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evidence and related papers. This Final Title Assembly must be chronologically arranged and securely fastened for permanent filing, and should include the following:

(i) Abstract of title, properly continued through time of closing; or preliminary, intermediate, and original of final certificate of title; or interim binder and original of the Title Guarantee (Insurance) Policy.

(ii) Curative instruments and material pertaining to title defects appearing in the abstract, the final certificate of title, or the title guarantee or insurance policy.

(iii) Deed to the United States, executed, stamped, acknowledged, and recorded.

(iv) Copy of the accepted offer to sell (ENG Form 42 or ENG Form 2970).

(v) Completed ENG Form 798.

(vi) Completed ENG Form 1566.

(vii) Statement regarding payment of taxes or amount withheld to pay the taxes.

(viii) Where required, completed ENG Form 1290.

(ix) If the power of attorney procedure is followed, power of attorney on proper Department of the Treasury Form and completed ENG Forms 1569 and 1571.

(x) Certified copy of any waiver letter or certificate.

(xi) Any other papers relating to the title or closing of the case.

(xii) An additional copy of the deed and the Attorney's Final Title Opinion for review by the Attorney General.

(5) A copy of the executed and recorded deed will be retained by the Division or District Engineer for the project files.

(6) Similar action will be taken by the Closing Officer in acquisition of easements costing not in excess of $1,000.

§ 644.71 Final title assembly.

(a) *Disposition of final title assemblies.* The final title opinion and related papers will be forwarded to HQDA (DAEN-REA-P) WASH DC 20314 for review and disposition. In addition, copies of deeds and related papers in acquisitions for the Strategic Petroleum Reserve Program of the Department of Energy will be forwarded to: Department of Energy, Strategic Petroleum Reserve Project Management Office, 900 Commerce Road East, New Orleans, Louisiana 70123.

(b) *Division/District files.* True copies will be retained for Division or District files.

§ 644.72 Transfer to condemnation.

(a) *Transfer of tracts from purchase to condemnation.* If at any time, in the course of acquisition by purchase, it becomes apparent that title clearance and closing cannot be completed within 60 days of the offer to sell, action will immediately be taken to acquire the land by condemnation in order to make funds available to the landowner.

(b) *Contents of letter of submittal.* In such cases the letter of submittal will contain or be accompanied by:

(1) All title evidence.

(2) An analysis of the title defects and a statement of the attempts which have been made to cure the defects.

(3) A statement of the attempts to have the title infirmities waived by the title company and the reasons for refusal; or

(4) The curative material which has been obtained to remedy the infirmities; and

(5) Two copies of the offer to sell from the apparent owners.

ACQUISITION BY PURCHASE, DONATION, AND TRANSFER

§ 644.81 General.

Sections 644.81 through 644.88 describe the procedures of the Corps of Engineers relating to the acquisition of land and interests therein for both military and civil works projects by purchase, donation and transfer.

(a) *Applicability.* These sections are applicable to all Division and District Engineers having real estate responsibilities.

(b) *Acquisition authority*—(1) *Limitation.* Acquisition of land for use by the United States requires express authorization (10 U.S.C. 2676, 41 U.S.C. 14).

(2) *Military.* Title 10 U.S.C. 2571 authorizes transfer of real property between Defense elements without compensation if the Secretaries approve. Title 10 U.S.C. 2662 provides that acquisition of fee title or transfer of real

property owned by the United States to another Federal agency, military department or a state must be reported to the Committees on Armed Services of the Senate and House of Representatives if the estimated value is more than $50,000 and the transaction may not be consummated until after 30 days have expired from the date the report is submitted to the Committees. Title 10 U.S.C. 2663 provides for acquisition by the Secretary of a military department during time of war or when war is imminent of any interest in land, including temporary use, required for a Defense installation, munitions plant or power plant for production of munitions, through negotiation and purchase, by condemnation or by gift. Title 10 U.S.C. 2672 provides that the Secretary of a military department may acquire any interest in land, including temporary use, by gift, purchase, exchange of United States owned land or otherwise, that he or his designee determines is needed in the interest of national defense and does not cost more than $50,000 exclusive of administrative costs or the amounts of deficiency judgments.

(3) *Civil works.* Acquisition of real property for civil works projects for which provision has been made by law is authorized in 33 U.S.C. 591–595a and 701. As in the case of military projects, the Secretary of the Army is also authorized to accept donations of lands and materials required for civil works projects.

(c) *Rights-of-entry.* Rights-of-entry for construction may be obtained by the Division or District Engineer, after he has been authorized by the Chief of Engineers to acquire the land, pending completion of acquisition by purchase or the filing of condemnation proceedings with declaration of taking. In the event the landowner will not voluntarily grant a right-of-entry, an appraisal of the required interest should be made and negotiations conducted on the basis thereof. If the negotiations are not successful, a declaration of taking should be submitted to acquire the necessary rights. The same procedure will be used for acquiring rights-of-entry for other purposes, such as survey and exploration.

§ 644.82 Prerequisites to acquisition.

(a) *Authority to begin acquisition.* Action to acquire a tract of land will not be initiated until the Real Estate Design Memorandum (for all projects except military) or Real Estate Planning Report (for Army, other than Civil Works, and Air Force projects) is approved and specific authorization of the Chief of Engineers, or the appropriate Air Force Regional Civil Engineer (AFRCE), to proceed with the acquisition of the project is received by the Division and District Engineer and funds have been made available. Upon such approval, the Division or District Engineer is authorized to initiate action for the acquisition of the estate approved for the particular project in accordance with the procedures hereinafter set forth.

(b) *Tract description.* Authority to initiate engineering planning of a project will state the mapping procedures provided for in Chapter 3, ER 405–1–12. It is necessary that land requirements be determined, that the various tracts be identified by ownership, and that accurate tract descriptions be developed. Tract ownership data may be developed by Division or District personnel from the local land records or procured by contract from a qualified local Government official, abstractor or title company representative.

(c) *Title evidence.* With approval to proceed with acquisition, title evidence contracts can be initiated. The procedures for obtaining title evidence are covered in §§ 644.61 through 644.72. Preliminary title evidence to confirm ownership and status of the title is prerequisite to negotiating for acquisition of the land or interests therein.

(d) *Appraisals.* Concurrently with the procurement of title evidence, the appraisal of the land should begin. The appraisal, when approved, forms the basis for the determination of fair market value which will not be less than the approved appraised value. The appraisal procedures are covered in subpart B. Normally, one appraisal per tract (ownership) will be obtained; however, in unusual cases such as those which involve novel, unique or controversial appraisal concepts, there is no objection to obtaining more than one appraisal covering the same tract

if considered advisable by the Division or District Engineer. When fee tracts are acquired by eminent domain procedures, where the value of the property is between $50,000 and $100,000, only one appraisal need be provided to the Department of Justice so long as it is a contract appraisal; two appraisals will be provided for values exceeding $100,000. Easement tracts acquired by eminent domain procedures, in excess of $50,000, will require two appraisals. At least one of the two appraisals must be made by a contract appraiser. Generally, in these cases, the second appraisal is procured only after negotiations indicate that agreement on price cannot be reached and that acquisition by condemnation will be required. The second appraisal will be procured in order that the Corps can take advantage of any negotiating flexibility that the second appraisal may afford in order to preclude court action. It is also necessary that the appraisals be relatively current in point of time (not to exceed six months) since dependent upon the real estate activity and degree of stability of the local economy, significant changes may take place in relatively short periods of time.

(e) *Environmental considerations.* Paragraph D3, Attachment 1 to Enclosure 1, DOD Directive 6050.1, dated March 19, 1974, subject: ''Environmental Considerations in DOD Actions,'' requires close environmental scrutiny of real estate acquisitions, disposals and outgrants to determine if said actions constitute a ''Major Action Significantly Affecting the Quality of the Human Environment (MASAQHE).'' If the action is determined to be a MASAQHE, then an environmental impact statement is required. Paragraph D3 is quoted here for ready reference:

D. Certain types of actions require close environmental scrutiny because of the possibility that they may either affect the quality of the environment or create environmental controversy. It may be desirable in such cases to have a complete presentation of the environmental aspects of the proposed action available for any interested party. For these reasons, consideration shall be given to documenting the environmental effect of the following types of actions in writing: (The written environmental assessment need not be elaborate for actions in which it is readily determinable that the impact would not be significant; however, negative declarations must be supported by written environmental assessments which generally meet the EIS format requirements.)

* * * * *

3. Real estate acquisition, disposal and outgrants.

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§ 644.83 Negotiations.

(a) *Acquisition objectives.* The objective of a land acquisition program is to acquire land at a price that will afford each landowner his constitutional guarantee of ''just compensation'' as that term has been defined by Federal judicial decisions. The Government must never pay less than just compensation unless a gift is intended. In eminent domain proceedings, the just compensation due a landowner is determined judicially by court award or by settlement prior to trial; in a purchase case, it is determined by negotiations leading to a satisfactory price and agreement with the landowner. While it is recognized that an appraisal is only an informed opinion and does not establish or determine just compensation, it is also recognized that, in negotiating for the purchase of land, an appraisal is the best and sometimes the only reliable opinion of the market value of the land which is supported by a thorough, acceptable analysis of market conditions at the time of purchase. Therefore, in the negotiation for the purchase of land, an approved current appraisal shall establish the minimum price to be paid for the land being acquired by the Corps of Engineers. Negotiations or offers below this price are prohibited except where the property is being acquired on a competitive basis and condemnation is not authorized.

(b) *Negotiating objectives.* In all cases, it is important that the negotiator receives adequate guidelines and explicit instructions. Promptly, after the amount of the estimated just compensation is established, the negotiator shall make an initial offer in the full amount of the fair market value, shall advise the landowner that the land was appraised for such amount, and shall furnish the landowner a written statement of, and summary of the basis for,

said amount. A concentrated effort will be made to acquire the land for that amount. This written statement will be in the form of a letter which may be delivered personally or by first class mail. Such summary will include, as a minimum, the following items:

(1) Definition of the term ''fair market value.''

(2) An accurate legal description and location identification of the real property and the interest(s) therein to be acquired (legal description and estate may be attached).

(3) The amount of the offer and a statement that such amount:

(i) Is the amount believed by the agency to be just compensation for the property;

(ii) Is not less than the approved appraisal of the fair market value of the property;

(iii) Disregards any increase or decrease in the fair market value caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner;

(iv) Does not reflect any consideration of or allowance for any relocation assistance and payments which the owner is entitled to receive.

(4) An inventory identifying the buildings, structures, fixtures, and other improvements, including appurtenant removable building equipment, which are considered to be part of the real property for which the offer of just compensation is made. The inventory shall include a statement of the utility and condition of said buildings, structures, fixtures, and other improvements.

(5) A description of the appraisal technique used, *i.e.*, market approach, income approach, or cost approach, in sufficient detail to explain clearly to the landowner the process by which his property was valued. Thus, as an illustration, where the market approach was used, the explanation should include the number of comparable sales used, their general location and type, the factors considered in adjusting sales of subject property, and any other information which would help the landowner understand what was done to value his property. A statement that comparable sales of similar properties were examined without more explanation is not sufficient. Similar information should be given when any other appraisal technique is used. Unusual cases will require a more detailed explanation.

(6) An identification of land classification categories (do not show acreage breakdown).

(7) If only a portion of a property is to be acquired, an apportionment of the total estimated just compansation for the partial acquisition between:

(i) The amount representing the just compensation for the real property to be acquired;

(ii) The amount, if any, representing severance damages to the remainder, together with a brief narrative description of the cause thereof; and

(iii) In the event ''off-setting benefits'' are involved, these must be shown, along with a narrative explanation and the landowner shall be given a ''person-to-person'' explanation by the negotiator.

(8) If the property contain a dwelling, the value of said dwelling and homesite shall be set forth separately, with the statement that this figure will be used in calculating housing relocation benefits under title II of Pub. L. 91–646.

(9) If any building, structure, fixture, or other improvement, comprising part of the real property, has been identified as being owned by a tenant who has the right or obligation to remove it at the expiration of his term, the amount of the value of such building, structure, fixture, or other improvement, being the greater of:

(i) The amount which the tenant's improvement contributes to the fair market value of the real property to be acquired; or

(ii) The fair market value of the tenant's improvement for removal from the real property. The basis of such amount shall be included.

(c) Appraisal reports or the appraiser's analysis (complete breakdown of principal value elements) will not be revealed by the negotiator unless specifically authorized. Cases involving property for which the highest and best use cannot be definitely established, and to which the exceptions mentioned

in paragraph (a) of this section do not apply, will be reported to HQDA (DAEN-REA) WASH DC 20314 for specific instructions. If the land is being donated, initial offers are not necessary, and the appraisal will be significant in negotiations only when considering the conditions under which the donation is made as, for example, an agreed valuation for tax purposes. Negotiations will be based on current market values, which normally means that last offers will be based on appraisals not over six months old. Exceptions will be required in instances of rapid escalation of values when the appraisal is quickly outdated or in instances of a relatively static market or other condition resulting in a minimal change in property values. In such cases an explanation will be necessary.

(d) *Exceptions*—(1) *Corps Employees.* If an employee of the Corps of Engineers has a direct interest in a tract of land being acquired by the Corps for public use, the tract will be acquired by condemnation. In cases of this nature, appraisal reports should be prepared, reviewed and forwarded together with a declaration of taking, with the condemnation assembly. The negotiator's report, of course, will not be included. The Department of Justice will be requested to handle all further matters pertaining to settlement or trial of the case. The Department of Justice has agreed to accept full responsibility for negotiations and approval of settlements or awards in such cases, without contacting any Corps personnel other than the owner of the interests being acquired.

(2) *Members of Congress.* Since, under 18 U.S.C. 431 and 432, members of Congress who hold interests in land that is required for project purposes cannot contract for sale of such interests to the Government, these interests will also be acquired by condemnation. Negotiations for acquisition by purchase or for settlement without trial cannot be conducted by officers or agents of the United States. The determination of just compensation must be made by judicial proceedings. Appraisal reports and the condemnation assembly should be prepared and forwarded as set forth in paragraph (d)(1) of this section.

(e) *Negotiating guidelines.* (1) The negotiator should be thoroughly familiar with the Division and District negotiating guidelines and should study the background data of the project, consisting of the authorizing act, survey report, project document, design memoranda, etc.; the applicable appraisal reports; tract ownership data; preliminary title certificates; and other related material. He should be entirely familiar with the project and the owner's individual property before initiating negotiations.

(2) The owner shall be provided with available brochures which explain the project and the Pub. L. 91–646 benefits, together with the written statement and summary required by §644.83(b). The negotiator should explain to the landowner the Government's requirement for the land, the amount of land required, the estate(s) to be acquired, the terms and conditions of the Government's contract form, and the fact that relocation assistance benefits may be available. He should furnish the landowner a copy of a map indicating the boundaries of that portion of his land to be acquired, where the entire ownership is not being acquired or where different estates are being acquired in the same ownership, specifying the estate in each area.

(3) Negotiations will be continued in an effort to obtain acceptance of the Government's offer or a reasonable counteroffer from the landowner, or until it is definitely determined that such a counteroffer will not be forthcoming. It is not intended that negotiations be continued until an unacceptable counteroffer is finally obtained. However, in an effort to obtain a reasonable counteroffer above the Government's estimate, the negotiator will, if necessary, take the initiative in suggesting a series of prices within a range which, in accord with the guidelines discussed in §644.84, has been predetermined to be reasonable.

(4) The interest of both owners and tenants must be considered and protected. The tenant is a proper party to the transaction, and every effort must be made to obtain the consent of the landowner and tenant as to the price to be paid to the tenant for his leasehold interest. This can be accomplished by

the tenant's execution of ENG Form 1564, Consent to Offer to Sell Real Property, which shall then accompany the owner's offer to sell. In cases where the tenant executes this form, payment for the tenant's interest can be made to him in the closing of the purchase transaction. This procedure will be followed whenever possible. An exception is permitted in those cases where the landowner and tenant prefer to handle the matter as a private transaction between themselves. In such cases, it should be determined that a satisfactory agreement has been made by the landowner and tenant. Consideration should be given to any interest which the tenant may have in growing crops. This procedure is also applicable to any third party having an interest in the property, except through severance of a subsurface estate.

(5) Negotiations with landowners will be conducted in a fair and courteous manner. The negotiator must not, under any circumstances, resort to coercion or threats of condemnation.

(6) The negotiator has no authority to obligate the Government in any manner beyond the contract form. He must refrain from oral promises or understandings and include all terms and conditions in the contract form.

(7) Although appraisal reports cannot be made available for inspection by a landowner, the various elements of value considered by the appraisers may, and should, be discussed with the landowner to satisfy him that all elements of compensable values and damages have been considered in arriving at an overall value for the property being acquired. Care will be exercised during any discussion not to reveal specific amounts related to any elements considered in the appraisal, except the acquisition cost assigned to the dwelling for purpose of calculating replacement housing payment under section 203, Pub. L. 91–646.

(8) Any interest in a tract of land sought to be acquired, or any type of relationship with the owner, disqualifies the negotiator from participating in negotiations for the acquisition of that particular tract.

(9) An appraiser is not, under any circumstances, permitted to negotiate for the acquisition of a tract of land for which he has prepared the appraisal or reviewed it as reviewing appraiser.

(f) *Discussions With Landowners.* In order to avoid the creation of negotiating patterns, and keeping in mind that counteroffers must be justified as being just and reasonable, discussions with landowners should be conducted without disclosing the extent of the delegations and redelegations of authority to accept counteroffers. However, during negotiations on individual tracts, the landowners must be advised that, in the event of condemnation, the deposit will be in an amount no less than the approved appraised value, since the question of value cannot be resolved by negotiations. It must further be made clear that this advice is not in the nature of a threat, but is an explanation of the statement of policy directed by the Congress and the law. The negotiator will also inform each owner that offers and counteroffers made during negotiations are made without prejudice in the event of condemnation. The negotiator will make a notation on the Negotiator's Report to the effect that he has so informed the owner.

(g) *Obtaining the written counteroffer; preparation of negotiator's report.* If the negotiator considers that a counteroffer in excess of the approved appraised value is in the amount which should be considered for acceptance, the counteroffer will be reduced to writing on ENG Form 42, Offer to Sell Real Property, or on ENG Form 2970, Offer to Sell Easement, and be properly executed by the landowner. In such cases, a complete written record of negotiations with respect to each tract or ownership, as appropriate, will be maintained by means of ENG Form 3423, Negotiator's Report, Part I. This record will state the chronological history of negotiations, all elements considered in evaluating the landowner's final counteroffer, and the justification for such recommendation in accordance with § 644.84. The justification will be fully recorded in ENG Form 3423A, Negotiator's Report, Part II, which is a separate page of this report, and which will be removed in the Office of the Chief of Engineers prior to submitting the counteroffer assembly to higher authority for approval. Final action on

the counteroffer, either by the Secretary of the Army, the Chief of Engineers or under the delegated authority to Division and District Engineers, will be entered on this record as soon as that information is available.

§ 644.84 Counteroffers.

(a) *Consideration of counteroffers.* In negotiations with landowners, if agreement cannot be reached with a landowner as to the purchase price established by the appraisal, the lowest price demanded by the landowner may be considered by the Division and District Engineer, and the Chief of the Real Estate Division, on the basis of the following factors:

(1) *Variations in appraisals.* In the usual case, the Corps will have the opinion of only one appraiser with respect to the market value of the particular tract of land. It must be recognized that the opinion of a second equally competent appraiser might be higher or lower than that of the appraiser who appraised the property. Hence in considering counteroffers of landowners, Division and District Engineers should keep in mind that two equally competent appraisals may reflect reasonably divergent opinions of value as to the same property. Instances requiring two appraisals are covered in § 644.82(d).

(2) *Built-in costs, prior counteroffers, settlements and liability risks of proceeding to trial.* It is recognized that there are certain Government administrative costs and liability risks involved when property is condemned by the United States and the land value is judicially determined. These items are definite in character but the attendant costs will vary. ''Built-in'' costs of proceeding to trial include, but are not limited to, the following items: Salaries of all Government personnel participating in trial preparation, pretrial hearings, and the actual trial; cost of an additional appraisal(s); witness fees of contract appraisers employed by the Corps of Engineers or the Department of Justice; travel costs of all Government personnel and consultants participating in trial preparation, pre-trial hearings, and the actual trial; and cost of preparing trial documents and exhibits. Consideration should also be given to prior counteroffers which have been accepted and settlements approved prior to trial. ''Liability risks'' of proceeding to trial are the amount of the anticipated award over and above the appraised value, taking into consideration probable testimony on behalf of the Government and the landowners, as well as the history of condemnation awards in the Federal court jurisdiction in which the lands are located, and the amount of interest on a deficiency judgment which would result from the anticipated award. Serious consideration of the above factors may justify a recommendation for authority to accept a counteroffer which otherwise would appear to liberal.

(3) *Non-compensable elements of value.* Elements of value based on consequential damages or speculative values, as defined by the Federal courts, may not be recognized in considering a landowner's counteroffer. However, even though a landowner's counteroffer might include non-compensable items of value, favorable consideration of the counteroffer may be given if it can be justified on the basis of variances in appraisals, built-in costs, and liability risks of proceeding to trial.

(4) *Value of reserved items.* The salvage value of improvements and the value of crops and/or timber reserved by the landowners, as provided in § 644.86 (g), (h), and (i), will not be included in the amount of the counteroffer in determining the excess of counteroffers over appraised values when applying the dollar and percentage limitations in the delegations of authority to Division and District Engineers for acceptance of counteroffers. The determination of the excess will be made on the basis of the appraised value of the interests being acquired (including the value of the reserved items) compared to the cash payment which will be made to the landowner if the Government accepts his counteroffer. However, this method of analyzing the counteroffer is intended for use only in determining the limitations of authority. The overall transaction must be in the interest of the United States and not afford an unwarranted windfall to the vendor.

(b) *Application and Limits of Delegated Authority.* The negotiating procedures

outlined herein will apply to all acquisitions by the Corps of Engineers for the Army (military and civil), Air Force, Department of Energy (DOE), National Aeronautics and Space Administration (NASA), and other Federal agencies which utilize the services of the Corps for acquisition of real estate. Delegations of authority to Division and District Engineers and to the Chiefs of their Real Estate Divisions to accept offers in excess of the appriased valuation have been made. Offers which do not exceed the approved appraised value may be accepted by authorized Division and District personnel regardless of the amount. Other offers will be handled as outlined in the paragraphs which follow.

(c) *Exercise of Delegated Authority.* The approval of a counteroffer over the appraised value, but within the authority redelegated to Divisions and Districts, will be evidenced by the Division Engineer, the District Engineer, the Chief of the Real Estate Division, or the incumbent of the position to which redelegations have been made, in one of the following manners:

(1) Manually accepting, on behalf of the United States, the offer to sell, as provided in § 644.87; or

(2) Manually executing a dated notation of approval of the purchase price, to be placed in the tract file, preferably on the original of the Negotiator's Report (§ 644.83(g)).

(d) *Submission of Counteroffers to the Chief of Engineers.* Recommendations for the grant of authority to accept counteroffers which are considered reasonable, but which cannot be accepted by the Division Engineer, the District Engineer, or the Chief of the Real Estate Division, within the limitations of delegated authority, will be submitted to HQDA (DAEN-REA) WASH DC 20314 for consideration. Negotiator's Reports, prepared in accordance with § 644.83(g) will accompany this submission; the contents thereof need not be repeated in the transmittal letter or in forwarding indorsements. The assembly will consist of the forwarding correspondence and the Negotiator's Report, with any additional material needed to support the recommendation of the Division and District Engineer. An analysis should be made of this offer as compared with other counteroffers accepted for the project, as well as with results in condemnation cases settled before trial. Signed offers will not be forwarded unless they contain deviations requiring approval by the Chief of Engineers. Appraisal reports are helpful and may be necessary reference for proper consideration of the recommendation. In the event the appraisal report was approved by HQDA (DAEN-REA), the forwarding letter should refer to the approval correspondence and data. It will not be necessary to enclose copies of the appraisal report. Where only a portion of an ownership is required, information should be furnished in the Negotiator's Report or in the transmittal correspondence (1) as to whether or not the remainder portion is considered to be an uneconomic remnant and (2) if so, as to whether or not an offer was made to acquire the entire property. Further, a statement is required as to whether or not it is considered that the acquisition will have any adverse effect on the acquisition of the remaining land required for the project.

§ 644.85 General negotiation procedures.

(a) *Provisions of Military Construction Appropriation Act.* (1) Section 108 of the Military Construction Appropriation (MCA) Act of 1978 (Pub. L. 95–101) provides that no part of the funds provided in the Act shall be used for purchase of land or easements in excess of the value as determined by the Corps of Engineers, except:

(i) Where there is a determination of value by a Federal Court; or

(ii) Purchases negotiated by the Attorney General or his designee; or

(iii) Where the estimated value is less than $25,000; or

(iv) As otherwise determined by the Secretary of Defense to be in the public interest.

(2) The above wording, except for paragraph (a)(1)(iv) of this section, constitutes a limitation on accepting or submitting a recommendation for approval of a counteroffer in excess of the appraised value. Paragraph (a)(1)(iv) brings military acquisition within the general acquisition policy required under Pub. L. 91–646. Future MCA Acts

should be carefully examined to determine if any limitations on acquisition have been restored.

(b) *Local cooperation projects.* The participation of a non-Federal agency in a federally-assisted project will be in accord with section 221 of Pub. L. 91–611 and subpart J (to be published). Acquisition of real property by a non-Federal agency will be in accord with sections 210 and 305 of Pub. L. 91–646 and this chapter.

(c) *Negotiations on the basis of ownership; ''Package-Deal'' negotiations.* (1) Normally, negotiations for all interests in all tracts which are being acquired from one parent ownership will be negotiated at one time. These tracts will usually consist of all those to which the same basic tract number has been assigned. Exceptions may be made only where negotiations for some of the tracts in a series must be accomplished to obtain possession, or for other critical reasons. Piecemeal acquisition must be avoided if at all possible.

(2) When more than one tract is operated by the owner as a unit, negotiations should take place on the two or more tracts or groups of tracts, whether or not they bear the same basic tract number.

(3) In cases where an owner insists on a ''package-deal'' negotiation on all tracts in the same ownership, or having at least one common owner, the negotiations will be considered as one transaction.

(4) Tracts which are in the same ownership, but which are not operated as a unit, should, unless the owner desires otherwise, be negotiated separately, on the basis of the separate appraisals which would be prepared in this type of case.

(5) Under paragraphs (c)(1), (2), and (3) of this section, the limitations of authority to accept counteroffers will be applied to the entire transaction.

(d) *Acquisition by condemnation if negotiations fail.* As soon as it is determined that a satisfactory agreement cannot be reached after full consideration of all reasonable counteroffers received, action will be promptly taken to acquire the property by condemnation proceedings, including the filing of a declaration of taking, in order to make funds available to the landowner and to maintain the project acquisition schedule. The landowner should be advised in writing, sufficiently in advance of the submission of the condemnation assembly to the Chief of Engineers, that condemnation proceedings will be recommended and the reason therefor. Condemnation assemblies will include copies of the Negotiator's Reports or other written records of negotiations. The estimated compensation to be deposited in the registry of the Federal District Court with the filing of a declaration of taking will be in the amount of the approved appraisal.

§ 644.86 Exceptions and reservations.

(a) *General.* Prior to the enactment of Pub. L. 91–646, the Corps encompassed a very generous policy of priority leasing with respect to former owners and tenants, in order to ease the burden of people who had to relocate because of the Corps' projects. Recognizing the inadequacies of the well-intentioned attempts by acquiring agencies to make whole the former landowner or tenant, the Congress enacted Pub. L. 91–646 which was approved on January 2, 1971. It would appear that the Congress intended that such law provide for the fair and equitable treatment of persons who are displaced, without having to rely on interim measures, such as priority leasing, to ease the inevitable relocation. In House Report 91–1656, the Committee on Public Works of the House of Representatives noted the likelihood that adequate housing may not be available readily and indicated this as its reason for including the provision in the law that satisfactory replacement housing must be available before displacement. In view of this, it is incumbent on the District Engineer to be opportune in seeking out replacement housing and to be judicious in the early relocation of owners and tenants before market changes eliminate any available supply of replacement homes. It is also essential that the District Engineer be diligent in providing the required relocation assistance advisory services and benefits authorized by the law.

(b) *Possession by Government.* It will be the objective of the District Engineer to have the premises vacated and

to cause unneeded improvements to be removed at the earliest practicable date and conform to the Congressional intention expressed above. In addition to the above, reasons for this objective are:

(1) To provide for the expeditious payment of benefits to former owners and tenants;

(2) To complete administration of the actual relocation of owners and tenants in a timely manner;

(3) To avoid maintenance and security problems with respect to acquired improvements;

(4) To prevent vandalism, trespassing and poaching with respect to acquired improvements;

(5) To avoid any implication that former owners or tenants may be permitted to remain indefinitely on the federally acquired property;

(6) To cause land to be leased on the basis of the most practicable size and configuration rather than on the basis of the size of the units acquired;

(7) To permit the general public to bid for the lease of federally owned land rather than restricting the privilege of leasing to the former owner or tenant; and

(8) To avoid a backlog of incomplete actions when construction or flooding is imminent or the land is otherwise required.

(c) *Possession reserved to former owners and tenants.* It is considered that the policy of granting priority leases to former owners and tenants has been overridden by the enactment of Pub. L. 91–646. Accordingly, this policy is being phased out, and where applicable, the acquisition agreement will set forth the dates agreed upon for the vacation of the premises by the owner and tenant without commitments, express or implied, as to the leasing of the premises after such dates. Procedure for providing for vendor's continued possession after the Government's acquisition is covered in paragraph (l) of this section.

(d) *Outstanding rights.* (1) When the United States is acquiring title subject to outstanding rights, the offer will differentiate between:

(i) Property which the vendor is excepting or rights which he is reserving and which are created for the first time; and

(ii) Rights which third parties have acquired in the past, generally referred to as outstanding rights in third parties.

(2) Exceptions or reservations of rights which the vendor may retain, without interfering with the construction or operation of the project, will be set forth in the offer and deed by a clause following the description, beginning with the words: ''Excepting * * *'' or ''Reserving * * *.'' Any other outstanding rights, subject to which the United States is acquiring title, held by third parties will be set forth in the offer and deed by a clause, following the description, beginning with words, ''Said premises are conveyed subject to * * *.'' Negotiations with the surface owner will include the owner's interest in the subsurface, unless acquisition of a lesser interest has been authorized by directive or specific approvals. These negotiations will not include interest severed and outstanding in third parties by purchase or lease, unless the surface owner agrees to remove the outstanding interest or agrees to obtain a subordination from the holder of the outstanding interest if that is consistent with the acquisition plan. If negotiations with the surface owner are successful, an Offer to Sell will be obtained, reciting the outstanding interest in the ''Subject to'' paragraph of the form, unless the surface owner has agreed to remove the outstanding interest (or obtain a subordination, if appropriate), in which case the Offer to Sell must recite specifically that the surface owner is assuming this obligation. In order to carry out the requirements of this paragraph, the title evidence must be examined prior to negotiations or, in any event, prior to acceptance of the Offer to Sell.

(e) *Right to repurchase prohibited.* In no case will an offer be obtained in which the vendor reserves the right to repurchase the property. Such a reservation would be contrary to the Federal Property and Administrative Services Act of June 30, 1949, 63 Stat. 377, 40 U.S.C. 471, *et seq.*

(f) *General reservation guidelines.* (1) Reservations of the right to remove

crops, timber, buildings, and improvements during a specified period will not be permitted without express approval of the Division or District Engineer on civil works projects, the Army or Air Force using service on military projects, or the Federal agency, if other than the Army or Air Force, for which the land is being acquired.

(2) At the time of the approval of the acquisition by the Chief of Engineers, a determination will generally have been made as to whether subsurface rights and/or water rights will be acquired or left outstanding. Acquisition will be on the basis of such determination and as outlined below. Lands will be acquired subject to minerals, oil and gas rights or other similar interests severed and outstanding in third parties by purchase or lease and as approved by the Chief of Engineers.

(3) Where it is not possible to acquire or subordinate an outstanding interest by negotiation and the interest will not interfere with the operation of the project, consideration may be given to obtaining a waiver from the Office of the Chief of Engineers on the basis of taking a calculated risk rather than resorting to condemnation (paragraph (k) of this section). Waivers will be considered on a tract-by-tract basis or on a project segment basis. Since such waivers involve several elements of the Office of the Chief of Engineers (Civil Works or Military Construction as well as Real Estate), the basis for the calculated risk must be fully explained.

(4) Concurrently with the negotiations to acquire from the surface owner, negotiations should be opened with the owner of the subsurface rights or other interests severed and outstanding in third parties by purchase or lease and required for the project, unless these interests are held in ''block ownership.'' Block ownership exists where a person, corporation, or other entity owns subsurface or other interests in connection with more than one surface tract and in sufficient amount for the entire interest holding to have added value, for operational or other reasons, because it is in a block ownership. In other words, block ownership exists when the acquisition of a part of the block would require the assessment of severance damage, even if the value of the interest or the amount of the severance damage would be in a nominal amount. On this basis, subsurface or other interests need not be contiguous to constitute a block ownership. Block ownership interests will not be acquired (or subordinated) piecemeal.

(5) Acquisition of the required interests, including subordination, held in block ownership should be started as soon as the extent of an operational unit is determined. As stated in paragraph (f)(4) of this section, all interests in a tract of land should be acquired at one time or as close in time as possible. Dual acquisitions of entire areas, one for surface rights and then for subsurface interests, should be avoided and acquisition of separate interests should be scheduled to coincide.

(g) *Reservation of buildings and improvements.* The reservation by vendors of the right to remove buildings and improvements will be permitted under the following conditions:

(1) Where the Division or District Engineer, in civil works projects, the using service in Army and Air Force projects, or the Federal agency, if other than the Army or Air Force, for which the land is being acquired, has determined that they will not be needed for the purpose of the project;

(2) The consideration to the Government for the reservation will be an amount negotiated at not less than the appraised salvage value of the building and improvements which are reserved, and such amount will be deducted from the negotiated price at the time of negotiation prior to execution of the offer;

(3) Where a reservation is permitted, the following clause will be inserted in the offer, following the description of the land:

> Excepting and reserving to the Vendor the right to remove (enter description of buildings) on or before _____ 19 __, which the Vendor agrees not to relocate on other land to be acquired for the project; provided, however, that, in the event that the said buildings and improvements are not completely removed on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said buildings and improvements which remain without notice to the Vendor; and provided further that, in the

event said buildings and improvements are relocated on other land to be acquired for the project, the United States shall have good and indefeasible title to said buildings and improvements without notice or further compensation to the Vendor.

The date on which the buildings or improvements must be removed must be fixed so that there is no interference with contruction or carrying out the mission of the project. The date for the removal should allow a reasonable time for removal of the improvements, usually not more than 90 days, except that for valid reasons the Division or District Engineer may grant an extension of time for removal. The right to remove such buildings cannot be prolonged indefinitely and certainly such right cannot survive the limited right of possession reserved to former owners and tenants as provided in paragraph (c) of this section.

(h) *Reservation of growing crops.* (1) The reservation by the owners of the right to harvest and remove growing crops should be encouraged in order to conserve land acquisition funds and to avoid the costs incident to disposal of crops by the Government, whenever there is a probability that possession of the land will not be required prior to the harvest season.

(2) Where a reservation is permitted, the following clause will be inserted in the offer, following the description of the land:

Reserving to the vendor the right to harvest all of the growing crops located on the above described land on or before _____ 19____. In the event the crops are not harvested on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said crops, without notice to the vendor.

The date on which the crops must be removed must be fixed so that there is no interference with construction or carrying out the mission of the project.

(3) The consideration to the Government for the reservation will be an amount not less than the appraised value of the crops as of the date of surrender of possession as disclosed by an approved appraisal report, and such amount will be deducted from the purchase price at the time of preparation and execution of the offer.

(4) Where a tenant has an interest in growing crops, the value of his interest must be fixed by use of ENG Form 1564, Consent to Offer to Sell Real Property, which provides that the value of the tenant's interest, as agreed upon by the landowner and tenant, will be paid from the purchase price for the land. The use of this form not only protects the tenant but, in addition, provides a simple method for extinguishing rights which the United States is legally bound to recognize. Where a tenant wishes to reserve the right to remove crops, it must be done in the name of the landowner, and in like manner. To accomplish the foregoing, any other form is satisfactory, in lieu of ENG Form 1564, as long as closing requirements are satisfied.

(i) *Reservation of timber.* (1) The reservation of the right to remove timber by vendors will be permitted only with the express approval of the Division or District Engineer, with the concurrence of the using service in cases other than civil works projects of the Corps of Engineers.

(2) Reservation of the right to remove timber will be handled in substantially the same manner as that described for the reservation of buildings and improvements. If owned by a third party, ENG Form 1564 will be used in the same manner as for crops unless the timber interests are held in block ownerships. The consideration to the Government for the reservation will be an amount not less than the appraised value of the timber, giving full weight to any unusual difficulty in harvesting and transporting which are caused by the size, shape and location of the stand reserved, time limitations for removal, clearing requirements over the above those normally involved in prudent harvesting, and similar factors. If necessary, the stand reserved will be re-appraised on this basis. An amount not less than this appraised value will be deducted from the purchase price at the time of preparation and execution of the offer.

(3) Where a reservation is permitted, the following clause will be inserted in the offer following the description of the land:

Reserving to the vendor the right to cut and remove on or before _____ 19 __, all trees

in excess of _____ inches in diameter at breast height (DBH) located on the above-described land. In the event the timber is not removed on or before said date, the right of removal shall terminate automatically, and the United States shall have a good and indefeasible title to said timber, without notice to the vendor.

(j) *Coal, oil, gas or other minerals.* Acquisition of land or interests therein for project purposes will usually include the subsurface as well as the surface, except in areas where minerals have more than a nominal value. When the mineral, oil and gas rights have an identifiable value or are the subject of separate estates in the land, such mineral, oil and gas rights will not be acquired except where the development thereof would interfere with project purposes, but mineral rights not acquired will be subordinated to the Government's right to regulate their development in a manner that will not interfere with the primary purposes of the project, including public access, and not be inimicable to the environment. This is covered in more detail in subpart A. It is essential, however, in many acquisitions that the subsurface rights be acquired. In others, where these rights need not be extinguished, provision must be made in the offer the deed to subordinate such rights to project requirements, by excluding the owners of such rights from the area, or limiting exercise of such rights so that they will not interfere with the primary purposes of the project, including public access. The following guidelines are applicable in these cases:

(1) Where it has been determined that subsurface rights in the vendor, or outstanding in third parties, must be acquired, extinguished or subordinated, such arrangements will be made in the course of obtaining an offer for the surface or subsurface interests. Where the negotiations for acquisition, extinguishment or subordination of subsurface rights will be delayed, and it is considered advisable to proceed with surface acquisition to keep pace with project requirements, appropriate recommendations and justification will be submitted to HQDA (DAEN-REA) WASH DC 20314 for approval.

(2) If the owners of the surface and subsurface rights are agreeable, the separate interests can be acquired in a single transaction by use of ENG Form 1564, Consent to Offer to Sell Real Property. This method is the most desirable one, and, if used, the purchase price in the offer will cover both the surface and subsurface interests and the offer will not be taken ''subject to'' the subsurface rights.

(3) Subordination of the subsurface interest based upon the value of the minerals in place and which will allow continued production by the mineral owner or lessee must be pursuant to such terms as will safeguard the Government's interest and preclude a windfall to the mineral owner or lessee. Value of the minerals in place will not exceed the recoverable portion of said minerals using agreed upon production methods. See subpart A for detailed treatment in the section pertaining primarily to Real Estate Design Memoranda.

(4) When the third-party owner of subsurface rights refuses to enter into an agreement as contemplated in paragraph (j)(2) of this section, the title to the surface estate may be acquired separately, and the subsurface rights outstanding in third parties acquired as a separate transaction. The offer for the acquisition of the surface estate will provide for the conveyance of all interests of the surface owner in and to the subsurface estate, as well as all surface rights, and provide for taking ''subject to'' the subsurface rights outstanding in third parties. In such cases, the negotiations described in § 644.83 will be conducted on the basis of the approved appraisal, less the appraised value of the outstanding subsurface rights.

(5) Where it has been determined that the subsurface rights and interests therein need not be acquired, but the owners of such rights must be excluded from the area, and the owner of the surface is the owner of the subsurface estate, the offer will contain a clause providing that he relinquish, for the period that title to the tract is vested in the Government, all rights to enter upon the lands covered by the offer or that he will limit entry and exploration in a named manner so as not to interfere with the operation of the project. If third parties own subsurface rights or interests, a similar waiver of

the exercise of such rights must be procured from all third parties having any interest in the subsurface estate, whether as lessees or assignees. The waiver by third parties must be obtained at the time the offer is procured for the surface estate, unless these subsurface interests are held in block ownership.

(k) *Title exceptions—Administrative waivers.* (1) A distinction should be made between those title defects, objections, liens or encumbrances which, if not eliminated, might possibly defeat or adversely affect the Government's title, and those interests in the property owned by parties other than the grantor. All encumbrances, defects, and outstanding interests which cannot be waived under paragraphs (k) (2), (3), and (4) of this section must be eliminated or a waiver of the defect secured from the Attorney General.

(2) Title may be taken subject to an outstanding third party interest which has been administratively waived. Requests for administrative waivers shall be submitted to HQDA (DAEN-REA) WASH DC 20314 for consideration, together with recommendations from Division and District Engineers. The recommendation for waiver should be coordinated with the using agency, if other than Department of the Army land (military or civil works), and should be accompanied by a certificate signed by the Chief, Real Estate Division or the Chief Appraiser, certifying that the outstanding interest has no contributory value to the estate being acquired and will not interfere with the purpose for which the property is being acquired.

(3) It has previously been administratively determined that all lands for Department of the Army (military or civil works) or Air Force projects may be acquired ''subject to existing easements for public roads, public highways, public utilities, railroads and pipelines,'' and ''to the reservations, exceptions and any other outstanding rights contained in or referred to in patents issued by the United States,'' and also ''to water rights, claims or title to water, if any, or other similar title exceptions.'' A decision as to whether any of these exceptions should be eliminated is the responsibility of the Division or District Engineer, after coordination with the using service if other than the Department of the Army. If such interests are to be left outstanding, they should be included in the ''subject to'' clause of the Offer to Sell.

(4) Offers to Sell may be accepted subject to subsurface mineral interests owned by third parties in accordance with § 644.86(d). In such case, the ''subject to'' clause of the Offer to Sell should recite the specific interest which is being left outstanding. Where it is not possible to acquire or subordinate an outstanding subsurface interest by negotiations and the outstanding interest will not interfere with construction, operation or maintenance of the project, consideration may be given to obtaining a waiver from HQDA (DAEN-REA) WASH DC 20314 on the basis of taking a calculated risk rather than resorting to condemnation. Such waivers may be considered on a tract-by-tract, segment-by-segment, or project basis. Where a number of small mineral interests in a project are to be recommended for waiver, it is preferable that the recommendation be submitted on an entire project or group of segments at one time. Such a recommendation should specifically identify the subsurface mineral interests which are to be left outstanding, together with the estimated value of each interest, and should be accompanied by a map(s) on which the areas affected by the outstanding interests have been outlined. The basis for the calculated risk should be explained fully.

(l) *Possession reserved to vendor.* (1) The objective in acquisition is to obtain possession for project purposes at the earliest practicable time. It is recognized, however, that there are occasions when possession by the Government may be delayed and provision must be made for continued possession by the former owner in order to meet the requirements of the Government's acquisition policy and to further soften the impact of the Government's acquisition. The retention of possession will enable the owner-occupant of farm land, or residential property, to receive

his purchase money and remove improvements reserved by him, and permit occupants who may be former owners or tenants the privilege of harvesting growing crops and sufficient time to relocate to other locations. Accordingly, the Division or District Engineer may make provision for the former owner, occupant, and/or his tenant(s) to remain in possession of the land under the terms and conditions as follows:

(i) If the tract is to be acquired by direct purchase, the provision for retention will be written into the offer (ENG Form 42, ENG Form 2970, or ENG Form 1564) and will read substantially as follows:

> Notwithstanding the provisions of paragraph ____ of this offer, (and/or consent to option) the occupant (vendor and/or his tenant) now in possession of the property, in consideration of the protection and maintenance of the land, buildings, and structures, and protection of the property against loss by fire, waste, or other causes, to which the occupant hereby agrees, reserves the right to occupy the property until _____. Such occupancy is subject to revocation by the (Division) (District) Engineer at any time by giving ____ days notice in writing to the occupant if possession of the property is required by the United States; and provided further that the vendor-occupant or his tenant will remove no improvements or timber unless otherwise provided herein.

(ii) When the tract is to be acquired by condemnation, the circumstances of the right to remain in possession, which has been established as hereinafter set forth, will be fully described in the correspondence forwarding the condemnation assembly to HQDA (DAEN-REA-C) WASH DC 20314. The retention of possession without payment of rent is directed to the benefit of the occupant of the property with some property maintenance consideration to the Government. This procedure will not be used to permit non-occupant owners a means of retaining possession without payment of rent and at the same time collect cash rents or unreserved crop rents from tenants.

(iii) When the land being acquired is utilized by the owner and/or tenant for agricultural or related purposes, a period of possession may be allowed, if consistent with project requirements, to permit the crop owner to harvest growing crops, and to avoid abrupt dislocations. The period of possession reserved in the offer, or for which request for the order of the court is deferred in declaration of taking cases, should generally be co-extensive with the crop season or the date that, by custom in the community, leases of such properties ordinarily expire: *Provided, however,* That such period does not exceed 12 months from the date title vests in the Government. Reservation of possession or delay in entry of order of possession that will interfere with the Government's requirements for use of the land will not be allowed.

(iv) In the case of owner-occupied residential property other than farm residences, possession may be permitted for a sufficient time to allow orderly relocation, but no longer than 12 months after title vests in the Government.

(v) In connection with the acquisition of commercial, industrial, tenant-occupied residential property other than residences occupied by farm tenants, and special use properties, ordinarily the procedures of reserving possession to the vendor by a clause in the offer, or deferring the right to possession under a declaration of taking proceeding, should not be utilized. In such cases, after title vests in the United States, the continued possession of the property by vendor or tenant should be formalized by an outlease from the Government. However, if in the opinion of the Division and District Engineer a reservation for possession in the offer or deferral of order of possession is desirable in certain instances from a public relations standpoint or for other compelling reasons, such cases will be forwarded to HQDA (DAEN-REA) WASH DC 20314 for consideration.

(vi) The reservation of use and occupancy in the vendor and/or tenant under the terms of the offer or deferment of possession must be based on adequate consideration to the Government. It is anticipated, however, that items such as the vendor's maintenance of the land, buildings, and structures, his protection of the property against loss by fire, waste, or other causes, and the fact that his possession can be revoked within a short period of time, will, in most instances,

offset any rental for the period of the reserved occupancy or deferred possession which might otherwise be due. However, if possession is reserved by the vendor in the acquisition of commercial, industrial, and special use properties, or other type of property having a potentially high income factor, the fair rental value for the period of reserved use or deferred possession must be deducted from the agreed purchase price.

(vii) Special provisions for protection of the Government, such as those appearing in ENG Form 1366, Department of the Army Lease—River and Harbor or Flood Control Property, will be added to the reservation clause in the offer in cases where, in the opinion of the Division or District Engineer, they are necessary or desirable. If the case is not to be closed by direct purchase, the letter to the vendor notifying him of the Government's intention to file a declaration of taking will set forth the fact that possession is to be deferred and for what period, and will contain a statement as to the Government's expectation that the vendor will properly maintain and protect the premises, and perform such other acts (or refrain from such acts) as deemed advisable by the Division or District Engineer. Both the letter of notice and the reservation clause in the offer will provide that the right to possession may be revoked on 30 days notice to the vendor.

(2) It is recognized that farmers may experience difficulty in finding substitute farms needed for their livelihood within one year, and other owners and tenants may encounter difficulty in relocating within one year. Therefore, the District Engineer, as an exception to the procedure in paragraph (l)(1) of this section may lease properties to former owners or tenants at the fair market rental value for up to one additional year where the circumstances justify such action, and, in such event, the record will contain the reasons justifying the action. Any occupancy by the former owner or tenant beyond 12 months from the date the property was acquired by the Government will be covered by a lease and will provide payment of the fair market rental value of the property leased.

(3) The District Engineer, through channels, may request the Chief of Engineers to grant exceptions to this policy where unusual circumstances warrant such consideration. In keeping with the intent of this action, it is hoped that such cases will be minimal in number.

(4) The following will apply with respect to advance land acquisition projects. Former owners and tenants whose properties were acquired *prior to August 1, 1972* will be allowed to remain on the property by lease on a year-to-year basis until the establishment of a land management use plan and thereafter, if the property is available for leasing, for a single five-year term. Former owners and tenants whose properties are acquired *after August 1, 1972* will be allowed to remain on the property by lease on a year-to-year basis until construction commences: *Provided,* The property is available for leasing. After construction commences, if the property is not immediately required for project purposes, such former owners or tenants will be allowed to remain on the property by lease for an additional two years. Continued possession of properties acquired after the date construction commences will be governed by the procedure outlined in paragraph (l)(1) of this section.

(m) *Schools, cemeteries, and facilities of State and local governments.* ER 1180–1–1, Section 73, provides for the discretionary relocation by the Chief of Engineers of schools and other local governmental facilities, and acquisition of the sites under section 111 of Pub. L. 85–500. Section 73 will be followed in the acquisition and relocation of cemeteries. Where the school was formerly a part of an abutting tract, offers for the abutting tracts will contain a clause whereby the vendor or vendors agree to quitclaim all right, title, and interest whether vested or reversionary, in and to the school site in executing the deed to the United States.

(n) *Reservations prior to completion of offer.* Where immediate possession of areas is necessary and is obtained by right-of-entry or the filing of condemnation proceedings, owners often

wish to move, taking with them buildings and improvements, or wish to harvest timber or crops, prior to any offer by the Government for the sale of their land. This action is authorized only under the following conditions:

(1) Appraisals of all the land, buildings, improvements, timber, and crops of the particular tract are completed and approved.

(2) A determination is made by the Division or District Engineer that the buildings, improvements, and timber will not be needed, and the harvesting of timber or crops will not interfere with construction or operation of the project.

(3) ENG Form 1565, Agreement for Removal of Property, will be obtained from all persons having an interest in the property to be removed. This agreement will recite the amount which the owner is willing to have deducted from the value of the tract as a whole for the right of removal, which may not be less than the appraised salvage value of the buildings, improvements and timber, and the appraised value of the crops, as set out in paragraphs (g), (h), and (i) of this section.

(4) ENG Form 1565 will be obtained and accepted by the Division or District Engineer, or the Chief of the Real Estate Division.

(5) If an offer is obtained later, an appropriate reservation must be inserted in the Offer to Sell to reflect the prior agreement relative to reservations and removals of property and the agreed value of same.

(6) If it is necessary later to file a declaration of taking on the particular tract, a copy of the agreement (ENG Form 1565) will be forwarded with the correspondence transmitting the declaration of taking assembly for use of the Department of Justice in the court action. The agreement by its own terms will serve as a stipulation as to the amount to be deducted from the ultimate award for the right of removing buildings, improvements, timber or crops.

(o) *Loss or damages to improvements, timber, or crops*—(1) *Insurance protection against risks.* The Government does not carry property insurance of any nature. Vendors, however, may be advised as to their liability for certain losses, and that insurance protection against such risks is optional. When buildings, improvements, timber, or crops on land being acquired by the United States are protected by insurance in effect when acquisition activities are initiated, the time and method of cancellation and negotiation for refund on premiums paid will be the responsibilities of the vendor. In order to avoid double payments to vendors, any amounts actually collected by vendors under the terms of the insurance policies for damage or loss occurring after acceptance of the offer by the Government will be deducted from the purchase price, regardless of when title is vested in the United States or the right to possession is exercised.

(2) *Fixing liability*—(i) *Prior to vesting title in Government.* Buildings, improvements, timber, or crops on land acquired by the United States by purchase or condemnation remain the property of the vendor until title has been vested in the United States by delivery of a deed of conveyance or filing of a declaration of taking, and loss or damage thereto caused by fire, acts of God, theft or vandalism, before such vesting of title, will be borne by the vendor, except as provided below.

(ii) *Possession by Government.* When the right to possession has been exercised by the United States under an accepted Offer to Sell, condemnation proceeding, or possession has otherwise been surrendered to and accepted by the United States, losses arising from damage to buildings, improvements, timber, or crops by fire, acts of God, theft, or vandalism will be borne by the United States. If, however, prior to vesting of title, the right to possession has been exercised, or surrender has been made and accepted only to part of the property, and the vendor continues to use buildings and/or to cultivate or harvest crops or timber, such loss will be borne by the vendor as to buildings, timber or crops retained.

(iii) *Title in Government.* After title has vested, losses to buildings, timber or crops not caused by the willful act or gross negligence of vendor will be borne by the United States; provided, however, that if the vendor continues in possession of buildings, timber or crops, after title has vested, and the

deed, stipulation or order of court has reserved to the vendor the right to remove such buildings, timber or crops, loss or damage thereto, both before and after removal, caused by fire, act of God, theft, or vandalism will be borne by the vendor, only to the extent of the amount deducted from the purchase price, as provided in the deed, stipulation or order of court, for the right to remove.

(p) *Other reservations.* The following rights may be reserved to the owner wherever such reservation will be to the financial advantage of the Government and it has been determined by the Division or District Engineer that the reservation of the rights will not interfere with the operation of the project. These rights may be reserved in the Offer to Sell and in the condemnation estate but only whenever mutual agreement between the owner and the Government concerning all phases of the acquisition except just compensation has been reached, or by stipulation for settlement of condemnation cases, subject to approval of revestment, if any, by DAEN-REA.

(1) *Rights-of-way for stock to water.* Reservations of rights-of-way will be permitted for watering stock, in the case of bona fide livestock operations, such as dairymen and ranchers. Such rights-of-way will be limited to a reasonable width and will not be permitted in public access and use areas. The reservations will be so worded as not to require the owners to fence the rights-of-way, but to provide that if they elect to do so, they must provide gates at satisfactory intervals to permit crossing of the rights-of-way.

(2) *Rights-of-way for water pipeline for domestic use.* Reservations of rights-of-way for water pipelines for domestic use (household, stock watering, garden, farm yard, but excluding irrigation) may be permitted by providing for the reservation of a temporary or permanent easement.

(3) *Rights-of-way for water pipline for irrigation use.* (i) In areas where irrigation is commonly practiced, or is of paramount importance, owners of remainder or contiguous lands will be permitted to reserve a sufficient real estate interest to place water pipelines across Government-owned lands, in order to obtain financing for irrigation development and/or in order to be assured of being able to carry on irrigation operations. In ''water rights'' States (prior appropriation of water rights), the reservation of such interests will be permitted only to those owners who have established water rights from the State, or who may in the future obtain such rights. When irrigation is a project purpose, such reservation must be coordinated with the Bureau of Reclamation.

(ii) Under these circumstances, a landowner may be permitted to reserve an easement and right-of-way for a water pipeline and pumping unit across the land he conveys, by appropriate provisions in the offer to sell and in the deed to the United States. In ''water rights'' States, this reservation will be ''for the exercise of established water rights, although no right to use water is created hereby.'' (This phraseology is to be incorporated in the reservation.) The reservation will also include any pertinent provisions considered essential by the Division or District Engineer, such as requirement to install the pipeline underground and at a specified depth.

(iii) Reservations of this nature will also be permitted in those cases where acquisition is by condemnation. In these acquisitions, the reservation may be recited in the complaint and declaration of taking, whenever full agreement except as to just compensation has been reached, or it may permitted later by stipulation.

(iv) When the project is located in an area in which the Bureau of Reclamation is developing, or planning to develop, irrigation districts or systems, prior coordination with the Bureau will provide that copies of all deeds and final condemnation judgments which recite reservations under this paragraph will be furnished to the local office of the Bureau. Thereafter, the Bureau of Reclamation will be responsible for supervising the exercise of the easements to insure compliance with Reclamation laws.

(v) Plans to provide for irrigation will be fully covered in the Real Estate Design Memorandum.

(4) Acquisitions in which these rights are to be reserved must, of course, be

based on an appraisal of the fair market value of the estate to be acquired. Since the appraisal would probably be made originally on the basis that there would be no reservation, revision must be prepared whenever the reservation appears to be appropriate, to reflect the reduction in severance damages or other financial advantage accruing to the Government. Consideration of counteroffers which include proposals for these reservations by the landowner will be based on and compared with the appraised fair market value of the estate proposed to be acquired. Deposits with a declaration of taking will be based on the appraised fair market value of the estate to be acquired by the condemnation action.

§ 644.87 Preparation and execution of offers.

(a) *Fee acquisition offer form.* The use of the latest revision of ENG Form 42, Offer to Sell Real Property, is required in all authorized projects, except in those cases where agreements with the landowners can be fully reflected in an executed deed, and where the provisions of §§ 644.81(c), 644.82(a), and 664.86 are not applicable or can be fully complied with without the use of an Offer to Sell. When an agreement as to terms has been reached with the owner, or a counteroffer has been received which will be considered for acceptance or submitted for consideration by higher authority, a draft of the offer will be prepared, with particular attention to the following instructions:

(1) No changes or interlineations in the printed portions of the offer form will be permitted, unless authorized by the Chief of Engineers, except where the words ''general warranty deed'' are changed to another form of deed.

(2) Insert legal land description of property to be acquired, or attach description by Exhibits to be identified on page 1.

(3) The word ''none'' should be inserted in the blank spaces following the first and third lines, respectively, on page 2 of the offer form when title is being acquired free and clear of all rights outstanding in third parties and the vendor is not permitted to except or reserve any right or interest in the property to be conveyed to the Government.

(4) Particular attention is directed to § 644.86, regarding exceptions and reservations and outstanding rights in third parties. No exceptions or reservations of crops, timber, buildings and improvements, subsurface rights, or any other interest will be incorporated in any offer to sell unless the required approvals have first been obtained.

(5) In any case where the offer form deviates from the standard approved forms or contains any conditions, exception, or reservation contrary to these instructions, the assembly will be forwarded to HQDA (DAEN-REA) WASH DC 20314 for consideration with the recommendations of the Division and District Engineer. This may be done at the same time a counteroffer is submitted to DAEN-REA in accordance with § 644.84(d).

(6) The landowner's name will be set forth in the offer in the exact way in which it appears on record.

(7) When it is necessary for a corporate agent, fiduciary, or any person other than an individual owner to execute the offer, satisfactory evidence of the authority to act for the owner must be attached to each of the copies of the Offer to Sell.

(8) Where it is necessary to attach sheets to the offer in order to fully set forth the terms of reservations, exceptions, or outstanding rights in third parties, such additional sheets must be securely attached and initialed by all parties signing the Offer to Sell.

(9) The name and address of the person or persons to whom notice of acceptance is to be sent must be accurately set forth. The address where the landowner can be reached after he vacates the property, if different from the address to which the notice is to be sent, should be obtained.

(b) *Submission, acceptance, and distribution of offers to sell.* (1) For each purchase transaction, the original offer and four copies will be signed by the landowner and spouse, if any. A copy (5th) will be left with the landowner when the offer is obtained.

(2) Division and District Engineers, the Chiefs of the Real Estate Divisions, and the incumbents of the position to

which authority is delegated as provided in § 644.84(d) are authorized to accept offers to sell for the acquisition of land or interests in land and easements, licenses, permits, or similar acquisition instruments: *Provided*, The price set forth in the instrument is within their authority to approve or has been approved in writing by higher authority. The Division or District Engineer may also delegate to Project Managers (including the heads of any field offices with responsibility for real estate acquisition) authority to execute real estate instruments by which land or interests in land are acquired by agreement with landowners, provided the consideration set forth in the instrument is within the approved appraised value or has been approved as provided in § 644.84(c). Upon approval of the offer or other instrument requiring payment to the landowner, a determination that necessary funds are available, and acceptance of the instrument under the authority contained in this subparagraph, the instrument will be numbered in conformity with existing regulations and will immediately be distributed as follows:

(i) Original offers to sell will be retained at the Division or District for site audit.

(ii) Send signed copy to vendor as provided in paragraph (b)(3) of this section below.

(iii) Attached conformed copy to title assembly.

(iv) File signed copy with project records.

(3) Upon acceptance of the Offer to Sell, the Division or District Engineer will notify the vendor by transmitting a signed copy of the contract (accepted offer) to vendor by ENG Form 53, Notice of Acceptance of Offer to Sell Real Property.

(4) Upon acceptance of the Offer to Sell, the Division or District Engineer will notify the using service, in the case of military acquisition, that the Offer to Sell has been accepted and that the Government has ''the right of immediate occupancy and use of the land,'' subject to the terms of the accepted offer. The land should be clearly identified to the using service.

(5) Instruments which do not provide for payments to landowners will be distributed in accordance with regulations governing such cases.

(c) *Easement acquisition offer form.* (1) The use of ENG Form 2970, Offer to Sell Easement, is required for the acquisition of all types of easement estates, such as flowage, spoil, drainage, road, railroad, utility, restrictive or safety (Army and Air Force), clearance (Air Force), and other required easement acquisitions, except in those cases where agreements with landowners can be fully reflected in an executed deed, and where the provisions of §§ 644.84(b) and 644.86(d) are not applicable or can be fully complied with without the use of an Offer to Sell. Pages 1 and 2 of ENG Form 2970, containing the terms and conditions of the acquisition, are standard and need no modification. The tract of land in which the particular easement will be acquired will be described in Exhibit ''A,'' and the easement estate will be set forth in Exhibit ''B'' to ENG Form 2970. Division Engineers are authorized to approve deviations in ENG Form 2970 in all cases where the easement does not cost more than $500: *Provided*, That any deviation from the estates listed in Figure 5–6 of ER 405–1–12, must have the prior approval of DAEN-REA. When easements are being acquired from a vendor from whom fee is also being acquired, ENG Forms 42 and 2970 may be combined into one instrument in order to complete the entire acquisition as one transaction.

(2) In the acquisition of easements for rights-of-way for access roads, utility lines, etc., which cross or encroach upon rights-of-way or property of railroad companies, public utility companies, cities, counties and States, ENG Form 893, License for Installations Upon Right-of-Way, may be accepted, at the discretion of the Division or District Engineer, provided it is determined that such companies, municipalities, counties, or States are not vested with authority to convey a perpetual easement and the granting of a license under the conditions recited in ENG Form 893 will protect the interests of the United States and grant sufficient use of the right-of-way or land for project purposes. Normally a license of this nature should be obtained

for a nominal consideration. Occasionally it will be necessary to provide for the payment of a small fee to cover the licensor's engineering and administrative expenses. In such cases, the consideration for the granting of a license will not exceed $100. In cases where the licensor demands a consideration equal to the appraised value of the right to be acquired, consideration will be given to the acquisition of a perpetual easement by condemnation, if the licensor is not vested with authority to grant such an easement.

(3) The description of the tract over which an easement is being acquired should be prefaced by terminology similar to that of ENG Form 42 which makes the tract inclusive of the abutting owner's interest in contiguous roads and other easements, if any.

(4) Offer assemblies will be prepared, accepted, and distributed in the same manner as provided for fee acquisition, except that ENG Form 3422, Notice of Acceptance of Offer to Sell Easement, will be used.

(d) *Payment.* After acceptance and distribution of the offer assembly and the acquisition is ready for closing, payment will be made.

(e) *Cancellation of contracts.* If, for any reason, it is necessary to cancel a contract for acceptance by the Government of the Offer to Sell, the cancellation will be effected by using ENG Form 1572, Agreement for Mutual Cancellation of Contract. Upon execution of this agreement by the landowner and the Division or District Engineer, or the Chief of the Real Estate Division, distribution of the original and copies of the agreement will be the same as for the accepted Offer to Sell.

(f) *Transfer of tracts from purchase to condemnation.* If, at any time in the course of acquisition by purchase, it becomes apparent that acquisition by purchase will involve substantial delay or cannot be accomplished, action will be taken to acquire the land by condemnation.

(g) *Acquisition of land by donation.* (1) In cases where the acquisition of real property has been authorized and approved by donation, ENG Form 42, Offer to Sell Real Property, or ENG Form 2970, Offer to Sell Easement, will be entered into setting forth the terms and conditions of the donation and conveyance to the United States.

(2) The offer, when approved and accepted, will be distributed in accordance with paragraph (b)(2) of this section.

(3) Title clearance and closing of donation cases are processed in the same manner as any other fee or easement acquisition.

(h) *Vacation of property by landowners and tenants*—(1) *Notice to landowners.* From the inception of the project, landowners and tenants will be instructed to notify the Division or District Engineer or Real Estate Project Manager, in writing, as soon as they vacate their property; to turn in their keys whenever possible in order that the buildings may be kept under lock; and to keep the Division or District Engineer or Real Estate Project Office advised of any changes in address in order to expedite title clearance, payment, closing action, and the distribution of funds in condemnation proceedings. Landowners and tenants will be informed that, in order to protect their interests, they should not move from their property and that the Government will not require them to surrender possession until:

(i) They have received notice of acceptance of an offer granting the Government the right of immediate possession; or

(ii) They have been served notice of the filing of a condemnation proceeding by which the Government has obtained the right of possession.

(2) *Complete appraisals prior to vacation.* Where an offer is accepted or a declaration of taking is filed, the individual tracts will have been surveyed and appraised. In condemnation proceedings for possession, there may be cases in which individual tract surveys and appraisals will not have been completed at the time the condemnation proceeding is filed. In such cases, landowners and tenants will not be required to surrender possession, and buildings and improvements will not be removed or destroyed in the conduct of construction work, until individual appraisals have been completed and photographs have been procured.

(3) *Inspection of property.* (i) As soon as a landowner or tenant gives notification that he is vacating his property, or as soon as this information is obtained from any other source, the District Engineer will immediately have a member of his staff make a personal inspection of the property and execute ENG Form 1567, Report on Vacation of Property. The inspection will be made with a view of determining whether all buildings, improvements, and crops on the land to be acquired, as listed in the appraisal report, are still on the land and in substantially the same condition as they were on the date of the appraisal.

(ii) Where buildings, improvements, and crops have been removed under a reservation in the offer, an appropriate entry will be made in paragraph (3) of ENG Form 1567.

(iii) Where buildings, improvements, and crops have been removed or destroyed in the conduct of construction work on the project, an appropriate entry will be made in paragraph (3) of ENG Form 1567.

(iv) It will be determined whether or not the land is wholly unoccupied and vacant and whether there is evidence of present use thereof for farming and other operations.

(v) The original report will be retained in the real estate project files. The second copy will be held for the use of the closing attorneys on purchase cases, or for the use of the local representative of the Department of Justice in condemnation cases.

(i) *Public relations.* One of the most difficult problems encountered in the real estate activities of the Department of the Army, particularly from a public relations standpoint, is that of the sudden dislocation of families, tenants as well as owners, and the relocation of these families. Special attention, therefore, will be given to their problems.

(j) *Payment of relocation assistance and acquisition.* Public Law 91–646 provides for reimbursement of certain expenses incurred by owners and tenants who are displaced as the result of Federal and federally-assisted programs. Payment of relocation assistance benefits and certain costs incurred by the vendor in transfer of title to the Government and certain litigation expenses incurred by the owner is provided for under that Act.

§ 644.88 Other acquisition.

(a) *Acquisition from other Federal departments and agencies*—(1) *Transfers.* Transfers will be obtained from other Government agencies after issuance of real estate directives. Muniments of title will be obtained from the transferring agency, if possible, and be forwarded to HQDA (DAEN-REP) WASH DC 20314, with the original transfer letter or document. Title 10 U.S.C. 2571 authorizes transfer of real property within the Department of Defense (10 U.S.C. 2662).

(2) *Permits.* Upon receipt of a proper request from an authorized command, service or agency, Division or District Engineers and the Chiefs of the Real Estate Divisions are authorized to obtain, accept, and renew permits from other Government departments or agencies for the temporary (five years) use of land (except public domain for Air Force) and buildings. The use of over 500 acres of public domain land must have prior approval by the Assistant Secretary of Defense (MRA&L) pursuant to Department of Defense Directive 4165.12.

(b) *Withdrawal of public domain lands and right-of-entry permits for temporary use.* (1) Withdrawal of public domain lands will be necessary if a site is selected for construction and/or there is a continuing military use. Except in time of war, withdrawals in excess of 5,000 acres for military use must be by authority of an Act of Congress (Pub. L. 85–337, 43 U.S.C. 156).

(2) Requests for withdrawal of public domain land will be made to the appropriate State or Regional Supervisor of the Bureau of Land Management (BLM), Department of the Interior, by the Division or District Engineer, pursuant to 43 CFR part 295, as soon as a real estate directive is issued.

(i) If use the of land is needed promptly to meet a construction deadline or for other use, the request for withdrawal will contain this information, and the BLM supervisor will be requested to expedite submission of his report to BLM in Washington, and to

publish the proposed withdrawal in the FEDERAL REGISTER as soon as possible.

(ii) A copy of the request will be forwarded to HQDA (DAEN-REA) WASH DC 20314 (with a copy to HQ, USAF (PRER), WASH DC 20330, on Air Force projects), with request for assistance in obtaining issuance of the Public Land Order in time to meet construction or military use deadline.

(3) Pursuant to authority of 43 U.S.C. 416, requests for withdrawal of public domain lands may also be made to the appropriate State or Regional BLM Supervisor by the Division or District Engineer for the reservation of those public domain lands which will eventually be required for authorized Civil Works projects, in order to proceed with planning phase work and to prevent adverse private entry thereon. Such action will permit administrative jurisdiction to remain with the present Government agency for continued utilization not in conflict with the eventual purpose of the project. A copy of the request will be furnished to DAEN-REA.

(4) If a withdrawal is requested, the BLM supervisor cannot grant a permit to use the area; however, permits can be obtained for survey and exploration purposes, since these do not involve construction or military use of the land.

(5) Necessary rights-of-way will be obtained under the authority of section 507, Pub. L. 94–579, approved October 21, 1976.

(c) *Acquisition of outstanding rights on public domain*—(1) *Acquisition of possessory rights to mining claims.* (i) Upon issuance of a real estate directive to extinguish outstanding mining interests in the public domain, and notification that the Bureau of Reclamation (BLM) has withdrawn the public domain from appropriation under the public land laws and the public mining and leasing laws, the Division or District Engineer will, if necessary to obtain possession for construction or other project purposes, recommend to the Chief of Engineers the filing of a complaint in an eminent domain proceeding, based on a perimeter description of the project, and the obtaining of an order of immediate possession. Thereafter, the Division or District Engineer will promptly determine the possessory mining claims within the area withdrawn, and he is authorized to acquire such claims for either a nominal sum or an amount not to exceed the combined estimated costs of obtaining a detailed appraisal report and having the validity of the claim investigated by the BLM. This authority is limited to $1,000 per claim.

(ii) If an offer to settle is made on the basis provided in paragraph (c)(1)(i) of this section, and is not satisfactory to the possessory mineral owner, the Division or District Engineer will request the BLM to investigate the validity of the claim. In such case, under Comptroller General Decision B-143921, the District Engineer is authorized to make an agreement with the BLM for reimbursement of the following:

(A) Examination of the claim itself and assembling of the evidence to support the claim of invalidity.

(B) The presentation of the evidence, the cross-examination of witnesses for the mining claimant and other related expenses (subpart A).

(iii) The Corps of Engineers is not authorized to reimburse the BLM for hearing of the evidence and the rendering of the decision as to the validity of the mining claim.

(iv) If determined to be valid, claims will be appraised and an offer will be made to the owner at the approved appraised value. BLM is authorized to determine value of the claims and the Division or District Engineer may wish to arrange with BLM to perform this service on a reimbursable basis. In the event the offer based on the approved appraisal is not acceptable to the owner, and a reasonable settlement cannot be effected by negotiation, the Division or District Engineer will forward a report to HQDA (DAEN-REA) WASH DC 20314 with recommendation as to whether the claim should be acquired by declaration of taking or be left outstanding. Those cases in which occupants were dispossessed under the order of immediate possession, referred to in paragraph (c)(1)(i) of this section, will be given priority attention in all phases of the procedure set out herein, including preparation and submission of declaration of taking assemblies in appropriate instances.

(2) *Acquisition of grazing rights.* (i) Grazing rights in the public domain are granted pursuant to the provisions of a series of Congressional acts commonly referred to as the Taylor Grazing Act, 43 U.S.C. 315 *et seq.* Section 315q of this Act provides as follows:

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

It is emphasized that payments under this section are administrative; further that this section applies only to military projects.

(ii) Upon issuance of a real estate directive to acquire or terminate grazing rights in the public domain or other property owned or controlled by the United States and notification that the Government department controlling such lands has granted a right-of-entry or transferred the lands to the Departments of Army or Air Force, the Division or District Engineer will initiate action to acquire or terminate such grazing rights as authorized by the real estate directive.

(iii) Appraisals will be prepared in accordance with subpart B and the guidelines set forth in Comptroller General Decision No. B-132774, dated October 9, 1957.

(iv) Discussions with landowners concerning acquisition of a ranch unit will be conducted in accordance with the procedures for fee acquisition.

(v) Offers will be prepared, accepted, and distributed as provided in § 644.87.

(vi) Title procurement and title clearance relating to the acquisition of title to any fee lands within the ranch unit will be the same as in any other fee acquisition. In preparing title evidence covering leasehold interests, a search of the records will be made by the Division or District Engineer Office and ENG Form 909, Attorney's Preliminary Certificate of Title, will be prepared. In connection with the search of the records, it should be noted that Federal grazing privileges may be pledged or encumbered with mortgages.

(d) *Acquisitions under provisions of relocation contracts.* (1) When land or interests therein, including subordination of minerals, required for project purposes are acquired under the provisions of relocation agreements negotiated in accord with Section 73, ER 1180–1–1, it will be necessary to procure title evidence covering such land and interests. If the value of interests so acquired is not otherwise determinable for compliance with § 664.84, said value will be determined by the Division or District Engineer by means of a memorandum appraisal to be retained in the tract file. While this type of acquisition does not involve the closing procedure set forth in § 644.70, so much of the title assembly described as is applicable, plus an executed or certified true copy of the relocation contract, will be used in the examination and approval of the title. The disposition of final title assemblies will be governed by § 644.71.

(2) The procedures described in §§ 644.81 through 644.88 do not apply to the extinguishment of outstanding rights, including subordination of easements and similar interests, under the provisions of relocation contracts, as differentiated from the acquisition of land or easements, or the subordination of oil, gas, and other mineral rights, to be utilized for project purposes.

(e) *Acquisition by exchange*—(1) *Military.* The authority to acquire land by exchange for military projects is provided in 10 U.S.C. 2672, and in the Military Construction Authorization Act passed each year. As an example sections 601 and 702, Pub. L. 95–82, August 1, 1977, the Military Construction Authorization Act, 1978, provides in part, that ''the authority to acquire real estate or land includes authority to make surveys and to acquire land, and interests in land (including temporary use), by gift, purchase, exchange of

Government-owned land, or otherwise.'' Title 10 U.S.C. 2662a–4 provides that a transfer of real property owned by the United States to another Federal agency or another military department or to a state must be reported to the Committees on Armed Services if the estimated value of the property is more than $50,000. A prerequisite to any acquisition by exchange is authority for the acquisition.

(2) *Civil works.* The authority to exchange land or other Government property for private lands or property in execution of an authorized river and harbor or flood control work or improvement is found in 33 U.S.C. 558b and 558b–1.

(3) *Coordination with the Office of Management and Budget (OMB).* OMB requests that each proposal to use Government-owned property in a land acquisition exchange be cleared with the appropriate Associate Director of OMB. Disposal actions where exchange through the authority of the General Services Administration or specific legislation is envisioned will be cleared with OMB prior to filing a disposal report pursuant to 10 U.S.C. 2662. A draft letter to the Associate Director, Office of Management and Budget will be submitted to HQDA (DAEN-REA) WASH DC 20314 stating the requirement for the new acquisition, the description of the property to be excessed, its estimated fair market value, and a justification for the exchange of that property as constituting its highest and best use. OMB clearance will be required before disposal reports outlining exchange proposals are filed with the Congress.

INVOLUNTARY ACQUISITION BY THE UNITED STATES

§ 644.101 General.

This Section describes procedures of the Corps of Engineers relating to the involuntary acquisition of land and interests in land on the basis of a physical appropriation or use by the United States. It is applicable to all Division and District Engineers having real estate responsibilities.

§ 644.102 Examples of involuntary acquisitions.

While the Secretary of the Army and Secretary of the Air Force have no authority to acquire interests in real property except under express authorization and appropriation made by Congress, the Government may, nevertheless, in the performance of an authorized act involuntarily acquire an interest in real property, for which the owner is entitled to just compensation. Whenever a plaintiff successfully prosecutes litigation which establishes that an interest in real property has been taken, the interest so taken should be confirmed in the form of a grant, wherever possible. The instrument should be recorded in the public land records and permanently retained in the real estate files, as evidence of the interest taken and as a protection against possible future claims of purchasers for value without notice. No employee or representative of the Corps of Engineers shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his property, as prescribed by Pub. L. 91–646. Examples of involuntary acquisition are:

(a) Damage to real property caused by flooding, saturation, seepage, erosion, or other causes arising out of the construction, operation, or maintenance of an authorized project.

(b) Damage as a result of overflights of aircraft.

(c) Other instances where Government actions result in a restriction of the use of property.

§ 644.103 Litigation Reports.

In those cases where a landowner files suit alleging that the Government took his property or an interest therein, a litigation report should be furnished in accordance with ER 1180–1–1. Litigation reports will be submitted in quadruplicate in cases involving military installations, and in triplicate in cases involving civil works. District and Division Engineers will furnish an additional copy direct to the local United States Attorney in actions in a United States District Court. In addition to the information required by ER