

THE RIGHT WAY TO DO RIGHT OF WAY

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Louisville District
Levee Safety Section & Real Estate Section
Date: 08 December 2020



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INTRODUCTION



What is the Levee Sponsor's responsibility when it comes to levee REAL ESTATE?

When Levee Projects were originally constructed Agreements between USACE and the Levee Sponsor required Levee Sponsors to **acquire** and **maintain** ownership interest of **lands, easements, and rights of way to allow for design, construction, inspection, maintenance, repair, rehabilitation, and replacement of the levee project.**

Most of the time these "Agreements" are called Project Cooperation Agreements (PCA) and can be found in the Levee Sponsor's O&M manual for the project.





EXISTING LEVEE RIGHT OF WAY

Existing Levee Right of Way is important to the entire levee system in that it allows the Levee Sponsor the ability to properly O&M the Levee System and to flood fight when necessary.



Contractors will work within existing Right of Way when making levee repairs.



EXISTING LEVEE RIGHT OF WAY

Can a local sponsor sell existing levee right of way that is required to operate and maintain the existing levee?

Although it has been done, **NO**, it cannot. The Levee Sponsor ended up buying the property back from the Developer.



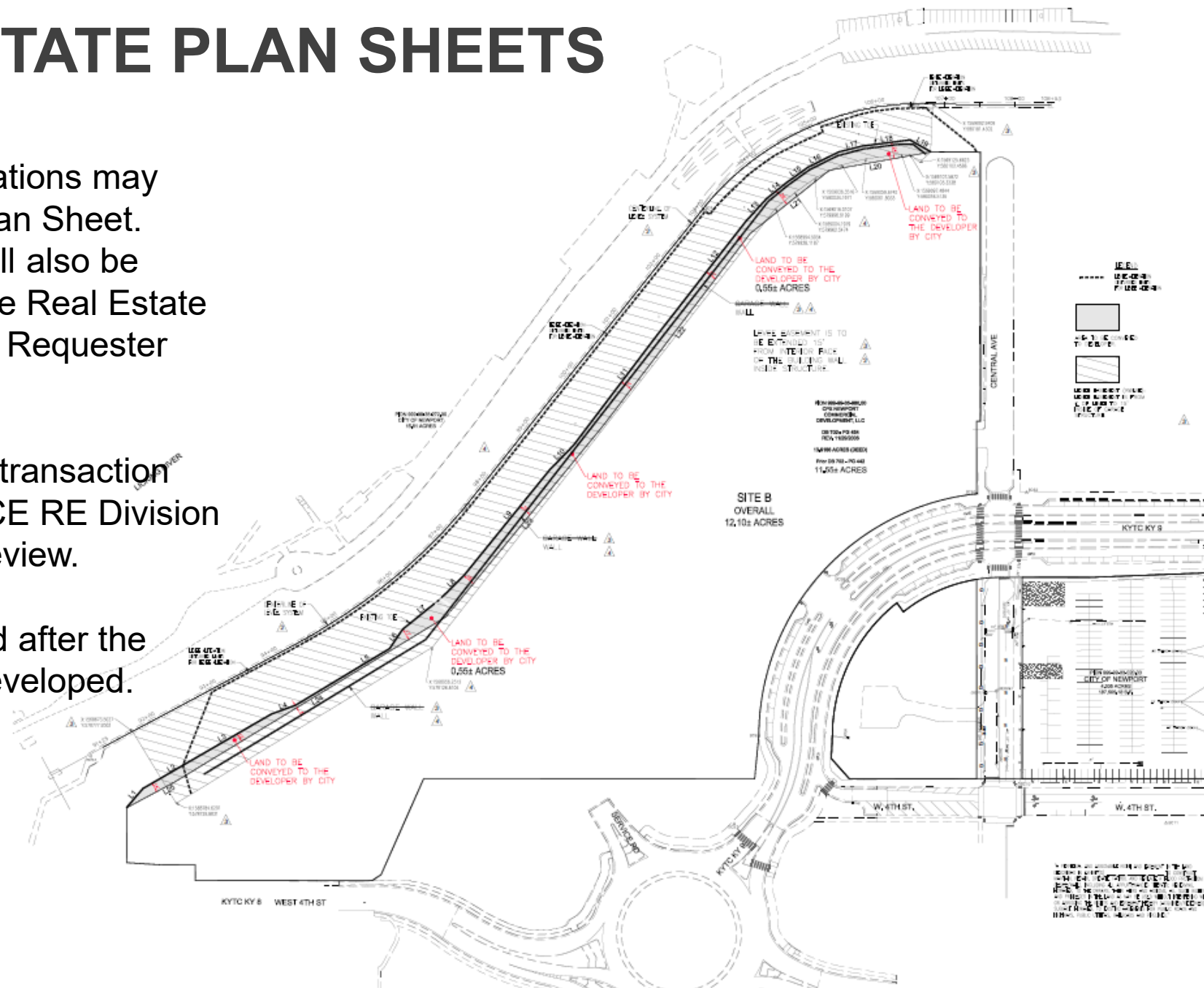


REAL ESTATE PLAN SHEETS

Some Section 408 alterations may include an Easement Plan Sheet. This same plan sheet will also be used as the Exhibit in the Real Estate documents between the Requester and Levee Sponsor.

If there is a Real Estate transaction required, then the USACE RE Division will need to conduct a review.

This review is completed after the plans have been fully developed.



Lot Table		
Lot #	Bearing	Distance
L1	N82°21'22"E	36.37'
L2	N24°36'28"E	85.09'
L3	N24°37'52"E	119.01'
L4	N34°49'55"E	36.16'
L5	N2°40'23"E	158.80'
L6	N7°18'19"W	33.52'
L7	N15°54'06"E	68.70'
L8	N10°04'40"E	48.51'
L9	N2°47'46"E	195.80'
L10	N8°00'22"E	49.85'
L11	N1°03'42"E	189.94'
L12	N2°41'15"E	207.83'
L13	N7°10'54"E	43.95'
L14	N1°08'45"E	37.15'
L15	N1°00'16"E	37.83'
L16	N28°22'12"E	48.85'
L17	N8°40'53"E	35.42'
L18	N47°26'50"E	68.70'
L19	N84°25'00"E	34.52'
L20	S44°28'17"W	148.50'
L21	N1°08'17"E	145.80'
L22	S02°08'17"W	346.30'
L23	S04°08'17"W	398.55'
L24	S23°23'17"W	459.00'
L25	S28°34'17"W	77.16'



April 15, 2019 Per USACE Comments
Nov 13, 2019 Per USACE Comments
Aug 14, 2019 Per USACE Comments
Revision: May 13, 2019 Per USACE Meeting
Issue Date: May 13, 2019

OVATION

CITY OF NEWPORT
CAMMELL COUNTY, KENTUCKY

PROPERTY MAP FOR LOT SPLIT

Project No:

16095

C-103

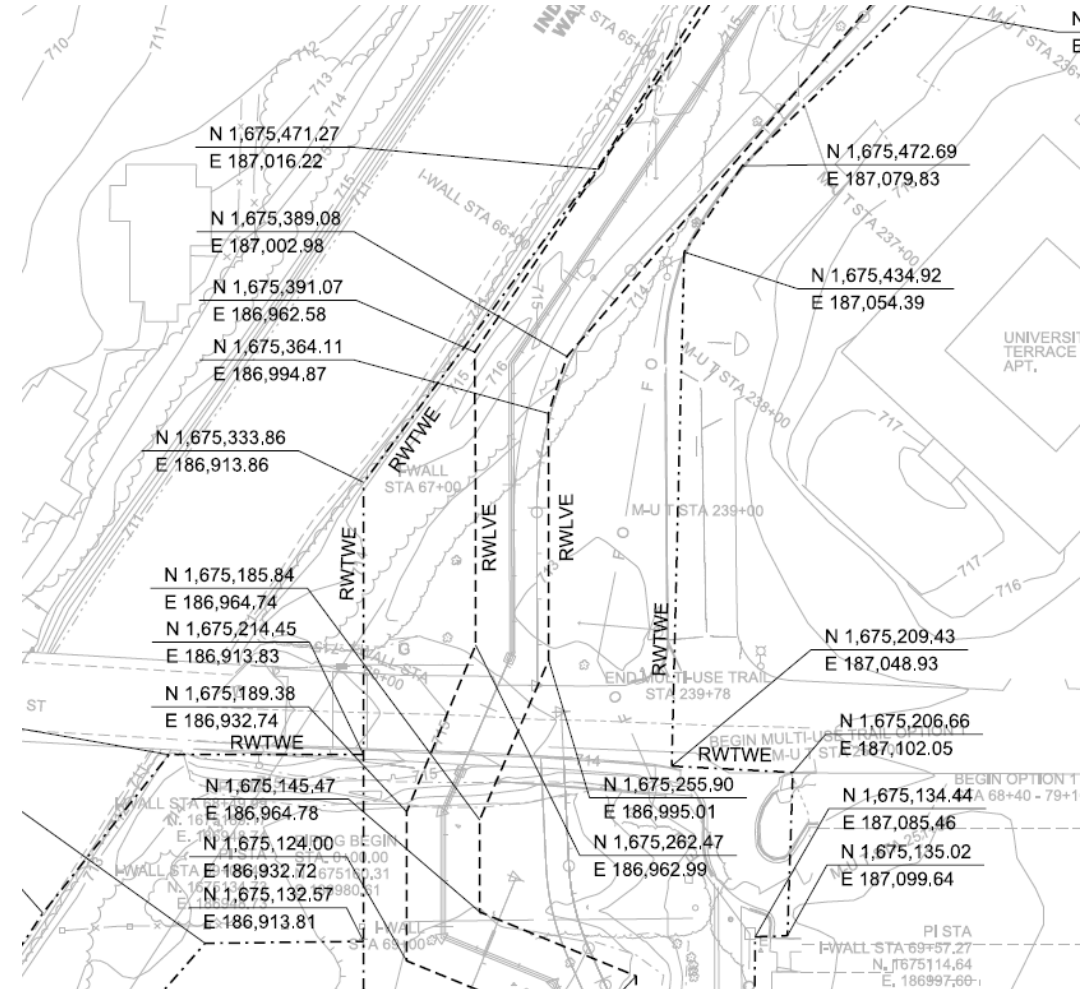


REAL ESTATE PLAN SHEETS



Real Estate Plan Sheets should include the following:

- Label the Levee or Floodwall Centerline
- Include all Stationing
- Levee toe (if applicable)
- Toe drain (if applicable)
- Legend
- Label Levee Easement (RWLVE)
- Label Temporary Work Easement (RWTWE)
- Proposed alteration (gray shaded)
- Northing and Easting coordinates at RW changes
- Temporary Easements may be required if an Emergency Closure is involved.



POP QUIZ

What is the minimum Levee Easement required to operate and maintain the existing Levee System?

Recommend a minimum 15 feet from the toe of the levee or floodwall face on either side or 8 feet from the toe drain, whichever is greater.



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PONDING EASEMENTS



Can the Levee Sponsor allow development in ponding easement areas within the existing leveed area?

NO, This can have a negative affect on the overall project. USACE receives 408 requests to build in ponding easements not realizing the negative affect this can have on the Levee System.

Volume of the ponding area cannot be reduced.





PONDING EASEMENTS



A local school corporation requested to build a baseball field in a ponding area (shown right) by adding fill material in low areas adjacent to the levee. This request was denied because this alteration would have changed the storage capacity of the ponding area and thereby flooding adjacent properties.

- Maintaining ponding areas is critical to the function of the existing overall levee system.





UNAUTHORIZED ENCROACHMENTS

An unauthorized **encroachment** is a structure or obstruction within the levee easement area that was placed without approval from both the Levee Sponsor and USACE.



Encroachments not only damage the levee but also prohibit flood fighting activities when needed.



UNAUTHORIZED ENCROACHMENTS



Unacceptable Encroachments

- Privacy fence on the levee (above)
- Tilled farmland on the landside levee slope (top right)
- Raised garden bed on levee slope (right)

Smile



We're half way!



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REAL ESTATE 101



The Bundle of Sticks

- Rights in property may be thought of as a “bundle of sticks”
- Each “stick” in the bundle represents a right in the property, such as
 - Right to occupy and use the land
 - Right to sell or grant access to the land, in whole or in part
 - Right to mortgage the property
 - Right to lease the property
 - Right to build improvements
 - Etc...





REAL ESTATE INTERESTS



Fee Simple Interest

- The most complete form of ownership (all of the sticks in the bundle)
- The owner has the right to sell a stick (or all of them) from the bundle



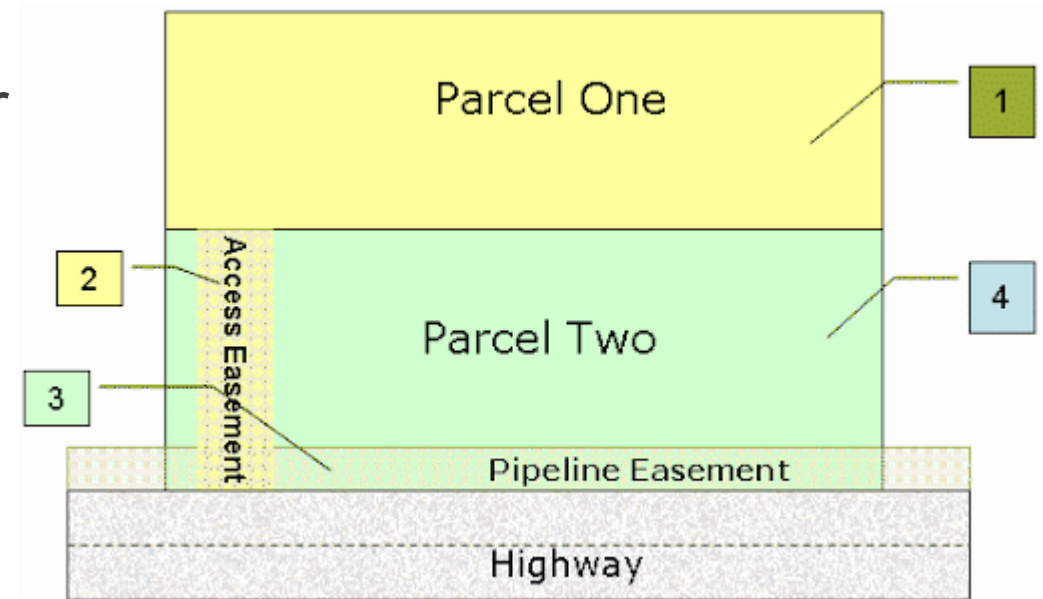


REAL ESTATE INTERESTS



Easements

- The right to use another's land for a specific purpose
- One of the sticks in the bundle
- There are many types of easements for various purposes, both permanent and temporary





TYPES OF EASEMENTS



Flood Protection Levee Easement

The right to construct, maintain, repair, operate, patrol and replace a flood protection levee.....





TYPES OF EASEMENTS



Road Easement

A perpetual easement and right-of-way in, on, over and across (a specific piece of land) for the location, construction, operation, maintenance, alteration replacement of (a) road(s)...





TYPES OF EASEMENTS



Temporary Work Area Easement

A temporary easement and right-of-way in, on, over and across [a specific piece of land], for [a specific length of time]... for use by the United States, its representatives, agents, and contractors as a work area, including the right to move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the [specific project]....





TYPES OF EASEMENTS



Borrow Easement

A perpetual right and easement to clear, borrow, excavate and remove soil, dirt, and other materials from [a specific piece of land]....





TYPES OF EASEMENTS



Many other types of easements:

- Flowage easements
- Utility easements
- Temporary access road easements
- Bank protection easements
- Channel improvement easements
- Snagging and clearing easements
- Conservation easements
- And many more...





ENCROACHMENTS



- An encroachment occurs when a portion of an improvement extends beyond the site boundary of its owner's land.
- Most encroachments are unintentional.





ENCROACHMENTS

Consequences of encroachments

- Prevent access for inspection, maintenance, and repair
- Damage levees leading to failures and increased flooding.
- Costly litigation and delays in levee projects.



Furor Over Fences On Levee

SESHADRI KUMAR Wednesday, 20 April, 2011, 12:00 AM



Contract workers rip-off the fences encroaching Fort Bend County Levee Improvement District No. 2's easement along the Oyster Creek in Oyster



PROTECTING REAL PROPERTY INTERESTS

- Cooperative agreements require you to acquire and maintain sufficient ownership interest in the lands, easements, and rights-of-way that are necessary for design, construction, inspection, maintenance, repair, rehabilitation, and replacement of your levee project.
- You must prevent unauthorized encroachments on levee project lands.
- Before granting any real estate interest around the Levee Project, contact your Levee Safety Area Representative for confirmation
- Most importantly.....



PROTECTING REAL PROPERTY INTERESTS

DO NOT SELL YOUR LEVEES!





CONSEQUENCES OF FAILURE TO PROTECT REAL PROPERTY INTERESTS

- Failure to comply with the terms of the Cooperative Agreement and O&M requirements compromises the Levee Project
- Without sufficient real estate interests, operation, maintenance, inspection, repair, and replacement are seriously hindered
- Encroachments can damage levees and lead to costly and lengthy legal battle
- Potential impacts to the community:
 - Loss of eligibility for National Flood Insurance Program
 - Loss of Federal assistance during flood events





KEY TAKEAWAYS



- Maintain sufficient real estate interest to support your Levee Project.
- Be *vigilant* in monitoring all development going on near your Levee Project.
- Address encroachments or potential encroachments immediately.
- Before granting any real estate interest around the Levee Project, contact your Levee Safety Area Representative for confirmation.
- Do not sell your levees.



ANY
QUESTIONS
?



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