

RESTORE Act Direct Component Application Supplement: Guide to Documenting Evidence of Title or Other Property Rights with Respect to Project Property

Below is Treasury's guidance to recipients of RESTORE Act awards regarding the documentation necessary to demonstrate evidence of title or other property rights with respect to project property. Applicants seeking funding under a Direct Component – Construction and Real Property Acquisition Activities Funding Opportunity Announcement should review this resource when preparing responses to Questions 24-26 of the Direct Component Narrative Form in the application package. Applicants may provide this documentation with their applications, but in any case, must submit this documentation prior to receiving an approval of a request to proceed with construction.

A. Documentation required if the property will be newly acquired for a project:

The recipient must provide the following evidence of clear title:

1. A copy of the recorded deed or equivalent conveyance document showing the recipient acquired title to the property; and
2. A copy of the title insurance (a.k.a. title policy), title report, or title opinion (by attorney(s) licensed in the jurisdiction where the property is located) completed after the real estate acquisition showing the recipient obtained title to the property free of any encumbrances (i.e., foreclosable liens, easements, or any other limitations on use that interferes with the recipient's intended use, operation, construction, maintenance of the property, or Treasury's federal interest). The title insurance, title report, or title opinion must include the legal description of the property.

Recipients must disclose any ongoing litigation concerning the project property prior to seeking Treasury's permission to proceed with construction.

B. Documentation required if the new construction/renovation project will be completed on existing property:

In the case of evidence of title, the applicant or recipient must provide the items listed above under section A, provided that the copy of the title insurance, title report, or title opinion must be completed within the last year. If such documentation is more than one year old, the applicant or recipient must provide Treasury with an explanation, which Treasury may in its discretion decline to accept.

In the case of evidence of easements or other rights required for completion of the project (e.g., construction easements or rights-of-way), the applicant or recipient must provide the following for each (e.g., for each easement):

1. A copy of the easement deed or equivalent conveyance document; and

2. A copy of the title insurance, title report, or title opinion (by attorney(s) licensed in the jurisdiction where the property is located).

In either case, applicants or recipients must disclose any ongoing litigation concerning the project property prior to seeking Treasury's permission to proceed with construction.

Treasury may in its discretion accept only a copy of the title insurance, title report, or title opinion as evidence of title (or easement or other rights) if the applicant or recipient is unable to produce the relevant conveyance document.

C. Documentation required if the improvements or construction will be completed on leased property:

The applicant or recipient must provide the following evidence of control of leased property:

1. A copy of the lease signed by the lessor and recipient that provides a lease term equivalent to the estimated useful life (EUL) of the project or renewable for that period; and
2. A certification from the applicant or recipient that it has control of all project property or improvements to the property and is not aware of any material restrictions or encumbrances that could interfere with any award purpose for the duration of the EUL. If this changes within the course of the EUL, the recipient must provide timely notice to Treasury.

D. Documentation required if the project involves linear construction or improvements:

In the case of construction/improvement projects that will cross several tracts of land (e.g., sewer and wastewater projects), the recipient must provide the evidence of title (e.g., easement) or other rights referenced above in section A for each tract of land required for completion and maintenance of the project.

If the applicant or recipient is unable to provide such documentation referenced above in section A, it should contact the Office of Gulf Coast Restoration at restoreact@treasury.gov to seek guidance as to whether it may provide a certification (signed by the county attorney/other responsible authority) that states the applicant or recipient or, as applicable, the subrecipient holds clear title to or otherwise has relevant legal rights to all project property and neither the recipient nor subrecipient is aware of any material restrictions or encumbrances that could interfere with any award purpose(s). The legal description of the property should be included in the certification.

In the case of linear construction/improvement, road construction, or other less common types of construction, applicants or recipients are encouraged to consult with Treasury for

additional guidance on the types of evidence of title that may be required, based on project specifics.

E. Florida County applicants or recipients only: documentation required if the project will be conducted on roads and pursuant to Florida statutes:

1. Title to roads by statutory dedication pursuant to Fla. Stat. § 95.361. The applicants or recipient must provide one of the following:
 - a. An affidavit (signed by the county attorney/other responsible authority) that states the county has title to the road by statutory dedication pursuant to Fla. Stat. § 95.361 and should indicate either that (i) the county constructed the road and maintained or repaired it continuously and uninterruptedly for 4 years or, if the county did not construct the road, that (ii) the county regularly maintained and repaired the road for the past 7 years. The affidavit must also include the legal description of the property; or
 - b. A copy of the title report or equivalent (completed within the last year) that shows the county has title to the roads by statutory dedication pursuant to Fla. Stat. § 95.361. The title report or equivalent should also include the legal description of the property.
2. Title to roads by statutory dedication pursuant to Fla. Stat. § 177-081(2). The applicant or recipient must provide one of the following:
 - a. A recorded deed that contains the dedication of the property by the owner(s) of record to the applicant or recipient and approval of the dedication from the appropriate governing body pursuant to Fla. Stat. § 177-081(2). The dedication must be executed by all persons, corporations, or entities whose signature would be required to convey fee simple title to the lands being dedicated; or
 - b. A copy of the title report or equivalent that shows the applicant or recipient has title to the roads by statutory dedication pursuant to Fla. Stat. § 177-081(2). The title report or equivalent should also include the legal description of the property.
3. Title to highways governed by Fla. Stat. § 337.29. The applicant or recipient must provide one of the following that shows it holds title to the roads:
 - a. A copy of the recorded deed for the property;
 - b. A copy of the recorded right-of-way map; or
 - c. A copy of the title report or equivalent that shows the applicant or recipient

has title to the roads by statutory dedication pursuant to Fla. Stat. § 337.29. The title report or equivalent should also include the legal description of the property.

Other Guidance Related to Project Property

Documentation required if the applicant or recipient requests that the federal interest be waived:

Treasury retains an undivided equitable reversionary interest (the “federal interest”) in the real property acquired or improved, in whole or in part, with RESTORE Act Direct Component funds for the Estimated Useful Life (EUL) of the project. To document the federal interest, Direct Component recipients are required to perfect a Covenant of Purpose, Use, and Ownership (Covenant) by recording it in the real property records of the jurisdiction where the property is located, in accordance with local law.

Treasury may waive the requirement to document the federal interest if Treasury determines that the risk to the federal interest is minimal because it is not likely that the applicant or recipient would dispose of or alienate its ownership of the property or use it in a manner inconsistent with the public purpose of the award during the EUL of the project. The types of projects for which Treasury may agree to this exclusion include those that are not for construction of built structures.

In the case of leased property, if it is decided that recording the federal interest is not feasible, then Treasury may include a special award condition on the award that the recipient will repay the federal interest if the lessor terminates the lease before the EUL of the project expires or if the recipient or lessor uses the property in a manner inconsistent with the public purpose(s) of the award during the EUL of the improvements or construction, as applicable.

Applicants and recipients should consult with Treasury if they intend to request that Treasury waive the recording of the federal interest.

Willing Seller Requirements for Land or Interest in Land Acquired for a Project:

In accordance with the RESTORE Act and Treasury’s implementing regulations, 31 CFR § 34.803(f), Direct Component grant funds may only be used to acquire land or interests in land by purchase, exchange, or donation from a willing seller. As such, applicants that have projects that include acquisition of land, easements, rights of way, or other interests in land must notify the property owner that the acquisition must be from a willing seller and obtain from the property owner a signed statement that identifies the owner as a willing seller. The applicant must submit the willing seller documentation to Treasury with its grant application for land or interest in land to be acquired for the project. Applicants may contact Treasury’s Office of Gulf Coast Restoration to obtain a template of a willing seller letter. For information, see also FAQ 58 at the Frequently Asked Questions posted on the [Direct Component Resources](#) webpage.