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DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
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Regulation
No. 405-1-20

30 September 2013

Real Estate
FEDERAL LEGISLATIVE JURISDICTION AND ANNEXATION

1. Purpose.

a. This Regulation describes the types of legislative jurisdiction and general procedures and responsibilities relates to the acquisition and retrocession of federal legislative jurisdiction over land areas under the control of the Department of the Army (DA).

b. This Regulation also contains procedures for situations where a municipality or another political subdivision of a state seeks to expand its boundaries to include real estate under the control of the DA.

2. Applicability. This Regulation applies to all Divisions and Districts having a real estate mission and real estate responsibilities.

3. Distribution Statement. This regulation is approved for public release; distribution is unlimited.

4. References.


- a. AR 405-20, 21 February 1974, Federal Legislative Jurisdiction
- b. 40 U. S. C. § 3112, Federal Jurisdiction
- c. 10 U. S. C. § 2683, Relinquishment of Legislative Jurisdiction; minimum drinking age on military installations
- d. 40 U.S.C. § 1314(c), Easements-Land Acquired for National Forest Purposes
- e. Pub. L. No. 85-508, 7 July 1958, To provide for the admission of the State of Alaska into the Union

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f. AR 405-25, 21 February 1974, Annexation

g. DoD Instruction 4165.70, 6 April 2005, Real Property Management

FOR THE COMMANDER:



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Colonel, Corps of Engineers
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CHAPTER 1

Federal Legislative Jurisdiction

1-1. Purpose. This section describes the types of legislative jurisdiction and general procedures and responsibilities relating to the acquisition and retrocession of federal legislative jurisdiction over land areas within the United States under the control of the Department of the Army (DA). For more detailed information on the policies, procedures, and responsibilities for the acquisition and retrocession of federal legislative jurisdiction on military installations, see AR 405-20. Federal legislative jurisdiction is not usually ceded over Civil Works property. The U.S. Army Corps of Engineers may deviate from any policy in this regulation as necessary unless required by law or another binding regulation.

1-2. Applicability. This Chapter applies to all Divisions and Districts having a real estate mission and real estate responsibilities.

1-3. General. The term “legislative jurisdiction,” when used in connection with a land area means the *authority* to legislate and to exercise executive and judicial powers within such area. However, regardless of the nature of legislative jurisdiction, the power of the installation commander to enforce Army regulations, the Uniform Code of Military Justice, and federal statutes is not affected.

1-4. Legal Authorities to Acquire and Relinquish Legislative Jurisdiction:

a. Legislative jurisdiction is currently acquired according to 40 U. S. C. § 3112. This statute authorizes the head of a department, agency, or independent establishment of the Government, or other authorized officer of the department, agency, or independent establishment, when considered desirable, to accept or secure custody, or control, consent to, or cession of, any jurisdiction over the land or interest not previously obtained. The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated. It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section.

b. The military departments may relinquish legislative jurisdiction to the State pursuant to 10 U. S. C. § 2683, which states a service Secretary to the Secretary concerned may, whenever considered desirable, relinquish to a State, or to a Commonwealth, territory, or possession of the United States, all or part of the legislative jurisdiction of the United States over lands or interests under his control in that State, Commonwealth, territory, or possession. Such relinquishment may be accomplished:

(1) by filing with the Governor (or, if none exists, with the chief executive officer) of the State, Commonwealth, territory, or possession concerned a notice of relinquishment to take effect upon acceptance thereof, or

(2) as the laws of the State, Commonwealth, territory, or possession may otherwise provide.

c. Pursuant to 40 U.S.C. § 1314(c): In connection with the grant of an easement the executive agency concerned may relinquish to the State in which the real property is located legislative jurisdiction that the executive agency considers necessary or desirable. Relinquishment of legislative jurisdiction may be accomplished by filing with the chief executive officer of the State a notice of relinquishment to take effect upon acceptance or by proceeding in the manner that the laws applicable to the State may provide. This statute does not relinquish jurisdiction automatically with the grant of the easement. If relinquishment is desired, the executive agency and State must use the relinquishment procedure described above.

1-5. Types of Legislative Jurisdiction. There are four types of legislative jurisdiction:

a. Exclusive.

(1) This term is applied when the Federal Government possesses, by whatever method acquired, all of the authority of the State, and in which the State concerned has not reserved to itself the right to exercise any of the authority concurrently with the United States except the right to serve civil or criminal process in the area relative to activities which occurred outside the area. This term is applicable even though the State may exercise certain authority over the land pursuant to the authority granted by Congress in several Federal Statutes *permitting* the State to do so.

(2) Exclusive Jurisdiction insulates the Federal Government from any state or local regulation of the use of U.S. property however; the U.S. loses state or local municipal services, courts, local code inspections. Residents may lose rights based on *domicile*, such as voting, libraries, attendance at local schools, juvenile services, and marriage/divorce.

b. Concurrent. This term is applied in those instances wherein, in granting to the United States authority which would otherwise amount to exclusive legislative jurisdiction over an area, the State concerned has reserved to itself the right to exercise, concurrently with the United States, all of the same authority. DA policy does not favor holding concurrent jurisdiction except in unusual circumstances. See e.g., Pub. L. No. 85-508, the Alaska Statehood Act.

c. Partial. This term is applied in those instances where the Federal Government has been granted, for exercise by it over an area in a State, certain of the State's authority, but where the State concerned has reserved to itself the right to exercise, by itself or concurrently with the United States, other authority constituting more than merely the right to serve civil and criminal process in the area attributable to actions outside the area. For example, the United States is considered to have partial legislative jurisdiction where the State has reserved the additional right to tax private property.

d. Proprietorial (or Proprietary). This term is applied to those instances wherein the Federal Government has acquired some degree of right or title to an area in a State, but has not obtained any measure of the State's authority over the area. In applying this, recognition should be given to the fact that the United States, by virtue of its functions and authority under various provisions of the Constitution, has many powers and immunities not possessed by ordinary landowners with respect to areas in which it acquires an interest, and of the further fact that all its properties and functions are held or performed in a governmental capacity as distinguished from an action performed by a private owner or citizen. In addition, federal land is held and the functions performed thereon are performed in a governmental capacity as distinguished from an action performed by a private owner or citizen.

1-6. Army Legislative Jurisdiction Policy. The Army policy is to acquire only a proprietary interest in land rather than any other degree of legislative jurisdiction except under exceptional circumstances. It is further the policy of the Army to retrocede unnecessary federal legislative jurisdiction to the state concerned. This is particularly applicable to the jurisdiction held over public roads that border a military installation. However, the District must be aware that the policy is being reviewed in light of new security issues – the policy may change to at least require partial.

1-7. Jurisdictional Changes:

a. The Headquarters, Department of Justice, has requested that planned expansions or contraction of legislative jurisdiction over military property may be taken only after consultation with the local United States Attorney. All requests for expansion and contraction of legislative jurisdiction will be referred to the District Counsel for action.

b. The Headquarters, Department of Justice, also requested that its General Litigation and Legal Advice Section of the Criminal Division be consulted before jurisdictional changes occur.

1-8. Jurisdictional Assembly. Whether acquiring or relinquishing jurisdiction, a Jurisdictional Assembly is prepared by the District:

a. District Real Estate prepares an assembly of the following draft documents:

- (1) Map, plat and legal description.
- (2) Description of current jurisdiction.
- (3) Reason for request.

(4) Draft letter to Governor or Executive Officer. If asking the state to cede jurisdiction, the draft letter must contain "acceptance language" to indicate acceptance of jurisdiction on behalf of the U.S. by this filing of the notice of acceptance with the state. See the samples and formats issued by HQUSACE (CEMP-CR) for a sample letter of cession and of retrocession.

(5) A draft Patent or Deed of Cession, if required.

b. District Counsel shall review the entire draft Jurisdiction Assembly for legal sufficiency including compliance with state law. The final Jurisdiction Assembly is forwarded to the Division Chief of Real Estate, who will obtain the review of Division Counsel. The Jurisdiction Assembly is then forwarded to HQUSACE, CEMP-CR, who will perform the a review and obtain the review of HQUSACE, CECC-R. Following legal review, the Director of Real Estate will transmit the final Jurisdiction Assembly to DASA (IH&P), who has retained approval authority.

1-9. Methods for Losing Legislative Jurisdiction. Legislative jurisdiction may be lost by reversion upon noncompliance with a reverter provision in the consent or original cession; by unrestricted transfer to private hands; or by retrocession tendered by U.S. A state acceptance is presumed when terminated through unrestricted disposal or by operation of reverter provision since return was anticipated when the clause was written. Acceptance by the state is not required when retrocession is offered by U.S. under 10 U.S.C. § 2683.

1-10. Recordkeeping:

a. Districts will maintain the record files with all documents evidencing federal acceptance or retrocession of legislative jurisdiction relating to installations or projects. Districts will furnish copies of such documents to The Judge Advocate General or District Counsel for incorporation in the title files of a particular project or installation and will furnish copies to the appropriate installation commander and District Engineer.

b. Each District should have the legislative status on land within its area. The District Counsel must review the jurisdiction in light of laws at the time of the cession and issue an opinion on the status.

c. Districts should also maintain electronic records to ensure timely responses to requests from information from Installations and HQUSACE (CEMP-CR).

CHAPTER 2

Annexation

2-1. Purpose. This Chapter contains procedures for situations where a municipality or another political subdivision of a state seeks to expand its boundaries to include real estate under the control of the DA. For more detailed information on the policies, procedures, and responsibilities regarding Annexation, see AR 405-25.

2-2. Applicability. This Chapter applies to all Divisions and Districts having a real estate mission and real estate responsibilities.

2-3. General:

a. Annexation is the act of adding or joining additional land to the boundaries of a political subdivision of a state. Annexation can be by such entities as a city, town, water, sewer or school districts.

b. Annexation does not alter the kind of federal jurisdiction over the DA land and does not interfere with official Army activities or functions because these lands are protected by federal constitutional immunity (see AR 405-20). Nevertheless, once the lands are annexed, the annexing municipality assumes responsibility for providing a number of governmental functions and services, which may not be possible if the federal government exercises exclusive jurisdiction over the land involved. This element should be fully explored and explained to the municipality proposing the annexation.

2-4. Department of Defense Annexation Policy. Per DoD Instruction 4165.70, 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.

2-5. Procedure - Military Lands:

a. The Military Department having real property accountability for the installation will make the determinations on proposals to annex Department of Defense (DoD) installations. According to DODI 4165.70, DoD 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. If the annexation is opposed by another political subdivision of the state, the DA must be careful to remain neutral and not appear to support one local political subdivision over another.

b. In States where the law requires that an annexation proposal receive an affirmative determination from the DOD, the Military Department will make a determination based on the best interests of the DOD. Factors to be considered include potential extension of taxing authority to private entities on the installation, local zoning implications, and changes in school boundaries. Upon receipt of information or official notice that a municipality is undertaking actions to annex DA real property, the installation commander will take initial action as described below.

c. The installation Staff Judge Advocate and the USACE district through District Counsel shall coordinate on the affects of the annexation proposal on DA land.

d. The commanders of Active Army installations, Army Reserve base support operations, and the National Guard Bureau will take the following actions:

(1) Immediately notify the District having real estate responsibility for the area involved; and in coordination with the District Chief of Real Estate, the District Counsel and the Staff Judge Advocate, assess the annexation's affect on the installation mission and the federal government.

(2) If the annexation is determined to benefit the federal government, or the annexation's affect is minimal, the commanders of Active Army installations, Army Reserve base support operations, the National Guard Bureau or the District Chief of Real Estate will recommend that the DA take a neutral position. If the annexation is determined to have an adverse affect on the installation or the federal government, the commanders of Active Army installations, Army Reserve base support operations, the National Guard Bureau or the District Chief of Real Estate, will recommend that DA either oppose the annexation, or suggest neutrality, with justification, to the next level in the chain of command, as appropriate. The next level of command will review the recommendation and the annexations affect on the federal land, and recommend approval of the annexation, approve neutrality, or approve opposing the annexation. The District, through the District Chief of Real Estate and the District Counsel, will prepare an Annexation Assembly and Evaluation Report.

2-6. Procedure - Civil Works Lands:

a. Upon receipt of information or notice that a municipality or other political subdivision has taken action, or is in the process of undertaking an annexation, and upon receipt of a request by a municipality or other political subdivision of a State for annexation, the District having real estate responsibility for the area involved, through the Chief of Real Estate, Operations, and the District Counsel, will assess the annexation's affect on the project mission and the federal government.

b. If the annexation is determined to benefit the federal government, or the affect is minimal, the District will recommend that the DA take a neutral position. If the annexation is determined to have an adverse affect on the project, or the federal government, the District Chief

of Real Estate will recommend that DA either opposes the annexation, or suggest neutrality. The District Chief of Real Estate will coordinate with Operations and the District Counsel. The Division will review the recommendation and the determination of the annexation's affect. The Division will forward to HQUSACE (CEMP-CR), who will coordinate with HQUSACE (CECC-R), for submittal to DASA (I, H&P) for final determination of the DA position.

2-7. Annexation Assembly and Evaluation Report. The Annexation Assembly and Evaluation Report will be prepared in coordination with the installation commander when Army military real property is involved and with internal coordination when civil works real property is involved. The Annexation Assembly will include all information and exhibits to be considered in determining the DA position. The Annexation Assembly generally should contain the following information:

- a. Map, plat and legal description.
- b. Description of current jurisdiction.
- c. Reason for annexation proposal advanced by the political subdivision for annexing the federal government land.
- d. Impacts on Installation or Project.
- e. Objections, if any, by other political subdivisions.
- f. Recommendation.

2-8. Approved Annexation Requests. Upon receipt of notice of approval of a request for annexation of land, and with direction from the DA, the District will communicate with the appropriate government official of the annexing municipality and execute the required Army consent to the action or, if required, prepare the necessary document or petition for annexation in a form mutually considered to be appropriate. Upon completion of the annexation, the District will furnish copies of all pertinent documents reflecting the complete annexation through Division to HQUSACE and if military land is involved, a copy to the commander of the annexed installation.