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(2) Estates in individual tracts may be changed if consistent with the overall plan. Approval, however, will be required from HQDA (DAEN-REA-P) if the estates are non-standard.

§ 644.8 Planning and scheduling real estate activities.

(a) *Normal scheduling.* (1) The objective of a planned program is to provide for the early acquistion of land to avoid enhancement in land prices and a minimum of inconvenience to the property owners. Also, it is essential that there be adequate planning of the land acquisition program to insure that there is no interference with unacquired properties as a result of construction activities.

(2) It is essential that adequate funds be programmed on ENG Form 2213, Advance Engineering and Design Planning Schedule (PB-2B), to proceed with real estate planning; preparation of Real Estate Design Memoranda; determination of final project boundaries; and preliminary real estate work to the point where land acquisition can be started as soon as construction funds become available.

(3) Surveys and boundary monumentation and/or marking shall be completed prior to acquistion.

(4) Funds will be programmed for acquisition of lands for the construction area and/or other areas initially required within the first year, and for acquisition of lands for the other features of the project as rapidly as necessary real estate data can be assembled. For projects with major impoundment features and with scheduled construction periods of more than two years, funds will be programmed at a uniform level so that total real estate requirements will be covered by accepted offers to sell or declarations of taking filed in court by the end of two-thirds of the overall construction period.

(b) *Public information.* (1) The real estate activities of the Corps are extremely sensitive, since they disrupt the lives of individuals and take their homes, farms and businesses. Therefore, the importance of keeping landowners and others having an interest in the land informed of the land acquisition program is emphasized. In order to avoid false rumors and to permit the affected owners to formulate plans for the future, information concerning the land acquisition program, procedures with respect thereto, and the specific effect on the individual properties, will be furnished to the affected owners at the outset of the project.

(2) Section 302 of Pub. L. 86–645 (33 U.S.C. 597) is quoted, in part, for guidance:

> Within six months after the date that Congress authorizes construction of a water resource development project under the jurisdiction of the Secretary of the Army, the Corps of Engineers shall make reasonable effort to advise owners and occupants in and adjacent to the project area as to the probable timing for the acquisition of lands for the project and for incidental rights-of-way, relocations, and any other requirements affecting owners and occupants. Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, the Corps of Engineers shall conduct public meetings at locations convenient to owners and tenants to be displaced by the project in order to advise them of the proposed plans for acquisition and to afford them an opportunity to comment. To carry out the provisions of this section, the Chief of Engineers shall issue regulations to provide, among other things, dissemination of the following information to those affected: (1) Factors considered in making the appraisals; (2) desire to purchase property without going to court; (3) legal right to submit to condemnation proceedings; (4) Payments for moving expenses or other losses not covered by appraised market value; (5) occupancy during construction; (6) removal of improvements; (7) payments required from occupants of Government-acquired land; (8) withdrawals by owners of deposits made in court by Government; and (9) use of land by owner when easement is acquired.

(3) Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, Division and District Engineers will conduct meetings with landowners. The United States Senators of the state or states and Members of the House of Representatives of the district or districts in which the project is located should be invited to attend. Normally, the public meetings should be scheduled prior to the commencement of the land acquisition program. The agenda for the meetings will include not only the nine specific items listed in section 302, Pub. L. 86–645, but all other items of a nature

that will assist landowners and tenants in understanding all of the Corps' real estate procedures such as, but not limited to: Acquisition schedules, the type of land interests to be acquired under the Joint Policy, approximate acquisition lines, management of the project, etc. In addition to the foregoing, pamphlets containing this information and the information brochure explaining the benefits to landowners under Pub. L. 91–646 will be given wide distribution at approximately the same time the landowners meeting program is initiated, and copies will be furnished to the appropriate United States Senators and Members of the House of Representatives.

(4) Inquiries, comments of landowners and tenants, and problems developed at the landowners meetings should be recorded or, at least, a detailed written resume made. HQDA (DAEN-REA-P) should be informed as to the outcome of these meetings. Effective follow-up to supply any information not available at the meeting, or to consider any particular problems presented, is essential to realize the full advantage of the public relations program.

(5) The provisions of this paragraph are applicable to all water resource development projects, including all local cooperation projects for which real estate is to be acquired in whole or in part by local interests. Initial information as to such projects for which real estate acquisition is exclusively a local interest responsibility may be given, within six months after project authorization, by either the local interest or Federal Government, through the media best adaptable under the circumstances. Advice should be given as to the timing of acquisition of the lands and lesser interests, and also as to the extent to which acquisition will be accomplished by the local interests. After appropriations, the local interests should be encouraged to sponsor and conduct a landowners meeting with attendance by Corps of Engineers representatives. If there is a joint responsibility for real estate acquisition, the local interests should explain the scheduled requirement for possession of the lands involved and their acquisition procedures, and the Corps of Engineers representatives should explain the procedures followed when lands are condemned by the Federal Government on behalf of local interests, and the authority for each action.

(6) If local interests refuse to call a landowners meeting, the District Engineer should call such a meeting, to explain the general construction features of the project, to inform the landowners and tenants that local interests are obligated to acquire the necessary lands, to state that we cannot explain the exact procedures which will be followed by local interests, but to explain the procedures followed when lands are condemned by the Federal Government on behalf of local interests. If only a very few landowners and tenants are involved, local interests may hold their meeting in the District Engineer's office or at a location more convenient to the landowners and tenants. While this would not be a formal meeting, the same type of information would be furnished. Here, also the District Engineer should call such a meeting if local interests refuse to do so.

(7) To summarize, public (landowners) meetings are required by section 302 of Pub. L. 86–645. This requirement applies to local cooperation projects as well as to the large Federal water resources development projects. The meetings will be held by Division/District Engineers, to comply with the law, if local interests refuse to call meetings at which information would normally be furnished jointly by the local interests and by the Corps of Engineers representatives.

(8) Real Estate personnel and the Public Affairs Officers of the Division and District Engineers should cooperate closely in planning vigorous public relations programs as contemplated in this paragraph and through the press, radio, and television.

(c) *Land acquisition funds for land acquisition in advance of project construction.* (1) A Land Acquisition Fund in the amount of $2 million was established as a part of the appropriations contained in the Public Works for Water, Pollution Control, and Power Development and Atomic Energy Commission Appropriation Act, 1971 (Pub. L. 91–439). Comments of the House Appropriations Committee in establishing

the Fund are contained in House Committee Report No. 91–1219, 91st Congress, 1st Session, as follows:

> New land acquisition fund. The committee has approved the budget proposal to allocate $2 million to establish a fund for land acquisition, in advance of project construction, to alleviate severe hardship cases and to avoid price escalation. The proposal has been approved with the understanding that prior committee approval will be obtained for initial purchases in each project area and that use of the fund shall be confined to those projects on which planning has progressed to the point that the damsite has been finalized, and it is known with certainty the lands to be acquired for the project.

This fund was increased to $3 million by the Public Works for Water and Power Development and Atomic Energy Commission Appropriation Act of 1973 (Pub. L. 92–405).

(2) *Applicability.* Expenditures from the Fund are applicable to *authorized* water resource development projects for which land acquisition is a Federal responsibility.

(3) *Guidelines for utilization of the Fund for Advance Land Acquisitions.* (i) The Fund will be used to acquire private and non-Federal publicly-owned properties at authorized water resource development projects on which planning has progressed to the point that the damsite has been finalized and it is established with certainty that the individual properties will be required for the project.

(ii) Only those individual properties will be considered for acquisition where it can be shown that advance acquisition of the properties will alleviate severe hardship to the landowner and/or will avoid unusual land price escalation. Unusual price escalation cases involve those individually owned properties where it can be demonstrated that the land value will materially escalate, prior to commencement of the land acquisition program for the project from future appropriations for land acquisition or construction, because of imminent actions which will change the highest and best use of land, such as zoning actions, planned construction on the land and other changes in real estate market factors which will materially escalate land values. Normal land escalation occurring to all properties in general within a project will not be considered as a basis for acquisition. Hardship cases include, but are not necessarily limited to, cases involving the following:

(A) The landowner has a valid contract to purchase a replacement property and failure to dispose of his property inside the project will force him to default the contract, forfeit his deposit, or otherwise lose the benefits of the contract, and other replacement property is not available within the same area under similar terms;

(B) The property owner is forced to relocate from the area due to his employment or other circumstances beyond his control, and the Government's project has so affected the sale of properties within the project area as to make a sale to another private party at a fair and reasonable price extremely difficult; and

(C) Illness of the owner or other members of his family, or other personal hardship makes his relocation from the area necessary and the Government's project has so affected the sale of properties within the project area as to make a sale to another private party at a fair and reasonable price extremely difficult.

(D) As indicated above, these examples are not intended to exclude other cases where, in the exercise of sound judgment, actual hardship is found to exist.

(iii) Individual tract ownerships recommended for advance acquisition by Division and District Engineers and approved by OCE will be acquired by direct purchase or through the filing of condemnation proceedings, in accordance with normal procedures.

(4) *Procedures.* Individual tract ownerships which Division and District Engineers consider are hardship cases or involve unusual price escalation, within the guidelines set forth in paragraph (c)(3) of this section should be recommended to OCE for acquisition.

(i) Full justification must be submitted to HQDA (DAEN-CWB) WASH DC 20314 in support of the recommendation to acquire the individual ownerships.

(ii) If the recommendation is approved, action will be taken by OCE to

obtain approval of the House and Senate Committees on Appropriations. Upon receipt of Committee approvals, the Division Engineer will be authorized to proceed with the acquisition action if sufficient funds are available from the Land Acquisition Fund.

(iii) Appropriate records will be maintained by District or Division Engineers of allocations made from the Fund which are used for approved acquisition cases. These funds will be accounted for under a designated account number.

(iv) When appropriations for land acquisition or construction of the Federal project are specifically made by the Congress, the initial allowance of funds to the project will be reduced by the amount previously allotted from the Land Acquisition Fund in order to replenish the Fund for use at other projects.

(d) *Acquisition for State or local interests—Resettlement sites.* (1) Section 209 of Pub. L. 90–483 (82 Stat. 745) enacted August 13, 1968, provides that the Secretary of the Army may, prior to the approval of title by the Attorney General, acquire, enter upon, and take possession of lands or interests in lands by purchase, donation, condemnation or otherwise, whenever any State, or any agency or instrumentality of a State or local Government, or any nonprofit incorporated body organized or chartered under the law of the State, or any nonprofit association, shall undertake to secure any lands or interests therein as a site for the resettlement of families, individuals, and business concerns displaced by a river and harbor improvement, flood control or other duly authorized water resource project, and

(i) It is determined by the Secretary of the Army that the State or local interest is unable to acquire the necessary land, or unable to acquire it with sufficient promptness, and

(ii) The Governor of the State in which the site is located has requested such acquisition.

(2) *Cost of acquisition.* The Act also provides that:

(i) All expenses of acquisition accomplished under the authority of the Act, including any award that may be made in a condemnation proceeding, the cost of title evidence, appraisals and any other costs incident to such acquisition, shall be paid by the State, agency, instrumentality or nonprofit body.

(ii) The State, agency, instrumentality or nonprofit body may repay such amount from any funds made available to it by any Federal department, agency, or instrumentality, other than the Department of the Army.

(iii) Pending such payment, the Secretary of the Army may expend from any funds appropriated for the project such sums as may be necessary to carry out section 209, Pub. L. 90–483.

(iv) To secure such payment, the State, agency, instrumentality or nonprofit body may be required to execute a proper bond before acquisition is commenced.

(v) Any sums paid by a State, agency, instrumentality or nonprofit body under section 209 shall be credited to the appropriation for the project.

(3) *Determinations required before application of section 209.* No acquisition by the Department of the Army may be undertaken under this section until the Secretary of the Army has determined, after consultation with appropriate Federal, State and local government agencies, that:

(i) The development of a site is necessary in order to alleviate hardships to displaced persons;

(ii) The location of the site is suitable for development in relation to present or potential sources of employment; and

(iii) A plan for development of the site has been approved by appropriate local government authorities in the area or community in which the site is located.

(4) *Action by District or Division Engineer.* When the District Engineer is of the opinion that section 209 may be applicable to a given situation, after consultation with State and State agency officials, the Governor of the State should be advised of the pertinent provisions of the law and the assistance that can be rendered by the Secretary of the Army under the terms and conditions of the law at the request of the Governor. If planning towards resettlement is undertaken by a State, agency, instrumentality or nonprofit body, the District Engineer will keep advised of

the progress of such local planning and will furnish guidelines and consultation to the local interests during development of the plan.

(5) *Implementation of the Plan of Resettlement.* When the final plan has been developed and approved by the appropriate Federal, State and local governmental agencies (which will include information showing that the site is necessary to alleviate hardships to displaced persons and suitable for development in relation to present or potential sources of employment), a showing has been made that the State is unable to acquire the necessary lands or interests therein or is unable to acquire the lands with sufficient promptness, the Governor has executed a request that the Secretary of the Army acquire the lands under the terms and conditions of the Act, and the State or agency of the State has executed a proper bond in an amount deemed necessary to cover total expenditures to be made by the Army for the land acquisition, the District Engineer should submit to HQDA (DAEN-REA-P) WASH DC 20314 a brief Real Estate Design Memorandum covering the land to be acquired under the plan. The REDM should be accompanied by the final approved plan and the information listed above in order that the Secretary may make the determinations as required by section 209(b) of Pub. L. 90–483. No action will be taken by the District Engineer to acquire the land, proposed for acquisition in the plan and the REDM, until receipt of authority from DAEN-REA-P to proceed with the acquisition. A complete record will be maintained of all land and administrative costs incident to the acquisition as a basis for a request for reimbursement to the State and/or the State agency or agencies. Upon authorization to the District Engineer to proceed with land acquisitions of the site, normal Corps land acquisitions procedures will be followed.

(6) *Conveyance of the site to the State or State agency or agencies.* In accordance with section 209(c) of Pub. L. 90–483, upon completion of the acquisition of the site, a proper deed will be submitted to HQDA (DAEN-REA-P) WASH DC 20314 for execution by the Secretary of the Army, for conveyance of the land to the State or State agency, as appropriate. Evidence must be submitted that the terms and conditions of the deed have the approval of the Governor and the agency to which conveyance is to be made. The deed will not be delivered until reimbursement has been made to the United States for the land and administrative costs expended by the District Engineer incident to the acquisition of the site.

MILITARY (ARMY AND AIR FORCE) AND OTHER FEDERAL AGENCIES

§ 644.21 General.

(a) *Purpose.* Sections 644.21 through 644.30 describe the procedures of the Corps of Engineers relating to real estate planning and project authorization for the acquisition of land and interests therein for military projects, for the Department of Energy (DOE), and for other Federal agencies as required.

(b) *Applicability.* Provisions of these sections are applicable to the Office of the Chief of Engineers and all Division and District Engineers having real estate responsibilities.

(c) *General procedures.* (1) AR 405–10 and AFR 87–1 outline the policies of the Department of the Army and the Department of the Air Force, respectively, with respect to real estate acquisitions.

(2) The policies of the Department of Energy (DOE) with respect to acquisition of real estate are generally set forth in requests of that agency for preparation of real estate design memorandums.

(3) The purpose of the planning function is to establish a sound basis for the acquisition of land and interests therein in accordance with existing law and broad procedures of higher authority; to collect all necessary real estate data; to correlate and evaluate these data from the standpoint of establishing the necessity for the proposed acquisition; to establish that no Government-owned or Government-controlled lands are available for the intended use; to determine the required estate, in accordance with existing policies, sufficient to protect the interests of the Government; and in general, to prepare each project for submission