643.30 Policy—Construction projects and activities; protection of historical and archeological data.

The Archeological and Historical Preservation Act of 1974 (16 U.S.C. 469 *et seq.*) provides for the preservation of historical and archeological data on all Federal or Federally-assisted construction projects or in connection with any federally licensed activities or programs.

§ 643.31 Policy—Flood hazards.

Each Determination of Availability Report will include an evaluation of the flood hazards, if any, relative to the property involved in the proposed outgrant action, pursuant to the provisions of Executive Order 11296, August 10, 1966. DA will not authorize the use of lands in flood plains for habitation purposes or any other use which may be uneconomical, hazardous, or unnecessary.

§ 643.32 Policy—Endangered species.

The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), declares the intention of Congress to conserve threatened and endangered species of fish, wildlife and plants, and the ecosystems on which those species depend. The Act provides that Federal agencies must utilize their authorities in furtherance of its purposes by carrying out programs for the conservation of endangered or threatened species, and by taking such necessary action to insure that any action authorized by that agency will not jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretaries of the Departments of Commerce or Interior, as appropriate, to be critical.

§ 643.33 Policy—Coastal zone management.

(a) The Coastal Zone Management Act of 1972 (16 U.S.C. 1456), directs all Federal agencies conducting or supporting activities directly affecting the coastal zone of a state, to conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs. The opinion of the Attorney General of the United States is that Federal lands are excluded from mandatory compliance with the state's coastal zone management program, regardless of the type of Federal jurisdiction exercised thereover. However, it is Army policy that its activities will comply, to the extent practicable, with a state's approved coastal zone management program.

(b) Applications for grants for use of real estate affecting land or water uses in the coastal zone of a state will include a certification that the proposed activity complies with the state's approved program and that applicant's activity will be conducted in a manner consistent with the law.

(c) An activity affecting land or water uses in the coastal zone of a state which will not be conducted in a manner consistent with an approved state program will be exempted from this certification requirement only if the Secretary of Commerce, on his own initiative or upon appeal of the applicant, determines that the activity is consistent with the objectives of the Coastal Zone Management Act or is otherwise necessary in the interest of national security.

§ 643.34 Policy—Public utilities on installations.

(a) Contracting officers, with the approval of Installation Commanders, are authorized to permit the extension of public utilities upon installations, as part of the contract for furnishing to the Government electricity, water, and gas, where such extension is necessary solely to serve the installation and not in part to serve private consumers outside the installation. The above authorization is covered by the provisions of the contract for purchase of utilities services contained in Armed Services Procurement Regulations.

(b) Contracts or agreements for the sale of surplus utilities services as authorized by law or regulations will include similar authority for the purchaser to install and maintain such facilities on the installation as necessary in connection with the sale of such utilities services, in accordance with AR 420–41 and AR 105–23.

§ 643.35 Policy—Mineral leasing on lands controlled by the Department of the Army.

(a) *Acquired lands*—(1) *General.* The Coal Leasing Amendments Act of 1975, hereinafter referred to as the act, amended the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) and permits the Secretary of Interior (SI), with the consent of the Secretary of

Defense, to lease deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium and sulfur which are within acquired lands of the United States which have been set aside for military or naval purposes. The consent requirement is to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered. Leasing is subject to the same conditions as contained in the leasing provisions of the mineral leasing laws (see 30 U.S.C. 351). Authority in this paragraph does not permit leasing of mineral deposits lying in tidelands, submerged lands, nor in certain coastal waters.

(2) Notwithstanding the generality of the foregoing, leasing of coal and lignite deposits is subject to special restrictions. The act permits such leasing, provided the Secretary of Defense concurs, only to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which provides electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located.

(b) *Public domain lands.* Deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semi-solid bitumen, bituminous rock and gas located on public domain lands under the jurisdiction of the Department of the Army may be leased by the SI pursuant to 30 U.S.C. 181 *et seq.* with the concurrence of the Secretary of the Army.

§ 643.36 Policy—Interim leasing of excess properties to facilitate economic readjustment.

Interim outleasing of excess real property is authorized to lessen the economic impact on the local community, caused by an installation inactivation, closure or realignment. These outleases may be granted to State or local governmental bodies in consideration for care, custody, management and routine maintenance. Income derived from the use of the property in excess of the cost of care, custody, management and routine maintenance will be covered into the Treasury as miscellaneous receipts. The outleasing will generally conform to an economic recovery plan outlined by the Office of Economic Adjustment, OASD (I&L), will require coordination with the DASD (I&H) and concurrence by the GSA. Leases are limited to one year and must be revocable by the Government on 30 days notice.

§ 643.37 Policy—Requests to search for treasure trove.

Section 3755 of the Revised Statutes (40 U.S.C. 310) authorizes the Administrator of the GSA to make such contracts and provisions as he deems necessary to protect the interests of the Government in searches for and sales of treasure trove. All searches and sales authorized by GSA under this statute are subject to the Act for the Preservation of American Antiquities (16 U.S.C. 432) and will only be permitted after consent of the Department of the Army has been obtained.

§ 643.38 Policy—Utility rates.

(a) Rates for utilities furnished by the Army will be in accordance with AR 420–41.

(b) Payments for utilities or services furnished will be deposited to the Treasurer of the United States to the credit of the appropriation from which the costs of furnishing them was paid. Collection for utilities and services furnished by the Army is the responsibility of the officer having immediate jurisdiction over the property in accordance with AR 37–19 and AR 37–27.

§ 643.39 Policy—American National Red Cross.

(a) Title 10 U.S.C. 2670, authorizes the SA to grant revocable licenses permitting the erection and maintenance by the American National Red Cross on military reservations, of buildings suitable for the storage of supplies for the aid of the civilian population in case of serious national disaster, or the occupation for that purpose of buildings erected by the United States.

(b) Installation Commanders will furnish office space and quarters for Red Cross activities and personnel when assigned to duty with the Armed Forces in accordance with AR 930–5.

§ 643.40 Policy—Young Men's Christian Association (YMCA).

Title 10 U.S.C. 4778, authorizes the SA to grant revocable licenses pemitting the erection and maintenance by the YMCA on military reservations, of such buildings as their work for the promotion of the social, physical, intellectual, and moral welfare of the garrisons may require.

§ 643.41 Policy—National Guard use.

Pursuant to the authority contained in 32 U.S.C. 503, the SA is authorized to grant revocable licenses to the States and territories for the use and occupancy of installations or portions thereof by the National Guard. A license may not be granted for the erection of a permanent National Guard Armory without specific congressional authority.

§ 643.42 Policy—Consents for crossing of rights-of-ways and similar interests owned by the United States.

Under the various easement authorities or under the administrative power in cases outside the purview of those authorities, the SA may consent to the granting of an easement by the owner of the servient estate, subject to such conditions as may be required to protect the Government's interest.

Subpart C—Leases

§ 643.51 Additional items concerning leasing.

In addition to the general and policy matters covered in Chapters I and II of Title 32, the following also apply with respect to the leasing of Army real estate.

§ 643.52 Term.

Each lease will be for a period not exceeding five years unless the SA determines that a longer period will promote the national defense or will be in the public interest.

§ 643.53 Consideration.

(a) Unless otherwise authorized by this regulation or directed by the SA, the consideration for a lease of real estate will be the appraised fair market rental value. However, the value of the maintenance, protection, repair, or restoration by the lessee of the property leased, or of the entire unit or installation where a substantial part of it is leased, may be accepted as all or part of the consideration. The value of the maintenance, protection, repair or restoration, when added to the amount of the monetary payment to be made by the lessee, must equal the appraised fair market rental value of the property leased.

(b) Buildings and space may be leased to a State or political subdivision thereof for public school purposes, limited to use for classrooms and closely related academic instructions, through high school level, at no monetary consideration. Where bare land is leased for construction of a school through high school level, the acreage will not exceed criteria established by the appropriate State authority or the Department of Health, Education, and Welfare (HEW), the rental will be $1 for the term of the lease and any renewal thereof. Leases of bare land will be for a term of 25 years, with an option on tenant's part to renew for another term of 25 years. Real estate may also be leased for educational purposes to public educational institutions at a reduced rental, after consultation with the HEW, and taking into account any benefits accruing to the United States through the use of such property. In any event, the lessee will be required to assume the cost of maintenance, protection, repair, or restoration of the property leased and the administrative costs incident thereto.

(c) Lease granted for agricultural, grazing, or haying purposes will have attached thereto the land-use regulations furnished by the installation commander specifying the items required to be performed by the lessee as part of the lease obligations. It is the policy of the DA that land leased for agricultural, grazing or haying purposes be returned to the Government in as good or better condition than when initially leased. The land-use regulations will include those activities of maintenance, protection, repair, or restoration of the property leased which the lessee will be required to perform as part or all of the consideration for