

EXHIBIT 1

SECOND DECLARATION OF ALEX A. BEEHLER

I, Alex A. Beehler, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Assistant Secretary of the Army (Installations, Energy and Environment). Among other duties, which are generally reflected in General Orders No. 2019-01, "Assignment of Functions and Responsibilities Within Headquarters, Department of the Army," I am responsible for developing and overseeing policies and programs that include military construction, management of real property and installations, real estate contracting, environmental compliance and conservation, and oversight of all execution functions performed by the U.S. Army Corps of Engineers related to the Army's military construction, real property, real estate, and environmental programs.
2. This declaration is based on my own personal knowledge and information made available to me in the course of my official duties.

Process for Designating Real Property as a Military Installation

3. A military installation is defined at 10 U.S.C. § 2801(c)(4) as "a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense, without regard to the duration of operational control."
4. The process of real property becoming part of a military installation begins with identifying the military requirement for real property, followed by the legal and administrative actions necessary to bring that real property "under the jurisdiction of the Secretary of a military department," in accordance with 10 U.S.C. § 2801.
 - a. For property already owned by the United States, the steps and mechanisms for bringing real property under the jurisdiction of the Secretary of a Military Department depend on whether the property is subject to the Federal Land Policy Management Act of 1976 (FLPMA), 43 U.S.C. § 1714, or subject to the Federal Property and Administrative Services Act of 1949 (Property Act), 40 U.S.C. §§ 101 *et seq.*
 - i. For land available for transfer under the FLPMA, the Military Department submits a withdrawal application to the Department of the Interior in accordance with 43 U.S.C. § 157 or 43 C.F.R. Subpart 2310. The Department of the Interior then acts on this application by withdrawing the land from other forms of use under the public land laws and transfers administrative jurisdiction to the requesting Military Department by publication of a Public Land Order in the Federal Register.

- ii. For land governed by the Property Act, the transfer of custody and accountability among agencies occurs by the General Services Administration (GSA) executing a letter effectuating transfer pursuant to 40 U.S.C. § 521 and in accordance with the Federal Management Regulation, 41 C.F.R. Subchapter C.
 - b. For property not already owned by the United States, the process for bringing real property under the jurisdiction of the Secretary of a Military Department begins by obtaining ownership over the real property in the name of the United States.
 - i. Because “[n]o military department may acquire real property not owned by the United States unless the acquisition is expressly authorized by law,” the Military Department must first identify the land acquisition authority. 10 U.S.C. § 2664; *see* 10 U.S.C. § 2802(a) (“The Secretary of Defense and the Secretaries of the military departments may carry out such military construction projects, land acquisitions, and defense access road projects . . . as are authorized by law.”). In this case, 10 U.S.C. § 2808 provides the requisite legal authorization because it authorizes military construction, and the definition of “military construction” in § 2808 includes “any acquisition of land.” 10 U.S.C. § 2801(a).
 - ii. Real property not owned by the United States may be acquired by a Military Department in the name of the United States through purchase, donation, exchange, or condemnation.
 - iii. Once the Military Department acquires the real property, the Military Department has administrative jurisdiction and real property accountability on behalf of the U.S. Government.
5. In order to manage and account for real property under its jurisdiction consistent with Chapter 159 of Title 10 U.S. Code and DoD Directive 4165.06, *Real Property*, the Military Department may either designate the property as a new military installation or assign the property to an existing military installation.
6. Under Army procedures established by General Orders No. 2019-01, *Assignment of Functions and Responsibilities Within Headquarters, Department of the Army*, such organizational designations relating to installations are directed by General Orders signed by the Secretary of the Army and registered in the DoD official real property database of record as required by DoD policy.
7. In this instance, the Army assigned the real property brought under the jurisdiction of the Secretary for these military construction projects to Fort Bliss, Texas, through General Orders 2019-36, October 8, 2019, signed by the Secretary of the Army.

Geographically Separate Sites of a Military Installation

8. There is no legal, regulatory, or policy requirement for geographically separate sites to be assigned to a “nearby” military installation. Nor is there any legal, regulatory, or policy requirement for all the sites or lands that comprise a given military installation to be located in the same State or within a certain distance of other sites associated with the military installation. In the Secretary of Defense’s September 3, 2019, memorandum to the Secretary of the Army, the Secretary of Defense directed the Department of the Army to “add such land to the Department of the Army’s real property inventory, either as a new installation or as part of an existing military installation,” without conditions on the location of the existing installation to which the land could be added.
9. The Department of the Army, on behalf of the United States, owns and uses many parcels of land that are not contiguous to other portions of a military installation and that are not considered separate military installations. The same is true for other Military Departments. Such locations are referred to as “sites.” DoD Instruction 4165.14, *Real Property Inventory (RPI) and Forecasting*, defines a site as a “physical (geographic) location that is, or was owned by, leased to, or otherwise possessed by a DoD Component on behalf of the United States. Each site (except for leased) is assigned to a single installation.” A site may exist as “land only, where there are no facilities present,” “facility or facilities only, where the underlying land is neither owned nor controlled by the government,” or “land and the facilities thereon.”
10. Each such site is assigned to a military installation for real property accountability purposes and is considered part of that installation, even if located remotely from the Army Garrison. The Garrison is the Army organizational unit that is responsible for installation management across the installation sites. *See Army Regulation 405-70, Utilization of Real Property*. Sites can be in States other than the one in which the Army Garrison unit is located, and the distance between various sites can vary significantly. For example, Fort Campbell is located in both Kentucky and Tennessee; the Green River Test Complex site in Utah is part of White Sands Missile Range in New Mexico; the Special Forces site in Key West, Florida, is part of Fort Bragg, North Carolina; six different Navy Outlying Landing Field sites in Alabama are part of Naval Air Station Whiting Field, Florida; a new National Geospatial Intelligence Agency West Campus being constructed in Missouri is part of Scott Air Force Base, Illinois; the Pentagon Reservation includes the Pentagon building and Mark Center in Virginia as well as the Raven Rock Complex in Maryland and Pennsylvania; and among other Army examples, Fort Carson, Fort Belvoir, Fort Bliss, Joint Base Lewis McChord, Fort Benning, Fort Greely, and Fort Detrick all include various geographically separate sites.

Decision to Designate Section 2808 Project Locations as Part of Fort Bliss

11. Fort Bliss is the largest, most capable Active Army installation in the vicinity of the southern border. Fort Bliss has a sizable existing installation management office with

experience addressing various land management issues and experience working with the U.S. Army Corps of Engineers on military construction projects. The Department of the Army also determined that it is more efficient for command of all the real property associated with the projects undertaken pursuant to Section 2808 to be vested in one Army installation, given the similar nature and scope of all such Section 2808 projects. In addition, Fort Bliss has an existing support relationship with the U.S. Border Patrol, which maintains a regional office on the installation.

I hereby declare under penalty of perjury that the foregoing is true and correct.


Alex A. Beehler

Executed on November 25, 2019