

**REAL ESTATE PLAN**

**Final Integrated General Reevaluation Report and  
Supplemental Environmental Impact Statement**

**Mississippi River, Baton Rouge to the Gulf of Mexico  
Mississippi River-Gulf Outlet,  
Louisiana, New Industrial Canal Lock and Connecting  
Channels Project**

**DECEMBER, 2016**

**ORLEANS PARISH, LOUISIANA**

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## REAL ESTATE PLAN

### **Final Integrated General Reevaluation Report and Supplemental Environmental Impact Statement**

#### **Mississippi River, Baton Rouge to the Gulf of Mexico Mississippi River-Gulf Outlet, Louisiana, New Industrial Canal Lock and Connecting Channels Project**

DATE: December, 2016

#### 1. PROJECT DESCRIPTION AND AUTHORIZATION

The Inner Harbor Navigation Canal (IHNC), located in southeastern Louisiana within the city of New Orleans, connects the Mississippi River with the Gulf Intracoastal Waterway (GIWW) and Mississippi River – Gulf Outlet (MRGO). The IHNC is a major link from the Mississippi River to the GIWW, an inland navigation channel connecting ports along the Gulf of Mexico from Brownsville, Texas to Apalachicola Bay, Florida, for shallow-draft traffic. The MRGO Project was deauthorized by Congress through WRDA 2007, but portions of the channel remain open for recreational vessels. Ships can no longer navigate from the Gulf to the IHNC through this channel.

The existing 640'L x 75'W x 31.5'D lock, completed in 1923, has been dimensionally inadequate to handle traffic since 1970. Due to maintenance issues and small size, the lock is subject to closures and congestion, leading to long delays for waterborne traffic.

The Tentatively Selected Plan (TSP) described in this Real Estate Plan (REP) involves replacing the existing lock with a cast-in-place, shallow-draft, navigation lock, 900 feet long by 110 feet wide by -22 feet North American Vertical Datum 1988 (NAVD88), to be located just north of the current lock. The plan also includes a new, low-level double bascule bridge and a temporary single-bascule bypass bridge at St. Claude Avenue, bypass channels around the new lock construction site and around the existing lock during demolition, cofferdam at new lock location, disposal of dredged material suitable for aquatic disposal into the Mississippi River via a pipeline, disposal of contaminated material in a commercial industrial landfill, in-kind replacement of flood risk reduction measures along the banks of the IHNC and staging areas located within the IHNC right of way. After construction is completed, the bypass channels will be backfilled with material that will be acquired from a commercially available source. A Community Impact Mitigation Plan will be reevaluated and implemented to compensate for impacts of the project to the surrounding communities.

This REP is submitted to outline real estate interests required for the access to and construction of the proposed project. The information contained herein is for planning purposes while the Project Delivery Team (PDT) moves from the TSP milestone and into feasibility level analysis. Once the feasibility level analysis is complete and the Agency Decision Milestone is reached, the REP may be revised to augment the information contained herein and more adequately conform to Chapter 12 (ER 405-1-12) requirements. This REP will be an Appendix to the final Feasibility Report.

A previous Real Estate Plan was prepared as part of an Evaluation Report and Environmental Impact Statement for the project: Mississippi River – Gulf Outlet New Lock and Connecting Channels Evaluation Report – Real Estate Supplement, Volume 8 of 9, appendix F, March, 1997. Real estate acquisitions based on the approved design took place between 2000 and 2002.

A reevaluation study of the lock replacement was required due to changes in the scope in existing conditions including navigation traffic, forecast methodology, commodity movements and transportation costs. Also, MRGO was closed in 2009, eliminating the need for a deep draft connection.

#### Project Authorization

The designated name of the project is the “Mississippi River Gulf Outlet, New Lock and Connecting Channels, (Industrial Canal Lock Replacement), North of Claiborne Avenue Site,” located in Orleans Parish, Louisiana.

The replacement of the existing Industrial Canal lock was initially authorized by an Act entitled “Mississippi River—Gulf Outlet—Construction Chapter 112—Public Law 455, An Act to authorize construction of the Mississippi River—Gulf Outlet”, Public Law 86-455 2<sup>nd</sup> Session, approved March 29, 1956 (1956 Act). Among other things, the 1956 Act provided, “. . . That when economically justified by obsolescence of the existing industrial canal lock, or by increased traffic, replacement of the existing lock or an additional lock with suitable connections is hereby approved to be constructed . . . with type, dimensions, and cost estimates to be approved by the Chief of Engineers . . .”

Although, both the 1956 Act and an amendment to that Act by Section 186 of the Water Resources Development Act (WRDA) of 1976 (PL 94-587) contained certain cost-sharing requirements for the construction of the replacement lock, those enactments were overtaken by the cost-sharing modifications contained in Section 844 of the Water Resources Development Act of 1986 (WRDA 1986). Section 844 of WRDA 1986 modified the prior authorization for a lock replacement and stipulated, among other things, that the costs of the lock replacement be allocated between general cargo navigation and inland navigation based upon use patterns determined by USACE. With respect to the costs associated with inland navigation, Section 844 specified that one-half of the costs would be paid from the Inland Waterways Trust Fund and one-half paid from monies appropriated from the General Fund of the U.S. Treasury. Costs allocated to general cargo navigation were directed in the Act to be cost shared in accordance with the provisions of Section 101 of the Act. The Act also provided that the lock and connecting channels shall be in the area of the existing lock or at a site in the vicinity of Violet, Louisiana.

In 1991, the U.S. House of Representatives, Committee on Appropriations drafted the Energy and Water Development Appropriations Bill (Report Number 101-536), which directed the USACE in conjunction with the Port of New Orleans to develop a community impact mitigation plan to ensure the communities adjacent to the project remain as complete, livable neighborhoods during and after project construction. WRDA of 1996 (PL 104-303) amended WRDA of 1986 by requiring the implementation of a comprehensive community impact mitigation plan to address four specified neighborhoods within the vicinity of the IHNC project, as described in the evaluation report of the District Engineer for the New Orleans District dated August 1995. The 1995 Evaluation Report had not been approved by higher USACE authority prior to the Congressional action in WRDA 1996. After enactment of WRDA 1996, the 1995 Evaluation Report was re-visited by the New Orleans District and resulted in the approved 1997 Evaluation Report which contained certain modifications within the Chief of Engineers discretionary authority.

## 2. PROJECT LOCATION AND DESCRIPTION OF THE LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREAS (LERRD'S) REQUIRED FOR THE PROJECT

Located in Orleans Parish, the IHNC is situated between St. Claude and Bywater Historic District neighborhoods to the West and The Lower Ninth Ward and Holy Cross Historic District neighborhoods to the East. These neighborhoods are among the oldest in New Orleans with two being historic districts listed on the National Register of Historic Places. Lake Pontchartrain is north of the IHNC and the project is on the east bank of the Mississippi River. See map below showing the area with the City of New Orleans (Map - Section 8, Figure 1). The existing lock is located north of St. Claude Avenue Bridge and south of Claiborne Avenue Bridge. The proposed new lock location is north of Claiborne Avenue Bridge and south of Florida Avenue Bridge (Map - Section 8, Figure 2).

The majority of the IHNC Project area, approximately 135+/- acres (from levee wall on the west side, waterway (channel), and levee wall on the east side; and from the mouth of the Mississippi River on the south end and the northern most point of the project on the north end – south of Florida Avenue Bridge) is owned in fee by the United States. The St. Claude Avenue and Claiborne Avenue Bridges are within this area also. Please see Exhibit A Map showing real estate that has been acquired by the United States within the IHNC. The channel north of Florida Avenue is encumbered with a perpetual channel easement, 71+/- acres.

The TSP consists of the following features:

### LANDS OWNED IN FEE:

**New cast-in-place, shallow-draft lock, cofferdam and temporary bypass channel** – A bypass channel will be dredged east of the new lock site to reroute marine traffic during construction of the new lock (yellow area of map). A cofferdam will be built around the area of the new lock (red area of map). The new lock will be a 900'L x 110'W x -22'D lock. After construction of the lock, the bypass channels will be backfilled with material from a commercially available source. The material will be stockpiled near the existing IHNC lock and placed as required. The land necessary for this portion of the project was previously acquired in fee by the United States. A small portion of the channel north of the new lock and bypass channel location, near Florida Avenue Bridge was acquired through a perpetual channel right-of way. (Map - Section 8, Figure 3)

**Existing lock area bypass channel, lock demolition and in-kind replacement of flood risk reduction measures** – After the new lock is constructed, a bypass channel (yellow area of map) will be dredged next to the existing (old) lock for marine traffic during and after demolition of the existing lock. After demolition is completed, the bypass channel will be backfilled with material from a commercially available source. Portions of the flood risk reduction levees which are impacted due to construction of this project will be replaced in-kind. (Map - Section 8, Figure 4, Area marked in green). The existing lock area and all right of way needed for this portion of the project was acquired in fee by the United States.

**Access and construction staging areas** – This work is estimated to take place within United States fee-owned lands. These areas will be needed for staging equipment and materials, and worker

parking. Access to the project will be through public streets. There is ample right-of-way owned in fee to accommodate all staging needs.

**Dredging pipeline** – Material suitable for aquatic disposal will be dredged from the canal and transported to be disposed in the Mississippi River via a pipeline. The pipeline will run from the lock/channel site south to the Mississippi River. A small portion of the pipeline will run under the St. Claude Bridge within an area that is part of the street right of way of Sister Street; real estate rights to be obtained are discussed below. Material not suitable for aquatic disposal will be transported to a commercial landfill in another part of the city. There are no real estate acquisitions associated with disposing material in a landfill.

#### CITY/STATE RIGHT-OF-WAYS :

**St. Claude Avenue Bridge:** This Bridge will be replaced to meet U. S. Coast Guard requirements. The new bridge, temporary bridge and staging/construction areas are either within United States owned areas, areas owned by the Port of New Orleans (LA State agency), City of New Orleans lands, Sewerage & Water Board lands, or Department of Public Works street rights of way. (Map – Section 8, Figure 2)

After the existing lock is demolished, a temporary single-bascule bridge will be constructed adjacent to the existing bridge (red area of map) to allow traffic flow during construction. The existing St. Claude Avenue Bridge will be demolished; materials will be disposed in a commercial industrial landfill. The new low-level double bascule bridge will be constructed in the same location. After the new bridge is constructed, the temporary bridge will be removed (Map – Section 8, Figure 4).

The USACE will coordinate with the Port of New Orleans, the City of New Orleans, Sewerage & Water Board, and Department of Public Works to determine the best method to obtain rights to perform this work. The work may be accomplished by obtaining one of the following instruments: a temporary work area easement, a permit, or a grant of particular use. This will be address in more detail in the final REP once discussions have taken place with the aforementioned entities.

Although residents and businesses will be inconvenienced and street access will be blocked temporarily, because no real estate interests are to be acquired from private individuals, they are not entitled to compensation or relocation assistance under the Uniform Relocation Act. However, the Community Mitigation Plan contains provisions to address these issues. Please refer to that document for further information.

**Dredging pipeline** – A small portion of the pipeline carrying dredged material to the Mississippi River will be located outside of the Unites States fee-owned area; it will run along the sidewalk under the St. Claude Bridge approach on the east side of the canal along Sister Street which is owned by the City of New Orleans, Department of Public Works. As stated above, the USACE will coordinate with the City of New Orleans and the Department of Public Works to determine the appropriate method for which to obtain rights to place the pipeline within their right of way. Material will be dredged by a hydraulic dredge and pumped via the pipeline for permanent disposal into the Mississippi River. No acquisition will be needed for disposal into the River.

Design is estimated to take three years starting in 2019. Construction is estimated to take eleven years, starting in 2022.

#### BORROW MATERIAL:

Borrow material will be needed for several project features. At this time Engineering has not determined the borrow quantities. Real Estate regulations (ER 405-1-12, paragraph 12-9d(3)) allow for small quantities of borrow material to be supplied by the construction contractor through the use of readily available commercial sites, if supported by an analysis conducted by the Government and if no other constraints exist. During the feasibility phase, once the quantity of borrow is determined, a borrow analysis will be performed to determine whether the borrow can be obtained from a local commercial source. For this REP the assumption is made that borrow quantities are small and that they can be obtained from a commercial borrow source. If revisions are necessary, those will be incorporated in the final REP.

#### 3. NON-FEDERAL SPONSOR-OWNED LERRD'S – NOT APPLICABLE

There is no Non-Federal Sponsor on this project. It will be 100% federally funded. Cost allocations for this project were set forth in the WRDA of 1986 requiring one-half of the federal cost to be paid from the Inland Waterways Trust Fund and one-half be paid from the general fund of the Treasury (through Corps appropriation monies).

#### 4. STANDARD ESTATES

The only areas of the project which are located outside of U.S. fee-owned land are a small area within City of New Orleans Department of Public Works right of way for Sister Street and a small portion of the temporary bridge which will cross Sewerage & Water Board lands. The USACE will coordinate with the Port of New Orleans, the City of New Orleans, Sewerage & Water Board, and Department of Public Works to determine the best method to obtain rights to perform the work associated with the pipeline and the temporary bridge. The rights may be obtained by use of one of the following methods: temporary work area easement, a permit, or a grant of particular use. This will be address in more detail in the final REP once discussions have taken place with the aforementioned entities.

#### 5. EXISTING FEDERAL PROJECT(S) WITHIN THE PROJECT AREA

Inner Harbor Navigation Canal - The existing lock structure and surrounding lands are owned by the Government. The Lock Replacement area is within and adjacent to the IHNC. The United States (Government) owns 135+/- acres of the subject in fee and holds a Perpetual Channel Easement 71+/- acres. See Maps in Paragraph 8 showing project features and Exhibit A.

Acquired Tract 100 (existing lock), 11.05 acres (fee simple)

Acquired from Port of NO 25OCT2002 Tract 100A, 105.54 acres (116.59 less 11.05 above) (fee simple)

Acquired from Port of NO 10DEC2002 Tract 100B, 61.71 acres (fee simple)

Acquired from Port of NO 10DEC2002 Tract 100C, 2.54 acres (fee simple)

Acquired from Orleans Levee District 15NOV2001 Tract 108, 1.16 acres (fee simple)

Acquired from Orleans Levee District 15NOV2001 Tract 109, 1.13 acres (fee simple)

Acquired from Port of NO 10DEC2002 Tract 105E, 25.80 acres (perp channel improvement easement)

Other Federal Projects within the immediate vicinity of the IHNC Project (see map Paragraph 8, Figure 1):

- IHNC Surge Barrier – Located at the intersection of the IHNC and the Lake Pontchartrain.

- Lake Pontchartrain Hurricane Risk Reduction Project – The LPV levee system ties into the IHNC levees.
- Mississippi River and Tributaries Project – The Mississippi River Levee ties with the existing lock. This project area (levee) is owned by the Orleans Levee District (NFS).
- Mississippi River Gulf Outlet (MRGO) – 17,265.40 acres, channel and disposal area easement
  - WRDA 2007 Section 7013 de-authorized navigation channel portion from Gulf of Mexico to Mile 60 at south bank of GIWW. The IHNC lock and a portion of the MRGO between the IHNC and Michoud Slip remain authorized.
  - The channel was closed by placing a rock weir in vicinity of Bayou La Loutre in 2009
- Intracoastal Waterway Higgins Ship Canal – 93.60 acres in fee, 527.10 acres easement waterways
- Michoud Canal – approximately 101 acres easement
- Intracoastal Waterway Rigolets to Mississippi River – 17,588 acres easement for waterways
- Intracoastal Waterway Algiers Lock and Navigation Channel – 99.60 acres in fee, 888.20 acres in easements (Includes Algiers Lock – 92.30 acres in fee)
- Intracoastal Waterway Harvey Canal No. 1 Hero Cut Off – 205.50 acres in fee, 1072.30 acres easement (Includes Harvey Lock – 13.89 acres in fee)

#### 6. FEDERALLY-OWNED LANDS WITHIN (LERRD'S FOR) THE PROJECT

Project area of the existing lock and the proposed lock location are owned in fee by the United States. The United States owns 135+ acres. See Exhibit A Map showing IHNC project area lands owned in fee.

#### 7. NAVIGATIONAL SERVITUDE

None of the lands needed for the project lie along a natural navigable stream. The navigational servitude will not be invoked in this project and will not be needed for disposal of material into the Mississippi River.

#### 8. PROJECT MAPS

Figure 1 below shows project area in southeast Louisiana within the City of New Orleans.

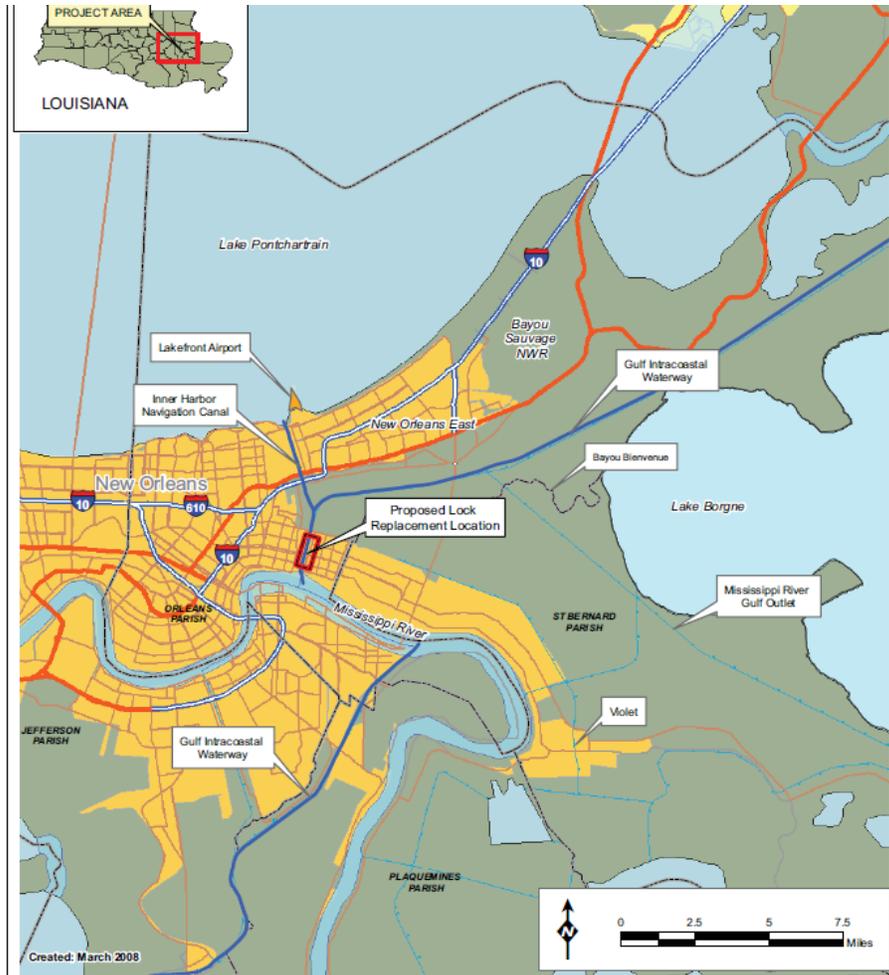


Figure 1-1: Vicinity Map for the Inner Harbor Navigation Canal Lock Replacement Project

Figure 2 below shows location of existing (yellow) and proposed (red) locks within the IHNC.



Figure 3 below shows proposed lock location – cofferdam (red) and bypass channel (yellow).



Figure 4 below shows existing lock location – temporary bridge (red), new flood risk reduction measures (green) and bypass channel (yellow).



## 9. INDUCED FLOODING

Construction of this project will not induce flooding.

## 10. BASELINE COST ESTIMATES/CHART OF ACCOUNTS (COA'S)

The areas of the project needed for the dredged material pipeline and the temporary bridge, which are owned by the City of New Orleans' Department of Public Works and Sewerage & Water Board, consist of public improvements and therefore have no economic highest and best use or economic market value. If it is determined that a temporary work area easement is required for project purposes, in lieu of a permit or a grant of particular use, it is anticipated that such rights would be obtained without cost to the United States for the land impacted. Acquisition costs, therefore, are

estimated to be only the administrative costs associated with acquiring the rights from the aforementioned agencies. These costs are estimated to be approximately \$10,000 which includes a 25% contingency.

#### 11. RELOCATION ASSISTANCE BENEFITS

This project does not displace residential, commercial, industrial or habitable structures. Access to residential and commercial properties may be limited with the construction area footprint of the Temporary St. Claude Avenue Bridge that will be used by local traffic while the existing St. Claude Avenue Bridge is being demolished and new bridge constructed. However, since all work will be accomplished within street right-of-way, adjacent owners are not considered displaced under the Uniform Relocation Act.

#### 12. TIMBER/MINERAL/ROW CROP ACTIVITY

Project does not impact any timber, mineral or row crop activity. Some trees along the banks of the canal may be replanted within the Community Impact Mitigation Plan.

#### 13. PROJECT SPONSOR/NFS CAPABILITY ASSESSMENT – NOT APPLICABLE

There is no Non-Federal Sponsor on this project. It will be funded 50 percent from appropriations from the Inland Waterways Trust Fund and 50 percent from appropriation from the General Fund of the U.S. Treasury..

#### 14. ZONING IN LIEU OF ACQUISITION

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

#### 15. ACQUISITION SCHEDULE

It is estimated that approximately three months will be needed to obtain real estate rights from the City of New Orleans Department of Public Works and Sewerage & Water Board.

#### 16. FACILITY/UTILITY RELOCATIONS

According to the Real Estate Policy Guide Letter Number 31, an attorney's opinion of compensability is not required unless the cost of utility/facility relocations exceed 30% of the total project cost. Based upon present information it is anticipated that the cost of relocations will not exceed 30% of the total project cost. A determination of the existing utilities and facilities will be made during planning and design; after which a determination of compensability will be made.

There are three bridges in the project area. Florida Avenue Bridge (includes railroad lines) is not within this project scope. The replacement of the existing South Claiborne Avenue Bridge with a mid-rise bridge was initially within the project scope for the Recommended Plan described in the 1997 Evaluation Report; however, replacement of this bridge is no longer required for the Tentatively Selected Plan (TSP). The St. Claude Avenue Bridge will be replaced. A temporary bridge will be built for use while the new bridge is being constructed. Preliminary drawings for the temporary bridge indicate that all work will take place within existing street right-of-way and that no additional interest in real property will be required for the temporary bridge.

#### 17. ENVIRONMENTAL CONSIDERATIONS

Demolition and environmental remediation of the abandoned industrial sites along the east side of the IHNC have been completed. This work included the removal of above and below-ground structures and canal-side obstructions. This work was completed in June 2005, and now this area north of Claiborne Avenue is a grassy area with some open water areas where soils were removed. In addition, certain areas of the property were found to contain HTRW after acquisition had been completed. Remediation of these areas is ongoing.

CEMVN has determined that, on the basis of the 404(b)(1) guidelines, the disposal of dredged material into the Mississippi River would comply with the requirements of the guidelines under disposal of dredged material suitable for aquatic disposal. Other disposal materials that are contaminated will be shipped to a commercial industrial landfill .

No Federally threatened or endangered species nor any designated critical habitat would be affected by the recommended plan. Likewise, no species or habitat of local concern, as listed by the Louisiana Natural Heritage Program, would be affected.

#### 18. LANDOWNER CONCERNS

Project lands are owned by the United States; therefore, there are no landowner concerns regarding the lands needed for the project construction. However, the IHNC is surrounded by older residential neighborhoods. Corps of Engineers representatives have held several public meetings to discuss the impact of the Industrial Canal Lock Replacement. There is strong opposition to the project for several issues: construction noise, construction activities (possible damage to historic area homes), delays caused by traffic detours and congestion, increased risk for water pollution and potential lost revenue to businesses from reduced access.

A Community Impact Mitigation Plan (CIMP) was authorized by WRDA 1996, with some modifications, within the Chief's discretionary authority, in the 1997 Evaluation Report. Due to changed conditions post Hurricane Katrina, it is possible that the approved CIMP will require modification.

#### 19. NON-FEDERAL SPONSOR NOTIFICATION OF RISKS – NOT APPLICABLE

There is no Non-Federal Sponsor on this project. It will be funded through appropriations from the Inland Waterway Trust Fund and from the General Fund of the U.S. Treasury.

#### 20. OTHER RELEVANT REAL ESTATE ISSUES

None.

PREPARED BY:



DATED: 12/22/16

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Pamela M. Fischer  
Realty Specialist

REVIEWED AND RECOMMENDED BY:



DATED: 12/22/16

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



**Exhibit B**

**DRAFT 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**

Mississippi River Gulf Outlet, New Lock and Connecting Channels, (Industrial Canal Lock Replacement),  
North of Claiborne Avenue Site

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 Mississippi River, Baton Rouge to the Gulf of Mexico Mississippi River-Gulf Outlet, Louisiana, New Industrial Canal Lock and Connecting Channels Project**

**REPORT TITLE** REAL ESTATE PLAN

**Date of Report** \_\_\_\_\_ **Date of REP** December, 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.**   √   NOT APPLICABLE – NO NFS – 100% FEDERALLY FUNDED

- 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.**   √   NOT APPLICABLE –

- 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. NOT APPLICABLE – NO NFS

**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. Maps**   √  

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**   √   NOT APPLICABLE – NO NFS – 100% FEDERALLY FUNDED

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. √ NOT APPLICABLE – NO NFS – 100% FEDERALLY FUNDED

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.**



11/4/16

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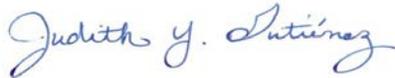
Preparer

\_\_\_\_\_

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**



11/4/16

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RE Internal Technical Reviewer

\_\_\_\_\_

Date

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