

the Committees on Armed Services if the estimated value of the property is more than \$50,000. A prerequisite to any acquisition by exchange is authority for the acquisition.

(2) *Civil Works*. The authority to exchange land or other Government property for private lands or property in execution of an authorized river and harbor or flood control work or improvement is found in 33 U.S.C. 558b and 558b-1.

(3) *Coordination with the Office of Management and Budget (OMB)*. OMB requests that each proposal to use Government-owned property in a land acquisition exchange be cleared with the appropriate Associate Director of OMB. Disposal actions where exchange through the authority of the General Services Administration or specific legislation is envisioned will be cleared with OMB prior to filing a disposal report pursuant to 10 U.S.C. 2662. A draft letter to the Associate Director, Office of Management and Budget will be submitted to HQDA (DAEN-REA) WASH DC 20314 stating the requirement for the new acquisition, the description of the property to be exchanged, its estimated fair market value, and a justification for the exchange of that property as constituting its highest and best use. OMB clearance will be required before disposal reports outlining exchange proposals are filed with the Congress.

INVOLUNTARY ACQUISITION BY THE
UNITED STATES

§ 644.101 General.

This Section describes procedures of the Corps of Engineers relating to the involuntary acquisition of land and interests in land on the basis of a physical appropriation or use by the United States. It is applicable to all Division and District Engineers having real estate responsibilities.

§ 644.102 Examples of involuntary acquisitions.

While the Secretary of the Army and Secretary of the Air Force have no authority to acquire interests in real property except under express authorization and appropriation made by Congress, the Government may, neverthe-

less, in the performance of an authorized act involuntarily acquire an interest in real property, for which the owner is entitled to just compensation. Whenever a plaintiff successfully prosecutes litigation which establishes that an interest in real property has been taken, the interest so taken should be confirmed in the form of a grant, wherever possible. The instrument should be recorded in the public land records and permanently retained in the real estate files, as evidence of the interest taken and as a protection against possible future claims of purchasers for value without notice. No employee or representative of the Corps of Engineers shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his property, as prescribed by Pub. L. 91-646. Examples of involuntary acquisition are:

(a) Damage to real property caused by flooding, saturation, seepage, erosion, or other causes arising out of the construction, operation, or maintenance of an authorized project.

(b) Damage as a result of overflights of aircraft.

(c) Other instances where Government actions result in a restriction of the use of property.

§ 644.103 Litigation Reports.

In those cases where a landowner files suit alleging that the Government took his property or an interest therein, a litigation report should be furnished in accordance with ER 1180-1-1. Litigation reports will be submitted in quadruplicate in cases involving military installations, and in triplicate in cases involving civil works. District and Division Engineers will furnish an additional copy direct to the local United States Attorney in actions in a United States District Court. In addition to the information required by ER 1180-1-1, there will be furnished preliminary certificates of title to properties subject to the taking, covering a period of search of at least 25 years prior to initiation of the action, and indicating the date of acquisition of the plaintiff's interest. Certificates may be procured commercially, or may be prepared by a staff attorney.

(a) *Avigation Easements.* Reports on actions alleging the taking of an avigation easement should include the following information together with supporting exhibits:

(1) Permanency of the installation and its designated use;

(2) Dates of commencement of use of the runway involved and of each extension thereof;

(3) Date of commencement of take-offs and landings by regularly assigned aircraft of the type (identify) causing the taking;

(4) Frequency and actual height of flight of the particular aircraft over some portion of plaintiff's property;

(5) Any applicable zoning regulations affecting use of the property;

(6) A drawing at an approximate scale of 1" to 400' showing the location and length of the present runway, its original length, and each extension, and also showing the location of plaintiff's property with relation to the approach-departure zone of the runway and the longitudinal distance in feet, measured along the extended center line from the end of the runway and the lateral distance measured perpendicular to the extended center line, of the plaintiff's property and of any dwellings thereon.

(7) A vertical projection of the drawing at an approximate scale 1" to 100' showing the approach-departure clearance surface at the specified slope ratio and the mean sea level heights of the end of the runway and of the plaintiff's property and any dwellings thereon; and

(8) Name of the person qualified to testify concerning preparation of the drawing.

(b) *Clearance Easements.* Litigation reports on actions alleging the taking of a clearance easement will contain the following:

(1) Details of any prior acquisition of clearance easements over the same property;

(2) Statement as to any outstanding clearance easement directives, including criteria for approach and transition zones, status of negotiations, and copies of appraisal reports;

(3) Statement that all acquisition of clearance easements has been stopped, unless their prompt acquisition is nec-

essary to provide for current flight operation; and

(4) Recommendation that there be included in the estate, in the event of settlement, provisions for the clearance of existing obstructions and prohibition against future obstructions, provided that circumstances will permit a delay in the acquisition of a clearance easement until completion of the litigation.

(c) *Appraisal Reports.* Appraisal reports will be submitted to HQDA (DAEN-REE) WASH DC 20314 after the Department of Justice has determined the date (or dates) of taking. These reports will reflect the "before" and "after" values of the property, based on the assumption that the United States acquired an easement on that date (or dates).

§644.104 Procurement of deed and title assembly.

In any case in which the Court determines that the United States has taken an interest in real property, the Department of Justice will attempt to have included in the findings and in the judgment a precise description of the interests taken. An attempt will also be made to provide in the judgment that payment by the United States will not be required until the plaintiff has delivered a deed or other acceptable conveyance of the interest taken.

(a) *Preparation of Instrument.* Upon receipt from the Department of Justice of information as to the nature of the settlement which has been reached, a deed will be prepared, drafted in accordance with §644.70, covering the estate provided in the judgment.

(b) *Execution and Recording of Deed.* The Division or District Engineer will obtain proper execution of the deed, record the same, procure a final certificate of title of a commercial title company or a staff attorney, and obtain a final title opinion pursuant to the provisions of the Delegation to the Department of the Army for the Approval of the Title to Lands Being Acquired for Federal Public Purposes, dated December 4, 1970, and issued by the Assistant Attorney General, Land and Natural Resources Division, Department of Justice. The title assembly

and final title opinion should be forwarded to HQDA (DAEN-REA-P) WASH DC 20314, with information copy of transmittal letter to Division Engineer.

(c) *Notification to the Department of Justice.* If the recorded deed and the final certificate of title are not readily available, the Division or District Engineer will notify the Land and Natural Resources Division of the Department of Justice by letter, with a copy to the appropriate United States Attorney, that the deed has been properly executed and delivered by the plaintiff and has been entered for record in order that settlement will not be delayed.

(d) *Disposition of Final Title Assembly, Mapping, and Audit.* When a final title opinion has been obtained, the Division or District Engineer will assign a tract number to the areas in which the interest has been acquired, will add the tract to the project map, and will transmit the final title opinion and related papers to HQDA (DAEN-REA-P) WASH DC 20314. The tract will be included in the audit of the installation to which it pertains. Audits will be revised for this purpose, if necessary. The amount of the judgment received by the plaintiff will be shown in the audit assembly, with a proper notation that it represents the amount of the judgment entered in the litigation, which will be identified in the audit by its civil number, and by designation of the Court in which it was rendered. A copy or abstract of the judgment will be inserted in the District Office audit assembly, identified as follows:

Directive by judicial decree for the acquisition of Tract No.; being an easement (or other interest), containing — acres.

(e) *Action in Lieu of Confirmatory Deed.* Where a confirmatory deed cannot be obtained, the Division or District Engineer will obtain from the Clerk of the Court a copy of the final judgment (or an appropriately excerpted copy of the final judgment), acknowledged or properly certified to permit recordation in the local land records. The Division or District Engineer will record same and later transmit the appropriate title assembly to HQDA (DAEN-REA-P) WASH DC 20314. If the final judgment does not contain language which clearly vests title in

the United States of the interest in land for which compensation was paid, request should be made of the United States Attorney to move the Court to amend the judgment to show that such title has vested.

ACQUISITION BY CONDEMNATION PROCEEDINGS

SOURCE: Sections 644.111 through 644.121 appear at 44 FR 8184, Feb. 8, 1979, unless otherwise noted.

§ 644.111 General.

Sections 644.111 through 644.121 describe the procedures of the Corps of Engineers relating to the acquisition of real estate and interests therein by condemnation proceedings. It is applicable to the Office of the Chief of Engineers (OCE) and to all Division and District Engineers having real estate responsibilities.

§ 644.112 Applicable statutes in condemnation proceedings.

A complaint in condemnation, and any declaration of taking filed in conjunction therewith, will contain a citation of the congressional authorization and appropriation acts for the particular project, and any other applicable acts of Congress. Existing acts of Congress authorizing the acquisition of land and interests therein are outlined in AR 405-10 and subpart A. Acts of Congress applicable, generally, to condemnation proceedings are outlined below.

(a) *Military projects.* (1) Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U.S.C. 257) authorizes the head of any Government department or agency to acquire real estate, otherwise authorized for acquisition, by condemnation proceedings.

(2) Section 2663 of title 10, United States Code, authorizes the Secretary 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 approved 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 similar 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 cita-

tions 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 ask the Department of Justice to obtain judgment should be submitted as a separate Declaration of Taking.

(b) *Negotiator's report.* Each declaration of taking assembly should be accompanied by a separate Negotiator's Report, ENG Form 3423 (Parts I and II), in duplicate, for each tract of land included in the assembly. The Negotiator's Report should be current, i.e., it should indicate a contact with the

landowner, or his representative, at a time reasonably close to the date of submittal of the assembly, and should reflect that actual, practical and realistic negotiations were conducted in accordance with the procedure set forth in §644.83. The Negotiator's Report should be complete, but should be concise and not made unduly lengthy by extraneous material. It should contain so much of the following information as may be pertinent:

(1) A brief physical description of the property, including its present use and highest and best use claimed by both the Government and the landowner.

(2) Number of discussions and date and place of each discussion, and a statement that the landowner was furnished a summary of the basis for the Government's valuation prior to negotiations.

(3) Statement of each offer made by the negotiator, any counteroffer received from the landowner, and any figures suggested by the negotiator in an effort to obtain a reasonable counteroffer above the Government's estimate of value.

(4) Where the discussions reveal that further negotiations would not be productive, a statement that the real estate representative explained that it was necessary that the interests be obtained through condemnation, not in the sense of a threat, but as an effort on behalf of the Government to secure an impartial determination by the court of the differences of opinion as to value, and in order to make funds available to the landowner.

(5) If the owner cannot be contacted for the purpose of conducting negotiations, a full explanation of the circumstances and the efforts made to contact the owner should be set forth in the Negotiator's Report.

(6) A statement that any remaining property of the owner enjoys access and is an economic unit, or if it is an uneconomic remainder, that the Government has offered to acquire the remainder.

(7) Where there is an Offer to Sell, the Negotiator's Report should include a statement that no separate representations were made in order to obtain the offer, if this was the case. If any such representations were made, they

should be fully explained. The report should also include the negotiator's telephone number.

(c) *Letter of transmittal.* The letter of transmittal to be submitted with a declaration of taking assembly will contain the following:

(1) The date of the real estate directive or the date of approval of the real estate design memorandum which includes the land to be condemned, a statement that the land is within the approved project boundary line, and the date of approval of the boundary line.

(2) A statement concerning the availability of funds.

(3) A list of the dates of the appraisals of the tracts in the assembly and the dates of the last review thereof. If more than one approved appraisal exists for any tract, the deposit will be in the amount of the highest approved appraisal. If the value of growing crops has been included in the appraisal, a statement concerning same is required in the transmittal letter pursuant to paragraph (h)(3) of this section.

(4) A statement that all owners of land included in the assembly, whose addresses are known, have been notified in writing that condemnation will be recommended and the reason therefor. The information furnished to the owners should include the name and address of the United States Attorney who will advise and assist them in applying for withdrawal of the funds deposited in the registry of the court. The notice to the owners should also state the date on which possession of their property will be required.

(5) A statement concerning the date when possession of each tract included in the assembly should be obtained. This should include information as to when the 90-day notice was given, as required by section 301(5) of Pub. L. 91-646 (84 Stat. 1894), or if not required, an explanation as to why not.

(6) In assemblies involving other than civil works projects, a statement as to whether or not all of the land authorized in the real estate directive is included in the proposed declaration of taking. Any variance that may exist between the acreage in the directive and the acreage in the declaration of taking should be fully explained.

(7) For military projects, a statement of the expected local resistance to the proposed acquisition by condemnation, and the efforts which have been made to adjust requirements to the local situation.

(8) For those assemblies involving the first case in a particular project, information as to:

(i) When the initial land acquisition for the project took place.

(ii) The total acreage for the project and the estimate of the cost thereof; if available, two copies of the project brochure furnished to landowners should be forwarded.

(iii) Whether or not an environmental impact statement has been filed, and, if not, when it is expected to be filed.

(9) Two copies of each accepted Offer to Sell covering any of the tracts included in the declaration of taking will be submitted with the assembly.

(10) A statement as to whether there have been any Congressional inquiries regarding the acquisition.

(d) *Title defects.* If a tract is recommended for condemnation due to title defects, three copies of the title opinion will be submitted with the assembly.

(e) *Deposit of funds.* Two copies of the declaration of taking, as finally approved and signed, will be transmitted by the Chief of Engineers to the Division and District Engineer. Procurement and delivery of a check to the United States Attorney for deposit in the registry of the court will be authorized, subject to the availability of funds.

(f) *Additional information to accompany Air Force acquisitions.* Each condemnation assembly (complaint or declaration of taking) covering the acquisition of land for an Air Force project will include the following information and material, in duplicate:

(1) A map showing the base boundaries, outlining in red all land included in the applicable real estate directive, and showing the land included in the condemnation assembly hachured in red. In the case of an off-base facility, the map will show the nearest boundary of the main base with relation to the off-base facility, outlining in red all land in the applicable real estate

directive, with the land covered by the condemnation assembly hachured in red.

(2) On the same map or a larger scale map, the following information on each tract in the applicable real estate directive:

(i) Tract number.

(ii) Acreage.

(iii) Ownership.

(iv) Contours.

(v) Existing improvements.

(vi) Proposed construction, including utilities, drainage ditches, and other supporting facilities.

(3) Summary of status of acquisition of all land included in the applicable real estate directive. ENG Form 3905-R will be used for this purpose. All discrepancies in figures for acreages and costs should be fully explained.

(4) If any of the land included in the applicable real estate directive is held under voluntary lease or leasehold condemnation, report for each such tract the annual rental, the period of time the leasehold interest has been held, and whether it is a voluntary lease or a condemnation leasehold. If the land is not under lease, this fact should be reported.

(5) If the United States has previously acquired an easement interest (clearance easement, safety area easement, etc.) in any of the land included in the condemnation assembly, identify the real estate directive which authorized the previous acquisition by number, date, interest acquired, acres, cost and method of acquisition (including lease number, tract number, caption with civil action number as applicable). A negative report is required.

(6) If severance damage is involved in any of the land included in the condemnation assembly, include a detailed statement of the facts and justification for the severance allowed, unless the severance damage has been adequately explained in a Real Estate Planning Report or a Real Estate Requirements Estimate, in which case such Report or Estimate should be identified for reference.

(7) A copy of the appraisal report on which the deposit in a declaration of taking is based, irrespective of value.

(g) *Interests included in declaration of taking.* (1) The estate recommended for

use in a declaration of taking should conform to the estate approved by the Chief of Engineers in Civil Works projects and to the applicable directive in military and other agency projects. Any deviation should be fully explained and justified in the transmittal letter. Examples of estates which have been approved for use in declarations of taking are contained in Figure 5-6 in ER 405-1-12. A condemnation proceeding is an in rem action. The definition of "property" and what constitutes property is generally determined by reference to State law. Therefore, full consideration should be given to the applicable State law in connection with requests for deviations from the standard approved estates.

(2) Normally, under the "unit" rule a condemnation proceeding should include all interests in a given tract authorized for acquisition even though an Offer to Sell may have been obtained and accepted from the surface owner with an outstanding interest in the subsurface estate recited in the "Subject to" paragraph. In such a case, if it is necessary to condemn due to title difficulties or failure of the owner to carry out the terms of the Offer to Sell, the deposit will be increased by the appraised value of the outstanding subsurface interest. The only exception to including subsurface interests outstanding in third parties is in the case of block ownership of subsurface interests; i.e., where a person, corporation, or other entity owns subsurface interests under more than one surface tract and in sufficient amount for the entire interest holding to have added value, for operational or other reasons, because it is in a block ownership. In other words, block ownership exists when the acquisition of a part of the block would require the assessment of severance damage, even if the value of the interest or the amount of the severance damage would be in a nominal amount. On this basis, subsurface interests need not be contiguous to constitute a block ownership.

(3) If future negotiations to acquire or subordinate the subsurface interests left outstanding under paragraph (g)(2) of this section (or any non-block subsurface interests "excepted" from direct purchase cases) are unsuccessful,

and the outstanding interest cannot be waived under the provisions of § 644.86, then acquisition or subordination of the outstanding interest should be accomplished by condemnation proceedings. In so doing, block ownerships should be condemned as a unit rather than on a piecemeal basis. Full information should be submitted with such assemblies as to the method of acquisition of each surface ownership affected by the subsurface acquisition.

(h) *Payment for crops.* At the time the declaration of taking assembly is prepared, it will be necessary that a determination be made as to whether the value of growing crops should be added to the value of the land improvements in determining the amount to be deposited as estimated compensation. The determination will be made as follows:

(1) If the crops have been harvested, or it is known or highly probable that the crops will be harvested by the landowner or tenant, no deposit will be made for the crops.

(2) The approved appraised value of crops will be included in the amounts to be deposited in all other cases.

(3) The letter forwarding the declaration of taking to the Chief of Engineers will state whether the value of growing crops has been included in the amount recommended for deposit, and will set forth a statement of the facts upon which the action is based.

(i) *Filing and possession.* Upon the filing of a complaint, accompanied by a declaration of taking, the court has the power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the United States (40 U.S.C. 258a). Requests for orders of possession should be made only after all requirements of Pub. L. 91-646 (84 Stat. 1894) regarding possession have been satisfied.

(1) The Division or District Engineer will ascertain from the United States Attorney the date on which the condemnation proceeding with declaration of taking is filed and the date on which possession is available. The using service of the Army and Air Force or the local representative of other agencies will be informed of the date on which possession of the land is available.

(2) The above information, together with the civil number assigned to the case, and a copy of the complaint and order of possession will be furnished to HQDA (DAEN-REA-C) WASH DC 20314 within six weeks after the date the case was forwarded by the Chief of Engineers to the Department of Justice. If this cannot be accomplished, an explanation will be furnished by such date.

(3) Where an Order of Possession is obtained but the landowner refuses to comply, it may be necessary to obtain a Writ of Assistance from the court. Prior to requesting the United States Attorney to obtain such a Writ, all pertinent facts should be reported to DAEN-REA-C.

(4) The United States Attorney should be requested to have judgment entered in accordance with the terms of any accepted Offers to Sell immediately after the filing of the case, since delay in taking such action works to the disadvantage of the Government. Any difficulty in securing prompt action by the United States Attorney in this matter should be reported to DAEN-REA-C.

(j) *Amendments.* (1) If at any time it becomes necessary to amend a complaint or declaration of taking previously filed, an amendment assembly will be submitted to DAEN-REA-C together with a full statement of the facts requiring the amendment. The letter of transmittal should certify that the tracts affected by the amendment have not been adjudicated.

(2) No amendment should be submitted which will result in a revestment of an interest in property, unless a stipulation for revestment has been obtained from the former owner in accordance with § 644.115.

(3) If, after the filing of a declaration of taking, a substantially higher appraisal is approved for any reason, and a settlement does not appear imminent, an amendment will be submitted promptly to increase the amount of the deposit.

(k) *Alternate form declaration of taking.* An alternate form of Declaration of Taking has been approved by the Judicial Conference on an optional basis, and must be used where the local District Court requires. Under this form a

Declaration of Taking may have up to 15 ownerships, but each ownership will be set up separately so that it may be included in a separate civil action. In other words, there may be up to 15 separate civil actions which are keyed in to one Declaration of Taking. An example of this type of Declaration is included in Figure 5-5 in ER 405-1-12. In this form, Schedule "A" will include the authority and public uses. Schedule "B" will include the description, the estimated compensation, and the estate to be acquired. Schedule "C" will be the plan showing the land to be acquired. It will be noted that there will be a separate Schedule "A", "B", and "C" for each ownership. The schedules may include more than one tract where the ownership is unified and is an economic unit. All of the civil actions will be keyed in to the Declaration of Taking by a Master File number. The Master File number must be used on all correspondence pertaining to tracts in this type of an assembly.

§ 644.115 Revestment of title by stipulation.

When fee title or an interest in property has been acquired by the United States by declaration of taking in a condemnation proceeding and it is determined to be in the best interest of the Government to wholly or partially exclude said property or interests therein, or to acquire a lesser estate, such exclusion or diminution in the estate can be accomplished by stipulation with the former owner under the provisions of the Act of Congress approved October 21, 1942 (40 U.S.C. 258f).

(a) *Required approval.* All stipulations involving a revestment of title must be forwarded to DAEN-REA-C for approval with a full statement of the facts, related data and recommendations. Approval of the revestment action must be obtained from the appropriate using agency. Such stipulations will not be filed in the condemnation proceedings by the United States Attorney until the specific approval of the Chief of Engineers is obtained and the matter coordinated by the Chief of Engineers with the Department of Justice. It should be stressed in negotiations that final approval of the stipulation is under the jurisdiction of the

Attorney General, based on the recommendation of the Chief of Engineers.

(b) *Reduction of price.* A stipulation for revestment should provide for a deduction from the agreed price or from the ultimate award of an amount equal to the difference between the value of the property originally taken and the value of said property after the proposed exclusion of a part thereof or acquisition of a lesser interest therein, i.e., the stipulation should be an overall settlement of the case whenever possible. If it is impossible to reach an amicable agreement for complete settlement for the Government's acquisition of the tract, an agreement as to the area and estate, leaving final determination as to compensation with the court, may be submitted with facts showing that the proposed action is in the best interest of the Government. The stipulation should also include a release concerning any benefits under section 304, Pub. L. 91-646 (84 Stat. 1894), because of the revestment, particularly when no agreement is reached concerning compensation.

(c) *Required information.* A sample stipulation for revestment is contained in Figure 5-8 in ER 405-1-12 which may be adapted to fit the particular project and tract involved. In this connection, the following requirements should be observed:

(1) The stipulation will not provide for any change in the amount of the deposit unless the stipulation provides for an overall settlement of the case or the entire tract is to be excluded from the acquisition.

(2) The areas in which the Government has acquired an interest and those in which an interest will be retained after the revestment will be fully described.

(3) The estates to be retained by the Government after the revestment will be accurately described; where the owner reserves mineral or other interests or use, appropriate restriction of exploration and subordination to the paramount right of the Government to use the property for the required purpose will be included.

(4) The stipulation should include, as part of the consideration:

(i) Consent by the former owner to the Government's acquisition of the revised area and the estates therein in the event the stipulation is approved.

(ii) Withdrawal of any answer contesting the Government's right to acquire the property and any interrogatories theretofore filed.

(iii) A waiver of any and all claims by the former owner, his heirs and assigns, against the United States, the State, County and political subdivisions thereof for loss of access to the land (where applicable).

(5) The stipulation will include, as an exhibit, maps delineating the fee area in red, the easement area in blue, and the area to be revested in yellow.

(6) The letter of transmittal in connection with any revestment in Civil Works projects should include information as to whether the area in which title is to be revested has a potential for recreational use without regard to the currently established public access areas.

(d) *Application.* The foregoing procedure applies only to instances where a declaration of taking has been filed. Where only a complaint has been filed, the necessary revisions may be made by securing a satisfactory Offer to Sell and deeds to the United States, or by amending the complaint and filing a declaration of taking containing the revised descriptions or estates.

§ 644.116 Distribution, reservations, and title evidence.

Distribution of the estimated compensation deposited in the registry of the court is the responsibility of the United States District Court. However, the Division or District Engineer will assist the United States Attorney in arranging for the distribution of funds deposited with a declaration of taking in order that landowners may receive either partial or total payment as soon as possible.

(a) *Distribution.* Partial or total distribution may be made upon a showing to the court that the claimant is the proper person to receive the money on deposit (40 U.S.C. 258a). An examination of the title evidence by the United States Attorney, together with a physical inspection of the premises, is usually sufficient to enable the United

States Attorney to ascertain the proper claimants so that he may consent to the entry of an order of distribution. Distribution may be made without prejudice to the owner's right to contest for a higher award than the sum deposited by the United States.

(b) *Inspection and title evidence.* As soon as a condemnation proceeding is filed, a physical inspection of the premises will be made and the United States Attorney will be furnished the following:

(1) ENG Form 798, Certificate of Inspection and Possession, or such other similar form as may be requested.

(2) ENG Form 1567, Report on Vacation of Property.

(3) Title evidence and all available curative material covering the tracts of land included in the declaration of taking.

(4) Copies of all offers to Sell, leases, relocation agreements, etc., which are pertinent to the case and would be useful in making distribution.

(c) *Reservations.* If the landowners are to be permitted to remove crops, timber, buildings or other improvements from land acquired in the declaration of taking (by approval of the Division or District Engineer), a stipulation for reservation of these items may be obtained at this time. The stipulation should be in a form acceptable to the United States Attorney, should specify the date on or before which the reserved items are to be removed, and should provide that if the reserved items are not removed on or before said date, the right of removal shall terminate automatically and the United States shall have a good and indefeasible title to these items without further notice. The consideration to the Government for the reservation will be in an amount not less than the appraised value of the crops, or not less than the appraised salvage value of the timber, buildings or other improvements which are reserved, and the stipulation should provide that such amount shall be deducted from the amount of the final award.

(d) *Continuation of title evidence.* A continuation of the existing title evidence will be obtained to include a search of the records to a date subsequent to the date of filing of the Notice

of Lis Pendens, the Judgment on Declaration of Taking, or the filing of the complaint in those states where such filing constitutes notice. The additional title evidence will be furnished to the United States Attorney as soon as possible after filing of the case.

§ 644.117 Procedure prior to trial.

(a) *General.* After filing of condemnation proceedings, the Division or District Engineer will maintain close liaison with the United States Attorneys and will render all possible assistance to the United States Attorneys in negotiating settlements, preparing cases for trial, and in conducting such trials. When the Division or District Engineer is informed that a case has been set for trial involving an unusual or novel issue of fact or law, or where the Government testimony will be \$100,000 or more, he will promptly furnish this information to DAEN-REA-C. In addition, the Division or District Engineer should:

(1) In coordination with the United States Attorney, conduct discussions for settlement with landowners and other interested parties defendant. When a satisfactory agreement has been reached, an executed stipulation in a form satisfactory to the United States Attorney will be obtained. A suggested form of stipulation as to just compensation is contained in Figure 5-8 in ER 405-1-12. In this connection, the closest cooperation and collaboration must exist between representatives of the Department of the Army and the Department of Justice; no settlement negotiations should be conducted by Corps personnel without the knowledge and consent of the United States Attorney. If the property owner is unwilling to execute a stipulation until assured that the amount of the settlement will be accepted by the Government, formal execution of the stipulation may, in such instances, be delayed. However, the offer will be processed in accordance with the applicable provisions of paragraph (b) of this section.

(2) Furnish maps, photographs and other necessary exhibits for trial.

(3) Assist in preparing expert witnesses for trial.

(4) Take necessary action to assure the presence of witnesses at the trial. District personnel who qualify as expert witnesses will be made available.

(5) Be represented at the trial by an attorney thoroughly familiar with Federal court procedures, condemnation law, and the details of the project affected by the condemnation proceedings.

(b) *Stipulated settlements.* (1) Where the amount of the stipulation obtained in accordance with paragraph (a)(1) of this section does not exceed the high, approved appraisal prepared by an appraiser employed by, or under contract with, the Corps of Engineers, and the proposed settlement will completely dispose of the issue of compensation for all interests acquired in the tract in the proceeding, approval of the settlement will be recommended by the Division or District Engineer or the Chief of the Real Estate Division directly to the United States Attorney. The Division or District Engineer will inform DAEN-REA-C of the action taken, either by sending a copy of the letter addressed to the United States Attorney of by separate correspondence.

(2) Where the total settlement for all interests acquired in a given tract does not exceed \$40,000 and the proposed settlement will completely dispose of the issue of compensation for all interests acquired in the tract in the proceeding, Division and District Engineers and the Chiefs of the Real Estate Divisions are also authorized to recommend approval of settlements directly to the United States Attorney. In leasehold condemnation cases the monetary limitation includes the full lease term and not merely the per annum rental. DAEN-REA-C will be informed of the action taken in the same manner as in paragraph (b)(1) of this section. Even though the total settlement for all interests acquired in a given tract does not exceed \$40,000, the proposed settlement will be submitted to DAEN-REA-C for consideration in the following instances:

(i) If the United States Attorney and the Division or District Engineer cannot agree as to whether a particular settlement should be consummated.

(ii) If the stipulation involves a novel issue of law or question of policy which

would adversely affect the disposition of other tracts in a project.

(iii) If revestment of any land or interests therein or change in estate is involved.

(3) All proposed settlements not covered by paragraphs (b) (1) and (2) of this section will be forwarded to DAEN-REA-C, together with specific recommendations of the Division and District Engineers and a full statement of the facts. Three copies of the signed stipulation will be forwarded to DAEN-REA-C with the report in those situations where the stipulation contains any unusual conditions or terms. The report should contain the following:

(i) The amount of the deposit and the amount of the proposed settlement.

(ii) The amounts and dates of all Government appraisals. Where the Department of Justice appraisal is substantially above or below the Corps of Engineers' appraisals, the Division and District reviewing appraisers should carefully examine the appraisals and ascertain whether the facts in the case and the appraisal techniques have been consistently applied, and should prepare a comparative analysis.

(iii) The appraisal valuations by the property owners, their appraisers, or other witnesses who may testify for the owners, if such can be ascertained.

(iv) A statement of the recommendation of the United States Attorney as to the proposed settlement.

(v) Such other matters as should be considered by the Chief of Engineers in determining whether the proposed settlement is satisfactory; e.g., any pattern of awards which has been established as the result of other trials concerning land at the same project, or in the same Federal judicial district, disposition of any accepted Offer to Sell, any unusual legal or factual issues involved, any unusual factors which would increase the hazard of proceeding to trial, or the anticipated effect of the settlement on remaining acquisition in the project.

(vi) Whether or not funds are available to satisfy any deficiency.

(vii) The report should contain the required information in tabulated form. For each item the statement should be short and concise; lengthy reports are not required.

(4) A copy of the report and recommendation sent to the Chief of Engineers will be immediately transmitted to the United States Attorney. If the settlement is satisfactory, the Chief of Engineers will forward a letter of approval to the Department of Justice, recommending that the stipulation be approved, filed and judgment entered thereon. A copy of the letter of approval will be sent to the Division or District Engineer. Receipt of such copy is authority to satisfy the judgment when entered, provided funds are available.

(5) If a stipulation is obtained by a United States Attorney in excess of their authority, they will forward the proposed settlement to the Department of Justice. Simultaneously, in accordance with procedures agreed upon by the Chief of Engineers and the Department of Justice, the United States Attorney will transmit copies of the transmittal letter and of the proposed stipulation to the Division or District. The Division or District Engineer will immediately forward the letter outlined in paragraph (b)(3) of this section to the Chief of Engineers.

(6) All settlements negotiated for interests acquired in condemnation proceedings will be inclusive of interest and will include all claims of any nature arising as a result of the taking of the estate recited in the complaint or declaration of taking, with the exception of benefits to which the landowner may be entitled under Pub. L. 91-646 (84 Stat. 1894). In lease-hold condemnation cases, all proposed settlements should include not only an agreement as to compensation for the period of the leasehold but also an agreement as to any and all claims arising from restoration of the premises, if known (§644.121(b)).

(7) Where surface and subsurface interests are acquired in a single condemnation proceeding, it is desirable to settle by stipulation, or to go to trial, on the "unit" basis. Many United States Attorneys insist on this course of action. However, Division or District Engineer should cooperate with United States Attorneys who wish to negotiate for stipulated settlements which may not include all of the interests acquired in a given proceeding as to a

specific tract or tracts, provided appraisal reports have been prepared in such a manner as to make the appraised value of the several interests ascertainable.

(8) If an offer of settlement is not intended to include the full interest which was condemned in a particular tract, the letter transmitting the settlement offer will specifically identify the interests included in the settlement, the interests which remain unsettled, and the amount of estimated compensation remaining on deposit for the unsettled interests. The amounts remaining on deposit for the unsettled interests should be the appraised valuation of such interests.

(9) Landowners will be advised during negotiations for settlement that offers to settle are not binding on the United States until accepted by a duly authorized representative of the Department of Justice.

(10) In cases where tracts which are covered by accepted Offers to Sell are acquired by declaration of taking because of title defects or the failure of the landowner to carry out the terms of the Offer to Sell, the United States Attorney will be informed by letter and furnished copies of the Offer to Sell. The consideration contained in the Offer to Sell is considered binding upon the landowner despite the fact that condemnation is used to acquire title to the land. No settlement will be approved by the Division or District Engineer in an amount exceeding the amount contained in the Offer to Sell unless the Offer has been set aside by court order. Reports submitted in accordance with paragraph (b)(3) of this section will contain a statement as to the status of any Offer to Sell which may have been accepted.

(c) *Appraisal Review.* Land and Natural Resources Division Directive No. 11-68, dated 22 November 1968, provides that where two or more appraisals for a particular property have a valuation spread in excess of 10 percent of the high appraisal figure, the United States Attorney should submit such appraisals to the local representative of the Corps for approval. Every effort should be taken to see that this policy is followed so that the Corps has full knowledge of the appraisal reports on