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# ***Environmental Requirements For Use of Army Real Property By Third Parties***

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# ***This Is All You Need to Know ...***

Endangered Species Act		American Indian Religious Freedom Act
CERCLA	National Historic Preservation Act	RCRA
		FIFRA
Army Environmental Campaign Plan	AR 200-1	ER 405-1-12
		Toxic Substances Control Act
Wild and Scenic Rivers Act		DA PAM 200-1
		FOSL
E.O. 12512	Environmental Operating Principles	FOST
		E.O. 11990
		Army Environmental Pillars

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## **Objectives**

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- Understand environmental requirements for use of Army (Civil Works) real property
- Know environmental documents needed for real estate actions
- Increase awareness of changes on the horizon

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## **Army Compliance As Landholding Agency**

- AR 200-1
- Applies to civil and military
- Requires external environmental audit every 3 years
- Requires internal self-audit annually
- Army uses protocols developed by CERL
  - ECAS (military)
  - ERGO (civil)

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## ***Environmental Laws***

- National Environmental Policy Act (NEPA) of 1969 as amended (42 USC 4321)
  - Requires assessment and documentation of impacts before a major action is decided upon or done
  - Usually includes an analysis of how other environmental laws would affect the action proposed
  - Decision to make property available for outgrant triggers NEPA

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## ***National Environmental Policy Act (NEPA) of 1969***

- Regulations and guidance
  - AR 200-1, 21 Feb 97 and AR 200-2
  - DA Pamphlet 200-1, 17 Jan 02
  - ER 200-2-2
  - Council on Environmental Quality (CEQ), 40 CFR 1500-1508
  - CEREM, 14 Jan 99, Policy Guidance Letter #21

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## **National Environmental Policy Act (NEPA) of 1969 (Cont'd)**

- Regulations and guidance (Cont'd)
  - Do we have an inconsistency?
  - Or an opportunity...
  
  - AR 200-1, 21 Feb 97
  - CERE Policy Memo #21, 14 Jan 99
  - DA PAM 200-1, 17 Jan 02

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## **National Environmental Policy Act (NEPA) of 1969 (Cont'd)**

- Five environmental review categories:
  - Exemption by law REC
  - Emergencies
  - Categorical exclusions REC
  - Environmental assessment EA – FONSI
  - Environmental impact  
statements NOI – DEIS – FEIS – ROD

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## **CERCLA**

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- All contracts for transfers of real property must contain a notice of hazardous substances release, storage or disposal during Federal ownership
- "Contract for transfer" includes leases
- Notice identifies substance, when occurred, and remedial action taken
- Covenant warrants all remedial actions have been taken and that any additional remedial action found to be necessary after the transfer will be conducted by the U.S.

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## **Real Property Transactions**

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- Environmental Baseline Survey (EBS):
  - Inventory and evaluation of environmental condition
  - Based on a comprehensive search and site inspection
  - Conducted to determine if hazardous substances were stored, released or disposed of on a site

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## ***Real Property Transactions (Cont'd)***

- Environmental Baseline Survey (EBS)  
(Cont'd):
  - Performs a contamination screening
  - Documents the nature, magnitude and extent of contamination
  - Identifies and limits the potential liabilities
  - Protects the public health and the environment

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## ***EBS – Who Pays?***

- Should be the party that initiated the transaction
- Exception: Army proponent decides the transaction is in the best interests of the Army

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## ***EBS Statement of Findings***

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- Can be integrated and documented, as appropriate, in the “affected environment” portion of:
  - Record of environmental consideration (REC)
  - Environmental assessment (EA)
  - Environmental impact statement (EIS)
- May provide recommendations on the acceptability of the proposed real property action – supports the ROA, FOSL, FOST, ECOP, and FOSET
- Generates notice information for real estate transactions

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## ***The Final Analysis***

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- Is the real property contaminated?
- How does the contamination affect the proposed use by a non-Army entity?
- Are there other environmental concerns begging restrictions? Wetlands, floodplains, endangered species, underground storage tanks, historic properties, Native American artifacts...
- Document these findings!

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## ***Bottom Line***

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- Use the USACE environmental operating principles
- Document compliance with environmental statutes
- Be aware of environmental changes
- Work together

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## ***What Is Next?***

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- Chapters 8 and 11 of ER 405-1-12 are being rewritten
- Possible policy letter clarification
- Needs to be a PMBP answer

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