

APPENDIX N
REAL ESTATE PLAN

*Feasibility Report with Integrated Environmental Assessment
Rip Rap Landing HREP*

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Real Estate Plan

Upper Mississippi River Restoration

**RIP RAP LANDING
HABITAT REHABILITATION AND ENHANCEMENT PROJECT
Pool 25
Calhoun County, Illinois**

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1. PURPOSE

The Water Resources Development Act of 1986, as amended, authorizes the Rip Rap Landing Project as part of the Upper Mississippi River Restoration program.

The Upper Mississippi River system is a vital part of this nation's ecology. The Rip Rap Landing project area consists of a series of backwater lakes, sloughs, wetlands, and floodplain and bottomland forest. Backwater habitats within the project area have been degraded due to sedimentation and lack of hydrological connection. Continued deterioration of this ecology threatens the long-term stability of important fish and wildlife resources.

This Real Estate Plan (REP) has been prepared, in accordance with ER 405-1-12, to present the real estate requirements and support the Rip Rap Landing Feasibility Report. Information contained in this report is based on preliminary data and is subject to change.

2. DESCRIPTION OF LANDS, EASEMENT, AND RIGHT-OF-WAY (LER)

a. Description of Lands, Easements and Rights-of-Way (LER) required for the construction, operation and maintenance of the project

This project is located within the Rip Rap Landing Conservation Area, located in Calhoun County, Illinois along the left descending bank of the Mississippi River between river miles 267 and 260.5 in Pool 25. The project area contains a total of 2,338 acres, 2,055 acres of which are owned by the State of Illinois and managed by the Illinois Department of Natural Resources (IDNR). Of the 2,055 acres owned by the IDNR, 793 acres are encumbered by a Wetlands Reserve Program (WRP) easement. This project is in compliance with the Natural Resource Conservation Service's Wetlands Reserve Program. 1,618 acres within the project area are required for the construction, operation, maintenance, rehabilitation and replacement of the project. Although 1,618 acres are considered creditable for the non-federal sponsor, not all lands necessary for the project are valued the same. For example, those lands encumbered with a permanent WRP easement are valued as encumbered.

The remaining 283 acres, known as Dog Island, are owned by the United States. Dog Island is managed under a Cooperative Agreement originating on 21 January 1954 between the Department of the Interior, U.S. Fish and Wildlife Service (USFWS), and the U.S. Army Corps of Engineers (Corps). The USFWS and IDNR then executed a subsequent Cooperative Agreement conveying management responsibility of Dog Island to IDNR.

b. Total LER required for each project purpose and feature

The project area is divided into five separate zones for organizational purposes. Land in zones 1-4 are owned by the IDNR. Land in zone 5 is owned by the Corps.

Zone 1: A ditch will be created in order to improve hydrologic connectivity. In addition, a water control structure will be constructed to improve water management capability within this zone. In order to supplement water level management throughout the project area, a new well will be installed. Finally, floodplain forest will be planted throughout 63 acres of zone 1.

Zone 3: A new, larger pump will be installed to help increase the functionality of isolated backwater habitat by improving water management capability. In addition, water conveyance ditches in this area will be widened and new larger water control structures will be installed increasing connectivity. Finally, trees will be planted throughout 37 acres of zone 3.

Zone 4: Sny Creek will be dredged to Roadside Lake. Dredged material will be placed both on the existing bench along Sny Creek as well as in the river. In addition to the pump from Zone 3, a spillway will be constructed which is designed to protect the water control structure from erosion during high water events. A water control structure will also be constructed between Roadside Lake and Sny Creek. All these features are designed to restore the hydrologic connection to backwater lakes and improve water management capability.

Zone 5: The only project feature proposed in zone 5 is the dredging of Sny Creek to the Mississippi River to fully restore connectivity to backwater area. Dredged material will be placed both on the existing bench along Sny Creek as well as in the river.

c. Estates to be acquired.

Where project features exist, either the NFS or the Federal Government owns the right-of-way (ROW) required. Therefore, no additional acquisition is required for project features. However, a temporary work area easement is necessary for dredge material transport.

Because dredged material will be transported via a temporary road on the existing bench/berm, a 2.1-acre temporary road easement will be required from one private landowner since a portion of the berm is on privately owned land. Therefore, there is one estate proposed for use in this project.

Temporary Road Easement (standard estate)

A temporary easement and right-of-way in, on, over and across (the land described in Schedule A)(Tract No. ___) for a period not to exceed two (2) years, beginning with the date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors for the location, construction, operation, maintenance, alteration and replacement of a road and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; (reserving, however, to the owners, their heirs and assigns, the right to cross over or under the right-of-way as access to their adjoining land at the locations indicated in Schedule B); subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

3. LERRD OWNED BY THE NON-FEDERAL SPONSOR

The Illinois Department of Natural Resources owns 2,055 acres of land within the project area, 1,618 of which will be used or impacted by the project.

4. NON-STANDARD ESTATES DISCUSSION

There are no non-standard estates required.

5. EXISTING FEDERAL PROJECTS WITHIN THE LERRD REQUIRED FOR THE PROJECT

The Mississippi River 9-foot navigation channel is within the LERRD required for the project. In 1939, the land currently known as the Dog Island complex was acquired in fee title for the Mississippi River 9-foot navigation channel project. At the time of acquisition, the Dog Island complex consisted of two tracts; tract C-277 and tract C-278 (see Exhibit A-1). Tract C-277 was an island in the Mississippi River known as Dog Island consisting of approximately 16.04 acres. Tract C-278 consisted of four unnamed islands in the Mississippi River totaling approximately 208.46 acres. Since the acquisition of the islands in 1939, accretion has occurred, increasing the size of the Dog Island complex to approximately 283 acres at normal pool.

6. FEDERALLY OWNED LAND REQUIRED FOR THE PROJECT

The 283 acre Dog Island complex is the only Federally-owned land required for the project. There is no other Federally-owned land in the vicinity of the project.

7. NAVIGATION SERVITUDE

Navigation 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. It is not anticipated that Navigation Servitude will be exercised for this project.

8. MAPS

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

9. INDUCED FLOODING

Rip Rap Landing is located within the Mississippi River floodplain. The Rip Rap Landing project features are designed to modify existing flow and drainage patterns in order to better approximate the patterns that used to naturally occur benefitting habitat in the area. Any locations within the project area that experience increased water levels as a result of the project are currently owned in fee by the non-federal sponsor and will be provided for use in conjunction with the project. These lands will be addressed in the Project Partnership Agreement (PPA).

In addition, this project will not cause induced flooding outside of the project area.

10. BASELINE COST ESTIMATE

The original gross appraisal has an effective date of valuation of November 1, 2011. An Addendum to that appraisal evaluating 1,618 acres was performed with a date of value of August 23, 2013. Cost estimate table 10.1 is provided below.

| Table 10.1 | Land Area | Federal Costs | NFS Costs | Total |
|--------------------------------|------------------|----------------------|------------------------------|--------------------|
| Property Acquisitions | | - | | |
| Temporary Road Easement | 2.1 acres | | \$1,050 | |
| Fee Acquisition | 1,618 acres | | <u>\$2,477,600</u> | |
| Total Property | 1620.1 acres | | \$2,478,650 | |
| Incremental Costs (15%) | | | \$371,850 | |
| Sub-Total | | | | \$3,851,900 |
| Administrative Expenses | | \$10,000 | \$25,000 | \$35,000 |
| Total | | \$10,000 | \$2,875,500 | \$2,885,500 |
| Total Federal/NFS Costs | | | \$2,886,000 (rounded) | |

11. RELOCATION ASSISTANCE BENEFITS

There are no relocations associated with this project.

12. MINERAL ACTIVITY/TIMBER HARVESTING IN PROJECT AREA

No mineral activity is known to exist within the project area.

13. NON-FEDERAL SPONSOR ASSESSMENT

The Non-Federal Sponsor is assessed to be fully capable to perform all acquisition activities associated with this project. The Sponsor has the capability to acquire and hold real estate as well as the ability to contract for real estate services to supplement its staff in order to meet project schedules.

The Assessment of the Non-Federal Sponsor's Real Estate Acquisition Capabilities is attached as Exhibit C.

14. ZONING IN LIEU OF ACQUISITION

There will be no zoning ordinances enacted to facilitate acquisition of land for the project.

15. SCHEDULE

A detailed schedule will be developed when the final ROW is determined. Normally, an estimate of one year is allowed to acquire ROW for a project. However, because a temporary construction easement is the only acquisition proposed for this project, it is anticipated that acquisition can be completed more quickly than the typical one year time-frame.

16. FACILITY OR UTILITY RELOCATION

There are no utility relocations proposed as a result of this project.

17. HTRW AND OTHER ENVIRONMENTAL CONSIDERATIONS

No known contaminants exist within the project area.

18. LANDOWNER ATTITUDE

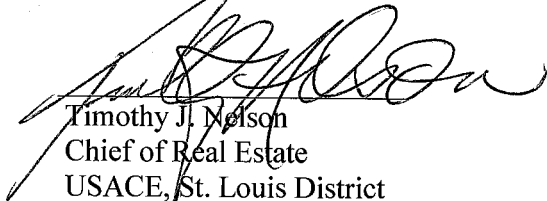
There is no known opposition to this project. The community views this project very positively and fully supports this environmental asset.

19. NOTIFICATION TO THE NFS REGARDING THE RISKS ASSOCIATED WITH ACQUIRING LAND BEFORE EXECUTION OF THE PROJECT PARTNERSHIP AGREEMENT

As project right-of-way is finalized, the non-federal sponsor will be issued a risk letter explaining the risk of acquiring lands prior to the execution of the PPA and advised to wait on coordination of the acquisition plan and notice to proceed with acquisition.

20. OTHER REAL ESTATE ISSUES RELEVANT TO THE PROJECT

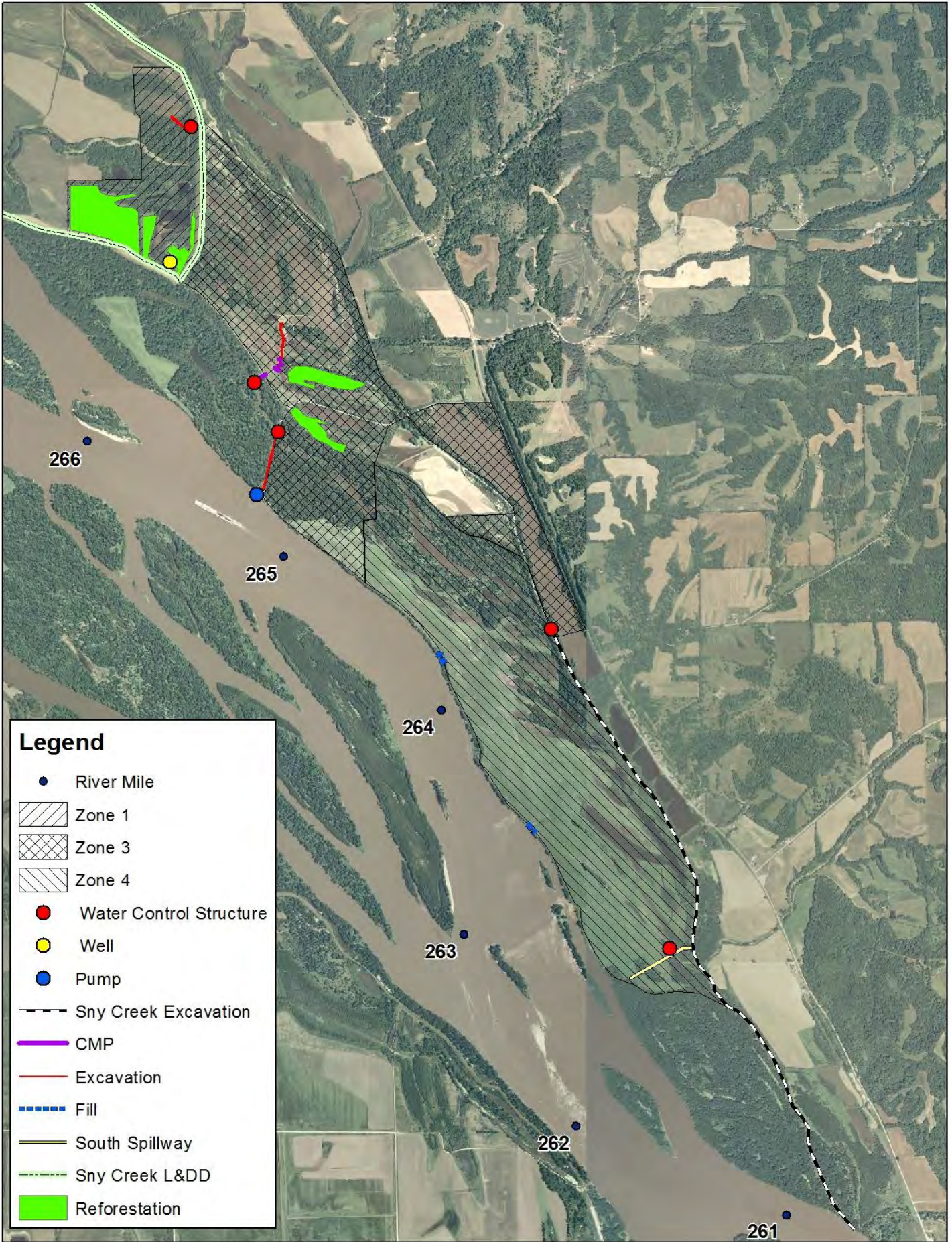
There are no other known real estate issues relevant to the project.



Timothy J. Nelson
Chief of Real Estate
USACE, St. Louis District

Prepared by:
Real Estate Plan – Lynn Hoerner, Realty Specialist
Cost Estimate – Doug Nelson, Appraiser
Bonnie Tanamor, Appraiser Trainee

Exhibit A



Legend

- River Mile
- ▨ Zone 1
- ▩ Zone 3
- ▧ Zone 4
- Water Control Structure
- Well
- Pump
- - - - - Sny Creek Excavation
- CMP
- Excavation
- Fill
- South Spillway
- Sny Creek L&DD
- Reforestation

Exhibit B
Quality Control Checklist

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: RIP-RAP LANDING, HABITAT REHABILITATION AND ENHANCEMENT PROJECT

REPORT TITLE: UPPER MISSISSIPPI RIVER RESTORATION FEASIBILITY REPORT, RIP RAP LANDING HABITAT REHABILITATION AND ENHANCEMENT PROJECT

Date of Report _____ **Date of REP: November 7, 2011**

1. **Purpose of the REP.** X _____

- 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.** X

- 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.** X

- 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.** N/A

- 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.** X

- a. Discuss whether there is any existing Federal project that lies fully of 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** X

- 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.** X

- 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** X

- 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. X

- 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. X

- 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. X

- 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.** X

- 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 3rd party mineral interests.
- e. Does estate properly address mineral rights in relation to the project?

13. NFS Assessment X

- 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 X

- 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 X

- 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 X

- 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** X
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.** X
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. X

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

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

 4-17-12
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

 7/17/12
Date

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

Exhibit C
Sponsor Capability Checklist

**ASSESSMENT OF NON-FEDERAL SPONSOR'S
REAL ESTATE CAPABILITY**

Legal Authority:

Does the sponsor have legal authority to acquire and hold title to real property for project purposes?

Yes

Does the sponsor have the power of eminent domain for this project?

The sponsor does not have specific power to use eminent domain on this project (requires signoff from Governor). Recently there has been no will to exercise eminent domain on any IDNR projects. If eminent domain is necessary, COE would have to use it at the FED level.

Does the sponsor have "quick-take" authority for this project?

No

Are any of the lands/interests in land required for the project located outside the sponsor's political boundary?

Project land already owned by the Federal Government would be outside of the sponsor's political boundary and would not be subject to eminent domain.

Human Resource Requirements:

Will the sponsor's in-house staff require training to become familiar with the real estate requirements of the Federal project including P.L. 91-646, as amended?

No. The sponsor has a well trained, fully capable staff for real estate acquisition.

If the answer to II.a. is "yes has a reasonable plan been developed to provided such training?

N.A.

Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project?

Yes

Is the sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule?

Yes

Can the sponsor obtain contractor support, if required in a timely fashion?

No. Due to the financial condition of the State of Illinois, contractor support is not currently being utilized.

Will the sponsor likely request USACE assistance in acquiring real estate?

Conditionally yes.

Other Project Variables

Will the sponsor's staff be located within reasonable proximity to the project site?

Yes. The Illinois real estate staff is located approximately 90 miles away.

Has the sponsor approved project/real estate schedule/milestones?

No milestones have been developed for the project at this time.

Overall Assessment

Has the sponsor performed satisfactorily on other USACE projects?

Yes

With regard to this project, the sponsor is anticipated to be fully capable.

Yes. The sponsor is considered fully capable of successfully complying with all real estate requirements.

Coordination:

Has this assessment been coordinated with the sponsor?

Yes. It was coordinated with Pat Brannan from the Illinois Department of Natural Resources, Office of Realty Division.

Does the sponsor concur with this assessment?

Yes.