

Appendix G

Real Estate

Shorty's Island / Meander Reach Ecosystem Restoration

Kootenai River, Idaho

Draft Continuing Authorities Program Section 1135 Detailed Project Report and Integrated Environmental Assessment

June 2012

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**REAL ESTATE PLAN
SECTION 1135
SHORTY'S ISLAND MEANDER REACH RESTORATION
Kootenai River, Boundary County, Idaho**

Prepared for

**U.S. Army Corps of Engineers
Northwestern Division
Seattle District**

Prepared by

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Realty Services Branch**

Dated: June 29, 2012

**REAL ESTATE PLAN
SECTION 1135
SHORTY’S ISLAND MEANDER REACH RESTORATION
Kootenai River, Boundary County, Idaho**

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Attachments:

- Exhibit A Project Real Estate Map
- Exhibit B Non-Federal Sponsor Acquisition Capability Assessment
- Exhibit C Draft Certification of Lands, Attorney’s Certificate, Third Party Risk Analysis

REAL ESTATE PLAN
SECTION 1135
SHORTY’S ISLAND MEANDER REACH RESTORATION
Kootenai River, Boundary County, Idaho

1.0 Introduction

1.1 Real Estate Plan Purpose

This Real Estate Plan (REP) is presented in support of the Section 1135 Shorty’s Island/Meander Reach Restoration Project and describes the real property interests required to implement the project. The purpose of the Real Estate Plan is (1) to identify the lands, easements, rights-of-way, relocations and disposal sites (LERRD) necessary to support construction, operation and maintenance of the proposed project elements described in the Detailed Project Report and Integrated Environmental Assessment; (2) to outline the costs and real estate considerations associated with project implementation; and (3) to assess the Non-Federal Sponsor’s capability for LERRD acquisition. The Non-Federal Sponsor (NFS) for this project is the Kootenai Tribe of Idaho.

The REP is tentative in nature; it is for planning purposes only and both the final real property acquisition lines and the real estate cost estimates provided are subject to change even after approval of the Detailed Project Report and Integrated Environmental Assessment.

1.2 General Project Description

This feasibility study was initiated to consider environmental-quality improvements related to the operation of Libby Dam. Altered flow regimes associated with project operations have modified downstream channel characteristics and impacted downstream habitat functions and attributes important to Kootenai River white sturgeon (KRWS). The Shorty’s Island restoration project is intended to restore ecosystem function and habitat attributes for the KRWS at two locations in the meander reach of the Kootenai River, including the Myrtle Creek and Shorty’s South sites. The proposed restoration work consists of depositing rock material from a barge onto existing clay substrate in the river to enhance the viability and survivability of eggs that KRWS attach to the substrate when they spawn. The large rock substrate will also provide refuge habitat for KRWS in their early life stages. A temporary stockpile area and barge loading facility will be constructed on the right bank near the Shorty’s South substrate placement site. The land affected by the stockpile/barge loading facility and temporary access road will be restored to pre-existing conditions when all construction work has been accomplished. The project improvements will be monitored by the NFS over a five year period following construction. There is no long term maintenance tasks anticipated for this project.

1.3 Project Location

The Shorty’s Island Section 1135 project is located on the Kootenai River between River Mile (RM) 143 and RM 146 near the City of Bonners Ferry, Boundary County, Idaho (See, DPR-EA, Appendix B, Sheet G-001). Land use in the project area is predominantly agricultural. Materials destined for the substrate placement sites will be delivered to a temporary stockpile site and barge loading facility constructed on the right (east) bank of the river near the south end of Shorty’s Island. The barge loading facility will ramp up and over an existing levee on the right bank of the

river that is operated by Boundary County Dike District No. 11. A conveyor system will be constructed to load materials directly onto the barge from the stockpile area. Trucks will deliver materials to the stockpile area from County Road 38 over a private unpaved road. The Myrtle Creek project site is located in Section 12, Township 62 North, Range 1 West, near River Mile (RM) 145.5; the Shorty's South site as well as the stockpile/barge loading facilities are located in Section 31, Township 63 North, Range 1 East, near RM 143.3; and the temporary access road is located in Sections 5 and 6, Township 62 North, Range 1 East, Boise Meridian, Boundary County, Idaho.

2.0 Access to Project Site

Access to the project footprint is available from County Road 38, a public right-of-way. The access route is over a private, unpaved farm road. Road surface improvements will be constructed to accommodate heavy truck traffic. The road surface materials will be removed and the road restored to pre-project conditions when construction is accomplished. Access to the substrate material placement sites will be accomplished by barge.

4.0 Description of Lands, Easements and Rights-of-Way (LER)

The general project purpose as stated in the Detailed Project Report is to restore habitat and ecosystem functions for the Kootenai River white sturgeon (See, Executive Summary, page iii). All land described in this Real Estate Plan are proposed to support that project purpose. Project Lands, Easements and Rights-of-Way (LER) include approximately 27.40 acres of state aquatic lands under the jurisdiction and control of the Idaho Department of Lands, approximately 3.86 acres for a temporary access road, and approximately 26.40 acres for a temporary work area for material staging and barge loading facility. Affected parcels and acreages are listed in a table shown on the map attached to the REP as Exhibit A. None of the proposed project lands are owned by the NFS. The NFS is expected to acquire and certify a perpetual, non-standard easement for the state aquatic lands, a standard temporary road easement for the access road, and a standard temporary work area easement for the stockpile and barge loading facility site (See, Exhibit A LER map for a plan view depiction of the project lands).

5.0 Estates

5.1 Standard Estates

Temporary Work Area Easement

A temporary easement and right-of-way in, on, over and across the land described in Schedule A for a period not to exceed two (2) years, beginning with date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors as a work area, including the right to deposit fill 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 Section 1135 Shorty's Island / Meander Reach Ecosystem Restoration 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.

Temporary Road Easement

A temporary easement and right-of-way in, on, over and across the land described in Schedule A for a period not to exceed two (2) years, for the location, construction, operation, maintenance,

alteration and replacement of a road 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; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

5.2 Non-Standard Estates

State aquatic land required for the placement of substrate materials is under the control of the Idaho Department of Lands (IDL). Although fee simple is the prescribed property interest required for project elements that carry an environmental restoration purpose, IDL policy precludes conveyance of a perpetual interest in state lands. It is anticipated that a non-standard environmental easement estate for state aquatic lands will need to be drafted and routed through NWD to HQ for approval in the next project phase.

6.0 Navigational Servitude

The Federal Navigational Servitude is not available in the subject reach of the Kootenai River; therefore, navigational servitude will not be exercised for the construction of the proposed project.

7.0 Induced Flooding

The proposed project is limited to placement of rock material on the beds and banks of the Kootenai River and is not expected to induce any flooding.

8.0 Public Law 91-646 and LER Acquisition

The NFS has been advised of Public Law 91-646, as amended. The NFS has land acquisition experience and is fully capable of acquiring any lands necessary for the project. Exhibit D provides an assessment of the NFS' real estate acquisition capability.

All lands necessary for project implementation shall be made available by the NFS to the Corps by a Certification of Lands and Authorization for Entry, Attorney's Certificate of Authority, and Outstanding Third Party Risk Analysis documents (See, Exhibit C). Within 180 days after certifying project lands available, the NFS shall provide to the Corps all LER crediting documentation necessary to support their claim for credit.

9.0 Relocation Assistance Benefits

No relocation assistance benefits are anticipated for the proposed project. There are no families or businesses that will temporarily or permanently be displaced.

10.0 Minerals

There are no known outstanding mineral interests or active mining operations in the project area that may affect implementation of the project.

11.0 Zoning

The majority of lands affected by the proposed project footprint are located within the 100-year flood plain of the Kootenai River. The predominant land use in the project area is agricultural crops. There will be no zoning ordinance or zoning variance proposed in lieu of, or to facilitate, acquisition of project real estate interests.

12.0 Facility and Utility Relocations

There are no utilities or public facilities affected by the proposed project. No relocations are anticipated.

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 COMPLETEION AND APPROVAL OF FINAL ATTORNEY'S OPINIONS OF COMPENSABILITY FOR EACH OF THE IMPACTED UTILITIES AND FACILITIES.

13.0 HTRW

A preliminary HTRW investigation was conducted to document any current and/or historical contamination from activities in the project area. The preliminary investigation was primarily based on: (a) review of previous documents relevant to the proposed project; (b) review of relevant environmental databases maintained by federal and state regulatory agencies; (c) examination of historical aerial photos and topographic maps of the project area; (c) preliminary site reconnaissance; and (d) in-person discussion with a current/historical landowner. Review of documents and databases indicated that there is no record of any current or historical HTRW contamination in the proposed project site and surrounding area. (See, DPR-EA, pg. 67).

14.0 Landowner's Views and Public Opposition

The local community, private residents and public stakeholders appear to be very supportive of the proposed project. There have been no reports of public opposition to the project.

15.0 Outstanding Third Party Interests

All property interests acquired in support of the proposed project must take priority over any competing third party interests that could defeat or impair the NFS' title to the property or interfere with construction, operation and maintenance of the project. Such third party interests should be cleared from title, or subordinated to the interests being made available to the project by the NFS.

The stockpile and barge loading facility will affect the Dike District 11 levee easement footprint. The NFS will need to coordinate with DD 11 to obtain approval to implement the proposed temporary levee modifications required for construction of the stockpile/barge loading facility. The levee will be restored to pre-project condition after all construction activities have been accomplished.

16.0 Risks Associated With Advanced Land Acquisition

The NFS is not expected to acquire project real estate interests prior to execution of the Project Partnership Agreement (PPA). The following list of common risks associated with advanced land acquisition is provided for informational purposes only:

- 1) Congress may not appropriate funds to construct the proposed project;
- 2) The proposed project may otherwise not be funded or approved for construction;
- 3) A PPA mutually agreeable to the NFS and the Government may not be executed and implemented;

- 4) The NFS may incur liability and expense by virtue of its ownership of contaminated lands, or interests therein, whether such liability should arise out of local, state, or Federal laws or regulations including liability arising out of CERCLA, as amended;
- 5) The NFS may acquire interests or estates that are later determined by the Government to be inappropriate, insufficient, or otherwise not required for the project;
- 6) The NFS may initially acquire insufficient or excessive real property acreage which may result in additional negotiations and/or benefit payments under P.L. 91-646 as well as the payment of additional fair market value to affected landowners which could have been avoided by delaying acquisition until after PPA execution and the Government's notice to commence acquisition and performance of LER; and
- 7) The NFS may incur costs or expenses in connection with its decision to acquire or perform LER in advance of the executed PCA and the Government's notice to proceed, which may not be creditable under the provisions of P.L. 99-662 or the PPA.

17.0 Cost Estimate for Lands, Easements and Rights-of-Way

The baseline cost estimate for real estate (BCERE) presented below provides a breakdown of the estimated costs for project LER, NFS administrative costs associated with LER acquisition activities, and Federal review and assistance costs. For lands acquired within five (5) years preceding the execution date of the PPA, the NFS may claim credit for incidental acquisition costs such as title, survey, appraisal, negotiation costs, recording fees and legal fees. Federal review and assistance costs include those costs associated with providing the NFS with LER requirements, review of acquisition and crediting appraisals, coordination meetings, review of right-of-way documents, legal support, and crediting activities. Current land costs are based on three recent comparable sales in the general project area provided by USDA. Preliminary land costs shown below will be confirmed with a land cost estimate update performed by the Corps appraiser and will be accomplished before the DPR-EA goes to NWD for final review and approval.

Table 1 - Baseline Cost Estimate for Real Estate (BCERE).

Estates	Acres	Lands & Damages	NFS Admin	Fed Admin	Total LER Costs
Aquatic Lands	27.40	\$ 0.00			
TWA (24 months)	26.40	\$ 18,480			
Temporary Road Easement (24 months)	3.86	\$ 2,700			
NFS LER cost subtotal	57.66	\$ 21,180	\$ 10,000		\$ 32,000 (rounded-up)
20% contingency					\$ 6,400
NFS Lands & Damages Total					\$ 38,400
Federal Review & Assistance cost				\$ 10,000	
20% contingency				\$ 2,000	
Federal Review & Assistance Total				\$ 12,000	
NFS and Federal LER Cost TOTAL					\$ 50,400

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Exhibit A – Real Estate Maps

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**SECTION 1135 SHORTY'S ISLAND / MEANDER REACH
ECOSYSTEM RESTORATION PROJECT**

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

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? **NO**
- c. Does the sponsor have "quick-take" authority for this project? **NO**
- d. Are any of the lands /interests in land required for the project located outside the sponsor's political boundary? **YES, all project lands are outside the Kootenai Indian Reservation boundaries.**
- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? **YES** (e.g., State aquatic lands under the control of Idaho Department of Land).

II. **Human Resource Requirements:**

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended? **NO**
- b. If the answer to II.a. is "yes," has a reasonable plan been developed to provide such training? **N/A**
- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? **YES**
- d. Is the sponsor's projected in-house staff level sufficient considering its other work load, if any, and the project schedule? **YES**
- e. Can the sponsor obtain contractor support, if required, in a timely fashion? **YES**

Exhibit "B"

- f. Will the sponsor likely request USACE assistance in acquiring real estate? **NO** (If "yes," provide description).

III. **Other Project Variables:**

- a. Will the sponsor's staff be located within reasonable proximity to the project site? **YES**
- b. Has the sponsor approved the project/real estate schedule/milestones?
YES

IV. **Overall Assessment:**

- a. Has the sponsor performed satisfactorily on other USACE projects?
N/A
- b. With regard to this project, the sponsor is anticipated to be:
 - highly capable
 - fully capable
 - moderately capable
 - marginally capable
 - insufficiently capable. (If sponsor is believed to be "insufficiently capable:", provide explanation).

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V. **Coordination:**

- a. Has this assessment been coordinated with the sponsor? **YES**
- b. Does the sponsor concur with this assessment? **YES**
(If "no," provide explanation).

Prepared by:

KEVIN KANE
Realty Specialist

Reviewed and approved by:

CHRISTOPHER D. BORTON
Chief, Real Estate Division

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DATE

Department of the Army
Seattle District, Corps of Engineers
ATTN: Real Estate Division
Post Office Box 3755
Seattle, Washington 98124-3755

RE: Certification of Lands and Authorization for Entry for Section 1135 Shorty's Island / Meander Reach Ecosystem Restoration Project located on the right bank of the Kootenai River near the City of Bonners Ferry, Boundary County, Idaho.

Dear Sir:

By Project Participation Agreement dated the _____ day of _____ 20____, the Kootenai Tribe of Idaho, hereinafter Non-Federal Sponsor (NFS), assumed full responsibility to fulfill the requirements of non-federal cooperation as specified therein and in accordance with the Water Resources Development Act of 1986, as amended.

This is to certify that the NFS has sufficient title and interest in the lands hereinafter shown on Exhibit A, attached, in order to enable the NFS to comply with the aforesaid requirements of non-federal cooperation.

Said lands and/or interest therein are owned or have been acquired by the NFS, and are to be used for the construction, maintenance and operation of the above referenced project and include but are not limited to the following specifically enumerated rights and uses, except as hereinafter noted:

1. Temporary Work Area Easement -- A temporary easement and right-of-way in, on, over and across the land described in Schedule A for a period not to exceed twelve (12) months, beginning with date possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors as a work area, including the right to deposit fill 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 Section 1135 Shorty's Island / Meander Reach Ecosystem Restoration 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.

2. Temporary Road Easement -- A temporary easement and right-of-way in, on, over and across the land described in Exhibit A, for the location, construction, operation, maintenance, alteration and replacement of a road 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; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.
3. Non-Standard Environmental Easement – NOTE: the NSE will be drafted and routed through NWD to HQ during the Final Design/Implementation project phase for NSE approval as well as approval to deviate from Corps policy that requires a fee interest for environmental restoration project elements.

The NFS does hereby grant to the United States of America, its representatives, agents and contractors, an irrevocable right, privilege and permission to enter upon the lands hereinbefore mentioned for the purpose of prosecuting the project.

The NFS certifies to the United States of America that any lands acquired subsequent to the execution of the Project Participation Agreement that are necessary for this project have been accomplished in compliance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (Public Law 91-646) as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR, Part 24.

KOOTENAI TRIBE OF IDAHO

By: _____

DATE: _____

ATTORNEY'S CERTIFICATE

RE: Certification of Lands and Authorization for Entry for Section 1135 Shorty's Island / Meander Reach Ecosystem Restoration Project located on the right bank of the Kootenai River near the City of Bonners Ferry, Boundary County, Idaho.

I, _____, an attorney admitted to practice law in the State of _____ certify that:

I am the attorney for the Kootenai Tribe of Idaho.

I have examined the title to _____ [Parcel # (s)] of land identified by the U.S. Army Corps of Engineers as needed for the Section 1135 Shorty's Island / Meander Reach Ecosystem Restoration Project, located near the City of Bonners Ferry, Boundary County, Idaho and included in the Certification of Lands and Authorization For Entry document to which this Certificate is appended.

The Kootenai Tribe of Idaho is vested with sufficient title and interest in the described lands required by the United States of America to support the construction, operation, and maintenance of the Section 1135 Shorty's Island / Meander Reach Ecosystem Restoration Project.

There [] are (see attached risk analysis) [] are no outstanding third party interests of record that could defeat or impair the title and interests of the Kootenai Tribe of Idaho in and to the lands described, or interfere with construction, operation, and maintenance of the Project. Such interests include, but are not limited to, public roads and highways, public utilities, railroads, pipelines, other public and private rights of way, liens and judgments. To the extent such interests existed prior to acquisition of the described lands by the Kootenai Tribe of Idaho such interests have either been cleared or subordinated to the title and interests so acquired except as provided in the attached risk analysis.

The Kootenai Tribe of Idaho has authority to grant the Certification of Lands and Authorization for Entry to which this Certificate is appended; that said Certification of Lands and authorization for entry is executed by the proper duly authorized authority; and that the authorization for entry is in sufficient form to grant the authorization therein stated.

DATED AND SIGNED at _____, this _____ day of _____ 20__.

[INSERT NAME OF NON-FEDERAL SPONSOR'S ATTORNEY]
Attorney at Law

**RISK ANALYSIS FOR OUTSTANDING
THIRD PARTY INTERESTS**

RE: Certification of Lands and Authorization for Entry for Section 1135 Shorty's Island / Meander Reach Ecosystem Restoration Project located on the right bank of the Kootenai River near the City of Bonners Ferry, Boundary County, Idaho.

There are outstanding third party interests of record in and to the lands required for the Project. An evaluation of those interests is as follows:

1. IDENTIFICATION OF THIRD PARTY INTERESTS:

2. **ASSESSMENT:** (Discuss whether the exercise of that interest is likely to physically impair the Project. Discuss the legal implications if the interest is not cleared or subordinated. Discuss the practical impediments to the exercise of the interest such as any required permits, land use restrictions, or compensation.)

3. **PLAN TO RESOLVE:** (Discuss recourse available to protect the Project in the event the outstanding interest is exercised).

Signed:

[INSERT ATTORNEY'S NAME]
Attorney for Kootenai Tribe of Idaho

DATE _____