

CHAPTER 8

REAL PROPERTY ACQUISITION POLICIES AND PROCEDURES

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CHAPTER 8

REAL PROPERTY ACQUISITION POLICIES AND PROCEDURES

SECTION I - GENERAL

1. APPLICABILITY

a. This chapter prescribes Department of the Navy (DON) policies and procedures regarding the acquisition of land and related interests by purchase or donation. In this regard, no commitments regarding the acquisition of real estate may be made before obtaining the required approvals as set forth in **P-73, Chapters 2 and 3**.

b. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 has significant applicability to this chapter. Therefore, the Facilities Engineering Command (FEC) is encouraged to consult the Office of Real Estate Services of the Federal Highway Administration* regarding any issues that may arise about the interpretation of the Act. Further guidance can be found at [reference \(b\)](#). The FHWA and FEC counsel can offer guidance on the Act's accompanying House Report No. 91-1656 entitled, "A Report to Accompany S.1, Committee on Public Works, House of Representatives, 91st Congress, Second Session, December 2, 1970."

*<http://www.fhwa.dot.gov/realestate/index.htm>

2. REFERENCES

- (a) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601-4655
- (b) Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs (49 C.F.R. pt. 24)
- (c) 10 Comp. Gen. 320
- (d) 37 Op. Atty. Gen. 356 (1933)
- (e) Order No. 1 440-70 of the Attorney General, dated October 2, 1970, titled

Regulations of the Attorney General Promulgated in Accordance with the Provisions of Public Law 91-393, Approved September 1, 1970, 84 Stat. 835, An Act to Amend Section 355 of the Revised Statutes, As Amended, Concerning Approval by the Attorney General of the Title to Lands Acquired for and on Behalf of the United States and for Other Purposes

- (f) 40 Op. Atty. Gen. 431 (1945)
- (g) 28 Op. Atty. Gen. 413
- (h) 10 U.S.C. § 2664
- (i) 10 U.S.C. § 2684a
- (j) SECNAVINST 11011.47B 12 Jan 2009
- (k) DODI 4165.71
- (l) 10 U.S.C. § 2852

As used in this chapter, "property" refers to real property unless the context states otherwise.

3. ACQUISITION POLICY

a. The annual Military Construction (MILCON) Acts and other express legislation authorizes DON to acquire property. However, the actual process for acquisition of property is governed by [reference \(a\)](#), which also guides some of the Navy's property acquisition policies. Central to these policies are the following principles:

(1) The necessity of treating all property owners in a fair and consistent manner;

(2) Emphasis on voluntary purchase of property through negotiations with the owner;

(3) Offering to purchase the property at a price the Navy considers to be just compensation, established through an approved appraisal of the fair market value of the property as detailed in **P-73, Chapter 16**;

(4) Providing specific relocation assistance, payments, and services to eligible persons who are displaced from their property as a result of a Navy acquisition project. The amount of the relocation assistance and payments may not be deducted from the acquisition price of the property being acquired; and

(5) Occupants will not be required to relinquish possession of property without their consent unless payment has been made to the parties in interest under a purchase contract, or a Declaration of Taking has been filed in a condemnation proceeding and the Government's estimate of just compensation is deposited into court.

b. (1) Under [reference \(a\)](#), DON also has an obligation to provide suitable replacement housing that is decent, safe, and sanitary, to eligible displaced persons. Further, DON must ensure that those persons are fully informed at the earliest time prior to actual displacement. Thus, under no circumstances should a person be required to move from a dwelling, assuming a replacement dwelling is available, or to move his/her business or farm operations, without at least 90 days advance written notice of the required move date. A sample notice is included in paragraph 24.

(2) A relocation plan must also be in place containing eligibility information, payments, and other relocation benefits. The focus of the relocation plan or program is to leave the owner or tenant in the same relative position after the acquisition as before.

c. Encroachment Protection Agreements

When used in this subparagraph, "agreement" refers to the agreement described in 10 U.S.C. § 2684a(a).

(1) DON may enter into an agreement with an eligible entity or entities (EE) described in [reference \(i\)](#) to address the use or development of real property in the vicinity of, or ecologically related to, a DON installation or DON airspace for purposes of:

(a) Limiting any development or use of the property that would be incompatible with the mission of the installation; or

(b) Preserving habitat on the property in a manner that is compatible with environmental requirements, and may eliminate or relieve current or anticipated environmental restrictions that would or might otherwise restrict, impede, or otherwise interfere, whether directly

or indirectly, with current or anticipated military training, testing or operations on the installation.

(c) The agreement must provide for the acquisition by the EE of all right, title, and interest in and to any property, or any lesser interest in the property that may be appropriate for purposes stated in [reference \(i\)](#), and the sharing by the United States and the EE of the acquisition costs as outlined in subparagraph (f).

(d) Property or interests may not be acquired under the agreement unless the owner consents to the acquisition.

(e) If the Secretary of the Navy (SECNAV) determines that there is a demonstrated need to preserve or restore natural resources, he/she may enter into an agreement for the management of that habitat on acquired property or related interest or right and for payment by DON of all or a portion of the management costs.

(f) SECNAV determines the appropriate portion of the acquisition costs to be borne by the United States in the sharing of the acquisition costs under subparagraph (c).

(1) The portion of acquisition costs borne by the United States **may not** exceed an amount equal to the fair market value of any property, interest, or right to be transferred to the United States under subparagraph (f) (except as provided for in this paragraph), OR the cumulative fair market value of all properties or interests that will be transferred to the United States under paragraph 5 of reference (i). DON's portion of those costs may exceed that fair market value if SECNAV gives the House and Senate Armed Services Committees written notice with his/her certification that the military value to the United States justifies a payment in excess of fair market value, and DON's contribution is not made until at least 14 days after the date on which the notice is submitted, or, if earlier, at least 10 days after a copy of the notice is given by email.

(2) The contribution of an EE to the

acquisition costs may include, with the approval of SECNAV, all or any combination of the following:

- (m) Providing funds, including funds received by the EE from a Federal agency outside the Department of Defense, or a state or local government in connection with a governmental program.
- (n) Performing in-kind services, including services related to the acquisition or maintenance of the property, interest, or right.

(3) The exchange or donation of property or a related interest or right.

(g) The agreement must require the EE to transfer to the United States, upon request of SECNAV, all or a portion, of the property or interest or right acquired under the agreement. SECNAV must limit that transfer request to the minimum property, interest, or right necessary to ensure that the property concerned is developed and used in a manner appropriate for the purposes stated in [reference \(i\)](#).

(h) SECNAV may accept on behalf of the United States any property, interest, or right to be transferred to the United States under the agreement.

(i) For purposes of the acceptance of property or interests under the agreement, SECNAV may accept an appraisal report or title documents prepared or adopted by a non-Federal entity as satisfying the applicable requirements of [section 301 of reference \(a\)](#) 42 U.S.C. § 4651, or [40 U.S.C. § 3111](#), if SECNAV finds that the appraisal report or the title documents substantially comply with the requirements.

(j) The authority to acquire property or any interest or right also includes the authority to support the purchase of water rights from any available source when necessary to support or protect the mission of the installation.

(k) SECNAV may require additional terms and conditions in the agreement that he or she considers appropriate to protect the interests of the United States.

(l) Funds available for operation and maintenance (or research, development, test, and evaluation funds, in the case of an installation operated primarily with those funds) may be used for the purposes described in this paragraph.

(m) 31 U.S.C. §§ 6301-6308 regarding the use of procurement-type contracts does not apply to any agreement under [reference \(i\)](#).

(n) Not later than March 1, 2007, and annually thereafter, SECDEF must, in conjunction with SECNAV, submit to the House and Senate Committees on Armed Services a report on the projects undertaken through encroachment agreements.

d. Major Acquisition Moratorium. Under reference (k), no major land acquisition proposals within the Washington, DC area may be made public through (1) a request for proposals; or (2) a notice of intent to perform environmental analysis; or (3) a request for legislation or budget line item; or (4) press release; or (5) other official notice without the approval of the SECDEF or the DEPSECDEF. All previously approved or announced major land acquisitions within the Washington, DC area for which binding documents have not been executed, as of 17 November 2002, may not proceed until approved by the SECDEF or the DEPSECDEF, after review by the Under Secretary of Defense (Acquisition, Technology, and Logistics) (USD (AT&L)). In addition, no major land acquisition proposals outside the Washington, DC area may be made public, in the manner stated above, without the approval of the USD (AT&L).

(1) Additionally, no proposals for relocating into or within the Washington, DC area that exceed \$500,000 in relocation costs may be made public in the manner stated above without approval by the SECDEF or the DEPSECDEF. All previously approved or announced relocations that have not occurred as of 17 November 2002 may not proceed until approved by the SECDEF or the DEPSECDEF, after review by the USD (AT&L).

(2) The DODI defines a major land acquisition as the purchase, withdrawal from public domain, lease or permit from individuals or government entities, or any other type of use agreement involving more than 1,000

acres, or land whose estimated purchase price or annual lease price exceeds \$1,000,000. The Washington, DC area is defined generally as the geographic area within 100 miles of the Pentagon.

(3) Exceptions. By memorandum dated 28 Jul 2005, the Under Secretary of Defense stated that the acquisition of a negative, non-possessory easement under 10 U.S.C. §2684a does not constitute a major land acquisition as defined in this paragraph 3. Also, renewal of existing withdrawals, leases, permits, or other use agreements other than those at bases being closed or realigned are not subject to the moratorium.

(e) Exception or Reservation of Mineral Title or Interests. At the time NAVFACENGCOM approves the property acquisition, a determination will have been made whether mineral title or interests can or should be acquired, excepted, or reserved. Base negotiations upon that approval and conduct them in accordance with procedures outlined in paragraph 12. FEC counsel must review for legal sufficiency any deviation from the approved exceptions and estates.

SECTION II - PROPERTY ACQUISITION PROCEDURES

4. AUTHORITY TO NEGOTIATE

The FEC will initiate negotiations for the acquisition of property in MILCON and MCNR programs upon receipt of appropriate authorization and program assignments (funds). In no case should negotiations with the owner begin before the receipt of a current appraisal report, reviewed and approved according to **P-73, Chapter 16**, and preparation of the report of the relocation assistance program/plan as discussed in paragraph 5.

5. REPORT ON RELOCATION ASSISTANCE

The FEC will prepare a report on its relocation assistance plan under [section 205 of reference \(a\)](#) (42 U.S.C. § 4625) before beginning negotiations in any project involving the displacement of any "person" (as defined). In the report, set forth the plan of action and relocation

assistance advisory services that the FEC will provide in carrying out the requirements of 42 U.S.C. § 4625. Also include the determination of availability of replacement housing. This determination cannot be made by another agency, but facts and recommendations developed by the other agency may be used in making a determination.

**6. AUTHORITY TO EXECUTE AGREEMENTS FOR PURCHASE
REAL OF PROPERTY**

a. The FEC is authorized under [reference \(j\)](#) to execute agreements on behalf of the Government for the purchase of real property where the purchase price does not exceed the approved appraised value. However, the FEC may consider an owner's counteroffer that exceeds the approved appraisal. In that event, the FEC is authorized to consummate the acquisition at the owner's counteroffer purchase price if that purchase price does not exceed the appraised value by 15%.

b. In determining the limit of authority for accepting owner's counteroffers, do not include the salvage value of improvements reserved by the landowners in the amount of the counteroffer. Also, where timber or crops are involved, use their full value in determining the limitation of authority.

c. Recommendations for counteroffer acceptance that the FEC considers reasonable, but cannot accept within the limitations stated in paragraph a. above should be submitted to NAVFACENCOM for consideration. The submission will consist of the forwarding correspondence and the Negotiator's Report, together with any additional material that supports the recommendation. The additional material will include a signed copy of the Agreement for Purchase of Real Property or a written statement from the owner setting forth his/her offer, and a copy of all appraisal reports with review attached.

d. MILCON acquisitions require **both** a specific authorization **and** a specific appropriation by Congress. Do not proceed with an acquisition unless and until both of these requirements have been met. (See paragraph 15(k) of this Chapter.)

7. DISQUALIFICATION OF NEGOTIATORS

Any negotiator having an interest in a parcel included in an acquisition project, or a relationship to the owner of any parcel, will be disqualified for that particular project. Any negotiator having an interest in a corporation owning lands or interest in lands within an acquisition project will be disqualified as to negotiations with that particular corporation.

8. INSTRUCTIONS TO NEGOTIATORS

a. Before initiating negotiations with owners and tenants, the FEC will provide the negotiator with instructions for negotiations to be conducted for the specific land acquisition project under consideration. The FEC will instruct the negotiator that he/she is not under compulsion to obtain agreements for the purchase of real property. The FEC will establish a reasonable time within which negotiations must be completed and establish an amount it considers just compensation for inclusion in the statement to the owner (see paragraph 24). The amount the FEC considers as just compensation will never be less than the approved appraised value, and, except in unusual cases, the amount will not exceed the approved appraised value.

b. The senior FEC real estate officer, in consultation with the action proponent as appropriate, will issue specific instructions concerning generally acceptable reservations from the owner, such as the right to harvest crops, remove improvements, and the time during which the owner may retain possession.

9. APPRAISAL REPORTS AND TITLE EVIDENCE

It is the responsibility of the senior FEC real estate officer to review with the negotiator, the staff reviewing appraiser, and with other personnel that he/she considers necessary, all of the appraisals obtained as well as the Toxic and Hazardous Waste Study. Any questions concerning the suitability of the appraisals should be resolved at this time. The senior FEC real estate officer will also review title evidence with the negotiator, FEC counsel, and other personnel, when necessary to determine the exact status of the title and parties in interest with whom to

conduct negotiations. Any deviation from the approved Land Planning Report must be consistent with the property interests or estate stated in the [DD Form 1391](#) submitted to the Congress. In the Agreement for Purchase of Real Property, set forth exceptions or reservations of rights that the vendor may retain without interfering with the construction or operations of the project. Also set forth in the Agreement for Purchase of Real Property any other outstanding rights, subject to which the Government is acquiring title, held by third parties.

10. INSPECTION OF THE PROPERTY

a. The negotiator will make a physical inspection of the parcel involved, including any visible improvements, with the consent of, or preferably in the presence of, the owner or owner's representative. The inspection is made to assure that the appraisal report covers the exact property to be acquired, that improvements have not been removed or destroyed, and that nothing has occurred to enhance or decrease the value of the property since the date the property was appraised. The senior FEC real estate officer may waive this requirement on small unimproved tracts where negotiation will be done by telephone or mail, or in other cases warranted by the facts.

b. The negotiator, upon completion of the inspection, must deliver a written report containing the inspection results to the senior FEC real estate officer. This report will also include a statement concerning any evidence of possession not disclosed by either the appraisal reports or by the title evidence. In particular, the report must state whether there is any merchantable timber on the property, and the appraisal must treat this fact accordingly. The negotiator is required to report the results of the inspection even if there are no changes to report. If the inspection discloses that the improvements have been removed or destroyed or that something has occurred to enhance the value of the property, such as the construction of additional improvements, the senior FEC real estate officer will obtain a new or revised appraisal or appraisals.

c. If the inspection discloses an error in the appraisal report concerning the number and type of improvements or in the physical characteristics of the

land, the senior FEC real estate officer will ask the reviewing appraiser to contact the appraiser to correct the error or oversight before initiation of negotiations.

11. COORDINATION WITH OTHER FECs AND NAVAL COMPONENTS

The senior FEC real estate officer and the negotiator will coordinate their plans for negotiations with other FEC and Naval components, as required. This action will assist in scheduling construction and establishing dates on which owners and/or the tenants must surrender possession to the Government. The FEC will also determine whether any of the improvements located on the land are required by the Government. By doing so the negotiator will not permit the reservation to the owners for offsite removal of any improvements that the Government may require. A similar determination should be made before allowing the reservation of any rights to the owner to remove timber or minerals from the land being acquired.

12. CONDUCT OF NEGOTIATIONS

a. After taking all the preliminary steps, the negotiator will contact the owner to begin negotiations. He/she will then deliver to the owner a statement similar to that in paragraph 24, setting forth the initial offer. In the event the initial contact is made by telephone, due to time or distance considerations, advise the owner that the statement will be delivered by mail. Explain to the owner the Government's requirement for the land and improvements, if any, the amount of land it requires, and the estates to be acquired. Also explain the terms and conditions of the Government's purchase agreement form. The Negotiator's Report will contain a statement that the owner was advised of those matters.

b. Give the owner a copy of a map indicating the boundaries of that portion of his/her land to be acquired. Where the entire ownership is not being acquired, or where different estates are being acquired in the same ownership, the map should specify the estates in each area.

c. Conduct negotiations in a fair and courteous manner. The negotiator must not resort to coercion or threats of condemnation proceedings. Advise owners and

tenants of possible benefits to them under resettlement procedures and inform them that written notification of those procedures will be given at the time of acquisition, either by purchase or condemnation. The negotiator will make a notation on the Negotiator's Report to the effect that he/she has so informed the owner and/or tenants of the provisions of [reference \(a\)](#). The possibility of receipt of benefits under this legislation will not be used in bargaining for the purchase or lease of property or in attempting to effect settlement of condemnation proceedings.

d. When the owner operates more than one parcel as a unit, the appraisal and negotiations should treat the parcels as a unit. Values for parcels that are in the same ownership, but which are not operated as a unit, unless the owner desires otherwise, should be negotiated separately based on separate appraisals. Apply the limitations of authority to accept counteroffers as stated in paragraph 6 to the entire transaction. Where a satisfactory agreement cannot be reached after full consideration of all the reasonable counteroffers received, take action to acquire the property by a condemnation proceeding, including the filing of a Declaration of Taking. This action will make funds available to the owner and maintain the acquisition schedule.

13. OWNER'S EXPENSE

The negotiator will explain to the owner what sums out of the agreed purchase price will be paid to him/her and what further expense he/she will have to incur to complete the conveyance. To this end, the owner should be made fully aware of his/her obligation to discharge all liens and other legal encumbrances against the property and of what items may be reimbursable to him/her by the Government.

14. SURRENDER OF POSSESSION TO THE GOVERNMENT

a. Where the acquisition is made in fee, it is Navy policy to plan its requirements for possession of property to allow owners adequate time, consistent with military requirements, to complete an orderly vacation of the property and, in the case of farm lands, allow maximum

opportunity to harvest growing crops. Generally, possession is surrendered to the United States at the time the deed of conveyance is delivered to the Government and the purchase price is paid to the vendor, provided that the 90-day notice to vacate the property required by [reference \(a\)](#) was issued in time to support a request for possession at the time of closing of title. An exception to this rule of immediate possession at closing may be granted to permit an owner or tenant to remain in possession for a reasonable period to harvest growing crops, provided that military requirements can be met. In all other cases, follow the outleasing procedures in **P-73, Chapter 19** to deal with the period of possession reserved by the owner for his/her use and benefit.

b. Sometimes acquisitions for MILCON involved restrictive covenants. In these cases, there is no need for the owner or his/her tenant to surrender possession of the property.

15. RESERVATIONS AND OUTSTANDING INTERESTS AND RIGHTS IN THIRD PARTIES

a. Background

(1) As a general principle, it is not permissible to acquire title by purchase subject to reservations, restrictions, conditions, and/or terms **that restrict the Navy's essential uses of the land**. (See [reference \(c\)](#)). The reason for this is when the United States acquires land by purchase, it is bound by any terms in the deed that limit use of the property to a specific purpose, or imposes a condition that may defeat the Government's title, ([reference \(d\)](#)). (Conversely, and for informational purposes, the attorney general has issued regulations allowing acquisition of a defeasible title by purchase or donation, provided that no permanent improvements were erected by naval entities on the site ([reference \(e\)](#)). Further, the attorney general has approved acquisitions of title subject to reservations of timber, minerals, and easements that, in the judgment of the acquiring agency, would not interfere with the land's contemplated use ([reference \(f\)](#)). In this regard, the Certificate of Non-Interference required in **P-73, Chapter 6, paragraph 10**

would serve this purpose. Approval of title would still be subject to the attorney general's or his/her delegatee's review.)

(2) On the other hand, building restrictions, codes, and ordinances affecting private property acquired for Government use have been held not to be binding on the Government.

(3) With this background in mind, the essential point to remember is that acquisition by purchase or donation of private property having reservations may be allowable by the attorney general, or his/her delegatee authorized to approve title, provided that the reservations do not, in the opinion of the Navy, interfere with or restrict the Navy's contemplated use of the land.

b. Use of Terms.

(1) When the Government acquires title subject to outstanding interests and rights, the Agreement for Purchase of Real Property must differentiate among:

(a) rights or interests in third parties acquired in the past, generally referred to as outstanding rights in third parties, and;

(b) rights or interests the vendor is reserving (see subparagraph 3 of this paragraph).

(2) Set forth in a numbered attachment to the agreement the rights outstanding in third parties, other than those specified in Paragraph 9(a) of the General Provisions of the Agreement for Purchase of Real property. Also set forth in a numbered attachment to the Agreement, the exceptions to title and any reservations of rights that the vendor may retain without interfering with the construction or operation of the project.

(3) When reading this and subsequent paragraphs, keep in mind the legal distinction between an "exception" and a "reservation." An exception is a retention of existing title to land, improvements, minerals, or crops, while a reservation, as noted above, is a creation of a right in favor of the owner at the time of conveyance.

c. Acquisition Subject to Public Highways, Roads, and Utilities. Agreements for the Purchase of Real Property will be taken subject to outstanding rights for public highways, roads, power lines, pipelines, and other utilities. If it is determined that the existence of any of the above will interfere with the Government's use of the property, relocate or extinguish them as stated in **P-73, Chapter 3.**

d. Acquisition of Mining Claims. For the purchase of possessory interests in unpatented mining claims, mill sites, or tunnel rights, DD Form 1034 and [NAVFAC Form 7-11011/15](#) will be forwarded for issuance of the check. The check will be delivered to the vendor at the time the disclaimer or quitclaim deed is executed. No contract will be executed. The [NAVFAC Form 7-11011/15](#) will be retained by the disbursing officer.

e. Exception of Crops, Timber, and Buildings. Exceptions of crops, timber, buildings, and other improvements, together with the right to remove them during a specified period, will not be permitted without the express approval of the Activity Commander.

f. Restrictions on Reservations or Exceptions. Do not negotiate agreements for the purchase of property that contain reservations or exceptions by owners or that are subject to outstanding third-party rights that may interfere with the proposed use for which the land is being acquired. **In no case should an agreement for purchase be negotiated in which a former owner reserves the right to repurchase the property, or undertakes to convey the property subject to those rights to repurchase in a third party.**

g. Exception of Growing Crops. A conditional exception of growing crops is encouraged to avoid waste and to conserve funds whenever there is a possibility that possession of the property will not be required before the harvest season.

(1) Where an exception of growing crops is permitted, insert the following clause in the agreement:
"Excepting the growing crops located on the above described

land on or before _____. In the event the crops have not been harvested on or before that date, ownership to them shall terminate in the vendor and title to them shall automatically vest in the United States without notice to the vendor. In the event the Government requires possession prior to that date, the compensation based on the value of the crops on the date the Government takes possession will be paid to the vendor."

(2) Normally, the appraisal report of the property will not include an estimate of the fair market value of the growing crops. In the event the appraisal report does include an estimate of the value of the growing crops, conduct negotiations on the basis that: (1) the consideration to the Government for the reservation of growing crops will be an amount not less than the appraised value of the crops, and (2) that amount will be deducted from the purchase price at the time of preparation and execution of the Agreement for Purchase.

h. Tenants Interest in Growing Crops. Make every effort to have the owner and tenant agree on the value of the tenant's interest. Obtain an appropriate document disclosing that both parties agree to the payment of the tenant's interest from the purchase to be paid for the property. This procedure will not only protect the tenant but also provide a method for extinguishing rights that the Government is legally bound to recognize. Where a tenant wishes to reserve crops, both the owner and tenant must agree to the amount to be deducted from the purchase price for the reservation, if the value of such crops is included in the appraisal as set forth in subparagraph g. If the appraisal report does not include the value of the growing crops, no monetary consideration need be stated for this reservation.

i. Exception of Buildings and Improvements. Title to buildings and improvements may be excepted, and the right reserved to remove them, by the vendors where the FEC Commander, or his/her delegatee, the Asset Management Business Line Coordinator, or the Installation Commander, or his/her delegatee, the Public Works Officer, has determined that they will not be needed for project purposes. The consideration to the Government in this case

must not be less than its appraised salvage value. Deduct the amount from the purchase price at the time of preparation and execution of the Agreement for Purchase of Real Property.

(1) Where an exception of buildings and improvements is permitted, insert the following clause in the Agreement for Purchase of Real Property: "Excepted from the conveyance is the ownership in the vendor of the (description of buildings and improvements taken from the appraisal report), together with the right to remove (it)(them) on or before _____. In the event that the buildings and improvements have not been removed on or before that date, the exception of ownership shall be null and void, and good and indefeasible title to the buildings and improvements shall vest in the United States without notice to the vendor. In the event the Government requires possession prior to that date, compensation based on the appraised value of the buildings and improvements will be paid to the vendor."

j. Removal of Buildings, Improvements, Crops after Acceptance of Agreement for Purchase. If owners make their desire known to remove buildings or improvements or to harvest crops after an Agreement for Purchase of Real Property has been accepted on behalf of the Government, but prior to closing of title, the agreement may be modified if it is in the best interest of the Government to do so.

k. Acquisition of Less than Fee Simple. **Reference** (1) authorizes a military department to acquire an interest in land less than fee simple for military construction on if a Certificate of Title is obtained from the Attorney General and SECNAV determines that the interest to be acquired in the land is sufficient for the purposes of the project.

16. ACQUISITION OF MINERAL TITLE AND INTERESTS

Where it is determined that the mineral ownership or any interests outstanding in third parties must be acquired or extinguished, make those arrangements during negotiations. If the owners of the surface and subsurface are agreeable, acquire the separate titles in a single

transaction by an appropriate clause in the purchase agreement. If this method is used, the purchase price in the agreement will include both the surface and subsurface title or interests.

17. SURFACE AND SUBSURFACE TITLE AND INTERESTS ACQUIRED SEPARATELY

When the owners of surface and subsurface title or interests are not agreeable to acquisition by a single transaction as discussed above, title to the surface rights and the subsurface rights outstanding in third parties may be acquired in separate transactions. The purchase agreement for the acquisition of the surface estate will provide for the conveyance of all interests of the owner in and to the subsurface interests and will be made "subject to" the subsurface title or interests outstanding in third parties. In these cases, deduct the approved appraised value of the outstanding subsurface rights from the total appraised value of the parcel. If an acceptable agreement with either the owner of the surface or subsurface title or interests can be reached, acquire that title or interest by direct purchase. Then acquire the remaining title or interest, either surface or subsurface, by direct purchase or condemnation.

18. RELINQUISHMENT OR LIMITATION ON THE RIGHT TO EXPLORE AND DEVELOP

In cases where it is decided not to acquire mineral title or interests, and it is found that the exercise of subsurface ownership or interests will interfere with the purpose of the property acquisition, reach an agreement with the owner or interest holder(s). This agreement should require the owner or interest holder to relinquish all rights to enter upon the property and all rights to explore, develop, or remove the minerals. Enter into this agreement only when it a financial advantage will accrue to the Government; otherwise, acquire the title or interests separately or jointly with the surface estate as set forth above. If it is found that the title or interest holder can exercise its rights or can remove the mineral(s) by "slant" drilling without interference with the purposes of the property acquisition, then an agreement may be made with the title owner. The agreement will define the terms

and conditions under which those rights may be exercised. FEC counsel should review the agreement for legal sufficiency.

19. RESERVATION OR EXCEPTION OF TIMBER

a. Permit the exception of timber by vendors or the acquisition of land subject to timber deeds or leases (together with a reservation of the right to remove timber) only with the express approval of the FEC Commander, or his/her delegatee, the Asset Management Business Line Coordinator, or the Installation Commander, or his/her delegatee, and the Public Works Officer. Wherever there is timber present in merchantable size and quantity, the appraisal report will state the value of the timber as a separate item. The deduction for the reservation of timber or for a timber deed or lease that will remain outstanding will be based on the appraised value of the timber. Handle exception of timber in substantially the same manner as that prescribed for the exception of buildings and improvements in sub-paragraph 15.i.

b. Where an exception for timber is permitted, insert the following clause in the Agreement for Purchase of Real Property: "Excepting the ownership of all timber, together with the right to cut and remove the same on or before _____, in accordance with the Disposal Plan attached to this Agreement. In the event the timber is not removed on or before that date, the ownership in the vendor shall become null and void and right of removal shall terminate, and title to the timber shall vest in the Government without notice to the vendor. In the event the Government requires possession prior to that date, compensation based on the appraised value of the remaining timber will be paid to the vendor."

20. ACQUISITION OF TENANT'S INTEREST IN IMPROVEMENTS

Reference (a) requires that in the acquisition of any interest in property, at least a like interest will be acquired in all buildings, structures, or other improvements. The interest of the respective parties should be appraised separately, and the resulting values used in negotiations. Once a value has been agreed to with

each party, obtain an appropriate document evidencing that agreement and disclosing that both agree to the payment of the tenant's interest from the purchase price to be paid for the property. In the event an agreement cannot be reached with both the owner and tenant, acquire the property by condemnation.

21. REPORT OF THE NEGOTIATOR

The negotiator will, in all cases, make a complete written record of the negotiations concerning each parcel or ownership as appropriate by means of a Negotiator's Report. This record will state the chronological history of negotiations, together with all elements considered in evaluating the owner's final counteroffer. It will also state the recommendation for acceptance or rejection of the counteroffer and the justification for that recommendation. In the event it is necessary to acquire property through condemnation, include copies of these reports in the condemnation assembly to be submitted to NAVFACENGCOM.

SECTION III - PROPERTY ACQUISITION AGREEMENTS

22. PREPARATION AND EXECUTION OF AGREEMENT FOR PURCHASE OF REAL PROPERTY

a. Form of Agreement to be Used. [NAVFAC 11011/14](#) "Agreement for Purchase of Real Property" (the "Agreement") is required in all fee acquisitions.

b. Preparation of the Agreement. Follow directions printed on the form when preparing the Agreement. Particular attention to the following is required:

(1) Changes or inter-delineations in the printed portions of the Agreement are not permitted unless reviewed by the FEC counsel.

(2) Prepare the description of the land contained in the Agreement according to the requirement of **P-73, Chapter 3.**

(3) Direct attention to sub-paragraph 15 regarding exceptions and reservations and outstanding rights in third parties. No exceptions or reservations of

any interests will be incorporated in any Agreement unless subsequently reviewed by the FEC counsel.

(4) In any case where it is considered necessary to deviate from [NAVFAC 11011/14](#), the FEC counsel must review the Agreement.

c. Execution of the Agreement

(1) State the vendor's name in the Agreement exactly as it appears on record and show his/her marital status. The vendor and spouse, if any, will be required to sign the original of the Agreement and two copies.

(2) A corporation, general partnership, limited partnership, limited liability company, fiduciary, or any person other than an individual owner, must have attached to the original and each copy of the Agreement satisfactory evidence of the authority to act for the owner.

(3) Extra sheets may be attached to the Agreement, including a full and accurate legal description or terms and conditions of the Agreement concerning reservations, exceptions, or outstanding rights in third parties. These additional sheets must be securely attached, identified, and initialed by all parties signing the agreement.

(4) Accurately state in the Agreement the name and address of the person or persons to whom notice of acceptance is going to be sent. In addition, obtain the address where the land owner can be located after he/she vacates the property, if different from the address to which the notice is to be sent.

d. RP Contract Number and Accounting Data. Write the appropriate RP Contract Number and Accounting data on the original and each copy of [NAVFAC 11011/14](#), "Agreement for Purchase of Real Property," the "Notice of Exercise of Option to Purchase Real Property," and the "Agreement for the Purchase of Easements." Accounting data need not be shown on the vendor's copy.

e. Acceptance of the Agreement. After the enactment of the authorization and appropriation legislation and

receipt of all approvals, NAVFACENGCOM will allocate funds to the FEC for acquisition of the real estate chargeable to the specific program assignment. The FEC will then execute an "Agreement for Purchase of Real Property," [NAVFAC 11011/14](#), or execute a "Notice of Exercise of Option to Purchase Real Property."

f. Distribution of the Accepted Agreement. When the Agreement and an "Agreement for Purchase of Easement" have been fully executed, the FEC will distribute as follows:

| | |
|-----------------|--|
| Signed Original | FEC Files |
| Signed Copy | Vendor |
| Signed Copy | The code having cognizance over management of MILCON project funds |
| Conformed Copy | FEC FM |
| Conformed Copy | Command(FEC/ Installation) |

Additional copies of the Agreement may be made and distributed to meet local requirements. Distribute the signed copy to the vendor by certified mail and also include, if appropriate, the forms necessary in connection with the processing of appeals under **P-73, Chapter 12**.

g. Cancellation of the Agreement. If, during an acquisition, it becomes necessary to cancel the Agreement after acceptance by the Government or after the exercise of an option, the FEC will prepare a form of agreement. The agreement will contain a mutual release of all the obligations of the parties to the agreement and without the payment of consideration. Upon execution of this agreement by the parties, make distribution in the same manner as in the case of the distribution of the accepted Agreement.

23. ACQUISITION OF LAND BY DONATION

In cases where the acquisition of property by donation has been authorized and approved, enter into an Agreement or other form of appropriate agreement, setting forth the terms and conditions of the donation and conveyance to the United States. Title clearance and closing of donation cases are processed in the same manner as any fee or

easement acquisition. (For information purposes, it should be noted that the attorney general has stated that, "In instances where the estate in lands was a donation to the United States. . .it has been held that legislative authority was not required." (See [reference \(g\)](#)) The FEC should consult with counsel concerning the applicability of this opinion to a donation it wishes to consider in view of the "express" legislative authority requirement for land acquisitions contained in [reference \(h\)](#).

SECTION IV - RELOCATION STATEMENT FORMAT/FORMS

24. Format of Statement Under [reference \(a\)](#)

1. **Owner:**

2. **Parcel No.:**

[Reference \(a\)](#) requires that each owner of property to be acquired by the Government be given a written statement of, and summary of the basis for, the amount established as just compensation.

"Under established law the criteria for just compensation is fair market value, which is defined as:

The amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold by a knowledgeable owner, willing but not obligated to sell to a knowledgeable purchaser who desires, but is not obligated, to buy. In ascertaining that figure, consideration should be given to all matters that might be brought forward and reasonably be given substantial weight in bargaining by persons of ordinary prudence, but no consideration whatever should be given to matters not affecting market value.

In preparing the appraisal report, the appraiser considered the highest and best use for which the property was adapted. He/she concluded that the highest and best use of your property was for _____ purposes.

(If appropriate) The law is well established that if

only a part of the property is taken, the just compensation must include not only the value of the part taken, but also any diminution in the value of the remainder caused by its severance from, and the use to be made of, the part taken.

(If appropriate) It is well established that the law permits offsetting benefits, in partial takings, that are due to a public project. Benefits to the remaining property because of a public improvement are deductible from the entire compensation for the acquisition to the extent that they actually increase the market value of the remaining property immediately after the acquisition.

Your property has been appraised by (an independent contract appraiser(s)) and/or (a staff appraiser(s)) who is(are) well qualified to prepare the appraisal(s). He(they) is(are) knowledgeable of the local real estate market conditions and has(have) made a thorough investigation of sales of comparable properties. The appraisal(s) has (have) been reviewed by qualified staff personnel. Based upon all factors, the amount established as just compensation for the purchase of your property is \$_____.

(If appropriate) Enclosure (1) is a summary of the appraised value for your information.

Project _____

Parcel _____

Value Before (Entire Property) \$

Value After (Remainder) \$

Value of Acquisition \$

Broken down as Follows:

Value of part taken \$

Severance Damages \$_____

Total \$_____

(90 day notice to vacate, if appropriate)

You are hereby notified that it is the intention of the government to acquire the above identified property, and that the Government will require possession of the property ninety days from the date this notice is delivered to you, namely, _____. In the event the Government determines not to acquire the property, or the date possession will be required is extended, you will be promptly notified. You will not be required to surrender possession of the property prior to payment of the purchase price that may be agreed upon, or deposit in court for your benefit of an amount not less than Navy's approved appraisal of the fair market value of the property."

25. AVAILABILITY OF FORMS

Refer to the forms system for the Agreement, [NAVFAC 11011/14](#), and Negotiator's Report, [NAVFAC 11011/20](#).