



Real Estate Acquisition Procedures for USACE Projects

Office of Emergency and Remedial Response
Hazardous Site Control Division OS - 220

Quick Reference Fact Sheet

Introduction

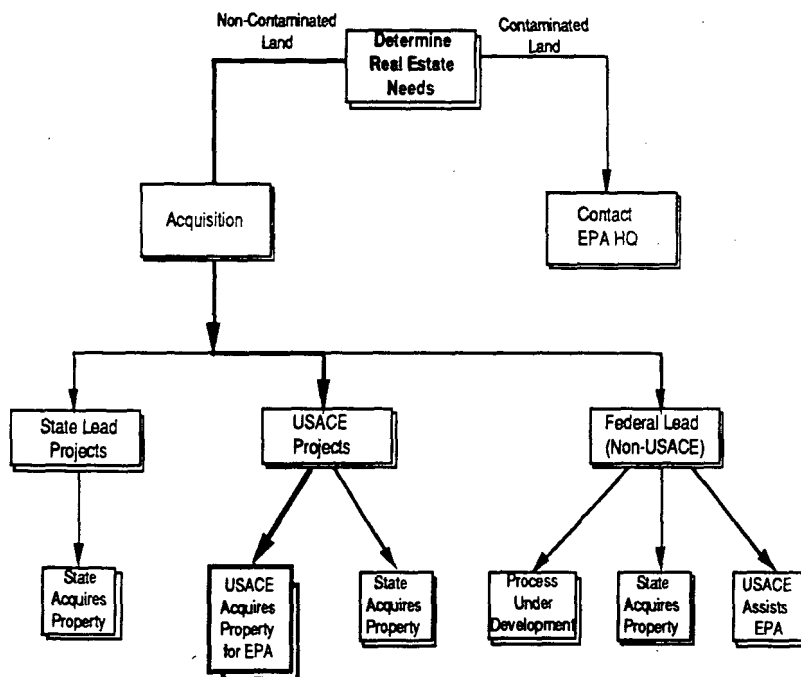
The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended, authorizes the US Environmental Agency (EPA) to cleanup the nation's hazardous waste sites. Prior to planning and implementing a remedial action (RA), EPA will select one delivery mechanism from among several available options. The US Army Corps of Engineers (USACE), because of their extensive experience in real estate activities has been asked to assist EPA where EPA has determined that USACE is the appropriate supporting agency and that health based relocation is not required. Health based relocations (or emergency relocations) are beyond the scope of this document and will be addressed at a later date.

EPA, under Section 104(j)(1) of the Superfund Statute, is authorized to acquire by purchase, lease, donation, condemnation, or otherwise, any real property needed to conduct a remedial action. Recent experience with real property acquisitions for the Superfund program has emphasized the need for Remedial Project Managers (RPMs) to anticipate that:

- Time frames for acquisitions may be long in duration.
- Site activities may be delayed due to acquisition issues.
- Initial planning must begin early in the remedial design process.

The process by which property is acquired for the remediation depends upon the remedy selected,

Superfund Real Estate Alternatives Flow Chart



the design of the remedy, the parties involved in implementation of the remedy, and the role of the state in which the site is located. Generally, EPA will only acquire through purchase, lease, donation, or condemnation, property which is not contaminated. The Enforcement Access Provisions of 104(e) grants EPA the authority to access any real property which is contaminated or threatened with contamination.

Initial Planning

During the initial planning phase of the acquisition process, the Region must determine the real estate needs based on the requirements of the Record of Decision (ROD). In order to make this determination, the Region will task USACE with the development of a Real Estate Planning Report (REPR) in the Interagency Agreement (IAG). The REPR, completed prior to the submission of the preliminary design for the project, summarizes specific characteristics of the properties needed for the remedial action (see Summary of the REPR in the sidebar). REPRs are to be developed for all USACE designs, even when acquisitions are not anticipated.

Upon reviewing the REPR, the Region in consultation with the Regional Counsel (RC), will determine those interests to be acquired and then develop a strategy for acquiring those interests (see Real Estate Decision Flow Chart). The following issues would be considered in the Region's acquisition strategy:

- Method of acquisition (purchase, lease, donation, or condemnation).
- Summary of criteria for determination of acquisition method.
- Federal funding availability
- Acquisition schedule
- Plan for public involvement related to acquisition (coordinated with overall site community relations effort).

Request and Approval Process

Once the Site Acquisition Strategy has been developed, the Region (with USACE assistance as needed) will submit a formal request for acquisition to the Assistant Administrator, Office of Solid Waste and Emergency Response (OSWER) at EPA Headquarters.

This request, based on the site acquisition strategy, must include:

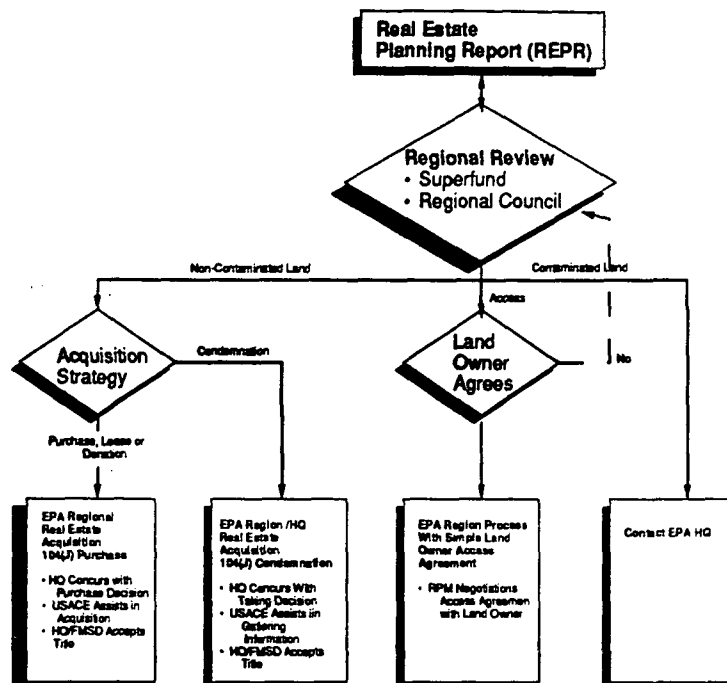
- A rationale for the required acquisition.
- The legal description of all parcels.
- Estimated cost of acquiring the interest.
- The REPR.

Prior to initiating the request, the Region must verify that the State will agree to accept title to the property on or before the completion of the remedial action. The acquisition cannot be completed until the Superfund State Contract (SSC) is signed.

Headquarters review is coordinated by the Office of Emergency and Remedial Response (OERR). OERR will evaluate the Region's request to determine if the acquisition is technically feasible and

cost effective. Before the Assistant Administrator approves the request, the Region must be able to demonstrate that all reasonable attempts have been made to limit the acquisition. Prior to OSWER's approval, the request will be sent to the Office of General Counsel (OGC) whose role is to concur with the strategy, thereby ensuring that the acquisition does not violate or contradict any current EPA policies or regulations. When both of these milestones have been reached, a transmittal memo will be sent from OERR (thru the Hazardous Site Control Division) to the Facilities and Management and Services Division (FMSD) who will complete the acquisition.

Real Estate Decision Flow Chart



Acquisition

The Facilities Management and Services Division (FMSD), an EPA Headquarters organization, has the sole authority in the Agency to accept titles and record deeds on behalf of the Federal Government. This division, with their specialists in real estate, will facilitate USACE support in the actual acquisition phase of the project by formally transmitting the acquisition request to the USACE Headquarters' real estate division. USACE Headquarters will determine what support is available and then make the appropriate assignments.

In order for FMSD to perform their role adequately, they will examine the acquisition request and supporting documentation provided by the Region (in the REPR) to determine whether any additional information such as detailed property descriptions, surveys, or appraisals are necessary to complete the acquisition in accordance with existing Federal regulations. Once the USACE district is formally tasked by USACE Headquarters, the USACE District will prepare and submit an acquisition implementation plan complete with scheduling requirements to the Region with a copy to FMSD. The Region with assistance from FMSD, will review the plan and use it in assessing the status of the project. USACE will proceed with the offers to the property owners, negotiate, and settle, at which time FMSD will accept the title.

Before or upon the completion of remedial activities, EPA will transfer the title to the State. At the time of transfer, the Region prepares a memo to FMSD explaining any deed restrictions referenced in the Record of Decision. FMSD, upon receipt of the memo, will proceed with the transfer.

The acquisition process for USACE performed projects is detailed in the "Real Estate Acquisition Flow Chart".

Summary of the Major Roles and Responsibilities

- Region requests REPR through the Remedial Design IAG.
- Region review the REPR and devises a strategy for site acquisition.
- Region submits the request to the Assistant Administrator, OSWER.
- OERR coordinates EPA-HQ response on behalf of OSWER.
- OGC concurs/nonconcurrs with the request.
- OSWER approves/disapproves the request.
- State provides assurances of its intent to accept title.
- OERR prepares transmittal memo to FMSD.
- FMSD tasks USACE to offer support.
- USACE prepares the final offer and title.
- USACE makes the offer, negotiates, and conducts the closing.
- FMSD signs and accepts the title.

Timetable for 104 (j) Acquisitions

The following real estate acquisitions activities required by the "Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970" (PL 91-646) normally require the listed durations to complete. These time frames should be incorporated into any planning schedules for real estate acquisitions.

ACTIVITY	DURATION
TITLE EVIDENCE	90 DAYS
APPRAISAL	90 DAYS
FAIR MARKET LETTER	FOLLOWING APPRAISAL
NEGOTIATIONS	60 DAYS
CLOSING	30 DAYS
TOTAL ESTIMATED TIME	9-10 MONTHS

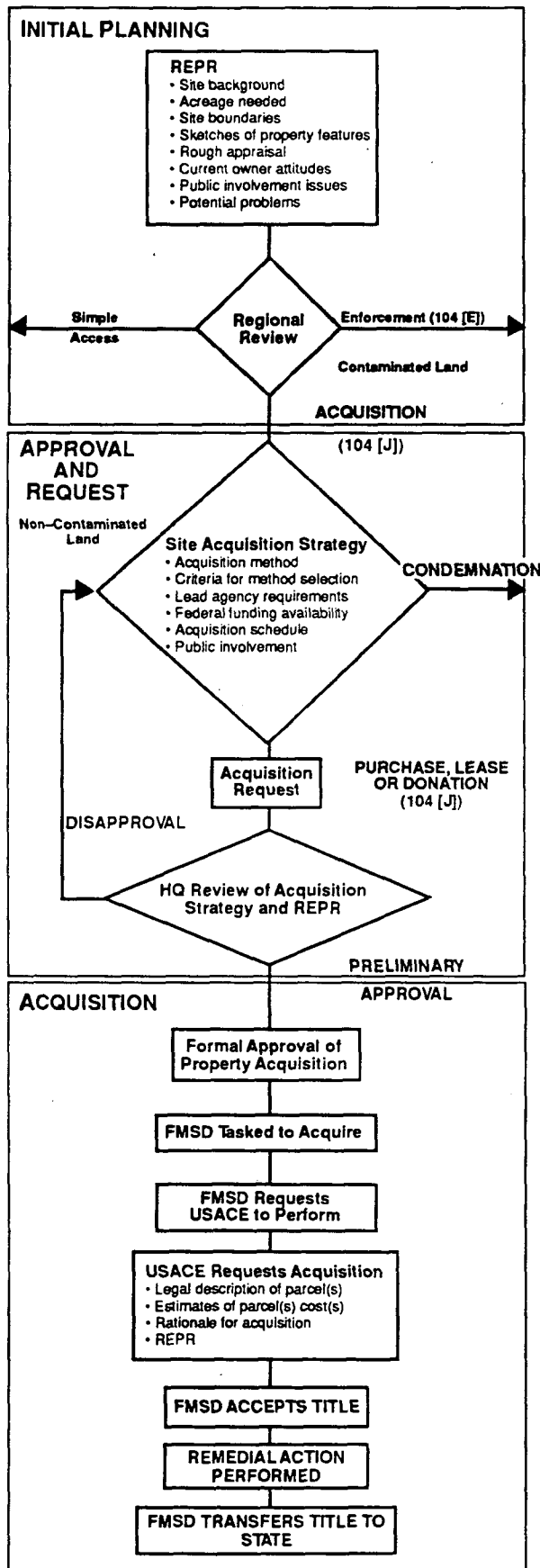
The above time frames do not include the duration for condemning a property after all attempts have been made to settle with the property owner. Condemnation proceedings which will be initiated by USACE after receiving approval from EPA, generally takes an additional 80 days to complete.

Real estate needs must be identified early in the design phase of the project to prevent any unnecessary delays. The RPM can receive real estate support from USACE by requesting a Real Estate Planning Report in the RD/RA IAG.

This guidance covers the most basic type of acquisitions for EPA involving non-contaminated properties. When contaminated property is needed to carry out the remedial action, then the Region must contact EPA-HQ directly for further guidance.

For additional information, please contact Ms. Jo Ann Griffith, EPA-HQ, OSWER, OERR, HSCD at FTS-475-6704 or commercially at (202) 475-6704.

REAL ESTATE ACQUISITION FLOW CHART



Summary of REPR

- Site Background Information
- Acreage Needed
- Site Boundaries
- Sketches of Property Features
- Rough Appraisal on Interest to be Acquired
- Current Owner Attitudes on Access/Acquisition
- Public Involvement Issues
- Potential Problems

Real Estate Definitions

"Access": a right to enter, pass to and from, obtain or make use of a property interest or parcel of land.

"Acquisition": obtaining an interest in real property by means of purchase, donation, transfer, or condemnation activities.

"Easement": a limited right to use another party's land or property interest for a special purpose such as construction during a remedial action or for purposes of exploration (surveys, appraisals, test borings, etc.) necessary to the design of a public works project.

"Enforcement Access": the use of SARA 104(e) to gain access to a contaminated property.

"Interest": share, right or title in property.

"Short-term Interest": a need for involvement at a site of duration limited to completion of the Remedial Action (RA) phase of site cleanup.

"Long term Interest": an extended (past duration of RA construction) limited to completion of the Remedial Action (RA) phase of site cleanup.

"Real Estate Planning Report" (REPR): a research report describing a parcel of land including land title, ownership, estimated value and acreage prepared by USACE to assist EPA Regions in decisions regarding necessary real estate for Remedial Actions.

"Right of entry": a permit to enter in, on, over, and across property or land for a limited period of time.