

This webinar discussed how planners can partner effectively with Real Estate throughout the feasibility phase to ensure successful project delivery during implementation, including an overview of common real estate definitions, Real Estate's role during the feasibility phase and identifying Real Estate requirements, how Real Estate fits into SMART Planning, and best practices for project delivery teams partnering with their local Real Estate teams. The webinar was presented by members of the USACE Real Estate Community of Practice and NWD vertical chain: Ted Nettles (HQUSACE Realty Specialist/HQUSACE Base Realignment and Closure [BRAC] Program Manager), Kimberly Ohman (NWD Planning and Acquisition Program Manager), and Meredith Harmon (NWK Planning and Acquisition Branch Chief).



This summary of the Question / Answer session of the webinar is not a transcription; questions and responses have been edited and reordered for clarity.

A. Complying with USACE Real Estate Policy and Legal Requirements

1. Does USACE policy require that PDTs seek full fee title for ecosystem restoration studies?

Yes. USACE policy generally requires ecosystem restoration projects to obtain the fee title; see Paragraph 12-9 of Engineer Regulation 405-1-12, Real Estate Handbook and Paragraph 3-5.b(9) of [ER 1105-2-100, Planning Guidance Notebook](#). Below is summary from Paragraph 12-9 of ER 405-1-12 regarding minimum interest appropriate for certain types of projects.

Generally, fee title is required for the following: (1) dam sites; (2) lock and dam sites; (3) disposal and borrow areas required for future maintenance work; (4) public access areas; (5) recreation; and (6) fish and wildlife mitigation lands, ecosystem restoration, and other environmental purposes. However, a lesser, or easement estate, may be appropriate based on the extent of interest required for the operation or requirements of a project.

Generally, permanent easements are required for the following: (1) levees, floodwalls and other permanent structures; (2) flowage areas; (3) ponding areas for dry dams; (4) channel rectification works and adequate access thereto; (5) areas impacted by induced flooding where the impact rises to the level of a taking; (6) roads; (7) waterway improvements and the right to permanently flood areas needed for navigation pools; (8) the construction and maintenance of aids to navigation (the location and extent of land required for aids to navigation shall be coordinated by the District Commander with the local Coast Guard District Commander at the time the land is being obtained).

Generally, temporary easements are required for the following: (1) adequate access and work areas required during construction of the project; (2) disposal areas for all projects other than commercial navigation projects for a harbor or inland harbor if needed only to support construction; and (3) borrow areas.

2. Where is the non-federal sponsor's responsibility for providing real estate interests and performing relocations documented?

The [Water Resources Development Act of 1986](#) contains the provision that the non-federal sponsor has the obligation to provide real estate interests and perform relocations (see Title I – Cost Sharing). Additionally, the Project Partnership Agreement is a legally binding agreement between the Department of the Army and the non-federal sponsor that describes the roles and responsibilities of the parties regarding provision of the real estate requirements.

3. What level of coordination under Public Law 91-646, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (referred to as the Uniform Act) is required during feasibility design?

During the feasibility phase, the Realty Specialist will work with the non-federal sponsor to ensure that the sponsor understands the acquisition policies outlined in the Uniform Act that must be followed if the study receives federal construction authorization and appropriations. The Real Estate Plan will describe any anticipated relocation assistance benefits that may be required for project implementation, along with the availability of replacement housing and any need for housing of last resort benefits.

4. What is the vertical team alignment process for Real Estate, and why is it not similar to the policy and legal compliance review for Planning which includes a documented project guidance memorandum (PGM)?

Real Estate participates in the policy and legal compliance reviews and is a member of the One Headquarters Review Team. Depending on the delegated authority of the study, a Real Estate reviewer at the HQUSACE or MSC level documents his or her review comments using the 4-part comment structure for the PGM. The vertical team alignment process is the same as other disciplines: District, MSC, HQUSACE.

B. Lands, Easements, Rights of Way, Relocations, and Dredged Material Disposal Areas (LERRD)

1. What is the expected timeline when LERRDs include lands held in trust by the U.S. Department of the Interior (DOI) Bureau of Indian Affairs (BIA)?

There is no minimum or expected set timeline for LERRDs for projects where lands are held in trust by the BIA. PDTs should work closely with the non-federal sponsor and BIA and communicate with both entities regularly. The ultimate timeline will be determined by internal DOI and BIA processes.

2. What additional information should planners know about Real Estate and compensatory mitigation?

Planners should keep in mind the following information about compensatory mitigation:

- LER needed for mitigation are assigned to, and cost shared as part of, the features/purpose that caused the mitigation need.
- The non-federal sponsor shall not use the ecosystem restoration features, or real property interests required for construction, operation, and maintenance of such features, as a wetlands bank or mitigation credit for any other project.
- All costs associated with acquisition of credits from a mitigation bank will be classified as construction costs – not LERRDs. See [CECW Policy Guidance Letter 46, Use of Mitigation Banks for U.S. Army Corps of Engineers Civil Works Projects \(22 April 1998\)](#).