

DEPARTMENT OF THE ARMY
Omaha District, Corps of Engineers
6014 U.S. Post Office and Courthouse
Omaha, Nebraska 68102

DM 405-1-2

MRORE

Memorandum
No. 405-1-2

22 November 1977

Real Estate

RIGHT OF ENTRY ON LANDS NOT OWNED OR CONTROLLED BY THE GOVERNMENT

1. Purpose. This memorandum sets forth the policies and procedures implementing the following references as they pertain to rights-of-entry for survey and exploration and for construction.

2. Applicability. This memorandum is applicable primarily to Engineering Division and Real Estate Division with occasional interest and applicability to other divisions of the District. This memorandum covers all procedures on rights-of-entry that are obtained and administered by this District.

3. References.

- a. ER 405-1-625
- b. AR 405-10, Paragraphs 2-7 and 2-8
- c. AFR 87-1, 1W
- d. AR 27-20
- e. MRD Regulation No. 1180-234-2

4. Definition. A right-of-entry is a bare authority to do a specified act or series of acts upon non-Government owned property without acquiring any estate or interest in the land. The principal effect of a right-of-entry is to authorize an act which, in the absence of the right-of-entry, would constitute a trespass. In consideration of the rights granted, the Government agrees to be responsible for damages arising from the activity of the Government, its officers, employees or representatives, either by repairing such damage or by making a cash settlement in lieu thereof.

5. Forms. ENG Form 1258, "Right-of-Entry for Survey and Exploration," and ENG Form 2803, "Right-of-Entry for Construction," are prescribed for use. These forms may be modified where landowners or tenants insist upon changes provided such modifications do not increase the scope of the liability or responsibility of the Government over those contained in the standard form. Any material deviation requires prior approval of Chief of Engineers. In certain cases, a special right-of-entry for survey and exploration form will be prepared to incorporate a provision or provisions peculiar to the

project. In this event, the proposed form must be submitted to OCE for approval and upon approval will be given a locally assigned number for control purposes. The policies and procedures set forth in this memorandum will apply to this special form unless otherwise directed.

6. Rights-of-Entry for Survey and Exploration.

a. General.

(1) Rights-of-Entry for Survey and Exploration will be obtained by Real Estate Division for civil projects upon the written request of the Chief, Engineering Division or the Area Engineer, when authorized to make such requests. For military projects, requests will be made by the Chief, Engineering Division based upon its Design Directive. All requests should be submitted as far in advance of the need date as possible and will contain the following information:

(a) Project name.

(b) Specific area required for survey and exploration. (Note that survey forms provide for access across other lands of the landowner to get to the area required.) This may be by either a legal description or map of the specific area. If a map is used, it must indicate adequate land ties or references.

(c) Proposed activity on the land, i.e., surface surveys; subsurface exploration, well drilling, etc. (If known, the type of equipment to be used should be given.)

(d) Access requirements to reach survey and exploration area. This may involve a landowner other than the one owning the area where work is to be performed. A right-of-entry must also be obtained in this case but landowner can be advised that it is for access only. If access will be limited to public roads, so indicate.

(e) Length of time required. Information should be given on the estimated date crews will enter upon the property and the period of time needed to complete the work. The time period should be reasonable and take into consideration unforeseen delays.

(2) At the time Right-of-Entry for Survey and Exploration is obtained, the real estate representative will note the address of the landowner and/or tenant on the form. Instructions or directions to the home of the person in possession, including telephone number, should also be noted so that the survey or drill crews will have this information readily available. All exceptions, reservations, and suggestions made by the landowner or his/her tenant will also be noted on the Right-of-Entry. Landowner and tenant,

if applicable, each will be left a copy of the signed Right-of-Entry, given an explanation regarding same, and contained thereon will be the address and telephone number of the Corps of Engineers office that obtained the right-of-entry.

(3) In all cases, an attempt will be made to secure a Right-of-Entry for Survey and Exploration signed both by the landowner and tenant. However, in some instances landowners refuse to sign anything but will give verbal permission for the work to be performed. The Real Estate Division will consider verbal approval as authority to enter upon the land; however, a memorandum giving complete details will be written by the real estate representative and furnished to Chief, Real Estate Division. The Chief, Real Estate Division will determine in each such instance whether entry will be permitted based upon such verbal permission. If entry is approved, memorandum will be distributed same as an executed Right-of-Entry. The real estate representative will furnish the owner the address and telephone number of the Corps of Engineers office that obtained the right-of-entry.

(4) After Rights-of-Entry have been obtained by the Real Estate Division, a copy will be furnished to the office or command making the request. If the survey or drill crews are in the field awaiting entry upon the land, the Real Estate representative should leave the crew chief a copy of each Right-of-Entry obtained and advise him/her of lands as to which verbal permission only was obtained. The transmittal DF or letter will make note of all exceptions, reservations, and significant comments made by the landowner or his/her tenant. In all cases, the crew chief should make contact with the person in possession of the land before making entry for purpose of survey or exploration.

(5) Where neither written nor verbal permission can be secured, the requesting office will be advised to determine if entry to that particular area is absolutely essential for their purpose. Every effort should be made by the requesting office to adjust the area or otherwise eliminate the need for the particular land where refusal for entry was given. If it is then determined that no adjustment can be made and area is necessary, the Real Estate Division will be notified of this fact and requested to take action to obtain the required interest as may be appropriate.

b. Architect-Engineers and/or Contract Surveyors - Employed by the Corps of Engineers or the Department of the Army.

(1) Generally, contracts with Architect-Engineers and/or contract surveyors contain a provision requiring the contractor to secure rights-of-entry to perform any of the work required on the property under the contract provisions. Similar provisions will be inserted in any other type contract which requires the contractor to perform services on land not

owned or controlled by the Government. Where such provisions are a condition of the contract, the contractors will be responsible to make settlement for damages to the property as a result of the contractor's activities. The contractor should be cautioned not to implicate the Government in connection with the contractor's use or damage to the property.

(2) Where circumstances are such that responsibility for obtaining Rights-of-Entry for Survey and Exploration cannot be made a condition of the contract, Engineering Division or Area Engineer, as applicable, will make requests for Rights-of-Entry to the Real Estate Division as prescribed above, except information in the request should make note of the firm conducting the survey and/or exploration work. Where the Government obtains Rights-of-Entry for a contractor, the contractor should be cautioned that damages over and above what is normally expected for the type of work being performed may be referred to the contractor for direct settlement or reimbursement to the Government, as may be appropriate in the individual case.

c. Air Force Architect-Engineers and Contract Surveyors.

(1) Rights-of-Entry for Survey and Exploration for use of Architect-Engineers or contract surveyors will be obtained by the Real Estate Division in the same manner as prescribed in paragraph a. above.

(2) In the event the request from the Air Force command does not contain specific information concerning the contract responsibility of its Architect-Engineer or Contract Surveyor for processing and payment of damage claims, such information shall be obtained prior to making landowner and tenant contacts. Generally, it will be the responsibility of the Corps of Engineers to process and pay landowner and tenant claims by Supplemental Agreement to the Right-of-Entry from money allocated by the Air Force for this purpose. When transmitting signed Rights-of-Entry to the Air Force, it should be pointed out to the Air Force that they should caution their contractor that damage or injury to the owner's or tenant's property that is not directly related to the work covered by the contract may be referred to the contractor through the Air Force for settlement or reimbursement.

d. Local Cooperation Projects.

(1) Where Rights-of-Entry for Survey and Exploration are required in connection with a local cooperation project, prior to project authorization, Engineering Division will furnish Real Estate Division the name of the proposed local sponsor at the time Rights-of-Entry are requested together with a statement that the project has not been authorized. It is desirable in these cases, that the representative of the proposed local sponsor be contacted by the Real Estate representative who may offer valuable assistance in obtaining the Rights-of-Entry. In the event survey and exploration work will be done under contract, the contractor should be furnished the name of the proposed local sponsor and should obtain the necessary Rights-of-Entry in coordination with the proposed local sponsor.

(2) After project authorization, the responsibility for securing Rights-of-Entry is considered to be the responsibility of the local sponsor. This is based on the approved assurances given by the local sponsor which generally states, in part, that it will "provide without cost to the United States all lands, easements, rights-of-way necessary for construction of the project." The rights secured by the local sponsor should include entry by the local sponsor, the United States, and their contractors. Any claims for damages thereunder will be the responsibility of the local sponsor.

e. Occupancy and Use of Land Under Rights-of-Entry for Survey and Exploration.

(1) A Right-of-Entry obligates the Government to make restoration or cash payment in lieu thereof for damages incurred by the Government, its employees, or representatives. This obligation exists regardless of whether or not damages were necessary to protect requirements or whether the Right-of-Entry is written or verbal. Accordingly, extreme care should be taken at all times to avoid unnecessary damage to either real or personal property.

(2) Good public relations are most important. Oftentimes, the landowner and tenant will form their attitudes concerning the Corps based upon their Right-of-Entry experience which will influence them in all their future dealings with the Government. All personnel therefore must exert every effort to avoid incidents which may lead to landowner and/or tenant complaints. The following policies are prescribed to assure good public relations.

(a) We are guests of the landowner and tenant when we make entry upon the land and our conduct must be that expected of a guest.

(b) Crew chief will contact the landowner and/or tenant in advance of survey and exploration work to identify themselves and explain the purpose of entry.

(c) Field crews will make sure that all gates are closed after passage to avoid escape of livestock.

(d) Access to the area will be made as prescribed by the landowner and/or tenant and wherever possible crews will use only established roads, trails or fence rows.

(e) Landowner and/or tenant should be advised by field crews of the location of any stakes, monuments, holes, or pits that must be left on the land. Stakes or markers no longer needed should be removed and pits filled, if not later needed, before the crew leaves. Markers of a permanent nature should not be placed at points where they will interfere with the landowner and/or tenant's usage insofar as is practicable. No trash, debris, waste material, etc., will be deposited or left by the crew on the premises.

DM 405-1-2
22 Nov 77

(f) During periods of mud or soft ground conditions, if schedules will permit, surveys and explorations generally will be made by personnel on foot rather than with the use of vehicles. Vehicles should not be driven upon the property primarily for transportation of personnel when damage will result unless absolutely necessary because of distances to be traveled.

(3) The following procedures will be followed by field crews when they have finished their mission:

(a) Crew chief will contact the landowner and/or tenant before the field crew leaves and invite him/her to make a joint inspection of the property. Any damages noted by the landowner and/or tenant which can be readily repaired or restored by the crew will be accomplished at that time.

(b) If no damage was incurred or the landowner and/or tenant agrees to waive restoration or payment for damages, the landowner and/or tenant will be asked to sign MRO Form 1124. A copy of the signed forms will be left with the landowner and/or tenant.

(c) If damages have been incurred, the crew chief will prepare MRD Form 0646a, Employee's Statement of Damages to Private Property. In addition to completion of the form, photographs or sketches sufficient to identify the damages and areas thereof should be attached. The owner and/or tenant will be asked to review MRD Form 0646a and acknowledge the data set forth on the form by signing in the space provided therefor. The landowner and/or tenant will be advised that a future contact will be made by a real estate representative to work out the details of the settlement.

(d) After survey and exploration work has been completed on a particular project, the crew chief will send MRD Form 0646a, or MRO Form 1124 to Chief, Engineering Division for transmittal to the Real Estate Division. Where the crew chief cannot obtain the landowner and/or tenant's signature as provided above, because of a reluctance to agree to the extent or absence of damage, MRD Form 0646a, will be submitted to Chief, Engineering Division with a notation to this effect and the reason therefor.

(e) Engineering Division will submit forms to Real Estate Division and will advise date that survey and exploration work on the area covered by the Right-of-Entry was completed.

f. Procedure for Processing Damage Claims Under Rights-of-Entry for Survey and Exploration.

(1) The Real Estate Division will be responsible for the disposition of all claims for damages incurred as a direct result of the use and occupancy of private lands covered under a written Right-of-Entry or verbal permission obtained by the Government. However, as noted above, when at all possible, field personnel will attempt to make satisfactory restoration of damages by repairing such damage prior to the time of leaving the property.

(2) The preparation of MRD Form 0646a, Employee's Statement of Damage to Private Property, by employees of the Government will be construed as a formal notice of damages. Restoration or cash settlement in lieu thereof is the responsibility of the Government whether or not such statement is signed by the landowner and/or tenant.

(3) Upon receipt of MRD Form 0646a, Employee's Statement of Damage to Private Property, or MRO Form 1124, Owner's Acknowledgment of No Damage, the Real Estate Division will take appropriate action:

(a) If damages have been incurred and survey and exploration work is complete, Right-of-Entry will be terminated by Supplemental Agreement which will also provide for payment of damages.

(b) If damage occurred but further entry is to be made, Real Estate Division will continue the Right-of-Entry in effect but will promptly process any claim and pay for damages incurred to date. Subsequent entries will be handled in the same manner as prescribed above. Final Supplemental Agreement will include standard general release provision.

7. Rights-of-Entry for Construction.

a. Rights-of-Entry for Construction will be obtained by the Real Estate Division only after receipt of a real estate directive and funds, or authorization of the Chief of Engineers to proceed with the acquisition of the land has been issued, and then only when the construction schedules do not allow sufficient time to secure possession by purchase, lease, or condemnation.

b. Generally Rights-of-Entry for Construction will only be relied upon for the purpose of advertising for bids for construction in advance of the availability of real estate, when availability of real estate by option, lease, or condemnation is assured prior to opening of bids. In this respect, see MRD Regulation No. 1180 234-2, subject: "Availability of Real Estate for Construction Purposes" which sets forth the general policy and procedures applicable to both military and civil projects relative to the availability of real estate preparatory to award of construction contracts. While there may be times where the urgency of a situation demands that we proceed with advertising before having acquired necessary real estate interests, these occasions should be the exception. It is the policy of this District,

(1) To advertise for construction after real estate acquisition action has been completed to the point of a signed and accepted option or the filing of a declaration of taking, or, in the case of a local protection project, legally acceptable assurances by the sponsoring agency.

(2) That Engineering Division will maintain close liaison with the Real Estate Division and will report in advance to the District Engineer any and all delays in the advertising schedule which they anticipate as a result of non-availability of real estate.

(3) That exceptions to the above will be granted upon the written recommendations of the Engineering Division, concurred in by Real Estate and Construction Divisions, to the District Engineer in person.

c. After Rights-of-Entry for Construction have been secured by the Real Estate Division, copies of the document will be furnished to the appropriate divisions, field offices, and using services, with all other pertinent information obtained from landowner and tenant entered on the document in the letter of transmittal. The landowner or tenant should be contacted by the Government person in charge of the construction or his/her representative, in advance of initial entry upon the land under the Right-of-Entry.

d. Upon execution of a Right-of-Entry for Construction, a copy thereof shall be forwarded to HQDA (DAEN-REA-P) Wash, D.C. 20314, together with a proposed schedule of final acquisition of the necessary interests in real estate. If final acquisition is not contemplated within six (6) months from the date of right-of-entry, an explanation should also be furnished as to the reason for the delay.

e. Claims for damages by landowners and/or tenants are not generally anticipated in connection with Rights-of-Entry for Construction as the areas involved are authorized to be acquired for the project. It is important, however, to determine the physical conditions of the areas at the time of actual entry, as the value of the land for purposes of later acquisition will be determined as of the time of actual physical entry. Therefore, it is important that Real Estate Division be immediately advised by Construction Division or the using service of the date of initial entry so that physical inspection may be made of the property involved to note improvements, growing crops and their degree of maturity and anticipated yield, the manner of ingress and egress afforded to the area covered, and to take photographs or prepare a sketch map of the area covered and the immediately adjacent area. Photographs should be taken whenever buildings or improvements are affected unless an appraisal has been previously made and the appraisal reflects the then conditions. If there will be a delay in notifying Real Estate Division of initial entry, Government person in charge should provide photographs of the construction area as of time of initial entry. Such information will be very important in future negotiations and/or condemnation proceedings.

f. Occupancy and use under Rights-of-Entry for Construction must be confined to the area covered by the Right-of-Entry. In this regard, special attention should be given to the manner of ingress and egress to the construction area. The access route to be acquired should be incorporated in the Right-of-Entry, and should be utilized. If access to the site must be made over other lands of the landowner not described on the Right-of-Entry and the Right-of-Entry authorizes use of such lands, consultation with the landowner and/or tenant should be made to keep the possibility of damages to a minimum. Extreme care should be taken by construction supervisors to insure that adjacent areas are not infringed upon in any manner, including disposal of trash, debris and waste materials.

DM 405-1-2
22 Nov 77

g. The procedure for processing damage claims under Rights-of-Entry for Construction will be governed, as applicable, by the procedures set forth in the preceding paragraph 6f.

JAMES W. RAY
Colonel, Corps of Engineers
District Engineer

DISTRIBUTION:

A
B