

Delaware River Basin Comprehensive Flood Risk Management Interim Feasibility Study and Integrated Environmental Assessment for New Jersey



Flooding in the Study Area, April 2005

June 2015

APPENDIX F: Draft Real Estate Plan



**U.S. ARMY CORPS OF
ENGINEERS
PHILADELPHIA DISTRICT**



**NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION**

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APPENDIX F: REAL ESTATE PLAN

1. GENERAL

This Real Estate Plan is in support of the Delaware River Basin Comprehensive Flood Risk Management Interim Feasibility Study and Integrated Environmental Assessment for New Jersey (herein called “Interim Feasibility Study for New Jersey”.) The purpose of the Interim Feasibility Study for New Jersey is to evaluate potential solutions to frequent flooding problems within a select portion of the Delaware River Basin in New Jersey. Plan formulation has shown potential for flood risk management projects in the City of Lambertville and in the Gibbstown area of Greenwich and Logan Townships. The New Jersey Department of Environmental Protection (NJDEP) is the non-Federal Sponsor (NFS).

The Tentatively Selected Plan (TSP) includes two hydrologically separate areas. The northern area is located in Lambertville while the southern area is located in Greenwich and Logan Townships (Gibbstown area). The primary features of the plans are a system of levees and floodwalls with gravity drainage outlets.

Figure 1. Gibbstown Project Area

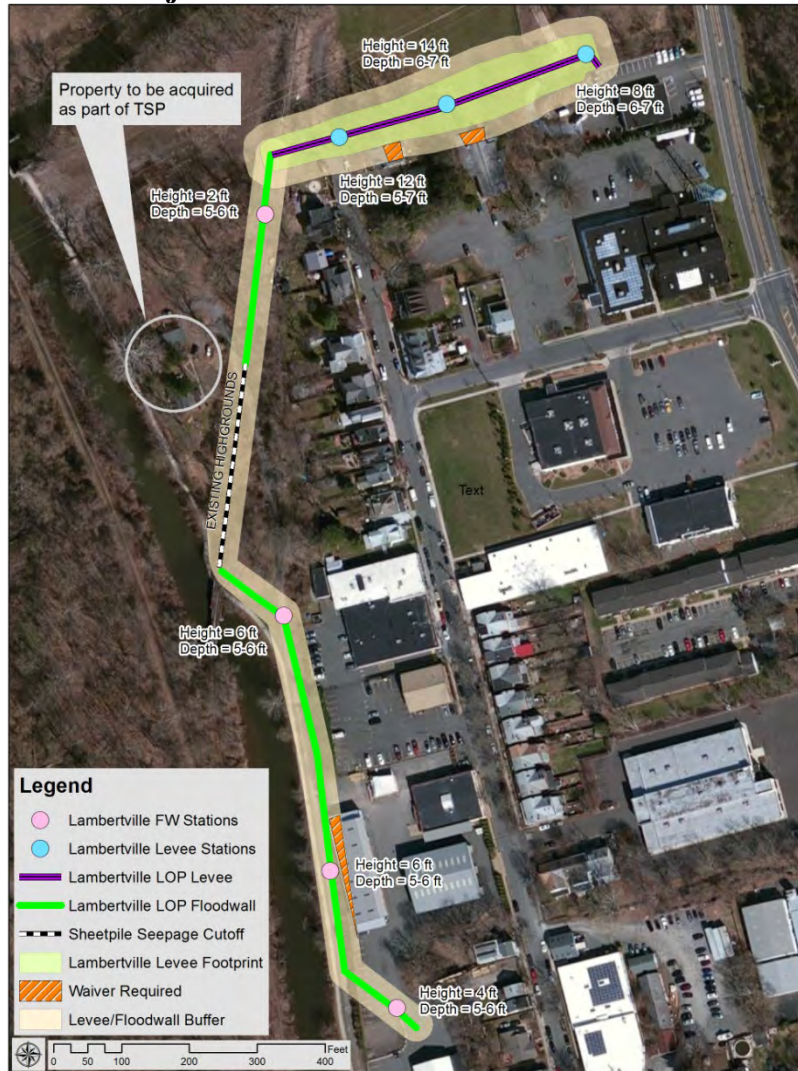


In Gibbstown the plan includes buyouts of 16 residential structures and one currently vacant commercial structure located outside of the levee system, and construction of ring levees/floodwalls for three industrial facilities. The line of protection plan in Gibbstown includes approximately 7,386 feet of levee with a maximum height of 12 feet, 13,788 feet of floodwall with a maximum height of 10 feet, and the construction of two swing closure gates and the acquisition and demolition of one garage/ carriage house adjacent to one of the

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closure gates. Also, approximately 12.5 acres will have to be acquired in fee to mitigate for wetlands lost in certain areas of the Gibbstown levee and floodwalls.

Figure 2. Lambertville Project Area



In Lambertville the plan includes a system providing a 516 foot long zoned earth levee along Alexauken Creek and a 1409 foot long concrete capped sheetpile floodwall near the Delaware and Raritan Canal. The TSP in Lambertville includes construction of one additional 54 inch diameter gravity outlet in the area of Ely Creek as the interior drainage component. One home is identified for acquisition because the plan may limit access and safe evacuation.

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2. REAL ESTATE REQUIREMENTS

a. Description of Land, Easements, Rights-of-Way and Roadway Requirements for Project

The land required for the Gibbstown project area consists of approximately 142 parcels affected by the easement, as well as buyouts of 16 residential structures and one currently vacant commercial structure located outside of the levee system.

The section of the project located in Lambertville consists of approximately 14 parcels affected by the easement, as well as 1 fee simple buyout of a residential structure and relocation of the resident.

LERRD acreage and the gross appraisal will be developed upon final draft of the Feasibility Report.

b. Standard Estate

The minimum estates required for the Gibbstown section as well as the Lambertville section of this project are Fee Simple (Estate No. 1) for residential buyouts and for Gibbstown wetland mitigation areas, a Flood Protection Levee Easement (Estate No. 9) for a permanent right-of-way on for levees, floodwalls, and gates, and a Temporary Work Area Easements (Estate No. 15) for staging, and work areas.

FEE (Estate No. 1)

The fee simple title to (the land described in Schedule A) (Tract Nos. ____), subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

FLOOD PROTECTION LEVEE EASEMENT (Estate No. 9)

A perpetual and assignable right and easement in (the land described in Schedule A) (Tract Nos. ____) to construct, maintain, repair, operate, patrol and replace a flood protection (levee) (floodwall) (gate closure), including all appurtenances thereto; reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land 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.

TEMPORARY WORK AREA EASEMENT (Estate No.15)

A temporary easement and right-of-way in, on, over and across (the land described in Schedule A) (Tract Nos. ____), for a period not to exceed ____ () year, beginning with date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors as a work area, including the right to move, store and

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remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the _____, together with the right to trim, cut, fell and remove there from all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, 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.

c. Non-Standard Estates

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

d. Current Ownership

A map delineating ownership parcels and lists will be developed for the final report.

e. Real Estate Mapping

General maps of the buyouts and the anticipated location of the levees are as shown on Figures 1 and 2 above. More detailed real estate parcel mapping with estates and acreages are shown below for both the Gibbstown area and Lambertville as Exhibit "B".

3. EXISTING FEDERAL PROJECTS

There are no known existing federal projects within this project area.

4. EXISTING FEDERALLY OWNED LANDS

There are no known existing federally owned lands within this project area

5. LANDS OWNED BY THE NON-FEDERAL SPONSOR

In this preliminary stage, there are no known lands owned by the Non-Federal Sponsor.

6. NAVIGATIONAL SERVITUDE

Navigational servitude is not applicable to this project.

7. INDUCED FLOODING

No induced flooding is anticipated at this time for this study project area.

8. BASELINE COST ESTIMATE FOR REAL ESTATE

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No detailed Real Estate Cost Estimate in MCACES format is available for this reporting phase to determine the value of lands, easements and rights-of-way. This will be developed for the final report.

9. PUBLIC LAW 91-646 RELOCATIONS

One Public Law 91-646 relocation is anticipated for the buy-out for the Lambertville section, since this will not be voluntary. Since the buy-outs for the Gibbstown section will be on a voluntary basis only, Public Law 91-464 relocation assistance is not required.

10. MINERAL ACTIVITY

There is no present or anticipated mining and drilling activity in the vicinity of the project that may affect the operation thereof.

11. TIMBER RIGHTS

There is no present or anticipated timber harvesting activity in the vicinity of the project that may affect the operation thereof.

12. NON-FEDERAL SPONSOR

The New Jersey Department of Environmental Protection (NJDEP) is the Non-Federal Sponsor. NJDEP will be responsible for acquisition of the real estate interests and relocations. The NJDEP has the necessary experience and resources, including quick take authority, to acquire the real estate interests required for the project. The assessment of the NFS's real estate acquisition capability is included in Exhibit "A".

13. ZONING

The enactment of zoning ordinances is not anticipated by the NFS to facilitate acquisition.

14. ACQUISITION SCHEDULE

A schedule coordinated with the NFS will be developed for the final feasibility report. The NFS may officially initiate real estate acquisition activities after final execution of the new Project Partnership Agreement (PPA). The following estimated acquisition schedule indicates the length of time usually required for each step in the standard acquisition process. The following is an estimated real estate timeline:

	<u>End Date</u>
a. PPA Execution	Start Date
b. Forward Maps to Sponsor	Within 1 week of Start Date
c. Plats and Owner Verification	Within 12 weeks of Sponsor map receipt

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d. Appraisal receipt	Within 8 weeks of plats/owners
e. Review Appraisals	Within 4 weeks of Appraisal receipt
f. Negotiations	Within 8 weeks after Appraisal review
g. Closings	Within 6 weeks of completion
	Negotiations
h. Relocation	6 months
i. Possession	Within 1 day of Closings
j. Certification of Real Estate	Within 1 week of Possession; requires the transmittal of the Non-Federal Sponsor's Authorization for Entry for Construction and Certificate of Authority
Approximate Total	1.5 years
k. Condemnation/Eminent Domain	Within 1 year of failure of Negotiations

It is known that the NFS may have initiated LER acquisition through its municipalities. We are coordinating with the NFS to determine the current status and what the timeline for any remaining easement acquisition will be.

15. UTILITY AND FACILITY RELOCATIONS

There are requirements for utility relocations anticipated for this project.

16. ENVIRONMENTAL CONCERNS

In the southern section of the study area, there may be hazardous waste contamination in or near the levee/floodwall system due to former industrial activities on sites owned by DuPont and Ashland/Hercules. As of 2015, some remediation has been done on the Ashland/Hercules site, which is a known site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as Superfund. In addition, the DuPont property, known as the Repauno Facility, is a listed Resource Conservation and Recovery Act (RCRA) site. Stormwater and wastewaters generated throughout the site have contaminated soil, surface water, and groundwater. Contaminants found on site include: nitrobenzene, aniline, diphenylamine, and polychlorinated biphenyls (PCBs). Contamination within the site is being effectively held in place through use of a groundwater interceptor and treatment system installed in 1985. There are numerous sources of PCBs in the Delaware River. These sources include contaminated sites, non-point sources, industrial and municipal point sources in both the main stem Delaware River above Trenton and tributaries to the Delaware both above and below Trenton. The U.S. EPA, Region 2 leads remediation at eight sites undergoing cleanup for PCBs and four sites with ongoing PCB remediation are led by NJDEP. Of these sites, eight are located within the county of Gloucester. These include: Bridgeport Disposal, LLC, Bridgeport Rental Oil Services, Lail Property (Exxon/Mobil), Manchester Machinery and Salvage Site, Matteo & Sons, Inc., Monsanto, Welsbach and General Gas Mantle, Hercules, and Former General Engines Company.

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17. ATTITUDES OF THE LANDOWNERS

At this time the content of the information presented to the public has been conceptual and general in nature. It is reasonable to suggest that the general public is in favor of flood risk management projects; however, until more detailed alignments are available, which will more definitively determine which landowners are impacted; attempting to realize actual landowner attitudes at this time is premature.

18. NOTIFICATION TO NON-FEDERAL SPONSOR

The NFS will be given notice of their responsibilities for cost sharing, real estate acquisition, crediting requirements under PL 91-646, and operation and maintenance for the project.

19. RISK ANALYSIS

There appears to be low real estate risks associated with this project, since the project is designed to protect a flood prone area and will be a benefit to owners.

APPENDIX F: REAL ESTATE PLAN – EXHIBIT A

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

Project: Interim Feasibility Gibbstown and Lambertville, New Jersey

Non-Federal Sponsor: New Jersey Department of Environmental Protection (NJDEP)

I. Legal Authority:

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

Yes. The non-Federal sponsor (NFS), the NJDEP, has acquisition authority in the project area, except those river portions within the State of Delaware.

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

Yes. Although the State of New Jersey does have the power of eminent domain, the delegated authority to the NFS' department was rescinded more than 10 years ago. However, this delegated authority may be restored for Post Sandy projects. Either way, NJDEP can ask the State of New Jersey Attorney General's office to exercise its power of eminent domain on NJDEP's behalf. The State Attorney General's office has cited three statutory condemnation authorities that they intend to utilize to take the properties if necessary. For example, under N.J.S.A. App. §§ A:9-51.5 – 51.7 (Disaster Control Act), the NFS has indicated that assistance would be contracted from the local municipalities involved, through a State Aid Agreement, to acquire the necessary real estate interests. The local municipalities do have the power of eminent domain.

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

No. The NFS does not have "quick-take" authority for this project. If a local municipality were to acquire the real estate, they would file a Declaration of Taking and deposit the estimated just compensation with the court. However, possession could be stayed if the property owner contests the authority and that results in prolonged litigation. Unlike in federal law for this type of project, the New Jersey Eminent Domain Act does not allow the state to take immediate possession upon filing of the Declaration of Taking. See 33 U.S.C. § 594. Specifically, the New Jersey Eminent Domain Act says "[w]hen the authority to condemn is denied, all further steps in the action shall be stayed until that issue has been finally determined." See N.J.S.A. § 20:3-11.

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

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Yes. The borrow area in the Delaware River channel and beach and outfall areas beyond the mean low water line are located in the State of Delaware.

- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn?

Yes. The sponsor cannot condemn State of Delaware property on the bottom of the Delaware River as described above.

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. The NFS is familiar with the requirements of P.L. 91-646.

- 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 work load, if any, and the project schedule?

Yes. The NFS has indicated that assistance would be requested from the local municipalities to acquire the necessary real estate interests. The NFS will utilize State Aid agreements as necessary to enlist the assistance of local townships.

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

Yes.

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

No.

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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?

Yes.

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 fully capable.

V. Coordination:

a. Has this assessment been coordinated with the sponsor? Yes

b. Does the sponsor concur with this assessment? Yes

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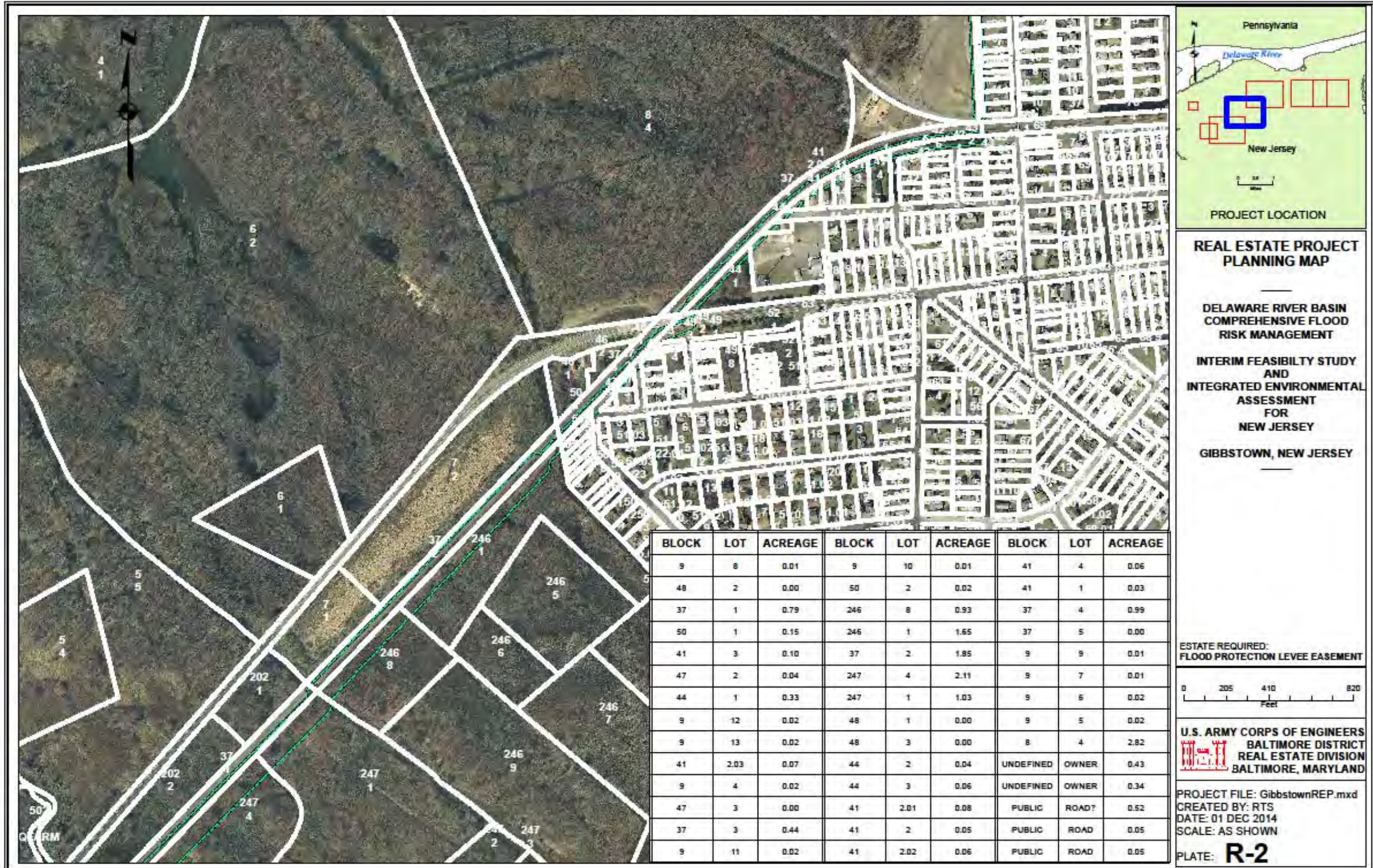
APPENDIX F: REAL ESTATE PLAN – EXHIBIT B



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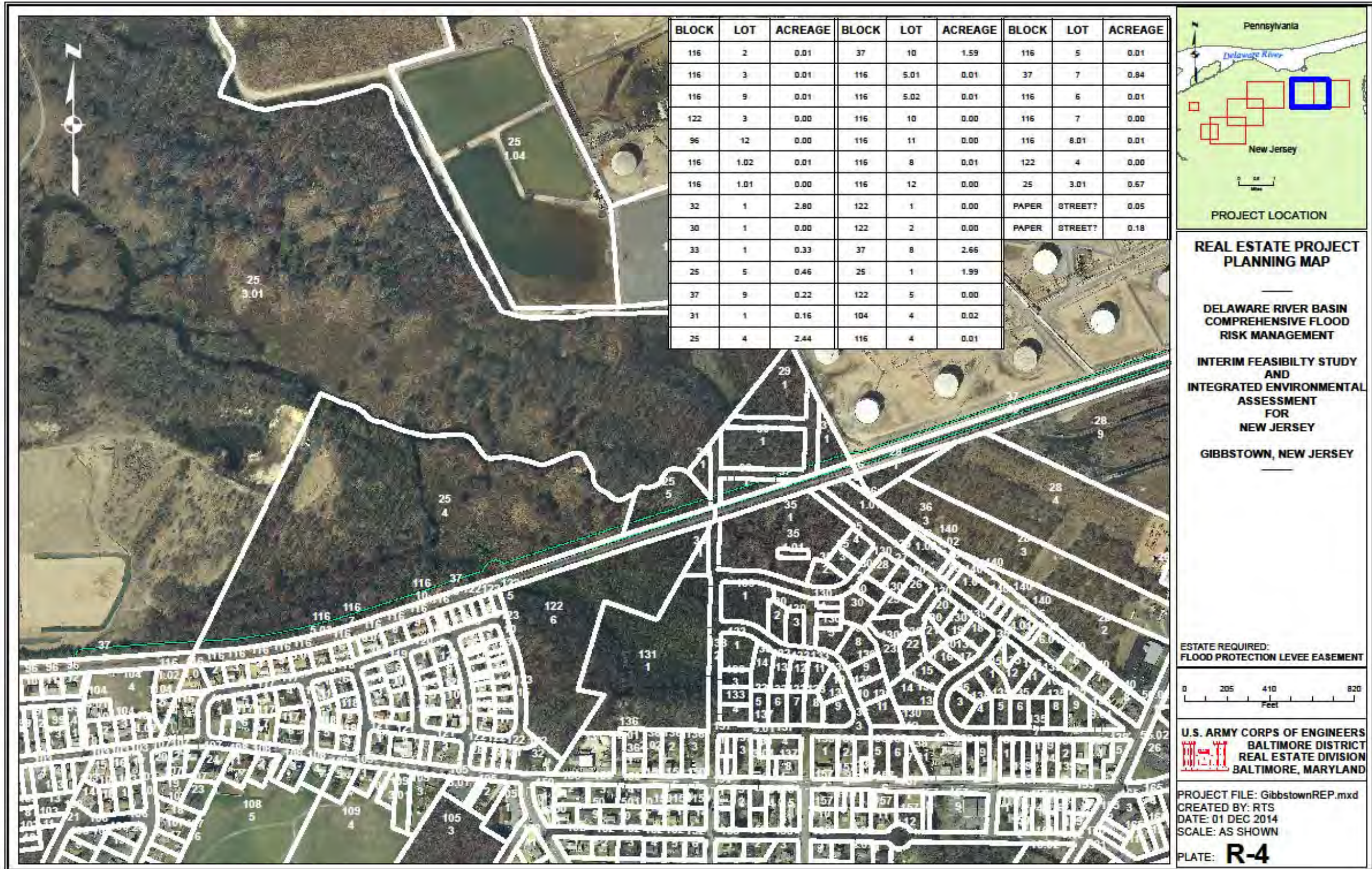
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