



**US Army Corps
of Engineers®**
St. Paul District

Appendix F: Real Estate Plan

**Lower Sioux Indian Community Riverbank
Stabilization**

**Section 203 Tribal Partnership Program
Integrated Feasibility Report Environmental
Assessment**

Section 203 Tribal Partnership Program

April 2023

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1 PURPOSE AND GENERAL PROJECT INFORMATION

1.1 Purpose

The information presented in this Real Estate Plan (REP) is based on preliminary data, tentative in nature and should be used for planning purposes only. No prior REP has been submitted for the project.

The purpose of the REP is to support the Integrated Feasibility Report (IFR). The purpose of the IFR, in turn, is to investigate solutions and recommend a Tentatively Selected Plan for the identified problem. The Tentatively Selected Plan (TSP) will focus on a portion of the LSIC land to reduce land erosion and protect against river bifurcation for the purpose of preservation of cultural resources. Further erosion of LSIC land could lead to a decrease in the already limited amount of Tribal land.

1.2 Project Location

The project area is located along the right descending bank of the Minnesota River, within lands held in Trust by the United States Government (through the Bureau of Indian Affairs) for the benefit of the LSIC. The project is in Redwood County, near Redwood Falls and Morton, Minnesota. This Federally recognized tribal community is approximately 95 miles southwest of Minneapolis, Minnesota and two miles south of Morton, Minnesota. The reservation land is 1,923 acres in total (Figure 1).

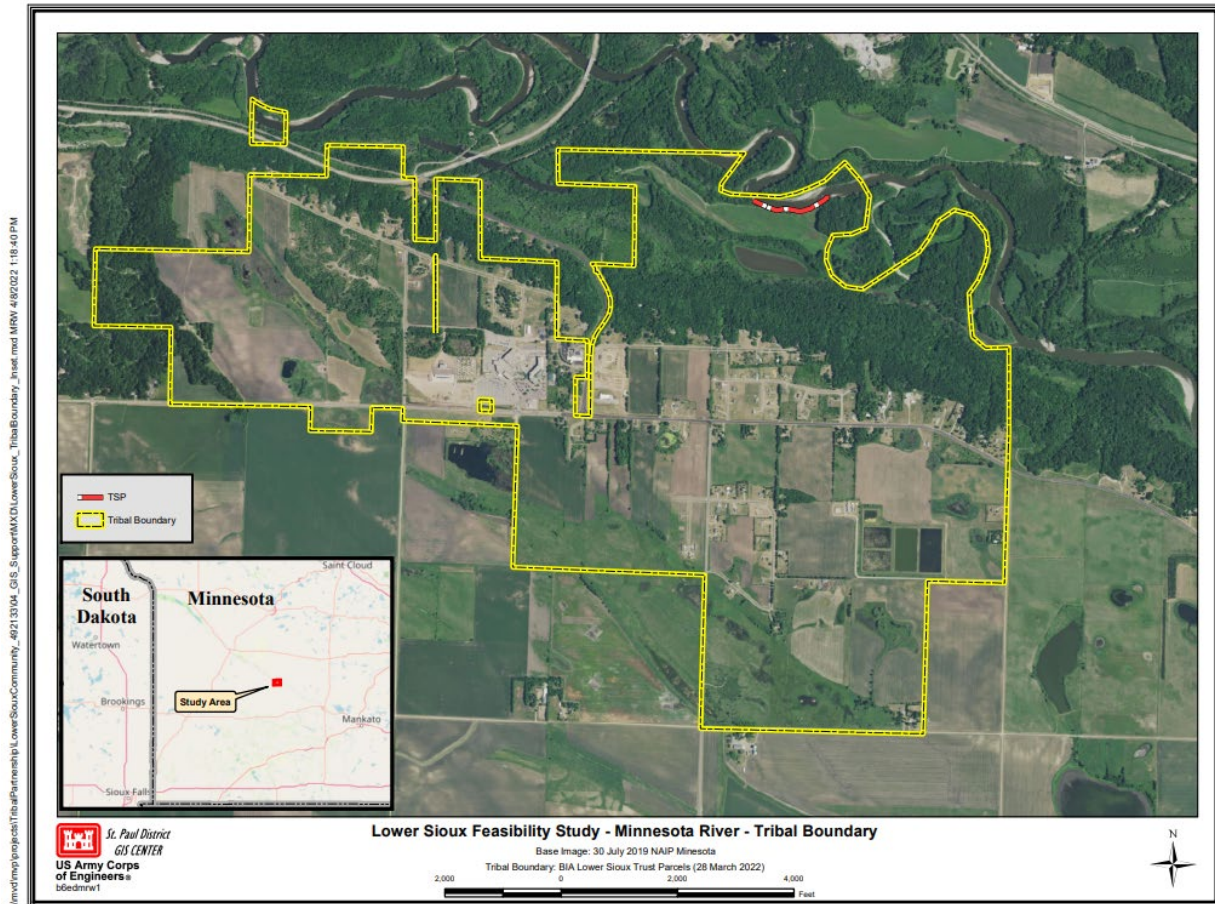


Figure 1: LSIC Project Location

1.3 Project History

Please refer to the IFR, Section 1.3.1 for historical information pertaining to the LSIC.

1.4 Project Authority

The Study is being carried out under Section 203 of the Water Resources Development Act (WRDA) of 2000, as amended (33 U.S.C. § 2269). Section 203 authorizes the Secretary of the Army to carry out the Tribal Partnership Project (TPP), consisting of water-related planning activities and activities related to the study, design, and construction of water resource development projects that substantially benefit federally recognized Indian tribes. Authorized activities include projects for flood risk reduction, environmental restoration and protection, and preservation of cultural and natural resources; watershed assessments and planning activities; and other projects the secretary, in cooperation with Indian tribes and the heads of other federal agencies, determines to be appropriate.

1.5 Future without Project

Please refer to the IFR, Section 1.7 for a description of existing conditions and expected future without project conditions.

1.6 Tentatively Selection Plan (TSP)

Alternative 3 is designated as the tentatively selected plan for the project. Alternative 3 consists of riprap built out into the river from the bank in Reaches 1, 2, and 3. Alternative 3 also includes seven bendway weirs. The TSP seeks to stabilize approximately 1500 linear feet of riverbank. This TSP meets all project objectives, avoids project constraints, and exceeds the conditions of completeness, effectiveness, efficiency, and acceptability. Further details will continue to be refined in the plans and specifications stage.

2 PROJECT LANDS, EASEMENTS, RIGHT-OF-WAY, RELOCATIONS AND DISPOSAL/BORROW AREAS (LERRD)

2.1 Project LERRD

The construction staging area is reachable by a public road owned by Paxton Township. According to the Township's Chairperson, a permit will not be required for USACE to utilize the access road for construction purposes. The other project features will not be accessed by public roads since they are in the water. All land required for the construction, operation and maintenance of the project are owned by the United States Government (through Bureau of Indian Affairs) and held in trust for the LSIC; this includes land required for river access areas as well as disposal. This appendix uses the existing centerline of the Minnesota River as the boundary for tribal lands based on currently available information. Therefore, all land required for the project is understood to be held in trust by the US Government for the benefit of the LSIC. The boundary will be confirmed through relevant records and coordination prior to finalization of the Integrated Feasibility Report and Environmental Assessment. This issue is discussed further in the main report.

Approximately 37 acres of LSIC land was enrolled into the Conservation Reserve Program (CRP) in 2019. The CRP, through the Natural Resources Conservation Service (NRCS), provides technical and financial assistance to eligible parties to address soil, water, and related natural resource concerns. All impacts to land enrolled in CRP would be temporary. Temporary impacts include the access road and staging area. The access road would be removed after project completion. At the request of the Farm Services Agency (FSA), the LSIC has provided a letter to the FSA which documents these temporary impacts. This is the extent of coordination required by the FSA. A borrow site is not required for this project.

Total LER required for the Project is shown in Table 1.

Table 1: Total LER

Project Area	Ownership	Acres	Standard Estate Required
Stabilization	US in Trust for the LSIC	0.04	Bank Protection Easement
Staging Area	US in Trust for the LSIC	1.00	Temporary Work Area Easement
Access Road	US in Trust for the LSIC	1.10	Road Easement
Disposal Site	US in Trust for the LSIC	0.5	Temporary Work Area Easement
Total		2.64	

A map of the disposal site identified by the LSIC, named the Gravel Pit, is included in Figure 2 below. It is assumed that no disposal or land management fees would be required to dispose of material at this site.

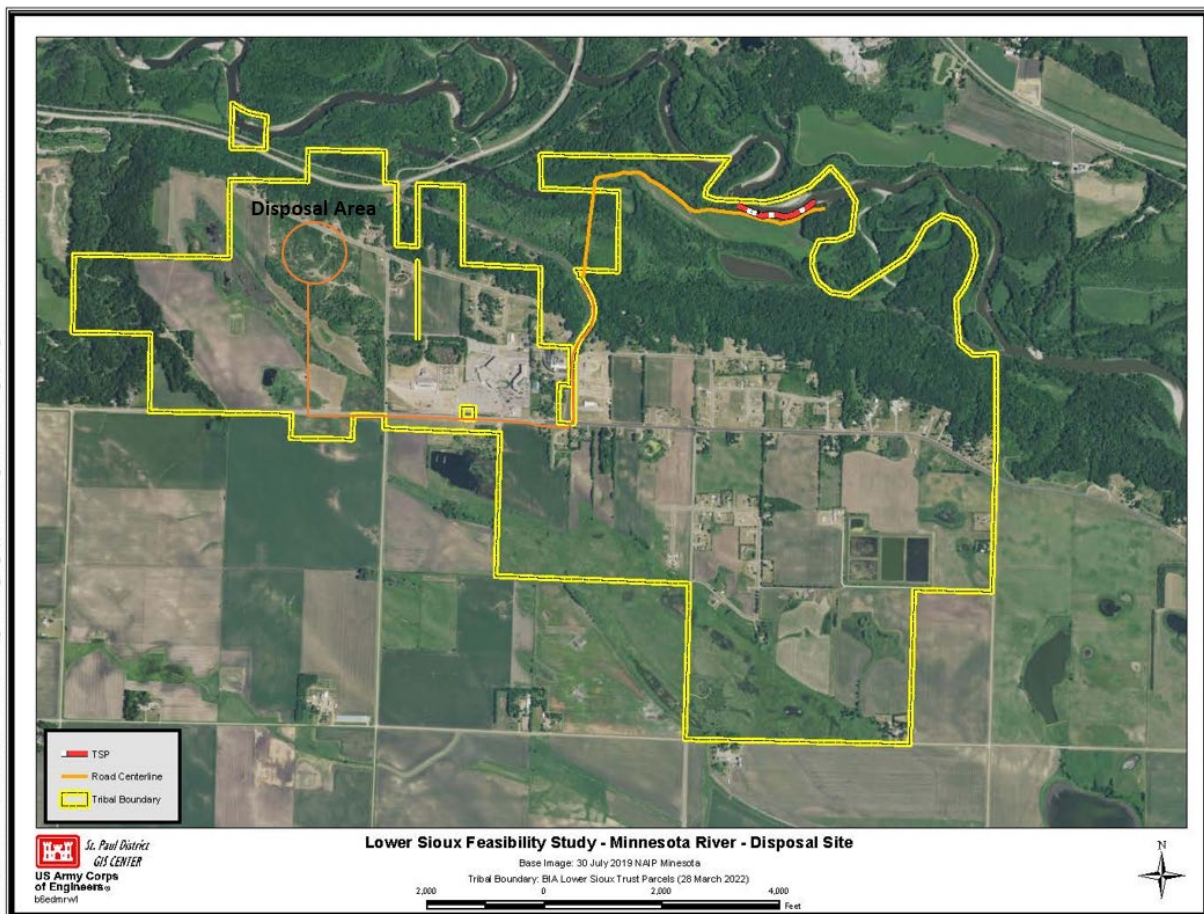


Figure 2: Disposal Site

3 NON-FEDERAL SPONSOR LERRD

3.1 Required Lands

The LSIC will serve as the NFS for the TPP Section 203 project. In accordance with LERRD crediting guidance for Section 203 projects, the NFS may receive credit for the acreage associated with the existing interest that it currently holds. The NFS holds interest sufficient and available to cover what would typically be required for a Bank Protection Easement, Temporary Work Area Easements (TWAE), and a Road Easement.

4 ESTATES TO BE ACQUIRED

4.1 Estate

Additional Real Estate acquisition is not required for this project. The non-Federal sponsor holds all necessary interests in land. The following Standard Estates would apply for this project:

BANK PROTECTION EASEMENT

A perpetual and assignable easement and right-of-way in, on, over and across the land hereinafter described for the location, construction, operation, maintenance, alteration, repair, rehabilitation and replacement of a bank protection works, and for the placement of stone, riprap and other materials for the protection of the bank against erosion; together with the continuing right to trim, cut, fell, remove and dispose therefrom all trees, underbrush, obstructions, and other vegetation; and to remove and dispose of structures or obstructions within the limits of the right-of-way; and to place thereon dredged, excavated or other fill material, to shape and grade said land to desired slopes and contour, and to prevent erosion by structural and vegetative methods and to do any other work necessary and incident to the project; together with the right of ingress and egress for such work; 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.

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 County of Ransom, State of North Dakota, for use by the County of Ransom, its representatives, agents, and contractors as a work area, including the right to 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 Sheldon Road Bridge, Ransom County, North Dakota Section 14 Project, together with the right to trim, cut, fell and remove therefrom 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.

ROAD EASEMENT

A temporary easement and right of way in, on, over and across (the land described in Schedule A) (Tracts Nos. _____, _____ and _____) for the location, construction, operation, maintenance, alteration replacement of (a) road(s) and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right of way; (reserving, however, to the owners, their heirs and assigns, the right to cross over or under the right of way as access to their adjoining land at the locations indicated in Schedule B); subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

5 EXISTING FEDERAL OR OVERLAPPING PROJECTS

5.1 Overlapping Projects

There is no existing Corps project at the proposed project site.

Approximately 37 acres of LSIC land was enrolled into the Conservation Reserve Program (CRP) in 2019. A map of the land enrolled in CRP is included in the IFR. All impacts to land enrolled in CRP would be temporary. Temporary impacts include the access road and staging area. The LSIC has conducted necessary coordination with the FSA and no additional action is required related to temporary impacts to CRP lands.

6 FEDERALLY OWNED LANDS OR OTHER INTEREST

6.1 Project Lands

There are no known Federally owned lands or lesser interests that lie fully or partially within the proposed project LERRD. Lands required for the project wholly consist of tribal lands held by the US Government in Trust for the Benefit of the LSIC. Such lands are eligible for credit to the non-Federal sponsor.

7 NAVIGATION SERVITUDE

7.1 Navigation Servitude

The Navigational Servitude does not apply and will not be exercised for this project. The Minnesota River in this reach is not navigable per Section 10 Waterways publication dated July 25, 2012, titled: Jurisdictional Waterways under Section 10 of the Rivers and Harbors Act.

8 PROJECT MAP

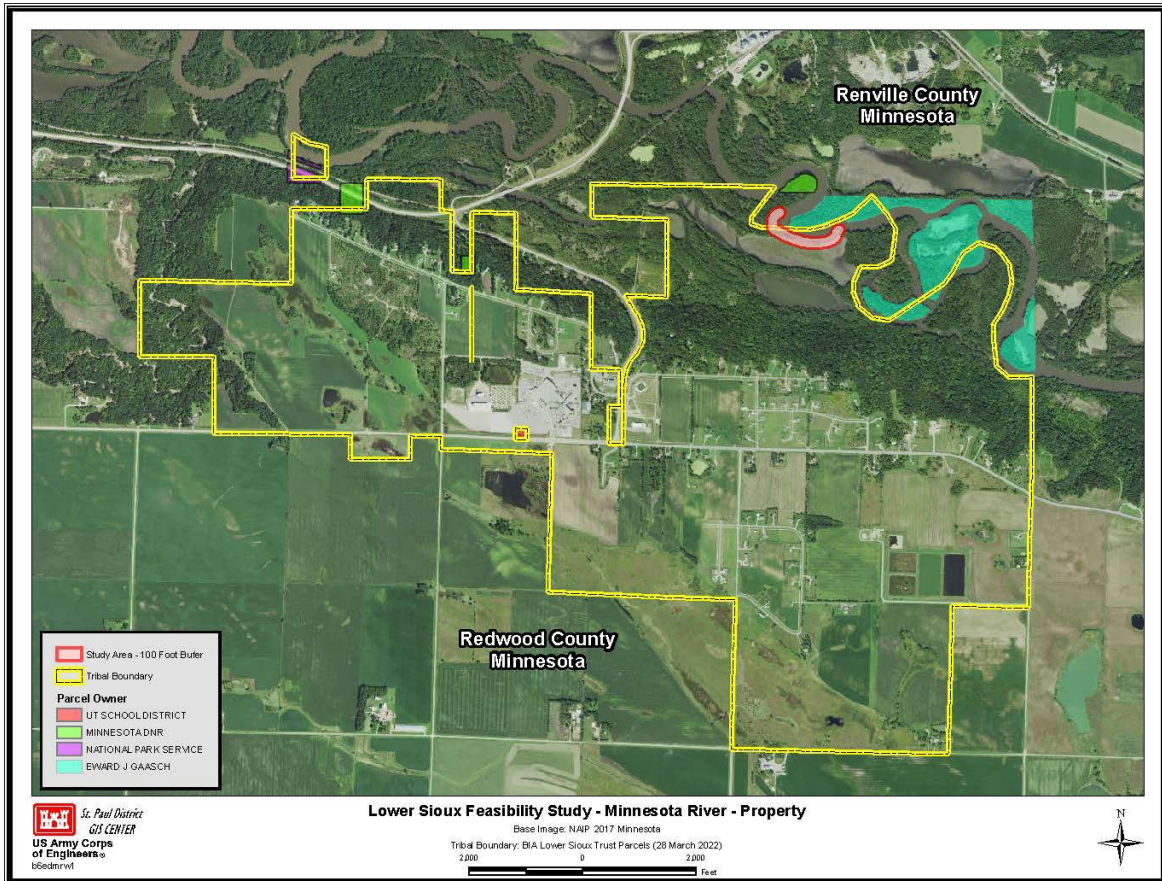


Figure 3: LSIC Project Area

9 INDUCED FLOODING

9.1 Flooding

It is reasonably anticipated that this project will not cause any induced flooding. Please refer to Section 1.7.2 of the IFR for additional information on project Hydraulics & Hydrology.

10 BASELINE COST ESTIMATE FOR REAL ESTATE (BCERE)

10.1 Costs

The baseline cost estimate for real estate is estimated to be \$2,000. Lands required for the project wholly consist of tribal lands held by the US Government in Trust for the Benefit of the LSIC. In accordance with LERRD crediting guidance for Section 203

projects, the NFS will receive credit for the value of land that it owns plus any administrative costs associated with providing evidence of such land to the Government for project purposes.

11 RELOCATION ASSISTANCE BENEFITS, PUBLIC LAW 91-646(PL 91-646)

11.1 Relocation

The project will not require any relocations as defined by CFR 49 Part 24.

12 MINERAL ACTIVITY

12.1 Mineral

There are no known mineral recovery activities currently ongoing or anticipated, or oil/gas wells present on the project LERRD or in the immediate vicinity that will impact the construction, operation, or maintenance of the project. No acquisition of any mineral interest from surface owners or rights outstanding in third parties will be required.

13 NFS REAL ESTATE ACQUISITION CAPABILITIES ASSESSMENT

13.1 Capabilities

The NFS is in possession of the lands required for project construction, operation and maintenance. In the event that any Real Estate acquisition is necessary, coordination with HQUSACE would be conducted as required by TPP policy.

14 ZONING ORDINANCE REQUIREMENTS

14.1 Zoning

No zoning in lieu of acquisition is proposed.

15 ACQUISITION SCHEDULE

15.1 Schedule

The proposed project is located on lands owned by the United States (under management of the Bureau of Indian Affairs) and held in trust for the LSIC in the State of Minnesota. The NFS currently holds sufficient land interests for the construction, operation and maintenance of all project features anticipated as part of this project.

16 PUBLIC UTILITY OR FACILITY RELOCATIONS, ALTERATIONS OR REPLACEMENT

16.1 Facility

No facility or utility relocations are necessary for this project.

"ANY CONCLUSION OR CATEGORIZATION CONTAINED IN THIS REAL ESTATE PLAN, OR ELSEWHERE IN THIS PROJECT 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 FINAL ATTORNEY'S OPINIONS OF COMPENSABILITY FOR EACH OF THE IMPACTED UTILITIES AND FACILITIES."

17 HAZARDOUS, TOXIC, AND RADIOACTIVE WASTE (HTRW)

17.1 HTRW

In accordance with ER-1165-2-132, Water Resource Policies and Authorities HTRW Guidance for Civil Works Projects (see Appendix L, Hazardous, Toxic, and Radioactive Waste, for the full report), a Phase I HTRW analysis was conducted in September 2020. This HTRW analysis concluded that there were no recognized environmental conditions. Therefore, USACE does not recommend a Phase II assessment. There aren't any known HTRW sites located in the project area, and there are no HTRW concerns with moving forward with the TSP or alternatively choosing not to take any action.

18 LANDOWNER OPPOSITION/PUBLIC CONCERNS

18.1 Concerns

The general attitude of the LSIC is in full support of this project. The LSIC recognize the need to get the project under construction as it will provide long-term stability to the streambank. Additionally, the LSIC Tribal members using the project area will benefit from this bank protection project aimed at addressing the tribal members' safety due to current streambank stability concerns.

19 LERRD ACQUISITION PRIOR TO PROJECT PARTNERSHIP AGREEMENT (PPA) EXECUTION

19.1 Agreement

As previously stated, the NFS holds the necessary land interest for this project, however, the representative assigned by LSIC located in Redwood County, Minnesota was contacted on 19 July 2021, by Realty Specialist Gloria Penalosa, to discuss describe in detail the land acquisition process for a Federally supported/Cost-Shared Project, in the event a TWAE is necessary for a borrow site. It was later determined that a borrow site is not required for this project. The sponsor will also be made aware of the risks associated with acquiring real estate in advance of a PPA signing in the event the project alignment changes in the design phase and the acquisition of additional real estate interests become necessary.

20 OTHER RELEVANT REAL ESTATE ISSUES

20.1 Issues

No additional issues have been raised at this time.

Denita F. Wesley (Preparer)
Realty Specialist

Date

Stephanie Dupey (Reviewer)
Chief, Planning & Acquisition Branch

Date

Kevin Sommerland (Approver)
Chief of Real Estate
St. Paul District

Date

Exhibit A

Quality Control Plan Checklist

Real Estate Plans

And other similar Feasibility-Level Real Estate Planning Documents

ER 405-1-12, Section 12-16, Real Estate Handbook, 1 May 1998

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: Lower Sioux Indian Community (LSIC) and Integrated Environmental Assessment

Date of Report: September 9, 2021 Date of REP: September 9, 2021

1. Purpose of the REP. XX

- 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. XX

- 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. **XX**

a. Describe the 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**. **XX**

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 purposes, 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. **XX**

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. **XX**

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. **XX**

a. Identify the 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 can a navigation nexus be shown.

e. See paragraph 12-7 of ER 405-1-12.

8. Map. XX

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. XX

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. XX

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. XX

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. XX

- 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. XX

- 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 XX

- 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. XX

- a. Reasonable and detailed Schedule of land acquisition milestones, including LER certification.
- b. Dates mutually agreed upon by Real Estate, PM, and NFS. N/A

16. Facility or Utility Relocations. XX

- 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 **XX**

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.** **XX**

a. Is there support, apathy, or opposition toward the project?

b. Discuss any landowner concerns on issues such as condemnation, willing seller provisions, estates, acreages, etc.?

19. A statement that the **NFS has been notified in writing about the risks of acquiring LER before the execution of the PPA.** If not applicable, so state. **Not Applicable**

20. **Other Relevant Real Estate Issues.** Anything material to the understanding of the RE aspects of the project. **Disturbance of about 15 acres of aquatic habitat as a result of dredging, this will only be a temporary, minor adverse effect during construction.**

A copy of the completed Checklist is attached to the REP. **XX**

(Draft REPs must contain a draft checklist and draft Technical Review Guide)

I have prepared and thoroughly reviewed the REP and all information, as required by Section 12-16 of ER 405-1-12, is contained in the Plan.

Preparer – Gloria Penalozza

Date

REAL ESTATE COST ESTIMATE:

The real estate lands and damages estimate is as follows:

	Federal Costs	NFS Costs
Lands / Damages	-	\$550
RE Administrative Costs	\$500	\$500
Sub-Total	\$500	\$1,050
Contingencies	\$125	\$262.50
Total	\$625	\$1,312.50
Total Federal/NFS Costs	\$1,937.50	

As of September 16, 2021

Prepared By: _____
Gloria Penaloza
Realty Specialist