ROCKAWAY RIVER AND DEN BROOK DENVILLE TOWNSHIP MORRIS COUNTY, NEW JERSEY CAP SECTION 205 FLOOD RISK MANAGEMENT STUDY

APPENDIX E REAL ESTATE PLAN

September 2023



U.S. Army Corps of Engineers

North Atlantic Division – New York and Baltimore Districts
In partnership with the New Jersey Department of Environmental Protection

REAL ESTATE PLAN

Rockaway River and Den Brook, Denville Township, Morris County, NJ CAP Section 205 Flood Risk Management Feasibility Study

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Section 1: Statement of Purpose

a. <u>Purpose</u> – This Real Estate Plan (REP) is provided in support of the Rockaway River and Den Brook, Denville Township, Morris County, New Jersey CAP 205 Flood Risk Management Study (the "Study") and is an appendix to the Study's Integrated Feasibility Report and Environmental Assessment (the "main report"). The purpose of this report is to describe the Lands, Easements, and Rights-of-Way, Relocations, and Disposal Areas (LERRD) requirements for the construction, operation, and maintenance of the Study's Recommended Plan. This REP summarizes the required Land, Easements, and Rights-of-Way (LER), costs to acquire the LER, real estate acquisition schedule, facility and utility relocations that may be necessary to facilitate construction, and other pertinent real estate information pertaining to the Recommended Plan's LERRD requirements.

This REP is the first prepared for the Study and prepared at a design level of approximately 20%. The acquisitions are based only on existing, readily available Geographic Information System (GIS) data. Even after the Study is approved and the project is authorized, the LERRD requirements presented herein are subject to change with plan optimization during the design and implementation phase when final plans, specifications, and detailed drawings are prepared. A map of the study area is shown below in Figure 1.

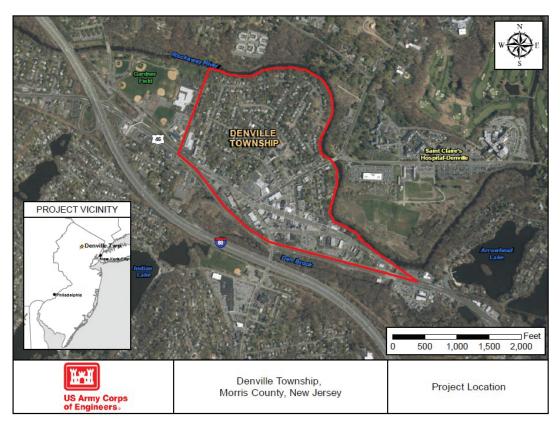


Figure 1: Study Area

- b. <u>Study Authority</u>: The authority for this project is Section 205 of the Flood Control Act of 1948 (Public Law 80-858), as amended. Under this authority, the USACE is authorized to plan, design, and construct small flood risk management projects.
- c. <u>Non-Federal Sponsor</u>: The non-Federal sponsor (NFS) for the study is the New Jersey Department of Environmental Protection (NJDEP) and the major stakeholder is the Township of Denville. The Township of Denville will serve as the non-Federal sponsor for the design and implementation phase of the Recommended Plan as stated in a letter dated 3 March 2023. The NFS will acquire and retain real estate responsibilities for the project. See Section 14, Assessment of Non-Federal Sponsor Acquisition Capabilities, for additional information. Construction will be cost shared at a 65% (Federal) and 35% (non-Federal).

Section 2: Real Estate Requirements

a. <u>Recommended Plan</u> – The Recommended Plan is Alternative 4b, a plan consisting entirely of nonstructural measures for buildings. There are no structural features to be constructed as part of the Recommended Plan and there are no environmental mitigation requirements that require the acquisition of real estate.

In total, there are 38 residential and commercial structures in the Recommended Plan, recommended for elevation, wet floodproofing, or dry floodproofing grouped into three cluster areas (North, North Riverside, and Southwest). *Elevations* involve raising the lowest finished floor of a building to a height that is above the flood level (i.e., raising a home). *Wet floodproofing* consists of constructing or installing features designed to allow water to flow in and out of a structure but prevent the contact of water to essential utilities or mechanicals of the structure. Examples include filling a basement and elevating or protecting the HVAC system. *Dry floodproofing* consists of constructing or installing features designed to allow flood waters to reach a structure but diminish the flood threat by preventing flood waters from entering a structure. Examples include attaching watertight sealants on windows and doors and relocating utilities and sump pumps. There are no required buyouts as part of the Recommended Plan. Table-1 below lists the number of structures. Figure-2 show the location of the cluster areas.

Table-1: Number of Structures

Nonstructural Measure	Residential	Non-residential	Total Structures
Elevation	28	2	30
Wet Floodproofing	2	0	2
Dry Floodproofing	0	6	6
TOTAL	30	8	38

Table 2: Structures by Cluster Area

Cluster Area	Elevation	Wet Floodproofing	Dry Floodproofing
North	11	1	0
North Riverside	13	1	0
Southwest	6	0	6
TOTAL	30	2	6

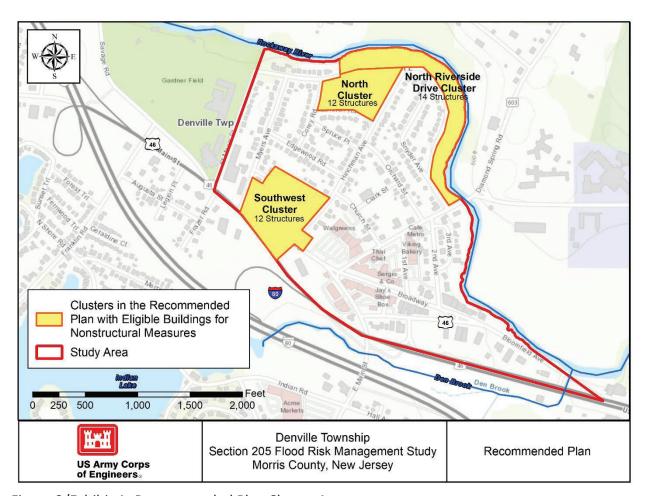


Figure 2/Exhibit A: Recommended Plan Cluster Areas

b. <u>Required Land, Easements</u>, and <u>Rights of Way</u> – The Recommended Plan requires the acquisition of an easement on each of the properties to be elevated or floodproofed. No other Lands, Easements or Rights-of-Way (LER) are required. The easement will allow for the construction, operation, and maintenance of the project, and prevent future work on the site that would undermine the benefits of the project. See Section 4, Nonstandard Estate, for additional information.

The recommended plan includes up to 38 structures located on 37 properties. Assuming 100% participation rate, 37 easements would be acquired. Owners will also be expected to sign a Participation Agreement with the non-Federal sponsor, the Township of Denville, prior to providing the easement. The Participation Agreement will document that the owner voluntarily elected to participate in the project and outline actions and steps that must be taken by the property owner prior to commencement of the nonstructural treatment, including the requirement to grant an easement. The non-Federal Sponsor is responsible for acquiring all LERRD, including these easements, which will require title searches, recording executed easements, and mortgage subordinations on properties where applicable.

As a nonstructural plan, implementation of the Recommended Plan will be performed on a voluntary basis. Property owners will have the option to voluntarily participate in the project to have their structure either elevated or floodproofed (as determined eligible by the USACE). If an owner chooses not to participate in the project or cannot provide the required real estate access and easement, the nonstructural project will not take place on that property.

This REP assumes all properties have legal access by way of public streets or existing public rights-of-way and have sufficient available area to accommodate staging of material and equipment. Therefore, there is no LER requirement for road access, staging, or work areas.

b. <u>Land Value Estimate</u>— In accordance with USACE Real Estate Policy Guidance Letter No. 31, CEMP-CR, 11 Jan 2019, subject: Real Estate Policy Guidance Letter No. 31-Real Estate Support to Civil Works Planning (hereinafter referred to as "PGL 31"), a "cost estimate", or a "rough order of magnitude" estimate, was completed for the required restrictive easements. The appraisal cost estimate represents the estimated market value of the real estate required for the Recommended Plan. A cost estimate is <u>not</u> a full appraisal. To establish a more accurate land valuation for the required real estate, a full land appraisal based on the Recommended Plan's final design plan is required. The land value cost estimate is incorporated into the 01-Lands and Damages cost as provided in the Baseline Cost Estimate for Real Estate (BCERE) (See Section 10).

The cost estimate was completed by a licensed, in-house USACE staff appraiser who concluded, as of November 2022, and updated in February 2023, that the market value for the required restrictive easements is approximately **\$3,801,670**. Table-3 below provides a summary of the aggregated estimated market value of the easements required by cluster area.

Table-3: Cost Estimate by Cluster Area

Cluster Area	Easement Value	
North	\$1,111,500	
North Riverside	\$1,245,040	
Southwest	\$1,445,130	
TOTAL	\$3,801,670	

Real property acquisition for nonstructural projects that meet all of the conditions in 49 CFR § 24.101(b)1 do not fall within the procedural requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 USC §§ 4601, et seq.). The four conditions in that regulation include: (i) No specific site or property must be acquired, (ii) the property is not part of a group of properties where all (or substantially all) must be acquired within a specific timeframe, (iii) the property will not be acquired by eminent domain if voluntary negotiations are unsuccessful, and the owner is so informed in writing, and (iv) the property owner is informed in writing of the market value of the property interest that is being acquired. Recent USACE interim nonstructural real estate guidance clarifies that an easement is required for nonstructural plan implementation. The interim guidance has further indicated that, as a condition of participation in this voluntary program, property owners will not be provided compensation for that easement. Property owners are, however, entitled to know, in writing, the value of the easement they provide and impact to their property value. While appraisals are not required, the non-Federal sponsor must have a reasonable method to estimate value of the real estate interest to be acquired and communicate that to the owner in accordance with 49 CFR § 101(b)(1)(iv).

Section 3: Real Estate Owned by the Non-Federal Sponsor

The non-Federal Sponsor owns no LER required for the Recommended Plan.

Section 4: Nonstandard Estates

Nonstandard estates are necessary when there is no corresponding USACE approved standard estate for the real property interest required, or when material changes to a corresponding standard estate (or previously approved nonstandard estate) is desired. Since there is no standard estate available for nonstructural features, a nonstandard restrictive easement is necessary to enable the construction, operation, and maintenance of the nonstructural feature. It will include securing certain access rights and impose land use restrictions on the lands of the owner, which the owner must agree to and comply with to ensure the long-term performance of the nonstructural feature. Examples of these rights and restrictions include limitation to habitable spaces below the target elevation and requirements for flood insurance, among others.

The approved nonstandard estate will be incorporated into the body of an easement agreement between the non-Federal Sponsor and the property owner. The easement will be recorded in the county land records and will run with the land. Once recorded, the easement agreement will provide notice to subsequent owners of the rights and restrictions associated with the nonstructural treatment. Once the project is approved and the project is authorized for construction, proposed nonstandard estate language will be coordinated with USACE North Atlantic Division and submitted to USACE Headquarters (HQ) for review and approval. Should USACE establish a standard estate, it is possible that the restrictive easement recommended herein will change.

Section 5: Existing Federal Projects

There are no known existing or planned federal projects within the LER required for this project.

Section 6: Federally Owned Lands

The Recommended Plan includes no federally owned lands as part of the LER.

Section 7: Federal Navigational Servitude

There is no LER requirement located below the mean high-water mark; therefore, navigation servitude is not available for the project.

Section 8: Real Estate Maps

Figure 2. above is provided as the general real estate map provided in Exhibit "A". More detailed mapping may be developed with plan optimization. The Clusters shown are intended for preliminary planning purposes only of optimum areas where owners will be able to volunteer to receive nonstructural treatments on their properties.

Section 9: Induced Flooding

Since the Recommended plan consists of nonstructural measures only, there is no induced flooding anticipated by the project.

Section 10: Baseline Cost Estimate for Real Estate

Estimated financial costs attributed to the Recommended Plan's real estate requirements are shown in Table-4 below:

Table-4: Baseline Cost Estimate for Real Estate

Cost Category	Cost
Incidental Cost	\$1,033,650
20% Contingency	\$206,730
Subtotal	\$1,240,380
*Acquisition Cost	\$3,801,670
TOTAL 01-LANDS & DAMAGES	\$5,042,050

^{*}Contingency included in the land value cost estimate.

Incidental costs consist of expenses incurred to facilitate the acquisition of the required real estate interest, such as title work, appraisals, appraisal review, relocation assistance benefits, meetings, legal assistance, crediting, etc. Acquisition costs include the estimated total fair market value of the restrictive easements to be acquired as provided in Section 2(c), Land Value Estimate, above.

Section 11: Uniform Relocation Assistance Act (Public Law 91-646)

The availability of relocation assistance benefits for persons affected by this project is determined pursuant to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended ("Uniform Act"), and its implementing regulations at 49 C.F.R. Part 24 ("Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs"). The National Nonstructural Committee (NNC) Best Practice Guide (BPG) 2020-02 addresses temporary relocation for nonstructural plans. It states the owner must have the ability to afford to temporarily relocate at their own expense and only applies to structures being elevated. Therefore, it implies that no relocation is necessary for wet or dry floodproofing, which is consistent with the intent of the Recommended Plan.

According to the Uniform Act, owner occupants participating in voluntary actions are not eligible for relocation assistance benefits. Therefore, structure owners who voluntarily elect to participate in the Recommended Plan and who may be required to temporarily relocate during construction must do so at their own expense. The Uniform Act generally provides relocation assistance benefits to tenants who are permanently displaced. However, Appendix A of the Uniform Act, provides that tenants who are subject to temporary relocation assistance must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation even if they do not meet the criteria of a "displaced person" as defined by the Uniform Act.

Census information for the Town of Denville indicates an approximate 33% rental rate. With 28 residential structures being elevated, approximately 10 may have tenant occupants who will require temporary relocation assistance. For planning purposes, relocation assistance benefits are estimated based on each eligible tenant consisting of a married couple with two children and one pet who will require temporary housing (hotel with kitchen) for a 90-day construction period. Temporary relocation assistance for the approximately 10 tenants is estimated to be \$234,500.

There are two non-residential structures proposed for elevation. As of this report, there is a dance studio and a day care present within the project area, and it is assumed these are tenants to the building. Often, businesses are relocated on a permanent basis; therefore, it is assumed the elevation of the two non-residential structures will require permanent relocation assistance for two businesses. Permanent relocation for the two business is estimated to be \$155,000, which includes cost associated with moving and related expenses and business reestablishment expenses.

Section 12: Mineral and Timber Activity

There are no known present or anticipated mineral extraction or timber harvesting activities within the LER required for the Recommended Plan.

Section 13: Non-Federal Sponsor Acquisitions Capability Assessment

The Township of Denville will serve as the non-Federal sponsor for project design and construction and will retain the responsibilities to perform the project's LERRD requirements. NJDEP will partner with the Township of Denville for the design and implementation of this project. An assessment of the Township of Denville as the non-Federal Sponsor is provided in Exhibit B. The Township of Denville has been determined as moderately capable of performing or ensuring the performance of the real estate requirements. They have less experience with real estate acquisition and currently do not have a dedicated staff to perform acquisition.

Section 14: Land Use Zoning

There will be no application or enactment of zoning ordinances in lieu of, or to facilitate, the Recommended Plan.

Section 15: Real Estate Acquisition Schedule

The below real estate acquisition schedule is supported by NJDEP and the Township of Denville and is based on current project schedule projections. The forecasted acquisition schedule for the Recommended Plan is projected to take up to two years.

Table-5: Real Estate Acquisition Schedule

Milestone	Date
Execution of Project Partnership	January 2024
Agreement with Sponsor	
Notice to Proceed with Real Estate	January 2024
Acquisition furnished to Sponsor	
Sponsor obtains owner's signed	June 2024
Participation Agreement	
Final structure eligibility inspections for	January 2025
nonstructural treatment	
Sponsor initiates acquisition of required	February 2025
easements	
Sponsor provides Authorization for Entry	January 2026
for Construction to USACE	
USACE reviews acquisition documents	May 2026
and certifies real estate	
USACE commences advertising for first	June 2026
construction contract	

Section 16: Relocation of Facilities or Public Utilities

For flood risk management projects, the non-Federal Sponsor is required to relocate affected public facilities and utilities necessary for the construction, operation, and maintenance of a project. A relocation may take the form of an alteration, lowering, raising, or replacement (and attendant removal) of the affected public facility/utility or part thereof. Since the Recommended Plan consists of a nonstructural plan in which the construction of the nonstructural features will be performed entirely on privately owned structures located on private property, there is no expectation to perform a relocation of a public utility or facility. However, permission from servicing utilities will be needed for this work, and in many cases the utilities may need to perform the utility work themselves. All service utilities will be elevated to the designed flood elevation for the nonstructural feature as part of the overall construction cost.

Section 17: Environmental Contamination

According to the main report, the residences for which nonstructural measures are recommended do not lie within or near any potentially contaminated sites. Although unlikely, historic industrial activity could have produced Hazardous, Toxic, and Radioactive Waste (HTRW) not identified in the preliminary analysis. It is likely that the structures, particularly those that are older, contain at least minor quantities of contaminants, such as lead paint, asbestos, and fuel storage tanks. It is assumed that no significant impact to the environment

from hazardous, toxic, and radioactive waste is expected because of implementation of the proposed action.

No elevation or floodproofing of structures will occur containing lead paint or products or asbestos and/or asbestos-containing materials if the proposed actions may disturb the lead or asbestos and/or asbestos-containing material. Prior to any actions being commenced, the lead paint or products or asbestos and/or asbestos containing material that may be disturbed by the floodproofing activity must be removed by the property owner at their sole cost and expense and in compliance with all applicable local, state, and federal laws and regulations. Lead paint or products or asbestos and asbestos-containing materials that would not be affected when carrying out the nonstructural flood risk management treatment would not need to be removed prior to commencing such work. See the main report for additional HTRW information.

Section 18: Project Public Support

At the time of release of the Draft Report, no public meeting on the proposed project has occurred. While the Project Delivery Team (PDT) has been working closely with the Township of Denville on developing the Recommended Plan, it is not yet clear how the proposed project is perceived by affected property owners. Given the voluntary nature of the nonstructural plan, there is no expectation of unfavorable responses from property owners that could adversely impact the real estate cost, schedule, and easement requirement outlined in this report.

Section 19: Non-Federal Sponsor Risk Notification

The Township of Denville will serve as the non-Federal sponsor for project design and construction and will retain the responsibilities to perform the project's LERRD requirements. The Township of Denville is anticipated to receive a written notice about the risks associated with advanced land acquisition prior to the execution of the PPA and prior to USACE providing its notice to proceed with real estate acquisition in the Fall of 2023.

Section 20: Other Pertinent Information

- 1. There is a risk that utilities serving a particular eligible property may need to be separately floodproofed which would require a separate agreement with the utility. This determination will be on a case by case basis and at the current level of design USACE does not have enough information about each property to make this determination. USACE will need to revisit this issue for each structure as the design level increases and there is specific information about each structure or property.
- 2. There is risk that structures eligible for floodproofing will require additional work to make them handicap accessible. The National Nonstructural Committee Best Practices Guide (BPG)

2020-07 discussed this issue and states in paragraph 5.b. that USACE should follow best practices for ensuring accessibility of elevated or floodproofed structures and that ramps and elevators may be considered eligible projects costs for those structures inhabited by people with disabilities. A letter from a licensed physician is sufficient to document this need according to the BPG.

- 3. Historic Structures. At this level of design, it is not known whether there are historic structures included in the Recommended Plan. Buildings older than 50 years may need to be evaluated for the National Register of Historic Places (NRHP) before floodproofing or elevation can occur. Should a building be listed with NRHP, it may increase acquisition costs or schedule as outline herein.
- 4. If participating properties are subject to perfected liens against the property, such as mortgages, the lien holders/mortgage holders will need to be contacted by each owner so that appropriate partial releases or subordination agreements can be obtained. These partial releases /subordination agreements typically involve a fee charged by a lender for review so the homeowner will need to be prepared to pay these costs out of pocket. Payment of these fees could potentially affect the participation rate. In addition, it will take time to acquire these partial releases or subordination agreements and it will need to be determined who pays to record them in the land records.
- 5. This real estate plan does not address possible issues related to leasehold/ground rent properties and whether these ground rents will need to be redeemed for a property owner to participate in this project. At this time, it is not known whether Leasehold properties are common in the Denville, New Jersey area.
- 6. The Section 408 process may be required if an owner of a participating property desires to make changes to it after implementation of the Recommended Plan.

PREPARER

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Craig R. Homesley
Deputy Chief, Real Estate Division
Baltimore District

DISTRICT CHIEF OF REAL ESTATE

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Stanley H. Graham
Chief, Real Estate Division
Baltimore District

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

ROCKAWAY RIVER AND DEN BROOK DENVILLE TOWNSHIP MORRIS COUNTY, NEW JERSEY CAP SECTION 205 FLOOD RISK MANAGEMENT STUDY

I. Legal Authority:

a. Does <u>Denville Township</u>, <u>NJ</u> (the potential "sponsor") have legal authority to acquire and hold title to real property for project purposes?

N.J.S.A. 40A:12-4 Further acquisitions authorized

Any county or municipality may acquire:

- (a) Any real property, capital improvement, personal property or any interest or estate whatsoever therein, including easements, water, water power, or water rights, either within or without the county or municipality, except that no such property belonging to the State or any of its agencies, a county or any municipality shall be acquired without its express consent;
- (b) Any outstanding easement, right or interest in any real property, capital improvement or personal property previously acquired by the county or municipality which the governing body shall determine to be necessary or useful for the proper exercise of any power conferred or duty imposed upon the county or municipality by this or any other law; but this section shall not operate, or be construed, to repeal or supersede any law requiring the consent of any other county or municipality, or any State authority, department, agency or commission for the acquisition of any such property; or
- (c) Any real property for the purpose of farmland preservation, which property may be resold or leased by the county or municipality with an agricultural deed restriction placed on the property by the county or municipality.

This authority allows the Denville Township to acquire and hold property for a project. An Ordinance is required for the township to hold an easement. A homeowner may grant a TCE to allow Township on their property for work, but the Township normally uses a license for this which can be done by resolution.

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

Yes, but eminent domain will not be utilized for this project since it is non-structural and 100% voluntary on the part of eligible owners.

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

No, but "quick take" will not be necessary for this project since it is non-structural and 100% voluntary on the part of eligible owners.

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

All of the lands/interests required are located within the sponsor's political boundary.

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

No, but condemnation will not be necessary for this project since it is non-structural and 100% voluntary on the part of eligible owners.

II. <u>Human Resource Requirements</u>

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?

Yes, Denville Township has limited expertise in this arena. They do not have staffing capacity so it is unlikely they can do this work and they will need help from USACE or from NJDEP. There is a township attorney and township engineer who may be able to acquire the necessary real estate interests.

b. If the answer to II.a. is "yes," has a reasonable plan been developed to provide such training?

There is no training plan at this time.

c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project?

Probably not without some training or supervision.

d. Is the sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule?

<u>See above. There is no dedicated staff, but they do have a township attorney and township engineer who may be able to assist.</u>

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

Perhaps. They may need to ask NJDEP to help or find an outside contractor.

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

No, it is not expected that the sponsor will request USACE assistance in acquiring real estate.

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, the Sponsor has approved the tentative schedule as shown in Section 15. of the Real Estate Plan.

IV. Overall Assessment

a. Has the sponsor performed satisfactorily on other USACE projects?

There is no history with this sponsor.

b. With regard to this project, the sponsor is anticipated to be: highly capable/fully capable/moderately capable/marginally capable/ insufficiently capable.

<u>Moderately capable, but may need assistance from NJDEP, outside contractor, or USACE.</u>

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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Craig R. Homesley
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