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the lease. Generally, an activity will qualify as an offset from rental if it is:

(1) Performed on the leased premises, or when it constitutes a substantial part of the entire rental unit or installation,

(2) Of direct benefit to the installation in its authorized current or mobilization mission, as distinguished from desired programs, or in furtherance of the Army's leasing program,

(3) Generally related to the lessee's use of the leased property. Where all of the above criteria are met, the following activities may be authorized: Control of erosion, conservation of natural resources, and maintenance of the viability of the land for continuing leasing, such as mowing, weed control, seeding, fertilizing, mulching, crop rotation, selected cutting, and soil conservation measures such as terraces, check dams, wells, springs, ponds, title, or open channels or culverts for drainage, firebreaks, inside fencing and cattle guards. Maintenance, protection, repair or restoration of buildings, roads, perimeter fencing, and similar improvements are not authorized as offsets from rental unless the property is leased to and beneficially used by the lessee, or on a rental unit or installation in which the leased premises constitutes a substantial part or as otherwise approved by HQDA (DAEN-REM), Washington, DC 20314. Also, lessee may be required to perform activities in support of recreation and welfare, fish and wildlife, beautification, and esthetic programs and the cost of establishing and maintaining recreation, swimming and fishing areas, wildlife habitats, food plots, and similar activities when the following conditions have been met:

(1) The activities to be offset are in furtherance of the installation natural resources plan as approved by the MACOM.

(2) The overall plan for the term of the lease, has been approved by ASA (IL & FM).

(3) MACOM approval has been obtained for each lease when any activity to be offset exceeds $1,000.

Total of the offsets in any year will never exceed the annual rental.

§ 643.54 Receipts.

Receipts will be deposited into the Treasury as miscellaneous receipts.

§ 643.55 Mandatory revocation clause in lease.

Each lease will contain a provision permitting the SA to revoke the lease at any time, unless it is determined that the omission of such provision from the lease will promote the national defense or will be in the public interest. In any event, the lease will be revocable by the SA during a national emergency.

§ 643.56 Taxation of lessee's interest.

The lessee's interest in leased property may be taxed by State or local governments as provided in 10 U.S.C. 2667(e). Each lease will contain a provision that if and to the extent that the property owned by the Government and included in the lease, as opposed to the leasehold interest of the lessee therein, is later made taxable by State or local governments under an act of Congress, the lease will be renegotiated.

§ 643.57 Sublease or assignment.

A lease of real estate will not be subleased or assigned for direct or indirect use by another Federal agency. Except as specifically provided in the lease, a sublease or assignment of the lease will not be authorized without prior approval of HQDA (DAEN-REM), Washington, DC 20314.

Subpart D—Licenses

§ 643.71 Additional items concerning licenses.

In addition to the general and policy matters covered in subparts A and B, the following also apply with respect to the granting of licenses.

§ 643.72 License.

A license is a bare authority to do a specified act upon the property of the licensor without acquiring any estate therein. The principal effect of a license is to authorize an act which in the absence of the licensee would constitute a trespass.

§ 643.73 Term.

The term of a license will be limited to a period reasonably necessary to accomplish the purpose for which the license is being granted, but in no event will the term exceed five years, without the approval of COE.

§ 643.74 Consideration.

When a license is granted under the authority of an easement or leasing statute, the same rules will apply in regard to consideration as is applicable to the granting of an easement or lease under the statute. Since the administrative power may be relied upon for the grant of a license only when such grant is of direct benefit to the Government, such grants may be made without consideration.

Subpart E—Easements

§ 643.81 Additional items concerning easements.

In addition to the general and policy matters covered in subparts A and B, the following also apply with respect to the granting of easements.

§ 643.82 Term.

The term for which an easement is granted will be guided by the type of easement, the period for which the land can be made available and the limitations of the authorizing statute.

§ 643.83 Consideration.

Although the statutes authorizing grants of rights of way or easements do not make it mandatory that compensation be paid to the United States, such grants will reserve consideration in an amount equal to the fair market value as established by recognized appraisal practices. As an exception to this rule, grants to States, counties, municipalities, or political subdivisions thereof, will not require fair market value when the purpose of the easement is to serve the public interest or is to benefit the Federal Government.

§ 643.84 Easement—Grantees relocate or replace needed facilities.

In easement grants, grantees usually will be required to repair and restore damage done to Government land and improvements and to relocate or replace buildings and other needed facilities rendered useless or less useful by the exercise of the easement rights granted. DOD policy requires that in keeping the Army whole, the relocation or replacement of facilities will be limited to those for which there is a continuing requirement. By specific exclusion, establishment of a different category of facility is not authorized. (DODI 4165.12 III C)

§ 643.85 Easement grantees—Payment for removal or destruction of unneeded improvements.

Where a proposed right-of-way will require removal or destruction of improvements which are not required to be relocated or replaced to meet military needs, such improvements will be disposed of as excess property in accordance with AR 405–90, and a condition of the easement grant will be payment for such improvements as follows:

(a) Where the easement grant is to be made at fair market value to entities not entitled to grants of rights of way without charge, the charge for the grant will include the in-place fair market value of the improvements.

(b) Where the proposed grantee is a State or local Government agency normally granted a right of way without charge under Army policy and the grantee's project is subsidized wholly by an agency of the Federal Government, no charge will be made for the improvements thus lost, since any charge made would not reflect a net return to the Government.

(c) Where the proposed grantee is a State or local Government agency normally granted a right of way without charge under Army policy, and the grantee's project is not subsidized, or is subsidized only in part, the charge for such improvements removed or destroyed and not replaced will be the salvage value thereof.

§ 643.86 Easements for various purposes with relinquishment of legislative jurisdiction.

Title 40 U.S.C. 319, and delegation of authority thereunder from the Secretary of Defense authorizes the SA to grant easements and concurrently to