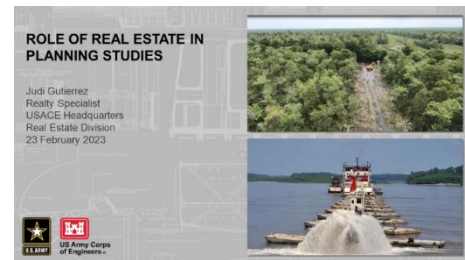


*This PCoP webinar, presented by Judi Gutierrez (Civil Works Realty Specialist, Headquarters Real Estate Division), provided an overview of Real Estate's role in Civil Works project studies. This webinar also covered the role of the Real Estate Project Delivery Team member on the study team, non-standard estates for ecosystem restoration projects and non-structural projects, and work products produced by Real Estate. See the end of this document for a list of common Real Estate terms and acronyms.*



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

### **Real Estate Across Study Phases**

#### **When should Real Estate be engaged during the study process?**

Realty Specialists should be engaged from the earliest stages of the feasibility study; this ensures that alternative evaluation takes into account all relevant issues that may impact construction of a project. It is advised that the Realty Specialist participate in study charrettes; if that is not possible, they should be included during the Alternatives Milestone Meeting so that cost estimates can be prepared inclusive of Real Estate costs. For study teams not sure where to begin, the [Study Issue Checklists](#) include several Real Estate questions/considerations.

#### **Should the Real Estate Plan (REP) be prepared during the feasibility phase, or can it be delayed until the Pre-construction, Engineering, and Design (PED) phase?**

The REP must be prepared during the feasibility phase because it is a required element of the final feasibility report (See [Engineer Regulation 1105-2-100, Appendix G, Amendment #1, 30 Jun 2004, Exhibit G-5: Items to be addressed in Alternative Formulation Briefing Documentation, item 9; Exhibit G-7: Feasibility Report Content, item 5](#)). During the PED phase, Real Estate is working with engineer designers to prepare for acquisition of real estate interests. *Note: An updated version of Appendix G of the Planning Guidance Notebook is scheduled to be published later in 2023.*

#### **What role does the Real Estate Specialist have during the project phases in the valuation and crediting of relocations that are a part of Lands, Easements, Rights-of-Way, Relocations, and Disposals (LERRDs)?**

Relocation of facilities and utilities is an item of LERRD and the responsibility of the non-federal sponsor. The REP, developed during the feasibility phase, addresses the proposed relocations; the REP includes a list of identified utilities and facilities, the estimated cost of the relocation, and a preliminary assessment of whether the facility or utility is of the type eligible for compensation under the substitute facility doctrine and whether there is evidence that an owner with a compensable interest has been identified.

Most of the valuation and crediting of relocations associated with LERRDs is done in the PED phase. The Real Estate PDT member will work with the Office of Counsel to make a determination in PED regarding the compensability of the planned relocations. Office of Counsel will prepare an Attorney's Opinion of Compensability for each facility/utility. The utility/facility company will estimate the cost of the relocation, and the Engineering Division will review those costs to determine reasonableness. The Compensable Reimbursement Agreement (CRA) is signed by the District Chief of Real Estate if the

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estimated cost is within his/her warrant authority; otherwise, it is signed by the MSC Chief of Real Estate. The Relocation Agreement/Subordination of Interests will be signed by the utility company and the non-federal sponsor and will be forwarded to Real Estate for review and final determination of LERRD credit to the sponsor. It is very important that utilities be identified early in the PED phase so that there is sufficient time to complete relocation plans, estimates, and approvals so as not to impact construction schedules.

*Note: If project alignment impacts a railroad, that needs to be identified in the feasibility phase. Engineering needs to determine whether the relocation will be permanent or temporary, whether the line will be placed back in its original location, or whether new right of way needs to be acquired. The REP needs to discuss the planned railroad relocation. Conversations between the non-federal sponsor and the railroad company need to begin soon after signing of the Project Partnership Agreement because negotiations typically take a significant amount of time.*

### **Real Estate Documentation and Review**

#### **Is the draft REP that is circulated for public comment and review with the draft feasibility report signed/approved?**

Both the draft and final REPs are signed by the District Chief of Real Estate because [Real Estate Policy Guidance Letter No. 31](#) (Real Estate Support to Civil Works Planning) does not make the distinction between the draft and final Real Estate Plans. In some Districts, the preparer and the District quality reviewer also sign the draft and final REPs.

#### **Does a Chief's Report address real estate?**

While the Chief's Report does not include specific real estate information, there are areas of discussion in the Report where real estate considerations can be included, depending on the type of project and the situation.

#### **Where can planners find a list of Real Estate Agency Technical Review (ATR) reviewers?**

The list of ATR reviewers approved for the Real Estate mission is currently being updated. It will be circulated once the update is complete.

### **Real Estate Costs and Credits**

#### **Why are LERRDs factored into the benefit cost ratio (BCR) if they are carried out by the non-federal sponsor at no cost to the Federal Government?**

LERRDs are included in the BCR because they are a part of the total project cost. BCRs include all costs to the overall national economy, not just costs to the Federal Government or the non-federal sponsor. Furthermore, the costs incurred by the non-federal sponsor in acquisition of LERRD are creditable towards the sponsor's project cost share. The LERRD costs reduce the cash contribution of the sponsor to the project cost which consequently affects the federal cash contribution.

#### **Does the non-federal sponsor get credited for their actual costs or for an assessed value?**

LERRD costs that are eligible for credit can vary depending on the project and the Project Partnership Agreement language. Market value is the value supported by an appraisal product. The sponsor may receive credit for actual costs of Real Estate interests if supported by an approved appraisal, as well as, actual incidental costs associated with the acquisition. Tax assessments are not used to approve non-federal sponsor credit.

**How are uncertainties and contingencies incorporated into the Real Estate cost estimate?**

Real Estate cost estimates include contingencies to account for uncertainties related to acquisition of Real Estate interests. These uncertainties can include uncertainty regarding the property value estimated in feasibility given that appraisers cannot enter private property without owner permission, uncertainties regarding the price at which property rights will be purchased, whether property rights will need to be condemned, whether properties will be owned by multiple undivided interest holders which will require more administrative effort to acquire, etc. This is only a partial list of the considerations when estimating a contingency for Real Estate cost estimates.

No additional contingencies need to be added to the Real Estate cost estimate when developing a total project cost estimate. The cost estimate should also not be escalated, because Real Estate costs will be based on the Real Estate market at the time, rather than a standard cost escalation.

**Is there implementation guidance for Section 115 of the Water Resources and Development Act of 2018, which focuses on the procedures that states use to acquire lands?**

Yes. This implementation guidance is available on the Headquarters' Water Resources Development Act website: <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll5/id/35404>.

**Does induced flooding always have to be compensated for?**

Yes. The Office of Counsel and Real Estate will make a determination to see if real property rights are taken due to induced flooding, which will be dependent on the property. The payment amount will be dependent on the type of property being impacted and the impact itself.

**Standard and Non-standard Estates and Easements**

**What is the difference between a standard and non-standard estate?**

There are 26 standard estates listed in ER 405-1-12, the Real Estate Handbook. These standard estates (e.g., levees, channels, etc.) have been vetted, approved, and are ready for use. Standard estates are approved for a specific mission area; if applied to a different mission, they need approval as non-standard estates. Non-standard estates are only utilized for unusual project features for which a standard estate cannot satisfy the rights needed. Non-standard estates are prepared for a specific project need, and approval must be requested from the HQUSACE Real Estate Directorate during the feasibility analysis phase, between the draft and final REP completion. Depending on the level of detail available during the project study, there may be times when a non-standard estate is developed during PED. This estate must be approved by HQ prior to the non-federal sponsor initiating acquisition activities.

**What is the difference between affirmative and restrictive easement rights?**

Affirmative easements are easements that allow the easement holder to do certain actions – such as a levee easement which allows the Federal Government to construct a levee on private property. Restrictive easements are easements that restrict what an underlying fee owner can do – such as development restrictions.

**Using conservation easements to implement an aquatic ecosystem restoration project is a challenge. How should PDTs approach this?**

A conservation easement is a non-standard estate. The district office, in conjunction with the Office of Counsel, will have to obtain a policy waiver approval to acquire a conservation easement. Typically,

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USACE acquires easements with “affirmative rights” and conservation easements are “restrictive easements” in nature.

**Real Estate Terms & Acronyms:**

**LERRD** – Lands, Easements, Rights-of-ways, Relocations, and Disposals

**REP** – Real Estate Plan

**P.L. 61-646 or Uniform Act** – Public Law enacted by Congress to provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs

**49 CFR part 24** – The implementation guidance published by the Federal Highway Administration to guide all acquisitions for Federal and federally assisted programs

**Fair Market Value** – The price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts

**Fee Simple Interest** – Ownership of real estate unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

**Easement Interest** – The grant of a nonpossessory property interest that provides the easement holder permission to use another person's land for a defined purpose.

**Rights-of-Entry** – A short term authority to do a specified act or series of acts upon land that is not owned or controlled by the United States without acquiring any real property interest therein. A right-of-entry authorizes an act which, in the absence of the right-of-entry, would constitute trespass, for example to conduct surveys and exploratory work. A right-of-entry for construction could be agreed to by a property owner to allow the Government to begin construction on the property in advance of completion of the acquisition process.

**R/W** – Right-of-way

**Estate** – The real property interest that is required to support the construction, operation or/and maintenance of a project

**Standard Estate** – Real property interest descriptions that have been approved by HQUSACE Real Estate for use for USACE projects and have been included in the Real Estate Handbook

**Non-standard Estate (NSE)** – If a project proposes a feature which is unique and there is no corresponding standard estate that can provide the necessary rights to construct, operate and maintain that feature, a non-standard estate is drafted and submitted to HQUSACE Real Estate for review and approval

**Attorney's Opinion of Compensability** – The principal process for determining the extent of the Government's or the Non-federal Sponsor's legal obligation to relocate a utility or public facility that will be impacted by construction or operation of a project.

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**Eminent Domain** – The power of the Government to take private property for public use. The [Fifth Amendment](#) of the constitution provides that the government may only exercise this power if it provides [just compensation](#) to the property owner

**Condemnation** – The process by which the Government exercises its power of eminent domain.

**MCACES** – Micro-Computer Aided Cost Estimating System

**TRACES** – Tri-Service Automated Cost Engineering System