

# Appendix A

## Real Estate Plan

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## **Real Estate Plan Appendix A**

### **1. PURPOSE**

The Upper Mississippi River Restoration – Environmental Management Program was authorized by Congress in Section 1103 of the Water Resources Development Act of 1986 (Public Law 99-662), as amended. The authority for this Definite Project Report is provided by the 1985 Supplemental Appropriations Act (Public Law 99-88) and Section 1103 of the Water Resources Development Act of 1986 (Public Law 99-662), as amended.

The Upper Mississippi River system is a vital part of this nation’s ecology. Continued deterioration of this ecology threatens the long-term stability of important fish and wildlife resources.

This Real Estate Plan has been prepared, in accordance with ER 405-1-12, to present the real estate requirements and support the Clarence Cannon National Wildlife Refuge (NWR), Upper Mississippi River Restoration – Environmental Management Program Habitat Rehabilitation and Enhancement Project Definite Project Report with Integrated Environmental Assessment and Appendices, Pike County, Missouri. Information contained in this report is based on preliminary data and is subject to change.

### **2. DESCRIPTION OF LANDS, EASEMENTS, AND RIGHTS-OF-WAY (LER)**

The Clarence Cannon NWR project area is located along the right descending bank of the Mississippi River, adjacent to the town of Annada in Pike County, Missouri. The refuge lies in Pool 25 between Upper Mississippi River Miles (RM) 261.1 and 263.8, approximately 70 miles northwest of St. Louis. Approximately 3,750 acres are included within the project area, which consists of wetlands, mudflats, bottomland forests, backwater lakes, and sloughs, and agricultural fields. The wetland and aquatic habitats within the project area have been degraded due to lack of hydrological connection with river and inability to mimic historic water regimes within the project area.

This restoration project would reduce the trend of habitat degradation by improving hydrology within the project area. This will be accomplished by restoring connectivity to the Mississippi river through constructing a new section of berm setback, restoration of historic meanders, new interior managements units within the project area, reforestation and a new diesel pump station to assist in water level manipulation.

All required LER for this project is owned by the U.S. Fish and Wildlife Service (USFWS). Acquisition of privately owned LER is not required.

### **3. LERRD OWNED BY THE NON-FEDERAL SPONSOR**

This project is 100% federally funded (per Section 906(e) of WRDA 1986) because it is located within a National Wildlife Refuge. Therefore, there is no non-federal sponsor for this project. A Memorandum of Agreement (MOA) will be executed between the USFWS before implementation of the project, and is

used in lieu of a separate List of Items of Cooperation normally used in specifically authorized and cost-shared projects.

#### **4. NON-STANDARD ESTATES DISCUSSION**

There are no non-standard estates proposed for this project.

#### **5. EXISTING FEDERAL PROJECT WITHIN THE LERRD REQUIRED FOR THE PROJECT**

- a. The Clarence Cannon NWR is an existing federal project that lies fully within the LER required for this project.
- b. The USFWS-owned area of Clarence Cannon NWR was established in 1964 with funds from the purchase of migratory waterfowl stamps. The USFWS is the project partner for the proposed project.
- c. The land provided is not eligible for credit as a fee title interest in the land was acquired using Federal funds.

#### **6. FEDERALLY OWNED LAND REQUIRED FOR THE PROJECT**

All lands required for this project are located on Federally-owned property.

#### **7. NAVIGATIONAL SERVITUDE**

Navigational Servitude allows acquisition of shore lands extending to the ordinary high-water mark thereof and may be exercised under statutory rights and powers without obligation for compensation to the riparian landowners. Navigational Servitude will not be exercised for this project.

#### **8. MAPS**

A map depicting the area and project features is included as Exhibit A.

#### **9. INDUCED FLOODING**

Construction and OMRR&R of the project will not cause induced flooding outside of the project area.

#### **10. BASELINE COST ESTIMATE**

A baseline cost estimate for LERRDS has not been completed for this project because all lands provided for this project are owned by the USFWS and will be provided as specified in a MOA. Credit for LERRDS will not be afforded to the USFWS as is typically done with a non-federal sponsor.

#### **11. RELOCATION ASSISTANCE BENEFITS**

There are no residents eligible for relocation benefits associated with this project because there are no residences within the project area. There are no structures in the vicinity of the proposed project other than USFWS structures.

**12. MINERAL ACTIVITY/TIMBER HARVESTING IN PROJECT AREA**

No mineral activity is known to exist in the area of this project. No timber harvesting is anticipated within the project area.

**13. SPONSOR ASSESSMENT**

There is not a non-federal sponsor for this project. USFWS is USACE's project partner for this project, and the MOA formally establishes the relationships and responsibilities of the project partners.

**14. ZONING ORDINANCES PROPOSED**

There will be no zoning ordinances enacted to facilitate acquisition of land for the project. Pike County, Missouri has no planning and zoning laws or ordinances.

**15. SCHEDULE**

There are no scheduled acquisition milestones since all right-of-way required for the project will be provided by the USFWS.

**16. FACILITY OR UTILITY RELOCATION**

No utility facility or utility relocations are necessary as a result of this project.

**17. HTRW OR OTHER ENVIRONMENTAL CONSIDERATIONS**

No known contaminants exist within the project area. A Phase I environmental assessment will be completed once flooding recedes in the project area.

**18. LANDOWNER ATTITUDE**

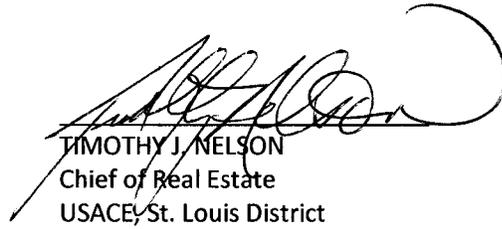
There is no known opposition to this project. The community views this project very positively and fully supports this environmental asset.

**19. NOTIFICATION TO THE NON-FEDERAL SPONSOR REGARDING THE RISKS ASSOCIATED WITH ACQUIRING LAND BEFORE EXECUTION OF THE PROJECT PARTNERSHIP AGREEMENT (PPA)**

Not applicable because there is no non-federal sponsor and the project partner owns the entire project area in fee title.

**20. OTHER REAL ESTATE ISSUES RELEVANT TO THE PROJECT**

None are known to exist.



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Draft Definite Project Report with Integrated Environmental Assessment  
 Clarence Cannon National Wildlife Refuge HREP

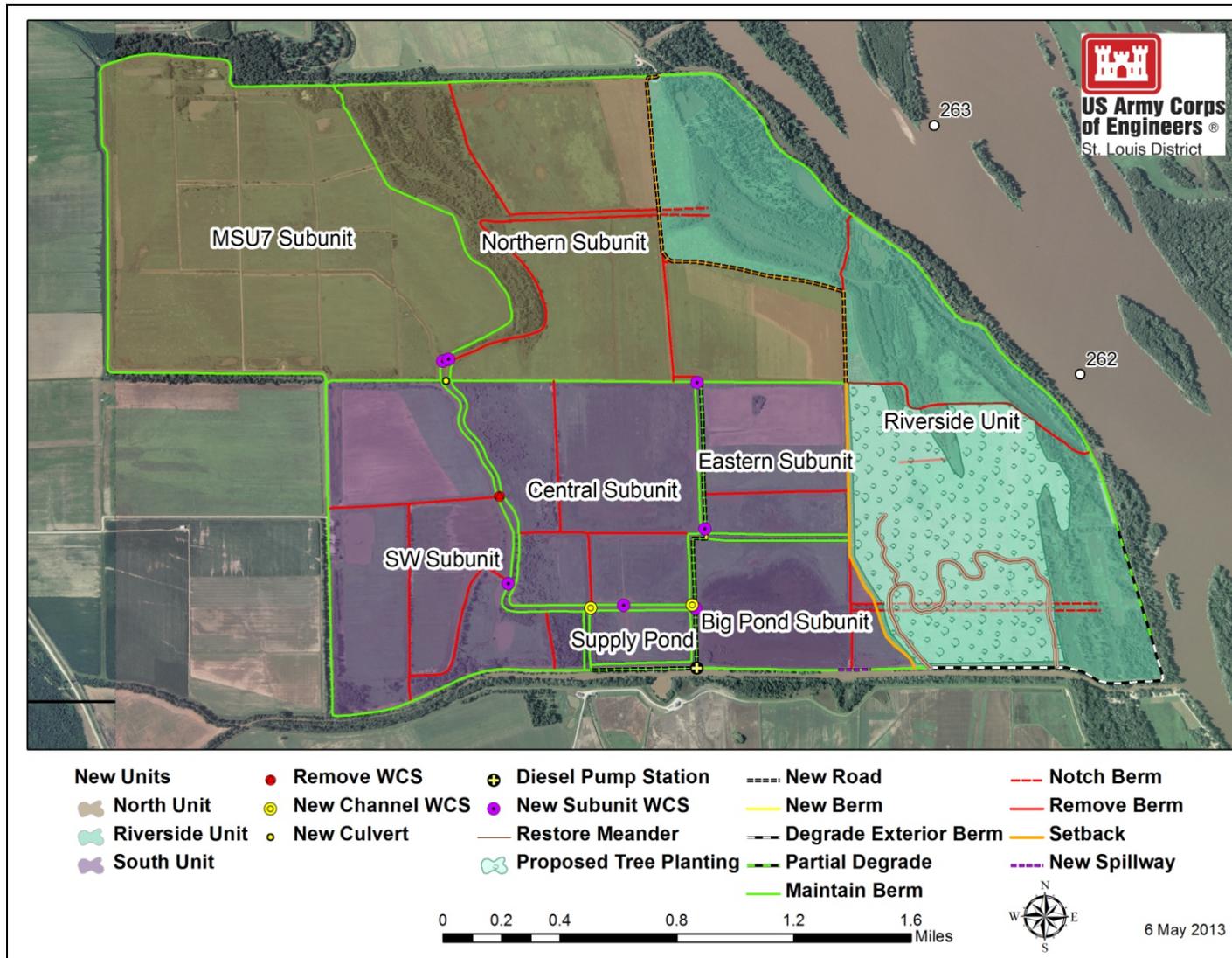


Exhibit A. Location of features for the Tentatively Selected Plan for Clarence Cannon National Wildlife Refuge HREP.

# 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.

### **PROJECT: Clarence Cannon National Wildlife Refuge HREP**

**REPORT TITLE:** Draft Definite Project Report with Integrated Environmental Assessment

**Date of Report:** May 2013

**Date of REP:** May 31, 2013

**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. **NFS Assessment**

- 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.

14. **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.

15. **Schedule**

- a. Reasonable and detailed Schedule of land acquisition milestones, including LER certification.
- b. Dates mutually agreed upon by Real Estate, PM, and NFS. \_\_\_\_\_

16. **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.

17. **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.

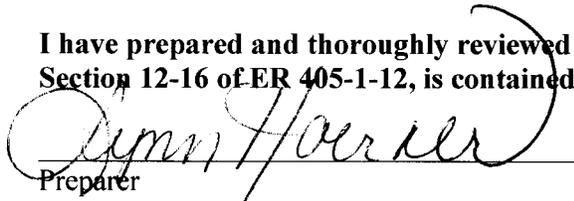
18. **Landowner Attitude.**          
a. Is there support, apathy, or opposition toward the project?  
b. Discuss any landowner concerns on issues such as condemnation, willing seller provisions, estates, acreages, etc.?

19. 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.        

20. **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.**

  
Preparer

5/31/13  
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**

  
RE Internal Technical Reviewer

6/5/13  
Date

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

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