

## Real Estate Roles in Feasibility Scoping


21 November 2024

Q&A Summary

*This webinar provided an overview of role and responsibilities of Real Estate during the scoping and alternative formulation phase of the study process. Presenter John Wilburn (HQUSACE Realty Specialist) discussed why it is important to involve Real Estate team members early on in the scoping phase and outlined key scoping considerations related to Real Estate.*



*Real Estate resources for feasibility study project delivery teams:*

- [Real Estate Knowledge Management Portal Site](#) 
- Chapter 12 of [Engineer Regulation 405-1-12: Real Estate Handbook](#) (Note: If prompted to get Adobe Reader in order to open this PDF portfolio, download the ER locally and open in your current version of Adobe Acrobat.)
- [Engineer Regulation 405-1-11: Real Estate Acquisition](#)
- [Real Estate Policy Guidance Letter No. 31: Real Estate Support to Civil Works Planning](#)
- [Real Estate Policy Guidance Letter No. 35: Approved List of Standard Estates](#)
- [Non-Federal Sponsor Package \(prepared by LRD, focused on real estate requirements\)](#)
- [NFS Guide to Land Acquisitions \(prepared by SAM, focused on real estate requirements\)](#)
- [NFS Land Acquisition Handbook \(Prepared by NWD, focused on real estate requirements\)](#)

**Are there regional or state-by-state differences in Real Estate scoping considerations (e.g., are Realty Specialists working in one District or MSC able to support scoping a project in a different District or MSC)?**

Knowledge of the local market, as well as having access to the appropriate data sources, is very important to a Realty Specialist's work. It is preferable that the Realty Specialist be based in the local area of the project. However, the Real Estate Community of Practice (CoP) can provide study teams with support as necessary from other areas of the country.

**What enterprise-wide actions are being taken to ensure the non-federal sponsor fully understands their project implementation responsibilities prior to the signature of the feasibility cost share agreement (FCSA) and engagement in multi-year planning efforts? Is it recommended that District Real Estate be involved in early conversations with the sponsor, even before the FCSA is signed?**

The study's project manager should be working with Real Estate to communicate Lands, Easements, Right of Ways, Relocations, and Disposals (LERRD) responsibilities to non-federal sponsors prior to signing the FCSA to ensure they understand the requirements and are prepared to fulfill them. Non-federal sponsors who do not have the appropriate authorities to acquire and hold real property rights to support USACE projects, as well as those who are unwilling to acquire the required real property rights or exercise their authority of eminent domain, when necessary, may not be the appropriate sponsors for a project. To ensure the non-federal sponsor understands its responsibilities, it is advisable that these discussions with the non-federal sponsor include the appropriate real estate specialists.

**How should study teams address a situation in which the non-federal sponsor cannot locate the necessary LERRD crediting information, particularly when property acquisition took place many years prior?**

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Per [Engineer Regulation 405-1-12: Real Estate Handbook](#), the non-federal sponsor is entitled to receive credit for the market value and incidental expenses of acquiring the lands, easements, and rights-of-ways (LER) it provides to the project. The general requirement is that the market value of the LER be determined by an appraisal of the real property interests acquired. If the non-federal sponsor does not have the appropriate documentation to support the acquisitions, credit may be determined by performing an appraisal of the real property interests owned by the non-federal sponsor at the time authorization for entry for construction is provided to the project. If the non-federal sponsor refuses to appraise the real property interests for credit purposes, the Government may perform its own appraisal to determine the fair market value of the LER provided to the project. If the highest and best use of the properties has changed since the non-federal sponsor acquired the property interests, the District Chief Appraiser may authorize the use of hypothetical conditions in the appraisal so that the appraised value may more closely reflect what the non-federal sponsor paid to acquire the real property interests. If the non-federal sponsor acquired the property interests within five years of signing the PPA and the non-federal sponsor has documentation to support the incidental costs of acquisitions, credit may be granted for those costs found to be reasonable, allocable, and allowable. If the non-federal sponsor does not have documentation of the incidental costs, no credit can be granted for such.

### **What is navigational servitude?**

Navigational servitude is the dominant right of the Federal Government under the Commerce Clause of the U.S. Constitution ([Article I, Section 8, Clause 3](#)) to use, control, and regulate the navigable waters of the United States and the submerged lands thereunder for various commerce-related purposes including navigation and flood control. In tidal areas, the servitude extends to all lands below the mean high-water mark. In non-tidal areas, the servitude extends to all lands within the bed and banks of a navigable stream that lie below the ordinary high-water mark.

The authority to utilize the navigational servitude is based on a legal opinion made by Office of Counsel and is specific to each channel.

### **How is the Real Estate CoP addressing sea level change in determining navigational servitude?**

Navigation servitude is decided on a case-by-case basis; therefore, there is not a need to determine the overarching impact of sea level change.

### **Is there a list available of certified Real Estate Agency Technical Reviewers?**

Please contact your Real Estate Planner PDT member to request that an ATR Reviewer be assigned to your study.