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## WRDA 2026: MINIMUM NECESSARY REAL ESTATE INTERESTS

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### Action Needed

NWC encourages Congress to address minimum necessary real estate issues in the Water Resources Development Act (WRDA) of 2026 this year.

Based on concerns raised by NWC members, Congress may wish to consider:

- **Clarifying that the “minimum real estate interest” necessary** for project purposes is the maximum interest a non-Federal sponsor can be required to provide.
- **Directing the Corps to develop and apply clearer, project-type-specific real estate frameworks** that clearly identify when easements or other limited interests are appropriate.
- **Requiring the Corps to document and justify when fee title is required** in cases where limited interests could otherwise meet project purposes.
- **Clarifying that real estate decisions should be based on the functional needs of the project** for construction, maintenance, and rehabilitation, and aligned with project risk and long-term performance rather than default administrative preference.

### Key Terms

#### Easement

A legal right to use or limit the use of another person’s land for a specific purpose. The landowner keeps ownership of the property, but the easement grants defined rights to another party.

#### Fee title

Full ownership of real property, including the right to possess, use, sell, lease, or transfer it, subject to law and any recorded restrictions. In plain terms, fee title means ownership of the land itself, not just a limited right to use it.

#### Willing Landowner

A willing landowner is a property owner who voluntarily agrees to sell land or grant the needed property interest for a project. In these cases, the acquisition moves forward only with the owner’s consent rather than through a compulsory process.

#### Non-standard estate

A real property interest that does not fit one of USACE’s standard approved estate forms and is instead specially tailored for a particular project or circumstance. Because it departs from standard estate language, it typically requires additional review and approval.

- **Allowing non-Federal sponsors more flexibility** on when real estate acquisition can begin, since the acquisition risk falls on the sponsor, with the Corps crediting only the interests actually needed for the project.
- **Streamlining the real estate acquisition process** by relying more on audits and tracking systems rather than reviewing every acquisition individually.
- **Clarifying that when a non-Federal sponsor lawfully acquires more than the minimum interest needed for project purposes, the sponsor may provide the minimum interest to the Corps** while retaining the greater interest, with credit provided for the lesser interest consistent with current policy.

Some of these issues may be addressed through WRDA 2026. Others may be better resolved through implementation guidance, administrative action, or focused Congressional oversight. Congress should specifically examine why WRDA 2024 Section 1104 has not yet been implemented and whether additional oversight is needed.

## Background

Non-Federal sponsors must provide land, easements, rights-of-way, relocations, disposal areas and other real estate interests (collectively known as “LERRDs”) for U.S. Army Corps of Engineers (Corps) Civil Works projects. The basic question is simple: how much property interest does the Corps actually need?

In theory, the answer should be straightforward. A project needs enough of a real estate interest to support construction, allow access for maintenance, and ensure long-term project function for the life of the project. If an easement does that, an easement should be enough. Fee title should only be required when it is truly necessary.

The Corps already has in place policies that call for the Corps to identify only the minimum interests in real property necessary to support a project’s purposes, and that if a non-standard estate or real estate policy deviation is needed, it needs to be coordinated with the Corps division and headquarters. However, many non-Federal sponsors report that Corps districts often default to seeking a fee title or require more expansive or permanent interests than a project may truly need, because it is viewed as the lowest-risk administrative option. Even when lesser real estate interest alternatives are technically allowable, the Corps often does not seek them in practice.

That creates real problems on the ground:

- **Higher acquisition costs.** Fee title costs more than an easement, and the difference adds up fast when a project involves dozens or hundreds of parcels.
- **More landowner resistance.** Many landowners will grant easements but will not sell their land outright. When districts insist on fee title, non-Federal sponsors can lose willing participants.

- **Project delays.** Non-Federal sponsors may have to reopen negotiations, revise project footprints, or wait for higher-level approvals.
- **Late surprises.** Real estate requirements often become clear only after feasibility work or design has already advanced, forcing sponsors to revisit agreements, budgets, and schedules.
- **Inconsistent rules on when acquisition can begin.** Some districts allow acquisition earlier than others, even though the risk falls on the non-Federal sponsor.
- **Alternatives that exist on paper but not in practice.** Non-standard estates may be theoretically available, but if they take years to approve, they are not a realistic option.

## USACE Policy on LERRDs

In Section 1104 of WRDA 2024, Congress directed the Corps to obtain only the minimum real estate interest necessary for project purposes. That should have reinforced the idea that districts take only what the project needs. To date, the Corps has not implemented this provision.

Until the Corps issues implementation guidance for this section, districts are continuing to rely on existing practices and templates that often require broader or more permanent interests than projects actually need. That is why non-Federal sponsors are not seeing meaningful change on the ground.

This is not a question of whether the Corps has authority. The Corps already has authority and policy flexibility to use easements and other limited interests when they are sufficient. The bigger issue is that districts often default to fee title because it is easier internally, creates less perceived review risk, and avoids the need for case-by-case justification. In other words, the issue is not whether flexibility exists. It is whether districts are actually willing to use it.

## How To Talk About This on Capitol Hill

This issue is not hard to explain. When districts require more real estate than a project actually needs, state and local governments and special districts pay more, wait longer, and lose willing landowners. Those are real costs for local taxpayers and real delays for communities.

Congress already tried to address this in WRDA 2024, but implementation guidance has not been issued, and sponsors are not seeing change on the ground. WRDA 2026 is an opportunity to be more specific and make clear that district practice should match Congressional intent.

## Key Talking Points for Congressional Engagement

When talking to members of Congress or their staff, keep it concrete. Keep it bipartisan. Keep it focused on public dollars and public infrastructure. Be sure to highlight how it affects their constituents and you.

- This is about cost and delay for local taxpayers.
- Congress already acted in WRDA 2024, but implementation has not followed.

- The Corps already has flexibility, but districts are not consistently using it.
- The problem affects all project types, but it can hit restoration, resilience, and multi-landowner projects especially hard.
- Sponsors should not be forced into condemnation or project redesign when an easement would do the job.

**The Bottom Line.** Real estate acquisition remains one of the least predictable and most time-consuming parts of Corps project delivery. Sponsors are often being asked to acquire more than is functionally necessary, and the result is higher costs, more delay, and weaker local support. WRDA 2024 recognized the problem, but without implementation, district behavior has not changed. WRDA 2026 gives Congress a chance to provide clearer direction and help ensure that “minimum necessary” means what it says.

*For further information, contact Julie Ufner, President & CEO at [julie@waterways.org](mailto:julie@waterways.org) or 703.224.8007.*