

Real Estate

Annexation

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SUMMARY of CHANGE

AR 405-25
Annexation

Effective 1 November 1973

Real Estate

Annexation

By Order of the Secretary of the Army:

CREIGHTON W. ABRAMS
General, United States Army
Chief of Staff

Official:

VERNE L. BOWERS
Major General, United States Army
The Adjutant General

History. The original form of this regulation was published on 25 September 1973. Since that time, Change 1 has been issued to amend the original, and this change remains in effect.

This UPDATE issue is a reprint of the original regulation with the change incorporated directly into the text.

Summary. This revision provides clarification and specifies current procedures and responsibilities relative to military lands of the Army and those applicable to the discharge of responsibilities of the Army as related to lands under Army jurisdiction in connection with its Civil Works activities.

Applicability. Not applicable

Army management control process. Not applicable

Supplementation. Limited local supplementation of this regulation is permitted but is not required. If supplements are issued, one copy of each will be furnished to the

next higher headquarters, the Chief of Engineers (HQDA(DAEN–REM–U)).

Suggested Improvements. The proponent agency of this regulation is the Office of the Chief of Engineers. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications) directly to HQDA (DAEN–REM–U), WASH DC 20314.

Distribution. To be distributed in accordance with DA Form 12–9A requirements for AR, Real Estate: Active Army: C (Qty Rqr Block No. 347); ARNG: D (Qty Rqr Block No. 348); USAR: D (Qty Rqr Block No. 348).

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*This regulation supersedes AR 405–25, 26 March 1968.

RESERVED

1. Purpose and scope

This regulation sets forth the fundamental legal philosophy, basic 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 the Department of the Army. This regulation is applicable to annexation actions involving both military and civil works lands of the Department of the Army and will be used by the Office of the Chief of Engineers in processing any requested annexation matters in connection with land under the control of the Department of the Air Force, as its real estate agent, subject to any additional requirements and regulations of the Air Force. Additionally, the regulation covers those situations in which the Department of the Army considers that it would be advantageous to the Government to request that annexation of Federal lands be accomplished by the political subdivision of the State, either for acquisition or management purposes.

2. Definition and effect of annexation

a. Annexation is the act of adding, attaching or joining additional land areas within the boundaries of a political subdivision of a State. Generally, cities and counties are political subdivisions; however, the term can and usually does include other political subdivision of a State. Generally, cities water districts, and others created by State statutes. Annexation of Army-controlled lands is governed by individual State laws.

b. Depending on provisions of the law of the State where the land lies, the annexation may or may not require the prior consent of the Army. Regardless of the language of the State statutes, each annexation action requires a determination to be made by the Secretary of the Army, or his designee, as to the Army position in connection therewith. Where the language of the State statutes does not require Federal Government consent when Federal lands are involved, it is imperative that prompt action be taken to bring the matter to the attention of HQDA (DAEN-REM-U), WASH, DC 20314.

c. Municipalities acquire the power to tax private persons and private property by annexation. Military personnel to some extent and Government instrumentalities such as Post Exchanges are exempt from such taxation. Municipal taxation may be applicable to Army contractors and concessionaires, or others, resulting in higher prices to the Army or Army personnel. Municipal taxation may be applicable to dependents of military personnel. However, Congress has enacted laws authorizing such taxation.

d. 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 AR 405-20). However, upon annexation of lands the annexing State political subdivision assumes the responsibility of providing a number of governmental functions and services which legally it may not be authorized to offer where exclusive legislative jurisdiction exists over the lands involved. This element should be fully explored and explained to the community proposing annexation.

3. Policy.

It is the policy of the Army not to oppose annexation and to cooperate with municipalities desiring to annex in those instances where local statutes so provide, except in those instances where the Secretary of the Army, or his designee, determines that such action would not be in the interest of the Government. Generally, the Department of the Army will not approve an annexation proposal if the annexation is opposed by another political subdivision of the State.

4. Procedure

a. *General.* Upon receipt of information or official notice that a political subdivision has taken action or is in the process of undertaking an annexation, and also upon receipt of a request by a political subdivision of a State for annexation, the initial action will

be taken by the commanding officer of the installation concerned as to military real property and by the District Engineer as to Civil Works lands.

b. *Military lands.* The Installation Commander involved will immediately advise the District Engineer having real estate responsibility for the area involved and will request the latter to prepare an Annexation Assembly and Evaluation Report to be submitted to him in quadruplicate. The Commander will submit the report in triplicate through channels, with comments and recommendations, to the major field commander, chief, or executive with command responsibility, who will forward the assembly, with his comments and recommendations, through the Chief of Engineers and The Judge Advocate General, in turn, for submission to the Assistant Secretary of the Army (Installations and Logistics). The District Engineer will forward to the Division Engineer, simultaneously, a copy of the Annexation Assembly and Evaluation Report. Requests received in connection with Air Force installations will be referred to Headquarters, Air Force, with recommendations for determination by the Secretary of the Air Force.

c. *Civil Works Lands.* The District Engineer for the Corps of Engineers having real estate responsibility for the area involved will immediately notify the Office of the Chief of Engineers (DAEN-REM-U) by electrical message with information copies to the appropriate Division Engineer, when he learns or receives notice that an annexation proceeding is in process or has occurred. He will prepare an Annexation Assembly and Evaluation Report for submission through the Division Engineer to the Chief of Engineers (HQDA (DAEN-REM-U)) with comments and recommendations. The Chief of Engineers will evaluate the Annexation Assembly in the light of Departmental policy and forward it with recommendations to the Assistant Secretary of the Army (Installations and Logistics) for determination of Army position.

5. Annexation Assembly and Evaluation Report

The District Engineer's Annexation Assembly and Evaluation Report will be prepared in coordination with the Installation Commander when Army or Air Force military real property are involved and with internal coordination when civil works real property is involved. The entire documentation will be presented in the specific format prescribed by Engineer regulations and will include the following together with any other applicable and pertinent information and documentation:

a. Introductory matters identifying the area, its purpose, its present use, its acquisition origin and the political subdivision of the particular state proposing or undertaking annexation.

b. Title held by the Government in the property proposed for annexation.

c. Degree of legislative jurisdiction held by the Federal Government over the property proposed for annexation.

d. Citations and extracts of applicable annexation laws and ordinances.

e. A map of the general area showing the limits of the annexing political subdivision and the area proposed for annexation and color-coded to indicate jurisdiction. A real estate drawing or map of the Government installation or project with the portion involved in the annexation proceeding identified by cross-hatchure. A general state highway map color-coded to reflect the Government lands of the entire installation or project, the lands proposed for annexation, the geographical limits of both the present state political subdivision and the political subdivision desiring to annex.

f. The source of utilities being provided by the installation and by sources outside of the installation.

g. Adverse effects, if any, upon the mission of the Army at the installation or project concerned. This should include, where applicable, in-depth consideration of problems which might arise because of disruption of arrangements for utilities and sanitation services, fire and police protection, schools, street maintenance, snow removal, or other services provided by other local governments or by utility companies and the possibility of increased charges for such services including increased utility rates. Include also any probable

adverse effects on military and civilian personnel and their dependents from municipal taxation, licensing or other prospective municipal actions which could result in increased costs or prices resulting from taxation of Army concessionaires, contractors, or lessees.

h. Effect, if any, on master plans for the installation or project.

i. Actual benefits to the installation or project or personnel, if any, that will result from annexation such as municipal fire protection, maintenance of streets, snow removal, police services, use of schools, sanitation services, utility services or reduced utility rates. Include definite information of the annexor's capability to furnish such services.

j. Effect on the budget of the installation resulting from higher prices of Army contractors or others, due to municipal taxation or from higher costs for services resulting from annexation.

k. Reasons advanced by the state political subdivision for annexing the Government land.

l. Interest or objections, if any, of other political subdivisions, including the view of the political subdivision in which the land involved presently lies, as to the proposed annexation. (Explain in detail.)

m. Conclusions and recommendations regarding the annexation should be made a part of the Annexation Assembly and Evaluation Report.

6. Interim protest

a. Where the State law requires annexation to follow judicial procedures and also requires consent of the landowners, the time remaining after notice may not be sufficient to permit the Army to determine its position on the annexation. In such case if military property is involved, the Installation Commander will request an extension of time by written request or by entering an appearance in the proceeding or as might otherwise be prescribed by State law or town ordinances.

b. In order to assure that the Government's interests in the annexation are not forfeited where time is of the essence, 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.

c. Immediately notify, by electrical means, HQDA(DAJA-LD), HQDA(DAEN-REM-U) and the District or Division Engineer having real estate responsibility for the area involved concerning the matter and interim actions taken.

d. When Civil Works properties are involved, the District or Division Engineer having real estate responsibility therefor will comply with *a*, *b* and *c* above as appropriate. The District or Division Engineer will also act upon request of Air Force in connection with annexations involving Air Force real property.

7. Notification of Army position

a. Upon determination of the Army position, a case involving military property will be returned to DAEN-REM-U, who, through channels, will advise the Installation Commander. As to Civil Works lands, the Chief of Engineers, through Engineer channels, will advise the District Engineer or Division Engineer having responsibility for the area involved of determination of the Army position. If it is determined that the Army will not oppose annexation of military lands, the Installation Commander with the assistance of the District Engineer, if required, will take such action and prepare such documents as may be required of the Army to further the annexation. If Civil Works property is being annexed, the District Engineer or Division Engineer having real estate responsibility for the geographical area involved will take necessary action and prepare such documents as may be required to further the annexation. Any annexations of Air Force property will be processed as requested or directed by Headquarters, Air Force, pursuant to their determinations. Copies of all documents, including official documents, regarding the annexing of Army land will be furnished for the records of the Chief of Engineers and The Judge Advocate General, Department of the Army.

b. If it is determined that the Army will oppose the annexation as related to military real property all interested field elements will be

so notified. The Office of the Chief of Engineers (DAEN-REM-U) will provide technical advice and assistance to The Judge Advocate General in the preparation of a coordinated position of opposition to be forwarded to the Department of Justice for filing of judicial action. If Civil Works real estate is to be annexed and the Army position is opposed to annexation, the Chief of Engineers (DAEN-REM-U) will advise the Department of Justice of his recommendations for judicial action.

8. Army Request for annexation

When it is considered advantageous to secure the municipal annexation of land included or proposed for inclusion in a land acquisition program of the Department of the Army, or in other cases, application may be made to the Chief of Engineers who may initiate a request for authorization therefor.

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