

12 Right of Way Wetland Program

12.1 General

The Right of Way Wetland Program as referenced in the Acquisition Section in Chapter 5 of the Right of Way Manual is under the supervision of the State Right of Way Acquisition Manager. Reference [Title 23 CFR 710.513](#) Environmental Mitigation; [Title 23 CFR 777](#) Mitigation of Impacts to Wetlands and Natural Habitat; [Title 49 CFR 24](#) for acquisition policies. The acquisition policies to be followed will be those same policies found in Chapter 5 of this manual.

12.2 Purpose

The purpose of the Right of Way Wetland Program is to assist the Office of Environmental Services with Wetland, Stream, and Wetland Buffer acquisitions. The assigned Right of Way Specialist prepares and records Restrictive Covenant agreements on properties identified for Wetland Mitigation; optimizes goal attainment by communicating the aspirations of each office in a clear and concise manner to all participants; ensures negotiation procedures are non-coercive and encourages amicable settlements; decreases the likelihood of costly litigation; assures consistent treatment of owners and tenants; and promotes public confidence in State and Federal Land Acquisition practices.

12.3 Policy

Successful mitigation for the disturbance of wetlands or streams attributed to projects initiated by the Department is the policy of the Right of Way and Office of Environmental Services Wetland Program. Mitigation may be accomplished by acquiring individual wetland sites identified by the Department, which meet the approval of the appropriate Federal Agency Department of Natural Resources (DNR), US Army Corps of Engineers (USACE), National Environmental Policy Act (NEPA), and other federally related or state-related agencies. Additionally, mitigation may be accomplished by acquiring wetland sites, stream sites, or wetland or stream credits previously approved by the US Army Corps of Engineers. The acquisition of such sites shall adhere to the policies and procedures established in Chapter 5 of this Manual.

When federal funds are used to acquire property for mitigation purposes, Right of Way and Office of Environmental Services will comply with the applicable Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended provisions, which govern such acquisitions ([Reference 49 CFR 24](#)). Right of Way and Office of Environmental Services will also observe The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended when acquiring property with the intention of mitigating a current or future project's impact on wetlands or streams.

12.4 Procedures

Acquisition of Wetland Sites

A. Identification of Wetland/Stream Disturbance

Once the Department identifies a wetland or stream area disturbance attributed to an identified project, Office of Environmental Services will generate an Interdepartmental Letter to the attention of the State Right of Way Administrator. The request for the acquisition of a wetland site is to mitigate for the disturbance of existing wetlands or streams by an identified project or to create a Department-owned bank that shall be used by Office of Environmental Services to apply credits for identified Department projects. The name of the owner or the owner's representative shall be identified in each interdepartmental letter from Office of Environmental Services. If not, a call to the person in charge of the wetland program at Office of Environmental Services will help identify necessary owner contact information.

B. Use of Negotiator

A decision to use Staff or Consultant negotiators to acquire the site shall be made. A Letter of Notification shall be sent to the Staff or Consultant negotiator emphasizing the project let date in order to meet project delivery for the Department.

C. Parcel Designation

Wetland acquisitions shall be designated as a "W" parcel on the plans and all wetland buffer sites shall be designated as a "WB" parcel on the plans. Such designations ("W" and "WB") are reserved for wetland parcel acquisitions. If the acquired wetland or wetland buffer site is adjacent to a parcel designated with a number and letter (e.g. 8A), show the wetland parcel designation on the plans as 8AW, 8AWB, etc. All wetland acquisitions shall be in accordance with Federal and State guidelines, requirements and policy consideration.

D. Non-Successful Negotiations

1. When negotiations fail or an owner decides not to convey his/her property to the Department, the State Right of Way Acquisition Manager shall be notified. The State Right of Way Acquisition Manager will apprise Office of Environmental Services of the situation. Office of Environmental Services will determine if the property must be condemned.
 - a. Should the Department decide not to acquire the site by condemnation, the Staff or Consultant negotiator shall prepare and send a "pre-approved" letter by the General Office Right of Way to the owner explaining to the owner that at this time the Department no longer will require the property.

- b. Should the Department decide to acquire the site by condemnation, the Staff or Consultant negotiator shall follow established procedures identified in Chapter 5 for handling condemnation proceedings.
- c. Where negotiation procedures are successful and the Option for acquisition is approved, the Staff or Consultant negotiator shall follow closing procedures identified in Chapter 5. Funding must be authorized prior to negotiating with an owner. Funds authorized for Mitigation purposes may be drawn from an identified Right of Way project or from the Office of Environmental Services Mitigation Lump Sum Account. Boundary surveys shall be prepared through a task order request generated by Right of Way or Office of Environmental Services through the Procurement Office.

E. Request for Restrictive Covenants

Office of Environmental Services will initiate request for Restrictive Covenants required for a particular site. The Office of Environmental Services Administrator will submit an Interdepartmental Letter to the State Right of Way Administrator requesting preparation of the document and Office of Environmental Services will supply Right of Way with all pertinent information (surveys, 404 permits, Needs and Purpose Statement, etc).

1. The Restrictive Covenant shall be routed to the Legal Office for review and approval and then forwarded to the USACE or other appropriate Federal agency for final approval prior to filing. Any revisions recommended by the USACE or other appropriate Federal agency will be accomplished. The document shall be executed by the commissioner and filed in the County where the property is located. Copies of the recorded Restrictive Covenant shall be sent to Office of Environmental Services and to the USACE or other appropriate Federal agency. Right of Way maintains the original document in the Right of Way Wetland Mitigation Files.

F. Files to ROW Property Management

Wetland acquisition files including the recorded deed will be forwarded to Property Management Office. The Property Management Office will establish an inventory of properties acquired for Environmental purposes.

G. Documentation of Information

Documentation of all necessary information concerning negotiations, closing, condemnation, and the Restrictive Covenant is recorded in the Department's database "TPRO" and entered on the Right of Way Wetland Information Spreadsheet.

12.5 Quality Assurance Quality Control

All activities concerning the acquisition of right of way for the purposes of Wetlands mitigation must adhere to the policies and regulations of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. Reference [49 CFR 24](#). The checks and balances for these procedures can be found in Chapter 5 of the Right of Way Manual, under Quality Assurance, Quality Control.