



## APPENDIX B

### Real Estate



## APPENDIX B – REAL ESTATE PLAN

### B-1.0 PROJECT DESCRIPTION, LOCATION AND DESCRIPTION OF THE LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREAS (LERRD’S) REQUIRED

The project area is the southeastern portion of Louisiana (see map in Section 8 below) consisting of:

Dredging within the banks of the Mississippi River. The Tentatively Selected Plan (TSP) for the next phase of construction is to deepen the MRSC to a depth of 50 ft LWRP for the 3 crossings located within the footprint of the Port of South Louisiana (Richbend, Fairview, and Belmont) and a depth of 50 ft MLLW in the Lower Mississippi River from RM 13.4 AHP to RM 22 BHP. The 9 crossings located within the Port of Greater Baton Rouge will remain at their present constructed and maintained depth.

Disposal of materials dredged from the 3 crossings within the Port of South Louisiana will be deposited back into the river below the dredged location. All actual dredging activities for the three crossings will be conducted below the ordinary high water mark of the River; therefore, the actual dredging work will can be accomplished by invoking the Federal navigational servitude. Similarly, dredging of the reach of the Lower Mississippi River below approximate RM 18 BHP, will be placed with the OMDDS, such that all dredged work and disposal for this reach will be accomplished by invoking the Federal navigational servitude.

Disposal of materials dredged within the Lower Mississippi River between RM 13.4 BHP and approximately RM 18 BHP will be placed within existing disposal areas adjacent to the Mississippi River in the southern portion of Plaquemines Parish between Venice, Louisiana and the Gulf of Mexico. USACE has previously obtained environmental clearance over 143,264 acres, most of which are located in the USFWS Delta National Wildlife Refuge and in the LaDWF Passe a Loutre Wildlife Management Area.

The current evaluation has determined that construction of the alternatives beyond 48 ft in the Lower Mississippi River reach of the project (RM 13.4 AHP to RM 22 BHP) will potentially require the acquisition of additional dredged material placement and access areas. The majority of the additional dredged material placement and access areas that have been potentially identified for future use appear to lie in coastal marshes that are subject to inundation by the mean high waters of the Gulf of Mexico. As such, the marshes could be considered “navigable in law” (33 CFR 329.12(2)(b)), and disposal could be accomplished by invoking the Federal navigational servitude. The limits of the navigation servitude will be determined during PED in order to be available prior to the scheduled need for authorization for entry for construction.



If additional dredged material placement areas and/or access areas are determined to be necessary for construction and/or OMRR&R of the Recommended Plan, the Government intends to maximize use of the Federal navigation servitude, to the extent practicable and in keeping with project needs, for the additional dredged material placement and access requirements for the project. For purposes of selecting the TSP, we have selected several broad areas, as shown in Figure B-2, that would be examined during the feasibility design phase to identify discrete areas that would be suitable for consideration as dredged material placement areas and/or as access to those areas if such additional areas are needed for project construction and/or OMRR&R.

It is possible that some portion of the lands identified as being potentially needed as additional dredged material placement or access sites could lie outside of the limits of the navigation servitude. If additional dredged material placement or access areas are needed that include those privately owned lands that lie outside of the Federal navigation servitude, the Government may require the non-Federal sponsor to acquire an interest in real property for that purpose over those lands. Similarly, the Government may determine that additional State-owned lands, that lie outside of the area available under the navigation servitude, may be needed for the Recommended Plan. For those lands, the non-Federal sponsor would also be required to provide authorization for entry for the construction and OMRR&R of the project. The determination of whether such additional lands are required for project construction of the TSP will not be made until the final feasibility design phase.

Final determination of the State-owned and privately owned lands that lie outside of the Federal navigation servitude and that will be acquired for construction and/or OMRR&R of the project will not take place until final project design is complete. However, for purposes of this report, the Government has estimated \$2.5M for the land and administration costs associated with acquisition of a temporary work area easement over privately owned lands in order to ensure an appropriate estimate of the cost of construction for the TSP, to inform the public of the potential for the acquisition of additional interests in real property, and to estimate the maximum environmental impact. In the subsequent phase of feasibility design, further refinement of construction and OMRR&R requirements, including dredged material placement and access requirements, will be determined, and more precise dredged material placement and access needs will be available.

For any areas for which the Federal navigation servitude will not be exercised, the non-Federal Sponsor will be required to acquire the necessary interest in real property from the owners of interest in privately owned lands and to timely provide an authorization for entry to the interest acquired in the privately-owned lands and to any State owned land. Additionally, the non-Federal sponsor will be required to obtain authorization for entry over any lands under the



jurisdiction of another Federal agency, such as USFWS and its lands in the Delta National Wildlife Refuge.

Because a definitive identification cannot be made at this time regarding those lands that lie within the Federal navigational servitude, an assumption was made that some acreage would need to be acquired by the Non-Federal Sponsor from private individuals. See Map of Disposal Site in Section 8 below.

### **B-2.0 NON-FEDERAL SPONSOR-OWNED LERRD**

The Non-Federal Sponsor (NFS) on the project is Louisiana Department of Transportation and Development (LaDOTD). It is assumed that LaDOTD does not have jurisdiction over any LERRDs within the Mississippi River or in the existing or proposed areas for dredged material placement or access in southern Plaquemines Parish. The NFS will provide an authorization for entry over any LERRD's needed for this project which cannot be utilized by invoking the Federal navigational servitude.

LaDOTD has been an active participant in the development of the scope of the GRR and the Project Management Plan and executed a Feasibility Cost Sharing Agreement in April 2015. LaDOTD has expressed strong support and willingness to continue as the NFS through construction an OMRR&R, if building a channel up to a maximum of 50 feet is feasible.

#### **STANDARD ESTATE**

At this time, the need for additional LERRDs is unknown; however it is possible that some LERRDs may be required to support construction and OMRR&R of the Recommended Plan for purposes of dredged material placement and access. It is anticipated that, if additional LERRDs are found to be necessary, most of those lands and waterbottoms will lie within the area available under the Federal navigation servitude. However, if some of the required areas lie outside of the Federal navigation servitude, USACE will determine the requisite estates and easements necessary to meet the required purpose. If the additional need for dredged material disposal and access is limited to the construction of the Recommended Plan, the Non-Federal Sponsor will be required to acquire 5 year temporary work area easements for those purposes. If the additional need extends to OMRR&R requirements for dredged material placement and access, USACE will determine the requisite estate during final feasibility design.

#### **EXISTING FEDERAL PROJECT(S) WITHIN THE PROJECT AREA**

The Gulf Intracoastal Waterway (GIWW) links deep-water ports, tributaries, rivers and bayous and stretching for more than 1,300 miles from Mexican border at Brownsville, Texas to Apalachicola, Florida. Within this Mississippi River Ship Channel project, there are four locks



within the GIWW – Port Allen Lock near Baton Rouge and Algiers, Harvey and Inner Harbor Navigation Canal Locks in the New Orleans area.

Mississippi River and Tributaries Project (MR&T) the largest flood control project in the world, provides protection to the 36,000 square-mile lower Mississippi Valley. The four major elements are levees, floodways, channel improvement and stabilization and tributary basin improvements. MR&T has levees and a floodway within the Mississippi River Ship Channel project area.

The USFWS has jurisdictional responsibility for the Delta National Wildlife Refuge in lower Plaquemines Parish. The non-Federal sponsor is responsible for providing authorization for entry to any lands necessary for construction and OMRR&R of the Recommended Plan that are situated on the refuge, includes any newly designated areas for dredged material placement or access that area determined to be necessary during the feasibility design phase of the study.

### **B-3.0 FEDERALLY-OWNED LANDS WITHIN THE LERRD'S FOR THE PROJECT**

Mississippi River South and Southwest Passes Project encompass 14,706.34 acres of waterways and wildlife refuge areas in Plaquemines Parish, of which 35.25 acres are encumbered with easements, 8,367.17 acres are owned by the United States in fee, and 6,303.92 acres are public domain lands. Much of the disposal sites are within this project boundary.

### **B-4.0 NAVIGATIONAL SERVITUDE**

The navigation servitude is the dominant right of the Government under the Commerce Clause of the U.S. Constitution (Art. I, §8, cl.3) to use, control and regulate the navigable waters of the United States and the submerged lands hereunder for various commerce-related purposes including navigation and flood control.

Dredging will take place below the Ordinary High Water Mark within the banks of the Mississippi River; therefore, the Government will invoke the navigational servitude for dredging within the banks of the waterways, as it was done for Phases I and II.

In tidal areas, the servitude extends to all lands below the mean high water mark of a navigable watercourse. For the disposal areas, if the state lands fall within the navigational servitude limits, we will exercise the servitude and will not seek permission of a state agency since our rights under the servitude prime the State's rights acquired through statehood or later acquisition. If some portion of the State owned lands lie outside of the Federal navigation servitude, it is the responsibility of the non-Federal sponsor, LaDOTD to acquire ROE on behalf of the project to those non-servitude lands. Additionally, LaDOTD will be required to acquire any interests in real property over privately-owned lands that lie outside of the area available under the Federal



navigation servitude that is determined in the feasibility design phase to be necessary for the construction and/or the OMRR&R of the Recommended Plan.

A formal determination of which project areas fall within the navigational servitude will be made no later than the PED phase.

### B-5.0 PROJECT MAPS

Figure B-1 below - Shows the Mississippi River Ship Channel, Gulf to Baton Rouge, Louisiana project area. Upper Mississippi River (Baton Rouge to New Orleans Harbor) includes 12 Crossings. Lower Mississippi River (New Orleans Harbor to Gulf of Mexico) includes Southwest Pass and Bar Channel.



Figure B-1: Mississippi River Ship Channel, Gulf to Baton Rouge, Louisiana project area

Figure B-2 below – Shows the proposed disposal areas in the southern portion of Plaquemines Parish.



Figure B-2: Proposed disposal areas in the southern portion of Plaquemines Parish

### B-6.0 INDUCED FLOODING

Construction of this project will not induce flooding.

### B-7.0 BASELINE COST ESTIMATES/CHART OF ACCOUNTS (COA'S)

If all lands needed for the project can be utilized by invoking the navigational servitude, there will be no real estate costs associated with this project. However, in order to account for the possibility that some lands might not be subject to the navigational servitude and that acquisition could be necessary, a real estate cost estimate was prepared. The total estimated real estate costs were estimated to be \$2,500,000. Real Estate costs include the LER and administrative costs of negotiations, appraisal, mapping, title search, and processing the Non-Federal Sponsor's credit package. The real estate cost estimate includes a contingency of 25%. These costs have been included only as a precaution to avoid understating the costs.



### **B-8.0 RELOCATION ASSISTANCE BENEFITS**

This Project does not displace residential, commercial, industrial or habitable structures within the Project boundaries; therefore, the provisions under Title II of Public Law 91-646, as amended, are not applicable.

### **B-9.0 TIMBER/MINERAL/ROW CROP ACTIVITY**

All work is anticipated to occur by invoking the navigational servitude. Mineral rights will not be impacted. There is no timber or row crop activity in the area of the disposal site or within the banks of the Mississippi River where dredging will take place.

### **B-10.0 OYSTER LEASES**

No oyster leases in the immediate area of the disposal sites are evident through a SONRIS search of the State of Louisiana online website. Several locations north and two small locations east show leases, but these are well outside of the disposal site boundary.

### **B-11.0 PROJECT SPONSOR/NFS CAPABILITY ASSESSMENT**

The Non-Federal Sponsor (NFS) is responsible for providing an authorization for entry for all areas not subject to the navigational servitude. In the event that the NFS has to perform any acquisitions of private LERRD's, the sponsor will be advised of the Uniform Relocations Act requirements and Federal requirements for documenting expenses for credit. Prior to the final REP and final Feasibility Report, the NFS's capability assessment will be completed and added to this report as an Exhibit.

### **B-12.0 ZONING IN LIEU OF ACQUISITION**

Zoning ordinances will not be enacted to facilitate the acquisition of real estate interests in connection with the Project.

### **B-13.0 ACQUISITION SCHEDULE**

This schedule assumes dredging and disposal can be accomplished by invoking the navigational servitude. If it becomes necessary for the NFS to acquire real estate interests from private landowners, the NFS will need approximately two years to complete acquisition.

Obtain mapping	1 month
Issuance of Authorization for Entry by NFS	1 month



#### **B-14.0 FACILITY/UTILITY RELOCATIONS**

Preliminary in-house database research suggests approximately 50 - 70 pipelines may be located within the dredging areas along the Mississippi River (River Mile 233.40 to 110.6). At this time, it is unknown how many of these pipelines would need to be relocated due to the project.

Since 1995, utilities are required to go 25 feet below the deepest depth of 45 foot channel. New permits will require placement 25 feet below 55 foot depth. Due to O & M dredging cycles, some pipelines were removed on previous phases. Crossings in the Upper Mississippi River will be further investigated for pipeline locations during feasibility. Project costs include an estimated cost of relocations of \$40,000,000.

#### **B-15.0 ENVIRONMENTAL CONSIDERATIONS**

There is a low risk of saltwater intrusion due to small potential changes in depths and limited impacts to saltwater sill activation. Also, there is a low risk of relative sea level rise impacts. Probability of encountering Hazardous, Toxic and Radioactive Waste (HTRW) is low.

#### **B-16.0 LANDOWNER CONCERNS**

All work is anticipated to be performed in areas subject to the navigational servitude. Therefore, there are no landowner concerns. We anticipate broad public interest in the study from a range of stakeholders including maritime businesses, local communities and environmental groups.

#### **B-17.0 NON-FEDERAL SPONSOR NOTIFICATION OF RISKS**

It is anticipated that the Non-Federal Sponsor may not have to acquire any LERRDs; therefore, a notification of risks is not necessary.

#### **B-18.0 OTHER RELEVANT REAL ESTATE ISSUES**

The Project Checklist is attached to the REP as Exhibit A.



PREPARED BY:

A handwritten signature in blue ink that reads "Pamela M. Fischer".

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Pamela M. Fischer  
Realty Specialist

REVIEWED AND RECOMMENDED BY:

A handwritten signature in blue ink that reads "Judith Y. Gutierrez".

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Judith Y. Gutierrez  
Deputy Chief, Real Estate Division New Orleans

November 18, 2016



EXHIBIT A

**Quality Control Plan Checklist**

**Real Estate Plans**

**And other similar Feasibility-Level Real Estate Planning Documents**

**ER 405-1-12, Section 12-16, Real Estate Handbook, 1 May 1998**

A Real Estate Plan (REP) is prepared in support of a decision document for full-Federal or cost shared specifically authorized or continuing authority projects. It identifies and describes lands, easements and rights-of-way (LER) required for the construction, operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) of a proposed project including requirements for mitigation, relocations, borrow material, and dredged or excavated material disposal. It also identifies and describes facility/utility relocations, LER value, and the acquisition process. The REP does not just cover LER to be acquired by the non-Federal sponsor (NFS) or Government. The report covers all LER needed for the project, including LER already owned by the NFS, Federal Government, other public entities, or subject to the navigation servitude.

The REP must contain a detailed discussion of the following 20 topics, as set out in Section 12-16 of the ER, including sufficient description of the rationale supporting each conclusion presented. If a topic is not applicable to the project, this should be stated in the REP. The pages of a REP should be numbered.

MISSISSIPPI RIVER SHIP CHANNEL, Gulf to Baton Rouge, LA  
**PROJECT** \_\_\_\_\_

General Reevaluation Report  
**REPORT TITLE** \_\_\_\_\_

November 2016  
**Date of Report** \_\_\_\_\_ **Date of REP** \_\_\_\_\_  
November 18, 2016

1. **Purpose of the REP.**   √  

- a. Describe the purpose of the REP in relation to the project document that it supports.
- b. Describe the project for the Real Estate reviewer.
- c. Describe any previous REPs for the project.



2. **Describe LER.**   √  

- a. Account for all lands, easements, and rights-of-way underlying and required for the construction, OMRR&R of the project, including mitigation, relocations, borrow material and dredged or excavated material disposal, whether or not it will need to be acquired or will be credited to the NFS.
- b. Provide description of total LER required for each project purpose and feature.
- c. Include LER already owned by the Government, the NFS and within the navigation servitude.
- d. Show acreage, estates, number of tracts and ownerships, and estimated value.
- e. Break down total acreage into fee and the various types and durations of easements.
- f. Break down acreage by Government, NFS, other public entity, and private ownership, and lands within the navigation servitude.

3. **NFS-Owned LER.**   √  

- a. Describe NFS-owned acreage and interest and whether or not it is sufficient and available for project requirements.
- b. Discuss any crediting issues and describe NFS views on such issues.

4. **Include any proposed Non-Standard Estates.**   √  

- a. Use Standard Estates where possible.
- b. Non-standard estates must be approved by HQ to assure they meet DOJ standards for use in condemnations.
- c. Provide justification for use of the proposed non-standard estates.
- d. Request approval of the non-standard estates as part of document approval.
- e. If the document is to be approved at MSC level, the District must seek approval of the non-standard estate by separate request to HQ. This should be stated in the REP.
- f. Exception to HQ approval is District Chiefs of RE approval of non-standard estate if it serves intended project purposed, substantially conforms with and does not materially deviate from the standard estates found in the RE Handbook, and does not increase cost or potential liability



to the Government. A copy of this approval should be included in the REP. (See Section 12-10c. of RE 405-1-12)

g. Although estates are discussed generally in topic 2, it is a good idea to also state in this section which standard estates are to be acquired and attach a copy as an appendix. The duration of any temporary estates should be stated.

5. **Existing Federal Projects.**   √  

a. Discuss whether there is any existing Federal project that lies fully or partially within LER required for the project.

b. Describe the existing project, all previously-provided interests that are to be included in the current project, and identify the sponsor.

c. Interest in land provided as an item of local cooperation for a previous Federal project is not eligible for credit.

d. Additional interest in the same land is eligible for credit.

6. **Federally-Owned Lands**   √  

a. Discuss whether there is any Federally-owned land included within the LER required for the project.

b. Describe the acreage and interest owned by the Government.

c. Provide description of the views of the local agency representatives toward use of the land for the project and issues raised by the requirement for this land.

7. **Navigation Servitude.**   √  

a. Identify LER required for the project that lies below the Ordinary High Water Mark, or Mean High Water Mark, as the case may be, of a navigable watercourse.

b. Discuss whether navigation servitude is available

c. Will it be exercised for project purposes? Discuss why or why not.

d. Lands over which the navigation servitude is exercised are not to be acquired nor eligible for credit for a Federal navigation or flood control project or other project to which a navigation nexus can be shown.



e. See paragraph 12-7 of ER 405-1-12.

8. **Map**

a. An aid to understanding

b. Clearly depicting project area and tracts required, including existing LER, LER to be acquired, and lands within the navigation servitude.

c. Depicts significant utilities and facilities to be relocated, any known or potential HTRW lands.

9. **Induced Flooding** can create a requirement for real estate acquisition.

a. Discuss whether there will be flooding induced by the construction and OMRR&R of the project.

b. If reasonably anticipated, describe nature, extent and whether additional acquisition of LER must or should occur.

c. Physical Takings Analysis (separate from the REP) must be done if significant induced flooding anticipated considering depth, frequency, duration, and extent of induced flooding.

d. Summarize findings of Takings Analysis in REP. Does it rise to the level of a taking for which just compensation is owed?

10. **Baseline Cost Estimate** as described in paragraph 12-18.

a. Provides information for the project cost estimates.

b. Gross Appraisal includes the fair market value of all lands required for project construction and OMRR&R.

c. PL 91-646 costs

d. Incidental acquisition costs

e. Incremental real estate costs discussed/supported.

f. Is Gross Appraisal current? Does Gross Appraisal need to be updated due to changes in project LER requirements or time since report was prepared?



11. **Relocation Assistance Benefits** Anticipated.   √  

- a. Number of persons, farms, and businesses to be displaced and estimated cost of moving and reestablishment.
- b. Availability of replacement housing for owners/tenants
- c. Need for Last Resort Housing benefits
- d. Real Estate closing costs
- e. See current 49 CFR Part 24

12. **Mineral Activity.**   √  

- a. Description of present or anticipated mineral activity in vicinity that may affect construction, OMRR&R of project.
- b. Recommendation, including rationale, regarding acquisition of mineral rights or interest, including oil or gas.
- c. Discuss other surface or subsurface interests/timber harvesting activity
- d. Discuss effect of outstanding 3<sup>rd</sup> party mineral interests.
- e. Does estate properly address mineral rights in relation to the project?

13. **Oyster Leases**

14. **NFS Assessment** This section will be completed and added for the final REP

- a. Assessment of legal and professional capability and experience to acquire and provide LER for construction, OMRR&R of the Project.
- b. Condemnation authority
- c. Quick-take capability
- d. NFS advised of URA requirements
- e. NFS advised of requirements for documenting expenses for credit.



f. If proposed that Government will acquire project LER on behalf of NFS, fully explain the reasons for the Government performing work.

g. A copy of the signed and dated Assessment of Non-Federal Sponsor's Real Estate Acquisition Capability (Appendix 12-E) is attached to the REP.

15. **Zoning** in Lieu of Acquisition   √  

a. Discuss type and intended purpose

b. Determine whether the proposed zoning proposal would amount to a taking for which compensation will be due.

16. **Schedule**   √  

a. Reasonable and detailed Schedule of land acquisition milestones, including LER certification.

b. Dates mutually agreed upon by Real Estate, PM, and NFS. \_\_\_\_\_

17. **Facility or Utility Relocations**   √  

a. Describe the relocations, identity of owners, purpose of facilities/utilities, whether owners have compensable real property interest.

b. A synopsis of the findings of the Preliminary Attorney's Investigation and Report of Compensable Interest is included in the REP as well as statements required by Sections 12-17c.(5) and (6).

c. Erroneous determinations can affect the accuracy of the project cost estimate and can confuse Congressional authorization.

d. Eligibility for substitute facility

1. Project impact

2. Compensable interest

3. Public utility or facility

4. Duty to replace



5. Fair market value too difficult to determine or its application would result in an injustice to the landowner or the public.

e. See Sections 12-8, 12-17, and 12-22 of ER 405-1-12.

18. **HTRW** and Other Environmental Considerations

a. Discussion the impacts on the Real Estate acquisition process and LER value estimate due to known or suspected presence of contaminants.

b. Status of District's investigation of contaminants.

c. Are contaminants regulated under CERCLA, other statues, or State law?

d. Is clean-up or other response required of non-CERCLA regulated material?

e. If cost share, who is responsible for performing and paying cost of work?

f. Status of NEPA and NHPA compliances

g. See ER 1165-2-132, Hazardous, Toxic, and Radioactive Waste (HTRW) Guidance for Civil Works Projects.

19. **Landowner Attitude.**

a. Is there support, apathy, or opposition toward the project?

b. Discuss any landowner concerns on issues such as condemnation, willing seller provisions, estates, acreages, etc.?

20. A statement that the **NFS has been notified in writing about the risks of acquiring LER before the execution of the PPA.** If not applicable, so state.

21. **Other Relevant Real Estate Issues.** Anything material to the understanding of the RE aspects of the project.

A copy of the completed Checklist is attached to the REP.

(Draft REPs must contain a draft checklist and draft Technical Review Guide)



**I have prepared and thoroughly reviewed the REP and all information, as required by Section 12-16 of ER 405-1-12, is contained in the Plan.**

*Parvula Frail*

November 18, 2016

\_\_\_\_\_  
Preparer

\_\_\_\_\_  
Date

**A copy of the Real Estate Internal Technical Review Guide for Civil Works Decision Documents is attached and signed by me as the Reviewer**

*Judith y. Gutierrez*

November 18, 2016

\_\_\_\_\_  
RE Internal Technical Reviewer

\_\_\_\_\_  
Date

**The REP has been signed and dated by the Preparer and the District Chief of Real Estate.**

\_\_\_\_\_  
√