

# REAL ESTATE AND PLANNING: PARTNERING IN FEASIBILITY FOR SUCCESS

Real Estate Community of Practice  
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US Army Corps  
of Engineers®



# AGENDA



Common Real Estate Definitions

Real Estate's Role during Feasibility

Real Estate and SMART Planning

Partnering with Real Estate for Success

Key Takeaways



# PLEASE TELL US YOUR DISCIPLINE!

Planning

Environmental

Other (please specify below)

H&H

Econ

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Cost

Cultural

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Geotech

PM

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Legal / OC

Real Estate

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# COMMON RE DEFINITIONS



**LERRD:** Lands, Easements, Rights of Way, Relocations, and Dredged Material Disposal Areas.

**Minimum Interest:** The minimum interest in real property that the USACE must acquire, or that a non-federal sponsor (NFS) must provide, to support the purposes or features of a project.

**Standard Estate:** The 26 estate languages identified, approved, and published by HQUSACE Real Estate (CEMP-CR), for use in full federal or cost-shared projects representing the minimum real property interest.

**Uniform Act:** A law enacted by Congress to ensure that people whose real property is acquired, or who move as a result of projects receiving federal funds, will be treated fairly and equitably and will receive assistance in moving from the property they occupy. The Uniform Act provides procedural requirements (appraisals, payment of fair market value, landowner notices) in the acquisition of real property.

**LERRD Certification:** Prior to issuance of a contract solicitation, the District Chief of Real Estate is required to certify in writing that sufficient real property interests are available to support construction.

**LERRD Crediting:** The Non-Federal Sponsor is entitled to credit against their share of project costs for the value of required LERRDs provided if found to be reasonable, allowable and allocable. The PPA outlines specific crediting procedures and should be reviewed carefully by the NFS.



# WHEN DOES PLANNING TYPICALLY INVOLVE THE REALTY SPECIALIST IN YOUR STUDIES?

Right from the study  
kickoff

Once we have our array  
of alternatives

Once we have a  
Tentatively Selected  
Plan

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# REAL ESTATE'S ROLE DURING FEASIBILITY



- Identify the real estate requirements, known as LERRDs, and acquisition procedures for the proposed project footprint.
- Establish estimated costs for the proposed LERRDs through valuation products, including labor and incidental costs for the NFS. Establish estimated costs for the Government to certify availability of LERRDs, perform crediting, and provide oversight on NFS compliance with the Uniform Act.
- Establish agreed-upon and reasonable land acquisition milestones with the PDT and NFS, including LERRD certification. Coordinate and execute the NFS Capability Assessment.
- Prepare a policy compliant Real Estate Plan (REP) that is an appendix to the Feasibility Report.



# HOW MUCH FAMILIARITY DO YOU HAVE WITH REAL ESTATE PLANS (REP)?

I know they exist

I've read through them after they've been finalized

I've reviewed and/or provided comments on them

Click on the Annotation option *n* on the left side of your screen and then use the Pencil Tool or checkmark to mark your response.



# IDENTIFY THE REAL ESTATE REQUIREMENTS



USACE Policy: Acquire, or require a NFS to provide, the minimum interest in real property necessary to support the project purposes or features. Standard estates must be utilized unless a deviation is otherwise approved by the HQUSACE, Director of Real Estate.

- Real Estate determines the Appropriate, Minimum Interest to Acquire:
  - Fee Title: Dams, Locks, Disposal/Borrow for Future Maintenance Work, Public Access, Recreation, Mitigation, Ecosystem Restoration.
  - Permanent Easements: Levees, Floodwalls, Flowage, Induced Flooding, Roads, Channel Works, Waterway Improvements, Aids to Navigation.
  - Temporary Easements: Construction Access, Staging, One Time Disposal or Borrow during Construction.





# ESTABLISH BASELINE COST ESTIMATE OF RE

USACE Policy: The Baseline Cost Estimate of Real Estate includes the estimated value of the LERRDs required to construct, operate, and maintain the proposed project; the costs of relocating displaced persons from homes, farms or business under the Uniform Act; the incidental acquisition costs for both the Government and the non-Federal sponsor; and estimated risk-based contingencies.

## Why is the BCERE important?

- Required element of the REP
  - Basis for remaining study phase(s), implementation decisions, budgetary submissions, and a factor in economic analysis
  - May be a major factor in total project costs and formulation of the least cost and locally preferred plans
  - Basis for communication with Sponsor regarding scope and cost
- ★ Common issue in policy reviews is inconsistent amounts associated with real estate costs in the 01 and 02 cost accounts found in the Main Report, Real Estate, and Cost Appendix.



# 01 LANDS AND DAMAGES ACCOUNT



- 01 Lands and Damages Cost Estimate
  - Includes the valuation of the LER required for the construction and OMRRR, including those required for relocations, borrow material, and dredged or excavated material disposal; the costs of relocating displaced persons from homes, farms or businesses; the incidental acquisition costs for both the Government and the NFS and estimated risk-based contingencies.
  - Land costs should be established via a valuation product in accordance with PGL 31

It is important for the Realty Specialist to differentiate between the estimated, administrative oversight and incidental costs of the Federal Government and NFS.

It is important for the Realty Specialist to differentiate economic and financial costs in the REP and with the Economist and Cost Engineer PDT members.



# 02 RELOCATIONS ACCOUNT



- 02 Relocations Cost Estimate
  - Includes removing and relocating, or reconstructing property of others, such as roads, railroads, cemeteries, utilities, buildings, and other structures; and lands or interests purchased for such relocations and conveyed to others, including real estate planning and acquisition expenses.

Public Facility Relocations have two components: the cost to relocate the actual infrastructure itself (construction relocation costs) and the relocation administrative costs for preparing or reviewing real estate documents, including Relocation Agreements, with utilities - all of which are considered **LERRDs**.

LERRD credit eligibility will be based on the responsibility (**compensability**) for the relocation.

## ***Railroads***

- The NFS must begin negotiations with Railroads early! By PPA definition, relocations may take the form of alteration, lowering, raising, or complete replacement.
- Relocations of railroad bridges are considered construction costs (not LERRD costs!) and cost shared accordingly. Any Railroad Trackage not directly related to a particular railroad bridge alteration/modification will be considered a part of LERRD to be performed or paid for by the NFS.
- Project schedule is greatly impacted by any Railroad impacts!!



# LAND ACQUISITION SCHEDULE AND NFS CAPABILITY



USACE Policy: WRDA '86 assigned responsibility to the NFS for providing real estate interests and performing relocations.

- The acquisition schedule should be closely coordinated between the NFS, project manager, and Real Estate Division.
- The NFS must have the authority and full capability under state law to acquire and hold the real estate interests.
- The Capability Assessment examines the NFS' legal authority and professional capability and experience to acquire and provide the LERRDs for the construction, OMRRR of the project, including its condemnation authority, quick-take capability, and understanding of the Uniform Act.
- The NFS Capability Assessment review provides a critical opportunity for Real Estate to discuss the NFS' required local cost share obligations. The signed assessment is included in the REP.



# DEVELOP REAL ESTATE PLAN



USACE Policy: Chapter 12, Section 12-16

- The full list of policy compliant requirements for REP inclusion are found in ER 405-1-12, Chapter 12. The REP will be tailored to the facts and circumstances of the project and prepared to the same level of detail as the decision document it supports.
- The draft and final REP must undergo District Quality Control, Agency Technical Review, and MSC Policy and Legal Review. Each REP must be signed and dated by the Preparer and Approved by the District Chief of Real Estate.



# WHAT REAL ESTATE CHALLENGES HAVE YOU ENCOUNTERED ON YOUR STUDIES?

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# REAL ESTATE AND SMART PLANNING



- Real Estate operationalizes Risk Informed Decision Making during Feasibility with use of Real Estate Assessments and Valuation Products scalable to the project requirements (see RE PGL 31, 11 Jan 2019).
- Common risks that drive cost or impact plan selection:
  - Unidentified utility/facility relocations
    - ✓ Utilize publicly available utility data, survey information gathered from site visits.
    - ✓ Coordinate estimated design and construction costs with Engineering, RE, NFS.
  - Real Estate valuation based on preliminary or inadequate technical design footprint that changes
    - ✓ PDT agrees on minimum design to order the valuation product, ensuring sufficient schedule allows for policy compliant valuation.
    - ✓ Include proposed areas needed for temporary access, borrow or disposal
  - Unknown state or business landowner constraints
    - ✓ Identify entities that have their own real estate procedures (Tribal and BIA, State and Local) to coordinate any policy deviations or non-standard estates *early*.
    - ✓ Utilize the concept approval strategy.
  - Insufficient NFS time for land acquisition schedule
    - ✓ Talk through the whole acquisition process with the NFS.
    - ✓ Ensure NFS timeline aligns with program funding requests and contract timelines.
    - ✓ Ensure acquisition schedule is consistent throughout report documents and carried over to Implementation phase.



# PARTNERING WITH REAL ESTATE



- Communicate expectations!
  - Strong engagement with RE during Feasibility is worth its weight in GOLD during Implementation!
  - Utilize RE when meeting with NFS to ensure NFS is fully aware of project requirements and expectations.
- Understand and advocate for RE on the PDT!
  - Support the required coordination between Real Estate and the NFS on LERRD requirements, development of administrative costs, acquisition schedule and overall NFS oversight.
- Resource appropriately!
  - No two REPs are alike and real estate's level of effort must be tailored to each study.
- Manage risk together!
  - Real Estate can greatly assist in **analyzing** risk and **informing** decisions based on experience.
- Vertical and horizontal alignment is key!
  - Real Estate policy deviations take time and are a big level of effort.....do only when absolutely necessary.







# KEY TAKEAWAYS



- If the goal of Revolutionizing Civil Works is to **accelerate** project delivery...then **invest** in Real Estate partnerships during Feasibility.
- Overcommunicate. Overshare.
- Document risks and decisions.
- Write and share lessons learned (increases communication capacity and builds the bench).
- Celebrate successes as a team.

QUESTIONS?



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