

Army Regulation 405–80

Real Estate

Management of Title and Granting Use of Real Property

**Headquarters
Department of the Army
Washington, DC
22 April 2024**

UNCLASSIFIED

SUMMARY of CHANGE

AR 405–80

Management of Title and Granting Use of Real Property

This regulation revises policy relating to granting use of real property and adds policy on management of title. Specifically, this major revision, dated 22 April 2024—

- o Updates Secretary of the Army responsibilities (para 2–1).
- o Adds new [Table 3 – 1](#), Property Outgranting Approval Authority (chap 3).
- o Adds new chapter on Federal Legislative Jurisdiction to include incorporating Army Directive 2019–13, Response to Major Juvenile Misconduct and Referral of Civilian Criminal Offenses to Civilian Authorities (chap 5).
- o Adds new chapter on Annexation (chap 6).
- o Adds new chapter that provides policies and procedures for mineral exploration and extraction on Army land that incorporates Army Directive 2014–13, Mineral Leasing Policy (chap 7).
- o Adds new chapter on water rights and water resource management approval authorities incorporating Army Directive 2014–8, Water Rights Policy for Army Installations in the United States (chap 8).
- o Changes Major Army Commands to Landholding Commands (throughout).
- o Includes changes based on AR 200–1 (throughout).
- o Updates Army regulation cross references (throughout).
- o Changes Assistant Chief of Staff for Installation Management to Deputy Chief of Staff, G–9 per Army General Order 2019–23 (throughout).

Real Estate

Management of Title and Granting Use of Real Property

By Order of the Secretary of the Army:

RANDY A. GEORGE
*General, United States Army
Chief of Staff*

Official:


MARK F. AVERILL
*Administrative Assistant to the
Secretary of the Army*

Applicability. This regulation applies to all Army personnel responsible for Army real property, including the members of the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

Proponent and exception authority. The proponent of this regulation is the Chief of Engineers. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy

proponent. Refer to AR 25–30 for specific requirements.

Army internal control process. This regulation contains internal control provisions and identifies key internal controls that must be evaluated (see appendix D).

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without the prior approval of the Chief of Engineers (CEMP–CR), 441 G Street, NW, Washington, DC 20314–1000.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the office of the Chief of Engineers (CEMP–CR), 441 G Street, NW, Washington, DC 20314–1000.

Distribution. This regulation is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

History. This publication is a major revision.

Summary. This regulation provides policy on management of title and granting use of Army-controlled real property. It assigns responsibility and delegates authority to approve real property availability; and to issue, execute, manage, renew, supplement, and revoke outgrants authorizing the use of Army real property and to perform certain real property management activities.

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*This publication supersedes AR 405-20, dated 21 February 1974, AR 405-25, dated 25 September 1973, AR 405-30, dated 15 July 1984, and AR 405-80, dated 10 October 1997. Army Directive 2014-13, dated 23 May 2014, is rescinded upon publication of this regulation.

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Glossary

Chapter 1 General

1-1. Purpose

This regulation sets forth the authority and prescribes policies for management of title for real property under the control of the Department of the Army (DA), and the use of that real property by non-Army parties.

1-2. References and Forms

See appendix A.

1-3. Explanation of Abbreviations and Terms

See the Glossary.

1-4. Responsibilities

See chapter 2.

1-5. Records management (recordkeeping) requirements

The records management requirement for all record numbers, associated forms, and reports required by this publication are addressed in the Records Retention Schedule–Army (RRS–A). Detailed information for all related record numbers, forms, and reports are located in the Army Records Information Management System (ARIMS)/RRS–A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

1-6. General Authorities

- a.* The United States Constitution (article IV, sec. 3, clause 2) gives Congress the power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States.
- b.* Congress has enacted specific legislation giving the Secretary of the Army (SECARMY) authority to grant the use of real property under SECARMY control. Statutory authorities are listed in appendix B.
- c.* The SECARMY has general authority, which includes authority to grant uses of the property, which do not adversely affect title, ownership, or control.
- d.* The SECARMY may grant the right to use real property under authority implied from other specific powers granted by Congress.
- e.* The SECARMY exercises these authorities in accordance with directives and instructions issued by the Office of the Secretary of Defense (OSD).

Chapter 2 Responsibilities

2-1. The Secretary of the Army

The SECARMY is the head of DA and is responsible for and has the authority necessary to conduct all of DA's affairs. The SECARMY will—

- a.* Serve as trustee for the real property under the control of the Army.
- b.* Delegate responsibility for Army real estate programs.

2-2. The Assistant Secretary of the Army (Civil Works)

The Assistant Secretary of the Army (Civil Works) (ASA (CW)) will—

- a.* Supervise the development and implementation of policies for the management, requirements, and availability of Army civil works real property.
- b.* Make, modify, and revoke Determinations of Availability (DOAs), as appropriate, for Army civil works real property.
- c.* Through the Deputy Assistant Secretary of the Army (Management and Budget) (DASA (MB)), coordinate with the Assistant Secretary of the Army (Installations, Energy and Environment) (ASA (IE&E)) for policies and programs for Army civil works real property.

2-3. The Assistant Secretary of the Army (Installations, Energy and Environment)

The ASA (IE&E) will—

- a.* Advise the SECARMY on installations, energy, and environment matters.
- b.* Supervise the development and implementation of policies and programs for management of Army real property, real estate contracting, and oversee the execution functions performed by the Corps of Engineers related to the Army's real property and real estate programs.
- c.* Ensure the Deputy Assistant Secretary of the Army (Installations, Housing and Partnerships) (DASA (IH&P)) will—
 - (1) Advise the ASA (IE&E) on Army real estate management and contracting functions and responsibilities and execute all delegated Army real estate responsibilities.
 - (2) Develop and oversee policies and programs for the management and availability of Army-controlled military real property.
 - (3) Develop and oversee policies and programs for the management of title and granting use of Army-controlled real property, including military and civil works real property.
 - (4) Develop and oversee policies and programs for the procedural and technical aspects of the outgranting of Army-controlled real property, including delegations of authority.
 - (5) Make, modify, and revoke DOAs and issue, execute, manage, renew, supplement, or revoke outgrants, as appropriate.
 - (6) Delegate, as appropriate, outgrant authorities.
 - (7) Serve as the primary DA point of contact with OSD and other agencies for Army real property and real estate contracting.
 - (8) Approve and execute Congressional notifications regarding outgrants.
 - (9) Coordinate with the ASA (CW), through DASA (MB), for policies and programs for civil works real property.

2-4. Chief, National Guard Bureau

For all Army National Guard (ARNG) real property, the Chief, National Guard Bureau will—

- a.* Review Reports of Availability (ROAs) for consistency with DA mission requirements and applicable real property management policies for those outgrants requiring approval by higher authority.
- b.* Make, modify, and revoke DOAs, as delegated.
- c.* Oversee real property management activities.
- d.* Approve use of revenues from outgrant activities of real property under ARNG accountability.
- e.* Program for installation real property and real estate activities covered by this regulation.

2-5. Chief, Army Reserve

For all Army Reserve real property, the Chief, Army Reserve (CAR) will—

- a.* Review ROAs for consistency with DA mission requirements and applicable real property management policies for those outgrants requiring approval by higher authority.
- b.* Make, modify, and revoke DOAs, as delegated.
- c.* Oversee real property management activities.
- d.* Approve use of revenues from outgrant activities of real property under CAR accountability.
- e.* Program for installation real property and real estate activities covered by this regulation.

2-6. The Chief of Engineers

The Chief of Engineers (COE) is dual hatted as the Commanding General, U.S. Army Corps of Engineers (USACE). The COE will—

- a.* Serve as the principal advisor to the SECARMY and other Principal Officials of headquarters DA on matters related to management of title and granting use of Army real property to others.
- b.* Prepare, for review by the SECARMY, Chief of Staff of the Army, ASA (CW), and ASA (IE&E), policies and procedures for the management of title, granting of use, and disposing of real property.

2-7. Deputy Chief of Staff, G-9

The Deputy Chief of Staff, G-9 (DCS, G-9) is the principal military advisor to the ASA (IE&E) for installation management, to include real property management activities. The DCS, G-9, for all Regular Army real property, will—

- a.* Review ROAs for consistency with DA mission requirements and applicable real property management policies for those outgrants requiring approval by higher authority.

- b.* Make, modify, and revoke DOAs, as delegated.
- c.* Advise the ASA (IE&E) on real property management activities.
- d.* Approve use of revenues from outgrant activities of real property under Regular Army accountability.
- e.* Program for installation real property and real estate activities covered by this regulation based on inputs from the executing organizations.

2–8. Commanding Generals, Army Landholding Commands

Commanders of Landholding Commands (LHCs) (see Glossary for definition), with regard to real property under their respective accountability, will—

- a.* Review ROAs for consistency with DA mission requirements and applicable real property management policies for those outgrants requiring approval by higher authority.
- b.* Make, modify, and revoke DOAs, as delegated.
- c.* Specify authorized uses of real property compatible with mission requirements and policies in this regulation.
- d.* Budget for installation and civil works real property actions covered by this regulation not otherwise centrally funded through USACE (such as covered in the Program Objective Memorandum (for example, Recruiting, Leased Government Housing)).
- e.* Authorize the use of Army-controlled real property in foreign countries by non-Army parties in accordance with the Status of Forces Agreements, treaties, or other agreements under which the Army controls such real property.
- f.* Oversee their respective local real property management activities and policy compliance.
- g.* Ensure senior commanders of United States based installations with exclusive Federal jurisdiction provide status reports every 90 days on their command's requests to enter into retrocession agreements with host States to the Office of the Judge Advocate General's Criminal Law Division.

2–9. The Director of Real Estate, U.S. Army Corps of Engineers

The Director of Real Estate, under the oversight of the COE, who is dual hatted as the Commanding General, USACE, will—

- a.* Within delegated authority and in accordance with applicable law, regulations, policies, and approved DOAs, issue, execute, manage, renew, supplement, or revoke outgrants.
- b.* Oversee delegations to USACE divisions and districts and establish qualifying standards for any redelegation of authority. Periodically review delegations and audit actions taken under delegated authority.
- c.* Establish appropriate formats for outgrants, ROAs, DOAs, and related documents.
- d.* Provide training in procedures, policies, authorities, and documents covered by this regulation.
- e.* Prepare and recommend approval of Congressional reports regarding outgrants.
- f.* Review ROAs for civil works property for consistency with DA mission requirements and applicable real property management policies for those outgrants requiring approval by higher authority.
- g.* Establish and maintain an Accountable Property System of Record (APSR) for all Army outgrants.
- h.* Identify requirements for programming and budget resources for real property actions covered by this regulation, to include reimbursement of USACE administrative costs, which are not direct funded, to the designated Management Decision Package proponent.

2–10. Garrison Commander or Equivalent

Garrison Commanders (GCs) or their equivalent (see Glossary for definition), for real property for which they are accountable, will—

- a.* In conjunction with real property master plan updates as required by AR 210–20, review Army-controlled real property to identify any such property which may be made available for compatible use by others.
- b.* Review requests from non-Army entities for use of Army-controlled real property for consistency with DA mission requirements and applicable real property management policies.
- c.* Notify the appropriate USACE district commander of any possible title disputes, encroachments, real estate claims, or boundary questions.
- d.* Prepare ROA, or availability memorandum (see para 3–3a(4)(c)), as appropriate, for proposed outgrants of real property under installation control.
- e.* Account for all outgranted real property in accordance with AR 405–45 and other applicable real property inventory regulations and policies.
- f.* Ensure that all non-Department of Defense (DoD) use of assigned real property is authorized by an appropriate outgrant, nation agreement, or concession agreement as authorized by AR 215–4, and that an appropriate Installation Agreement (IA) pursuant to AR 5–9 is executed for all non-Army use of assigned real property.

- g. Identify and report resource requirements to LHC for real property actions covered by this regulation.
- h. Review all outgrants with subject tenants annually to validate requirement and document changes in status. Take necessary action to initiate any required change, renewal, or termination of the real estate outgrant instrument.

Chapter 3 Outgrants

3–1. General Outgranting

a. The Army holds real property to carry out its military and civil works mission responsibilities. Real property identified as excess will be promptly reported for disposal in accordance with AR 405–90 for military property, and Engineer Regulation (ER) 405–1–12 or its successor for civil works real property (found at www.publications.usace.army.mil/usace-publications/engineer-regulations/). Making non-excess Army real property (both military and civil works) available for compatible use by others can be prudent asset management. It can provide valuable revenue, defray Army costs to maintain the property, and enable other public and private sector uses of the property that complement Army missions. For military property, an outgrant must be of direct benefit to the United States; promote the national defense or an Army mission; be in the public interest; be compatible with current and anticipated future military activities; and be consistent with the installation real property master plan and related land use plans (that is, Integrated Natural Resources Management Plan). For civil works property, outgrants for recreational development must be dependent on the project's natural or other resources. Outgrants for non-recreational uses will be considered when 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. Decisions to make Army real property available for use by others will follow applicable policies, procedures, and approval authorities set forth in this regulation.

b. Outgrants will be authorized, prior to execution, by the official with approval authority (approval official) to determine the availability of the property for that purpose as set forth in this regulation.

(1) Outgrants will be documented and signed by an Army representative (for example, USACE Real Estate Contracting Officer) having statutory or delegated authority to bind the Government for the outgrant being made.

(2) The assignment of use of Army real property by another DoD component is not an "outgrant" of real property. The minimum documentation for an assignment of use of Army real property by another DoD component is the Real Property Use Agreement associated with an IA as provided in AR 5–9. The use of real estate permits, licenses, or other real estate outgrant instruments are not required for documenting the use of Army real property assets by another DoD component.

(3) The ROA prepared to support a proposed outgrant to a non-DoD Federal agency should be considered as part of the stationing approval process for that non-DoD Federal agency under AR 5–10.

c. Authorized forms of outgrants are leases, easements, licenses, and permits (definitions are in the Glossary). Different forms of outgrants each have specific purposes and limitations, are controlled by different legal authorities, and are not interchangeable. Care should be taken to use the proper form of outgrant for the intended purpose. For instance, licenses provide only limited rights to perform certain specific acts on Army property and allow for termination by the Army with minimal notice and should not be used when the intended use is not consistent with such limitations. A license should not authorize significant investment in the property by the licensee. Every non-DoD use of Army-controlled real property will be documented by an outgrant or other authorized document. In foreign countries, such non-Army use may be subject to provisions of a Status of Forces Agreement, treaty, or other agreement under which the Army controls such real property. Note: Memorandums of Agreement (MOA), Memorandums of Understanding (MOU) or Installation Agreements (IAs) are not outgrants. If use of Army real property by a non-DoD party is contemplated under such agreements, the use must be supported by the appropriate realty outgrant instrument following the applicable approval process.

d. Except where inconsistent with specific legal requirements, or a determination is made by the applicable official with approval authority to determine the availability of the property that an exception is in the best interest of the Army, use of Army real property that is available for use for non-Army purposes will be granted in the following order of preference:

- (1) Non-Army entities which directly support the Army mission at the installation or civil works project.
- (2) Non-Army entities which directly support the mission of the Army.
- (3) Other DoD components.
- (4) Other federal agencies whose mission is closely associated with the national defense and/or civil works mission(s).
- (5) All other federal agencies or activities.
- (6) Non-federal governmental entities, with preference given to State governmental entities.

(7) All others.

e. Outgrants will contain provisions that specifically address: Army termination rights; disposition of any grantee-constructed property at outgrant termination; restoration of the property by the grantee; compliance with regulations regarding access to the installation or project; and consideration/cost reimbursement. Outgrants will require the grantee to use, maintain, protect, and preserve the property in accordance with prudent management practices and the terms of the outgrant, to provide an annual written notice to the GC (the “Host”), validating their continuing need for, and occupancy and use of, real property assigned for their use, and to promptly notify the Host of any real property no longer required for their use. For outgrants exceeding a five-year term, the grantee will provide written notice to the Host as indicated above every five years, or annually if the remaining term of the out-grant is less than five years. The grantee must obtain prior written approval before allowing another party to exercise the rights and privileges directly or indirectly authorized by the outgrant and gain access in accordance with regulations issued by the senior commander.

f. Non-federal entities will be required to pay the administrative costs to the Army, including but not limited to USACE administrative costs (see 10 United States Code (USC) 2695), of entering into the outgrant, except:

(1) If the cost is nominal; or

(2) If the GC finds with LHC prior concurrence, that it is in the public interest to waive that requirement and the GC agrees to be responsible for the cost.

g. Non-federal entities will be charged no less than fair market value consideration for the outgrant, except when the applicable statute for the outgrant authorizes consideration of less than fair market value and the applicable DOA approval official determines that accepting less is in the best interest of the Army. Consideration will normally be accepted in the form of cash unless the applicable DOA approval official determines that accepting in-kind consideration is in the best interest of the Army and documents the basis for that determination.

(1) Any in-kind consideration accepted must be in a form authorized by the applicable legal authority for the outgrant, the dollar value must be determined, and must meet a valid Army requirement. Auditable procedures must be established to verify receipt of all in-kind consideration.

(2) The DASA (IH&P) is the approval authority for acceptance, as in-kind consideration, of other services relating to activities that will occur on leased property as the SECARMY considers appropriate under the authority of 10 USC 2667.

h. Except as otherwise provided by law, regulation, or policy, non-DoD federal agencies will pay all costs, whether direct or indirect, resulting from their use of Army real property. Exceptions may be authorized by the applicable DOA approval official based upon a written determination that the presence of the agency on Army property substantially benefits the installation’s mission or enhances national defense (see DoD Instruction (DoDI) 4165.70). In accordance with DoDI 4000.19 and AR 5–9, IAs should document the support Army will provide to such entities and the amount the non-DoD federal agency will reimburse the Army. Charging such agencies rent, in addition to or in lieu of cost reimbursement, is not authorized.

i. Outgrants should provide the grantee not more than the minimum interest in Army-controlled real property, for the minimum term, which will satisfactorily accomplish the intended purpose.

j. The Army will use open competitive procedures to select the lessee for any lease, except:

(1) In the case of Army civil works property when the competitive procedures are not required by the statutory authority (16 USC 460d), or

(2) When a public interest will be served as a result of the lease and the use of competitive procedures for the selection of the lessee is unobtainable or not compatible with the public benefit. The applicable USACE real estate contracting officer, after legal counsel review and DOA approval official concurrence, will approve any proposal not to use competitive procedures using justification and approval materials similar to those used to support non-competitive procurement contracting decisions. The DASA (IH&P) is the DOA approval official for exceptions to competitive procedures for any proposed lease that falls within the statutory requirement for use of competitive procedures in 10 USC 2667.

k. The Army should avoid creating direct competition with private enterprise, particularly in the lodging and food service industries. The outgranting of or otherwise making available of Army-controlled real property for these or related uses (except for DoD-sponsored programs operated for the direct benefit of DoD personnel such as those authorized by DoDI 1015.13) should be avoided.

3–2. Availability for Outgrant

a. An Army official with approval authority under this regulation will determine the availability of Army-controlled real property for use by a non-Army party.

b. Availability will be documented by a DOA, supported by a ROA, except as provided for in para 3–3a(4)(c) below. The ROA is prepared by the Army proponent for the proposed outgrant, usually the GC and is forwarded through the chain of command to the approving official, who executes the DOA. The ROA provides the information necessary for review and approval of availability and preparation of the real property outgrant instrument which will authorize the approved use. The DOA will include all determinations required by the applicable statutory authority for the proposed outgrant, if any, and will specify a termination date by which the DOA will expire unless the outgrant it authorizes has been fully executed. Approved formats for an ROA and DOA are published by USACE and provided to Army LHCs.

c. In addition to issuance of a DOA, any proposed action that would eliminate or diminish the size of a range or training area must be submitted to the Deputy Chief of Staff, G–3/5/7 for range closure approval. See AR 350–19 for guidance.

d. A preliminary ROA may be used to obtain conceptual approval by the applicable approval official during initial planning. Seeking conceptual approval is encouraged before the Army or prospective grantees expend significant time or money in outgrant planning activities. In such cases, a final ROA will be submitted to obtain a DOA once all information is available, prior to execution of an outgrant.

e. Availability for renewal of an existing outgrant (not already expired), for the same purpose, with the same grantee and for the same term length as the original outgrant, may be documented by supplement/update to the original ROA and DOA.

f. Renewal, substantive modification, or revocation, of an approved DOA must be approved by the same approval level that approved the original DOA.

3–3. Delegations of Authority

Table 3–1 lists specifics as provided in paragraph 3–3a below on approval officials, grouped by outgrant instrument type, statutory authority, and annual rent for the various outgrants. The approval authority confirms the requirement for the lease, license, easement, or permit action, then the outgranting action will be executed by a real estate agreement by the official with the appropriate delegated execution authority as provided below in paragraph 3–3b.

a. DOAs.

(1) DASA (IH&P) will make the DOA for the following military real property outgrant actions:

(a) All leases or licenses that exceed a five-year term. Term is defined as base year/period plus all optional years/periods that may be executed by the grantee without prior Army approval. Leases for the following purposes are exceptions for which DASA (IH&P) has determined that a lease term longer than five years will promote the national defense or is in the public interest:

1. Elementary and secondary public schools operated by a state or political subdivision for a term up to 25 years;
2. Agriculture and grazing for a term up to 10 years;
3. Bank or credit union for a term up to 25 years, subject to the requirements and conditions in DoD 7000.14–R, Volume 12; and
4. Cell towers and similar telecommunication facilities for a term up to 10 years.

(b) All outgrants that require notification to Congressional committees prior to execution under applicable provisions of 10 USC 2662.

(2) The ASA (CW) will make the DOA for the following civil works outgrant actions:

(a) Leases or licenses issued under the authority of 16 USC 460d which exceed a 25-year term (50-year term for leases or licenses to a state or political subdivision).

(b) Licenses that exceed a five-year term, and leases under the authority of 10 USC 2667 that exceed a five-year term (10-year term for leases for agriculture and grazing). ASA (CW) has determined that a lease term up to 10 years for agriculture and grazing is in the public interest.

(3) Commanders of LHCs, with regard to real property under their respective control, are delegated the authority, with authority to redelegate to individuals under their direct supervision, to make the DOA for:

(a) New easements, except as delegated to GC in paragraph 3–3a(4) below; and

(b) Leases and licenses that exceed a one-year term (any renewal options that may be executed by the grantee without prior Army approval will be included when calculating the term) but do not require higher authority approval. See AR 140–483 for additional United States Army Reserve procedures.

(4) GCs, for real property for which they are accountable, are delegated the authority, with authority to redelegate to individuals under their supervision, to determine availability for the following, except that any proposed outgrant with potential for significant effects on Army/DoD missions or resources will be forwarded to the next higher command echelon for consideration:

(a) Easement renewals.

(b) Leases or licenses that do not exceed a one-year term (any renewal options that may be executed by the grantee without prior Army approval should be included when calculating the term).

(c) Availability for the following may be documented by memorandum signed by the GC:

1. Short-term (not more than one year), revocable licenses for the use of property incidental to installation or project administration;

2. Easements to support an Army utility contract;

3. Revocable licenses to document property made available for use by a contractor in the performance of a Federal Acquisition Regulation (FAR) contract; and

4. Short-term (not more than one year), revocable licenses for the regular, occasional, or non-recurring use of real property by state or local governments, youth, civic, community, or non-profit organizations.

b. Execution of Real Estate Agreements.

(1) DASA (IH&P) may delegate to the USACE Director of Real Estate the authority to issue, execute, manage, renew, supplement, and revoke leases, easements, and licenses authorizing the use of Army real property, and may authorize redelegation of this authority to personnel that meet qualification requirements for real estate contracting. The USACE Director of Real Estate will establish such qualifications and may issue real estate contracting warrants to qualified personnel.

(2) The GC, for real property for which they are accountable, are delegated the authority, with authority to redelegate to individuals under their supervision, to execute, manage, renew, supplement, and revoke the following, using documents preapproved by USACE:

(a) Short-term (totaling not more than one year, including any renewal periods) revocable licenses for the use of property incidental to installation administration.

(b) Revocable licenses to document property provided in accordance with a FAR contract for the same term as the contract.

(c) Short-term (totaling not more than one year, including any renewal periods), revocable licenses to state or local governments, youth, civic, community or non-profit organizations for regular, occasional, or non-recurring use of land, facilities, or space.

**Table 3–1
Property Outgranting Approval Authority**

OUTGRANTS ¹						
TYPE	ENTITY	TERM ²	Annual rent	Congressional Reporting Rqmt ³	STATUTORY AUTHORITY	APPROVAL AUTHORITY
Lease	Any (with exceptions below)	≤ 5 yrs	≤ \$750K	N	10 USC 2667	LHC
			> \$750K	Y		DASA (IH&P)
Lease	Any (with exceptions below)	> 5 yrs ⁴	≤ \$750K	N	10 USC 2667	DASA (IH&P)
			>\$750K	Y		
Lease	Public schools	≤ 25 yrs	≤ \$750K ⁵	N	10 USC 2667	LHC
			> \$750K ⁵	Y		DASA (IH&P)
Lease	Public schools	> 25 yrs	≤ \$750K ⁵	N	10 USC 2667	DASA (IH&P)
			> \$750K ⁵	Y		DASA (IH&P)
Lease	Agricultural / grazing	≤ 10 yrs	≤ \$750K	N	10 USC 2667	LHC
			> \$750K	Y		DASA (IH&P)
Lease	Agricultural / grazing	>10 yrs	≤ \$750K	N	10 USC 2667	DASA (IH&P)
			> \$750K	Y		DASA (IH&P)
Lease	Bank or credit union ⁶	≤25 yrs	≤ \$750K	N	10 USC 2667	LHC
			> \$750K	Y	12 USC 1770	DASA (IH&P)

**Table 3–1
Property Outgranting Approval Authority—Continued**

Lease	Bank or credit union ⁶	> 25 yrs	≤ \$750K	N	10 USC 2667	DASA (IH&P)
			> \$750K	Y	12 USC 1770	DASA (IH&P)
Lease	Cell Towers or other tele-communications ⁷	≤ 10 yrs	≤ \$750K	N	10 USC 2667	LHC
			> \$750K	Y		DASA (IH&P)
Lease	Cell Towers or other tele-communications ⁷	> 10 yrs	≤ \$750K	N	10 USC 2667	DASA (IH&P)
			> \$750K	Y		DASA (IH&P)
License	Any (with exceptions below)	≤ 5 yrs	≤ \$750K	N	NA	LHC
			> \$750K	Y		DASA (IH&P)
License	Any (with exceptions below)	> 5 yrs	≤ \$750K	N	NA	DASA (IH&P)
			> \$750K	Y		
License	Red Cross/polling place/veterans organizations	Any term	≤ \$750K	N	10 USC 2670	LHC
			> \$750K	Y	10 USC 2602	DASA (IH&P)
License	YMCA	Any term	≤ \$750K	N	10 USC 7778	LHC
	YMCA		> \$750K	N		DASA (IH&P)
License	National Guard (State Guard)	≤ 25 yrs	NA	N	32 USC 503	LHC
	National Guard (State Guard)	> 25 yrs	NA	N		DASA (IH&P)
Easement	Various rights-of-way	Any	≤ \$750K	N	10 USC 2668	LHC
			> \$750K	Y	43 USC 961 40 USC 1314	DASA (IH&P)
Easement	Pipelines	Any ⁸	<24" diameter	N	30 USC 185	LHC ⁹
			≥ 24" diameter	Y		DASA (IH&P) ⁹
Easement	In connection with land conveyance	Any	NA	N	10 USC 2668a	DASA (IH&P)
Easement	Support Army Utility Contract	Any	NA	N	NA	GC
			NA	N		
Permit	Other Federal Agencies ¹⁰	≤ 5 yrs	NA		NA	LHC
		> 5 yrs	NA			DASA (IH&P)

1. See paragraph 3–3a(2) for Civil Works property.
2. Includes any renewal periods which the grantee can exercise without additional specific prior Army approval.
3. See 10 USC 2662 for the congressional reporting requirement.

4. The SECARMY has delegated authority to DASA (IH&P) to determine whether leases over 5 years will promote the national defense or be in the public interest.
5. 10 USC 2667 authorizes local education agencies or elementary or secondary schools leases for less than the fair market value of the lease.
6. DoD 7000.14–R, Financial Management Regulation, Volume 12.
7. See Telecommunications Policy (ASA (IE&E) Memo dated 13 Sep 2019, Subject: Deployment of Broadband and Telecommunications Infrastructure on Army Installations). Lease is not required if in support of Army/Air Force Exchange Service (AAFES) Personal Information Services and covered under AAFES contract.
8. 30 USC 185(n) indicates term may not exceed 30 years.
9. Army authority under 30 USC 185 only extends to pipelines which do not cross other Federal agency administered land. When pipelines cross lands administered by the Secretary of the Interior or by two or more Federal agencies, the Secretary of the Interior has lead and will consult with other agencies involved.
10. No real estate outgrant is required for use of Army property by another DoD component. See AR 5–9.

3–4. Environmental Considerations

- a.* Potential environmental impacts. Army will comply with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 et seq.) prior to executing outgrants of Army property. See Part 651, Title 32, Code of Federal Regulations (32 CFR 651) and see ER 200–2–2 for civil works property. The Army will comply with consultation requirements found in Federal law to include section 106 of the National Historic Preservation Act of 1966 (54 USC 100101 et seq.) and section 7 of the Endangered Species Act of 1973 (16 USC 1531 et seq.). The Army will not authorize use of its real property when the proposed use would conflict with the goals and intent of Federal, DoD, or Army laws and policies on environmental quality and historic preservation. All outgrants will comply with applicable Federal and state requirements governing the environment, historic and cultural preservation, coastal zone management, floodplain management, and wetland management. (Examples of such requirements are found in Executive Orders 11988 and 11990).
- b.* Environmental Condition of Property (ECP). Army will assess, determine, and document the environmental condition of Army property proposed for outgrant by lease or easement, and other outgrants as appropriate, in an ECP report prepared in accordance with guidance contained in AR 200–1 and ER 200–2–3. The ECP report will serve as the basis for a finding that the property is environmentally suitable for use for the intended purpose, for any limitations on property use due to site environmental conditions, and for appropriate notices to the grantee regarding the presence of hazardous materials and hazardous substances or their derivatives.
- c.* Toxic and hazardous materials. 10 USC 2692 prohibits use of DoD property for storage, treatment, and disposal of toxic or hazardous materials and hazardous substances or their derivatives that are not owned by DoD, with certain exceptions that must be approved by Army officials with specific delegated authority to make such determinations. The applicable DOA approval official will assure compliance with this requirement before approving such use of Army property by a non-DoD party. See DoDI 4715.06 and 48 CFR subpart 223.71.

3–5. Special Considerations Regarding Outgrants

- a.* Solid waste disposal. Use of Army-controlled real property for solid waste disposal is not authorized, unless the activity is for exclusive Army use and no materials from non-Army sources will be placed in it. Army must comply with the requirements of the Resource Conservation and Recovery Act (42 USC 6901 et seq.).
- b.* Political purposes. Army-controlled real property will not be made available for use by a Member of Congress for a district office, nor for use by any candidates (either incumbents or new office seekers), members of their staffs, or their campaign representatives for political campaigns, parties, or causes (regardless of sponsorship), press conferences, or any other activity that could be construed as partisan in nature.
- c.* Commercial billboards. Army-controlled real property will not be made available for commercial billboards promoting private commercial or political interests, except grantee signage determined to be necessary and appropriate in conjunction with an existing outgrant.
- d.* Private organizations. AR 210–22 establishes policy, procedures, and responsibilities for private organizations operating on Army installations and projects, including nonprofit non-federal entities that assist Servicemembers and families. The use of real property by private organizations on Army installations and projects will be authorized by an appropriate outgrant. (See also DoD 5500.7–R).
- e.* Hunting, fishing, and trapping. Authority and procedures for hunting, fishing, and trapping on Army installations is addressed in AR 200–1. See also ER 405–1–12 as it pertains to these activities on civil works outgranted lands.
- f.* Post offices. Army-controlled space or facilities may be made available for post offices under the authority of 39 USC 406 and 39 USC 411.

g. Rental quarters. Civilian employees and other non-military personnel will be assigned and rented quarters in accordance with AR 420–1.

h. Motion pictures, television, and video productions. Use of Army real property for non-government motion pictures, television, or video production requires coordination and prior approval in accordance with AR 360–1. When approved, use of Army real property for such purposes will be authorized by an appropriate outgrant.

i. Airfields. Use of Army airfields by others must be authorized by an appropriate outgrant except in unscheduled emergency situations. Refer to AR 95–2 for specific policies, procedures, and joint use agreements regarding authorized civil use of Army airfields.

j. Withdrawn Public Lands. The Army controls certain real property that has been withdrawn from the public domain, by statute, executive order, or administrative action by the U.S. Department of the Interior and reserved for use by the Army for military or civil works purposes. The applicable land withdrawal document will be reviewed prior to issuance of any outgrant on Army-controlled withdrawn public land to assure the outgrant is consistent with terms of the land withdrawal. Inform the applicable Bureau of Land Management (BLM) state or field office prior to granting an interest in real property to a non-federal party (that is, lease or easement) or authorizing construction of improvements by a non-Army party.

k. Utility contracts and easements. Use of Army real property by a utility company (including phone and cable service providers) providing utility services to the Army does not normally require issuance of separate easements unless the utility company requires an easement as a condition of providing service. However, if the utility company also uses the Army property to provide utility services to others, an easement is required.

l. Property made available under a FAR contract. Under FAR Part 45, Army property may be made available for use by a contractor in conjunction with provision of goods or services under a procurement contract. Such use must also be documented in an appropriate real estate outgrant, normally a license, to properly establish terms of use of the property and to assure recordation of the use in Army real property inventory records and the Army Stationing and Installation Plan system. The outgrant term must be consistent with the FAR contract. The outgrant should normally terminate automatically upon FAR contract termination.

m. Foreign Governments. Use of Army property in the United States by a foreign government is generally authorized by treaty, foreign military sales, or other country-to-country agreement which determines the type of support and real property to be provided. In foreign countries, use of Army-controlled property by others must be consistent with the country-to-country agreement under which the Army has use of the property.

n. Law enforcement agencies. To promote proper awareness and oversight, all requests by federal, state, or local law enforcement agencies for use of Army real property will be coordinated with the supporting LHC prior to approval. Requests for use longer than one year will be coordinated with DASA (IH&P) prior to approval.

o. Banks and Credit Unions. The furnishing of office space and/or land (including ATM placement) to on-base credit unions is governed by the Federal Credit Union Act (12 USC 1770). Provision of land or space on Army installations is at no cost for federal credit unions meeting the 95% criterion set forth in the Act. See DoD 7000.14–R, Volume 12, for more specific policies and procedures for providing space on Army installations for use by banks and credit unions.

p. Educational Use. Army real property may be made available to states, local governments, school districts, or others for full-time, occasional, or periodic educational uses using the real estate outgrant agreement that is appropriate to the circumstances and following the otherwise applicable authorities and procedures for approval and execution. If Army real property is leased, under the authority of 10 USC 2667, to a local education agency or an elementary or secondary school (as those terms are defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 USC 7801)), the applicable approval official may authorize acceptance of lease consideration in an amount that is less than the fair market value of the leasehold interest upon a determination that it is in the public interest to do so.

q. Commercial use of government-owned industrial installations. Commercial use of underutilized and unutilized industrial facilities is encouraged as a means to reduce product and ownership costs, protect state and local economies, maintain critical skills and technological base, maintain and/or modernize infrastructure, encourage contractor investment, and reduce environmental cost. Commercial use of government-owned, contractor-operated (GOCO) ammunition installations is also authorized by 10 USC 7554. See AR 700–90. Notwithstanding the form of agreement used, the grant of use of GOCO property to third parties for a period exceeding five years will be subject to approval by DASA (IH&P), with concurrence from Deputy Assistant Secretary of the Army (Acquisition Policy and Logistics) (any renewal options that may be executed by the grantee without prior Army approval should be included when calculating the term). Except as approved by DASA (IH&P), improvements to government real property by a tenant will not exceed \$750,000 in value over the life of the agreement.

r. Use of real property by concessionaires and contractors for Morale, Welfare, and Recreation activities and the Army and Air Force Exchange Service. See policies and procedures in AR 215–4 and AR 215–8.

s. VA-Recognized Veteran Service Organizations (VSO)/Military Service Organizations (MSO). Space and associated services on installations provided for use on an ‘as available’ basis to representatives of national VSOs/MSOs approved and recognized by the Secretary of Veterans Affairs pursuant to 38 USC 5902 to function on military installations for the purpose of providing VA-accredited representation services to transitioning Servicemembers will be provided at no charge and on terms that do not constitute a leasehold interest.

t. Career Skills Program (CSP)/Soldier for Life Transition Assistance Program. As authorized by 10 USC 1143 and DoDI 1322.29, Army property/space may be provided to an approved CSP, which provides skills training opportunities to soldiers preparing to transition from military to civilian employment. In connection with an approved CSP governmental, non-profit and commercial entities may provide skills training to soldiers and other authorized participants on the installation per an approved DOA and a signed MOA between the CSP and Garrison Command. Per 10 USC 2667, the appropriate outgrant will be specified based on the CSP’s requirements, type of service offered, and the availability of space. Competitive procedures will be followed unless a Waiver of Competition is requested and approved. A lease requiring consideration no less than fair market value is required for exclusive use requests.

Chapter 4

Management of Title

4–1. Unauthorized Uses

a. Unauthorized uses can take the form of either encroachment or trespass on land over which the United States holds either a fee or lesser interest. Encroachment is unauthorized placement of improvements on Army property by a non-Army party. Trespass is unauthorized transient use and occupancy of Army property by a non-Army party. Both encroachment and trespass should be addressed promptly upon discovery.

b. The appropriate USACE District and legal counsel will be consulted upon discovery of a suspected encroachment. Careful examination of property records may be required to confirm whether an encroachment exists, and legal actions may be required to enforce the Government’s rights and interests, especially if the owner of an encroachment is unwilling to cooperate with the Army on corrective measures or if the owner of the encroachment cannot be readily determined. Private parties do not have rights of adverse possession against the federal government, regardless of the duration of the encroachment before its discovery. Confirmed encroachments should be resolved by requiring the owner of the encroachment to remove it, restore Army property, pay any administrative costs incurred by the Army, and pay fair market consideration to the Army for the period Army property was used. Exceptions may be approved by the GC upon a determination that the encroachment was unintentional. But see, 43 USC 1068. In such cases, a further determination must be made about whether the encroachment is incompatible with Army mission requirements and must be removed, or whether other corrective measures can be considered that do not require immediate removal. When an exception to removal is approved, corrective measures that can be considered include either an appropriate outgrant (easement, license, or lease), exchange, or disposal of the affected property to the owner of the encroachment, or consent (for easements). In such cases, execution of the outgrant, exchange, or disposal must follow all regulations and policies normally applicable to the outgrant, exchange, or disposal action taken.

c. Trespass is generally handled at the local installation or project level by taking appropriate measures to either properly authorize or assure cessation of the occupancy and use. Trespass cases should be coordinated with law enforcement.

4–2. Boundary Line or Title Disputes

The appropriate USACE District will be consulted for assistance to address any issue or question raised by a non-Army party regarding the sufficiency of the Government title, control of Army property, or the proper establishment of Army property boundaries.

4–3. Easement Non-Use

Easements granted by the Army for use of Army property by others, such as roads, utilities, pipelines, railroads, or other rights-of-way, will normally contain terms that provide for termination of the easement in the event of non-use of the easement area by the grantee for a specified period of time. See 10 USC 2668. The Army, as property owner, may also have certain rights to extinguish the easement in the event of abandonment by the grantee even if the easement does not contain explicit termination provisions. See 10 USC 2668. Army installation and project personnel should be aware of the existence and terms of easements affecting their property and should notify the applicable USACE District whenever there is reason to believe a grantee may have abandoned its use of the easement so that the Army may properly assert any rights to extinguish the easement.

4–4. Withdrawn Public Land

A substantial amount of Army-controlled real property, primarily in the western United States and Alaska, has been withdrawn from the public domain, by statute, executive order, or administrative action by the U.S. Department of the Interior for use by the Army for military and civil works purposes. In managing Army activities and the uses of Army property by others, installation and project officials must be aware of the location of any withdrawn public land and the specific terms of the withdrawal order because the withdrawal order may limit the nature and duration of authorized activities. In some cases, the withdrawal order must be renewed by a specified date, and specific actions must be taken in order to obtain timely renewal of the withdrawal for continued Army use of the property. In some cases, BLM has authority to make outgrants on withdrawn public land, normally subject to prior Army concurrence. The applicable USACE District and the applicable BLM district office will be consulted if there are any questions about proposed actions involving withdrawn public land.

Chapter 5 Federal Legislative Jurisdiction

5–1. Purpose and Scope

a. This chapter sets forth basic characteristics of Federal legislative jurisdiction and the policies, procedures, and responsibilities relating to acquisition and retrocession of such jurisdiction over land areas within the United States that are under the control of DA. See Glossary for definition of legislative jurisdiction and associated types.

b. Basic characteristics of Federal legislative jurisdiction.

(1) Characteristics of exclusive legislative jurisdiction. Only Congress has the authority to legislate for areas held under exclusive legislative jurisdiction and the Federal Government has the responsibility for law enforcement. The State cannot enforce its laws and regulations in such areas, except as to the service of civil or criminal process pertaining to matters or actions outside the area or as permitted by Congress, and there is no obligation on the part of the State or any of its political subdivisions to provide governmental services such as disposal of sewage, trash and garbage removal, road maintenance, and police and fire protection. In some States, people residing on areas under exclusive legislative jurisdiction may be denied many of the important rights and privileges of a citizen of the State concerned, such as the right to vote and to have access to State courts. The language of the State statutes generally governs the remaining degree of state obligation where exclusive Federal legislative jurisdiction exists over an area.

(2) Characteristics of concurrent legislative jurisdiction. Both State and Federal laws are applicable in a concurrent legislative jurisdiction area. Both Federal and State governments may enforce their respective laws and punish an offender for an offense committed in the area. The State, subject to the exemption of the Federal Government, retains its right to tax. The regulatory powers of the State may be exercised in the area, but not in such a manner as to interfere with Federal functions. Persons residing on areas under concurrent legislative jurisdiction are not denied important rights and privileges of citizenship, such as the right to vote or access to the State courts.

(3) Characteristics of partial legislative jurisdiction. As to the authority to legislate, execute, and enforce municipal laws granted without reservation by the State to the Federal Government, administration of the Federal area is the same as if it were under exclusive Federal legislative jurisdiction. Such powers may be exercised only by the Federal Government. As to the authority to legislate, execute, and enforce municipal laws reserved by the State, administration of the area is the same as though the United States had no legislative jurisdiction whatever. As to those powers granted to the Federal Government with a reservation by the State to exercise the same powers concurrently, administration of the area is as though it were under concurrent legislative jurisdiction. In an area of partial legislative jurisdiction, the right most commonly reserved by the State is the right to tax.

(4) Characteristics of proprietary interest only. The Federal Government has only the same rights in the land as does any other landowner. However, there exists a right of the Federal Government to perform the functions delegated to it by the Constitution and directed by statutory enactment of Congress without interference from any source. Subject to these conditions, the State retains all of the legislative jurisdiction over the area it would have if a private individual rather than the United States owned the land. The State may not impose its regulatory power directly upon the Federal Government nor may it tax the Federal land, but it may tax a lessee's interest in the land if State law permits. The State may not regulate the actions of residents of the land in any way which might directly interfere with the performance of a federal function. Persons residing on the land remain residents of the State with all the rights, privileges, and obligations which attach to such residents.

5–2. Army Guidance

a. It is DA policy to acquire only a proprietary interest in land and not to acquire any degree of legislative jurisdiction except under exceptional circumstances. It is further the policy of DA to retrocede unnecessary Federal

legislative jurisdiction to the State concerned. Determinations regarding changes in Federal legislative jurisdiction on a DoD installation will be made pursuant to 10 USC 2683 and 40 USC 3112. See DoDD 4165.06 and DoDI 4165.70.

b. Senior commanders will seek to establish concurrent jurisdiction with the State through retrocession of jurisdiction, pursuant to 10 USC 2683, for juvenile offenses and for civilian adult criminal offenses committed on the installation by persons not subject to the Uniform Code of Military Justice (UCMJ). A retrocession will be supported by a MOA addressing the process and responsibilities among the Army, State, and U.S. Department of Justice (applicable U.S. Attorney) for the referral of alleged major juvenile misconduct and civilian adult criminal offenses to the appropriate State court or prosecution authority. In seeking to enter into such MOA, senior commanders will work collaboratively in consultation with relevant entities within the DoD and the Department of Justice to develop consensus approaches, where available, that preserve investigative and adjudicative flexibility in covered cases. In no case will a MOA established pursuant to this policy preclude or limit the investigative authority of any Defense Criminal Investigative Organization or any other Federal law enforcement agency, to include DoD law enforcement agencies.

5–3. Criteria for Exceptional Cases

a. General. Under exceptional circumstances, acquisitions of one of the three types (exclusive, concurrent, or partial) of federal legislative jurisdiction may be authorized by DA provided it is established that the acquisition of such legislative jurisdiction is essential to the proper performance of military functions, missions, and tasks on the property. When one of the three types of legislative jurisdiction is considered to be essential, the degree of jurisdiction sought to be acquired must be limited to the minimum required. The criteria set forth below will govern.

b. Acquisition of legislative jurisdiction.

(1) Concurrent legislative jurisdiction may be acquired where it is found necessary that the Federal Government furnish, or augment law enforcement otherwise rendered by a State or local government. These circumstances might exist where the Army installation or project is of great size, large population, is in a remote location, or where, because of peculiar requirements stemming from Army use, it is beyond the capacity of State or local governments to render effective service and control. When the acquisition of such jurisdiction is contemplated, it is desirable (if the State so permits) that:

(a) State law, judicial, and administrative authority continue to apply with respect to taxation, marriage, divorce, annulment, adoption, guardianship, commitment to mentally incompetent, descent, and distribution of property, education, notarizations, and inquests;

(b) The State retains concurrent power to enforce the criminal law and to execute on the installation any civil or criminal process;

(c) The inhabitants of the installation are not thereby deprived of any civil or political rights, especially rights to vote and attend State or local schools;

(d) There is specifically excluded from the acquisition wherever possible and reasonable, all legislative jurisdiction over public roads traversing the installation and over areas not lying within the perimeter of the main installation or project.

(2) Exclusive or partial legislative jurisdiction may be acquired in those few instances where, due to the peculiar nature of the military operation, the State or local laws unduly interfere with the purpose of the project or mission of the installation. Prior to initiation of requests for such jurisdiction, the following will be considered:

(a) In most instances, even without any measure of Federal legislative jurisdiction, the Federal Government is legally insulated from any State or local interference with the use of Government property such as would impede the Federal mission;

(b) The acquisition of exclusive Federal legislative jurisdiction entails potential disadvantages, principally the loss of State or local fire, police, and sanitation services, and the denial of rights incident to residence or domicile such as attendance at State or local schools, right to vote, and access to the authority of State or local courts, officials or laws in matters relating to probate, domestic relations, notarization, and inquests;

(c) Absent compelling circumstances, a single uniform Federal legislative jurisdiction throughout the installation is normally preferable.

(3) No request for the acquisition of exclusive or partial legislative jurisdiction will be made unless:

(a) The possible disadvantages have been fully examined and weighed against the benefits expected;

(b) There is excluded, wherever possible and reasonable, all legislative jurisdiction over public roads traversing the installation and over areas not lying within the perimeter of the main project or installation, and, wherever possible, reservations will be made in the acquisition request so as not to deprive inhabitants of the project or installation of any or all of the incidents of residence or domicile, as applicable.

5-4. Procedure for Acquisition of Legislative Jurisdiction

a. Requests. After fully considering the policy set forth in paragraph 5-2 above, in exceptional cases the GC for real property for which they are accountable, may initiate requests to acquire legislative jurisdiction subject to the criteria set forth in paragraph 5-3 above. Requests will be forwarded to the Headquarters, USACE (CEMP-CR), through (1) the USACE District Engineer having responsibility for the geographical area and (2) the LHC, with regard to real property under their respective jurisdiction, as applicable. The request will identify the project or military installation and include a vicinity map and a map and legal description of the specific tract of land involved. The request will set forth the present legislative jurisdiction status; will state in detail the background of the request and the circumstances which make it necessary to acquire legislative jurisdiction; the degree of legislative jurisdiction considered necessary, and the full justification therefor in light of the Army policy; and will state whether the degree of legislative jurisdiction considered necessary is available under the present law of the State concerned. If the laws of the State concerned do not offer concurrent legislative jurisdiction and acquisition of exclusive legislative jurisdiction is recommended solely because of this deficiency, a recommendation should be made concerning the feasibility of seeking enactment of special legislation by the legislature of the State concerned.

b. Processing and approvals. Before proposing a change in Federal legislative jurisdiction, USACE will consult with the United States Attorney in whose district the installation or civil works project is located, the Criminal Division, United States Department of Justice, and with applicable state and local law enforcement entities. USACE will evaluate requests in the light of departmental policy and refer them with recommendations through the Office of The Judge Advocate General and the Office of the Army General Counsel to the DASA (IH&P) for determination as to Army military installations. Any requests involving civil works lands of the Army will be forwarded with recommendations to the ASA (CW) for coordination. In each instance the request and recommendation will consider the necessity for acquiring any degree of legislative jurisdiction and the degree of legislative jurisdiction to be sought. In accordance with the determination made in each instance, USACE will take further actions as appropriate to include, as required, those necessary to comply with the laws of the State concerned governing acquisition of legislative jurisdiction, in the degree approved, and will submit assemblies for accomplishing the acquisition, including appropriate notices of acceptance through the above-mentioned officials set forth herein.

5-5. Procedure for Retrocession of Legislative Jurisdiction

Requests for retrocession of any degree of Federal legislative jurisdiction to the particular State concerned will be initiated, processed, and approved by the same officials and in the same manner set forth in paragraph 5-4 above. The request will identify the project or military installation and include a vicinity map and a map and legal description of the specific tract of land involved. The request will set forth the present legislative jurisdiction status; will explain the background of the request and the circumstances which make retrocession of legislative jurisdiction desirable; will recommend the degree of legislative jurisdiction desired to be retroceded; and will provide a draft MOA per paragraph 5-2*b* for juvenile offenses and for civilian adult criminal offenses committed on the installation by persons not subject to the UCMJ. Upon obtaining the requisite prior approvals: (1) USACE will take further action as appropriate to include, if necessary, actions required to comply with the laws of the state concerned governing retrocession of jurisdiction by the United States including drafts of necessary legislation appropriately amending State law when required to permit the desired retrocession for consideration of State governing bodies; and (2) for retrocession of legislative jurisdiction for juvenile offenses and for civilian adult criminal offenses committed on the installation by persons not subject to the UCMJ, senior commanders, or their designee, will sign the MOA and, through coordination with USACE, obtain appropriate Department of Justice and State signatures.

5-6. Notice and Information

a. Posting or publication. If senior commanders consider it advisable to inform the public of applicable governmental responsibility for law enforcement within areas under their jurisdiction frequented by the public such as roadways or recreational areas, they may post suitable notices that the area is under Federal, State, or concurrent Federal and State legislative jurisdiction. If the COE considers that the acceptance or retrocession of Federal legislative jurisdiction over a particular area of Army-controlled land is of national interest, the COE will secure publication of a notice thereof in the Federal Register.

b. Documents. USACE Real Estate, on behalf of the District Engineer, will maintain the record files with all documents evidencing Federal acceptance or retrocession of legislative jurisdiction relating to installations or projects and will furnish copies of such documents to The Judge Advocate General for incorporation in the title files of a particular project or installation, and will furnish copies to the appropriate senior commander. As an exception thereto, the letter bearing the original signature of the State official accepting the retrocession will be transmitted to The Judge Advocate General.

c. Information on jurisdiction status. District Engineers will maintain factual records pertaining to Federal legislative jurisdiction existing in connection with Army installations and civil works projects and provide information thereof upon request. Questions relating to legislative jurisdiction over military lands should be submitted to the Command Staff Judge Advocate. In the event there are questions as to the degree of legislative jurisdiction presently existing over the particular lands in question the matter should be submitted to USACE (CEMP–CR) for assistance. In the event a legal problem relating to legislative jurisdiction over lands within a military installation cannot be answered by the Command Staff Judge Advocate through the use of research material available, submit all available facts to The Judge Advocate General who will coordinate with the USACE (CEMP–CR) and the Office of the Chief Counsel. In the event a legal problem relating to legislative jurisdiction over lands within a civil works project cannot be answered by the District Counsel through the use of research material available, submit all available facts to the USACE (CEMP–CR) and Office of the Chief Counsel. USACE (CEMP–CR) will provide administrative and technical assistance as required. If the particular legal problem involves the determination of the status or degree of legislative jurisdiction existing at a precise fixed point on the installation or project, the precise point should be identified on an installation real estate tract map which will be included in the transmittal. Real estate tract maps are usually available from the installation Director of Public Works, or the District Engineer having real estate responsibility over the area where the installation is located.

Chapter 6 Annexation

6–1. Purpose and Scope

Annexation is the act of adding, attaching, or joining additional land areas within the boundaries of a political subdivision of a State. Annexation can be by cities or towns, or by entities such as water, sewer, or school districts. This chapter sets forth policies, procedures, and responsibilities attributable to those situations where a political subdivision of a State seeks to alter its existing boundaries in a manner which would result in the inclusion therein of real estate under control of DA. It is applicable to annexation actions involving both military and civil works lands of DA. The process for annexing Army-controlled lands is governed by individual State laws.

6–2. Effect of Annexation

a. Municipalities acquire the power to tax private persons, private property, and Federal interests (to the extent immunity has been waived) by annexation. Municipal taxation may be applicable to Army contractors, lessees and concessionaires, or others, which could result in higher prices to the Army or Army personnel. Municipal taxation may be applicable to dependents of military personnel and certain aspects of post exchanges, such as the sale of gasoline.

b. Annexation does not alter the existing Federal jurisdiction over Army-controlled land and does not result in any interference with official Army activities or functions because these are protected by Federal constitutional immunity (see Chapter 5). However, upon annexation of lands, the annexing State political subdivision may assume the responsibility for providing certain governmental functions and services. That responsibility may be affected by the type of legislative jurisdiction that exists on the lands involved, especially where exclusive legislative jurisdiction exists. This element should be fully explored, in consultation with applicable legal counsel, and explained to the community proposing annexation.

6–3. Army Guidance

a. If State law does not require that the Army take an affirmative position to support or oppose an annexation proposal, DA will be neutral unless the DASA (IH&P) or the ASA (CW) for civil works property, determines that the annexation would not be in the best interest of the Government.

b. If State law requires that the Army take an affirmative position to support or oppose an annexation proposal, the Army will normally take the actions necessary to cooperate with the proposed annexation unless the DASA (IH&P) or the ASA (CW) for civil works property, determines that the annexation would not be in the best interest of the Government. Generally, the Army will not affirmatively consent in cases where the proposed annexation is opposed by another political subdivision of the State.

6–4. Procedures

a. Upon receipt of information or official notice that a political subdivision of a State has taken action or is in the process of undertaking an annexation affecting Army property, and also upon receipt of a request by a political

subdivision of a State for annexation, the applicable GC will immediately notify the District Engineer and request evaluation of the effect of the annexation on Federal Government interests.

b. The District Engineer will prepare an Annexation Assembly and Evaluation Report following applicable ERs and formats and provide it to the GC, as applicable. The Annexation Assembly should generally contain the following information: (1) map and description of land involved; (2) legislative jurisdiction; (3) the reasons stated by the political subdivision for the annexation; (4) evaluation of anticipated effects on Federal Government interests as described in paragraph 6–4c below; (5) stated positions of any other political subdivisions; and (6) recommendation.

c. Evaluation of anticipated effects on Army and Federal Government interests should take account of the following factors, without limitation: (1) availability and costs for utilities and municipal services, including fire and police protection and any other services; (2) location and quality of public elementary and secondary schools attended by military dependents; (3) municipal taxation, licensing or other prospective municipal actions which could result in increased costs or prices from taxation of Army concessionaires, contractors, lessees, and others; (4) effect, if any, on master plans for the installation or project; and (5) whether the annexation proposal may affect the likelihood of adjacent private sector property use and development that is incompatible with DoD activities on or near the installation, to include any potential zoning implications.

d. In order to assure that the Government’s interests in the annexation are not forfeited where time is of the essence and the Army evaluation is not complete, the GC will request an extension of time or file a protest, subject to amendment, explanation, or withdrawal after the Army has had sufficient time to determine the facts and establish its position in the matter.

e. When the evaluation concludes that the Army should not oppose (or should support, where State law requires an Army position) the annexation, the GC will obtain concurrence, from the next level of the chain of command, to take that Army position. Upon concurrence regarding military lands, the GC will consult with the District Engineer to take the actions necessary under applicable State procedures.

f. When the evaluation concludes that the annexation would not be in the best interest of the Army or the Government, the evaluation and recommendation will be forwarded promptly via the chain of command to the DASA (IH&P) who will determine the Army position and direct appropriate continuing actions based on applicable State law and procedures.

Chapter 7

Mineral Exploration and Extraction

7–1. Purpose and Scope

This Chapter assigns responsibilities and sets policies and procedures for mineral exploration and extraction on Army land. It applies to leasing and related activities for exploration and extraction of leasable minerals (coal, phosphate, sodium, oil, oil shale, native asphalt, solid or semisolid bitumen and bituminous rock, potassium, sulfur, or gas) and geothermal resources on Army-controlled lands (including withdrawn public land and Army civil works lands) within the United States and its territories and possessions for which the mineral rights are owned by the United States. It does not apply to the following:

a. Exploration and extraction of minerals on Army lands for which the mineral rights are not owned by the United States;

b. Mineral leasing on Army lands situated within incorporated cities, towns, and villages, or on tidelands or submerged lands, when not permitted under applicable mineral leasing statutes;

c. Exploration and extraction of certain hardrock minerals, such as gold and silver, known as locatable minerals, for which new applications are not permitted on Army land; and

d. Common variety minerals such as sand, clay and gravel known as saleable materials, which are disposed in accordance with AR 405–90.

7–2. Army Guidance

United States lands under Army control that have associated federal mineral rights will be made available for mineral exploration and extraction to the extent compatible with military operations, national defense activities, Army civil works activities, and environmental conservation and protection. Application of this policy will ensure that Army mission requirements are not subordinated to mineral leasing interests.

7-3. Statutory Authorities

a. **Leasable Minerals.** Leasable minerals owned by the United States, including those on Army-controlled lands, are subject to the authority of the Secretary of the Interior to dispose of these minerals under The Mineral Leasing Act of 1920 (30 USC 181 et seq.) covering public domain lands and The Mineral Leasing Act for Acquired Lands of 1947 (30 USC 351 et seq.). Under these authorities, mineral leases are granted and administered by BLM. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 USC 181 et seq.) requires that all public lands available for oil and gas leasing be offered first by competitive leasing. BLM may issue noncompetitive leases only after the agency has offered the lands competitively and not received a bid. The mineral leasing laws and policies provide for BLM to obtain the consent of the Army as a condition precedent to issuance of a mineral lease on Army military property for leases of minerals under acquired civil works lands (see 30 USC 352), and for coal leases under civil works withdrawn public domain lands (see 30 USC 201).

b. **Geothermal Resources.** The Geothermal Steam Act of 1970 (30 USC 1001 et seq.) authorizes the Secretary of the Interior, acting through BLM, to lease public domain lands for geothermal development. The SECARMY also has authority (see 10 USC 2917) to develop, or authorize the development of, any geothermal energy resource within lands under the Army's jurisdiction, including public domain lands, for the use or benefit of DoD if that development is in the public interest, as determined by the SECARMY, and will not deter commercial development and use of other portions of such resource if offered for leasing.

c. Further information regarding BLM mineral leasing procedures and requirements implementing these authorities may be found at 43 CFR 3000 et seq. (Mineral Management).

7-4. Approval Authority

The ASA (IE&E) will make all final determinations regarding the availability of Army land for mineral exploration and extraction based on a recommendation from the chain of command, and in consultation with the ASA (CW) regarding civil works property.

7-5. Leasing Requests

a. **Oil and Gas Leasing Requests.** Per BLM's Minerals Management Handbook, H-3101-1, Issuance of Leases, a party desiring a federal oil and gas lease on Army-controlled property must first file an expression of interest in the proper BLM State office. If BLM accepts the expression of interest, it forwards the expression of interest and a title information request to the affected installation or civil works project. Upon receipt of such information from BLM, the GC will provide an interim response to BLM that acknowledges receipt and provides an estimate of the time required for Army review and further response.

b. **Other Leasing Requests.** BLM may grant leases for other types of minerals as listed in paragraph 7-1. Leases for these minerals are less frequent and procedures are usually more complicated. This regulation also applies to such leases. However, GCs and LHCs should consult with appropriate USACE District on procedures in each case.

c. **Title Information.** The GC will consult with the District Engineer to develop available title information for acquired lands and identify outstanding interests (for example, easements) on withdrawn public domain land. The GC will provide that information to BLM and include it in the materials sent forward for concept-level review.

d. **Concept-level Review.** The GC will submit a concept-level ROA, or a recommendation to withhold consent to lease, through the chain of command to the ASA (IE&E) for approval. With the ROA or recommendation, the GC will include a concept-level mineral leasing plan (MLP) that describes:

- (1) The area with potential mineral resources;
- (2) The potential effect(s) from leasing on current and future missions;
- (3) The applicable requirements for environmental compliance; and
- (4) The potential costs and benefits to the Army from consenting to lease.

Note. See Appendix C, Guidance for MLPs, for additional guidance.

7-6. Mineral Leasing Stipulations

a. **Stipulations** are contract terms that restrict the lessee's right to operate. In cases where the Army decides to make property available for mineral leasing, the MLP will be used as the basis for lease stipulations. The GC, after review by the local Office of the Staff Judge Advocate (OSJA), will provide to BLM draft stipulations that will guide actual development and operations on the lease site. Stipulations should not duplicate standard lease terms or published regulations.

b. **Drafting.** Stipulations should be written so the potential lessee can understand the effect on its activities, lease revenues, and costs. Stipulations should specify the reason for restricting operations and the land affected. For

example, “The lessee may not operate in Tract A because it contains a critical wildlife habitat.” Stipulations may also permit a waiver of the restriction if pertinent conditions change or if the lessee can operate without causing unacceptable effects. For example, “Operations on Tract B will not be approved, unless it is shown to the satisfaction of the senior commander that mineral operations will not interfere with training.”

c. Mandatory stipulations. Leases of minerals under Army military property and acquired civil works lands, and coal leases under civil works withdrawn public domain lands will contain the following stipulations:

(1) The SECARMY or designee reserves the right to require suspension of operations in a national emergency or if the Army needs the lease area for a mission that is not compatible with lease operations. Use of this right will have prior concurrence from one level of command above the GC. On approval from higher authority, the GC will give the lessee written notice, or when time permits, request BLM to give notice of the requirement to suspend operations. Copies of this notice must be simultaneously provided to the Army chain of command, the operator, and BLM. The lessee and the operator agree to this condition and waive the right to compensation for its exercise.

(2) If the GC finds an imminent danger to safety or security, the GC may order an immediate stop of such activities. The District Director of BLM, the Army chain of command, and the lessee will be notified immediately. On receipt of the notice, BLM District Director will review the order and determine the need for other remedial action.

(3) The operator will immediately stop work if contamination or unexploded ordnance is found in the operating area and inform the GC.

d. Additional stipulations should be included which are determined to be necessary and justified. Installations will consult BLM and District Engineer for help in drafting leasing stipulations. Consideration should be given to stipulations that address the following:

- (1) Access (for example, time of year, gates, roads, and so forth).
- (2) Location, design, and timing of exploration and construction activities including drilling, pipelines, ingress/egress routes, collection, and storage facilities.
- (3) Use and protection of installation water supply.
- (4) Protection of the environment.
- (5) Safety and fire protection measures, including safe working distances from ammunition and explosives.
- (6) Use of communication and transportation systems.
- (7) Installation security.
- (8) Management of production area (for example, size, fencing, gates, and so forth).
- (9) Reclamation and restoration measures during the lease term and at termination.
- (10) Attendance at meetings.
- (11) Disposition of merchantable timber on areas to be cleared.
- (12) Provision and payment for any services to be provided by the installation.

7-7. Protective Action Against Drainage of Oil and Gas in Army-Controlled Land

Army activities will take appropriate and timely action to protect the property rights of the Federal Government where oil and gas in lands under Army control (acquired or public domain) may be drained by drilling operations on adjacent non-federal land. When it is suspected that wells or other activities on lands adjacent to Army lands may cause drainage of oil or gas from the Army lands, the GC should ask the District Engineer to seek BLM assistance to conduct an investigation of actual or potential oil and gas development in the vicinity to determine whether any action is necessary to protect the interests of the Government in those mineral deposits. When, as a result of an investigation, it appears that wells drilled outside Army land are causing, or threaten to cause, drainage of oil or gas from beneath Army lands, the District Engineer will then develop, in coordination with BLM and the GC of the installation concerned, full information about the character and scope of the existing or threatened drainage, and recommend taking action that will most effectively protect the Government’s interests in the deposits. If mineral leasing on Army-controlled land is requested by BLM, mineral lease procedures discussed above apply.

7-8. Mineral Exploration and Extraction by the Army

Army activities will seek guidance from the DASA (IH&P) through the appropriate chain of command, before pursuing or authorizing any exploration or development/extraction of mineral resources on Army-controlled land not involving the Department of the Interior.

Chapter 8

Water Rights and Water Resource Management

8–1. Purpose and Scope

a. The Army requires enough water to carry out its missions without significant disruptions. This Chapter sets policy and assigns responsibilities for identifying, asserting, and preserving the Army’s water rights. It applies to all Army installations in the United States. It is not applicable to USACE civil works projects and real properties.

b. A water right is the legal right to use water from a source. Water rights are distinct from contractual rights of purchase. On behalf of the United States, federal installations own and can obtain water rights in support of their missions. The status of Army water rights is specific to each installation and is dependent on careful documentation and legal review by the installation’s OSJA. Army water rights may arise from State or Federal law. The character of these State water rights depends on the legal doctrine in the applicable state. In general, the eastern states assign “riparian” water rights: all landowners whose property adjoins a body of water have the right to make reasonable use of it. Many western states have a system based on “prior appropriation,” which assigns water rights prioritized by the date on which a person first put a quantity of water to beneficial use. In these prior appropriation states, ownership of land is separate from ownership of water rights. Some states have hybrids of these two systems. Each state’s laws are unique and should be reviewed by the installation legal counsel.

8–2. Army Guidance

a. The Army will acquire and maintain water rights for both ground and surface water consistent with mission requirements. Proposals to acquire or dispose of Army water rights, independent of the underlying real property, will be submitted via the applicable chain of command to the DASA (IH&P) for approval.

b. The Army will identify, assert, defend, and preserve its water rights to the maximum extent possible under State and Federal law to sustain mission capability. The assertion and defense of Army water rights must be coordinated, through the installation and LHC’s OSJA or legal office, with the Chief, Environmental Law Division, U.S. Army Legal Services Agency.

c. All installations or activities must analyze the adequacy of their current and future water supply needs, rights, and access. Such rights and access should be sufficient to continue essential activities under drought or other shortage conditions and to support increased demand due to mobilization, contingency operations, or increases in population or missions. Attention should be paid to actions necessary to maintain existing water rights, including planning and continued beneficial use to avoid abandonment or loss. Water resource management is further addressed in AR 420–1.

d. Army installations will locate, record, and retain documentation related to water rights. Documentation may also be found outside the command, such as USACE or at the federal records centers managed by the National Archives and Records Administration.

8–3. Reporting

All real property accountable organizations will report on an annual basis through their chain of command to the DCS, G–9 the current state of the Army’s water rights. This report will include the following topics: (1) an assessment of the sufficiency of existing water rights to meet mission requirements; (2) the state of documentation to assert, maintain, and defend the Army’s water rights; and (3) a current summary of all legal challenges to the Army’s water rights. The DCS, G–9 will provide the consolidated annual report to ASA (IE&E).

8–4. Command Policy and Guidance

The DCS, G–9 will maintain implementing guidance to execute the policy in this Chapter as well as coordinate any amendments or additions to the guidance with the Environmental Law Division, Office of the Judge Advocate General. Commands may issue further guidance to aid in local implementation as they deem necessary. Local implementation should also address any additional Federal, state, or regional issues that may be unique to the command’s particular missions and circumstances.

Chapter 9

Real Property Audit Accountability Requirements

All outgrants will be properly recorded by the real property accountable organization in their APSR in accordance with AR 405–45. Outgrants for property that is reported by an accountable organization in their APSR will also be documented in the appropriate USACE database using the same real property unique identifier obtained by the accountable organization.

Appendix A

References

Section I

Required Publications

Unless otherwise indicated, all Army publications are available on the Army Publishing Directorate website at <https://armypubs.army.mil/>.

AR 5–9

Installation Agreements (Cited in para 2–10*f*.)

AR 5–10

Stationing (Cited in para 3–1*b*(3).)

AR 95–2

Air Traffic Control, Airfield/Heliport, and Airspace Operations (Cited in para 3–5*i*.)

AR 140–483

Army Reserve Land and Facilities Management (Cited in para 3–3*a*(3)(*b*).)

AR 200–1

Environmental Protection and Enhancement (Cited in para 3–4*b*.)

AR 210–20

Real Property Master Planning for Army Installations (Cited in para 2–10*a*.)

AR 210–22

Support for Non-Federal Entities Authorized to Operate on Department of the Army Installations (Cited in para 3–5*d*.)

AR 215–4

Nonappropriated Fund Contracting (Cited in para 2–10*f*.)

AR 215–8

Army and Air Force Exchange Service Operations (Cited in para 3–5*r*.)

AR 350–19

The Army Sustainable Range Program (Cited in para 3–2*c*.)

AR 360–1

The Army Public Affairs Program (Cited in para 3–5*h*.)

AR 405–45

Real Property Inventory Management (Cited in para 2–10*e*.)

AR 405–90

Disposal of Real Property (Cited in para 3–1*a*.)

AR 420–1

Army Facilities Management (Cited in para 3–5*g*.)

AR 700–90

Army Industrial Base Process (Cited in para 3–5*q*.)

DA Pam 25–403

Army Guide to Recordkeeping (Cited in para 1–5.)

DoD 5500.7–R

Joint Ethics Regulation (JER) (Cited in para 3–5*d*.) (Available at <https://www.esd.whs.mil/>.)

DoD 7000.14–R, Volume 12

Special Accounts, Funds and Programs (Cited in para 3–3*a*(1)(*a*)3.) (Available at <https://comptroller.defense.gov/>.)

DoDD 4165.06

Real Property (Cited in para 5–2*a*.) (Available at <https://www.esd.whs.mil/>.)

DoDI 1015.13

DoD Procedures for Implementing Public-Private Ventures (PPVS) for Morale, Welfare and Recreation (MWR), and Armed Services Exchange Category C Revenue-Generating Activities (Cited in para 3–1k.) (Available at <https://www.esd.whs.mil/>.)

DoDI 1322.29

Job Training, Employment Skills Training, Apprenticeships, and Internships (JTEST–AI) for Eligible Service Members (Cited in para 3–5t.) (Available at <https://www.esd.whs.mil/>.)

DoDI 4000.19

Support Agreements (Cited in para 3–1h.) (Available at <https://www.esd.whs.mil/>.)

DoDI 4165.70

Real Property Management (Cited in para 3–1h.) (Available at <https://www.esd.whs.mil/>.)

DoDI 4715.06

Environmental Compliance in the United States (Cited in para 3–4c.) (Available at <https://www.esd.whs.mil/>.)

ER 200–2–2

Procedures for Implementing NEPA (Cited in para 3–4a.) (Available at <https://www.publications.usace.army.mil/>.)

ER 200–2–3

Environmental Compliance Policies (Cited in para 3–4b.) (Available at <https://www.publications.usace.army.mil/>.)

ER 405–1–12, Chapter 8

Real Estate Handbook, Real Property Management (Cited in para 3–5e.) (Available at <https://www.publications.usace.army.mil/>.)

ER 405–1–12, Chapter 11

Real Estate Handbook, Disposal (Cited in para 3–1a.) (Available at <https://www.publications.usace.army.mil/>.)

Executive Order 11988

Floodplain Management (Cited in para. 3–4a.) (Available at <https://www.federalregister.gov/presidential-documents/executive-orders/>.)

Executive Order 11990

Protection of Wetlands (Cited in para. 3–4a.) (Available at <https://www.federalregister.gov/presidential-documents/executive-orders/>.)

FAR Part 45

Government Property (Cited in para. 3–5k.) (Available at <https://www.acquisition.gov/>.)

32 CFR 651

Environmental Analysis of Army Actions (Cited in para 3–4a.) (Available at <https://www.ecfr.gov/>.)

43 CFR 3000

Minerals Management: General (Cited in para 7–3c.) (Available at <https://www.ecfr.gov/>.)

48 CFR subpart 223.71

Storage, Treatment, and Disposal of Toxic or Hazardous Materials (Cited in para 3–4c.) (Available at <https://www.ecfr.gov/>.)

10 USC 1143

Employment assistance (Cited in para 3–5t.) (Available at <https://uscode.house.gov/>.)

10 USC 2602

American National Red Cross: cooperation and assistance (Cited in table 3–1.) (Available at <https://uscode.house.gov/>.)

10 USC 2662

Real property transactions: reports to congressional committees (Cited in para 3–3a(b), table 3–1, and table 3–1 footnote 3.) (Available at <https://uscode.house.gov/>.)

10 USC 2667

Leases: non-excess property of military departments and Defense Agencies (Cited in para 3–1g(2).) (Available at <https://uscode.house.gov/>.)

10 USC 2668

Easements for rights-of-way (Cited in para 4–3.) (Available at <https://uscode.house.gov/>.)

10 USC 2670

Use of facilities by private organizations; use as polling places (Cited in table 3–1.) (Available at <https://uscode.house.gov/>.)

10 USC 2683

Relinquishment of legislative jurisdiction; minimum drinking age on military installations (Cited in para 5–2*a*.) (Available at <https://uscode.house.gov/>.)

10 USC 2692

Storage, treatment, and disposal of nondefense toxic and hazardous materials (Cited in para 3–4*c*.) (Available at <https://uscode.house.gov/>.)

10 USC 2695

Acceptance of funds to cover administrative expenses relating to certain real property transactions (Cited in para 3–1*f*.) (Available at <https://uscode.house.gov/>.)

10 USC 2917

Development of geothermal energy on military lands (Cited in para 7–3*b*.) (Available at <https://uscode.house.gov/>.)

10 USC 7402

Enlisted members of Army: schools (Cited in para B–13.) (Available at <https://uscode.house.gov/>.)

10 USC 7554

Property management contracts and leases (Cited in para 3–5*q*.) (Available at <https://uscode.house.gov/>.)

10 USC 7777

Permits: military reservations; landing ferries, erecting bridges, driving livestock (Cited in para B–5.) (Available at <https://uscode.house.gov/>.)

10 USC 7778

Licenses: military reservations; erection and use of buildings; Young Men’s Christian Association (Cited in table 3–1.) (Available at <https://uscode.house.gov/>.)

10 USC 18235

Administration; other use permitted by Secretary (Cited in para B–12.) (Available at <https://uscode.house.gov/>.)

12 USC 1770

Allotment of space in Federal buildings or Federal land (Cited in para 3–5*o*.) (Available at <https://uscode.house.gov/>.)

16 USC 460d

Construction and operation of public parks and recreational facilities in water resource development projects; lease of lands; preference for use; penalty; application of section 3401 of title 18; citations and arrests with and without process; limitations; disposition of receipts (Cited in para 3–1*j*(1).) (Available at <https://uscode.house.gov/>.)

16 USC 663

Impoundment or diversion of waters (Cited in para B–8.) (Available at <https://uscode.house.gov/>.)

16 USC 1531 et seq.

Endangered Species Act (Cited in para 3–4*a*.) (Available at <https://uscode.house.gov/>.)

20 USC 7801

Definitions (Strengthening and Improvement of Elementary and Secondary Schools) (Cited in para 3–5*p*.) (Available at <https://uscode.house.gov/>.)

30 USC 181

Lands subject to disposition; persons entitled to benefits; reciprocal privileges; helium rights reserved (Cited in para 7–3*a*.) (Available at <https://uscode.house.gov/>.)

30 USC 185

Rights-of-Way for pipelines through Federal lands (Cited in table 3–1.) (Available at <https://uscode.house.gov/>.)

30 USC 201

Leases and exploration (Cited in para 7–3*a*.) (Available at <https://uscode.house.gov/>.)

30 USC 351 et seq.

Definitions (Cited in para 7–3a.) (Available at <https://uscode.house.gov/>.)

30 USC 352

Deposits subject to lease; consent of department heads; lands excluded (Cited in para 7–3a.) (Available at <https://uscode.house.gov/>.)

30 USC 1001

Definitions (Geothermal Resources) (Cited in para 7–3b.) (Available at <https://uscode.house.gov/>.)

32 USC 503

Participation in field exercises (Cited in table 3–1.) (Available at <https://uscode.house.gov/>.)

32 USC 708

Property and fiscal officers (Cited in para B–21.) (Available at <https://uscode.house.gov/>.)

38 USC 5902

Recognition of representatives of organizations (Cited in para 3–5s.) (Available at <https://uscode.house.gov/>.)

39 USC 406

Postal services at Armed Forces installations (Cited in para 3–5f.) (Available at <https://uscode.house.gov/>.)

39 USC 411

Cooperation with other Government agencies (Cited in para 3–5f.) (Available at <https://uscode.house.gov/>.)

40 USC 1314

Easements (Cited in table 3–1.) (Available at <https://uscode.house.gov/>.)

40 USC 3112

Federal jurisdiction (Cited in para 5–2a.) (Available at <https://uscode.house.gov/>.)

42 USC 4321

National Environmental Policy Act (Cited in para 3–4a.) (Available at <https://uscode.house.gov/>.)

42 USC 6901

Resource Conservation and Recovery Act (Cited in para 3–5a.) (Available at <https://uscode.house.gov/>.)

43 USC 961

Rights-of-way for power and communications facilities (Cited in table 3–1.) (Available at <https://uscode.house.gov/>.)

43 USC 1068

Lands held in adverse possession; issuance of patent; reservation of minerals; conflicting claims (Cited in para 4–1b.) (Available at <https://uscode.house.gov/>.)

54 USC 100101 et seq.

National Historic Preservation Act (Cited in para 3–4a.) (Available at <https://uscode.house.gov/>.)

Section II

Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this regulation. Codes of Federal Regulations are available at <https://www.ecfr.gov/>. United States Codes are available at <https://uscode.house.gov/>.

AR 10–87

Army Commands, Army Service Component Commands, and Direct Reporting Units

AR 11–2

Managers' Internal Control Program

AR 25–30

Army Publishing Program

AR 165–1

Army Chaplain Corps Activities

DA Pam 415–28

Guide to Army Real Property Category Codes

ER 405–1–20

Federal Legislative Jurisdiction and Annexation

UFC 2–100–01

Installation Master Planning (Available at <https://www.wbdg.org/>.)

15 CFR 930

Federal Consistency with Approved Coastal Management Programs

24 CFR 581

Use of Federal Real Property to Assist the Homeless

32 CFR 174

Revitalizing Base Closure Communities and Addressing Impacts of Realignment

40 CFR 300

National Oil and Hazardous Substances Pollution Contingency Plan

41 CFR 102

Federal Management Regulation

10 USC 2687

Base closures and realignments

10 USC 2694

Conservation and cultural activities

10 USC 2831

Military family housing management account

10 USC 2854

Restoration or replacement of damaged or destroyed facilities

10 USC 2864

Master plans for major military installations

10 USC 2878

Conveyance or lease of existing property and facilities

10 USC 2883

Department of Defense Housing Funds

16 USC 505

Use of national forests established on land reserved for purposes of national defense; maintenance available

16 USC 1451

Congressional findings (re: Coastal Zone Management Act)

18 USC 4122

Administration of Federal Prison Industries

23 USC 317

Appropriation for highway purposes of lands or interests in lands owned by the United States

30 USC 601

Rules and regulations governing disposal of materials; payment; removal without charge; lands excluded

40 USC

Public Buildings, Property, and Works

40 USC 101

Purpose

40 USC 102(3)

Definitions: Excess Property

40 USC 572(b)

Real property: Real property under Control of a Military Department

42 USC 1594(a)

Contracts for construction: Contract provisions; competitive bids

42 USC 9601

Definitions (re: Comprehensive Environmental Response Compensation and Liability Act)

42 USC 11301

Findings and purpose (re: Homeless Assistance)

Section III

Prescribed Forms

This section contains no entries.

Section IV

Referenced Forms

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate website at <https://armypubs.army.mil/>.

DA Form 11–2

Internal Control Evaluation Certification

DA Form 2028

Recommended Changes to Publications and Blank Forms

Appendix B

Statutory Authorities

B–1. Leases: non-excess property of military departments and Defense Agencies (10 USC 2667).

B–2. Rights-of-Way for pipelines through Federal lands (30 USC 185).

B–3. Rights-of-way for power and communication facilities (43 USC 961).

B–4. Easements for rights-of-way (10 USC 2668).

B–5. Permits: military reservations; landing ferries, erecting bridges, driving livestock (10 USC 7777).

B–6. Easements (40 USC 1314).

B–7. Construction and operation of public parks and recreational facilities in water resource development projects; lease of lands; preference for use; penalty; application of section 3401 of title 18; citations and arrests with and without process; limitations; disposition of receipts (16 USC 460d).

B–8. Impoundment or diversion of waters (16 USC 663).

B–9. Licenses issued under statutory authority.

The SECARMY may issue a license under the leasing or easement authorities and is also authorized under several miscellaneous statutes to issue special purpose licenses to include:

- a.* National Guard (32 USC 503);
- b.* American Red Cross and Veterans Service Organizations (10 USC 2670, 2602); and
- c.* Young Men’s Christian Association (YMCA) (10 USC 7778).

- B-10. Postal services at Armed Forces installations (39 USC 406 and 411).**
- B-11. Cooperation with other Government agencies (39 USC 411).**
- B-12. Administration; other use permitted by Secretary (10 USC 18235).**
- B-13. Enlisted members of Army: schools (10 USC 7402).**
- B-14. Relinquishment of legislative jurisdiction; minimum drinking age on military installations (10 USC 2683).**
- B-15. Federal Jurisdiction (40 USC 3112).**
- B-16. Mineral Leasing Act of 1920, as amended (30 USC 181).**
- B-17. Mineral Leasing Act for Acquired Lands, as amended (30 USC 351).**
- B-18. Geothermal Steam Act of 1970, as amended (30 USC 1001 et seq.).**
- B-19. Allotment of space in Federal buildings or Federal land (12 USC 1770).**
- B-20. Real property transactions: reports to congressional committees (10 USC 2662).**
- B-21. Property and fiscal officers (32 USC 708).**

Appendix C

Guidance for Mineral Leasing Plans

C–1. Purpose

a. The MLP is a decision tool that installations should use to consider the availability of lands for mineral leasing. An installation's development of the MLP may be a one-time effort or subject to ongoing revision and refinement. Only installations that receive new lease requests from the BLM are required to prepare an MLP. Installations believed to be underlain with leasable minerals should become familiar with the requirements of an MLP and gather information to prepare the plan.

b. The MLP is an optional component of the Real Property Master Plan. The MLP will accompany any Report of Availability or any recommendation to deny a leasing request. A complete MLP, together with a list of lease stipulations, will provide the information necessary to support a determination to lease Army lands for either surface or non-surface occupancy.

c. Mineral development involves large-scale investments that may result in significant, long-term effects on land use. Under applicable regulations, once a lease is established, the lease generally may remain in effect as long as production continues. Consideration of any leasing request must take into account the potential effects on mission capability and effectiveness, plus the potential costs and benefits to the Army, not only in the short-term but also far into the future.

C–2. Discussion

a. The installation will use the MLP to document the locations and conditions under which mineral leasing could occur without negatively affecting current or future Army requirements. In cases where property is ultimately determined to be available, BLM will use information in the MLP to develop a lease offering for installation lands. While lease bidders may not see the actual MLP, the information in the plan will help them determine whether and how to bid on any lease offerings.

b. The MLP will be used as the basis for lease stipulations that will guide actual development and operations on the lease site. The installation will also use it to inform other land use and management requirements in support of the Installation Master Plan. The plan should be forward looking and anticipate potential mission conflicts, costs, and benefits to the Army. The plan should identify mitigation measures where feasible, as well as effects that cannot be mitigated.

C–3. Development of Plan

An MLP should be developed when BLM forwards an application to lease to the Army and a request for title information to USACE.

a. The MLP will address the feasibility of making Army land available for leasing by developing an overlay of maps in the Real Property Master Plan that displays important land uses and environmental information. These maps may include training areas, air installation compatible use zones, drop zones, impact areas, surface danger zones, endangered species habitat, and areas with possible contamination. A red-amber-green overlay may be useful for showing where surface occupancy would be prohibited, allowed with restrictions, or allowed without restrictions.

b. The MLP should be developed in consultation with subject matter experts from BLM and USACE and coordinated with all affected installation staff units and tenants. In locations where surface occupancy would be prohibited or restricted, the MLP should identify whether and where leasing without surface occupancy would be allowable (such as with slant drilling).

c. A set of lease stipulations should be provided with the MLP, developed in accordance with this regulation (see Section 7–6, Mineral Leasing Stipulations). The MLP should identify stipulations that address access control to well sites during construction and production and ensure the restoration of land to an appropriate condition. Where buried pipelines and wellheads are deemed appropriate, the MLP should determine depth requirements.

d. The MLP should address compliance with applicable environmental laws and regulations and critical issues related to environmental, historical, and archaeological resources. The author of the MLP should coordinate, as appropriate, with BLM, USACE regulatory office, U.S. Fish and Wildlife Service, and State Historical Preservation Office to determine what level of operations may be permitted. The MLP may rely on available information and should be considered a preliminary planning document. As the lead agency, BLM will prepare the necessary environmental and cultural documents before leasing.

C-4. Points to Consider

The following basic considerations should be taken into account when developing an MLP:

a. Mission Compatibility. Consider potential conflicts between military mission requirements and lessee operations, including wellheads, pipelines, and access requirements. Consider secondary effects of drilling. For example, lighted rigs at night may negatively affect night operations. Ensure that the Army water supply and water rights are not jeopardized by mineral leasing.

b. Costs. The MLP should identify all costs related to installation services, such as security and access control, environmental compliance, and administration.

c. Benefits. Consider whether the availability of onsite fuel may provide potential energy security benefits. By regulation, the United States may receive royalties from oil and gas leases in-kind. Consider the potential benefits to the installation or the Army overall from these aspects of leasing.

d. Exploration and Construction. Seismic surveys may be conducted throughout the lease area. The type and effect of explosives used for seismic surveys must be considered, as well as restoration requirements for seismic bore holes and the surrounding area. Heavy civilian activity is involved in site preparation and construction. Drilling activity can take several weeks or months and typically requires site clearing and road construction to the drill sites. Round-the-clock operations are common.

e. Ongoing Operations. Typically, a cleared right-of-way of 20 feet is needed for pipelines, limiting activities such as troop excavation or explosives use. High-pressure pipelines involve explosive potential. Access will need to be granted for regular inspections of pipeline and wellhead maintenance. Note that the level of activity may vary widely, and wells may be shut-in for several years with the lease remaining active.

f. Site Restoration. Address requirements for returning the site to its previous condition or other reasonable restoration measures. Under current BLM regulations, unless stipulations are included in the lease, wellhead abandonment may be allowable.

Appendix D

Internal Control Evaluation Certification

D-1. Function

The function covered by this checklist is granting of use of real property.

D-2. Purpose

The purpose of this checklist is to assist the USACE Division and District chiefs of real estate, the LHC real property officer, the installation real property officer, or other real property officer accountable for DA real property in evaluating the key internal controls listed below. It is not intended to cover all controls.

D-3. Instructions

Answers must be based on the actual testing of key internal control (for example, review of files or other documentation analysis, direct observation, sampling, simulation, interviews, other). Answers which indicate deficiencies must be explained and corrective action indicated in supporting documentation. These internal controls must be evaluated at least once every five years. Certification that this evaluation has been conducted must be accomplished on DA Form 11-2 (Internal Control Evaluation Certification).

D-4. Test Questions

a. Is property that has been identified as not currently utilized, but for which a future use is planned, being made available for other interim or collateral use by outgrant? YES /NO/NA

b. Is property identified as available for non-Army use during the master planning process or other management reviews being made available for other use by outgrant? YES/NO/NA

c. Was Army-controlled real property authorized for use by a non-Army party only after it was determined available by a duly authorized official who approved a Determination of Availability (DOA) with supporting Report of Availability (ROA), for all actions not covered by an exception to the DOA requirement? YES/NO/NA

d. Was a report made to the Armed Services Committees on all proposed leases or licenses of military real property located in the United States, its territories or its possessions, where the estimated annual fair market rental value exceeded the threshold set forth in 10 USC 2662, except for leases for agricultural purposes? YES/NO/NA

e. Were all identified encroachments removed, the premises restored and appropriate administrative costs and fair market value for the term of the unauthorized use collected, except for those authorized to be resolved by other methods? YES/NO/NA

f. Is the use of DA real property under Memorandums of Agreement, Memorandums of Understanding, Interservice, Interdepartmental and Interagency Support Agreements, FAR contracts, except for construction contracts, supported by the appropriate realty outgrant instrument? YES/NO/NA

g. Was the revocation/termination of any approved DOA approved at the same level as the original DOA? YES/NO/NA

h. Is outgranted property periodically inspected for compliance with the terms of the outgrant document? YES/NO/NA

i. Are procedures in place to ensure that cash rents collected from grantees will be deposited into special accounts identified as such for the appropriate Finance and Accounting Office? YES/NO/NA

D-5. Supersession

This evaluation replaces the evaluation previously published in AR 405-80, dated 10 October 1997.

D-6. Comments

Help to make this a better tool for evaluating management controls. Submit comments to the Chief of Engineers (CEMP-CR), 441 G Street NW, Washington, DC 20314-1000.

Glossary

Section I

Abbreviations

AAFES

Army/Air Force Exchange Service

APSR

Accountable Property System of Record

ARNG

Army National Guard

ASA (CW)

Assistant Secretary of the Army (Civil Works)

ASA (IE&E)

Assistant Secretary of the Army (Installations, Energy, and Environment)

BLM

Bureau of Land Management

CAR

Chief, Army Reserve

CFR

Code of Federal Regulations

COE

Chief of Engineers

CSP

Career Skills Program

DA

Department of the Army

DASA (IH&P)

Deputy Assistant Secretary of the Army (Installations, Housing and Partnerships)

DASA (MB)

Deputy Assistant Secretary of the Army (Management and Budget)

DCS, G-9

Deputy Chief of Staff, G-9

DOA

Determination of Availability

DoD

Department of Defense

DoD FMR

DoD Financial Management Regulation

DoDI

DoD Instruction

ECP

Environmental Condition of Property

ER

Engineer Regulation

FAR

Federal Acquisition Regulation

GC

Garrison Commander or equivalent

GOCO

Government-Owned, Contractor-Operated

IA

Installation Agreement

LHC

Landholding Commands

MLP

Mineral Leasing Plan

MOA

Memorandums of Agreement

MOU

Memorandums of Understanding

MSO

Military Service Organizations

NEPA

National Environmental Policy Act of 1969

OSD

Office of the Secretary of Defense

OSJA

Office of the Staff Judge Advocate

ROA

Report of Availability

SECARMY

Secretary of the Army

UCMJ

Uniform Code of Military Justice

USACE

United States Army Corps of Engineers

USC

United States Code

VSO

Veteran Service Organizations

Section II**Terms****Contamination**

The presence of an undesirable substance (physical, chemical, biological, or radiological) not normally present, or an unusually high concentration of a naturally occurring substance in water or soil.

Determination of Availability

The decision document which approves specified real property as being available for a proposed non-DoD use, based upon a ROA.

Direct cost

The cost of resources directly consumed by an individual activity that would not have been consumed if the individual activity did not require them or a cost that is specifically identified with a single cost object.

District and Division Commanders

Heads of local and intermediate USACE offices, respectively.

District and Division Engineers

See District and Division Commanders

Easement

A non-possessory interest in real property. An easement may be temporary or permanent in duration. Easements may be classified as either appurtenant or in gross. An *easement appurtenant* involves two pieces of land, where one serves as the servient tenement (estate) that bears the burden, and the other the dominant tenement (estate), which benefits from the grant of the easement and with which the easement passes as an appurtenance. Easements may be classified as affirmative or negative. An *affirmative easement* gives the easement holder the right to do something on the grantor's land, such as travel on a road through the grantor's land. A *negative easement* gives the easement holder the right to prevent the owner of the land subject to the easement from doing something on their land that may otherwise be lawful for them to do, such as a placing a building or structure.

Excess real property

Real property under the control of a federal agency that the head of the agency determines is not required to meet the agency's needs or responsibilities. See 40 USC 102.

Exclusive use

The right of the occupant of real property to maintain fulltime control and prohibit the use of the premises by any other party. A lease grants exclusive use, but a license and an easement generally do not.

Fair market value

The amount in cash, or on terms reasonably equivalent to cash, for which in all probability the property would be sold, by a knowledgeable seller who desired but is not obligated to sell, to a knowledgeable purchaser who desired but is not obligated to buy. Usually established by appraisal. Fair market value *of a leasehold interest* is the amount which, in a competitive market, a well-informed and willing lessee would pay, and a well-informed and willing lessor would accept for the temporary possession and use of the property.

Garrison Commander or equivalent

This term includes garrison commanders for Regular Army installations; Commanders, U.S. Army Reserve Regional Support Commands for Army Reserve installations; U.S. Property and Fiscal Officers for Army National Guard installations, and USACE District Engineers for civil works projects (when applicable).

Hazardous material

Hazardous material (commonly referred to as HAZMAT) is defined by the General Services Administration in Federal Standard, Material Safety Data, Transportation Data and Disposal Data for Hazardous Materials Furnished to Government Activities (FED-STD-313F, 12 October 2018).

Improvement

An addition or betterment to land amounting to more than repair or replacement and costing labor or capital (for example, buildings, structures, and/or linear structures permanently attached to the land).

Indirect cost

The cost of resources, including overhead, that support more than one cost object (that is, not consumed by a single cost object).

Industrial installation

Industrial facility held by DA in active or inactive status as a reserve of departmental-controlled production capacity and potential. Installations retained and used in their entirety or in part or maintained in idle status for production of military weapons, systems, munitions, components, and supplies.

Land

Real estate that is fee-owned by the Federal Government and or under custody and accountability of the Army. Includes land acquired by purchase, condemnation, donation, transfer, permit, lease, or other means. Includes reclaimed or accredited lands if title is vested in the Federal Government and such lands are under custody and accountability of the Army.

Landholding Command

Army organization assigned real property accountability as designated in the Headquarters Installation Information System.

Lease

A lease is a written contractual agreement which conveys a possessory interest in real property, usually exclusive, for a period of time for a specified consideration. A lease carries a present interest and estate in the land for the period specified. The estate of the lessee, or tenant, is called the term and the estate of the lessor, or landlord, is the reversion. Generally, the lessee may occupy and use the premises for any lawful purpose not injurious to the reversion. However, the lease may contain express provisions or conditions restricting the use of the property. Leases are not appropriate between the Army and another DoD component or federal agency.

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. When the Federal Government has legislative jurisdiction over a particular land area, it has the power and authority to enact, execute, and enforce general legislation within that area. The Federal Government holds land under four types of legislative jurisdiction. Each type indicates a different division of authority between the Federal Government and the State government and its political subdivisions to exercise the general municipal legislative and governmental power within that area. The types are exclusive, concurrent, partial, and proprietorial interest.

License

A license is a bare permission to an individual, an organization, a corporation, a state or local governmental entity, or another DoD component or federal agency, to do a specified act or series of acts on Army property without conveying any estate or possessory interest therein. Use is not exclusive and there is no alienation of title, ownership, or control of Government property. The license provides written evidence of the permission granted and of the obligations, responsibilities, and liabilities imposed on the licensee. A license may be issued pursuant to specific authority, as a lesser right under lease or easement authorities, or pursuant to the general administrative powers of the SECARMY. It is normally revocable at will, with minimal required notice.

Linear Structure

A facility whose function requires that it traverse land (for example, runway, road, rail line, pipeline, fence, pavement, electrical distribution line).

Non-excess property.

The converse of excess property as defined by 40 USC 102. Real property under the control of a federal agency that the head of the agency has determined is required to meet the agency's needs or responsibilities.

Outgrant

A written document which grants to a non-DoD federal agency or a non-federal party the right to use Army-controlled real property. Includes leases, licenses, easements, and permits.

Permit

A type of outgrant generally used to authorize use of DA real property by another Federal agency. Equivalent to a license.

Public domain

Land owned by the United States and administered by the Secretary of the Interior, through the BLM, which has never been conveyed out of Federal ownership (that is, land acquired by treaty, conquest, or cession), and which is subject to the Federal Land Policy Management Act.

Real estate

See real property. Interests in real property are referred to as estates.

Real property

Land and improvements to land (for example, buildings, structures, and linear structures). It includes equipment affixed and built into the facility as an integral part of the facility (such as heating systems), but not movable equipment (such as plant equipment). In many instances this term is synonymous with real estate.

Report of Availability

A document which provides the appropriate command authority the information necessary to determine whether real property can be considered for use by a non-DoD entity. The detailed report contains environmental, cultural, historical reviews, site specific restrictions, and other information needed to prepare an outgrant.

Right-of-way

A right-of-way is a servitude by virtue of which one has a right to pass through lands of another, usually to and from adjacent land. A right-of-way is often associated with easements granted or reserved over the land for transportation purposes, for example, a railway or highway, and for electric power transmission lines and pipelines.

Senior Commander

Senior Army officer responsible for an installation.

Structure

A facility, other than a building or linear structure, which is constructed on or in the land.

Withdrawn public lands

Public domain lands which have been withdrawn from other forms of use under the public land laws by the Congress or the Department of the Interior.

UNCLASSIFIED

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