

Appendix J

Real Estate Plan (REP)

REAL ESTATE PLAN

**Amite River Diversion Canal Modification Feasibility Study
Livingston, Ascension and St John the Baptist Parishes, Louisiana**



May 6, 2010

**Real Estate Plan
Amite River Diversion Canal Modification Feasibility Study
Livingston, Ascension and St. John the Baptist Parishes, Louisiana**

Table of Contents

PURPOSE:	3
PROJECT LOCATION AND STUDY AREA:	3
PROJECT SPONSOR:	6
GENERAL PROJECT DESCRIPTION:	6
NON-FEDERAL SPONSOR OWNED LER:	10
ESTATES:	10
SPONSOR LAND ACQUISITION EXPERIENCE:	14
REAL ESTATE ACQUISITION SCHEDULE:	14
PUBLIC LAW 91- 646:	15
ACQUISITION COSTS:	15
LANDOWNER ATTITUDE:	15
ENVIRONMENTAL ISSUES:	15
EXISTING FEDERAL PROJECTS & STATE / FEDERAL LANDS:	15
TIMBER / MINERAL / ROW CROP ACTIVITY:	15
INDUCED FLOODING:	16
ZONING ORDINANCES:	16
UTILITIES AND FACILITIES TO BE RELOCATED:	16
NAVIGATION SERVITUDE:	16
ACQUISITION PRIOR TO PPA:	17

- Exhibit I: Cross Sections for Channel Easements for Alternative 33**
- Exhibit II: Non-Federal Sponsor Assessment of Land Acquisition Experience**
- Exhibit III: Chart of Accounts**
- Exhibit IV: Non-Standard Estate Approval Request**
- Exhibit V: Quality Control Plan Checklist**

REAL ESTATE PLAN

Amite River Diversion Canal Modification Feasibility Study Livingston, and Ascension Parishes, Louisiana



Purpose:

The purpose of this Real Estate Plan is to determine the impact of the proposed construction on the real estate located within the project limits. This Real Estate Plan (REP) presents a preliminary plan for any acquisitions of lands, easements, relocations and rights-of-way necessary for construction and implementation of the project. Contact with landowners in the study area has been limited. This document is for planning purposes only and is subject to change.

The project is intended to reverse the trend of degradation of the lands located in the Western Maurepas Swamp. The introduction of freshwater from the diversion canal onto and across this land will restore hydrologic connectivity and provide valuable nutrients to the surrounding swamp. The increase in sediments will facilitate land building and offset the effects of subsidence. The enhancement of the wet/dry cycles will promote germination and promote survival of seedlings to enhance establishment of new forest growth.

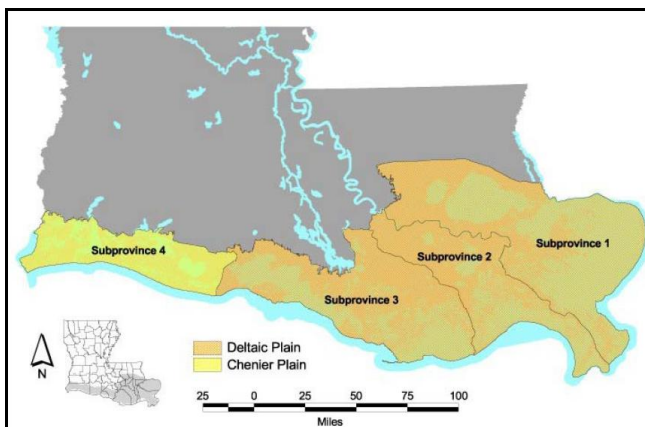
The goal of this project is to reverse the degradation trend within the western Maurepas Swamp ecosystem so as to contribute toward achieving and sustaining a coastal ecosystem that can support and protect the environment, economy, and culture of southern Louisiana and thus the Nation.

Project Location and Study Area:

The Louisiana Coastal Authority (LCA) study area, which includes the Louisiana coastal area from Mississippi to Texas, is comprised of two wetland-dominated

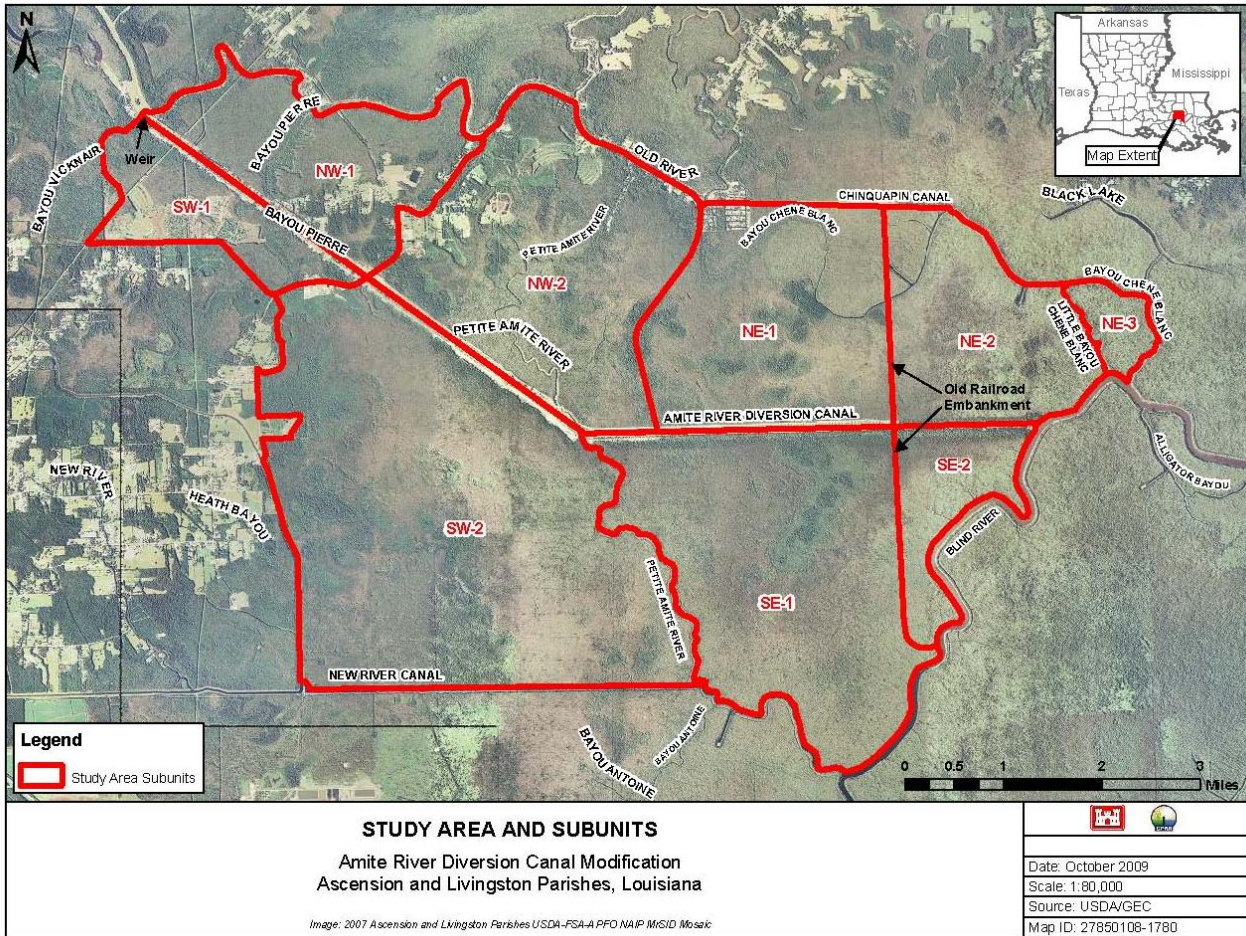
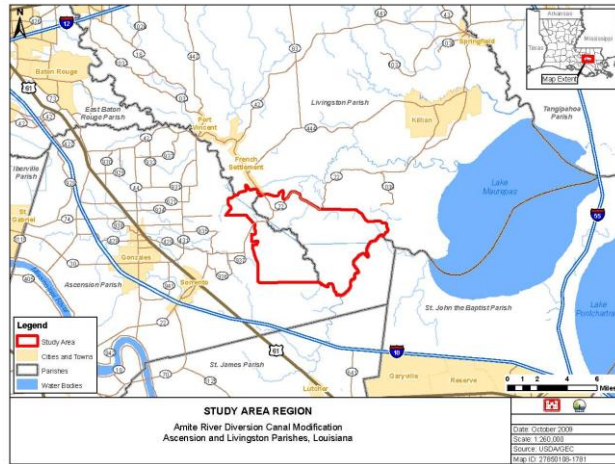
ecosystems, the Deltaic Plain of the Mississippi River and the closely linked Chenier Plain, both of which are influenced by the Mississippi River. For planning purposes, the LCA study area was divided into four subprovinces, with the Deltaic Plain comprising Subprovinces 1, 2, and 3, and the Chenier Plain comprising Subprovince 4 as shown in Figure 1.1. The LCA-Amite River Diversion Channel (ARDC) study area as shown in Figures 1.2 and 1.3 is located in LCA Subprovince 1 and is situated along the ARDC in Ascension and Livingston parishes, in the vicinity of Head of Island, Louisiana. The study area is bounded to the north by the old channel of the Amite River, Old River, Chinquapin Canal and Bayou Chene Blanc; to the east by the Blind River; to the south by the Petite Amite River and the New River Canal; and to the west by the Sevario Canal, Ascension Parish flood protection levees, and the Laurel Ridge Canal; and is located in the following sections:

- Township 9 South, Range 4 East, Sections 9-16, 22-27, and 34-36;
- Township 9 South, Range 5 East, Sections 7, 14-36;
- Township 9 South, Range 6 East, Section 30 and 19;
- Township 10 South, Range 4 East, Sections 1-3 and 10-12; and
- Township 10 South, Range 5 East, Sections 2-11.



**LCA Ecosystem Restoration Study,
2004
Figure 1.1**

**Study Area Region
Figure 1.2**



**Study Area and Subunits
Figure 1.3**

For planning purposes the study area has been divided into nine separate hydrologic subunits. Each subunit was developed based on hydrologic differences that exist throughout the study area due to natural and manmade hydrologic boundaries as shown in Figure 1.4. These boundaries include natural topography such as dredged material berms and natural ridges, as well as manmade and natural waterways. The tentatively selected plan is located in hydrologic subunit NE-2. This subunit has a high degree of habitat degradation and has little to no hydrologic connectivity. The subunit is surrounded by the Chinquapin Canal to the north, an abandoned railroad embankment to the west, the ARDC to the south, and Little Bayou Chene Blanc and Blind River to the east.

Project Sponsor:

The non-Federal sponsor is the Coastal Protection and Restoration Authority of Louisiana (CPRA). However the Office of Coastal Protection and Restoration (OCPR) is the implementing arm of CPRA, which has been given authority to acquire and hold these lands. As the non-Federal Sponsor, CPRA through OCPR must provide all real estate interests required for this proposed project construction, i.e., all lands, easements, right of way relocations, and any other interests, including suitable borrow and dredged or excavated material disposal areas (LERRDs). OCPR has indicated it would provide all lands, water bodies, and/or water bottoms that are owned, claimed, or controlled by the State of Louisiana. If it becomes necessary OCPR, having no “quick take” authority of its own, will partner with another public agency, such as the Pontchartrain Levee District (PLD), to acquire the lands needed for this project. The NFS feels confident in being able to meet the “public need” requirements of the quick take statutes of the State of Louisiana.

General Project Description:

In or around 1956 the Amite River Diversion Project was constructed to enhance drainage and flood control by diverting water from the Amite River to Lake Maurepas. The ARDC is a 10.6 mile long artificial channel that extends from the Amite River at mile 25.3 to mile 4.8 of the Blind River in Ascension and Livingston parishes (see Figure 1.2). The canal is roughly 80 meters wide. As part of this construction, spoil was deposited on each side of the newly constructed channel for future use. Since the early 1960’s, camp sites and homes have been constructed on these spoil banks. Over the years since its construction, the result of these developments and this flood control project has been the loss of fresh water and nutrient flowing into, out of and across the proposed project area. As shown in the photograph in Figure 1.5, the hydrological restrictions of the project in the 1950’s had the unintended consequence of wetland destruction. Storm surge from hurricanes have accelerated the damage because of salt-water intrusion. The transition from the swamp to an open water marsh is occurring.

This Real Estate Plan has been prepared after study and review of seven (7) of the original thirty-nine (39) alternatives presented by the Project Development Team

(PDT). These alternatives underwent additional screening to determine the maximum benefit for the sponsorships investments.



Figure 1.5 Degraded Swamp Area

Impacts on existing uses of the land and restrictions to the land in the future as a result of the project have been discussed during our process. The Real Estate Plan considers the characteristics of the lands found within the project area as well as the impact of the Tentatively Selected Plan (TSP). It is anticipated the increased hydrologic connectivity will provide nutrients and sediments to the impact areas and enhance the restoration of the swamp and prevent further degradation of the area. The final TSP should closely restore the natural wet/dry cycles in this area before the construction of the spoil banks. The result should promote seedling germination and promote survival to enhance establishment of new forest growth.

Figure 1.6 depicts the North East quadrant of the Study Area. This map shows the location of the TSP, Alt 33. The scope of work outlined in Alt 33 is concentrated in sections 23, 24, 25, 26 & 27.

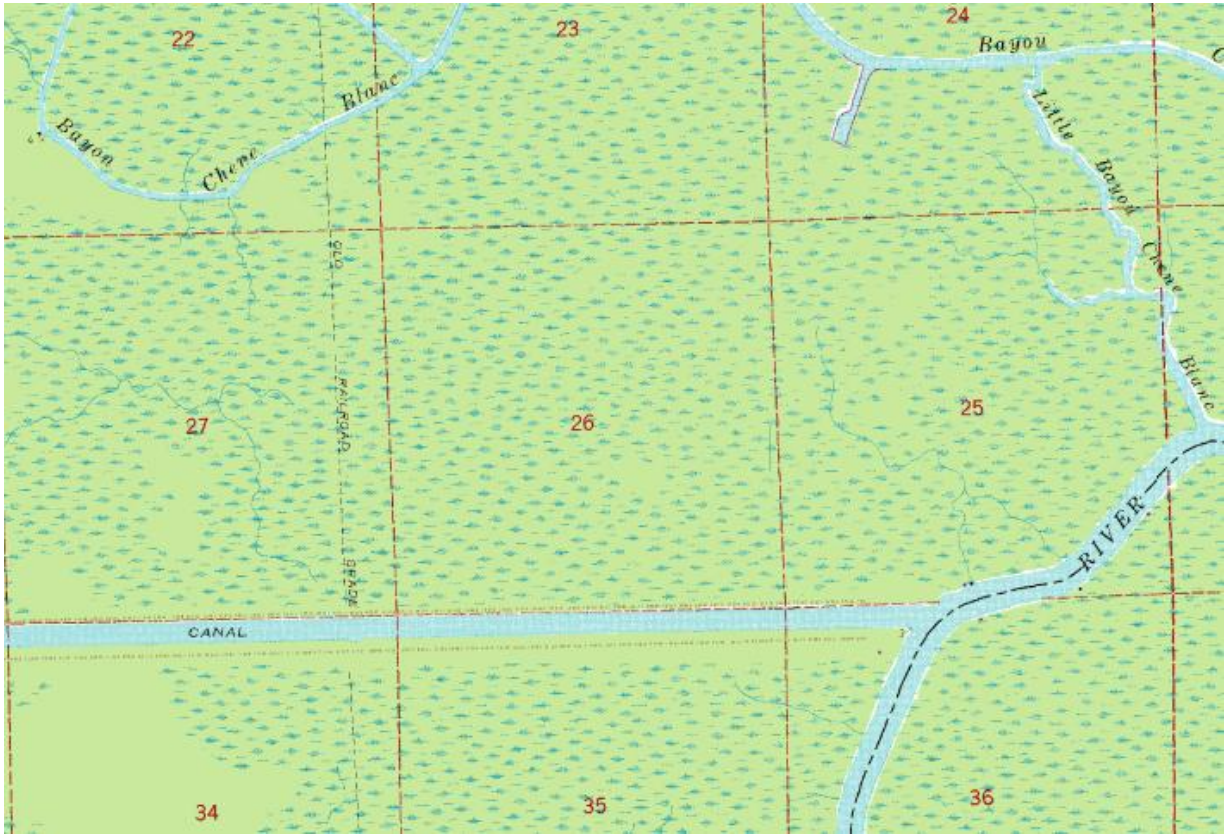


Figure 1.6 Quadrangle Map of the Project Area.

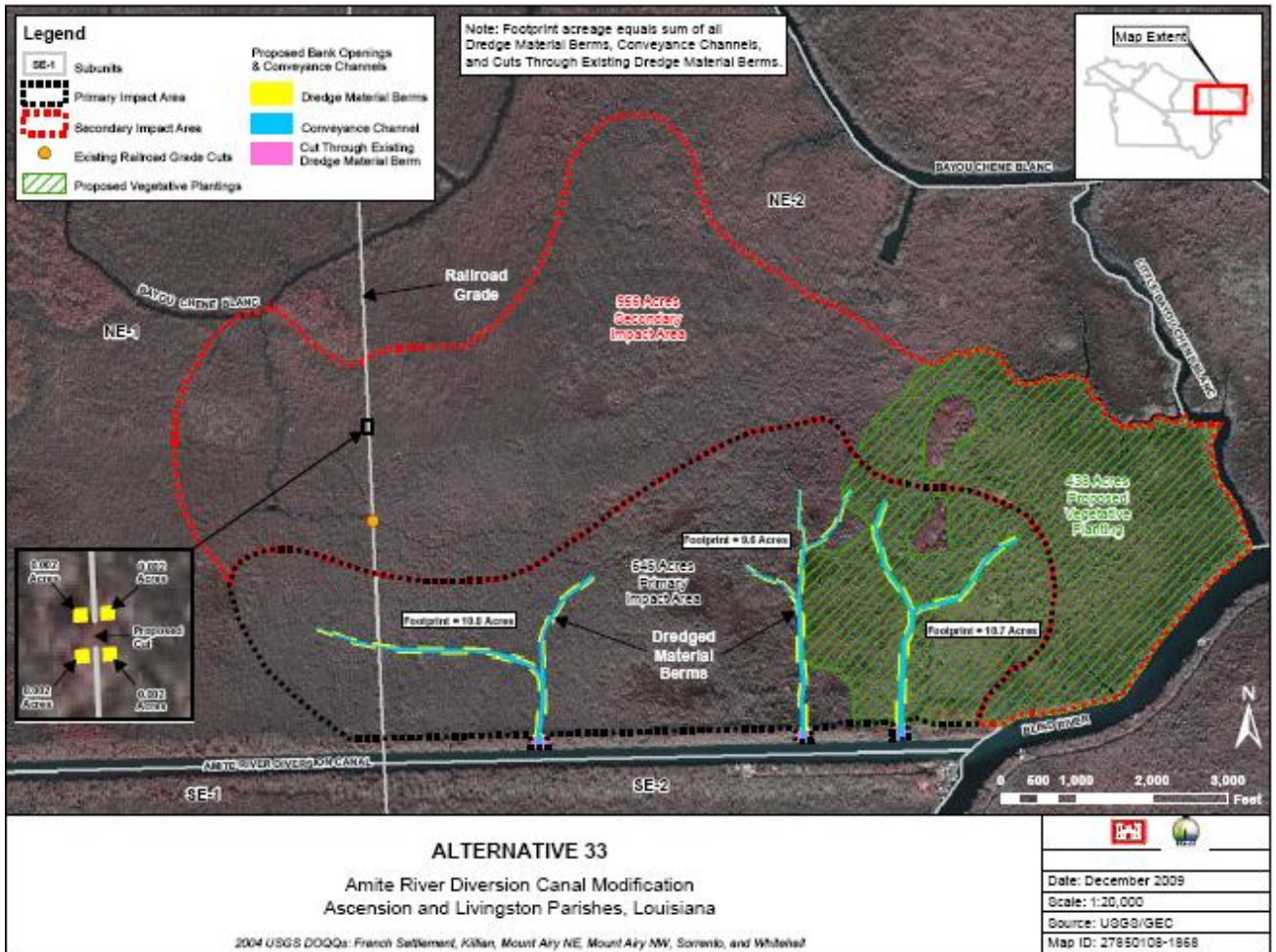


Figure 1.7 -TSP / Alternative 33

Features of the TSP (Figure 1.7) include:

- Three dredged material bank openings and three conveyance channels in the north bank of the ARDC in NE-2 with the westernmost cut in the north bank of the ARDC also extending through the railroad grade into NE-1 to add connectivity between NE-1 and NE-2.
- Dredged material (5.0 acres) from the bank openings and the conveyance channel would be sidecast in alternating berms so sheet flow is not reduced.
- One additional cut would be in the railroad grade approximately one-half mile north of the existing cut in NE-1/NE-2.
- Vegetative plantings of bottomland hardwood / freshwater swamp tree species on 5.0 acres of dredged material berms.
- Vegetative plantings of freshwater swamp tree species within 438 acres of the swamp floor.

Implementation of this alternative would restore the hydrologic connectivity between NE-1 and NE-2 with the ARDC thus reducing impoundment within the wetlands. Alternative 33 would benefit approximately 1,602 acres of existing freshwater swamp, recreate 144 acres of freshwater swamp from freshwater marsh, and create 5.0 acres of bottomland hardwood habitat from dredged material placement.

All excavation to take place for the cuts through the dredged material berms as well as the conveyance channels through the swamp would be based on four design cross-sections (attached Exhibit I). These cross-sections were developed in an effort to mimic natural, existing cuts within the study area, which have been determined to be self-maintaining. The material dredged from the existing berms would be placed along the swamp-side of the excavated cut as new bottomland hardwood habitat. All material dredged during construction of the conveyance channels would be placed along alternating portions of the channels to allow sufficient sheet flow to be conveyed from the swamp.

Non-Federal Owned LER:

The Non-Federal sponsor does not own any lands in the project right of way.

Estates:

The anticipated number of private property owners impacted by this project is one (1), Blind River Properties, represented by Mr. Glen Martin. Blind River Properties owns approximately 32,000 acres; a significant portion of this land is located within the study area and the ownership encompasses all of the project area. See Figure 1.8. No servitudes and rights of ways for pipelines or utilities are located in the project area.

It is Corps of Engineers policy to acquire fee simple title for ecosystem restoration projects. Two reasons for such requirement is to reduce the risk that incompatible uses on project land will occur after project construction, and to ensure that ownership rights vested in the project are clear and enforceable (ER 1105-2-100, Appendix F, Amendment # 2, F-20b(2)(a)). However, regulations also indicate that a lesser interest, such as, a specific type of permanent easement, may be appropriate depending upon the operational requirements of the project and other circumstances relevant to project implementation, including landowner preference (EP 1165-2-502, 17b). Circumstances wherein the acquisition of interests less than fee may be appropriate is where only select and easily identifiable and narrow affirmative rights are required for successful implementation of the project (ER 1105-2-100, Appendix F, Amendment # 2, F-20b(2)(b)i.)

It is the opinion of the Non-Federal Sponsor and the District that construction of this project can be accomplished through the acquisition of easements rather than fee. We propose acquisition of the following estates: a Channel or Channel Improvement Easement over 23.6 acres of canal banks along the ARDC and existing waterways; a

Wetland Creation and Restoration Easement over 438 acres to allow for vegetative plantings on existing degraded swamplands and wetlands; and a Flowage and Deposition Easement over 1,161± acres of swamplands which will be further inundated by the flow of water from the channel cuts. However, it should be noted that this is a planning document and the necessary estates are subject to change dependant upon project needs.

It is the opinion of the project delivery team that the estates proposed herein provide sufficient rights to the Government to construct the project and also protect the interests of the Government by prohibiting use of the surface for mineral exploration or construction of improvements. In addition, because the project area is a wetland, the project features are further protected through the police powers of the Federal Government through Section 404 of the Clean Water Act which require a permit from the Corps of Engineers for any activity that could negatively impact a wetland. Lastly, due to the topography of the project site and its limited access, it is highly unlikely that the landowner would propose development.

The non-standard estates were presented in the Louisiana Coastal Area – Louisiana, Ecosystem Restoration Study, dated November 2004. Exhibit IV includes a memorandum requesting approval of acquisition of interests less than fee as well as approval of these non standard estates in accordance with SOP established by MVD in December 2009.

THE NON-STANDARD ESTATES PRESENTED IN THIS REP ARE NOT APPROVED AS PART OF THIS REAL ESTATE PLAN AND FURTHER REVIEW, REVISION, AND APPROVAL OF SUCH ESTATES IS REQUIRED.

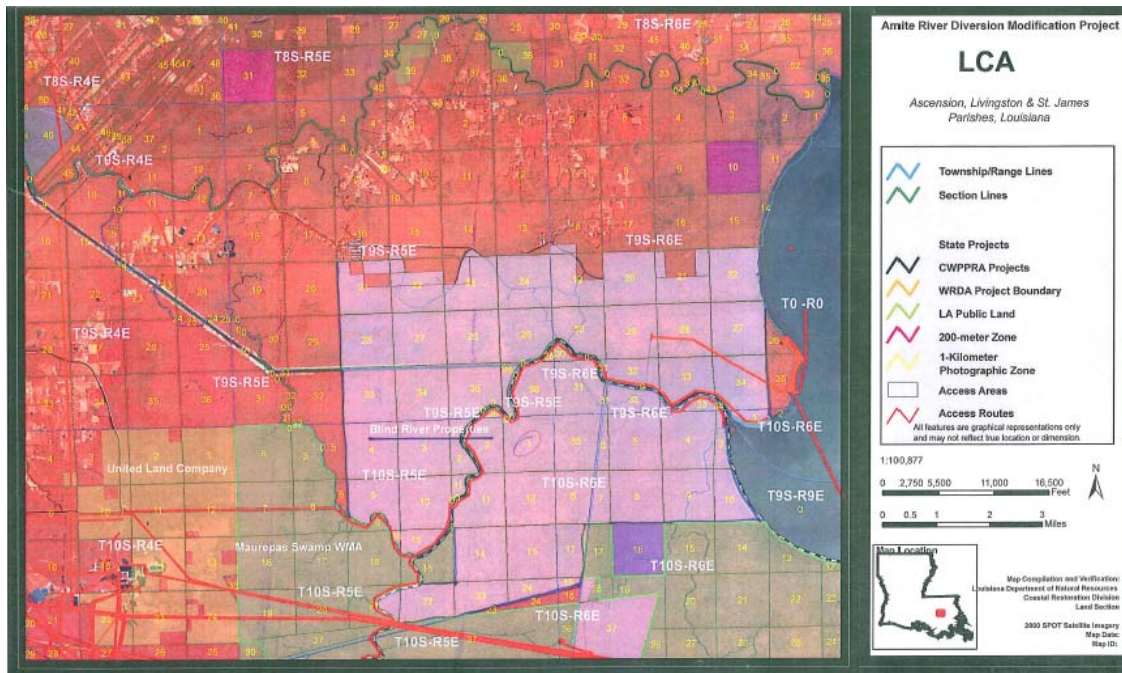


Figure 1.8 – Blind River Properties

Channel or Channel Improvement Easement (standard estate)

A perpetual and assignable right and easement to construct, operate, and maintain channel improvement works on, over and across (the land described in Schedule A) (Tracts Nos. _____, _____ and _____) for the purposes as authorized by the Act of Congress approved _____, including the right to clear, cut, fell, remove and dispose of any and all timber, trees, underbrush, buildings, improvements and/or other obstructions therefrom; to excavate: dredge, cut away, and remove any or all of said land and to place thereon dredge or spoil material; and for such other purposes as may be required in connection with said work of improvement; reserving, however, to the owners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

Wetland Creation And Restoration Easement (non-standard estate): (based on the standard Perpetual Beach Nourishment Easement and other standard estates)

A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule A) (Tract No. -) to construct, operate, maintain, patrol, repair, renourish, and replace wetlands and associated coastal habitats, including the right to borrow and/or deposit fill; to accomplish any alterations of contours on said land; to plant vegetation on said land; to excavate, dredge, cut away, and remove any or all of said land and to place thereon dredge or spoil material; to construct dikes and to install, alter, relocate, repair or plug cuts in the banks of dikes; to construct, operate and maintain pipelines for the purpose of dredge or spoil material transport and deposition; to move, store and remove equipment and supplies; to plug, fill or alter pipeline canals located within the limits of the easement; to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the easement (excepting the structures now existing on the land, described as _____), provided that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill, [that no vehicles shall be operated within the limits of the easement without such approval, except as may be required to operate and maintain the easement,] and that no trimming, cutting, felling or removal of trees, underbrush, and any other vegetation shall be conducted without such approval; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the grantor(s), (his) (her) (its) (their) (heirs,) successors and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; and expressly excepting

and excluding all oil, gas and other minerals occurring naturally in liquid or gaseous form, in and under said land and all appurtenant rights for the exploration, development, production and removal of said oil, gas and other minerals occurring naturally in liquid or gaseous form, but without the right to enter upon or over the surface of said land for the purpose of exploration, development, production and removal therefrom of said oil, gas and other minerals occurring naturally in liquid or gaseous form.

Flowage and Deposition Easement * (non-standard estate):

The perpetual right, power, privilege and easement occasionally to overflow the land described in Schedule A (Tracts Nos. _____, _____) and in connection with the operation and maintenance of the project, including the continuing right to clear and remove and brush, debris and natural obstructions which, in the opinion of the representative of the United States in charge of the project, may be detrimental to the project; and to deposit dredge material or sediment on the land, together with all right, title and interest in and to the structures and improvements now situate on the land, excepting _____ (here identify those structures not designed for human habitation which the District Engineer determines may remain on the land); provided that no structures for human habitation shall be constructed or maintained on the land, that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, that no vehicles shall be operated within the limits of the easement without such approval, except as may be required to operate and maintain the easement, that no trimming, cutting, felling or removal of trees, underbrush, and any other vegetation shall be conducted without such approval, and that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution; and expressly, excepting and excluding all oil, gas and other minerals occurring naturally in liquid or gaseous form, in and under said land and all appurtenant rights for the exploration, development, production and removal of said oil, gas and other minerals occurring naturally in liquid or gaseous form, but without the right to enter upon or over the surface of said land for the purpose of exploration, development, production and removal therefrom of said oil, gas and other minerals occurring naturally in liquid or gaseous form.

**Because nutrients will flow from the Amite River Diversion Canal into the benefits area via the channel cuts, a "Flowage and Deposition Easement" is suggested. However, no emergent lands will be created as a result of direct deposition of sediment.*

Sponsor Land Acquisition Experience:

The Non-Federal sponsor for this project is the Coastal Protection and Restoration Authority of Louisiana (CPRA), through the Office of Coastal Protection and Restoration. As the non-federal sponsor, CPRA must provide all real estate interests required for the project, i.e., all lands, easements, rights-of-way, relocations, and any other interest, including suitable borrow and dredged or excavated material disposal areas (LERRDs).

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. However, it must be recognized herein that CPRA is the non-federal sponsor for all New Orleans District coastal restoration projects and all hurricane risk reduction projects. Therefore, if all LCA projects and several hurricane risk reduction projects are authorized for construction under concurrent schedules, there is a possibility that CPRA may not be able to accomplish LER acquisition due to the massive amount of work required for such an undertaking. If that were the case, it is possible that CPRA may request that the Federal Government accomplish acquisition of LER on their behalf.

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

Real Estate Acquisition Schedule:

Acquisition will not begin until after the Project Partnering Agreement (PPA) is signed. Based on current schedule information, the land rights acquisitions would need to be started February 1, 2012 to meet the construction date of August 1, 2012. Based on acquisition of right of way from one landowner, estimated task durations are:

Task	Task Duration
Obtain title information	60 days
Obtain mapping information	60 days
Obtain appraisals	60 days
Negotiate & issue right-of-entry	90 days

These time frames assume amicable acquisitions, if condemnation proceedings are necessary, 12 months will be added to the schedule.

Public Law 91- 646:

All acquisitions of private property for this project will be done in accordance with the provisions of Public Law 91-646, as amended. All areas impacted by construction are vacant; the project will not displace any persons, businesses or farms.

Acquisition Costs:

The estimated total Real Estate costs are \$136,000.00. Real Estate costs have been outlined in the Chart of Accounts found in Exhibit III.

Landowner Attitude:

Owner contact, to date, has been limited. However, feedback from the private landowner, Mr. Glen Martin, has been positive. Mr. Glen Martin representing Blind River Properties owns the land required for this TSP. The landowner appears to be in favor of the project, given the direct benefits to his property.

Environmental Issues:

A Phase I Environmental Site Assessment (ESA) of the LCA-ARDC study area was conducted in accordance with USACE Regulation ER 1165-2-132, Water Resources Policies and Authorities for HTRW Guidance for Civil Works Projects, 26 June 1992 and the American Society for Testing and Materials (ASTM) Standard E 2247-08 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property in order to identify recognized environmental conditions (REC) located on, or in the vicinity of, the LCA-ARDC study area.

A review of various Federal and state databases indicates that none of the potential recognized environmental conditions (REC) sites found in the area would be likely to expose the public or construction workers to HTRW or to adversely affect the project.

Existing Federal Projects & State/Federal Owned Lands:

While we know the construction of the Amite River Diversion Canal was a public project, done in conjunction with the USACE and Livingston Parish, we have been unable to confirm easements or agreements to establish ownership or restrictions of the spoil banks. Additional research will be required when this project advances. At a recent meeting with the landowner, he stated the Diversion Project was built as part of the drainage servitude and the spoil, and the water bottoms, belong to Blind River Properties. This will be verified when the project progresses and prior to any agreements being executed.

Timber / Mineral / Row Crop Activity:

A timber survey and appraisal was conducted in 1994 by a professional forestry consultants for the 32,000 acres owned by Blind River

Properties. The consultants found that there were no areas of cypress and tupelo in the swamps with trees of sufficient size and volume to be considered merchantable. Merchantable size timber (red oak, sweet gum, and ash) was found only on the ridges, including those in the study area. However, marketability was considered doubtful because of inaccessibility. There is no timber harvesting in the project area.

The western Maurepas Swamp has undergone significant oil and gas exploration activity, particularly in the early to mid-20th century. However, most oil and gas exploration and production activities in the region have occurred southwest of the study area. Data from the LDNR Strategic Online Natural Resources Information System (SONRIS) (http://sonris-www.dnr.state.la.us/www_root/sonris_portal_1.htm) indicate that oil and gas production activities within the study area have been relatively light and occurred primarily in the late 20th century. It is our understanding that the owner of the minerals is the same entity which owns the surface rights. The easements to be acquired by the Government prohibit constructing improvements without the written permission of the United States which in essence could prohibit use of the surface for the exploration of minerals over the encumbered areas. The ownership impacted by this project is approximately 32,000 acres; the project areas are surrounded by the remaining unencumbered lands. The owner has access points throughout the perimeter of the project area to conduct directional drilling for oil or gas in the event that those minerals are present in the property. Therefore, the acquisition of the proposed easements does not impose a mineral taking.

There is no evidence of row crop activity in the project area.

Induced Flooding:

The construction of this project will allow water from the Amite River Diversion Canal to flow into, onto and across private land discharging into the adjacent swamp. As the water dissipates, sediments and nutrients will be deposited to assist in swamp restoration. Where water will flow across private lands, OCPR will acquire Flowage Easements.

Zoning Ordinances:

No zoning ordinances will be enacted in lieu of or to facilitate acquisition in connection with this project.

Utilities and Facilities to be Relocated:

There are no utility or facility relocations required in connection with this project.

Navigation Servitude:

Derived from the Commerce Clause of the U.S. Constitution, article 1, section 8, clause 3, the navigation servitude is the dominant right of the United States to use, control and regulate navigable waters and submerged lands. The applicability of the

navigation servitude depends on both legal and factual determinations. If the legal determination supports assertion of the navigation servitude, then the second step is to determine the geographical area over which the servitude can be asserted. In tidal areas, the servitude extends to all lands below the mean high water mark, whereas in non-tidal areas, the servitude extends to all lands within the bed and banks of a navigable stream that lie below the ordinary high water mark.

There are no lands being acquired for this project which would fall in this classification.

Acquisition Prior to PPA:

The non-federal sponsor is the author of this REP and is fully aware of the risks associated with acquisition of real estate rights prior to signing a Project Partnership Agreement.

This report has been prepared by the undersigned in accordance with Chapter 12 of the ER405-1-12.

Prepared By:

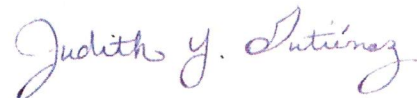


Ronnie Rabalais
SJB Group, LLC
Division Manager Real Estate
Services
April 21, 2010

Reviewed By:

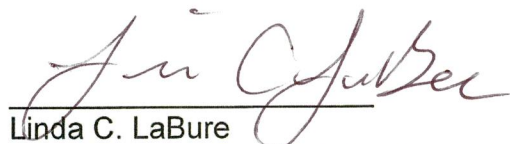


Erin A. Clark
USACE Appraiser
April 21, 2010



Judith Y. Gutierrez
USACE, Chief, Appr & Plang
April 21, 2010

Recommended for Approval:



Linda C. LaBure
USACE, Chief Real Estate Div
April 21, 2010

Exhibit I

Cross Sections for Channel Easements for Alternative 33

It should be noted that uniform channel widths and not the tapered channels shown within this Exhibit, were used when area calculations were provided for benefit calculations.

These areas, given the nature and scope of the construction, are minor.

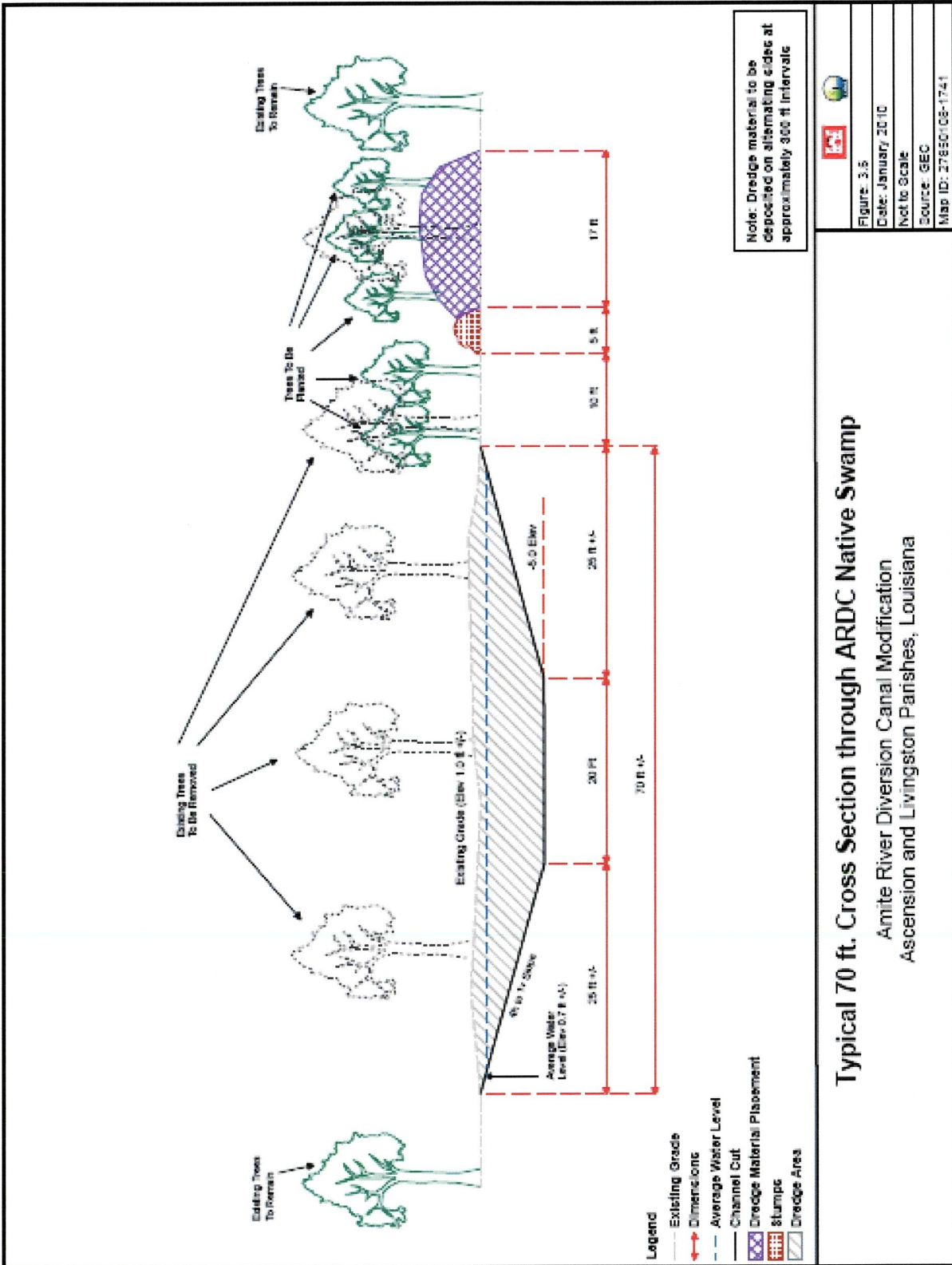




 Figure: 3.6

 Date: January 2010

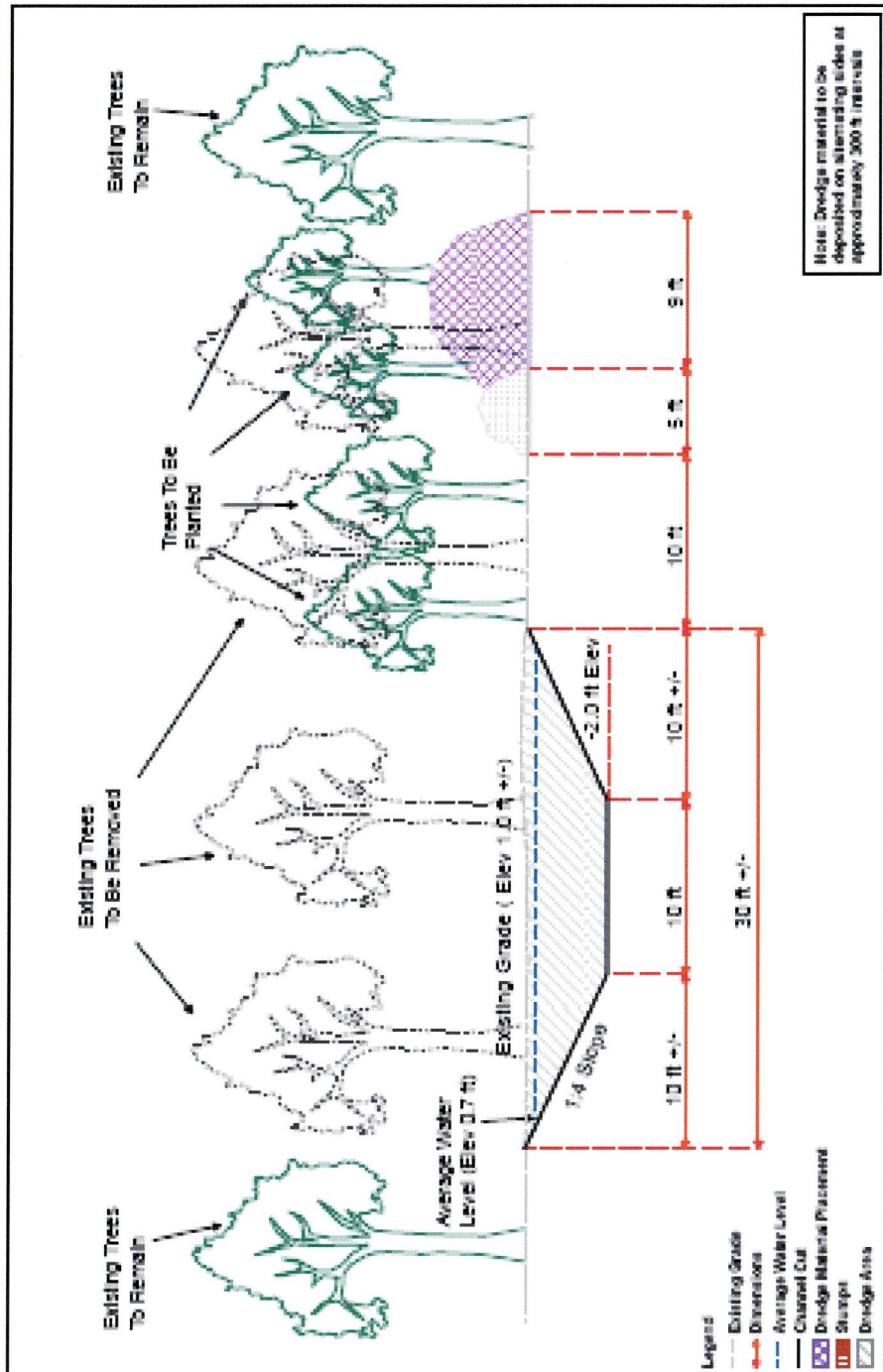
 Not to Scale

 Source: GEC

 Map ID: 27850108-1741

Typical 70 ft. Cross Section through ARDC Native Swamp

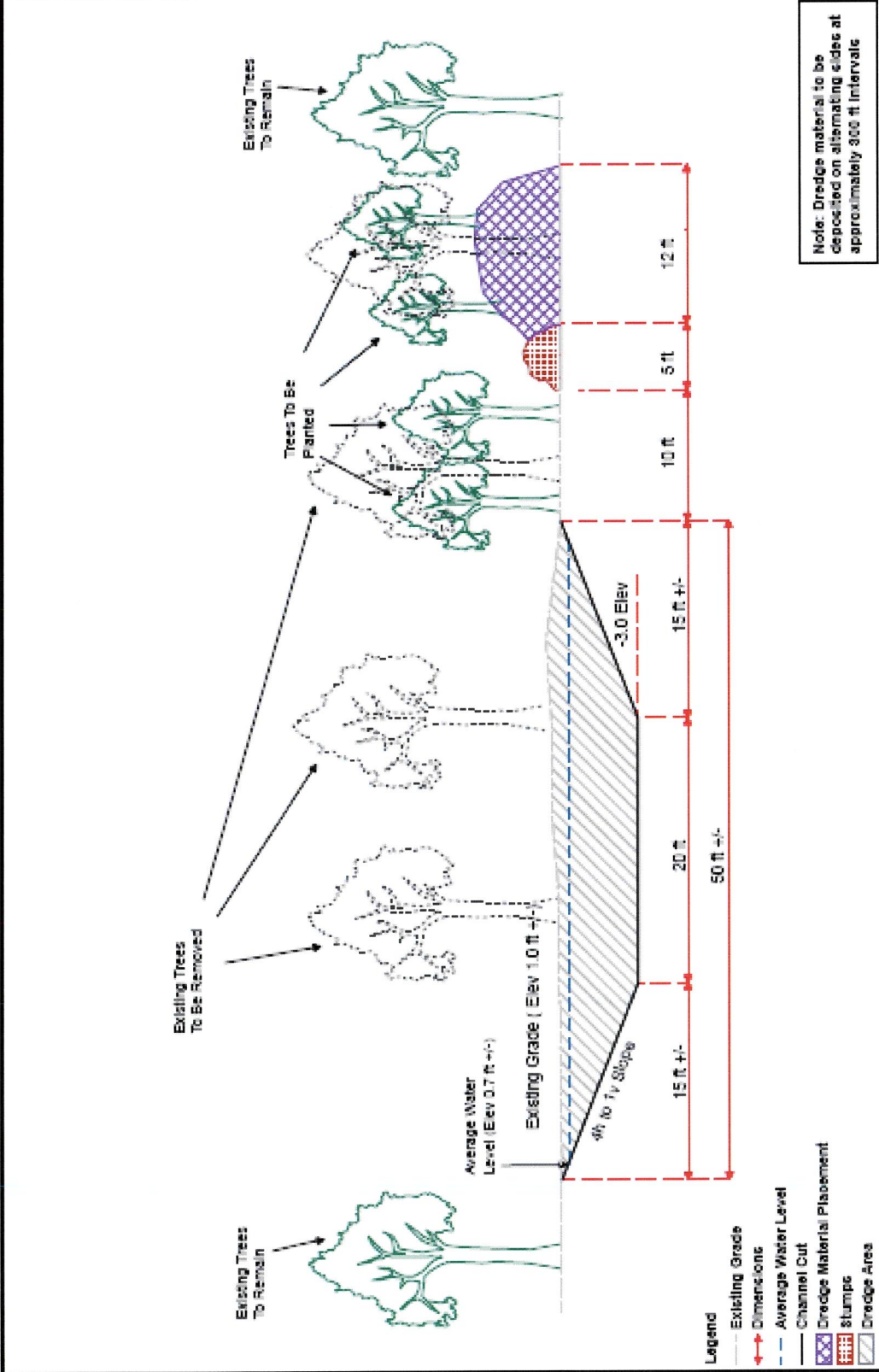
Amite River Diversion Canal Modification
 Ascension and Livingston Parishes, Louisiana




Typical 30 ft. Cross Section through ARDC Native Swamp
 Amite River Diversion Canal Modification
 Ascension and Livingston Parishes, Louisiana



Date:	January 2010
Not to Scale:	
Source:	GIS
Map ID:	37500105-1e1




 Figure: 3.7
 Date: January 2010
 Not to Scale
 Source: GEC
 Map ID: 37650108-1741

Typical 50 ft. Cross Section through ARDC Native Swamp
 Amite River Diversion Canal Modification
 Ascension and Livingston Parishes, Louisiana

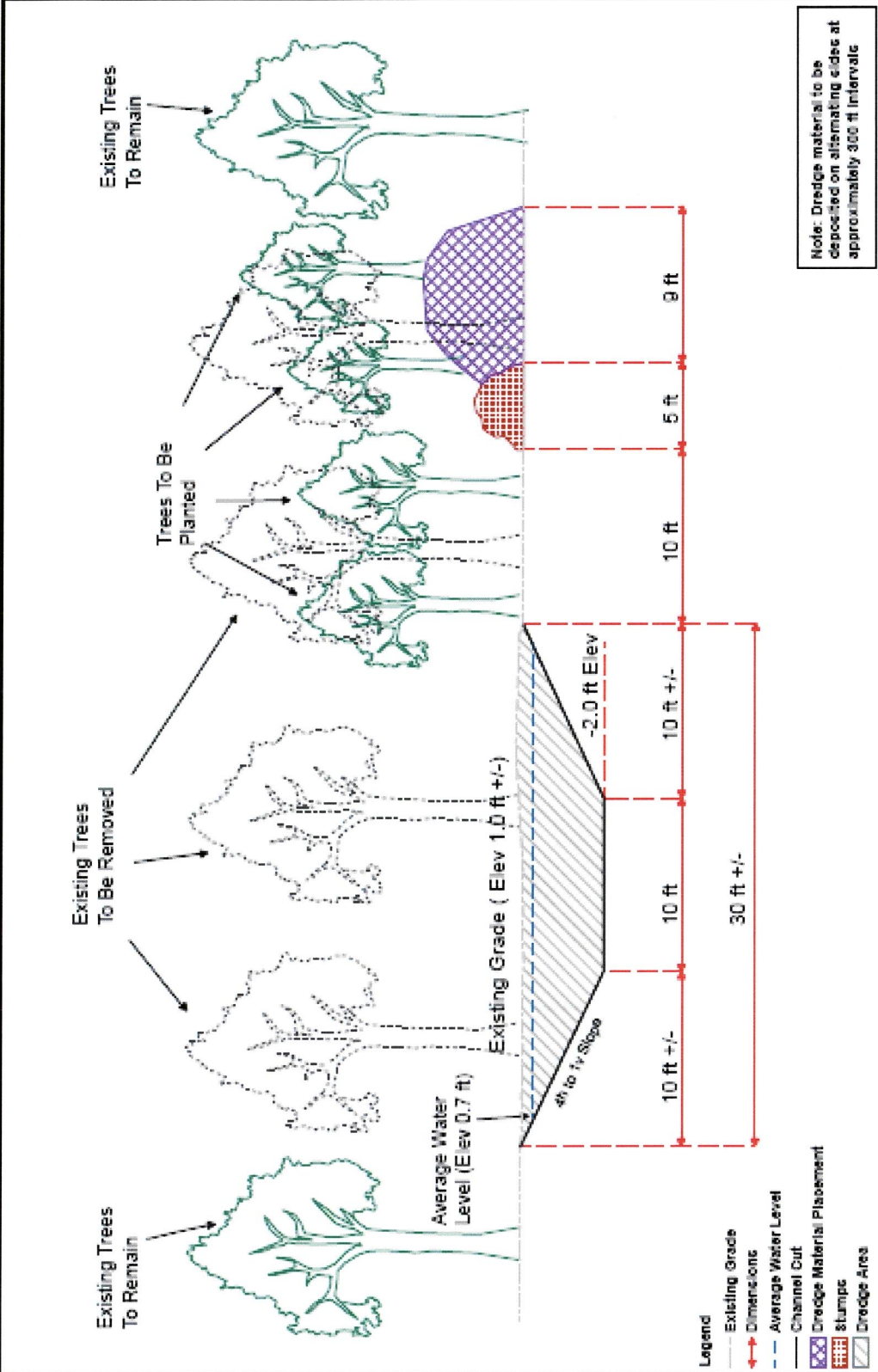


Figure: 3.9
Date: January 2010
Not to Scale
Source: GEC
Map ID: 2789C108-1741

Typical 30 ft. Cross Section through ARDC Native Swamp

Amite River Diversion Canal Modification
Ascension and Livingston Parishes, Louisiana

Exhibit II

ASSESSMENT OF NON-FEDERAL SPONSOR REAL ESTATE ACQUISITION CAPABILITY

**ASSESSMENT OF NON-FEDERAL SPONSOR'S
REAL ESTATE ACQUISITION CAPABILITY
Coastal Protection Restoration Authority (CPRA)
through the
Office of Coastal Protection and Restoration (OCPR)**

I. Legal Authority:

- a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes? **YES**
- b. Does the sponsor have the power of eminent domain for this project? **YES - But limited to expropriation.**
- c. Does the sponsor have "quick-take" authority for this project? **NO - Although the sponsor does not have quick take authority, if this should be needed for the project, the sponsor may partner with a Levee District or Parish Government who has this authority (Act 225 RS38:301.1 and Act 320) if they agree.**
- d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? **NO**
- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? **Unknown**

II. Human Resource Requirements:

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended? **NO**
- b. If the answer to II.a. is "yes," has a reasonable plan been developed to provide such training? **N/A**
- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? **YES**
- d. Is the sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule?
The office of OCPR is staffed with 3 Land Specialists and one Manager. Given current and projected workload, the in-house staff is not sufficient to accomplish acquisition of realty interests for this project.
- e. Can the sponsor obtain contractor support, if required in a timely fashion? **Unknown, no schedule has been drafted. Contracting typically takes 12 to 18 months.**

- f. Will the sponsor likely request USACE assistance in acquiring real estate?
Yes it is likely, but ultimately depends on the responsibilities as agreed upon in the PPA yet to be developed.

III. Other Project Variables:

- a. Will the sponsor's staff be located within reasonable proximity to the project site? **YES**
- b. Has the sponsor approved the project/real estate schedule/milestones?

"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." Once project designs are finalized, the sponsor will be requested to provide an acquisition schedule.

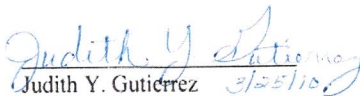
IV. Overall Assessment:

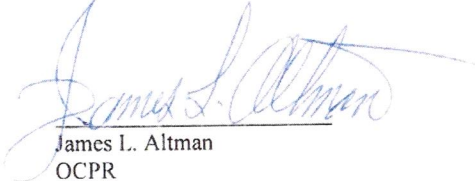
- a. Has the sponsor performed satisfactorily on other USACE projects? **YES**
- b. With regard to this project, the sponsor is anticipated to be: highly capable/fully capable/moderately capable/marginally capable/insufficiently capable.
Fully capable

V. Coordination:

- a. Has this assessment been coordinated with the sponsor?
YES
- b. Does the sponsor concur with this assessment?
YES

Prepared By:


Judith Y. Gutierrez
USACE
Chief, Appraisal. & Planning Branch


James L. Altman
OCPR
Land Manager

Approved-By:

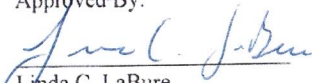

Linda C. LaBure
Chief, Real Estate Division

Exhibit III

CHART OF ACCOUNTS

				AMOUNT	CONTINGENCY	PROJECT
				ROUNDED		COST
						\$136,000
TOTAL PROJECT COSTS				112,900	23,360	136,260
01	LANDS AND DAMAGES		CONTINGENCY\PROJECT COST	112,900	23,360	136,260
01B	ACQUISITIONS					
01B10	BY GOVERNMENT	0	0	0		
01B20	BY NON FEDERAL SPONSOR (NFS)	9,500	0	9,500		
01B30	BY GOVT ON BEHALF OF NFS	0	0	0		
01B40	REVIEW OF NFS	5,000	0	5,000		
01C	CONDEMNATIONS					
01C10	BY GOVERNMENT	0	0	0		
01C20	BY NFS	0	0	0		
01C30	BY GOVT ON BEHALF OF NFS	0	0	0		
01C40	REVIEW OF NFS	0	0	0		
01E	APPRAISAL					
01E10	BY GOVT (IN HOUSE)	0	0	0		
01E20	BY GOVT (CONTRACT)	0	0	0		
01E30	BY NFS	3,000	0	3,000		
01E40	BY GOVT ON BEHALF OF NFS	0	0	0		
01E50	REVIEW OF NFS	2,000	0	2,000		
01F	PL 91-646 ASSISTANCE					
01F10	BY GOVERNMENT	0	0	0		
01F20	BY NFS	0	0	0		
01F30	BY GOVT ON BEHALF OF NFS	0	0	0		
01F40	REVIEW OF NFS	0	0	0		
01G	TEMPORARY PERMITS/LICENSES/RIGHTS-OF-ENTRY					
01G10	BY GOVERNMENT	0	0	0		
01G20	BY NFS	0	0	0		
01G30	BY GOVT ON BEHALF OF NFS	0	0	0		
01G40	REVIEW OF NFS	0	0	0		
01G50	OTHER	0	0	0		
01G60	DAMAGE CLAIMS	0	0	0		
01N00	FACILITY/UTILITY RELOCATIONS					
01R	REAL ESTATE PAYMENTS					
01R1	LAND PAYMENTS					
01R1A	BY GOVERNMENT	0	0	0		
01R1B	BY NFS	92,900	23,230	116,130		
01R1C	BY GOVT ON BEHALF OF NFS	0	0	0		
01R1D	REVIEW OF NFS	0	0	0		
01R2	PL 91-646 ASSISTANCE PAYMENTS					
01R2A	BY GOVERNMENT	0	0	0		
01R2B	BY NFS	0	0	0		
01R2C	BY GOVT ON BEHALF OF NFS	0	0	0		
01R2D	REVIEW OF NFS	0	0	0		
01R3	DAMAGE PAYMENTS					
01R3A	BY GOVERNMENT	0	0	0		
01R3B	BY NFS	0	0	0		
01R3C	BY GOVT ON BEHALF OF NFS	0	0	0		
01R3D	REVIEW OF NFS	0	0	0		
01R9	OTHER	0	0	0		
01T	LERRD CREDITING					
01T20	ADMINISTRATIVE COSTS	500	130	630		

Exhibit IV

Non-Standard Estate Approval Request

LCA: AMITE RIVER DIVERSION CANAL MODIFICATION
REQUEST FOR APPROVAL TO DEVIATE FROM FEE TAKING AND
REQUEST FOR APPROVAL OF NON-STANDARD ESTATES

1. This is a request for approval to deviate from acquisition of the Fee estate for the LCA Amite River Diversion Canal Modification project and request for approval to acquire a Channel and Channel Improvement Easement (standard estate), a Wetland Creation and Restoration Easement (non-standard estate), and a Flowage and Deposition Easement (non-standard estate) to accomplish the project.
2. The detailed project purpose and description is contained within the Real Estate Plan. The project entails making three cuts along the banks of the Amite River Diversion Channel (ARDC) and dredging three coordinating channels to flow water from the ARDC to the Maurepas Swamp. The dredged material from these conveyance channels will be sidecast to form bottomland hardwood habitat. In addition, bottomland hardwood/freshwater swamp tree species will be planted throughout the swamp. The project would closely restore the natural wet/dry cycles that existed in this area before the construction of the ARDC and adjacent spoil banks. The result should promote seedling germination and promote survival of habitats to enhance establishment of new forest growth.
3. A map depicting the location of all project features is included in the Real Estate Plan as Figure 1.7 –TSP/ Alternative 33 on page 9.
4. The District acknowledges that it is Corps of Engineers policy to acquire fee simple title for ecosystem restoration projects in order to reduce the risk that incompatible uses on project land will occur after project construction, and to ensure that ownership rights vested in the project are clear and enforceable (ER 1105-2-100, Appendix F, Amendment # 2, F-20b(2)(a). However, regulations also indicate that a lesser interest, such as, a specific type of permanent easement, may be appropriate depending upon the operational requirements of the project and other circumstances relevant to project implementation, including landowner preference (EP 1165-2-502, 17b). Circumstances wherein the acquisition of interests less than fee may be appropriate is where only select and easily identifiable and narrow affirmative rights are required for successful implementation of the project (ER 1105-2-100, Appendix F, Amendment # 2, F-20b(2)(b)i.)
5. It is the opinion of the Non-Federal Sponsor and the District that construction of this project can be accomplished through the acquisition of perpetual easements rather than fee. The project has specific features in defined areas, and the necessary real estate rights are narrow, affirmative rights that can easily be defined. The standard Channel and Channel Improvement Easement would allow the Government sufficient rights to construct the cuts along the ARDC and the conveyance channels. District Office of Council has prepared a non-standard Wetland Creation and Restoration Easement that would allow the Government necessary rights to place soil and plant vegetation in the swamp to improve the habitat and would protect the environment by prohibiting construction of structures, excavation of the property or placement of fill without approval by the United States. The estate also prohibits use of the surface to explore for minerals. District Office of Council has also prepared a non-standard Flowage and Deposition Easement which in addition to allowing flooding of lands

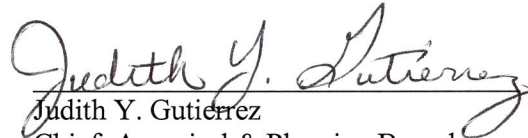
allows disposal of spoil material and prohibits use of the surface for mineral exploration, thus protecting the habitat.

6. It is the opinion of the project delivery team that the estates proposed herein provide sufficient rights to the Government to construct the project and also protect the interests of the Government by prohibiting use of the surface for mineral exploration or construction of improvements. In addition, because the project area is a wetland, the project features are further protected through the police powers of the Federal Government through Section 404 of the Clean Water Act which require a permit from the Corps of Engineers for any activity that could negatively impact a wetland. Lastly, due to the topography of the project site and its limited access, it is highly unlikely that the landowner would propose development.
7. The cost of managing fee owned lands is similar to the cost of managing lands encumbered by easements except for the initial year. Fee lands are surveyed and monumented. Given that the property impacted by this project is remote and it is wetlands, the cost of the survey is approximately \$5,000. For subsequent years, the cost of managing the easement would be approximately \$2,100, and the cost of managing fee would be approximately \$2,800.
8. The team proposes the acquisition of easements rather than fee considering that this project is one of 15 Louisiana Coastal Area (LCA) projects which collectively encompass thousands of acres. The decisions regarding which estates to acquire for Amite River Diversion Channel Modification will impact the other 14 LCA projects. The non-federal sponsor, The Coastal Protection Restoration Authority, is not in favor of owning fee interest over the project area for Amite River Diversion Channel Modification. The mission of the non-federal sponsor is to oversee all hurricane risk reduction projects and all coastal restoration projects in south Louisiana. The sponsor is willing to acquire a fee estate when it is absolutely necessary for the project. However, owning fee lands for public access is not within the authorized missions of the non-federal sponsor.
9. Approval of the non-standard Wetland Creation and Restoration Easement is requested because there is no standard easement that includes the real estate rights necessary for construction of certain project features. The project includes disposal of dredged material in designated areas to use it beneficially to enhance existing marsh and to propagate the growth of marsh in waterbottoms as well as vegetative plantings of bottomland hardwood / freshwater swamp tree species.
 - The Wetland Creation and Restoration Easement provides all the necessary rights to protect the marsh and trees that are planted as well as the marsh that will naturally propagate in the project areas. The only potential use of the property, given its location and physical characteristics, is for recreation (fishing and hunting) and mineral development. Recreational uses will not impact the viability of the project. The Wetland Creation and Restoration Easement prohibits the construction of structures, operation of vehicles, excavation of the land, placement of landfill, cutting of trees, and the use of the surface for mineral exploration without prior approval by the United States.
 - The cost of acquiring the Wetland Creation and Restoration Easement is less than the cost of acquiring Fee.

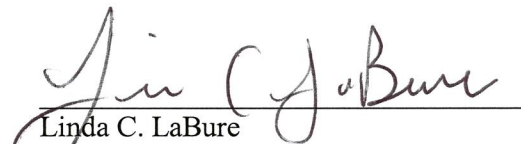
- The Wetland Creation and Restoration Easement was written using language from several standard estates such as the Perpetual Beach Nourishment Easement, the Perpetual Beach Storm Damage Reduction Easement , the Fee Excluding Minerals (with restrictions on use of the surface), and the Flowage Easement (Permanent Flooding).
 - For ease of review, attached as Exhibit A is a highlighted version of the Wetland Creation and Restoration Easement indicating which language was taken from standard estates and which language is non-standard. Also attached as exhibit B is a final version of the estate. Exhibit C is a written statement from Office of Counsel (MVN), indicating the legal sufficiency of the Non-Standard Estate.
10. Approval is also requested for a non-standard Flowage and Deposition Easement. Because the standard Flowage Easement does not account for the deposition of sediment, a non-standard estate is needed to encompass this project feature.
- This non-standard estate has been constructed in the same format as the standard Flowage Easement. Language has been added to give the Government the right to deposit dredge material or sediment on the land. Language has also been added to protect the existing ecosystem by giving the Government the right to prohibit the operation of vehicles without prior permission and the right to prohibit trimming, cutting, felling and the removal of trees or vegetation without prior permission. The non-standard estate allows for the Grantor to retain mineral rights, but restricts the use of surface for the purpose of drilling and extracting oil, gas and other minerals.
 - The cost associated with acquiring the non-standard Flowage and Deposition Easement is similar to the cost of acquiring a standard Flowage Easement. The reason for this is that both estates include the right to flood the land. This right is what has the most detrimental impact on the property's remainder value. The properties over which the non-standard estate will be acquired are wetlands where the harvesting of timber is unlikely. Therefore, the deposition of sediment and the prohibition of vehicle operations and removal of trees do not have a significant impact on the value of the property or the value of the easement.
 - For ease of review, attached as Exhibit D is a highlighted version of the Flowage and Deposition Easement which indicates which language was taken from standard estates and which language is non-standard. Also attached as exhibit E is a final version of the estate. Exhibit F is a written statement from Office of Counsel (MVN), indicating the legal sufficiency of the Non-Standard Estate.
11. Similar non-standard Wetland Creation and Restoration Easement and Flowage and Deposition Easement were previously approved for the 2004 LCA Project Report.

12. Also enclosed as Exhibit G is a Quality Control Checklist, Request to Deviate from Guidance as to Appropriate Interest to Acquire and/or Request for Approval of Use of Non-Standard Estate.
13. Point of contact for this request is Ms. Judith Gutierrez, 504-862-2575.

Prepared by:


Judith Y. Gutierrez
Chief, Appraisal & Planning Branch
USACE, MVN, Real Estate Division

Approved by:


Linda C. LaBure
Chief, Real Estate Division
USACE, MVN

WETLAND CREATION AND RESTORATION EASEMENT
(based on the standard Perpetual Beach Nourishment Easement and other standard estates)

A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule A) (Tract No. -) to construct, operate, maintain, patrol, repair, renourish, and replace wetlands and associated coastal habitats, including the right to borrow and/or deposit fill; to accomplish any alterations of contours on said land; to plant vegetation on said land; to excavate, dredge, cut away, and remove any or all of said land and to place thereon dredge or spoil material; to construct dikes and to install, alter, relocate, repair or plug cuts in the banks of dikes; to construct, operate and maintain pipelines for the purpose of dredge or spoil material transport and deposition; to move, store and remove equipment and supplies; to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the easement (excepting the structures now existing on the land, described as _____); provided that no structures for permanent human habitation shall be constructed or maintained on the land; that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill, and that no trimming, cutting, felling or removal of trees, underbrush, and any other vegetation shall be conducted without such approval; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the grantor(s), (his) (her) (its) (their) (heirs,) successors and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; and expressly excepting and excluding all oil, gas and other minerals occurring naturally in liquid or gaseous form, in and under said land and all appurtenant rights for the exploration, development, production and removal of said oil, gas and other minerals occurring naturally in liquid or gaseous form, but without the right to enter upon or over the surface of said land for the purpose of exploration, development, production and removal therefrom of said oil, gas and other minerals occurring naturally in liquid or gaseous form.

Comment [JYG1]: Standard Perpetual Beach Nourishment Easement

Comment [JYG2]: Non-Standard language

Comment [MB3]: From standard perpetual beach storm damage reduction easement.

Comment [MB4]: From standard channel improvement easement.

Comment [MB5]: Non-Standard language from LCA 2004 wetland creation and restoration easement.

Comment [MB6]: From standard perpetual beach storm damage reduction easement.

Comment [JYG7]: Standard Perpetual Beach Nourishment Easement

Comment [MB8]: Adapted from the standard flowage easement (permanent flooding) and standard flowage easement (occasional flooding).

Comment [MB9]: Non-Standard language added to safeguard against destruction of project benefits.

Comment [MB10]: From the standard fee excluding minerals estate, differs from LCA 2004 easement in that it prohibits surface activities altogether. I clarified the term "other minerals" so that it could not be interpreted to include solid minerals.

(Note only the language with red font is non-standard language. All other language is taken from standard estates).


WETLAND CREATION AND RESTORATION EASEMENT
(based on the standard Perpetual Beach
Nourishment Easement and other standard estates)

A perpetual and assignable easement and right-of-way in, on, over and across (the land described in Schedule A) (Tract No. -) to construct, operate, maintain, patrol, repair, renourish, and replace wetlands and associated coastal habitats, including the right to borrow and/or deposit fill; to accomplish any alterations of contours on said land; to plant vegetation on said land; to excavate, dredge, cut away, and remove any or all of said land and to place thereon dredge or spoil material; to construct dikes and to install, alter, relocate, repair or plug cuts in the banks of dikes; to construct, operate and maintain pipelines for the purpose of dredge or spoil material transport and deposition; to move, store and remove equipment and supplies; to plug, fill or alter pipeline canals located within the limits of the easement; to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the easement (excepting the structures now existing on the land, described as _____), provided that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill, [that no vehicles shall be operated within the limits of the easement without such approval, except as may be required to operate and maintain the easement,] and that no trimming, cutting, felling or removal of trees, underbrush, and any other vegetation shall be conducted without such approval; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the grantor(s), (his) (her) (its) (their) (heirs,) successors and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; and expressly excepting and excluding all oil, gas and other minerals occurring naturally in liquid or gaseous form, in and under said land and all appurtenant rights for the exploration, development, production and removal of said oil, gas and other minerals occurring naturally in liquid or gaseous form, but without the right to enter upon or over the surface of said land for the purpose of exploration, development, production and removal therefrom of said oil, gas and other minerals occurring naturally in liquid or gaseous form.

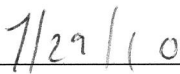
Exhibit B

STATEMENT OF REVIEW AND APPROVAL
LCA AMITE RIVER DIVERSION CANAL MODIFICATION
WETLAND CREATION AND RESTORATION EASEMENT
NON-STANDARD ESTATE

This is to certify that the Wetland Creation and Restoration Easement, a non-standard estate, has been reviewed and is legally sufficient for the requirements of the above referenced project.



Mayely Boyce
Attorney Advisor



Date

FLOWAGE AND DEPOSITION EASEMENT
(based on the standard Flowage Easement and standard Fee Excluding Minerals)

The perpetual right, power, privilege and easement occasionally to overflow the land described in Schedule A (Tracts Nos. ____, ____) and in connection with the operation and maintenance of the project, including the continuing right to clear and remove and brush, debris and natural obstructions which, in the opinion of the representative of the United States in charge of the project, may be detrimental to the project; **and to deposit dredge material or sediment on the land,** together with all right, title and interest in and to the structures and improvements now situate on the land, excepting _____ (here identify those structures not designed for human habitation which the District Engineer determines may remain on the land); provided that no structures for human habitation shall be constructed or maintained on the land, that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, **that no vehicles shall be operated within the limits of the easement without such approval, except as may be required to operate and maintain the easement, that no trimming, cutting, felling or removal of trees, underbrush, and any other vegetation shall be conducted without such approval,** and that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution; and expressly, excepting and excluding all oil, gas **and other minerals occurring naturally in liquid or gaseous form,** in and under said land and all appurtenant rights for the exploration, development, production and removal of said oil, gas **and other minerals occurring naturally in liquid or gaseous form,** but without the right to enter upon or over the surface of said land for the purpose of exploration, development, production and removal therefrom of said oil, gas **and other minerals occurring naturally in liquid or gaseous form.**

Comment [JYG11]: Standard Flowage Easement (Occasional Flooding)

Comment [JYG12]: Standard Flowage Easement (Permanent Flooding)

Comment [JYG13]: Non-Standard language

Comment [JYG14]: Standard Flowage Easement (Permanent Flooding)

Comment [JYG15]: Non-Standard language

Comment [JYG16]: Standard Flowage Easement (Permanent Flooding)

Comment [JYG17]: Deleted the word coal which is not present in Louisiana and clarified the meaning of other minerals used in the 2004 LCA report to prevent interpretation as solid minerals.

Comment [JYG18]: Standard Fee Excluding Minerals

(Note only the language with red font is non-standard language. All other language is taken from standard estates).

FLOWAGE AND DEPOSITION EASEMENT

(based on the standard Flowage Easement, standard Fee Excluding Minerals, and the non-standard Dredged Material Disposal Easement)

The perpetual right, power, privilege and easement occasionally to overflow the land described in Schedule A (Tracts Nos. _____, _____) and in connection with the operation and maintenance of the project, including the continuing right to clear and remove brush, debris and natural obstructions which, in the opinion of the representative of the United States in charge of the project, may be detrimental to the project; and to deposit dredge material or sediment on the land, together with all right, title and interest in and to the structures and improvements now situate on the land, excepting _____ (here identify those structures not designed for human habitation which the District Engineer determines may remain on the land); provided that no structures for human habitation shall be constructed or maintained on the land, that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, that no vehicles shall be operated within the limits of the easement without such approval, except as may be required to operate and maintain the easement, that no trimming, cutting, felling or removal of trees, underbrush, and any other vegetation shall be conducted without such approval, and that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and/or placement of landfill; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution; and expressly, excepting and excluding all oil, gas and other minerals occurring naturally in liquid or gaseous form, in and under said land and all appurtenant rights for the exploration, development, production and removal of said oil, gas and other minerals occurring naturally in liquid or gaseous form, but without the right to enter upon or over the surface of said land for the purpose of exploration, development, production and removal therefrom of said oil, gas and other minerals occurring naturally in liquid or gaseous form.

Exhibit E

STATEMENT OF REVIEW AND APPROVAL
LCA AMITE RIVER DIVERSION CANAL MODIFICATION
FLOWAGE AND DEPOSITION EASEMENT
NON-STANDARD ESTATE

This is to certify that the Flowage and Deposition Easement, a non-standard estate, has been reviewed and is legally sufficient for the requirements of the above referenced project.

Mayely Boyce
Mayely Boyce
Attorney Advisor

7/29/10
Date

Quality Control Checklist

Request to Deviated from Guidance as to Appropriate Interest to Acquire and/or Request for Approval of Use of Non-standard Estate

ER 405-1-12, paragraphs 12-9 and 12-10

PROJECT: LCA AMITE RIVER DIVERSION CANAL MODIFICATION

Title and date of Decision Document which contains the REP requesting approval of estate deviation or NSE approval LCA Amite River Diversion Canal Modification Feasibility Study

Subject line and date of memorandum requesting approval of estate deviation or NSE approval N/A – Requested as an exhibit in the Real Estate Plan

1. Does the proposed estate, whether standard or non-standard; provide sufficient interest for the construction, operation, and maintenance of the project? YES

2. Coordination has been made with the following and they concur with use of the proposed estate:

Project Management X
Operations X

E&C X
Office of Counsel X

Coordination was made with the following other functional groups. Environmental

3. A statement of legal sufficiency from OC is attached to the REP or memo requesting approval by HQ Yes

4. Is the cost to acquire the proposed estate more than cost of acquiring a standard interest with a standard estate? No Is this discussed in the request? YES

5. Did the Non-Federal Sponsor (NFS) propose the deviation from appropriate interest or use of a NSE? No

If so, why? _____

If not, was the deviation or NSE coordinated with the NFS? Yes

6. Can the non-standard estate be approved by the district Chief of RE? No

If so it must :

Serve the intended project purpose _____

Substantially conform with and not materially deviate form the corresponding standard estate _____

Does not increase the costs nor potential liability of the Government? _____

7. Does the NSE conform to format of standard estates Yes?

8. Does the request for approval which goes through MVD to HQ, contain a detailed explanation of and justification for the deviation as to interest to be acquired? Yes

9. Does the request contain a detailed explanation of each non-standard clause in the estate? Yes The request must detail the need for the language in relation to project requirements. Each non-standard right to be acquired, restriction/prohibition placed on fee owner's interest and /or reservation to the fee owner must be fully discussed. Is the acquisition or reservation of mineral rights held by the fee owner or outstanding 3rd party mineral rights fully discussed in relation to the estate language and project requirements? Yes

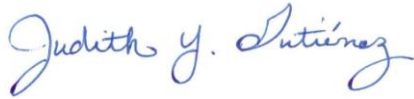
If there are clauses found in the corresponding standard estate which have been deleted, is there an explanation of the deletion? N/A

10. Has the district deviated as to the appropriate interest on similar projects in the past? Yes If so, which project(s)? The Wetland Creation and Restoration Easement is proposed for approval for other LCA projects.

11. Has the proposed NSE been previously approved by HQ for use for a project in your district? No. If so, which project(s)? _____
Provide a copy of the previous approval.

A copy of this Checklist is attached to the REP or memorandum requesting a deviation as to interest to be acquired or approval of a NSE. Yes

N/A Date: _____
Realty Specialist or Appraiser



July 28, 2010

_____ Date: _____
Branch or Section Chief

Exhibit V

Quality Control Checklist

**Quality Control 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 Amite River Diversion Canal Modification Project

REPORT TITLE Real Estate Plan

Date of Report March 12, 2010

Date of REP December 25, 2009

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 3rd 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. _____

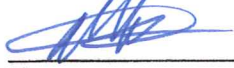
16. **Facility or Utility Relocations** _____

- 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. √

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.



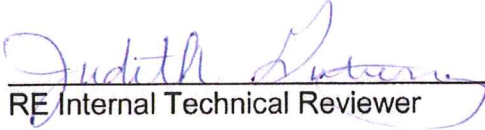
Preparer

4/13/2010

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

4/21/10

Date

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