

accomplished by obtaining a use permit, or if the land is desired permanently, then by transfer under applicable legislative authority. In the absence of such authority, a permit is obtained pending enactment of special legislation by the Congress. Public domain land under the Department of the Interior may be withdrawn and set aside for the use of the Department of the Army by Executive order or a Public Land Order.

(4) *Lease.* The negotiation of leases for river and harbor and flood control purposes must be approved by the Chief of Engineers or his duly authorized representative.

TEMPORARY USE BY OTHERS OF CIVIL
WORKS REAL ESTATE

AUTHORITY: Sections 211.5 through 211.9 issued under R.S. 161; 5 U.S.C. 301.

SOURCE: 13 FR 8748, Dec. 30, 1948, unless otherwise noted.

§211.5 Temporary use; how granted.

There are three methods by which the temporary use of real estate under the control of the Department of the Army may be granted: Lease, easement and licenses, or permit.

§211.6 Rights which may be granted by the Secretary of the Army in river and harbor and flood control property.

(a) *Leases.* (1) The Secretary of the Army is authorized, whenever he shall deem it to be advantageous to the Government, to lease such real property under the control of his Department as is not surplus to the needs of the Department within the meaning of the act of October 3, 1944 (58 Stat. 765), and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. Each such lease shall be for a period not exceeding five years unless the Secretary of the Army shall determine that a longer period will promote the national defense or will be in the public interest. The Secretary of the Army may include, among other terms and conditions in the lease, a right of first refusal in the lessee to purchase the

property in the event of the revocation of the lease in order to permit sale thereof by the Government, but this shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law. Each such lease shall contain a provision permitting the Secretary of the Army to revoke the lease at any time, unless he shall determine that the omission of such provision from the lease will promote the national defense or will be in the public interest. In any event each such lease shall be revocable by the Secretary of the Army during a national emergency declared by the President. Notwithstanding section 321 of the act of June 30, 1932 (47 Stat. 412; 40 U.S.C. 303b), or any other provision of law, any such lease may provide for the maintenance, protection, repair, or restoration by the lessee, of the property leased or of the entire unit or installation where a substantial part thereof is leased, as a part or all of the consideration for the lease of such property. In the event utilities or services shall be furnished by the Department of the Army to the lessee in connection with any lease, payments for utilities or services so furnished may be covered into the Treasury to the credit of the appropriation or appropriations from which the costs of furnishing any such utilities or services to the lessee was paid. Except as otherwise provided in this paragraph, any money rentals received by the Government directly under any such lease shall be deposited and covered into the Treasury as miscellaneous receipts. The authority granted in this section shall not apply to oil, mineral, or phosphate lands (10 U.S.C. 2667).

(2) The Chief of Engineers, under the supervision of the Secretary of the Army, is authorized to construct, maintain, and operate public park and recreational facilities in reservoir areas under the control of the Department of the Army and to permit the construction, maintenance, and operation of such facilities. The Secretary of the Army is authorized to grant leases of lands, including structures or facilities thereon, in reservoir areas for such periods and upon such terms as he may deem reasonable: *Provided*, That leases to non-profit organizations may

be granted at reduced or nominal rentals in recognition of the public service to be rendered in utilizing the leased premises: *Provided further*, That preference shall be given to Federal, State, or local governmental agencies, and licenses may be granted without monetary considerations to such agencies for the use of all or any portion of a reservoir area, when the Secretary of the Army determines such actions to be in the public interest, and for such periods of time and upon such conditions as he may find advisable. The water areas of all such reservoirs shall be open to the public use generally, without charge, for boating, swimming, bathing, fishing, and other recreational purposes, and ready access to and exit from such water areas along the shores of such reservoirs shall be maintained for general public use, when such use is determined by the Secretary of the Army not to be contrary to the public interest, all under such rules and regulations as the Secretary of the Army may deem necessary. No use of any area to which this section applies shall be permitted which is inconsistent with the laws for the protection of fish and game of the State in which such area is situated. All moneys received for leases or privileges shall be deposited in the Treasury of the United States as miscellaneous receipts. (Sec. 4, act of December 22, 1944, 58 Stat. 887, 889, as amended by sec. 4, act of July 24, 1946, 60 Stat. 641, as amended by Sec. 209, act of Sept. 3, 1954, 68 Stat. 1266.)

(b) *Easements*. (1) The Secretary of the Army is authorized to grant easements for rights-of-way across real estate acquired for civil purposes as follows:

(i) *Poles and wires*. The Secretary of the Army may grant easements for rights-of-way, for periods not exceeding 50 years, for poles and lines for the transmission and distribution of electrical power, and for poles and lines for telephone and telegraph purposes, over lands under his jurisdiction, upon a finding that the same is not incompatible with the public interest (see act of March 4, 1911; 36 Stat. 1253, as amended by the act of May 27, 1952, 66 Stat. 95; 43 U.S.C. 961). Form of easement is ENG Form 1360.

(ii) *Pipelines*. The Secretary of the Army may grant easements for rights-of-ways for gas, water, and sewer pipelines across lands under his control provided that such grants will be in the public interest and will not substantially injure the interest of the United States in the property affected thereby (10 U.S.C. 2669). Form of easement is ENG Form 1361.

(iii) *Other easements*. The Secretary of the Army is authorized and empowered, under such terms and conditions as are deemed advisable by him, to grant easements for rights-of-way over, across, in and upon acquired lands under his jurisdiction and control, and public lands permanently withdrawn or reserved for the use of the Department of the Army, to any State, political subdivision thereof, or municipality, or to any individual, partnership, or corporation of any State, Territory, or possession of the United States, for:

(A) Railroad tracks;
 (B) Oil pipelines;
 (C) Substations for electric power transmission lines, telephone lines, and telegraph lines, and pumping stations for gas, water, sewer, and oil pipelines;
 (D) Canals;
 (E) Ditches;
 (F) Flumes;
 (G) Tunnels;
 (H) Dams and reservoirs in connection with fish and wildlife programs, fish hatcheries, and other fish-cultural improvements;

(I) Roads and streets;

(2) *Provided*, That:

(i) Such rights-of-way shall be granted only upon a finding by the Secretary of the Army that the same will not be incompatible with the public interest.

(ii) Such rights-of-way shall not include any more land than is reasonably necessary for the purpose for which granted.

(iii) All or any part of such rights-of-way may be annulled and forfeited by the Secretary of the Army for failure to comply with the terms and conditions of the grant or for the nonuse for a period of two consecutive years or abandonment of rights granted (10 U.S.C. 2668).