

Appendix G – Real Estate

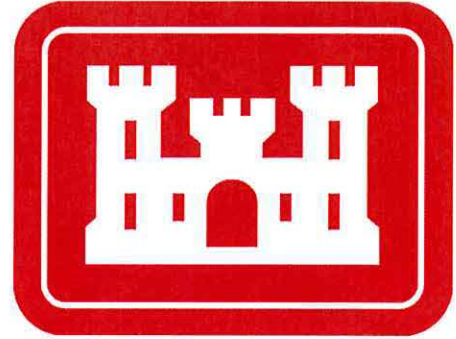
Lower Guadalupe Feasibility Study
(Guadalupe and Blanco Rivers), TX
Integrated Draft Feasibility Report and Environmental Impact Assessment

December 2019



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Fort Worth District

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REAL ESTATE PLAN

**Lower Guadalupe River Flood Risk Management
Interim Feasibility Study**


Date of Report: September 5, 2019

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

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PURPOSE

This Real Estate Plan (REP) identifies and describes the Lands, Easements, Rights-of-way, Relocations and Disposal areas (LERRD) required for the construction, operation and maintenance of the flood damage reduction improvements proposed for Comal County, Texas, including those required for mitigation of adverse impacts to fish and wildlife habitats, relocations of utilities and facilities, and disposal of excess excavated material. It also includes an estimate of LERRD value, costs for relocations of persons and businesses, together with the estimated administrative and incidental costs attributable to providing project LERRD. Finally it outlines the proposed acquisition process with roles, responsibilities and schedules for the acquisition, the types of ownerships, and the non-Federal sponsor's ability to acquire LERRD that is required to support project implementation. The non-Federal sponsor is Comal County. No previous REP has been created.

This Feasibility Study of the Lower Guadalupe-Blanco River watershed is being conducted in response to the initial findings of the Reconnaissance Study as authorized by the Guadalupe and San Antonio Rivers and Tributaries, Texas, resolution adopted by the Committee on Transportation and Infrastructure, U.S. House of Representatives, House Resolution docket 2547 dated 11 March 1998, which reads as follows:

“Guadalupe and San Antonio Rivers, Texas

Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, That, the Secretary of the Army is requested to review the report of the Chief of Engineers on the Guadalupe and San Antonio Rivers, Texas, published as House Document 344, 83rd Congress, 2nd Session, and other pertinent reports, with a view to determining whether any modifications to the recommendations contained therein area advisable at the present time, with particular reference to providing improvements in the interest of flood control and allied purposes on the Guadalupe and San Antonio Rivers in Texas.”

The reconnaissance phase was initially funded in Fiscal Year 1999. The GBRA Lower Guadalupe River Basin Interim Feasibility Study (GBR-IFS) is cost shared in accordance with the Water Resources Development Act of 1986, Section 105(a), Public Law 99-662 (33 U.S.C. 2215) as amended December 29, 2000.

DESCRIPTION OF LANDS, EASEMENTS AND RIGHTS OF WAY (LERRD)

Comal County is located northeast of San Antonio, Texas, and is home to just over 141 thousand people. The county seat is New Braunfels, and the county is part of the San Antonio-New Braunfels, Texas Metropolitan Statistical Area.

Proposed project features are divided into two main segments: Bear Creek Dam and Detention Basin and environmental and aquatic mitigation.

The Bear Creek Dam portion will include the construction of a dam in Bear Creek north of New Braunfels and west of the Guadalupe River. Bear Creek is a tributary to the Lower Guadalupe River which flows south from Canyon Lake (a USACE lake). For the dam, just over 125 acres of fee land will be required and approximately 5 acres of temporary work area easement will be needed for access and staging. The 125 acres of fee is due to the flowage area being used for onsite mitigation as well.

Figure 1



Bear Creek Detention Basin Map

For habitat mitigation, 412 acres are expected to be needed at this current point for warbler habitat. The specific location has not been determined as this acreage may change further into design, but for this plan, the Warbler habitat mitigation is needed near the Bear Creek detention basin. Another 25 acres are needed for riparian mitigation. The 25 acres of riparian mitigation are needed along the Guadalupe River in New Braunfels. Also for aquatic mitigation, the Cummings Dam in Hayes County to the east must be removed in the Guadalupe River. The Cummings Dam is a private dam built approximately 100 years ago. It does not appear to be operational and has not been maintained. Cummings Dam will require 5 acres of a temporary easement from one private owner and the Texas General Land Office (GLO). GLO maintains all riverbeds on behalf of the public. Figures 2-4 show the proposed mitigation areas and the Cummings Dam.

Figure 2



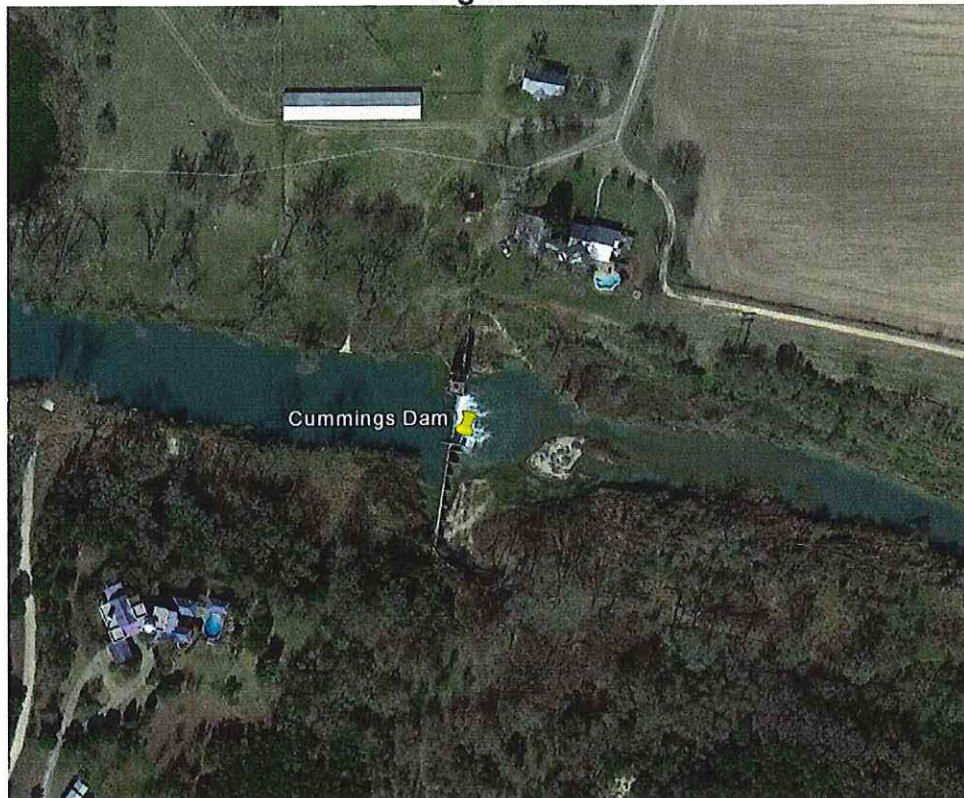
Warbler Habitat Area (Green)

Figure 3



Riparian Mitigation (Yellow)

Figure 4



Cummings Dam

LANDS, EASEMENTS AND RIGHTS OF WAY REQUIRED LOWER GUAD FLOOD DAMAGE REDUCTION PROJECT		
ESTATE	ACRES	TRACTS
Bear Creek Dam & Mitigation		
Fee	536.66	7
Temporary Construction Easement	5	2
Riverfront (Riparian Mitigation)		
Fee	25	3
Cummings Dam		
Temporary Construction Easement	5	2
Grand Total	571.66	15

PROJECT IMPACTS OUTSIDE THE PROJECT AREA

At this time, there are no anticipated impacts outside the project area as a result of the construction of the Bear Creek Dam or the removal of Cummings Dam.

ESTATES

The following standard estates will be utilized:

Fee Simple

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

Temporary Work Area Easement

A temporary easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. _____, _____ and _____), for a period not to exceed _____, beginning with date possession of the land is granted to the _____ (non-Federal Sponsor) for use by the _____ (non-Federal Sponsor), its representatives, agents, and contractors as a (borrow area) (work area), including the right to (borrow and/or deposit fill, spoil and waste material thereon) (move, store and 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 Wharton Flood Damage Reduction Project, 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.

DISCUSSION OF EXECUTIVE ORDER

On June 23, 2006, the President issued an Executive Order (EO) titled: Protecting the Property Rights of the American People. The EO is aimed at restricting use of eminent domain for "advancing the economic interests of private parties", is specific to actions of the Federal Government, and allows takings for public use with just compensation for purposes benefiting the general public. But, it is noted that while many specific purposes are exempted from the restrictions of the EO, flood damage reduction is not. The applicability of the EO to cost-shared projects wherein LERRD is acquired by the non-Federal Sponsor with non-Federal funds is also not clear. Condemnation actions for purposes of clearing title are allowed under the order. The EO states that the Department of Justice is to issue further guidance, but such has not yet been forthcoming. This REP is written under the premise that the non-Federal Sponsor may exercise eminent domain for the flood damage reduction purposes of this project due to failure to reach a reasonable agreement on a negotiated purchase under the normal, long-standing procedures established by the Department of the Army and other Federal agencies.

EXISTING FEDERAL INTERESTS

There is no Federally-owned land included within the LERRD required for the project and there is no existing Federal flood control project involved. There is no navigational servitude within the project LERRD. While the Guadalupe River is considered navigable, the project LERRD is located on Bear Creek, which feeds into the Guadalupe River.

BASELINE COST ESTIMATE FOR REAL ESTATE

Property values included in the cost estimate are based on an initial cost estimate prepared by the Fort Worth District, Real Estate Division, Planning and Appraisal Branch. A gross appraisal will be completed prior to the finalization of this report and this cost section will be updated to reflect the value from the gross appraisal. All land values were predicated on the assumption that the lands are free of hazardous, toxic or radiological wastes. Contingencies have been added to the cost estimate as follows:

01.23.03.01. Real Estate Planning Documents, 10%, based on reasonable certainty of these start-up costs.

01.23.03.02. Real Estate Acquisition Documents, 10%, based on experience from past projects.

01.23.03.03. Real Estate Condemnation Documents, 25%, based on the uncertainties regarding the number of condemnation cases.

01.23.03.05. Real Estate Appraisal Documents, 15%, based on the potential need for multiple appraisals on some tracts.

01.23.03.06. Real Estate PL 91-646 Asst. Documents, 10%, based on reasonable certainty of the costs associated with processing relocation benefits.

01.23.03.15. Real Estate Payment Documents, 20%, based on the contingency included in the gross appraisal. No additional contingency was applied to land payments. A 20% contingency was applied to PL 91-646 payments based on the possibility of unforeseen relocation costs, additional moving expenses, or housing of last resort cases.

01.23.03.17. Real Estate LERRD Crediting Documents, 20%, based on potential requirement for substantial coordination with the sponsor on crediting.

Costs are presented in Table 2. Estimates are presented in the standard Code of Accounts from the MCACES Models Database, October 1994.

Real Estate Cost Estimates

Project: Lower Guadalupe

Location: Comal County, TX

ACCOUNT	DESCRIPTION	LERRD	CONT.	NON-LERRD	CONT.
1	Land & Damages				
1.23	Construction Contracts Documents				
01.23.03	Real Estate Analysis Documents				
01.23.03.0	Real Estate Planning Documents				
1	Planning by Non Federal Sponsor			\$10,000	\$1,000
	Review of Non Federal Sponsor			\$1,500	\$150
01.23.03.0	Real Estate Acquisition Documents				
2	Acquisitions by Sponsor	\$8,000	\$800		
	Review of Sponsor			\$2,000	\$200
01.23.03.0	Real Estate Condemnation Documents				
3	Condemnation by Sponsor	\$100,000	\$25,000		
	Review of Sponsor			\$2,000	\$500
01.23.03.0	Real Estate Appraisal Documents				
5	Appraisal by Sponsor	\$60,000	\$9,000		
	Review of Sponsor			\$10,000	\$1,500
01.23.03.0	Real Estate PL 91-646 Asst Documents				
6	PL 91-646 Asst by Sponsor	\$40,000	\$4,000		
	Review of Sponsor			\$1,000	\$200
01.23.03.1	Real Estate Facility/Utility Relocation				
3	Payment by Sponsor	\$15,000	\$3,000		
	Review of Sponsor			\$1,000	\$200
01.23.03.1	Real Estate Payment Documents				
5	Payment by Sponsor (LERRD)	\$8,460,264	\$1,692,053		
	Payment by Sponsor (Minerals)	\$84,249	\$16,850		
	Payment by Sponsor (PL 91-646)	\$2,000	\$400		
	Review of Sponsor			\$8,000	\$2,000
01.23.03.1	Real Estate LERRD Credit Documents	\$8,000	\$800	\$6,000	\$600
	Total Admin & Acquisition	\$8,777,513		\$41,500	
	Total contingencies		\$1,751,903		\$6,350
	Total LERRD + Contingencies	\$10,529,416		\$47,850	
	PROJECT GRAND TOTAL		\$10,577,266		

RELOCATION ASSISTANCE UNDER THE UNIFORM ACT

All displaced owners and tenants will be assisted by the non-Federal sponsor and relocated in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (the Uniform Act). Based on a field investigation of the project alignment, a review of aerial photography, and the overlay of project features, the project will cause one residential displacement. The residence is a site-built house. The property is assumed to be owner-occupied and costs have been estimated accordingly. Because of the small number and based on observation of the local real estate market, adequate replacement properties are deemed to be available. Housing of last resort cases are not anticipated, although when dealing with basic housing, there can be instances where costs for replacement dwellings exceed the statutory limits due to unexpected living situations. Risks of such occurrences should be offset by the likelihood that some of the properties are either vacant or tenant occupied.

MINERALS AND TIMBER

An initial review of the Texas Railroad Commission's GIS Viewer of oil and gas wells in Comal County did not reveal any nearby mineral production activity. The required estate for this project is fee simple which includes minerals. There have been no third-party mineral rights identified at this time, but they are expected to be found at the time of acquisition. The gross appraisal valued the third-party mineral rights at \$150 per acre for all the fee land. With 561.66 acres required in fee, the third-party mineral rights total \$84,249. This amount has been included in the in the previous table.

The project is not located in an area of significant timber production; however, the warbler mitigation area requires forested areas and it appears there is merchantable timber in this area of Comal County. The property does not appear to be used for timber production, but the timber does have value on the property according to USACE foresters. The sponsor will be responsible for accounting for the timber in the acquisition of this tract.

NON-FEDERAL SPONSOR'S CAPABILITY

Comal County is assumed to be capable of accomplishing the required real estate tasks associated with this project either through in house completion or the assistance of a right-of-way company. It is not anticipated that the Corps of Engineers will be requested to perform any LERRD acquisition unless eminent domain involving the Cummings Dam is required since it is in a different county.

ZONING

No zoning ordinances are proposed in lieu of, or to facilitate, acquisition in connection with the project.

REAL ESTATE MILESTONE SCHEDULE

The project will be sequenced and to the extent these various segments are accomplished through separate contracts, the real estate acquisition can be sequenced, as well. As the project schedule and contracting strategy is more fully developed the acquisition schedule will likewise be formulated in coordination with the sponsor. This project has been broken down into three segments: Since an anticipated Project Partnership Agreement Execution Date has not been determined, the below schedule Day 1 will be the date the design has reached 65% after the PPA has been signed.

TABLE 3 REAL ESTATE MILESTONE SCHEDULE LOWER GUADALUPE RIVER FLOOD RISK MANAGEMENT PROJECT				
ACTIVITY	COE INITIATE	COE COMPLETE	LS INITIATE	LS COMPLETE
Transmittal of ROW drawings to LS with instruction to acquire LERRD	Day 1--	Day 30	--	--
Conduct landowner meeting	--	--	Day 31--	Day 60
Prepare mapping and legal descriptions – CR Levee	--	--	Day 31	Day 90
Review mapping and legal descriptions – CR Levee	Day 91	Day 112	--	--
Obtain title evidence	--	--	Day 113	Day 163
Obtain tract appraisals	--	--	Day 113	Day 193
Review tract appraisals	Day 194	Day 224	--	--
Conduct negotiations	--	--	Day 225	Day 250
Perform closings	--	--	Day 250	Day 275
Perform condemnations	--	--	Day 250	Day 369
Certify availability of LERRD	Day 286	Day 290	Day 276	Day 285
Complete PL 91-646 benefit assistance	--	--	Day 250	Day 340
Review PL 91-646 payments	Day 341	Day 345		
Prepare and submit credit requests	--	--	Day 250	Day 369
Review credit requests	Day 250	Day 375	--	--
Approve or deny credit requests	Day 250	Day 375	--	--
Establish value of LERRD credit in accounting records	Day 250	Day 375	--	--

UTILITY AND FACILITY RELOCATIONS

There are no public utilities in this area. There are utilities associated with the residence that will be impacted, but these utilities will either be capped or demolished when the home is acquired. One private, gravel road is anticipated to need relocation. The road sits on the west side of Bear Creek where the dam is to be constructed. The road will need to be moved around the dam, or another road be constructed elsewhere on the

property to allow access to a house downstream of the future dam. Any conclusion or categorization contained in this report that an item is a utility or facility relocation to be performed by the non-federal sponsor as part of its LERRD responsibilities is preliminary only. The Government will make a final determination of the relocations necessary for the construction, operation, or maintenance of the project after further analysis and completion and approval of the Final Attorney's Opinions of Compensability for each of the impacted utilities and facilities.

HAZARDOUS, TOXIC AND RADIOLOGICAL WASTE (HTRW)

A Phase 1 investigation has been completed and the findings are included elsewhere in this feasibility report. The LERRD costs have been developed under the assumption that the property is free of environmental hazards.

PROPERTY OWNER ATTITUDES

The attitudes of local property owners are unknown at this time.

OTHER REAL ESTATE ISSUES

A sponsor has not been identified at this point. An assessment of the Non-Federal Sponsor's acquisition capability has not been conducted.

This plan will be updated as design progresses.