



Department of Defense INSTRUCTION

NUMBER 4165.70
April 6, 2005

USD(AT&L)

SUBJECT: Real Property Management

- References:
- (a) DoD Directive 4165.6, "Real Property," October 13, 2004
 - (b) DoD Directive 4275.5, "Acquisition and Management of Industrial Resources," March 15, 2005
 - (c) DoD Directive 5110.4 "Washington Headquarters Services (WHS)," October 19, 2001
 - (d) Executive Order 13327, "Federal Real Property Asset Management," February 4, 2004
 - (e) through (r), see enclosure 1

1. PURPOSE

This Instruction:

- 1.1. Implements policy and assigns responsibility, under reference (a), for managing real property.
- 1.2. Re-delegates various statutory and regulatory authorities and responsibilities relating to real property management.

2. APPLICABILITY AND SCOPE

This Instruction applies to:

- 2.1. The Office of the Secretary of Defense (OSD), the Military Departments (including their Reserve components), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").
- 2.2. All DoD real property holdings except:

2.2.1. Civil works projects (unless relating to mineral exploration and extraction).

2.2.2. The acquisition and management of defense industrial plants that are governed by DoD Directive 4275.5 (reference (b)).

3. DEFINITIONS

3.1. Military Department. In accordance with DoD Directive 5110.4 (reference (c)), for purposes of the Pentagon Reservation, Washington Headquarters Services shall be considered a Military Department and its Director the secretary thereof.

3.2. Predominant User. The DoD Component whose activities comprise the predominant use of an installation, as measured by expenditures for operations, relative number of personnel, using the largest quantity or unit of measured space, and other mission-related metrics.

4. POLICY

This Instruction implements policy established in reference (a) regarding the management of real property.

5. RESPONSIBILITIES

5.1. The Deputy Under Secretary of Defense (Installations and Environment) (DUSD(I&E)), under the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)):

5.1.1. Shall provide additional guidance and procedures, as required, for implementing real property management policy and this Instruction.

5.1.2. Shall serve as the Senior Real Property Officer for the Department of Defense in accordance with Executive Order 13327 (reference (d)). In his or her absence or unavailability, the Principal Assistant Deputy Under Secretary of Defense (Installations and Environment) may represent the Department of Defense on the Federal Real Property Council.

5.1.3. Is hereby re-delegated, with authority to re-delegate, all those authorities and responsibilities delegated or re-delegated, as the case may be, to the USD(AT&L) under subparagraph 5.1.3. of reference (a) that relate to the management (including mineral exploration and extraction) of real property.

5.2. The Heads of DoD Components shall:

5.2.1. Maintain an accurate and current inventory of those real property facilities in which they are the sole user or over which they exercise management responsibility and provide this data to the military department exercising real property accountability for the facility.

5.2.2. Provide inventory and other information requested by the Military Departments to assist them in managing the real property used by the DoD Component.

5.2.3. In accordance with applicable policy, procedures, and guidance, reimburse the costs of the Military Department in managing the real property used by the DoD Component.

5.2.4. Except as otherwise provided by law or unless specified differently in this or other DoD publications, pay all costs, whether direct or indirect, resulting from their use of real property facilities. Such costs include, without limitation, maintenance, repair, construction, environmental compliance, environmental restoration, historic and cultural preservation, security, fire protection, utilities, and demolition/disposal.

5.3. The Secretaries of the Military Departments shall:

5.3.1. Establish programs and procedures to manage real property that conform with applicable law and to the policies, guidance, and procedures provided by and pursuant to reference (a) and this Instruction.

5.3.2. Accurately inventory and account for the real property under their accountability for the purpose of providing the basis for future justifications of capitalization improvements for the real property.

5.3.3. Assign a unique non-intelligent Real Property Unique Identifier, from the Department of Defense Real Property Unique Identifier Registry, to all real property assets. A real property asset is a land parcel or facility. The Real Property Unique Identifier shall be assigned to the real property asset, not the organization, owner, or manager. The Real Property Unique Identifier will be assigned when the Department of Defense acquires a legal interest in the real property asset. The Real Property Unique Identifier will remain associated with the asset perpetually. After the Department of Defense has relinquished all interest in the asset, the Real Property Unique Identifier will be archived along with all the associated attributes.

5.3.4. Assign a unique non-intelligent Real Property Site Unique Identifier from the Department of Defense Real Property Site Unique Identifier Registry, to all real property sites. A real property site is a specific geographic location that has individual land parcels and/or facilities assigned to it. The Real Property Site Unique Identifier will be assigned when the Department of Defense acquires a legal interest in the first real property asset (land parcel or facility) assigned to the site. The Real Property Site Unique Identifier will remain associated with the site perpetually. After the Department of Defense has relinquished all interest in the

site, the Real Property Site Unique Identifier will be archived along with all the associated attributes.

5.3.5. Maintain a program monitoring the use of real property to ensure that all real property holdings under their control are being used to the maximum extent possible consistent with both peacetime and mobilization requirements.

5.3.6. As appropriate, delegate to another DoD Component, for those installations under the management responsibility of that DoD Component, authority and responsibility for some or all management functions other than those reserved to an agency that can hold real property accountability.

6. PROCEDURES

6.1. Planning. Base master plans or comprehensive plans shall be developed for all installations. Such plans shall:

6.1.1. Be developed by the DoD Component having management responsibility for the installation.

6.1.2. Be based on a strategic assessment of the operational mission and expected use of the installation.

6.1.3. Cover at least a 10-year period and be updated every 5 years (more often if necessary).

6.1.4. Include a specific, annual listing of all construction to include military construction, military family housing, nonappropriated fund construction, commissary surcharge construction, appropriated fund construction for a non-DoD agency, and construction privately financed over the time period covered by the plan.

6.1.5. Include a specific, annual listing of all major repair and sustainment projects, as well as restoration and modernization projects needed within the time period covered by the plan.

6.1.6.. Include current and projected peacetime as well as mobilization requirements.

6.2. Outgranting.

6.2.1. Outgrants shall:

6.2.1.1. Always be documented and signed by persons having statutory or actual delegated authority to bind the Government for the outgrant being made.

6.2.1.2. Take the form of any legally authorized outgrant, including, without limitation, leases, licenses, permits, easements, and rights-of-way.

6.2.1.3. Be accomplished by obtaining at least fair market value except when the applicable statute authorizes payment of less than fair market value and accepting less is in the best interest of the Government. If acceptance of in-kind consideration is authorized, consider whether the in-kind consideration, in lieu of cash, would be more beneficial to the Department of Defense.

6.2.1.4. Be compatible with any current or projected military requirements.

6.2.1.5. Encourage multiple and compatible land uses.

6.2.1.6. Reduce maintenance and custody costs to the Department of Defense.

6.2.1.7. Not generate the need for real property acquisitions.

6.2.1.8. Include provisions requiring the grantee to obtain prior written approval before allowing another party to exercise the rights and privileges authorized directly or indirectly by the outgrant.

6.2.1.9. Be consistent with regulations issued by the installation commander governing access pursuant to DoD Directive 5200.8 (reference (e)).

6.2.2. The Military Departments are encouraged to use the enhanced leasing authority under Section 2667 of title 10, United States Code (U.S.C.) (reference (f)), when it is beneficial.

6.2.3. Unimproved lands (e.g., buffer, safety, restrictive, or maneuver areas) or real property may be made available for outgrant when interim usage will not interfere with or will support the purpose for which the Department of Defense holds the real property.

6.2.4. In establishing the terms for leasing property to States, commonwealths, territories, or their political subdivisions for public school purposes specifically limited to school facilities, classroom, and closely related academic uses at the high school level or below for military dependents, the Secretary concerned, after consulting with the Department of Education, may consider actual or potential benefits to the Military Department but should assure full cash reimbursement for maintenance, services, utilities, protection, repair, and restoration costs (including environmental restoration) of the property and related administrative costs. Where bare land is leased for school construction, the acreage shall not exceed criteria established by the appropriate State authority or the Department of Education for the particular type of school. Permits for such purposes may also be issued to the Department of Education at no charge.

6.2.5. All proposed outleasing actions (regardless of grantee or consideration) are subject to the appropriate level of analysis required by the National Environmental Policy Act of 1969 (reference (g)) and implementing regulations.

6.2.6. Applications for outgrants affecting land or water uses in the coastal zone of a State shall include a certification that the proposed activity is consistent to the maximum extent practicable with the federally approved, enforceable provisions of state coastal zone management programs pursuant to the Coastal Zone Management Act of 1972 (reference (h)).

6.3. Retention Reviews. The DoD Components shall periodically review their real property holdings, both land and facilities, to identify unneeded and underused property.

6.3.1. In deciding whether or not to retain real property, the DoD Components shall consider:

6.3.1.1. The property is being used effectively, is necessary to satisfy current or projected peacetime needs, or is needed to meet mobilization or legal requirements.

6.3.1.2. The DoD Component Head has determined that the property is essential to protect future mission flexibility, operational changes, changes in equipment types, mobilization for a national security emergency, or for research or development of future defense or weapons systems.

6.3.1.3. The requirement for the property can be met by using other property at less cost providing equal or better working and operating conditions.

6.3.1.4. The property is used as a buffer zone and is still required for that purpose.

6.3.1.5. The land is an internal parcel and access to it would disrupt installation operations or violate security requirements (although the building or facility may be excess if moved offsite or demolished).

6.3.1.6. The cost of declaring real property excess (because of new fencing, utilities, roads, replacement buildings, decontamination, or other factors) is likely to exceed the market value.

6.3.1.7. The property is affected by security or safety restrictions including quantity safety, distance safety arcs, radiation safety zones, Air Installation Compatible Use Zones, Range Air Installation Compatible Use Zones, potential encroachments, radio interference zones, or specifically designated security areas.

6.3.2. Real property for which there is no foreseeable military requirement, either in peacetime or during mobilization, shall first be offered to the other DoD Components for their possible use.

6.3.2.1. The Military Department that holds real property accountability for the property shall notify the other Military Departments, the Combatant Commands, the Defense Agencies, and the DoD Field Activities of the availability of the property.

6.3.2.2. The DoD Components notified pursuant to subparagraph 6.3.2.1., above, shall have 60 days from the date of notification to advise the holding Military Department of their requirement for the property.

6.3.2.3. If the holding Military Department does not receive, within such 60 days, a firm commitment from another Military Department to take real property accountability for the property or a firm commitment from a Combatant Command, a Defense Agency, or a DoD Field Activity that it requires the property, the holding Military Department may proceed with disposal. A Combatant Command, a Defense Agency, or a DoD Field Activity that is supported by a specific Military Department for its real property requirements shall communicate its requirements through that Military Department.

6.4. Inventory of Real Property. The Military Departments shall keep accurate records of the real property of the Department of Defense under their jurisdiction, custody, and control pursuant to 10 U.S.C. 2721 (reference (i)), and in accordance with DoD Instruction 4165.14 (reference (j)). The Military Department having real property accountability for a joint installation or leased facility will include that property in their inventory data. Real Property administrators, as designated by reference (d), shall be accountable for the following:

6.4.1. Maintaining a current inventory count and up to date information regarding the cost, functional use, status, condition, utilization, present value, maintenance and management, recapitalization investments, and remaining useful life of each individual real property unit in their real property inventory. Department inventory counts and associated information will be current as of the last day of each fiscal year. In accordance with subparagraphs 5.2.1. and 5.2.2., a DoD Component using real property will provide accurate and current inventory information to the accountable Military Department.

6.4.2. A complete detailed inventory will be prepared annually and made available as a reference for use in developing and effectuating DoD policies, plans, and programs.

6.4.3. Accumulating the full cost of maintenance and repair, use, and operation of their real property space, to include all direct and indirect costs.

6.4.4. Computing the unit costs of space maintenance, operation, and utilization based on designated management metrics for space operation, for the purpose of providing unit cost measures to program managers for the formulation and justification of program and performance plans and budgets.

6.4.5. Recovering the full cost of space utilization from Department of Defense and other Federal agencies in accordance with subparagraph 5.2.4., above.

6.4.6. Providing the basis for justifying future costing of real property acquisition or re-capitalized requirements and for justifying capitalization of improvements deemed to be required.

6.5. Priority of Use of Real Property. Military Departments shall use the following priorities when assigning available space on their installations. They may make exceptions to these priorities when they determine it is in the best interests of the Department of Defense to do so.

6.5.1. Appropriated fund activities of the DoD Component serving as host at the installation and non-DoD entities which directly support the host's mission on the installation.

6.5.2. Non-appropriated fund activities of the DoD Component serving as host at the installation.

6.5.3. Other DoD Components and non-DoD entities which support the mission of the DoD Component serving as host at the installation.

6.5.4. Other DoD Components.

6.5.5. Other Federal Agencies whose mission on the installation is closely associated with the national defense mission.

6.5.6. Other Federal Agencies.

6.5.7. Non-Federal governmental entities, with preference given to State governmental entities.

6.5.8. All others.

6.6. Force Protection. All facilities shall attempt to meet the DoD antiterrorism standards in DoD Instruction 2000.16 (reference (k)).

6.6.1. Relocations from leaseholds or otherwise should only be to facilities, whether owned or leased, that meet the standards of reference (k).

6.6.2. Antiterrorism standards shall be a key consideration when evaluating the suitability of a facility.

6.7. Leaseholds.

6.7.1. When possible, each DoD Component shall take prompt action to relocate activities accommodated in leased building space into Government-owned facilities, preferably located on a military installation, and to dispose of excess leaseholds.

6.7.2. Public release of proposals for relocations into or within the Washington D.C. area that exceed \$500,000 in relocation costs requires the prior approval of the Secretary of Defense or Deputy Secretary of Defense in accordance with the Secretary of Defense Memorandum dated November 17, 2002 (reference (l)).

6.7.2.1. Requests for approval shall be submitted to the Director, Washington Headquarters Services, who shall submit such requests to the USD(AT&L).

6.7.2.2. The Washington D.C. area is defined as the geographic area that falls within 100 miles of the Pentagon.

6.7.2.3. Public release includes any public announcement, request for proposals, notice of intent to perform environmental analysis, request for legislation or budget line item, press release, or other official notice.

6.8. Charges for Use of Space. Except as otherwise provided by law or unless specified differently in this or other DoD publications, the host shall assess charges for use of DoD space by other Federal Agencies that ensure full recovery of all direct and indirect costs including, without limitation, maintenance, repair, construction, environmental compliance, environmental restoration, historic and cultural preservation, security, fire protection, utilities and demolition/disposal provided to the tenant agency. Exceptions are:

6.8.1. Real property and related services provided to an organization that solely supports or substantially benefits the installation's mission or enhances the national defense (e.g., the Federal Aviation Administration Air Controller on an air base, the United States Forest Service for timber programs, the National Oceanic and Atmospheric Administration for tidal wave monitoring devices, the Weather Service for weather stations, the Coast Guard for installation harbor protection, the National Aeronautics and Space Administration for space launch support, or the United States Fish and Wildlife Service for preventing transport or introduction of invasive species by military transportation).

6.8.2. Use of DoD land where the activity being conducted on the property significantly benefits or enhances the national defense.

6.8.3. When the income produced by a charge is less than the expense of administering the charge.

6.9. Use of Space for Political Purposes. Installations shall not engage in, nor allow their tenant activities to engage in, activities that could be interpreted as associating the installation with any partisan political causes, issues, or candidates. The DoD Components shall not permit the use of installation facilities by any candidates (either incumbents or new office seekers), members of their staffs, or their campaign representatives for political campaigns, parties, or causes (regardless of sponsorship), press conferences, or any other activity that could be construed as partisan in nature.

6.10. Annexation. Determinations regarding proposals to annex a DoD installation shall be made by the Military Department having real property accountability for the installation.

6.10.1. The Department of Defense will be neutral relative to annexation proposals by a municipality or political subdivision acting in accordance with State law, unless the Secretary

concerned determines that such action would not be in the best interest of the Federal Government.

6.10.2. If the installation host is not also the Military Department having real property accountability for the installation, the installation host shall immediately forward any annexation proposal it receives or becomes aware of to that Military Department.

6.10.3. The Military Department having real property accountability will review the annexation proposal and any associated information and determine whether it should object to the proposal.

6.10.3.1. In those States where State law requires that an annexation proposal receive an affirmative determination from the Department of Defense, the Military Department shall make a determination based on the best interests of the Department of Defense.

6.10.3.2. Factors to be considered include, without limitation, potential extension of taxing authority to private entities on the installation, local zoning implications, and changes in school boundaries.

6.11. Changes in Federal Legislative Jurisdiction. Determinations regarding changes in Federal legislative jurisdiction on a DoD installation will be made pursuant to 10 U.S.C. 2683 (reference (m)) by the Military Department having real property accountability for the installation.

6.11.1. The Military Department having real property accountability for an installation should seek to have a single uniform Federal legislative jurisdiction throughout the installation unless there are compelling reasons to retain differing jurisdictions.

6.11.1.1. Privatized military family housing areas will normally be proprietary Federal legislative jurisdiction, without regard to the status of the supported installation.

6.11.1.2. Lands withdrawn for military purposes from national forest lands will normally retain their existing Federal legislative jurisdiction status without regard to the remainder of the installation.

6.11.2. While it is the general policy of the United States to obtain no more than proprietary Federal legislative jurisdiction over its property, the type of Federal legislative jurisdiction at any particular installation will be determined based on the individual merits of that location.

6.11.3. Before proposing to the State a change in Federal legislative jurisdiction, the Military Department shall consult with the United States Attorney in whose district the installation is located and the General Litigation and Legal Advice Section, Criminal Division, U.S. Department of Justice.

6.12. Maximum Use of Installation Resources. The DoD Components shall promote cross service and joint use of installations and facilities to achieve efficient customer service in overhead, support areas, and common logistical functions.

6.12.1. The predominant user will normally be designated as the host at joint-use installations.

6.12.2. Designations of host that cannot be settled by the DoD Components shall be referred to the DUSD(I&E) for resolution. Designation of host responsibilities involving Reserve components shall be coordinated by the DUSD(I&E) with the Principal Deputy Assistant Secretary of Defense for Reserve Affairs.

6.13. Conservation of Natural and Cultural Resources. All installations shall manage natural and cultural resources, land, and water areas in accordance with DoD Instruction 4715.3 (reference(n)).

6.14. Mineral Exploration and Extraction. The Military Departments shall identify potential minerals and energy resources (e.g., coal, oil, gas, geothermal steam) on DoD lands in accordance with 30 U.S.C. (reference (o)).

6.14.1. DoD property holdings shall be made available for mineral exploration and extraction to the maximum extent consistent with military operations, national defense activities, environmental conservation and protection, and Army civil works activities. Excluded are:

6.14.1.1. Certain hard rock minerals known as locatable minerals.

6.14.1.2. Minerals composed of sand and gravel known as saleable materials.

6.14.1.3. Lands situated within incorporated cities, towns, and villages.

6.14.1.4. Tidelands or submerged lands.

6.14.2. If a commercial oil and gas resource development is discovered near a DoD installation, the installation shall immediately contact the Bureau of Land Management, Department of the Interior, to advise of potential drainage problems. To prevent exploitation of a Government asset, and upon the recommendation of the Bureau of Land Management, the Department of the Interior may lease oil and gas rights under conditions specified by the Military Department concerned.

6.15. Federal Employee Parking at GSA Facilities. The DoD Components shall comply with title 41, Code of Federal Regulations, sections 102-74.265 through 310 (reference (p)) for Government-owned and leased property under GSA control.

6.16. Base Realignment Announcements. At least 30 days before making any public release of information relating to a base closure or realignment under 10 U.S.C. 2687 (reference (q)), a

copy of the closure or realignment information to be publicly released shall be provided to the DUSD(I&E) and the DoD Component concerned.

6.17. Pre-Designation of Facilities for Emergency Requirements. To ensure that the Military Departments have access to sufficient housing, training, and other facilities needed to respond effectively to mobilization surges and other major national emergencies, the Military Departments shall, in accordance with Executive Order 12656 (reference (r)):

6.17.1. Develop plans, programs, and procedures for selecting and pre-designating facilities to meet emergency requirements.

6.17.2. Identify supplemental facility requirements, including the conditions and extent of facility use.

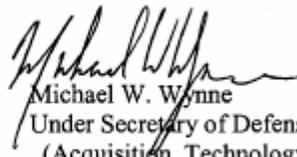
6.17.3. Request facility assignments by applying to the Federal Emergency Management Agency (FEMA) regional director in the area in which the facility is located. The regional director shall coordinate such requests with other Federal agencies and State and local emergency planners and resolve any conflicts in facility designations.

6.17.4. Arrange for formal agreement with a facility owner or operator once FEMA has approved the pre-designation of a facility.

6.17.5. Maintain records on the assignment and planned use of pre-designated facilities to help evaluate emergency preparedness capabilities.

7. EFFECTIVE DATE

This Instruction is effective immediately.


Michael W. Wynne
Under Secretary of Defense
(Acquisition, Technology and Logistics)

Enclosures - 1

E1. References, continued

E1. ENCLOSURE 1

REFERENCES, continued

- (e) DoD Directive 5200.8, "Security of DoD Installations and Resources," April 25, 1991
- (f) Section 2667 of title 10, United States Code
- (g) Section 4321 of title 42, United States Code
- (h) Section 1451 of title 16, United States Code
- (i) Section 2721 of title 10, United States Code
- (j) DoD Instruction 4165.14, "Inventory of Military Real Property," December 21, 1966
- (k) DoD Instruction 2000.16, "DoD Antiterrorism Standards," June 14, 2001
- (l) Secretary of Defense Memorandum, "Land Acquisition and Leasing of Office Space in the United States," November 17, 2002
- (m) Section 2683 of title 10, United States Code
- (n) DoD Instruction 4715.3, "Environmental Conservation Program," May 3, 1996(n)
- (o) Title 30, United States Code
- (p) Part 102 of Title 41, Code of Federal Regulations
- (q) Section 2687 of title 10, United States Code
- (r) Executive Order 12656, "Assignment of Emergency Preparedness Responsibilities" November 18, 1988, as amended