

Encroachment Action Handbook

Table of Contents

SECTION 1 - GENERAL	2
1.1 PURPOSE	2
1.2 REFERENCES	2
1.3 APPLICABILITY	2
1.4 GENERAL POLICY	2
1.5 INTENT	3
1.6 DEFINITIONS	3
1.6.1 Fee simple	3
1.6.2 Easement	3
1.6.3 Encroachment	4
1.6.4 Lease	4
1.6.5 License	4
1.6.6 Flowage Easement	4
1.6.7 Outgrant	5
1.6.8 Permit	5
1.6.9 Right-of-way	5
1.6.10 Trespass	5
SECTION 2 - PREVENTIVE MEASURES	5
2.1 BACKGROUND	5
2.2 SURVEY AND MONUMENTATION ON OPERATING PROJECT LANDS	5
2.3 PROPERTY LINE IDENTIFICATION	6
2.4 CIVIL WORKS LAND DATA MIGRATION (CWLDM)	6
2.5 INSPECTIONS	6
2.6 TRAINING OF PERSONNEL	7
2.7 COMMUNICATION WITH PROPERTY OWNERS	7
2.8 OUTGRANTED LANDS	7
2.9 PLANNED DEVELOPMENTS	7
2.10 CONTIGUOUS SUBDIVISIONS	8
SECTION 3 - RESOLUTION OF ENCROACHMENTS	8
3.1 ENCROACHMENT IDENTIFICATION RESPONSIBILITIES	8
3.1.1 Compliance Inspection Trips	8
3.2 METHODS OF RESOLVING ENCROACHMENTS	9
3.2.1 Civil Action	9
3.3 DOCUMENTING ENCROACHMENTS	9
3.3.1 Required Encroachment Data in REMIS	10
SECTION 4 – DIVISION AND DISTRICT SUPPLEMENTS	10

SECTION 1 - GENERAL

1.1 PURPOSE

The purpose of this U.S. Army Corps of Engineers (Corps) Enterprise Handbook is to prescribe procedures for Real Estate specific to safeguarding of Corps-managed fee and easement lands in order to identify and prevent encroachments, prescribe the actions necessary to resolve existing encroachments, and to ensure timelier recordation of encroachments in the Real Estate Management Information System. Consult Army Regulation (AR) 405-80 and Engineer Regulation (ER) 405-1-12, Chapter 8, for additional guidance related to civil and military real property.

1.2 REFERENCES

Below are other relevant policy guidance in addition to those mentioned:

- Paragraph. 4-11, AR 405-80;
- Section III, Chapter 8, ER 405-1-12 or its replacement;
- CECW-CO Memorandum, 10 May 2019, subject: Policy Guidance – U.S. Army Corps of Engineers Boundary Management and Encroachment Resolution; and
- Paragraph. 11-9, Engineering Pamphlet (EP) 1165-2-1 – provides existing administrative and legal water resources policies and authorities pertinent to Civil Works activities);
- ER/EP 1130-2-540 Environmental Stewardship Operations and Maintenance Polices – provides direction and policy on Civil Works projects will manage boundary and boundary inspection process;
- ER 1110-1-8170 Engineering and Design Policies for using the USACE Survey Monument Archival and Retrieval Tool (U-SMART) for Project Control and Boundary Monumentation – provides direction and policy to support data management of survey and control point data; and
- Engineering Manual (EM) 1110-1-1002 Survey Markers and Monumentations – provides instruction on proper monumentation of survey markers and how to satisfy survey monumentation.

1.3 APPLICABILITY

The policies in this Handbook are applicable to all Corps Divisions and Districts having a real estate mission and real estate responsibilities.

1.4 GENERAL POLICY

As outlined in paragraph 4-11 of AR 405-80, unauthorized uses of Army real property can take the form of either an encroachment or trespass on land over which the United States holds either a fee or lesser interest. Real Estate must complete a careful examination of property records to confirm whether an encroachment exists. Legal actions may be required to enforce the Government's rights and interests, especially if the owner is unwilling to cooperate with the Corps on corrective measures.

Confirmed encroachments should be resolved by requiring the owner of the encroachment to remove it, restore Corps property, pay any administrative costs

incurred by the Corps, and pay fair market value consideration to the Corps for the period Corps property was used.

Exceptions by the District Engineer may be approved upon a determination that the encroachment was the result of an unclear boundary line. In such cases, a further determination must be made about whether the encroachment is incompatible with Corps mission requirements and must be removed, or whether other corrective measures can be considered that do not require immediate removal, such as the area is no longer required for project purposes. 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. The Real Estate Contracting Officer will determine the appropriate outgrant to be used if an exception to removal is approved.

Further, paragraph 8-26, ER 405-1-12, provides guidance on the criteria that should be used to aid in a determination as to whether the encroachment was intentional or unintentional in nature.

1.5 INTENT

It is the intention of the Corps to protect project authorized purposes including the natural resources of operating project lands by preventing new encroachments and by resolving legacy encroachments by equitable, consistent, efficient remedies, coupled with project-related risk management concerns and critical thinking.

1.6 DEFINITIONS

1.6.1 Fee simple

The largest estate known to the law and of potentially infinite duration. Its three principal characteristics are that it is alienable, divisible, and descendible. May also be referred to as "fee" or "fee simple absolute." Ownership in fee does not necessarily mean that no other person may have a limited interest in or right to use the property as, for example, property subject to an easement.

1.6.2 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 constructing a building or structure.

1.6.3 Encroachment

An encroachment is unauthorized placement of improvements on Corps property by a non-Army party. Paragraph 8-24.a., ER 405-1-12, further outlines that an encroachment pertains to a structure or improvement built, installed, or established which substantially interferes with the rights held by the Government. An encroachment has occurred when the structure or improvement extends over, across, in, or upon lands in which the Government owns a real estate interest which would prohibit such, and the structure or improvement has not been approved. Structure or improvement means a permanent or semi-permanent facility, such as a habitable dwelling, building, fence, deck, porch, barn, outhouse, permanent storage building, road, pond, leach field and septic tank, utility line, levee, excavation, placement of fill material, oil and gas well, mine entrance and tunnel. Also, unauthorized removal of government-owned real property components of economic value such as timber, sand, gravel, or embedded stone should be coordinated with District Counsel for a review of the appropriate legal remedies.

1.6.4 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 leasehold and the future interest 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.

1.6.5 License

A license is a bare permission to an individual, an organization, a corporation, a state or local governmental entity, or another Department of Defense 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 Secretary of the Army. It is normally revocable at will, with minimal required notice.

1.6.6 Flowage Easement

A flowage easement is an easement that the Corps acquired either before construction of its operating projects or after a need was identified to perform certain actions on private land not owned by the Government. The Corps has only

purchased certain rights associated with periodic water storage on private property and does not exercise absolute control. Normally, terms of these types of easements dictate that no structure for human habitation shall be constructed or maintained on the land, and that no other structure shall be constructed or maintained on the land except as may be approved by the representative of the United States in charge of the project. Real Estate may consent to the use of an easement, subject to any conditions required to protect the Government's interest. For more information, see CECW-PA Policy Guidance Letter No. 32, Use of Corps Reservoir Flowage Easement Lands (Apr 1993).

1.6.7 Outgrant

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

1.6.8 Permit

A type of outgrant generally used to authorize use of Department of the Army real property by another federal agency. Equivalent to a license.

1.6.9 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.

1.6.10 Trespass

A trespass pertains to unauthorized transient use and occupancy, such as, but not limited to livestock grazing, mowing, planting, cultivation and harvesting of crops, and timber cutting. For the purpose of this handbook, the focus will only be on encroachments. See Section III of Chapter 8, ER 405-1-12, for additional guidance on how to resolve trespass issues.

SECTION 2 - PREVENTIVE MEASURES

2.1 BACKGROUND

Experience has demonstrated that using remedial measures to resolve encroachments can be costly and time consuming. It is important to make every possible effort to proactively manage real property to prevent new encroachments. An annual boundary report, with boundary Management Plan, will be maintained at the project that describes the projects plan for inspection, marking and identification of encroachments.

2.2 SURVEY AND MONUMENTATION ON OPERATING PROJECT LANDS

Operating project area boundaries, both fee and flowage easements, shall be surveyed and marked, commensurate with funding availability. Corps boundaries, particularly in problematic and highly developed areas, should be maintained and monitored and be

physically marked by survey signs and documentation, or other approved methods. Where feasible, boundary lines should be maintained for line-of sight to improve monitoring and to increase adjacent landowners' awareness of Corps property lines. For flowage easements, the scope of the Government's standard flowage easement estates has been considered to include the right to monument the boundaries as reasonably required to fulfill the purpose of the easement and to not constitute an unreasonable interference with the servient estate.

For new acquisitions, a survey will be conducted of any new property interest (fee or easement) prior to acquisition and monumentation of newly acquired property will occur at the time of acquisition or as soon as possible thereafter in accordance with EM 1110-1-1002, Survey Markers and Monumentation (1 March 2012).

2.3 PROPERTY LINE IDENTIFICATION

Some Districts have an inconsistent system for monuments and line-of sight markers. In areas where the probability of new encroachments are high, the property boundary should be clearly delineated. Prior to placement of any new fence, consideration must be given to any applicable state and local laws, ordinances, and regulations, as well as notifying adjacent landowners and providing them an opportunity to comment on fencing plans. New fencing placed by the Corps shall be constructed offset onto the Corps property by a width adequate enough to enable maintenance on the outside of the fence.

Since the boundary line is a common boundary between Corps lands and an adjacent landowner's property, both parties assume responsibility for the line. The Corps does not assume responsibility for determining adjacent property owner's property boundaries. If the Corps performs a survey, it is to determine the Government boundary line. Corps boundary surveys are of a higher order in detail and research than most subdivision/plot or individual property surveys.

2.4 CIVIL WORKS LAND DATA MIGRATION (CWLDM)

To assist with property line identification, Districts should make full use of available CWLDM data. The CWLDM data is a strategic asset used to drive business decisions and supports seamless sharing of geospatial data across the Corps. The CWLDM project involves the digitation of land tracts, land disposals and outgrants, and long term maintenance of the data to ensure future changes are captured. The geospatial data developed through the CWLDM project will be the official mapping source data for Corps, supporting significant increase in both Real Estate and Operations staff understanding and awareness of where Civil Works real property land tract and project boundaries are located.

2.5 INSPECTIONS

Adjacent property landowners are less likely to intentionally encroach when they know a boundary inspection is regularly conducted. Real Estate should work with Operations to ensure that thirty-three percent of projects are inspected annually.

2.6 TRAINING OF PERSONNEL

It is recommended that the District conduct training of real estate personnel on the rules, regulations, and policies concerning encroachments. Suggested training includes: review of existing laws and regulations, review of this Handbook, training conducted on trespass and encroachment related issues, presentations at sub-Community of Practice and national community meetings, and the establishment of a District Encroachment Task Force made up of personnel from Real Estate, Operations, Counsel, and other functional members as needed.

2.7 COMMUNICATION WITH PROPERTY OWNERS

Real Estate personnel, in coordination with Operations and the Public Affairs Office, should conduct a public affairs campaign in order to educate local contacts, such as county planning and building departments, media outlets, and local real estate agents. These are all excellent contacts for spreading knowledge about Government rights and encumbrances affecting area lands. Such campaigns should be tailored to meet local requirements.

2.8 OUTGRANTED LANDS

Districts should continue to partner with our outgrantees to take full advantage of the enhanced boundary surveillance provided by their use and occupation of project lands. This is both a good preventative measure as well as a means of discovery and reporting.

Generally, grantees are required by their real estate instrument to monitor boundaries of their outgranted areas to maintain the integrity of the boundary. If the grantee believes the outgrant area is impacted by an encroachment, the grantee should reach out to the Corps Real Estate staff. In the event that Corps staff identify encroachments affecting outgranted lands, Real Estate staff must review the issue to determine if the grantee is encroaching or others, and take the necessary actions to resolve.

If during a compliance inspection, Real Estate staff notices that line of sight markers or other signage elements are missing or damaged, Real Estate should follow-up with Operations.

2.9 PLANNED DEVELOPMENTS

One economical and effective means of preventing new encroachments is for Real Estate and Operations to maintain close relationships with county commissioners, city and county planning and zoning staff, and other officials directly responsible for approving plats and issuing building permits. District Real Estate staff should educate platting and building officials on the purpose of flowage easements and ask for their assistance in requiring developers to document the easements during the normal platting and permitting process.

Local planning departments may request District input on development projects prior to issuing permits and building certifications. District staff, including Real Estate and

Operations, should use these opportunities to provide input. Although these requests typically require a short turnaround, they represent an important tool in working with local communities. At a minimum, platting departments should encourage the following requirements be performed for all new plats:

- Identify the flowage easement contour as determined by survey;
- Reference the control elevation used to locate the contour and the vertical datum; and
- Prominently identify the Government boundary on the plat.

2.10 CONTIGUOUS SUBDIVISIONS

Where adjacent properties have been subdivided, Real Estate staff and/or the District Land Surveyor, in coordination with Operations staff, will accomplish the following:

- Determine when the subdivision plat was recorded and when Government real estate rights were acquired. If the plat was recorded prior to acquisition of Government rights, the legal description in the acquisition should be in plat language, not metes and bounds.
- Forward plat and ownership information to Real Estate staff for comparison of the flowage easement contour line with the contour lines shown on the subdivision plat. If a flowage easement contour line falls within the subdivision, Real Estate staff shall clearly delineate it on the plat thereof.
- Assemble plats and ownership data and examine it closely to determine if the platted land boundaries align with Government land boundaries. If the position of the potential encroachment is to be directly related to the Government land boundary, then the District Land Surveyor is the only one authorized to determine said boundary.
- Advise adjacent land-owners of existing flowage easement restriction language. Identification of private properties that are affected by easement restriction needs to be determined by a Licensed Land Surveyor.

SECTION 3 - RESOLUTION OF ENCROACHMENTS

3.1 ENCROACHMENT IDENTIFICATION RESPONSIBILITIES

Real Estate staff are responsible for certifying and resolving encroachments. If Operations staff identifies perceived encroachments at operating projects, this information should be provided to the District Real Estate office.

3.1.1 Compliance Inspection Trips

Real Estate staff should coordinate their annual outgrant compliance inspection trips with Operations staff at the District and project levels. Real Estate should review land boundary information, outgrant documentation, and other available information to identify the Government land boundaries of the lands scheduled for inspection.

When possible, boundary inspection and maintenance should be inspected during the compliance inspection trip.

3.1.2 Boundary Management Budgeting

Real Estate staff in coordination with Operations should work annually to develop budget packages to cover cost of inspection and resolution actions. These efforts must compete with all other activities that support Corps missions. Therefore, the funding should be risk based in accordance with annual budgeting guidance. It is important to note that responsibilities on boundary and flowage easements cross multiple business lines, including Environmental Stewardship, Flood Risk Management, and Navigation.

3.2 METHODS OF RESOLVING ENCROACHMENTS.

As stated in Section 1.1, Real Estate should follow the guidance in paragraph 4-11, AR 405-80, and the process further outlined in ER 405-1-12, Chapter 8, Section III. See Paragraph 1.4 above and the aforementioned regulations for the methods that should be used to resolve intentional and unintentional encroachments. Exceptions to the guidance provided must be coordinated with District leadership, and Real Estate files should be documented to support the decision.

3.2.1 Civil Action

If attempts to remedy an encroachment have failed, the District Encroachment Team will evaluate possible legal actions. Office of Counsel staff can request that the U.S. Attorney's Office file a civil action in Federal Court to resolve encroachments. Additionally, there may be a basis for the U.S. Attorney's Office to file a criminal case against a violator.

3.3 DOCUMENTING ENCROACHMENTS

All encroachment actions will be recorded, including those immediately resolved. Such documentation can help identify repeat offenders and aid in determinations regarding appropriate resolution methods for future encroachments. All required encroachment data must be included in the Real Estate Management Information System (REMIS).

REMIS managed by Real Estate Community of Practice, is the database of record for documenting and tracking all Army encroachments. Suspected encroachments that have been identified shall be submitted to Real Estate and placed in the REMIS database for tracking. Once an encroachment is confirmed, Real Estate will record the encroachment in REMIS within 30 days. The Real Estate District and data support will be resourced and budgeted for as provided and approved in each Project's "Boundary Management Plan" following budgetary guidance.

Division Real Estate Chiefs will provide an annual report, due 15 November, to the Director of Real Estate (DRE). This report will contain a high-level overview of the encroachment data in REMIS and the Division's plan with timelines to resolve encroachments in their area of responsibility. Progress on this plan will be

monitored by the DRE during the Headquarters Corps Real Estate Division (CEMP-CR) quarterly Directorate Management Reviews.

3.3.1 Required Encroachment Data in REMIS

Encroachment data in REMIS will focus on the following three areas as per the policy guidance memorandum issued 10 May 2019: prevention, management, and resolution.

Currently, there are nine fields in REMIS specific to the resolution of encroachments. The required fields are:

- District
- Project
- Encroacher ID

Additionally, in order for the Encroachment record to be a meaningful description, the following should be included:

- Type
- Description
- Reported By
- Reported Date
- Estimated 1st Existence Date
- Recommended Resolution

Enter as much information as is available on the encroachment. On the Remarks tab of the Encroachment data screen (RD106), include comments regarding GIS data and information about the location of photographs. (Note: GIS component and document management, including photographs, will be integrated into REMIS during the upcoming REMIS modernization.)

Additionally, if the encroachment is resolved by an outgrant, ensure the outgrant record is created. If resolved by disposal, complete the disposal record. See the Encroachment Module of the REMIS User Manual for complete instructions.

SECTION 4 – DIVISION AND DISTRICT SUPPLEMENTS

Corps Divisions and Districts are authorized to supplement this Handbook to deal with unique encroachment issues not addressed in this policy, provided that any supplemental policy issued is not in conflict with this enterprise Handbook. All proposed supplements to this policy will be subject to the review and approval of the Division Chief of Real Estate, with a Level III Real Estate Contracting Officer Warrant. All controversial or precedential encroachment resolution actions must be forwarded, with supporting documentation, through the Division, to CEMP-CR, ATTN: Director of Real Estate for additional guidance.