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of a military department to acquire by condemnation any interest in land, including temporary use of the site, construction, or operation of fortifications, coast defenses, or military training camps.

(3) Section 9773 of title 10, United States Code, authorizes the Secretary of the Air Force to acquire by condemnation additional permanent air bases and depots, enlarge existing air bases and depots, bombing and machine gun ranges, and areas for the training of tactical units.

(4) Section 2233 of title 10, United States Code, authorizes the Secretary of Defense (with authority to delegate) to acquire by purchase, lease, or transfer, facilities necessary for the Reserve Components. The authority to acquire by purchase has been held to include the authority to condemn. Therefore, this section authorizes condemnation for both Army and Air Force Reserve Training Sites.

(b) *Civil works projects*—(1) *Rivers and harbors.* (i) Act of Congress approved April 24, 1888 (25 Stat. 94, 33 U.S.C. 591) authorizes the Secretary of the Army to cause proceedings to be instituted for the acquisition by condemnation of any land, right of way, or material needed to maintain, operate, or prosecute works for the improvement of rivers and harbors for which provision has been made by law.

(ii) Section 5 of the Act of Congress approved July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) provides that possession of lands being acquired by condemnation proceedings for river and harbor works may be taken, provided adequate provision shall have been made for payment of just compensation.

(2) *Flood control.* (i) Act of Congress approved March 1, 1917 (39 Stat. 950, 33 U.S.C. 701) makes the provisions of the Act of Congress approved April 24, 1888 (paragraph (b)(1)(i) of this section) applicable to flood control works.

(ii) Section 6 of the Act of Congress approved August 18, 1941 (55 Stat. 650, 33 U.S.C. 701c–2) makes the provisions of section 5 of the Act of Congress approved July 18, 1918 (paragraph (b)(1)(ii) of this section) applicable to flood control works.

(3) *Local cooperation.* Acts of Congress approved June 29, 1906 (34 Stat. 632, 33 U.S.C. 592) and August 8, 1917 (40 Stat. 267, 33 U.S.C. 593) provide that the Secretary of the Army may institute condemnation proceedings for the acquisition of land or easement therein for river and harbor works which local interests undertake to furnish free of cost to the United States. The provisions of these Acts were made applicable to flood control works by the Acts of Congress approved March 1, 1917, and August 18, 1941 (paragraphs (b)(2)(i) and (ii) of this section).

(c) *Other pertinent statutes.* (1) Act of Congress approved July 18, 1918 (40 Stat. 911, 33 U.S.C. 594) provides that the United States shall have the right to take immediate possession of land to the extent of the interest condemned. The exercise of this right is subject, however, to the policy considerations set forth in the Act of Congress appoved January 2, 1971, Pub. L. 91–646 (84 Stat. 1894).

(2) Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U.S.C. 258a) makes provision for the filing of a declaration of taking in conjunction with condemnation proceedings and provides that title to the land or interests in land included in the declaration of taking vests in the United States upon filing with the court and deposit of the estimated compensation in the registry of the court.

(3) Title III of the Act of Congress approved January 2, 1971 (Pub. L. 91–646, 84 Stat. 1894) contains policies and guidelines for acquisition of land.

§ 644.113 Filing of complaint without declaration of taking.

(a) Only in exceptional cases will the Chief of Engineers give favorable consideration to the filing of a complaint in condemnation, and the request for an order of possession, without the concurrent filing of a declaration of taking and deposit of estimated compensation in the registry of the court. Examples of situations in which complaints may be used are as follows:

(1) Immediate possession is required for some essential military need and time does not permit preparation of an appraisal, title work, or negotiations.

(2) Condemnation proceedings are necessary in connection with a cemetery, in order to secure court approval

of the relocation and reinterment plan in accordance with the procedure outlined in ER 1180–1–1.

(3) Where right of entry for survey and exploration, appraisal purposes, or other similar need is required, and there is no material interference with the owner's possession. However, where there is material interference with the owner's possession, or it is considered there will be significant damage to the land, a deposit of estimated compensation may be necessary.

(b) *Approval required.* Prior to submission of a complaint assembly, except in cemetery cases, all pertinent facts justifying the need for such action will be submitted to the Division Engineer for approval. If the proposed action is approved, the Division or District Engineer will inform all affected landowners and tenants of the action being taken, the necessity therefor, and the subsequent procedure to be followed by the Government in conducting negotiations to acquire the land after the filing of the complaint.

(c) *Complaint assembly.* The following assembly will be submitted to HQDA (DAEN-REA-C) WASH DC 20314 where only a complaint is to be filed:

(1) Five copies of individual tract descriptions identified as *Exhibit ''A''.* (Reproduced copies will be accepted if clear and legible.)

(2) Five copies of segment or project maps, showing each tract or area to be acquired shaded or outlined in red and identified as *Exhibit ''B''.*

(3) Five copies of a list of the names and addresses of the persons purporting to own the tracts or having an interest therein, identified as *Exhibit ''C''.*

(4) Five copies of the exact estate or interest to be acquired, identified as *Exhibit ''D''.*

(5) In Air Force projects and acquisitions for other agencies, one additional copy of each exhibit will be required.

(6) In Air Force project acquisitions, the additional information set out in § 644.114(f) will be submitted, in duplicate.

(7) In those jurisdictions that adopt the alternate form declaration of taking, complaint assemblies should be similiar to the schedules submitted for the declaration of taking assembly.

(d) *Letter of transmittal.* Where a complaint assembly is submitted, the letter of transmittal should include the following information:

(1) A statement indicating the date of approval of the Real Estate Design Memorandum in civil works projects or the date of the Real Estate Directive for other projects, and whether the land included in the complaint assembly is within the approved project boundary line, together with the citations of the authorization and appropriation acts which cover the acquisition.

(2) The approved appraised valuation and date of appraisal of the interest to be acquired or, if appraisals have not been prepared, the estimated value with a statement indicating the basis of the estimate.

(3) Information as to whether the land included in the complaint assembly is vacant or occupied, together with the date any occupants will be required to vacate the premises.

(4) If possession is required, an explanation of the need therefor and the reasons why the normal land acquisition schedule was not met.

(5) Results of contacts with the landowners and tenants and their views with respect to the filing of condemnation proceedings.

(6) A statement as to the plan and schedule to acquire such land after filing of the complaint in order to make funds available to the landowners and tenants.

(7) In assemblies concerning land for other than civil works projects, a statement indicating whether all of the land authorized in the Real Estate Directive is included in the assembly. Any variance between the area or estate authorized in the directive and those in the assembly should be fully explained.

(8) In military assemblies, a statement of expected local resistance to the proposed acquisition and efforts made to adjust military requirements to the local situation.

(9) Whether there have been any Congressional inquiries regarding the acquisition.

(e) *Action after filing complaint.* After filing of a complaint proceeding, action to acquire the land involved, either by

direct purchase or by the filing of a declaration of taking, will be completed as soon as possible.

(1) Where a satisfactory Offer to Sell is obtained and accepted, the transaction will proceed through the stages of title clearance, payment and closing. Upon final approval of title, the Division or District Engineer will recommend to the Chief of Engineers that the Department of Justice be requested to dismiss the tract from the proceeding.

(2) Where a satisfactory lease of the premises included in a leasehold condemnation proceeding is obtained and accepted, the Division or District Engineer will recommend to the Chief of Engineers that the Department of Justice be requested to dismiss the tract from the proceeding.

(3) The recommendation of the Division or District Engineer for dismissal of a tract from condemnation will include the following information:

(i) Name of project.

(ii) Caption of the complaint and civil action number assigned thereto.

(iii) The date the final title approval was rendered; on lease cases, the date the lease was accepted.

(iv) A statement as to whether the particular deed or lease includes the same land described in the complaint under the same tract number.

(v) A statement as to whether the particular deed or lease includes all outstanding interests involved in the complaint insofar as the specific parcel of land is concerned. If all outstanding interests are not covered by the deed or lease instrument, a statement of the proposed method of acquiring those interests which remain outstanding, either by filing a declaration of taking or by direct purchase, or a recommendation that they be left outstanding permanently.

§ 644.114 Acquisition by declaration of taking.

If it has been determined that acquisition of a tract cannot be accomplished by purchase due to failure to reach an agreement with the owners as to value, inability to contact the owners, title defects, or for other reasons, acquisition will be completed by the filing of a declaration of taking in a condemnation proceeding and the concurrent deposit of the estimated compensation in the registry of the court. The requirements for a declaration of taking are set forth in 40 U.S.C. 258a.

(a) *Declaration of taking assembly*. The assembly to be submitted by the Division or District Engineer to the Chief of Engineers, with a recommendation for the filing of a declaration of taking, will contain the following:

(1) Seven copies of the declaration of taking. (Reproduced copies will be accepted if clear and legible). The copy to be executed and filed in court must be free of errors and erasures.

(2) Seven copies of tract descriptions and names and addresses of purported owners, identified as Schedule ''A'' to the declaration of taking.

(3) Seven copies of a segment or project map, showing the individual tracts outlined in red, or shaded in such a way as to identify them, constituting Schedule ''B'' to the declaration of taking.

(4) In acquisitions for Air Force and other agencies, one additional copy of each of the above is required.

(5) As to tracts which are appraised at $50,000 or more, it is necessary to have a least two appraisals for each such tract in condemnation. One copy of each appraisal will be forwarded with the assembly for those tracts valued less than $100,000, and two copies where the value is $100,000 or more. Also, a copy of the appraisal should be forwarded when there is a counteroffer of $50,000 or more, no matter what the appraisal is. In all cases where two appraisals are necessary, at least one will be by a contract appraiser approved in advance by the United States Attorney in whose jurisdiction the case will be filed.

(6) Appraisals must be on a current basis so that at the time of submission of the assembly, the review certificates should indicate that the review has been made within thirty days prior to submission of the assembly.

(7) Guides in preparing declarations of taking for acquisitions for the Departments of the Army (Military and Civil) and Air Force are contained in Figure 5–5 in ER 405–1–12.

(8) Each case where there is an accepted Offer to Sell on which we will