DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

CECW-CO/CEMP-CR

MAR 30 2009

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Non-Recreational Outgrant Policy

1. **Background**. In executing the U.S. Army Corps of Engineers mission, districts receive numerous and diverse proposals for use of lands and waters at Civil Works water resources projects. Nationwide guidance specifically for recreation development on outgranted land was issued on 6 December 2005. No similar nationwide criteria exist to evaluate proposals for non-recreation purposes. Districts have taken different approaches in evaluating these proposals. This has created inconsistencies in the type and scope of use authorized and other conditions related to authorizations, such as mitigation and long term affects on public resources. Past proposals have included a wide variety of activities involving the utilization of public lands and waters, such as roadways, public utilities (power lines, waterlines, intakes and outfalls, natural gas and fuel pipelines, etc.), commercial navigation activities (harbors, barge terminals, mooring cells, etc.), flood risk management or hydropower generation structures, public facilities such as schools, fire houses, police stations, and private residential subdivisions. At times, there may be an interrelationship between recreation and other real estate outgrant proposals (e.g. leases, licenses, easements). In those cases, the intent and philosophy of both policies will be evaluated, along with other applicable statutes, regulations, and guidelines, such as the Corps Environmental Operating Principles. This policy was developed jointly by the Real Estate and Operations Communities of Practice.

2. **Purpose**. The purpose of this guidance is to establish a consistent, nationwide policy that will be applied to evaluate non-recreational real estate outgrant requests for use of Civil Works lands and waters. The Corps intent is to meet legitimate needs for the use of project lands and waters while sustaining our natural resources and protecting authorized project purposes. Depending on specific project legislation, project purposes may include navigation, hydropower, flood risk management, recreation, water supply, and low flow augmentation. Additional statutes can assign mission responsibilities, such as fish and wildlife and endangered species management.

3. **Applicability**. This policy applies to all new non-recreational outgrant requests for use of Corps fee owned lands and waters by the public (Federal, State and local), Indian Tribes, private sector, quasi-public entities, or individuals at Civil Works water resources projects. All requests submitted prior to the effective date of this policy will be processed in accordance with current District policies. Existing outgrants are grandfathered under this policy. Proposals to modify or renew existing outgrants will also be evaluated for policy compliance under this guidance.

All new proposals must comply with Section 9 - Evaluation Criteria, Enclosure 1 - General Outgrant Application Information, and as applicable, Enclosure 2 - National Environmental Policy Act Guidance, Enclosure 3 - Mitigation Guidance, and Enclosure 4 - Additional Guidance For Specific Outgrant Applications. It is recommended that designated corridors be established in Project Master Plans where feasible and new proposals should utilize these corridors where they exist. This policy is not applicable to oil, gas, or mineral exploration or extraction. This policy is also not applicable to the licensing of hydropower facilities by non-federal interests on Corps administered Civil Works Projects. That program is regulated by the Federal Energy Regulatory Commission. However, full compliance with the associated non-federal hydropower requirements defined in ER 1110-1-1454 (Corps Responsibilities for Non-federal Hydroelectric Power Development under the Federal Power Act) is required. Specific guidance for evaluating antenna sitting requests is contained in 41 CFR 102-79.70-79.100. A license, lease, or easement will be issued in association with the request depending on proposed use of the Federal property (i.e. whether a tower or other facilities will be constructed on Federal property; or solely placement of an antenna).

4. **Policy.** The primary rationale for authorizing any future non-recreational outgrant request for use on Corps lands or waters will be one of two reasons: there is no viable alternative to the activity or structure being located on Civil Works land or waters; or, there is a direct benefit to the government. Examples of instances of no viable alternative include but are not limited to: cross-country utilities, pipelines, or roadways that must cross projects, public water intakes, or commercial mooring cells in a navigable waterway. If a proposal meets one of these two criteria, it must be evaluated in light of compatibility with authorized project purposes, compliance with statutory and regulatory requirements, including environmental and cultural resource laws, cumulative impacts, and overall long-term public interest factors. The impacts associated with an individual action or the accumulated impact of a series of actions must not adversely impact the capability of the project to generate the benefits for which the project was congressionally authorized, constructed, and is operated. The Corps shall coordinate and/or consult with American Indian/Alaska Native Governments when reservation lands are involved. Public or private structures or activities that are not dependent on use of, or location on, Civil Works lands and waters, such as schools, fire houses, and hospitals are prohibited unless no viable alternative is proven available. Permanent commercial ventures and private residences are prohibited. Any private exclusive use of Civil Works lands and waters not specifically authorized by ER 1130-2-406 is prohibited.

5. **Consideration.** In most instances, an applicant will be required to pay the fair market value or consideration for use of Civil Works lands and or waters. This consideration may be monetary or non-monetary. However, in-kind consideration is not authorized for leases or licenses granted under 16 USC 460d.

6. **Mitigation.** Mitigation guidelines can be found in Enclosure 3. Wherever possible, applicants requesting use of Corps fee-owned lands or waters generally will be required to mitigate for adverse impacts to ensure that public resources suffer no net loss of value, post-construction. This may include statutory and/or non statutory mitigation actions. However, only

non-statutory mitigation may be waived as defined in Enclosure 3, paragraph 4. Where required, a Mitigation Plan must be prepared and approved by the District Engineer prior to issuance of the outgrant instrument. Approved mitigation plans shall become a condition of and added as an addendum to the applicable real estate instrument.

7. **Administrative Expense.** In addition to consideration and mitigation, the applicant will be required to pay administrative expenses for the outgrant. Administrative cost for the evaluation of any application documents (preliminary, detailed, supporting) will be paid up front and prior to the start of the review process by project and district personnel in accordance with Civil Works Policy Memorandum, "Collection of Civil Works Appropriations," dated 2 October 2008.

8 **Storage Capacity.** By law, every Corps water resource project has designated missions (e.g., flood risk management reduction, hydropower, navigation, water supply, etc). To ensure compliance with law, the Corps is required to maintain the ability to store water to support these missions. The amount of water storage availability for each mission is identified in a congressionally approved Water Allocation Report. Changes to these amounts may not be done without a re-allocation study and an approved amended Water Allocation Report. Proposals that impact water storage availability for any mission will be required to offset the impact. This includes impacts up to the maximum storage of the reservoir (see Definitions Section 8d.).

9. **Definitions.**

a. **Consideration** - The fair market value received for the outgrant (monetary and non monetary, such as in-kind improvements or services). Administrative expenses and mitigation requirements cannot be applied towards consideration. Administrative expenses and mitigation cost are considered as an additional expense to the fair market value of the outgrant.

b. **Designated Corridors** - A parcel of land with fixed boundaries that has been identified in the Project Master Plan or operational management plan as being the preferred location for future outgrants (e.g., public utilities, roadways, pipelines, etc) or proposed modifications to existing outgrants suitable to accommodate compatible types of outgrants.

c. **Freeway** - A road that has controlled access and is designed to link urban areas. Freeways are designed for high volumes of traffic, use grade separations at all intersections, have design speeds of 50-65 miles per hour, and no median access. Freeways include expressways, interstates, and toll-roads.

d. **Maximum Storage** - The total storage space in a reservoir (in acre feet) below the maximum attainable water surface elevation (crest of the dam or top of the flood pool), including any surcharge storage (capacity above the maximum operating level of reservoir).

e. **Operational Management Plan** - A separate document from the Project Master Plan that outlines in detail the specific operation and administration requirements for natural resources and park management consistent with the approved Project Master Plan. Management strategies consistent with authorized project purposes, approved resource use objectives, and land designations will be established in the document. The document will be used as a working tool for the overall management of the project on a day to day basis.

f. **Non-Statutory Mitigation** - The definition of mitigation is broadened to include "all measures necessary to make the Corps project whole." No specific statute may address these actions, yet damages are incurred and appropriate mitigation should be provided. Non statutory mitigation actions may take the form of actions to restore project value, such as replacing trees, soil stabilization, and providing new, relocated, or replacement facilities.

g. **Outgrant** – A document which authorizes the right to use Civil Works lands and waters. It is a written legal document which conveys the right to use Army controlled real property. For the purposes of this policy, an outgrant is typically a lease, license, or easement generally authorized by 16 USC 460d, 10 USC 2667 or 10 USC 2668, and the general administrative authority of the Secretary of the Army (reference ER 405-1-12, Chapter 8 (Real Property Management), AR 405-80 (Management of Title and Granting Use of Real Property), and the forthcoming EC 405-1-80 (Management and Outgrant Programs).

h. **Project Level Representative** – Person responsible for operations at a project or area level, such as lake manager, operations project manager, park manager, resource manager, etc.

i. **Project Master Plan** - A conceptual document guiding Corps responsibilities pursuant to Federal laws and regulations to preserve, conserve, develop, restore, maintain, and manage project lands, waters, and associated resources. The primary goals of a Master Plan are to prescribe an overall land and water management plan, resource use objectives, land use classifications, and associated design and management concepts. The plan addresses all resources including, but not limited to, fish and wildlife, vegetation, cultural, aesthetic, interpretive, recreational, mineral, water, and commercial.

j. **Regional Arterial Road** – A road that links multiple communities within two or more counties, and provides continuous and mostly uninterrupted traffic flow. Regional arterial roads are designed for high volumes of traffic, design speeds of 45-50 miles per hour, and use partially controlled access, grade separation at isolated intersections and limited curb and median access controls to facilitate traffic flow.

k. **Statutory Mitigation** - Statutory mitigation is driven by regulations that require mitigation to correct negative impacts to the environment based on a proposed action. For example, § 33 CFR 320.4(r) and 33 CFR 332 detail the required mitigative actions when wetlands or navigable waterways (e.g., discharge of dredged or fill material into the water) are impacted.

l. **Viable Alternative** – Other lands or waters not under Corps management that meet the intended objective of the proposal. Factors such as cost or the appearance of unused Corps lands or waters will not affect the determination of viability.

10. Evaluation Criteria. All new requests for use or revisions to existing outgrants must be in writing and reviewed by a district team. Generally, the team will at a minimum consist of a Project Level Representative, Real Estate, Operations, and other legal/technical elements as appropriate (Counsel, Engineering, Planning, Regulatory, etc.). Final approval rests with the District Engineer unless such authority is specifically delegated to an appropriate subordinate level to accommodate a minor request. In the rare circumstance that exceptions to this policy may be warranted, proposals for non-recreational use will first be forwarded to the Division Commander. If the review for these exceptions is not resolved at the Division level, as a last resort, the request will be forwarded to Headquarters (CECW-CO-N, CEMP-CR, applicable headquarters Regional Integration Team, and the Director of Civil Works (if needed)) for resolution.

a. Although these evaluation criteria are integral to any land availability determination, the preparation of the Report of Availability (ROA) will follow the processes established in ER 405-1-12, Chapter 8 (Real Property Management), AR 405-80 (Management of Title and Granting Use of Real Property), the forthcoming EC 405-1-80 (Management and Outgrant Programs), ER 200-2-2 (Procedures for Implementing NEPA) and ER 200-2-3 (Environmental Quality-Environmental Compliance Policies). In addition, the evaluation will be consistent with ER 1130-2-540 (Environmental Stewardship Operations and Maintenance Policies), ER 1130-2-550 (Recreation Operations and Maintenance Policies), and ER 1130-2-406 (Shoreline Management at Civil Works Projects).

b. The team will evaluate requests using all of the following criteria:

- Consistent with project purposes
- Viable alternatives to utilization of public lands and waters
- Consistent with complete land use classifications and resource management objectives identified in the approved Project Master Plan (or supplement thereto)
- Consistent with applicable evaluation contained in the enclosures
- In the public interest
- Demonstrated need
- Technical capabilities
- Financial capabilities (consideration, mitigation and administrative expenses)

11. **Implementation.** This policy is effective immediately and supersedes any existing project, district, or MSC policy on evaluating proposed outgrants. This policy will remain in effect until incorporated into appropriate Engineer Regulations. District policies may be developed that supplement this policy in order to further define evaluation roles and responsibilities within the district. However, district policies will not be in conflict with this policy.

FOR THE COMMANDER:

Encls

MERDITH W. B. TEMPLE
Major General, USA
Deputy Commanding General
for Civil and Emergency Operations

GENERAL OUTGRANT APPLICATION INFORMATION
ENCLOSURE 1

1. Preliminary Information – The applicant must provide the preliminary information requested below (a-h) to the Project Level Representative. The initial submission will be evaluated by the Project Level Representative and district team to determine if a proposal is appropriate for location on Government property. Administrative cost for the evaluation of any application documents (preliminary, detailed, supporting) will be paid by the applicant prior to the start (up front) of the review process by project and District personnel, in accordance with Civil Works Policy Memorandum, "Collection of Civil Works Appropriations" dated 2 October, 2008.

a. Identify Applicant:

(1) Name, address, and phone number of applicant. The application must be submitted by the entity to whom the outgrant will be assigned.

(2) Point of contact for processing (e.g. City Manager, Mayor, Commissioner, etc)

b. Describe the structure or facility.

c. Identify the purpose, need and objective (benefits, enhancements, statutory requirements) for the structure or facility.

d. Justify placement of structure or facility on government property. The justification should include a description of all alternative locations and routes that were investigated, including routes and locations off of project lands. The description will also include rationale for why the other alternatives were not selected. Cost factors alone will not affect the determination of viability.

e. State the duration for which the proposed outgrant is requested. Include the duration of the temporary license if one is needed (usually 1 year).

f. Generally describe the location and dimensions of the requested outgrant area to include a preliminary site plan. NOTE: Outgrants should be placed in the footprint of existing project outgrants or within designated corridors where possible.

g. Provide basic construction methods and timeline.

h. Anticipated impacts (environmental, cultural resource, social, etc.).

2. Detailed Information - If upon review of an initial request, the Corps determines that the requested activity may be feasible and will be considered further, the information below must be provided as required. This information will be provided to the Project Level Representative and be evaluated by the district team. Additional information may be requested based on the nature of the proposed activity. A Corps determination will be made as to what environmental documentation is required for the proposed action. Preliminary information concerning administrative fees, consideration and mitigation will be provided to the applicant.

a. **Coordination**

(1) Provide concurrence from third parties who may be affected by the structure or facility (e.g. other existing outgrants)

(2) Provide other agency concurrence regarding legal or regulatory requirements where necessary (e.g. responsible State natural resources and utility entities).

NOTE - A temporary real estate instrument will be required prior to conducting any on-the-ground activities (for surveys, ground disturbance, soil and groundwater testing). An Archeological Resources Protection Act (ARPA) permit may also be required.

b. **Description of Proposal**

(1) Provide preliminary plans and specifications for the proposed outgrant. Include construction areas, if applicable.

(2) Provide a map(s) which includes the following:

(a) A legal description (location, identification of parcel) of the proposal. (reference to a known Corps of Engineers property monument is encouraged). This description can also be provided separately;

(b) The upper guide contours and elevation intervals appropriate to the terrain as applicable, if available;

(c) Identification of the project property line (Federal government property line) in relation to the proposal;

(d) Any structures that will be affected (e.g.: fences, roads, monuments, gates, intake structures, natural and environmental resources, etc.); and

(e) The estimated acreage of the proposed outgrant.

(3) Stake/flag the boundary or centerline of the outgrant if requested

c. **NEPA** - If NEPA documentation is required from the applicant, see Enclosure 2.

d. **Mitigation** – Non-statutory mitigation is generally required for impacted public resources. Mitigation often requires, but is not limited to, wildlife habitat improvement and vegetative plantings on the area of actual disturbance and on additional areas or other forms of restitution. Statutory mitigation may also be required if the proposed work involves applicable statutes, regulations, and guidance concerning impacts of a proposed action. For example, a discharge of dredged or fill material into waters of the U.S typically requires a Section 404 permit (Clean Water Act) and associated mitigation. See Enclosure 3 for additional mitigation guidance.

e. **Storm Water Requirements** – In accordance with State, County and/or local laws, various Districts within the Corps do not allow outgrants for storm water facilities. For those Districts that allow outgrants for storm water facilities, the applicant must also contact the applicable State, County and/or local agency responsible for storm water permits. The applicant must provide documentation of the contact, a Notice of Intent and evidence that a permit is being pursued (if required). In addition, the applicant shall provide a Storm Water Pollution Prevention Plan when required if earth-disturbing activities are to be performed. This plan shall include the means by which erosion and sedimentation will be controlled and monitored to protect the drainage courses.

f. **Storage Capacity** – In general, Corps policy is no net loss of maximum storage capacity. This generally includes calculating amounts of cut and fill which could impact storage capacity.

g. Landscaping and Revegetation - As part of site stabilization and restoration, the applicant in most cases will be required to reestablish vegetation after construction. The applicant must demonstrate that the seed and vegetative plantings proposed for revegetation are native species to the area and not listed as an invasive species on a Federal or applicable State list.

NOTE: Applicants, please review Enclosure 4 for guidance addressing additional requirements for specific types of outgrants.

NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) GUIDANCE
ENCLOSURE 2

For outgrant proposals requiring an Environmental Assessment (EA) the following information is generally required by NEPA. Additional information may be requested depending on the nature of the proposal. An EA facilitates the decision process regarding the proposed action and alternatives. Additional information concerning NEPA can be found at http://ceq.hss.doe.gov/.

NEPA documents may be completed by the Corps or the applicant. If completed by the Corps, the applicant must pay for the expenses incurred prior to the work being initiated. If completed by the applicant, the applicant must pay for the expenses to be incurred by the Corps prior to the Corps review in accordance with Civil Works Policy Memorandum, "Collection of Civil Works Appropriations" dated 2 October 2008.

a. SECTION 1	AUTHORITY, PURPOSE, AND SCOPE provides the authority for the proposed action, summarizes the project purpose, provides relevant background information, and describes the scope of the EA.
b. SECTION 2	ALTERNATIVES examines alternatives for implementing the proposed action.
c. SECTION 3	PROPOSED ACTION describes the recommended action.
d. SECTION 4	AFFECTED ENVIRONMENT describes the existing environmental and socioeconomic setting.
e. SECTION 5	ENVIRONMENTAL IMPACTS OF THE PROPOSED ACTION identifies the potential environmental and socioeconomic effects of implementing the proposed action and alternatives.
f. SECTION 6	MITIGATION PLAN summarizes mitigation actions required to enable a Finding of No Significant Impact for the proposed alternative.
g. SECTION 7	FEDERAL, TRIBAL, STATE, AND LOCAL AGENCY COORDINATION provides a listing of individuals and agencies consulted during preparation of the EA.
h. SECTION 8	REFERENCES provides bibliographical information for cited sources.
i. SECTION 9	APPLICABLE ENVIRONMENTAL LAWS AND REGULATIONS provides a listing of environmental protection statutes and other environmental requirements.

j. SECTION 10	LIST OF PREPARERS identifies persons who prepared the document and their areas of expertise.	
k. APPENDICES	A	Correspondence
	B	Section 404 Permit (if required)
	C	Fish and Wildlife Coordination/Correspondence
	D	Cultural Resources Coordination/Correspondence
	E	Public Comments (if applicable)
	F	Newspaper Public Notice (if applicable)
	G	Other

MITIGATION GUIDANCE
ENCLOSURE 3

1. **Statutory Mitigation.** Statutory mitigation must be done in accordance with applicable statutes, regulations and guidance. Statutory mitigation is generally defined as actions that reduce the severity or intensity of adverse impacts of other actions, to include:

a. Avoiding the impact by not taking a certain action or parts of an action or by moving the project location. Applicants are encouraged to consider avoidance as the preferred mitigation measure.

b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, for example, by adjusting site layout.

c. Rectifying the impact by repairing, rehabilitating, relocating, or restoring the affected public resources.

d. Reducing or eliminating the impact over time by monitoring, maintaining, and/or replacing equipment or structures to prevent future degradation from equipment or structural failure over the life of the action.

e. Compensating for the impact by replacing or providing substitute resources or environments. With the exception of unique habitats under imminent threat of destruction, a mere change in ownership of existing habitat is generally not considered mitigation. Habitat improvement must be implemented in addition to long-term protection of the habitat.

Statutory Mitigation requirements vary somewhat under the environmental laws, regulations, and executive orders. For Corps of Engineers Regulatory Program mitigation guidance see 40 CFR Part 230 "Compensatory Mitigation for Losses of Aquatic Resources", 33 CFR 320.4 paragraph R, and 33 CFR 332. It is recommended that for actions on Civil Works lands and waters that require mitigation under these regulations, the mitigation occur on site where feasible.

2. **Non-Statutory Mitigation**: The definition of mitigation is broadened to include "all measures necessary to make the Corps project whole". Not all of the adverse impacts to a site will be required to be mitigated by a federal statute or regulation, but for outgrants, all adverse impacts must be mitigated unless a waiver is issued (see paragraph 4). The applicant for the outgrant will be advised of the impact and required mitigation. An example of impacts that may not be covered by existing authorities is a proposal that is categorically excluded from NEPA documentation but may still result in the destruction of a small wooded area containing twenty trees. There are no threatened or endangered species or any wetlands involved. Another instance may entail the destruction of 20 campsites resulting from a road expansion. In each case, the impacted resources must be restored or otherwise mitigated.

3. **Real Estate Outgrant Documentation.**

a. Where mitigation is required as a result of an outgrant, it will be addressed as a condition of the real estate instrument. A copy of the mitigation plan, use restrictions, and/or Memorandum of Agreement (MOA) will be included as an attachment to the outgrant document. If a mitigation plan, restrictions or an MOA is required, the outgrant instrument must be modified to incorporate compliance with the terms of the plan, restrictions or MOA as a condition of the outgrant. The outgrant instrument must be modified to incorporate a specific termination clause to address failure to comply with mitigation requirements.

b. In addition, action may also be required under the specific statute(s) that required the mitigation. A clear timetable must also be provided if mitigation requirements extend beyond the execution date of the outgrant agreement. Coordination with the office(s) which are responsible for these requirements must be completed to ensure the requirements are in place before the outgrant document is executed.

4. **Waiver of Non-Statutory Mitigation Requirements**. When only "Non-Statutory Mitigation" is required, the Corps may choose to waive this mitigation requirement in cases where the requested activity will further an authorized project purpose and/or meet a public demand that the Corps is unable to meet. However, the Corps does not have the authority to waive mitigation requirements when such mitigation is required by a law, regulation, or statute.

5. **Responsibility for Expenses.** In most cases, all costs associated with processing the mitigation aspect of the outgrant and initiating and maintaining mitigation requirements over the life of the mitigation action are the responsibility of the outgrant applicant and will be agreed upon and documented in the real estate outgrant instrument. These administrative costs are in addition to the fair market value consideration, if applicable, of the property to be outgranted and any other purely administrative expenses incurred as a result of this outgrant request in accordance with Civil Works Policy Memorandum, "Collection of Civil Works Appropriations" dated 2 October 2008.

6. **Future Ownership and Management of Mitigation Properties**. On-site mitigation should be achieved wherever possible. If on-site mitigation is not possible, off-site mitigation should be undertaken, as follows:

a. Acquisition of Real Property. To the maximum extent possible, any additional lands or other real property interest required to be purchased by the applicant for mitigation purposes will be contiguous with existing project lands or waters. The NEPA decision document will clearly address any requirement for the acquisition of non-statutory mitigation lands. In no instance will the Corps take title to real property prior to receiving approval of the Director of Civil Works. Management of mitigation properties will be accomplished in accordance with 33 CFR 332.7. Typically, a Real Estate Plan (REP) will be prepared to support this type of action. However, there may be circumstances that require the preparation and approval of a Real Estate Design Memorandum (REDM) where acquisition of the land is tantamount to implementation of the project and approval of a decision document is required prior to commencement of the acquisition effort (e.g., some fish and wildlife mitigation projects). In addition, an REDM may

be appropriate when there is a new acquisition requirement for an existing project for which a REDM was previously utilized.

b. Other Mitigation Services.

1) Mitigation services generally consists of restoration, creation, relocation, or improvements of the same type (i.e., three acres of existing wildlife habitat destroyed and replaced with three or more acres of new wildlife habitat lands) to offset the damaged resource base. In other circumstances, it may be more appropriate to accept other types of services (i.e., three acres of existing wildlife habitat destroyed and mitigated by rip rapping 1,000 linear feet of shoreline to protect nearby wildlife habitat). Entering into agreements for the replacement of impacted wildlife habitat with recreation facilities is generally not appropriate.

2) In the absence of specific authority, the Corps may not accept cash in lieu of mitigation services. In some limited instances, however, it is possible for the Corps to directly perform the mitigation work by entering into agreements with states or others and then to be reimbursed by the state or others for such work. Approval from the Assistant Secretary of the Army (Civil Works) (ASA-CW) may be necessary prior to entering into such an agreement. In some cases, a real estate instrument or a management plan may be required in accordance with 33 CFR 332.7 if a land acquisition is part of the mitigation service.

ADDITIONAL GUIDANCE FOR SPECIFIC OUTGRANT APPLICATIONS
ENCLOSURE 4

1. Requirements for Specific Structures and Applicable Legal Compliance - In addition to the requirements listed in Enclosures 1 through 3, the following information may be required as appropriate for specific types of outgrants. This list is not intended to be all inclusive but an illustrative example of additional requirements that exist for specific types of outgrants. The construction, operation and safety of these outgrants will require compliance with all applicable Federal, state, and local laws, codes, and standards. While it is not the responsibility of the Corps to inspect these facilities for safety compliance, the Corps reserves the right to halt the construction and or operation of the structure if a safety issue creates a danger to the life of project visitors or the ability of the Corps to carry out project missions. All of these specific outgrant applications must include a safety point of contact. Also note that the application must be submitted by the entity to whom the outgrant will be assigned.

a. **Electric Power and Communication Lines, and Structures and Facilities for Radio, Television, and other Communication Services**

(1) Specify line heights, voltage, cutoff locations and elevations

(2) Submitted plans must be certified by a state certified professional engineer as being in compliance with the National Electric Safety Code requirements, ER-1110-2-4401, 30 May 97 (Clearances For Electric Power Supply Lines and Communication Lines Over Reservoirs), American National Standard ANSIC2, National Electric Safety Code (NESC), American National Standard ANSI/NFPA 70, and the National Electric Code NEC.

b. **Sewer and Water Lines**

(1) A state certified professional engineer must certify plans as being in compliance with all applicable Federal, State, and local government regulations.

(2) Additional requirements may apply pertaining to flood-proofing and impacts to public resources.

(3) Submit documentation demonstrating coordination with the applicable Corps of Engineers District Real Estate Office concerning the format for water pipeline easements contained in Real Estate Policy Guidance Letter No. 26, Easements to Support Water Supply Storage Agreements and Surplus Water Agreements, 10 June 2008.

c. **Water Intake Structure**

(1) Submit plans and specifications showing any effects on Corps facilities, as well as current and future water volume needs that may impact water storage/surplus water contracts, etc.

(2) Submit documentation demonstrating coordination with the applicable Corps of Engineers District Real Estate Office concerning requirements contained in Real Estate Policy Guidance Letter No. 26, Easements to Support Water Supply Storage Agreements and Surplus Water Agreements, 10 June 2008.

(3) Provide written documentation showing permission has been procured from the water contract holder if required.

(4) Provide approval/permit from appropriate regulatory agency (state/local) if applicable. Also provide water supply contract, authorizing document, or decision document based on statute, for authorizing a water supply intake.

(5) Provide documentation of review and approval from Corps of Engineers Dam Safety Committee

d. **Outfalls (e.g. stormwater, sewage, etc.)**

(1) A copy of the National Pollutant Discharge Elimination System (NPDES) permit must be provided for approval of any outfall that is placed on Corps administered lands and waters. Also furnish any other state/local approvals as applicable.

(2) A plan to prevent erosion, and to prevent litter, trash, and pollutants from being deposited on Corps administered lands and waters must be provided.

(3) Submitted plans must be certified by a state certified professional engineer.

(4) Submitted plans must be in compliance with Project Shoreline Management Plan if applicable.

e. **Major Oil, Natural Gas and Fuel Carrying Pipelines (Under USC 30 Section 185 for pipelines 24"and greater in diameter)**

(1) Disclosure of Ownership - If a partnership, corporation, association, or other business entity applies for an easement, the application shall disclose, where applicable:

(a) Name and address of each partner

(b) Name and address of each shareholder owning 3 percent or more of the shares; the number and percentage of any class of voting shares of the entity; and

(c) Name and address of each affiliate of the entity. If the entity controls the affiliate, include the number of shares and percentage of any class of voting stock of that affiliate; if, however, the affiliate controls the entity, include the number of shares and percentage of any class of voting stock of the entity.

(2) If this information is already on file, and current, in the District Engineer's office, or local Bureau of Land Management or Federal Energy Regulatory Commission offices, references may be made to it; the applicant need not file repetitious disclosure documents with successive applications.

(3) Submit documentation demonstrating coordination with the applicable Corps of Engineers District Real Estate Office concerning requirements contained in Real Estate Policy Guidance Letter No. 27, Issuance of Fuel Carrying Pipelines that are 24 inches or more in diameter, 29 October 2008.

NOTE: For oil, natural gas and fuel pipelines smaller than 24" in diameter, please refer to requirements contained in General Outgrant Application Information (Enclosure 1).

f. **Roads**

(1) Generally, Civil Works lands will only be made available for roads that are considered regional arteries or freeways (See Definitions in the Guidance). All other types of roads, including driveways and alleys, are generally not permitted on these lands. The expansion of existing roads on Civil Works lands will be considered on a case by case basis.

(2) Indicate whether or not Federal Highway Administration funds are being used for this road.

(3) A state certified professional engineer must certify plans as being in compliance with all applicable Federal, State, and local government Regulations.

g. **Telecommunications.** Authorities applicable to issuing outgrants for telecommunication purposes depending on the type of instruments desired are referenced in the Telecommunications Act of 1996, which is codified at 47 USC 332 and implementing regulations are provided in 41 CFR 102-79.70 to 79.100. In addition the applications must be in compliance with forthcoming Engineering Circular 405-1-80 (Management and Outgrant Programs), Section XIX, Procedures for Sitting of Communications Facilities on Army Controlled Lands. Proposals must include documentation to ensure the outgrant would not create the following problems:

(1) Impair, interfere, or degrade the Federal missions of the project or its operations.

(2) Interfere with existing radio frequency (RF) activities.

(3) Documentation of coordination with Federal Aviation Administration (FAA) and/or Department of Defense (DoD) and sitting approval for any proposed telecommunication facility that will be located within proximity to an existing FAA facility or DoD system.

h. **Hydropower facilities.** Any request to construct/develop hydropower facilities will be an unusual request that will be handled on a case by case basis per ER 1110-2-1454 as amended.