

**APPENDIX H
REAL ESTATE PLAN**



**APPENDIX E
REAL ESTATE PLAN**

**SAN MARCOS RIVER SECTION 206 AQUATIC
ECOSYEM RESTORATION PROJECT**

CITY OF SAN MARCOS, TEXAS

DATE OF REPORT

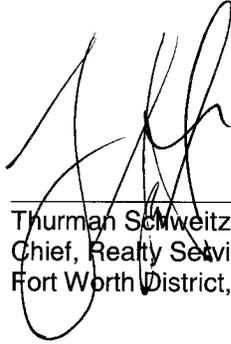
February 7, 2014

PREPARED BY

**U.S. ARMY CORPS OF ENGINEERS
FORT WORTH DISTRICT**

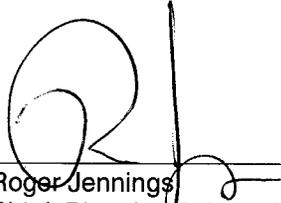
This Real Estate Plan has been prepared in accordance with ER 405-1-12 dated 1 May 1998.

PREPARED BY:



Thurman Schweitzer
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RECOMMENDED BY:



Roger Jennings
Chief, Planning & Appraisal Branch
Fort Worth District, Corps of Engineers

PURPOSE

This Real Estate Plan has been prepared in support of the feasibility study that describes the lands, easements, right of way, relocation, and disposal (LERRD) required for the San Marcos River Section 206 Aquatic Ecosystem Restoration Project in the City of San Marcos (Hays County) Texas. Both the City of San Marcos and the State of Texas, General Land Office are the non-Federal sponsors. As part of the cooperative agreement between the two NFS, the City of San Marcos will acquire the LERRD. The Continuing Authorities Program (CAP) and Section 206 of the Water Resources Development Act of 1996 authorizes the U.S. Army Corps of Engineers to participate in the development and implementation of projects to restore aquatic habitats that have been significantly disturbed, degraded, or altered.

The proposed project would restore valuable aquatic and riparian habitats along the San Marcos River, which have been degraded by recreational use, invasive exotic plant and animal species, and sedimentation. The Proposed National Environmental Restoration (NER or recommended plan) includes measures to control aquatic and riparian exotic plants, measures to restore riparian zones, measures to restore wetlands, and measures to remove and control accumulations of sediments from the San Marcos River channel. The proposed project would have benefits to several federally listed species.

LAND, EASEMENTS, AND RIGHTS-OF-WAY FOR THE RECOMMENDED PLAN

In accordance with ER 405-1-12, dated May 1, 1998, the estate to be acquired for "fish and wildlife mitigation lands, **ecosystem restoration**, and other environmental purposes" is Fee. Based on this guidance, the estate valued is defined by the U.S. Army Corps of Engineers as:

The fee simple title to the land described, subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

The subject property is located within the City of San Marcos in Hays County, Texas. The recommended plan is a combination of in-stream ecosystem restoration and that entails the removal of invasive species and the replacement with native species and the restoration of riparian habitats along the river bank. A total of 72.878 publically owned acres are involved.

- Public Owned Land
 - City of San Marcos – 35.003 acres
 - State of Texas, General Land Office (GLO) – 25.868 acres
 - State of Texas, Parks & Wildlife (TxP&W) – 12.007 acres

The NFS (City of San Marcos and GLO) currently owns 60.871 acres which includes the area for sediment disposal. The remaining 12.007 acres owned by the TxP&W will be acquired as a perpetual easement. TxP&W has stated publically that they are willing to work with the NFS and the Corps on the project. In support, a letter dated November 26, 2013 states that staff will recommend their Commission grant a non-standard estate for the land needed.

ER1105-2-100 allows exceptions to the general policy requiring fee. "Notwithstanding that fee title is generally the interest that must be provided to support CAP ecosystem restoration projects, there are circumstances where it may be appropriate to utilize permanent easements instead of fee. Such circumstances include:

- where project lands consist of the bed and immediate bank of a watercourse for the installation of features that improve habitat for aquatic resources (for example, root wads, shallow excavations, riffles, etc.)
- where project lands are owned in fee by public agencies other than the non-Federal sponsor and the owning agency cannot convey fee title and will not serve as a co-sponsor of the project; foreseeable future uses of the land by the public agency fee

owner are compatible with project purposes; and public access is provided otherwise or is not compatible with project purposes.

Where one or more of the circumstances described exists, the MSC may approve use of a permanent easement instead of fee for the implementation of the CAP ecosystem restoration project where use of such easement will satisfy project requirements and protect the project benefits. Given that none of the standard estates contained in EC 405 are applicable, language for a permanent easement (non-standard estate) has been developed and is included below.

COST SHARE OF PROJECT

The cost-share for the project is estimated at 65% Federal and 35% local. The estate to be acquired by the local sponsor is fee simple title. Table 1 - identifies the estate and estimated value of the land that will be acquired by the City of San Marcos.

| TABLE 1 LAND, EASEMENTS, and RIGHTS OF WAY San Marcos River Aquatic Ecosystem Restoration San Marcos, Texas | | |
|--|--------|-----------------|
| ESTATE | ACRES | ESTIMATED VALUE |
| PROJECT PURPOSE: Aquatic Ecosystem Restoration | | |
| PROJECT FEATURE: Aquatic Ecosystem Restoration | | |
| Fee Simple | 60.871 | \$412,342 |
| Non-Standard Perpetual Easement | 12.007 | \$108,238 |

NON-STANDARD ESTATE

A total of 60.871 acres is owned in fee by the NFS. An additional 12.007 owned by TxP&W will be acquired through a permanent easement that is allowed under ER1105-2-100. This permanent easement will be a non-standard estate and is shown below.

“A perpetual and assignable right and easement in, on, over, and across the land and water described in Exhibit __ attached hereto to locate, construct, operate, maintain, repair, alter, rehabilitate, remove, replace, upgrade, reconstruct, and monitor features of the San Marcos River Aquatic Eco-Restoration Project including, but not limited to the right to remove, chemical control, and plant vegetation; modify and improve adjacent to the channel for grade control, channel and bank stabilization purposes, hardpan surface removal, water quality improvement, wildlife habitat or other ecosystem improvements; monitor, maintain, and repair of plantings, bank modifications, or other project measures; and temporary mitigation measures such as recreational exclusion fencing and signage, and sediment control; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.”

EXISTING FEDERAL PROJECT

There is no other existing Federal project.

FEDERALLY OWNED LAND

There is no federally owned land associated with this project.

NAVIGATIONAL SERVITUDE

Navigational Servitude is not applicable to this project because the San Marcos River is not navigable.

PROJECT AREA

Maps depicting the project area are attached.

FLOODING OF PROJECT AREA

There is no induced flooding as a result of the project.

BASELINE COST ESTIMATE FOR REAL ESTATE

Values included in the baseline cost estimate are taken from the Gross Appraisal, San Marcos River Aquatic Ecosystem Restoration Project, dated July 8, 2013.

- 01 Land & Damages
- 01.23 Construction Contract Documents
- 01.23.03 Real Estate Analysis Documents
- 01.23.03.01 Real Estate Planning Documents, 25% based on reasonable cost estimates
- 01.23.03.02 Real Estate Acquisition Documents, 25% based on reasonable certainty
- 01.23.03.03 Real Estate Condemnation Documents, 20% based on the expectation of at least 10% will be condemned
- 01.23.03.05 Real Estate Appraisal Documents, 20% based on reasonable certainty of contract costs
- 01.23.03.06 Real Estate PL 91-646 Asst. Documents, 10% based on reasonable certainty
- 01.23.03.15 Real Estate Payment Documents, based on contingencies (20%) assigned by the Appraiser in the Gross Appraisal
- 01.23.03.17 Real Estate LERRD Accounting Documents, 20% based on reasonable certainty regarding accounting requirements

Cost estimates for the 72.878 acres needed for the project are presented in Table 2. The estimates are presented in the standard Code of Accounts from M-CACES Model Database, October 1994.

| REAL ESTATE COST ESTIMATES - PROJECT IMPLEMENTATION | | | |
|--|---|-----------------|----------------------|
| TABLE 2 | | | |
| SAN MARCOS RIVER AQUATIC ECOSYSTEM RESTORATION | | | |
| SAN MARCOS, TEXAS | | | |
| ACCOUNT | DESCRIPTION | ESTIMATE | CONTINGENCIES |
| 01 | Land & Damages | | |
| 01.23 | Construction Contract Documents | | |
| 01.23.03 | Real Estate Analysis Documents | | |
| 01.23.03.01 | Real Estate Planning Documents | | |
| | Planning by Non Federal Sponsor | \$44,000 | \$11,000 |
| | Review of Non Federal Sponsor | \$17,600 | \$4,400 |
| 01.23.03.02 | Real Estate Acquisition Documents | | |
| | Acquisitions by Sponsor | \$352,000 | \$88,000 |
| | Review of Sponsor | \$17,600 | \$4,400 |
| 01.23.03.03 | Real Estate Condemnation Documents | | |
| | Condemnations by Sponsor (estimate 10%) | \$0 | \$0 |
| | Review of Sponsor | \$0 | \$0 |
| 01.23.03.05 | Real Estate Appraisal Documents | | |
| | Appraisals by Sponsor | \$220,000 | \$44,000 |
| | Review of Sponsor | \$17,600 | \$3,520 |
| 01.23.03.06 | Real Estate PL 91-646 Asst. Documents | | |
| | PL 91-646 Asst. by Sponsor | \$0 | \$0 |
| | Review of Sponsor | \$0 | \$0 |
| 01.23.03.15 | Real Estate Payment Documents | | |
| | Payments by Local Sponsor (Fee) | \$520,580 | \$104,116 |
| | Payments by Sponsor (PL 91-646) | \$0 | \$0 |
| | Review of Sponsor | \$0 | \$0 |
| 01.23.03.17 | Real Estate LERRD Credit Documents | \$17,600 | \$3,520 |
| | Total Admin & Payments | \$1,206,980 | |
| | Total Contingencies | | \$262,956 |
| | GRAND TOTAL * | \$1,469,936 | |

*During DQC, the value was revised and does not match what was previously sent to the PCX. The Delta of an additional \$11,782 is considered inconsequential and included in the contingencies.

RELOCATION ASSISTANCE PROGRAM PL 91-646

No residential or business relocation will occur.

MINERAL AND TIMBER ACTIVITY

There is no known mineral exploration or extraction activity in the area. Because of the limited potential for production in the area, the value of the mineral estate is considered nominal and is included in the value of the land. If minerals are found to be of significance or the surface owner does not own, a waiver for acquiring the minerals will be sought at the time of discovery. There is no merchantable timber on the property.

NON-FEDERAL SPONSOR'S CAPABILITY TO ACQUIRE LERRD

The City of San Marcos will be responsible for acquiring LERRD. A checklist has been prepared in accordance with Chapter 12 of ER 405-1-12 and is attached. The City is aware of the requirements of PL 91-646, as amended, and the requirements for documenting expenses for credit purposes.

The City will also be advised of the risks associated with acquiring LERRD before execution of the PPA. The Corps will work with the sponsor throughout the project, to the extent appropriate and allowable; to ensure that there is understanding of the Federal real estate principles. Action will also be taken to address any policy issues that could significantly impact the project.

ZONING ORDINANCES

There are no special Zoning Ordinances proposed for enactment with the project.

MILESTONES FOR REAL ESTATE ACQUISITION

| Milestones are based on the Project Partnership Agreement being signed | |
|---|---|
| Transmittal of ROW drawings & estate(s) | 30 days after PPA signed |
| Obtain Surveys | 60 days after transmittal of ROW drawings & estate(s) |
| Obtain Title Evidence | 60 days after obtaining surveys |
| Obtain Appraisals & Reviews | 60 days after obtaining titles |
| Authorization to Proceed with Offer | 10 days after obtaining appraisals & reviews |
| Conclude Negotiations | 90 days after start of negotiations |
| Conclude Closings | 45 days after concluding closings |
| Conclude Condemnations | 240 days after condemnation process starts |
| Attorney Certify Availability of LERRD | 15 days after condemnations concluded |
| Corps Certifies Availability of LERRD | 5 days after NFS Attorney Certifies LERRD |
| Review LERRD Credit Request | 45 days after receiving LERRD documentation |
| Approve or Deny LERRD Credit Requests | 5 days after concluding review of LERRD documentation |

FACILITY OR UTILITY RELOCATIONS

Current plans indicate that no facility or utility relocations will occur.

CONTAMINANTS ON REAL ESTATE ACQUISITIONS

A literature review and site assessment for the area has been completed. Based on this evaluation, there are no known or suspected hazardous, toxic, and/or radioactive waste (HTRW) sites requiring remediation. Although none are expected, due diligence requires that actual field testing, conducted during demolition, could reveal that some of the structures contain materials for which special handling and disposal would be required.

OPPOSITION BY LANDOWNERS IN PROJECT AREA

No opposition to the project has been raised during public hearings.

OTHER REAL ESTATE ISSUES

No other Real Estate issues are known to exist.

CHECKLIST TO ACQUIRE LERRD (City of San Marcos)

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**
- c. Does the sponsor have "quick-take" authority for this project? **Yes**
- d. Are any of the lands/interested 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? **No**

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 PL 91-646, as amended? **No**
- b. If the answer to II(a) is yes, has a reasonable plan been developed to provide such training? **Not applicable**
- 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 other work load, if any, and the project schedule? **Yes**
- 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**

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? **Pending**

IV. Overall Assessment

- a. Has the sponsor performed satisfactorily on other USACE projects? **Not Applicable**
- 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? **Pending**

Information provided to Ms. Melani Howard (City of San Marcos).

Prepared by


Thurman Schweitzer
Chief, Realty Services Section

Reviewed and approved by:


Roger Jennings
Chief, Planning & Appraisal Branch

CHECKLIST TO ACQUIRE LERRD (State of Texas, General Land Office)

I. Legal Authority

- f. Does the sponsor have legal authority to acquire and hold title to real property for project purposes? **Yes**
- g. Does the sponsor have the power of eminent domain for this project? **Yes**
- h. Does the sponsor have "quick-take" authority for this project? **Yes**
- i. Are any of the lands/interested in land required for the project, located outside the sponsor's political boundary? **No**
- j. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? **No**

II. Human Resource Requirements

- g. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including PL 91-646, as amended? **No**
- h. If the answer to II(a) is yes, has a reasonable plan been developed to provide such training? **Not applicable**
- i. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? **Yes**
- j. Is the sponsor's projected in-house staffing level sufficient considering other work load, if any, and the project schedule? **Yes**
- k. Can the sponsor obtain contractor support, if required, in a timely fashion? **Yes**
- l. Will the sponsor likely request USACE assistance in acquiring real estate? **No**

III. Other Project Variables

- c. Will the sponsor's staff be located within reasonable proximity to the project site? **Yes**
- d. Has the sponsor approved the project/real estate schedule/milestones? **Pending**

IV. Overall Assessment

- c. Has the sponsor performed satisfactorily on other USACE projects? **Not Applicable**
- d. With regard to this project, the sponsor is anticipated to be: **Fully Capable**

V. Coordination

- c. Has this assessment been coordinated with the sponsor? **Yes**
- d. Does the sponsor concur with this assessment? **Pending**

Information provided to Mr. Tony Williams (GLO).

Prepared by

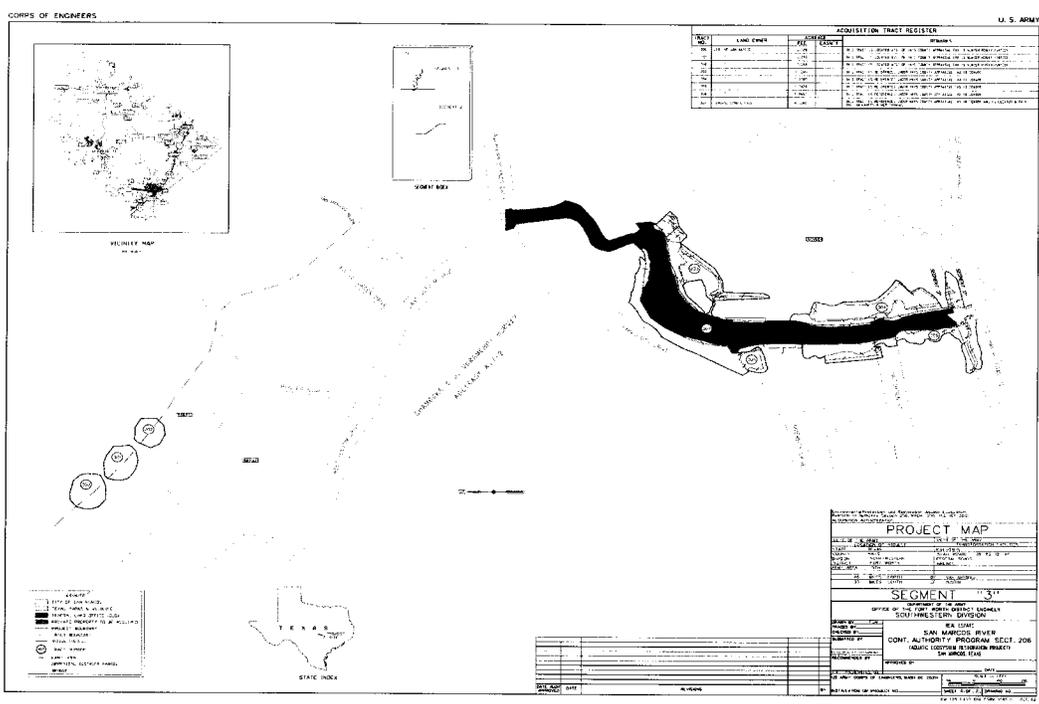

Thurman Schweitzer
Chief, Realty Services Section

Reviewed and approved by:


Roger Jennings
Chief, Planning & Appraisal Branch

REAL ESTATE PLAN: San Marcos River Section 206 Aquatic Ecosystem Restoration Project, City of San Marcos, Texas

Project Maps



Northern Portion of Project

