

Claiborne and Millers Ferry Locks and Dams Fish Passage Study

Draft Feasibility Report and Integrated Environmental Assessment

Appendix D - Real Estate Plan

May 2023



US Army Corps of Engineers®



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D.1. Introduction

D.1.1. Real Estate Plan

This Real Estate Plan is prepared in accordance with ER 405-1-12, Section 12-16, and in support of the Feasibility Report and Environmental Assessment to determine Federal interest in Fish Passage improvements adjacent to the Claiborne & Miller's Ferry Dams in Central Alabama. The purpose and scope of this Real Estate Plan is to describe the Recommended Plan land and real estate administrative costs for the habitat restoration project. This report is to be used for planning purposes only. There will be modifications to the plans that occur during Preconstruction, Engineering and Design (PED) phase, thus changing the final acquisition area(s) and/or land and administration costs.

D.1.1.1. Non-Federal Sponsor

The Nature Conservancy is a Non-Profit Organization focused on ecosystem and environmental values, incorporated in Arlington, Virginia.

D.2. Study Authority

D.1.1. Flood Control Act of 1970, Public Law 91-611 (33 U.S.C. 549a)

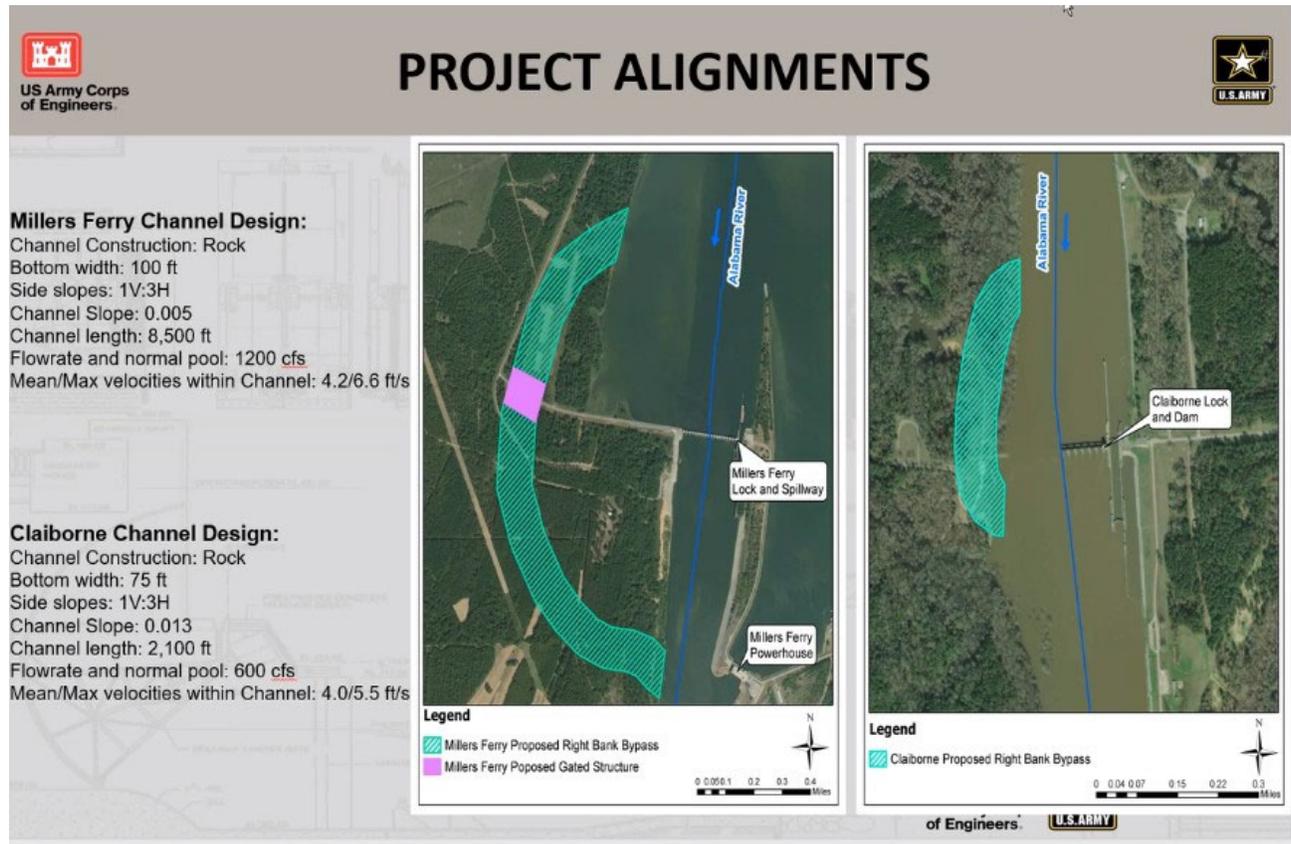
This study is prepared under the authority contained in Section 216 of the Flood Control Act of 1970, Public Law 91-611 (33 U.S.C. 549a) which authorizes the Secretary of the Army, acting through the Chief of Engineers, to review the operation of the Claiborne Lock and Dam and Millers Ferry Lock and Dam in the interest of navigation and for improving the quality of the environment, particularly for fish passage, due to significantly changed physical conditions. An excerpt from this authority is provided below:

"The Secretary of the Army, acting through the Chief of Engineers, is authorized to review the operation of projects the construction of which has been completed and which were constructed by the Corps of Engineers in the interest of navigation, flood control, water supply, and related purposes, when found advisable due to significantly changed physical or economic conditions, and to report thereon to Congress with recommendations on the advisability of modifying the structures or their operation, and for improving the quality of the environment in the overall public interest."

D.3. Project Description

The Recommended Plan includes the following habitat improvements:

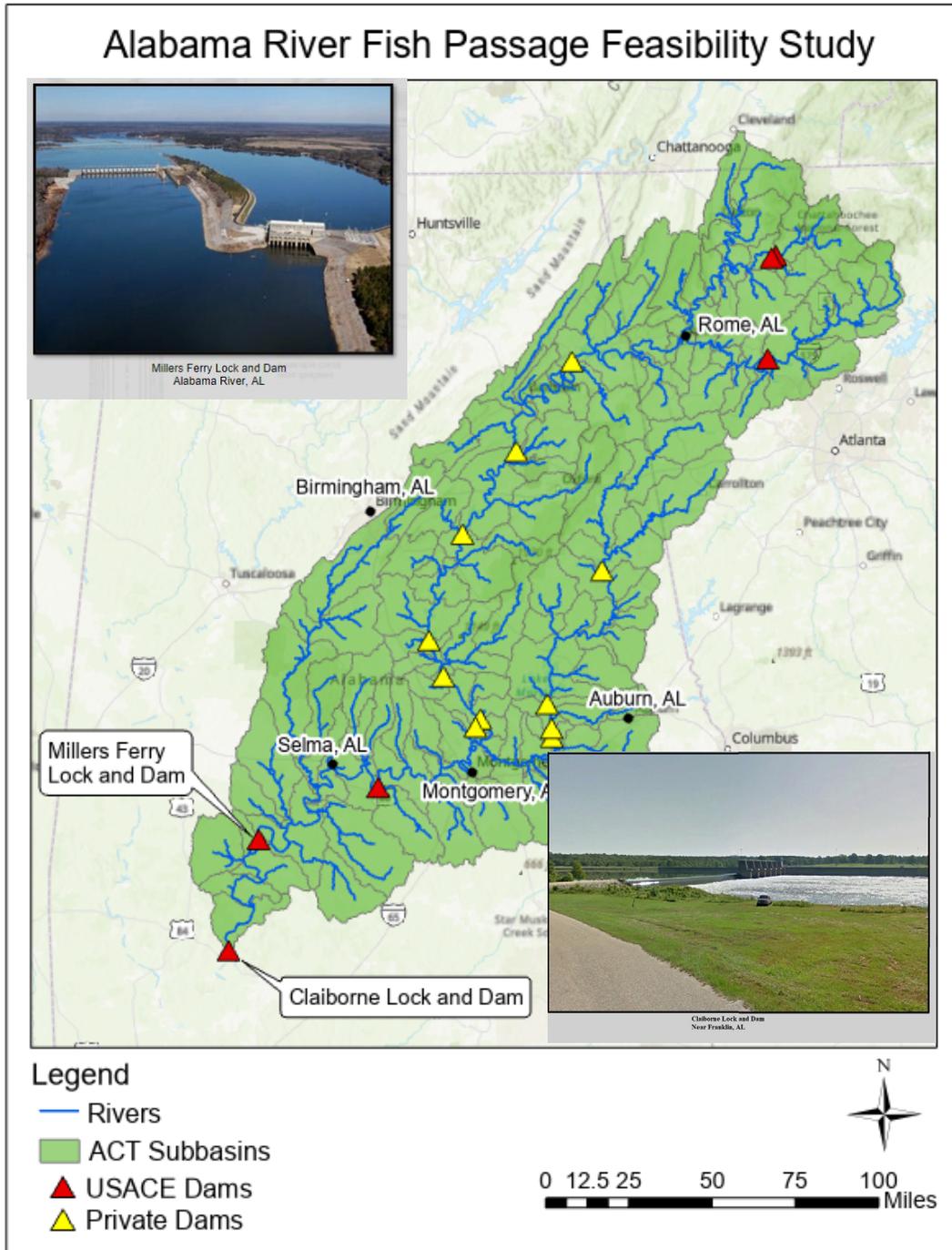
Figure D.3: Project Alignments.



D.3.1. Claiborne and Millers Ferry Lock and Dam

The overarching project area is part of the Alabama-Coosa-Tallapoosa (ACT) River System consisting of 5 USACE dams and 11 privately owned dams. The more specific study area extends from the Alabama River below Claiborne to Millers Ferry pool upstream of the dam. Two locks and dams are located within the project reach.

Figure D.3.1: Alabama River Basin and contributing rivers & tributaries.



D.3.2. Study Purpose and Objectives

The purpose of the study is to evaluate Federal interest in establishing fish passage restoring connectivity in the Alabama and Cahaba Rivers. Individually, the Alabama and Cahaba Rivers are nationally significant, but holistically may be in the top 5 in the U.S. for biodiversity. The passage is impaired by two dams that restrict access to historical spawning grounds on the Cahaba River from species present in the lower Alabama River.

Restoring connectivity to historic spawning grounds and aquatic habitat for several listed species of fish and freshwater mussels, which is critical to sustain biodiversity.

The resource significance of the fish passage is highlighted by the fact that the Cahaba River has been classified one of only eight “Hotspots of Biodiversity” out of 2,111 watersheds in the contiguous U.S. The Mobile/Tennessee/Cumberland river system is among the 19 highest priority places to save on the planet in the next decade according to World Wildlife Fund (WWF).

The end state goal is to reestablish connection of the lower Alabama River, Mobile River Delta and Gulf of Mexico to the Cahaba River as the Gulf Sturgeon, Alabama Sturgeon, Alabama Moccasinshell, Orangenacre Mucket, and Southern Clubshell have designated critical habitat in the area. Extensive physical and hydrologic alteration has occurred due to construction of dams, which has had significant ecological impacts as Mobile Bay is the fourth largest estuary in the contiguous U.S.

Reference the Main Report for further information on Study Purpose and Objectives.

D.4. Description of Lands, Easement, Rights-of-Way, Relocations, and Disposal Areas (LERRDs)

Once the Project Partnership Agreement (PPA) process is complete, the Mobile District Engineering Division will review the final design for advertisement and construction. During this process the tract register and tract maps will be updated to reflect any modifications to include final staging areas, access requirements, and restoration features. This information will be used for LERRD crediting project close out purposes.

D.4.1. Fee lands needed for Bypass Channel (Miller’s Ferry)

To construct the bypass channel, the Non-Federal Sponsor for the project will need to acquire Fee Simple title to 58.5 acres, more or less, within the following 2 parcels / tracts adjacent to the Millers Ferry Project:

66-08-04-18-0-000-001.000 Private Parcel - 51 +/- acres
66-08-04-19-0-000-002.000 Private Parcel - 7.5 +/- acres

D.4.2. License needed for Bypass Channel (Claiborne & Miller’s Ferry)

To construct the bypass channel, the Non-Federal Sponsor for the project will need to request a license from the Project Office for 86.1 acres, more or less, within the following 4 parcels / tracts within the Claiborne and Millers Ferry Projects:

66-08-03-07-0-000-003.010 USA parcel - 21.6 +/- acres

66-08-04-18-0-000-001.001 USA parcel - 31.4 +/- acres

68-08-04-19-0-000-002.001 USA parcel - 8.7 +/- acres

51 18 08 34 0 000 004.000 USA parcel - 24.4 +/- acres

D.4.3. Potential Borrow Sites and Placement Sites

A description of potential borrow and/or disposal sites has not been provided by Engineering as of the date of this draft, and therefore has not been explored in depth. Placement lands will be required in Fee Simple, with a road easement for access to public right-of-way. Additional land costs are anticipated once the project design reflects a specific location for required placement site.

D.4.4. Access

Access needs will be evaluated further at a later date upon receipt of specific Engineering drawings which outline location of required placement areas. For the construction area, it is anticipated that primary access routes will entail the public right-of-way and existing operational roads for the dam sites. Additional access needs will be evaluated with the development of further Engineering design, including Plans & Specifications provided for in the Pre-Construction Engineering Design (PED) phase).

D.4.5. Temporary Work Area

A description of potential temporary work areas has not been provided by Engineering as of the date of this draft, and therefore has not been explored in depth. Any temporary work areas on proposed to utilized on private property will require a standard Temporary Work Area Easement.

Table D.4: Recommended Plan Features

Restorations Sites	Project Features	Estate	Acres
Miller's Ferry Claiborne L&D	Bypass Channel - Private sites	Fee Simple Title	58.5 +/- Millers Ferry
	Bypass Channel - Federal Sites	DA License to NFS	61.7 +/- Millers Ferry 24.4 +/- Claiborne
	Staging Areas and Temporary Bridges	Temporary Work Area Easement	TBD
	O&M Roads/ Placement Routes	Permanent Road Easement	Existing Dam Access/ TBD
	3 owners - 6 parcels, 2 private owners, 1 businesses or farms, 4 federally owned (USACE)	Total Acres: (Rounded)	120.2 +/- Millers Ferry 24.4 +/- Claiborne

D.5. LERRDs Owned by the Non Federal Sponsor and Crediting

The Sponsor shall provide appraisal for all project lands associated with the USACE Recommended Plan. All appraisals will be prepared in accordance with the Uniform Appraisal Standards (USPAP) and prepared by a certified appraiser who will be approved as a qualified appraiser by the USACE Savannah District Appraisal Branch. At this time there are no sponsor owned land identified in the project footprint.

D.6. Standard Estates

The non-Federal sponsor will be required to acquire the minimum interest in real estate that will support the construction and subsequent operation and maintenance of the proposed USACE project.

The following standard estates (with definitions) are identified as required for the project:

D.6.1. Fee Simple Title

The fee simple title to [the lands described in tract register], subject however, to existing easements and gravel and gold outstanding in third parties and for public roads and highways, public utilities, railroads and pipelines.

D.6.2. Temporary Work Area Easement

A temporary easement and right-of-way in, on, over and across for a period not to exceed 5 years after the execution of the construction contract, beginning with date possession of the land is granted to the State of Alabama, the Nature Conservancy, its representatives, agents, and contractors, for use by 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 Claiborne & Miller's Ferry Fish Passage 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.

D.6.3. Road Easement

A (perpetual [exclusive] [non-exclusive] and assignable) (temporary) easement and right-of-way in, on, over and across (the land described in Tract Register) 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.

D.7. Description of any Existing Federal Projects in or Partially in the Proposed Project

With the exception of lands noted in Section D.8, there are no additional federal projects located in the proposed construction footprint.

D.8. Description of any Federally-owned land needed for the Project

There are 4 parcels owned by the United States of America, acting by and through the U.S. Army Corps of Engineers, Mobile District, under the existing Lock and Dam projects.

D.9. Application of Navigational Servitude to the LERRDs Requirement

Federal Navigational Servitude will be utilized in the construction of the proposed bypass channel features lying below the mean high water mark. Federal Navigational Servitude is defined as "the dominant right of the Government under the Commerce Clause of the U.S. Constitution (U.S. CONST. art.I, Section 8, cl.3) to use, control and regulate the navigable waters of the United States and the submerged lands thereunder for various commerce-related purposes including navigation and flood control. In non-tidal areas, the servitude extends to all lands within the bed and banks of a navigable stream that lie below the ordinary high water mark.

D.10. Project Maps

Figure D.10.1: Project Map - Claiborne.

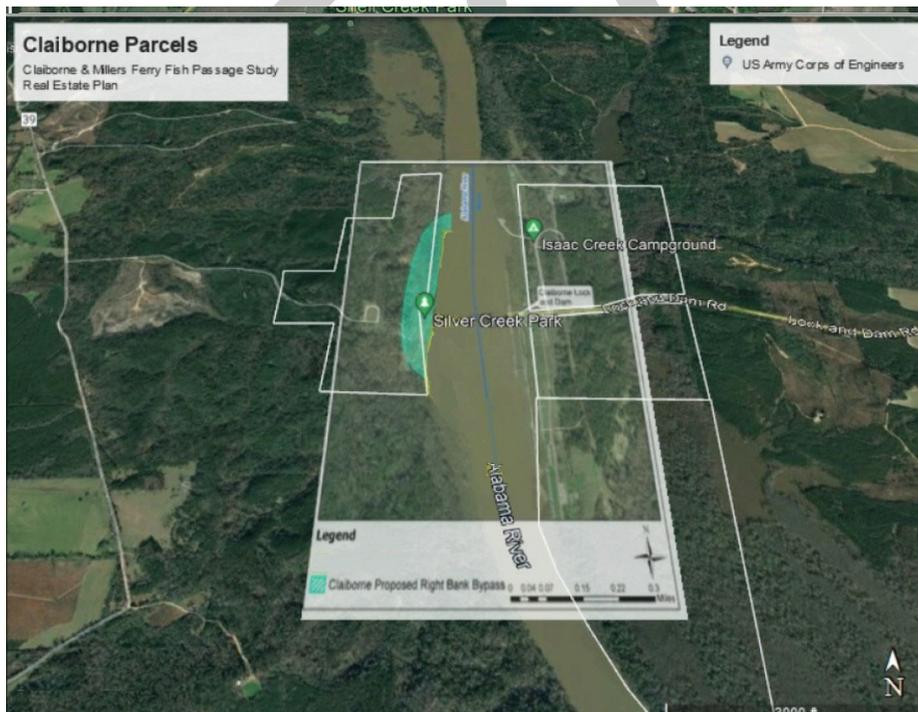


Figure D.10.2: Project Map - Millers Ferry.



D.11. Induced Flooding Impacts

Per Engineering analysis, project features would not affect the ability of the river to access high floodplain nor would it affect the hydrology of the watershed and therefore would not result in significant effects to this resources. Based on hydraulic modeling results, there will be no increased flooding from the proposed project.

Please reference Appendix H for further information.

D.12. Cost Estimate

The following is a preliminary analysis estimating the costs of acquiring the required LERRDs to support the USACE Recommended Plan to assist in the determination of federal interest for a cost benefit analysis. The format and level of investigation of this cost estimate is considered to be consistent with, and meet the intent of, the Real Estate Policy Guidance Letter No. 31-Real Estate Support to Civil Works Planning Paradigm (3X3X3). The table below estimates the costs associated with acquiring real property interests necessary to construct, operate and maintain the proposed project, except for placement areas which have not been identified as of the date of this report. A gross appraisal report was prepared by USACE Savannah District Appraisal Branch, dated July 30, 2022, with a review certificate of November 4, 2022. It includes anticipated Federal and Non-Federal administrative expenses and cost contingencies.

Table D.12: Baseline Cost Estimate for Real Estate (BCERE)

01A	PROJECT PLANNING	FEDERAL	NON-FEDERAL	TOTALS
	Other			
	Project Partnership Agreement (OC)	\$ -	\$ -	\$ -
01AX	Contingencies (%)	\$ -	\$ -	\$ -
	Subtotal	\$ -	\$ -	\$ -
01B	LANDS AND DAMAGES			
01B20	Acquisition by non-Federal sponsor	\$ -	\$ 488,000.00	\$ 488,000.00
01B40	Acq/Review of non-Federal sponsor	\$ 30,000.00	\$ -	\$ 30,000.00
01BX	Contingencies (25%)	\$ 7,500.00	\$ 122,000.00	\$ 129,500.00
01R	RE PAYMENTS	FEDERAL	NON-FEDERAL	TOTALS
01R1	LAND PAYMENTS	\$ -	\$ 232,000.00	\$ 232,000.00
01R1A	By Government	\$ -	\$ -	\$ -
01R1B	By non-Federal sponsor	\$ -	\$ -	\$ -
01R1C	By Government on behalf of non-Federal sponsor	\$ -	\$ -	\$ -
01R1D	Review of non-Federal sponsor	\$ -	\$ -	\$ -
01RX	Contingencies (15%)	\$ -	\$ -	\$ 58,000.00
01R2	PL 91-646 Assistance Payments			
01R2A	By Government	\$ -	\$ -	\$ -
01R2B	By non-Federal sponsor	\$ -	\$ -	\$ -
01R2C	By Government on behalf of non-Federal sponsor	\$ -	\$ -	\$ -
01R2D	Review of non-Federal sponsor	\$ -	\$ -	\$ -
	TOTALS	\$ 37,500	\$ 610,000	\$ 647,500 \$ 650,000 rounded

D.13. Relocation Assistance

The non-Federal sponsors must comply with the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.* (P.L. 91-646, “the Uniform Act”) and provide relocation assistance to qualifying residences and businesses within the project area that are displaced, as defined in the Uniform Act, as a consequence of USACE project implementation. Presently, no displacements are anticipated as a consequence of implementation of the Recommended Plan.

D.14. Mineral / Timber Activity

The Highest and Best Use for the private parcels has been deemed agricultural in nature, and therefore timber value is not considered to be a significant factor. No known mineral activity has been observed on the lands required for construction, operation and maintenance of the project.

D.15. Non-Federal Sponsor Real Estate Acquisition Capability

Per the NFS Real Estate Acquisition Capability Assessment, attached hereto as **Exhibit A**, the NFS **does not have condemnation authority** and will require the assistance of the State of Alabama to provide Sponsorship support for the potential of condemnation, for the Miller's Ferry portion of the project. Therefore, we do not anticipate that the Nature Conservancy would be performing any real estate acquisition on behalf of the project.

D.16. Proposed Zoning in Lieu of Acquisition

There is no zoning in lieu of acquisition planned in connection with the project.

D.17. Acquisition Schedule

The non-Federal sponsors will be directed to begin real property acquisition for the project only after the PPA is fully executed. A risk letter was sent from the Corps to the Nature Conservancy alerting them to the risks associated with purchasing project lands in advance of the PPA execution. The acquisition schedule for this project is anticipated to require 15 months from preliminary design milestone to Real Estate certification.

Table D.17: Real Estate Acquisition Schedule

REAL ESTATE ACQUISITION SCHEDULE				
Project Name: Claiborne & Millers Ferry Fish Passage	COE Start	COE Finish	NFS Start	NFS Finish
Receipt of final drawings from Engineering/PM	11/2024	02/2026		
Formal transmittal of final drawings & Notice to Proceed to acquire LERRD’s			11/2024	11/2026
Construction Solicitation	TBD			

D.18. Description of Facility and Utility Relocations

No utility or facility relocations have been identified for this project to date, but further review will coincide with the development of the Plans and Specs, particularly at the locations where the bypass channel traverses existing public roadways.

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 FINAL ATTORNEY’S OPINIONS OF COMPENSABILITY FOR EACH OF THE IMPACTED UTILITIES AND FACILITIES.

D.19. Hazardous, Toxic, and Radiological Waste (HTRW)

A Phase I Environmental Site Assessment is pending USACE Mobile District Engineering assessment.

D.20. Attitude of Landowners

Opposition to the Miller's Ferry segment of the project is anticipated inasmuch as a portion of the proposed project impacts the historical lands and plantation home surrounding the circa 1856 Rosemary Plantation. According to the Nature Conservancy, the owner is not willing to sell, and the Nature Conservancy does not have condemnation authority per the NFS Real Estate Acquisition Capability Assessment.

DRAFT

EXHIBIT A
NFS RE ACQUISITION CAPABILITY ASSESSMENT



DEPARTMENT OF THE ARMY
MOBILE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2288
MOBILE, ALABAMA 36628-0001

REPLY TO
ATTENTION OF:
USACE-SAM- RE-A

CLAIBORNE & MILLERS FERRY FISH PASSAGE STUDY

NATURE CONSERVANCY

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

1. LEGAL AUTHORITY:

- a. **Does the Sponsor have legal authority to acquire and hold title to real property for project purposes?** Yes, however, TNC Alabama has not received authorization for future projects or expenditures outside of the Feasibility Study Federal Cost Share Agreement. The intention is for another entity to engage as the non-federal sponsor for project implementation.
- b. **Does the Sponsor have the power of eminent domain for this project?** NO
- c. **Does the Sponsor have "quick-take" condemnation authority for this project? Please cite specific authority (i.e. local/state law):** NO
- d. **Are any of the lands/interests in land required for this project located outside the sponsor's political boundary?** NA
- e. **Any of the lands/interests in land required for the project owned by an entity whose property the Sponsor cannot condemn?** NA
 - i. **Private Property:** NO
 - ii. **State-Owned Property:** NO

2. 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 2(a) is "yes", has a reasonable plan been developed to provide such training?** NA
- c. **Does the Sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project?** YES

- d. **Is the Sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule?** YES, subject to caveats in Section 1.
- e. **Can the Sponsor obtain contractor support, if required in a timely fashion?** YES, subject to caveats in Section 1
- f. **Will the Sponsor likely request USACE assistance in acquiring real estate? (If "yes", provide description):** Unknown subject to caveats in Section 1.

3. 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 milestone (*answer is contingent upon whether the real estate milestones have been defined at this point in the project*)?** An approved project/real estate schedule has yet to be developed.

4. OVERALL ASSESSMENT:

- a. **Has the Sponsor performed satisfactorily on other USACE projects (if applicable)?** YES
- b. **With regard to this project, the Sponsor is anticipated to be (circle one):** Highly capable; Fully capable; Moderately capable; Marginally capable; Insufficiently capable. (If Sponsor is believed to be insufficiently capable, please provide explanation). Fully Capable, subject to caveats in Section 1.

5. COORDINATION:

- a. **Has this assessment been coordinated with the Sponsor?** Yes
- b. **Does Sponsor concur with this assessment?** YES

Accepted by Non-Federal Sponsor:

 26 August 2022
(Signature)

Mitchell Reid
State Director
The Nature Conservancy in Alabama
2 **(Title)**

Prepared by:

John J. Tetreau

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**RUSSELL W. BLOUNT, III
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REAL ESTATE DIVISION
MOBILE DISTRICT, USACE**

Reviewed and Approved by:

Derrick D. Moton

**DERRICK D. MOTON
BRANCH CHIEF, ACQUISITION
REAL ESTATE DIVISION
MOBILE DISTRICT, USACE**

EXHIBIT B – CADASTRAL MAP

Note: To be updated upon receipt of Engineering Design. Also, please reference conceptual mapping in Section 10 of this Appendix.

EXHIBIT C – RISK LETTER



DEPARTMENT OF THE ARMY
MOBILE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2288
MOBILE, ALABAMA 36628-0001

REPLY TO
ATTENTION OF:

USACE-SAM-RE-A

11 May 2022

Mr. Jason Throneberry
Director, Freshwater Programs
The Nature Conservancy
4245 North Fairfax Drive
Suite 100
Arlington VA 22203

Subject: Claiborne and Miller's Ferry Fish Passage Study – Formal Risk Notification Letter to Non-Federal Sponsor

Dear Mr. Throneberry,

The intent of this letter is to formally advise the Nature Conservancy, as non-Federal Sponsor for the proposed project, of the risks associated with land acquisition prior to the execution of a Project Partnership Agreement (PPA) or prior to the Government's formal notice to proceed with acquisition. If a Non-Federal Sponsor deems it necessary to commence acquisition prior to an executed PPA for whatever reason, the Non-Federal Sponsor assumes full and sole responsibility for any and all costs, responsibility, or liability arising out of the acquisition effort.

While we acknowledge that no land acquisition has been determined to date, for the subject project based on the latest engineering designs, we are still required by regulation to notify the non-Federal Sponsor of the inherent risks associated with a cost-shared project of this nature.

Generally, these risks include, but may be not be limited to, the following:

- (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 non-Federal sponsor and the Government may not be executed and implemented;
- (4) The non-Federal sponsor 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 non-Federal sponsor 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 non-Federal sponsor 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 Lands, Easements, Rights-of-way, Relocations, Disposal Areas and/or Borrow Areas (LERRD);

(7) The non-Federal sponsor may incur costs or expenses in connection with its decision to acquire or perform LERRD in advance of the executed PPA and the Government's notice to proceed which may not be creditable under the provisions of Public Law 99-662 or the PCA. Reference ER 405-1-12 (Change 31; 1 May 98) Section 12-31 Acquisition Prior to PCA Execution.

Please acknowledge that the Non-Federal Sponsor for the proposed project accepts these terms and conditions.

Accepted on behalf of the Non-Federal Sponsor:

Non-Federal Sponsor was provided document by e-mail and USPS but did not endorse

_____(Signature)

_____(Title)

Prepared by:

John J. Tetreau
Planning & Purchase Section
Acquisition Branch
Real Estate Division
Mobile District
U.S. Army Corps of Engineers