

DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, DC 20314-1000

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CEMP-CR

Regulation
No. 405-3-10

31 October 2013


Real Estate
PLANNING-MILITARY

1. Purpose. This regulation sets forth the authority, policy, responsibility and delegations for Military-Planning for the acquisition of real property for use by the Department of the Army. For military real property, this regulation implements Department of Defense Directive (DoDD) Number 4165.06, Subject: Real Property and AR 140-483.
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. DoDD Number 4165.06, Real Property
 - b. AR 140-483, Army Reserve, Reserve Officers' Training Corps, United States Military Academy, Religious Activities, Military Police, Criminal Investigation, Environment Quality, Conservation, Installations, Morale, Welfare, and Recreation, Field Organizations
 - c. 10 U.S.C. Section 2663, Land acquisition authorities
 - d. 10 U.S.C. Section 2675, Lease: foreign countries
 - e. ER 405-2-12, Roles and Responsibilities: Civil Works
 - f. ER 5-1-11, Management: USACE BUSINESS PROCESS
 - g. AR 405-10, Acquisition of Real Property and interests therein
 - h. AFJI 32-9006, Army and Air Force Basic Real Estate Agreements
 - i. DoDI Number 4165.71, Real Property Acquisition
 - j. 42 U.S.C. Section 4601 (Pub. L. No. 91-646), Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
 - k. AFI 32-9001, Acquisition of Real Property

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- l. UFC 4-101-01, DoD Minimum Antiterrorism Standards for Buildings
 - m. 10 U.S.C. Sections 18231-18240, Purpose, Definitions, Acquisition, Notice and wait requirements for certain projects, Authority to carry out small projects with operation and maintenance funds, Location and use, Administration: other use permitted by Secretary, Contributions to States; other use permitted by States, Supervision of construction: compliance with State law, Army National Guard of United States; Air National Guard of United States: limitation on relocation of units, Waiver of certain restrictions, Acquisition of facilities by exchange
 - n. DoDD 1225.07, Reserve Component Facilities Programs and Unit Stationing
 - o. 10 U.S.C. Section 2662, Real property transactions: reports to congressional committees
 - p. 43 U.S.C. Section 157, Application for withdrawal, reservation, or restriction: specifications
 - q. 43 CFR 2310.1-2, Submission of applications
 - r. 43 U.S.C. Section 315q, Withdrawal of lands for war or national defense purposes; payments for cancellation of permits or licenses
 - s. 43 U.S.C. Section 156, Approval by Congress necessary for withdrawal, reservation, or restriction of over 5,000 acres for any Department of Defense project or facility
 - t. 10 U.S.C. Section 2853, Authorized cost and scope of work variations
 - u. DD Form 1391, Fiscal Year XX Military Construction Project Data
 - v. AR 420-1, Army facilities management (*RAR 002, 08/24/2012)
 - w. ER 405-1-11, Acquisition

FOR THE COMMANDER:


R. MARK TOY, P.E.
Colonel, Corps of Engineers
Chief of Staff

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CHAPTER 1

OVERVIEW

Section 1 – Purpose and Applicability

1-1. Purpose and Applicability.

a. This regulation sets forth the authority, policy, responsibility and delegations for Military – Planning for the acquisition of real property for use by the Department of the Army

b. For military real property, this regulation implements Department of Defense Directive (DoDD) Number 4165.06, Subject: Real Property and AR 140-483.

c. 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. Status of Forces Agreements. Real Property outside the United States may be governed by a Status of Forces Agreement (SOFA), treaty, or use agreement with the host nation. Land acquired in foreign countries is only covered by this regulation when not in conflict with the treaty, SOFA, or other binding international agreement. No military department may acquire an interest in real property not owned by the United States unless the acquisition is expressly authorized by law; therefore, the DoD must have authority by law to acquire fee title or other interest in land in the name of the United States. 10 U.S.C. 2663. In-leases in foreign countries are authorized in 10 U.S.C. 2675.

1-3. Policy.

a. It is DoD and DA policy that all real estate instruments be documented and signed by persons having statutory or actual delegated authority to bind the Government for the action being made. Any U.S. Army Corps of Engineers (USACE) official executing a real estate document pursuant to delegated authority in a written warrant has a duty to ensure that they have the appropriate delegated authority for the action.

b. When U.S. acquires title to real property such title is held in the name of the United States of America. Therefore, all real property USACE acquisitions of title are done in the name of the United States of America, acting by and through the Secretary of the Army, or his authorized representative.

1-4. Applicability to Work for Other Agencies. Work performed for another agency, including Air Force (AF), is covered by that agency's authorities, policy and decision levels and does not have to comply with DA policy nor may DA's specific authorities be used for another agency's actions. This regulation does not cover any required delegations from other agencies. As a general matter, the USACE will defer to the other agency's interpretation or implementation of its legal authorities so long as the reviewing USACE counsel agrees such an interpretation is

reasonable. However, this does not prevent respective counsels from discussing issues or elevating the issue to its chain of command. Counsel will keep Real Estate apprised of any issues. Real Estate will coordinate with other offices as needed. This regulation may be used, as appropriate, for such real estate work to fill in a void where the other agency has no policy or procedure that covers the particular issue, unless contrary to the other agency's enabling authority. However, care should be exercised, even where legal authority is the same and this regulation is citing legal requirements, since agencies may still require different implementation.

1-5. Identification of Government Agencies, Statutes, Programs and Forms. Any reference in this regulation, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor or similar department, agency, statute, regulation, program or form.

1-6. Organizational Responsibility for Military Real Property. The District works primarily with the Installation Commander or equivalent DA representative accountable for the military planning, real property, or their real property staff, and either the Installation Management Command (IMCOM) Region Office, the Medical Command (MEDCOM), or the Army Materiel Command (AMC), depending on who is accountable for the real property.

CHAPTER 2

REAL ESTATE PROJECT PLANNING - MILITARY

SECTION I. General

2-1. Preface. This regulation sets out basic procedures to be followed in planning and scheduling for the acquisition of lands in connection with Military projects and work/support for others. Project planning for acquisition of land in connection with Civil Works projects is covered by various Civil Works regulations and by ER 405-2-12. This regulation is a guide to ensure all aspects involved and potential problems are fully considered in planning for the acquisition of additional lands. Proper planning in the initial stages of any project can and should eliminate unnecessary delays during the acquisition phase.

2-2. Purpose. This regulation describes the procedures of the Corps of Engineers (USACE) relating to real estate planning and project authorization for the acquisition of land and interests therein for military projects. Project planning should be done in accordance with the Project Management Business Processes (PMBP), ER 5-1-11, U.S. Army Corps of Engineers Business Process, and with the PMBP Manual.

2-3. Regulations. AR 405-10, Acquisition, outlines the policy of the Department of the Army. Air Force Instruction (AFI) 32-9001, or its replacement, outlines the policy of the Department of the Air Force with respect to real estate acquisitions. AFJI 32-9006 explains the agreements between the Air Force and Army for the acquisition of real property. DOD Instruction 4165.71 outlines policies, responsibilities, procedures and legal authorities applicable to acquisition of real estate by all DOD components. Projects that are being done for non-DOD entities will follow the authorities, policy and regulations applicable to that entity. Army Regulations do not apply.

2-4. General.

a. The purpose of the planning function is:

(1) to establish that no Government-owned or Government-controlled lands are available for the intended use;

(2) to establish a sound basis for the acquisition of land and interests therein in accordance with existing law;

(3) to collect all necessary real estate data; including but not limited to general ownership information, zoning or land use restrictions of record, relevant deed restrictions, boundary issues, topographic or geologic site issues, environmental issues that affect the use and development of the land, etc.;

(4) to evaluate relevant data to determine whether the acquisition will meet Army or other customer stated needs;

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(5) to determine the required estate, in accordance with existing laws and policies, sufficient to protect the interests of the Government;

(6) to generally prepare each project for submission to the appropriate decision making official of the interested department or agency, and, where necessary, to the Department of Defense and the Congressional Committees, for approval.

b. In the preparation of Real Estate Planning Reports, or Real Estate Summaries, consideration will be given to the procedures and criteria expressed in the regulations cited herein.

2-5. Site Selection. When a requirement develops for a new installation or the expansion of an existing installation or facility, site selection will be the primary responsibility of the using service. A representative of the appropriate District will participate in selection of sites for the Department of the Army and, upon request, in Department of the Air Force site selection and preliminary investigations. Commanders and site boards should be informed of any available lands, including marginal lands in civil works projects and available lands under the control of other departments and agencies, suitable for the desired purpose. The using service will request the District prepare a Real Estate Planning Report or Real Estate Summary, making reference to the prior Site Selection Report, if one was prepared. For U.S. Army Reserve projects, the Army Reserve Installation Directorate will request Available Site Identification and Validation (ASIV) reports in accordance with AR 140-483, Army Reserve Land and Facilities Management.

SECTION 2 - Major Land Acquisition Moratorium

2-6. Office of the Secretary of Defense (OSD) Major Land Acquisition Moratorium.

a. The Deputy Assistant Secretary of Defense established a moratorium on major land acquisition proposals due to the downsizing of the military services. See DODI 4165.71. Major land acquisition is defined as the purchase, withdrawal from public domain, lease or permit from individuals or government entities, or any other type of use agreement involving major land acquisitions currently set at more than 1,000 acres or any amount of land if the estimated purchase or annual lease price exceeds \$1,000,000. These size and value thresholds are subject to change based on further guidance from the Deputy Assistant Secretary of Defense.

b. The Principal Deputy, Assistant Secretary of Defense, provided the following additional guidance to the Secretaries of the Military Departments and the Assistant Secretary of Defense (Reserve Affairs).

(1) The major land acquisition moratorium prohibits acting to initiate an Environmental Assessment or to issue a Notice of Intent for an Environmental Impact Statement (EIS) without approval of the Deputy Secretary of Defense.

(2) Before issuing a Record a Decision or Finding of No Significant Impact to proceed with a major land acquisition, an exception to the moratorium must be obtained from the Deputy Secretary.

(3) Exceptions may be requested by the Secretaries of the Military Departments for urgent military requirements or when the moratorium would have an adverse effect on the Department's ability to perform its mission.

c. Compliance with the DOD Moratorium is part of the requirements approval of a real estate acquisition project and is the responsibility of the command or echelon of the Army or Air Force requesting acquisition. Submittals are made to the appropriate office within the office of the Secretary of Defense and follow the most recent Major Land Acquisition format.

2-7. Major Land Acquisition and Leasing of Office Space in the United States. For purposes of the moratorium, a major land acquisition includes a lease when the price exceeds \$1 million. The Washington, DC area is defined generally as the geographic area that falls within 100 miles of the Pentagon.

a. Major land acquisition proposals within the Washington, DC area may not be made public through a request for proposals, notice of intent to perform environmental analysis, request for legislation or budget line item, press release, or other official notice without prior approval from the Deputy Secretary of Defense. Major land acquisition proposals outside the Washington, DC area may not be made public in the manner discussed above, without prior approval from the Under Secretary of Defense (Acquisition, Technology, and Logistics). Proposals for relocating into or within the Washington, DC area that exceed \$500,000 in relocation costs may not be made public without prior approval from the Deputy Secretary of Defense. Requests for approval of such relocations are submitted to the Director, Washington Headquarters Services (WHS).

National Guard major land acquisitions that are funded in whole or in part by Federal funds are subject to the moratorium.

b. Renewals of existing leases, withdrawals, permits or other use agreements (other than those at bases being closed or realigned) are not subject to the moratorium. When USACE is requested by another command to acquire a parcel of land that exceeds the limits of the \$1 million purchase limit established by the Secretary of the Defense, the District must obtain a copy of the using / requesting command's waiver for its records. The District must also obtain a copy of the waiver and other supporting documentation, such as a 10 U.S.C. 2662 report, to be included as part of the acceptance package along with the Offer to Sell when submitted for signature. The Real Estate Contracting Officer should be assured that all requirements are in place prior obligating funds for the purchase.

Section 3 – Planning Documents

2-8. Real Estate Planning Reports.

a. A Real Estate Planning Report (REPR), will be prepared by the district real estate office for all major fee and easement projects. A project is considered major if it exceeds the reporting thresholds of 10 U.S.C. 2662. The request for such REPR may be initiated by any command or echelon of the Army or Air Force. Certain items of the standard REPR relate only to Department of the Air Force land acquisition programs for runways and approach zones and are not

applicable to other projects. Such items will be omitted from REPRs where not applicable. For Reserve Component projects, see AR 140-483 for requirements.

b. Air Force REPR. Upon the completion of a fee and/or easement planning report, the District Engineer will forward copies to the appropriate Air Force requesting office, within the number and format requested, for review, approval, and subsequent transmittal to the appropriate Air Force decision office.

c. Other Agency REPRs. In acquisitions for Reimbursable Work for another agency (i.e., Interagency Support formerly known as Support for Others (SFO) or Work for Others (WFO)) where the other agency's authority will be used for the acquisition, a REPR is only needed if requested by the proponent agency. If the other agency has a different format or data requirement, then their approval levels and policy control. If Memorandum of Agreement/Understanding was executed between USACE and customer agency for the acquisition work, such an agreement may include mandatory terms and procedures that affect the acquisition.

d. Urban and Rural Site Issues. First priority in the location of new offices and other facilities will be given to rural areas, as defined by the U.S. Department of Agriculture. GSA's Customer Guide for Real Property discusses the Rural Development Act and states that agencies must provide a statement for actions going to GSA. If the customer's mission does not require a specific location or specific geographic area, then USACE must give first priority to locating new offices or other facilities in a rural area. If mission or program requires being in an urban area, then USACE must consider the Central Business District (CBD) under E.O. 12072 and then historic properties in the CBD under E.O. 13006. In order to justify why the CBD does not fit the customer's requirements, USACE must at a minimum consider safe and efficient mission performance, nature and function of facility, public convenience, and safe and healthful working conditions for employees.

e. For Department of the Army projects where requirements approval authority is at the level of the Garrison Commander or IMCOM Region, such as projects under the minor construction limit, and for Department of Defense agencies or Department of the Air Force projects, as requested by the customer, a brief REPR may be prepared by the District real estate office for the approving official. The report should contain adequate information to appropriately address aspects of the project. The following is a suggested list, but project specific conditions may require additional information:

(1) Requirement for the property.

(2) Cost estimate of the property with indication of the method used in arriving at the estimate.

(3) Summary sheet showing the acreages, interests to be acquired, improvements and estimated costs, including the administrative costs of acquiring the real property and all costs in connection with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). See 42 U.S.C. 4601, et. seq.

(4) Map showing property to be acquired, ownerships, and relationship to existing installation, where appropriate.

(5) In reports covering the acquisition of runway clearance easements, a profile, topographic, and obstruction drawing should be furnished.

(6) Discussions of any peculiar or unusual problems anticipated in connection with the proposed acquisition including relocation assistance required by the Uniform Act.

(7) For Air Force projects, include any other information requested pursuant to AFI 32-9001.

(8) Recommendations of the office preparing the report.

(9) Environmental documentation as provided by the requesting military department.

(10) For DoD projects, if any buildings are included in the acquisition, or if new construction is proposed, include a statement of applicability and compliance with the Unified Facilities Criteria, DoD Minimum Antiterrorism Standards for Buildings (UFC 4-101-01).

(11) Show compliance with the rural and urban site selection, as applicable.

Section 4 – Planning Documents for Reserve Acquisitions

2-9. Planning Documents for Reserve Component Acquisitions.

a. Real Estate Planning Report. The Real Estate Planning Report (REPR) is used to assist decision-makers in the site selection process. It addresses the sites that were evaluated as potential Army Reserve Sites and recommends a selected site based on the criteria evaluated in the REPR. This REPR has been tailored to meet the unique requirements of the Army Reserve sites. Consequently, some of items have been omitted from the usual REPR. All REPRs for Reserve Component acquisitions should contain the following:

(1) A list of all sites inspected with reasons for rejection of the other sites, together with asking price or estimate.

(2) Description of physical characteristics of each site, including maps, pictures, acreages, configuration and duration of terrain, improvements, potential wetlands concerns and vegetation/timber, general utility information, distance to fire department, and police department.

b. For the site selected as primary, additional information must be provided as outlined below:

(1) Type and extent of grading and drainage required.

(2) Soil and foundation conditions with classification of overburden materials (to be determined by test borings only if conditions indicate this necessity).

(3) Availability of adequate access, water supply, electricity, gas for space heating, sewage disposal, drainage conditions, and telephone services.

(4) Cost estimates of supporting facilities and any unusual building foundations, itemized to the degree practicable to indicate items, quantities, sizes, unit prices, and totals.

(5) A preliminary site plan, showing existing conditions and proposed layout, to ensure adequacy of the site for its intended use.

(6) Verification that the proposed site is not within the 100-year flood plain.

(7) Environmental documentation as provided by the requesting military department.

(8) For DoD acquisitions, if any buildings are included in the acquisition, or if new construction is proposed, include a statement of applicability and compliance with the Unified Facilities Criteria, DoD Minimum Antiterrorism Standards for Buildings (UFC 4-101-01).

(9) A preliminary review of potential covenants or other defects that will impact title.

c. Agreements for Joint National Guard-Army Reserve Center. Title 10, United States Code, Sections 18231 through 18240 contain policy and directions for the establishment of this type of training facility. The District will participate in negotiation of the joint-use agreement and preparation of the necessary instruments, in coordination with local Army Reserve and National Guard representatives. A copy of the negotiated agreement will be attached to each copy of the REPR prior to its distribution for review. DOD Directive 1225.07 requires that any plan for the placement of Reserve component units ensure the greatest practical use of joint facilities. In order to secure a use term more commensurate with the government investment, joint-use agreements, at a minimum, will be set up on a 25-year basis, with the option on the part of the government to renew for an additional 25-year period under the same terms and conditions.

Section 5 - Real Estate Summary

2-10. Use of a Real Estate Summary. Considerable time, effort and funds can be saved if REPRs are forgone in those cases involving acquisition of property for U.S. Army Reserve and Army National Guard use by transfer from another military department or the GSA. The Real Estate document in support of such proposed acquisitions would be a Real Estate Summary that will contain the following elements only:

- a. Authority for request.
- b. Acreage and estate.
- c. Estimated gross fair market value.
- d. Map.

- e. Excess status of land.
- f. Description of improvements (including building numbers and square feet).
- g. Justification for use of the property as provided by the Command. Proposed construction (if any) should be included.
- h. Engineering feasibility study (if construction is planned).
- i. For acquisitions by transfer from another military department where the estimated gross fair market value exceeds the Congressional reporting requirements of Title 10 U.S.C. 2662, a draft Acquisition Report will be included.
- j. Verification that the property is not within the 100-year flood plain.
- k. Environmental documentation as provided by the requesting military department.
- l. For DoD acquisitions, if any buildings are included in the acquisition, or if new construction is proposed, include a statement of applicability and compliance with the Unified Facilities Criteria, DoD Minimum Antiterrorism Standards for Buildings (UFC 4-101-01), as amended.
- m. Discussion of urban and rural site issues.

Section 6 – Planning Reports for other than Fee Acquisition

2-11. Planning Reports. Reference is made to AR 405-10 and AFI 32-9001, concerning requests for other than fee acquisitions. A Planning Report will be prepared upon request of the using service. For major acquisitions that exceed the threshold in 10 U.S.C. 2662, a Planning Report will be prepared for all Army and Air Force projects.

a. **Army Projects.** Upon completion of a fee and/or easement planning report or a Lease Planning Report, the report will be processed in accordance with current delegations. Information will be included in the transmittal letter concerning status of environmental assessment or impact statement and applicability and compliance with the Unified Facilities Criteria, DoD Minimum Antiterrorism Standards for Buildings (UFC 4-101-01), as amended. For projects that will include placement of permanent construction on leasehold, DASA (IH&P) approval is required.

b. **Air Force Projects.** Upon the completion of a Planning Report, the District will forward copies to the appropriate Air Force requesting office, for review, approval, and subsequent transmittal to the appropriate Air Force decision office. Number of copies and format, printed or electronic, will be as requested by the customer.

c. **Interagency Support Work.** For less than fee acquisitions for other agencies, the other agency's authority, policy and procedures will be used for the acquisition. A Planning Report is only needed if requested by the proponent agency. In this instance, pay particular attention to

planning and other guidance contained in any Memorandum of Agreement between USACE and client agency.

Section 7 - Brief Planning Reports for other than Fee Acquisition

2-12. Brief Planning Reports. On Army projects where the estimated annual rent is less than the Title 10 U.S.C. 2662 threshold and Air Force projects as directed by the Air Force, a Brief Planning Report may be prepared upon request of the using service. The report should contain adequate information to appropriately address project aspects, including, but not limited to the following:

- a. Requirement for the property including proposed use, proposed construction to be placed by the Government with estimated costs thereof, and date needed.
- b. Site selection team and sites inspected. List sites and discuss all real estate implications of all other sites inspected, including government-owned sites, and give reasons for rejection.
- c. Description of the property, giving street number, city, county and state. Indicate gross and net usable area, if property is a building. If land is primary requirement, give acreage and attach a map showing boundaries. Also attach a vicinity map showing its location with relation to the parent facility and include the views of the lessor.
- d. Services to be provided under the lease. If all or parts of required services are not provided, discuss requirements and estimated cost to the Government.
- e. Discuss what alterations are necessary, if any, and estimated time and cost of construction.
- f. Discuss restoration costs to the Government upon termination of lease.
- g. Provide a summary with all lease costs including estimate of the annual rental value and the fair market value for economy policy compliance. The estimate will reflect actual market conditions and rental prices for similar property with the source noted. Include cost of services, alterations, the administrative costs of acquiring the lease and all costs in connection with the Uniform Act.
- h. Discussions of any peculiar or unusual problems anticipated in connection with the proposed acquisition including relocation assistance required by the Uniform Act.
- i. Environmental documentation as provided by the requesting military department.
- j. Recommendations of the office preparing the report.
- k. For DOD acquisitions, if any buildings are included in the acquisition, or if new construction is proposed, include a statement of applicability and compliance with the Unified Facilities Criteria, DoD Minimum Antiterrorism Standards for Buildings (UFC 4-101-01).

Section 8 – Distribution of Planning Documents

2-13. Army Projects. Upon completion of a fee and/or less than fee planning report, the report will be submitted to the requesting service for processing to the appropriate project approval authority. Information will be included in the transmittal letter concerning status of environmental assessment or impact statement and applicability and compliance with the Unified Facilities Criteria, DoD Minimum Antiterrorism Standards for Buildings (UFC 4-101-01).

2-14. Air Force Projects. Upon the completion of a fee and/or less than fee planning report, the district will forward appropriate copies to the requesting Air Force customer for coordination with appropriate decision offices.

2-15. Brief REPRs and Brief LPRs. Brief REPRs for Army and Air Force projects may be submitted directly to the requesting service.

2-16. Interagency Supports. Planning reports for other agencies will be prepared in their format and distributed according to the work request or the Memorandum of Agreement / Understanding between USACE and the client agency.

Section 9 - Acquisition by Transfer (Except Public Domain)

2-17. Acquisition by Transfer from Other Government Departments or Agencies (Except Public Domain). The requirement for the acquisition of Government-owned real property is generated by the using command, which obtains approval and validation of the requirement at the required level. Either a REPR or a brief report, as appropriate, is prepared to support the validation and approval of the acquisition. The REPR lays out the requirements for the property, the market value thereof, the “in place” value of existing improvements, the estimated cost of the proposed construction, attitude of the local representative of the department or agency having control, and such other items as are necessary to give full discussion of the real estate implications, for consideration and approval by the appropriate approving official.

2-18. Withdrawal of Public Domain for Defense Purposes.

a. General. Public Domain land may be made available for use by the military through a process called “withdrawal of public domain for defense purposes”. There are two processes for withdrawal of public domain lands for military purposes: legislative and administrative.

(1) Legislative. The Engle Act, 43 U.S.C. 155-158, provides that all withdrawals of public domain land, water, or land and water, or restrictions on use of areas in the Continental Shelf, aggregating an area of more than 5,000 acres for any one defense project, shall be by Act of Congress.

(2) Administrative. Section 204 of the Federal Land Policy and Management Act of 1976 codified at 43 U.S.C. 1714, authorizes the Secretary of the Interior to make, modify, extend, or revoke a withdrawal.

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b. Coordination with the Bureau of Land Management (BLM) State Office with jurisdiction over the lands is necessary to ensure an appropriate and accurate submission. BLM calls such coordination “pre-application consultation” (43 CFR 2300, et. seq.). Upon receipt of a request for withdrawal and reservation of lands of the public domain or for restrictions on exploration and exploitation in the Continental Shelf, the District will prepare and submit, through the Division to HQUSACE (CEMP-CR), a REPR which includes the following items.

(1) A copy of the request from the Army or the using service.

(2) Complete information on lands that cover the following (see 43 U.S.C. 157)

(a) the name of the requesting agency and intended using agency;

(b) location of the area involved, to include a detailed description of the exterior boundaries and excepted areas, if any, within such proposed withdrawal, reservation, or restriction;

(c) gross land and water acreage within the exterior boundaries of the requested withdrawal, reservation, or restriction, and net public land, water, or public land and water acreage covered by the application;

(d) the purpose or purposes for which the area is proposed to be withdrawn, reserved, or restricted, or if the purpose or purposes are classified for national security reasons, a statement to that effect;

(e) whether the proposed use will result in contamination of any or all of the requested withdrawal, reservation, or restriction area, and if so, whether such contamination will be permanent or temporary;

(f) the period during which the proposed withdrawal, reservation, or restriction will continue in effect;

(g) whether, and if so to what extent, the proposed use will affect continuing full operation of the public land laws and Federal regulations relating to conservation, utilization, and development of mineral resources, timber and other material resources, grazing resources, fish and wildlife resources, water resources, and scenic, wilderness, and recreation and other values; and

(h) if effecting the purpose for which the area is proposed to be withdrawn, reserved, or restricted, will involve the use of water in any State, whether, subject to existing rights under law, the intended using agency has acquired, or proposes to acquire, rights to the use thereof in conformity with State laws and procedures relating to the control, appropriation, use, and distribution of water.

(3) If the proposed withdrawal constitutes an expansion of an existing installation, pertinent data relative to the lands constituting the existing installation.

(4) Information relative to outstanding mineral, grazing, water and other rights. When grazing lands are affected as part of a project and it is proposed to cancel or prevent the use of these rights, under authority contained in 43 U.S.C. 315q, the REPR will disclose each of the ranch units comprising grazing privileges, indicating, in tabulated form, the name of each operator, acreage owned in fee, acreage of state-owned land held under lease, acreage of railroad land held under lease, acreage of other privately owned land held under lease, acreage under Federal grazing permits, licenses or leases, total acreage in ranch unit, total carrying capacity of ranch unit, and actual number of stock being carried on each ranch unit; whether project will be classified as a permanent or temporary installation; other acquisition problems, such as mining and water rights or claims; leasehold improvements which may be encountered; and a project map indicating project boundaries, Federal and state-owned lands, and location of mining and water rights or claims.

(5) A statement as to the estimated cost of extinguishing such rights and of suspending the exercise of outstanding rights held under third party agreements on a leasehold (annual rental) basis.

(6) Map(s) indicating the exterior boundaries of the project; excepted areas, if any; location of mineral rights, water rights, and other resources discussed in the report.

(7) The District will also prepare and include a draft of application for withdrawal that complies with 43 C.F.R. 2310.1-2.

c. Upon receipt of the REPR and draft of application for withdrawal, HQUSACE (CEMP-CR) will staff the action for approval.

d. The REPR, draft of application for withdrawal, and real estate approval or directive will be transmitted through channels to DASA (IH&P) for approval of the acquisition and for coordination with the Department of the Interior (BLM). Upon receipt of approval from the ASD (MRA&L), HQUSACE (CEMP-CR), will send the application to the Department of the Interior. When a legislative withdrawal is required, the Department of the Interior, in consultation with HQDA, will draft the necessary legislation for processing through normal legislative channels and the Department of the Interior will transmit the legislative proposal to Congress.

e. In accordance with 43 U.S.C. 156, the approval of Congress is required for withdrawals of five thousand acres in the aggregate for any one defense project or facility. The words "in the aggregate" shall be interpreted as applying only to withdrawals of land. For example, if 4,500 acres of public land had been withdrawn prior to enactment of 43 U.S.C. 156, and the new application for withdrawal covers 1,000 acres, the requirements do not have to be satisfied. If the new application covering 1,000 acres is honored and the withdrawal completed and a later requirement for 4,500 acres of public lands developed, the requirements would have to be satisfied.

f. The restrictions on the withdrawal and reservation of public land, water, or land and a water area in 43 U.S.C. 156, and the above instructions do not relate to the use of public lands under other types of authorization, such as permit, right-of-way or cooperative agreement.

g. In Department of Air Force cases, the District Real Estate office will continue to prepare such REPRs and to furnish such other services as are requested by Air Force.

h. When the REPR contains a proposal for the acquisition of minerals, the local office of the BLM, Department of the Interior, will be furnished with a copy of the Mineral Section of the planning report, which will indicate the number and types of claims, areas involved, and the gross appraisal. Accompanying this Mineral Section will be a request that the Bureau of Land Management place an item in the next available budget for the funds required for the validation of the mineral claims involved. A copy of the Mineral Section, together with a copy of the request to the local office of the Bureau of Land Management, will be forwarded to HQUSACE (CEMP-CR), for coordination with the Director, Bureau of Land Management, and Department of the Interior, Washington, and D. C. 20240.

Section 10 - Clearances and Authorities

2-19. Required Clearances.

a. Title 10 U.S.C. 2663(c) (d) provides a continuing authority to acquire low-cost interest in land. Subsection (c) authorizes the acquisition of land where the interest in land is needed in the interest of national defense and the cost is not more than the Minor military construction threshold (currently \$750,000), exclusive of administrative costs and the amounts of any deficiency judgments. Subsection (d) authorizes the acquisition of land where the interest in land that is needed solely to correct a deficiency that is life-threatening, health-threatening, or safety-threatening exclusive of administrative costs and the amounts of any deficiency judgments (currently \$1,500,000).

b. Certain clearances may be required with Department of Defense as described in this regulation. Requirements have to be validated with appropriate command channels. See AR 405-10 and AFI 32-9001. 10 U.S.C. 2662 requires reports to the Congressional Armed Services Committees before certain levels of acquisition may proceed. USACE is responsible for initiating clearance actions as to Army real estate acquisitions. Air Force Real Property Agency oversees all clearance actions as to Air Force acquisitions.

2-20. Authority to Issue Real Estate Directives. Where there is legislative authorization, and appropriation is available, requirements have been validated by the appropriate approving official, and necessary Congressional clearances have been obtained, the District Real Estate office is authorized to proceed and may issue whatever real estate approval or directive is required, designating the land to be acquired, the estate to be acquired, and the amount of funds available for the acquisition, for Army projects. Acquisition projects for other departments or agencies will follow their approval policy, requirements and formats. No formal directive is required for work for Army or non-Army agencies. Appropriate data will be entered into

supporting management information systems. This authority covers fee, easements, leasehold acquisition, including renewals and extensions, and space assignments from the General Services Administration. Authority to issue DOE real estate directives has been delegated by the General Manager to the Directors of Operating Divisions, DOE.

2-21. Amendments. Any significant change in the project, including, but not limited to changes in acreage or dollar amount, should be approved at appropriate project approval levels and documented in writing in the historical records. Deviations to cost and scope for land acquisitions authorized as military construction projects (DD Form 1391) must also comply with the limitations and notification procedures in 10 U.S.C. 2853 and AR 420-1.

2-22. Responsibility for Acquisition. USACE is responsible for acquiring real estate for the Department of the Army (military) and other Federal agencies as requested in accordance with GO 2012-01 and AR 10-87.

2-23. Authority to Proceed with Acquisition.

a. Upon approval of the real estate requirements, with necessary clearances made and an allotment of funds to the District, the District Real Estate office is authorized to proceed with acquisition in accordance with the procedures outlined in ER 405-1-11, Acquisition, and ER 405-1-16, Relocation Assistance Program

b. Under no circumstances will offers be made to landowners or construction initiated prior to the real estate acquisition being approved.

c. The District will maintain liaison with the requesting officer and advise when possession of the land is available.

Section 11 - Preliminary Real Estate Work

2-24. Preliminary Real Estate Work.

a. Preliminary real estate work is defined as that action taken with regard to the individual ownerships leading up to, but not including, solicitation of offers from landowners and should be considered or suggested to the customer as a means to expedite the acquisition when funds are available for this purpose. It includes preparation or procurement of tract ownership data (see ER 405-1-3, Mapping for examples of data), legal descriptions and mapping, title evidence, and individual tract appraisals. At this stage of the acquisition program, it will be necessary to make contact with landowners, tenants, or other interested persons (i.e., subsurface owners); for example, the appraiser's discussion of the property with the owner, agent, or other representative, in accordance with procedures set out in ER 405-1-04, Appraisal and the Uniform Act. In any such contacts, information should be confined to the fact that acquisition of the real property is being considered; no acquisition action can be taken until funds are made available; and, after acquisition is approved, as much advance notice as possible will be given to all

interested parties. It is also important to ensure there are no title defects early in the process. Military Planning Report request must be paid for by the requesting agencies / customers; as USACE is not direct funding organization.

b. Preliminary real estate work on Army projects will be conducted as soon as design has progressed to the point at which the exact land needed has been firmly determined, or as soon as the District has determined that it is practicable to proceed. Environmental requirements such as the National Environmental Policy Act must be adhered to as well before the acquisition is completed. The schedule for real estate acquisition should include preliminary work, environmental, and other design requirements to ensure the project is on track for execution.

c. Preliminary real estate work on Air Force projects will be conducted per their request.

Section 12 - Interest and Estates

2-25. The Navigational Servitude. As a general rule, the United States does not acquire interests in real estate that it already possesses or over which jurisdiction is or can be legally exercised. Irrespective of the ownership under state law of the banks and bed of a stream below ordinary high water mark, and irrespective of western water rights under the prior appropriation doctrine, no further Federal interest is required for navigation projects in navigable streams below the ordinary high water limit. It is required, therefore, that the acquisition plan considers the extent of the navigational servitude for those projects that involve federal use of navigable waters, such as harbors. No additional interests need be acquired in areas subject to the government's right of navigational servitude.

2-26. Estates.

a. Land to be Acquired in Fee. All lands necessary for permanent structures, construction areas, spoil disposal areas, mitigation areas, and similar purposes will be acquired in fee.

b. Standard Estates. Standard estates for acquisition of land or interests therein for Army, military or civil, are contained in ER 405-1-11, Acquisition, or as otherwise may have been approved for the type of project. Requests to acquire non-standard estates in the name of the United States should be submitted to HQUSACE (CEMP-CR) for approval and coordination with CECC-R and the Regional Integration Team.

c. Work for Another Agency. If the project is being acquired as work for another federal agency, then their policy and requirements for the type of estate control.

d. Lands Over Which Easements are to Acquired. Permanent easements are required for roads, utilities, pipelines, clear zones/aviation, and similar requirements. Temporary easements may be acquired for temporary construction and staging areas.

Section 13 – Mineral – Acquisition Procedures

2-27. Procedure. USACE policy is to permit the reservation of the minerals in the land acquired, unless such reservation is adverse to the operation of the installation. In all cases where a reservation is permitted, the mineral interests must be subordinated to the primary installation purposes, security and force protection.

2-28. General.

a. The multiplicity of ownerships in mineral interests, the variety of minerals and the different methods of mineral exploration, recovery and production make it impracticable to define in advance specific guidelines concerning the reservation of mineral interests and their subordination to primary installation purposes. The initial planning documents and master plans will fully discuss and consider the extent of acquisition and/or reservation of mineral interests.

b. Generally fee title to all subsurface interests will be acquired in areas required for all structures, family housing, and installation operations, and in areas where the value of the subsurface interests is nominal. Outstanding rights and reservation of coal, oil, gas and other minerals will be permitted whenever any aspect of mineral development will not interfere with installation purposes. The reservation of mineral rights will be predicated upon the government's right to so regulate their development as to eliminate any interference with installation purposes and to minimize any adverse impact on the environment, including aesthetic values.

2-29. Reservation Minerals.

a. When it has been determined that the reservation of minerals will not interfere with the purposes or force protection of the installation, the minerals will be subordinated in an agreement that, together with additional regulations incorporated by reference, clearly defines:

(a) The rights and obligations of the Government and the mineral owner, operator, and/or lessee.

(b) The control to be exercised over site development for mining purposes.

(c) Required land reclamation or restoration.

(d) Restrictions against pollution and degradation of project environment and aesthetics.

(e) Provisions for compliance inspection by the government of all site development and mining activities over which the government has control under subparagraph (b), above.

b. The representatives of the District are to be fully informed concerning the rights and responsibilities of the government and the mineral owner and/or operator under the terms of the estates acquired for the subordination of minerals.

2-30. Off-Project Mineral Activity. Where mineral activity outside of the government property will impact force protection, drain mineral resources underneath the government's property or

there is present or potential mineral activity on nearby lands outside the installation limits the District will:

- a. Establish and maintain liaison with Federal and state agencies having responsibility for the regulation of mineral activities and the control of environment in order to prevent adverse effects of mining on the installation.
- b. Institute a system for monitoring adverse effects on the installation such as sedimentation and acid drainage.
- c. Take steps to ensure that the installation is familiar with state and Federal laws governing the control of mineral recovery and the environment, as well as the Federal or state agencies responsible for the enforcement of such laws.
- d. Districts are requested to use the Refuse Act, 33 U.S.C. 407, and any other legal remedies that may be appropriate in a particular situation in order to protect the interests of the United States and preserve the integrity of the project.

Section 14 – Blocking Out and Acquisition Lines

2-31. Blocking Out. The following guidance is to be observed to the extent possible.

- a. Close blocking out will be accomplished in accordance with sound real estate practices.
- b. For land acquired in fee, the blocked out final real estate acquisition line will be established in such manner as to minimize costs and cause the least disruption in the use of the remainder of the ownership.
- c. Severance damages will be avoided to the extent possible consistent with real estate requirements for the project. In accordance with the Uniform Act, if the acquisition of part of a tract will render the remainder an uneconomic unit, an offer must be made to purchase the entire tract.
- d. It is conceivable that, in certain instances, acquisition of an easement will result in an uneconomic remainder and this requires application of the Uniform Act, as in subparagraph c. above.
- e. A remnant without access need not be acquired if:
 - (1) the owner desires to retain the property and releases the government from damages for lack of access, and
 - (2) the obtaining of such release in lieu of acquisition is concurred in writing, by the local road authority, and the local road authority is released from damages due to loss of access.

f. For lands to be acquired in fee or easements, close tangent will be used, generally following the acquisition line.

g. When small portions of additional properties, not otherwise needed for the project, are within the acquisition line, they may be omitted if to do so will not materially affect the operation of the project.

2-32. Tentative Acquisition Lines. Tentative acquisition lines which are shown on proposed project maps will, to some extent, be irregular and located without full regard to their effect upon fringe tracts. It will, therefore, be necessary to establish final acquisition lines, in accordance with sound real estate practices. Accordingly, fringe tracts will not be acquired until the customer approves the final acquisition lines.

2-33. In-Holdings. An in-holding is defined as a separate tract of land located completely within the area proposed for acquisition that is under separate ownership and apart from the primary tract of land. In-holdings will be rare on any military installation. A recommendation to acquire or not acquire an in-holding should be provided along with the supporting justification in the planning report. Identify any ownership located within the area of a proposed acquisition that is separate and apart from the primary tract of land if these ownerships are not to be acquired and the reason these parcels are not recommended for acquisition.

Section 15 – Planning and Scheduling Real Estate Activities

2-34. Submission. Appraisals covering the fringe tracts will be completed as soon as possible after authority has been granted to acquire the land and/or interest therein. A map showing proposed final acquisition lines will be submitted to the customer, for review and approval. This submission may be for an entire project or by segments or units. However, if the final map is submitted on a segment or unit basis, each segment or unit must be complete in and of itself and not be dependent on another segment or unit not submitted for approval.

2-35. Approval. The customer will approve final acquisition lines, based upon District submittals.

2-36. Normal Scheduling.

a. The objective of a well-planned acquisition program included in a Project Management Plan and any planning document is to provide for the early completion of preliminary acquisition actions (if any) and the expeditious completion of acquisition when authority and funds become available. Delay in acquisition may delay projects moving to advertisement and construction or otherwise being available for the mission. Acquisition schedules must be integrated into the overall project schedule.

b. Schedules should be initially predicated upon the projected dates when authority and funding will be available to proceed. However, if preliminary acquisition actions, which may include acquisition of Options to Purchase, are to be taken, the schedule should be planned accordingly. Funds for such preliminary work will have to be identified either through the use of

Planning and Design funds for a military construction project or funds otherwise made available by the customer. The schedule should show progressive and respective dates and duration times for the specific milestones from the date's authority and funding are available to the date the property is transferred to the customer. This would include surveys, title reports, maps and legal descriptions, appraisals, negotiations, relocations under the Uniform Act, closings, final title opinions, condemnations and trials, final transfer, and change of jurisdiction (if required). Schedules should also be realistic and reflect a longer negotiation time for some owners, such as railroads, and to condemn for known reasons. Schedules should also take into account actions that are not the responsibility of USACE the need for statutory authority, the appropriation of adequate funding, and any required waivers such as moratoriums issued by the Secretary of Defense.

c. Surveys and boundary monumentation should be performed during the acquisition process so that landowners can agree and concur with the boundary. Physical surveys also identify potential encroachments, title issues and other encumbrances. The customer as part of the project should program funds for survey and boundary monumentation. In unusual circumstances, final surveys, boundary monumentation, and/or marking may be completed after final acquisition.

d. The District must receive and reserve funds for land acquisition prior to beginning negotiations.

Section 16-- Public Information

2-37. Public Information.

a. The real estate activities of the Army are extremely sensitive, since they disrupt the lives of individuals and impact their homes, farms and businesses. Therefore, the importance of keeping landowners and others having an interest in the land informed of the land acquisition program is emphasized. In order to avoid inaccurate rumors and to permit the affected owners to formulate plans for the future, information concerning the land acquisition program, procedures with respect thereto, and the specific effect on the individual properties, will be furnished to the affected owners at the outset of the project. The district should work with the customer on a public relations and communication plan.

b. Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, the District, working with the installation or customer, will conduct meetings with landowners. The United States Congressional leaders of the states districts in which the project is located should be invited to attend. Normally, the public meetings should be scheduled prior to the commencement of the land acquisition program. The agenda for the meetings will include not only the nine specific items listed in b. above, but also other items that will assist landowners and tenants in understanding all of USACE's real estate procedures such as, but not limited to: acquisition schedules, the type of land interests to be acquired, and approximate acquisition lines. In addition to the foregoing, pamphlets containing this information and the information brochure explaining the benefits to landowners under the Uniform Act will be given wide distribution at approximately the same time the landowners

meeting program is initiated and copies will be furnished to the appropriate United States Congressional Members.

c. Inquiries, comments of landowners and tenants, and problems developed at the landowners meetings should be recorded or, at least, a detailed written memorandum of record. Effective follow-up to supply any information not available at the meeting, or to consider any particular problems presented, is essential to realize the full advantage of the public relations program.

d. Real Estate personnel and the Public Affairs Officers of the District and Installation should cooperate closely in planning vigorous public relations programs as contemplated in this paragraph and through the press, radio, and television.