



**US Army Corps
of Engineers** ®
Walla Walla District

SWEETWATER CREEK ECOSYSTEM RESTORATION

**Feasibility Report with
Integrated Environmental Assessment**

**Appendix F
Real Estate Plan**

**SWEETWATER CREEK ECOSYSTEM RESTORATION
FEASIBILITY REPORT WITH INTEGRATED ENVIRONMENTAL ASSESSMENT**

APPENDIX F, REAL ESTATE PLAN

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1 STATEMENT OF PURPOSE

This Real Estate Plan (REP) is prepared in accordance with Engineering Regulation (ER) 405-1-12, and presents the real estate requirements for the Sweetwater Creek Ecosystem Restoration Project Recommended Plan described in section 1.4. The Nez Perce Tribe is the non-Federal sponsor (NFS) for the study.

This REP is an appendix to the Feasibility Report, and fully describes the lands, easements, rights of way, relocations, and disposal areas (LERRD) required for construction, operation and maintenance of the proposed project, including the number of parcels, acreages, estates, ownerships, and estimated value. The REP includes other relevant information on NFS ownership of land, proposed non-standard estates, existing Federal projects and ownership, relocations under the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Public Law 91-646, as amended) ("the Uniform Act"), presence of contaminants, facility/utility relocations, a baseline cost estimate, a schedule for real estate activities, and other issues as required by ER 405-1-12.

The purpose of the REP is to support the Sweetwater Creek Ecosystem Restoration Feasibility Study with Integrated Environmental Assessment. It is tentative in nature and is to be used for planning purposes only. Both the final real estate acquisition lines and the estimate of value are subject to change even after the report has been approved.

1.1 Project Purpose/Objective

The purpose of the Feasibility Study is to evaluate problems, address issues and determine the feasibility of the potential solutions. In doing so the study will formulate and evaluate cost effective, environmentally-sensitive, and technically feasible ecosystem restoration alternatives for Sweetwater Creek and surrounding areas.

The purpose of the proposed project and alternatives considered in the Study is to restore the ecological potential of Sweetwater Creek for Endangered Species Act (ESA) listed and culturally significant Steelhead and Coho Salmon species by providing complex and suitable instream habitat, restoring culturally significant native riparian plant communities, and establishing sustainable river and floodplain morphology and function. These actions are necessary due to the degradation of the aquatic and riparian habitat by land use practices and other human related impacts that have altered the flow regime, impaired riparian habitat quality and function, adversely affected water quality, simplified channel morphology, segregated the river from the flood plain, and reduced fish and wildlife habitat diversity.

1.2 Study Authority

The Sweetwater Creek Ecosystem Restoration Feasibility Study was conducted pursuant to Section 905(b) of the Water Resources Development Act (WRDA) of 1986 and authorized under Section 203 of WRDA 2000, as amended by Section 2011 of WRDA 2007 (Tribal Partnership

Program). This program allows for the collaboration between Federally recognized American Indian and Alaskan Native Tribal governments, and other Federal agencies such as the U.S. Army Corps of Engineers (USACE) to participate in water related planning studies to determine the feasibility of water resource development projects located primarily within Indian Country (as defined in 18 USC 1151) and will substantially benefit the Indian Tribes.

1.3 Study Area

The study area for the Sweetwater Creek Ecosystem Restoration Project is located in Nez Perce County, Idaho along Sweetwater Creek near the city of Lapwai within in the Lapwai Creek watershed. Lapwai Creek watershed encompasses approximately 171,000 acres (≈ 267 square miles) (Figure 1).

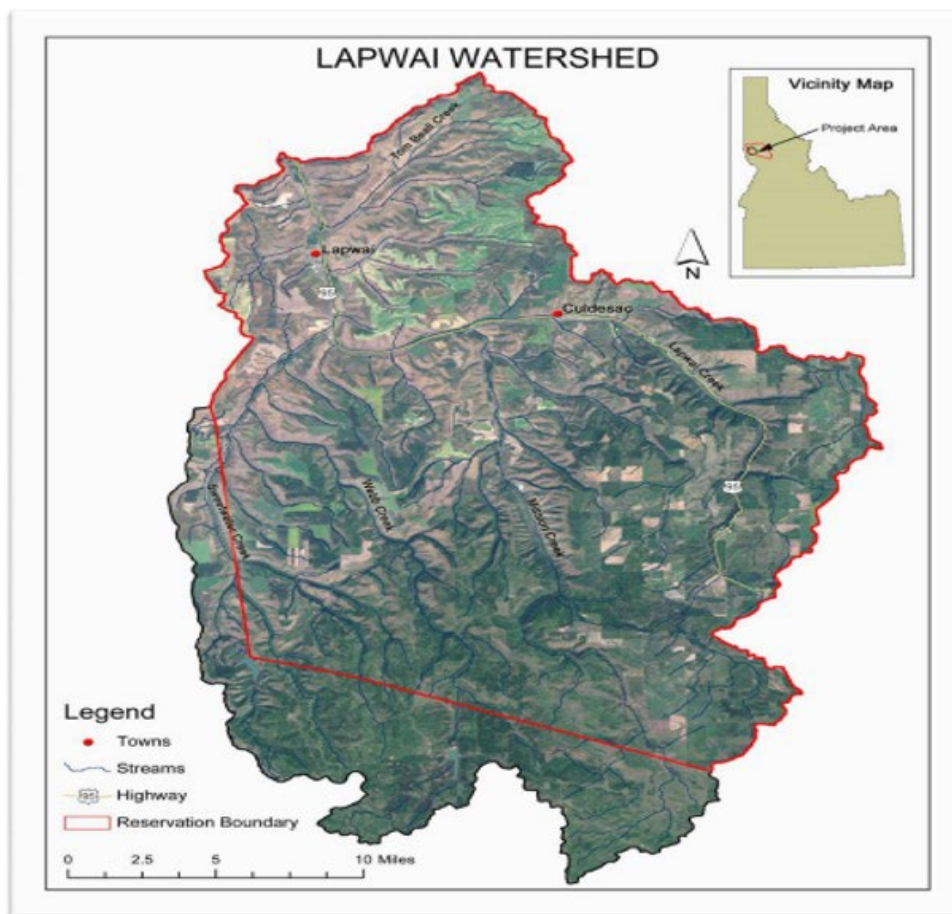


Figure 1. Lapwai Watershed

Sweetwater Creek flows nearly 18 miles from its headwaters at 4,800 feet elevation to the confluence with Lapwai Creek at 1,100 feet elevation. Three primary drainages contribute flow to Sweetwater Creek, the East Fork Sweetwater Creek, the West Fork Sweetwater Creek, and Webb Creek. (Figure 2)

Sweetwater Creek provides critical habitat for Snake River Steelhead; a species of fish listed under the ESA, as well as many other culturally significant species coveted by the Nez Perce Tribe.

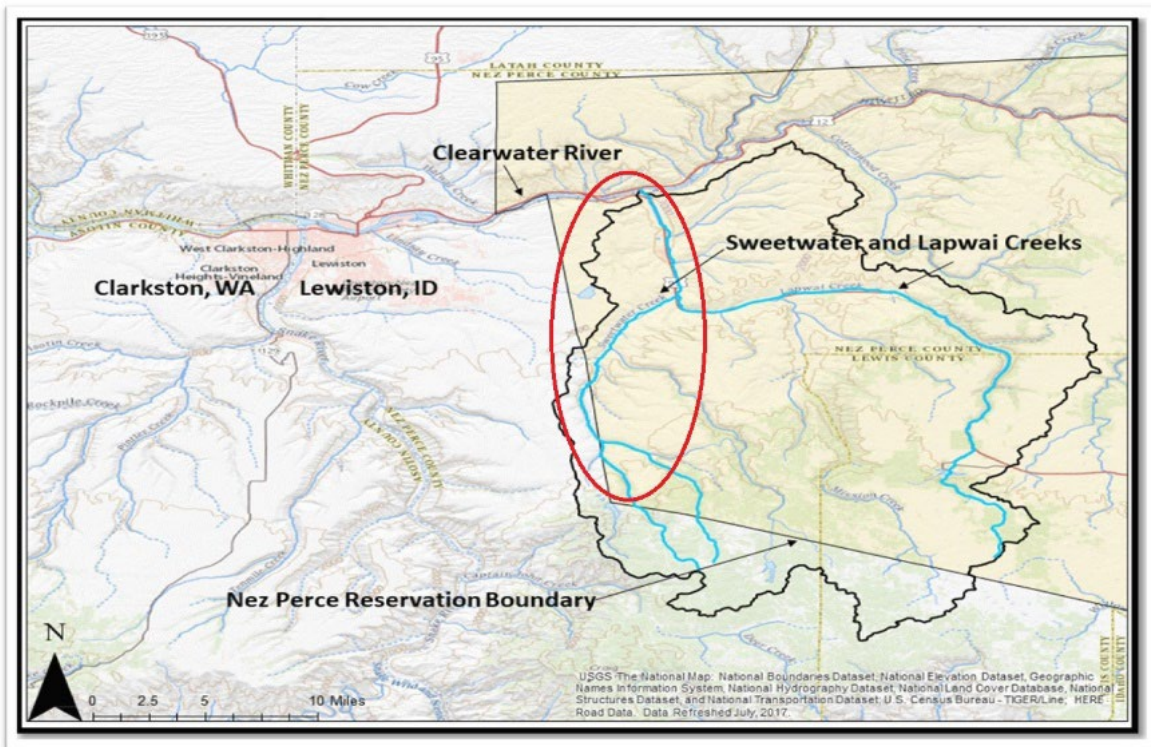


Figure 2. Study Area

1.4 Recommended Plan

This REP describes the real estate requirements for the Recommended Plan. The Recommended Plan is the National Ecosystem Restoration (NER) Plan as it is the alternative that maximizes environmental benefits while passing tests of cost effectiveness and incremental cost analyses, significance of outputs, acceptability, completeness, efficiency, and effectiveness as required by regulation ER 1105-2-100, *Planning Guidance Notebook* and the Institute for Water Resources (IWR) Report 95-R-1, *Evaluation of Environmental Investments Procedures Manual, Interim: Cost Effectiveness and Incremental Cost Analyses*. Alternative 7 is the selected alternative, and is a combination of Sweetwater Creek Reach 1 Plan 1.2, Sweetwater Creek Reach 5 Plan 5.1, and Sweetwater Creek Reach 7 Plan 7.1.

Reach 1: Plan 1.2

Reach 1 is located at the end of Sweetwater Creek where it ties into Lapwai Creek approximately 200 ft. East of U.S. Highway 95. The proposed restoration elements for this section are to include riparian restoration, channel enhancement, instream structures, flood plain construction, outer bank and overbank grading transitions, streambank shaping, and levee notching. (Figure 3)

Sweetwater Creek Section 203

Reach 1

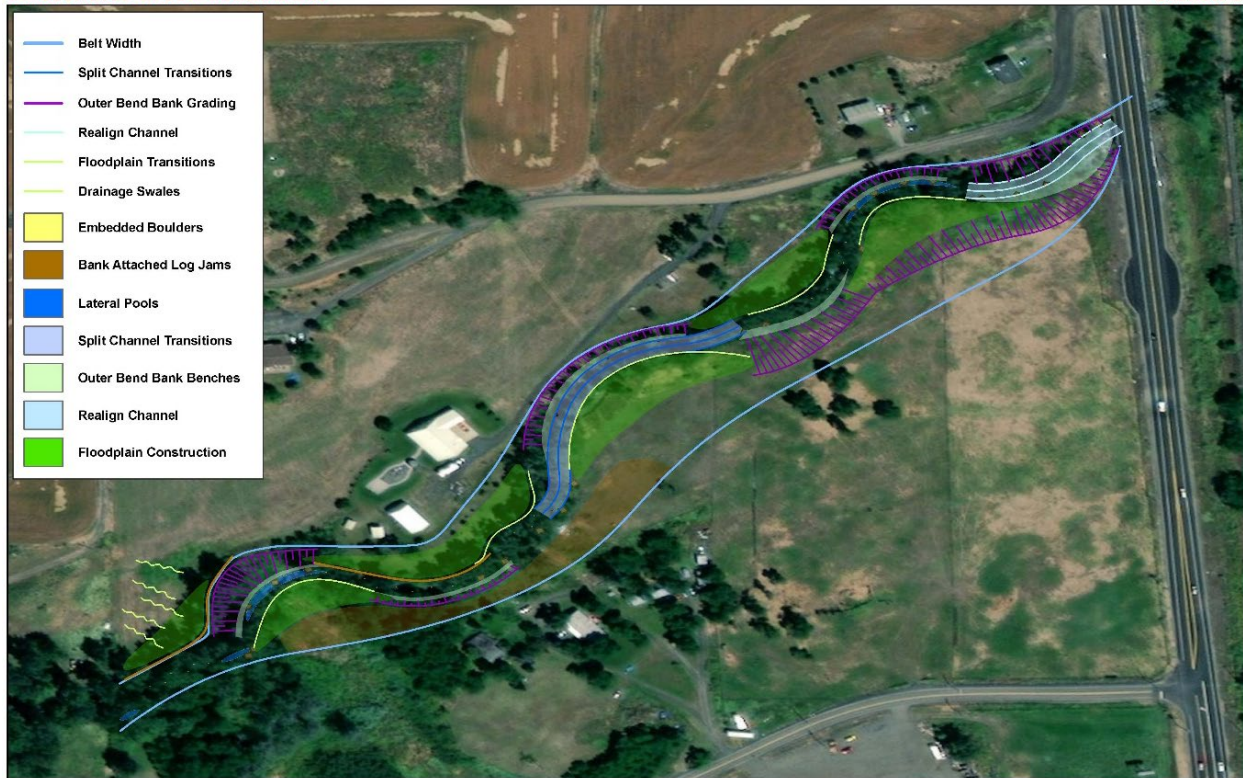


Figure 3. Sweetwater Alternative 7: Reach 1, River Mile 0.4 – 0.45

Outer stream bends would be excavated back to install large wood features, steep slopes would be flattened, and native riparian vegetation would be restored to provide elements needed for fish survival.

Meander transitions and other physical features of the Creek such as channel function, lateral stability and conveyance would be improved by embedding large boulders which would increase the hydraulic complexity of the stream. This increase in complexity will provide eddies and pools for the fish to rest while migrating upriver.

The development of floodplain connections in this reach will provide for approximately 2 acres of optimal rearing habitat for juvenile salmonids and would allow for the seasonal flows to carry nutrients, vegetation and natural debris into the Creek. The addition of these elements would naturally develop wetland and riparian functions within the study area by establishing migration corridors and developing food sources for native species further promoting restoration habitat.

Reach 5: Plan 5.1

Reach 5 is located downstream of the Webb Road bridge crossing and upstream of the Webb Rose Lane bridge crossing between river mile (RM) 2.02 and 2.46. The proposed restoration elements for this section are to include riparian restoration, channel enhancement, channel

realignment, instream structure installation, floodplain construction and enhancement, and streambank shaping. (Figure 4)

Sweetwater Creek Section 203

Reach 5



Figure 4. Sweetwater Alternative 7: Reach 5, River Mile 2.02 – 2.45

Many of the elements described in Reach 1 are also applied to this reach in the same manner. Outer stream beds and steep banks would be flattened to restore native vegetation, natural wood features would provide cover and reduce the energy of the stream resulting in pool formation, and placement of boulders would promote eddies and pools benefiting migrating fish species.

Reach 5 also has proposed floodplain enhancement that would provide for nearly 4 acres of optimal habitat for juvenile salmonids. This enhancement would include newly constructed floodplains on inside meander bends and tying into existing riparian corridors. This type of floodplain enhancement will allow for wetland development and riparian restoration providing habitat and food sources for all types of plant and animal species.

Reach 7: Plan 7.1

Reach 7 is located just south of McCormack Ridge Road bridge and extends upstream half of a mile. The proposed restoration elements for this section are to include riparian restoration, channel enhancement, channel realignment, instream structure installation, floodplain construction and enhancement, and streambank shaping. (Figure 5)

Sweetwater Creek Section 203

Reach 7

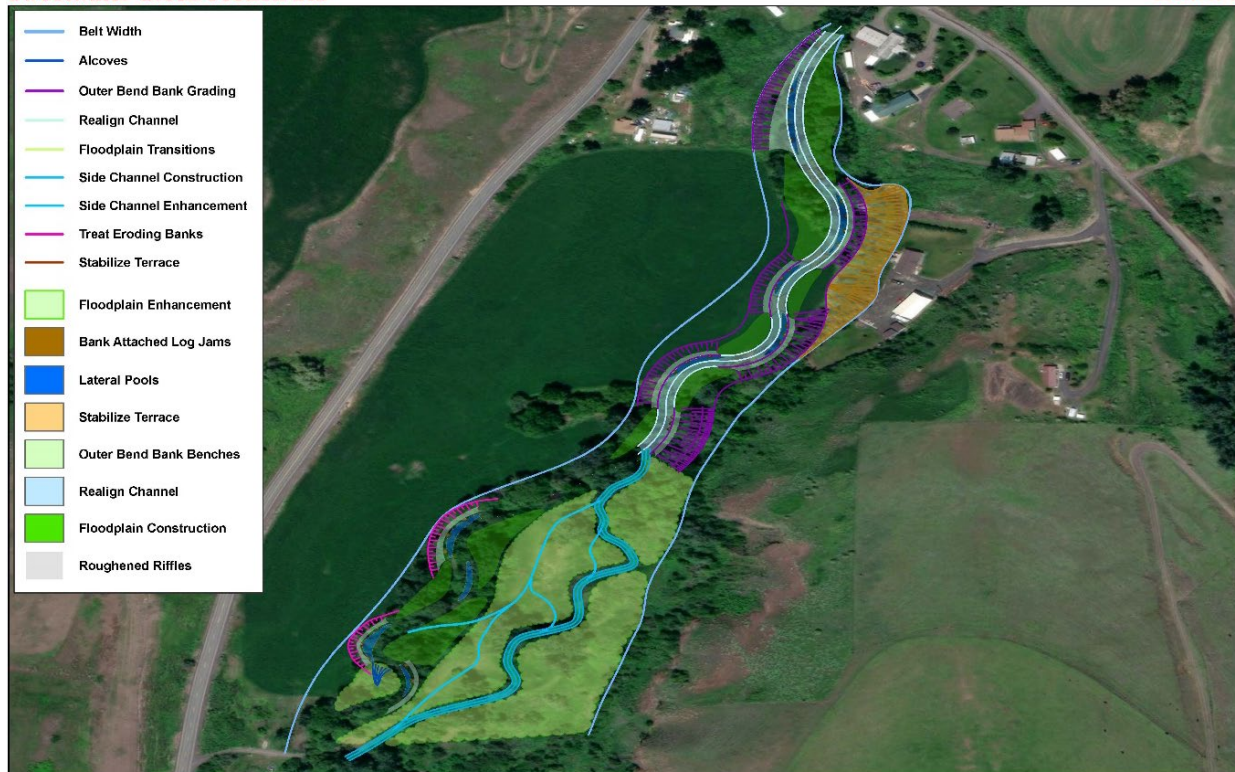


Figure 5. Sweetwater Alternative 7: Reach 7, River Mile 2.91 – 3.42

The elements described in Reaches 1 and 5 also apply to this reach as well. Outer stream beds and steep banks would be flattened to restore native vegetation, natural wood features would provide cover and reduce the energy of the stream resulting in pool formation. Upstream of RM 3.0, the step vertical bank would be graded out from the top stabilizing the bank and tying into the riparian corridor on the right bank of the realigned channel.

Reach 7 has many of the same elements as the other two reaches. Floodplain development and enhancement would provide 5.5 acres of optimal habitat for juvenile salmonid species. Newly constructed floodplain would occur over 1.5 acres where 4 acres currently exists. The existing floodplain would be enhanced through side channel construction, planting and seeding of riparian vegetation, and promotion of wetland and floodplain connectivity.

2 REAL ESTATE REQUIREMENTS: DESCRIPTION OF LANDS, EASEMENTS, AND RIGHTS-OF-WAY REQUIRED FOR THE PROJECT

The lands, easements, and rights of way (LER), required to be provided for the proposed project (Alternative 7), including the requirements for staging areas, ingress/egress routes, borrow and disposal sites, are described below:

Ecosystem Restoration Project Area

Alternative 7 would typically require fee interest in the lands in accordance with USACE regulations, but due to the nature of lands to be acquired for the project the PDT is requesting a non-standard estate for a lesser interest. Current estimates for the project footprint are 36 acres, 8.7 acres in Reach 1, 14 acres in Reach 5, and 13.7 acres in Reach 7. Temporary Work Area Easements (Standard Estate #15) will be required for all staging areas and access roads. A more detailed breakdown of ownership can be viewed in Table 1.

Staging Areas

Staging areas have been proposed but have not been finalized. Staging areas would require Temporary Work Area Easements (Standard Estate #15). Current estimates for staging areas total 3.01 acres over 5 sites, staging areas (2) for Reach 1 equal 2.05 acres, staging areas (2) for Reach 5 equal 0.56 acres, and staging areas (1) for Reach 7 equal 0.40 acres. Maps of the staging areas can be found in Exhibit B of this REP.

Ingress/Egress

Access roads to and from the project have been proposed but have not been finalized. Access roads would require Temporary Work Area Easements (Standard Estate #15). Current estimates for access roads total 1.79 acres, for Reach 1 access roads equal 0.73 acres, for Reach 5 equal 0.76 acres, and for Reach 7 equal 0.30 acres. Maps of the ingress/egress routes can be found in Exhibit B of this REP.

Disposal Sites

Disposal sites are not anticipated for Alternative 7.

Borrow Sites

Borrow sites are not anticipated for Alternative 7.

Table 1. Breakdown of Ownership

Feature	Ownership	Interest to be acquired/provided	Aprox acres to be acquired/provided
Reach 1	Tribal Allotment Allotment 314, 325, 342-D	Non-Standard Estate Easement Estate	8.71
Reach 1	Tribal Allotment (Ingress/Egress)	Temporary Work Area Easement (Standard Estate #15)	0.73

Reach 1	Tribal Allotment (Staging Areas)	Temporary Work Area Easement (Standard Estate #15)	2.05
Reach 5	Tribal Allotment Allotment 365, 365-B, 365-C	Non-Standard Estate Easement Estate	13.99
Reach 5	Tribal Allotment (Ingress/Egress)	Temporary Work Area Easement (Standard Estate #15)	0.76
Reach 5	Tribal Allotment (Staging Areas)	Temporary Work Area Easement (Standard Estate #15)	0.56
Reach 7	Tribal Allotment Allotment 375-A, 375-B, 375-C Owners: Privately Owned Approval % Needed: 50% Approval % Gained: 90.33%	Non-Standard Estate Easement Estate	13.68
Reach 7	Tribal Allotment (Ingress/Egress)	Temporary Work Area Easement (Standard Estate #15)	0.30
Reach 7	Tribal Allotment (Staging Areas)	Temporary Work Area Easement (Standard Estate #15)	0.40
Total Acres			41.1

3 NON-FEDERAL SPONSOR OWNED LANDS, EASEMENTS, AND RIGHTS-OF-WAY

The current project footprint identifies lands required for the project fall within the Nez Perce Reservation but are split between Tribal Trust (TT) and Tribal Allotment (TA) Lands. These lands are held in trust by the Government for the Nez Perce Tribe for TT lands and for individual Indians for TA lands which are all managed by the Bureau of Indian Affairs (BIA). The data for individual parcel identification and their respective acreages is still being determined.

4 NON-STANDARD ESTATES

The use of a non-standard estate (NSE) is anticipated for this project. The majority of the lands impacted by the project are TA lands and acquisition of fee interest is not obtainable due to the rights of the owners of the property. An NSE conceptual strategy document has been submitted to HQ USACE for approval on the use of an NSE for this project. HQ USACE has reviewed the conceptual strategy and has provided comments for the team to consider while continuing to prepare the feasibility study. The items to consider are clarification on the BIA ROW process, confirmation of the percentage required for TA landowners to convey interests, confirm timeline of realized project benefits, and to submit project related documents such as the environmental assessment, feasibility study, and other pertinent documents as they become available to the District.

5 EXISTING FEDERAL PROJECTS

Where there is an existing Federal project within the area proposed for a new project, such lands must be identified, and the sufficiency of those lands for the proposed project must be evaluated. In addition, the value of lands provided as an item of local cooperation for a previous Federal project are not included in the valuation of lands for the current proposed project, and no credit may be afforded for such interests.

Currently, there are no existing Federal projects within the LER required for this project. There is no evidence available that indicates that LER required for this project was previously provided as an item of local cooperation.

6 FEDERALLY OWNED LAND

Current project footprints identify all lands required for the project fall within the Nez Perce Reservation. These lands are comprised of both TT and TA lands and are held in trust by the Federal Government for the benefit of a Tribe (TT Lands) or the benefit of an individual Indian (TA Lands). Outside of that relationship there are no known federally owned lands within the project footprint.

7 NAVIGATIONAL SERVITUDE

Exercise of Federal navigational servitude is not applicable to this proposed project and is not being invoked.

8 PROJECT MAP

Exhibit A contains proposed project maps depicting the project study footprint. Currently there is only a 10 percent design construction boundary footprint.

9 POTENTIAL FLOODING INDUCED BY CONSTRUCTION, OPERATION, OR MAINTENANCE OF PROJECT

There is no potentially induced flooding as a result of the construction, operation, and maintenance of the proposed project.

10 REAL ESTATE BASELINE COST ESTIMATE

The Baseline Cost Estimate for Real Estate (BCERE) for the Recommended Plan is presented below. In accordance with ER 405-1-4 and Real Estate Policy Guidance Letter (PGL) No. 31, for projects in which the value of real estate (including lands, improvements, and severance damages) is not anticipated to exceed 15 percent of total project cost, a cost estimate or rough order of magnitude is acceptable for purposes of the feasibility phase. In the event where the value of real estate exceeds the 15 percent threshold, but is not greater than 30 percent, a brief gross appraisal will be acceptable. When the value exceeds 30 percent, a full gross appraisal will be required. This project is not anticipated to exceed the 15 percent threshold.

The values in Table 2 were derived from a Land Cost Estimate (LCE) prepared by a licensed appraiser, Heber Kennedy, on April 3, 2023. An LCE is not an appraisal and is intended for internal planning purposes only. Pre-acquisition appraisal services to determine the current actual market value of LER may be obtained if total real estate costs constitute more than 15 percent of the total proposed project costs. A contingency of 25 percent has been added into this estimate due to factors that cannot be evaluated at this time, such as the proposed project being delayed, differences in the Preconstruction Engineering and Design, and potential unforeseen changes in land use and support of the proposed project. Closing costs and title work costs, which in Idaho average approximately 10 percent of the total cost of acquisition, have also been added into the estimate.

Table 2. Real Estate Baseline Cost Estimate

NFS Cost (Alternative 7)	ACRES	COST
Standard Estate #1: Fee	0	\$0
Standard Estate #15: Temporary Work Area Easement	4.7	\$5,105
Non-Standard Estate:		
Lands, Easements and Rights-of-Way (01 Account)	36.4	\$182,060
Facility/Utility Relocations (02 Account)	0	\$100,000
Incremental RE Costs (25% contingency)		\$46,791
Subtotal LERRD		\$333,956
*NFS Administrative Costs		\$56,250
Total NFS LERRD		\$390,206
Federal Cost		
**Federal Administrative Costs		\$49,500
Total Real Estate Costs		\$439,706

11 P.L. 91-646 RELOCATION ASSISTANCE BENEFITS

The NFS is aware of the requirements of the Uniform Act (P.L. 91-646) and if relocations are required, the NFS will proceed in accordance with the Act. Currently, the Recommended Plan does not identify the displacement of any businesses, residences or farms that are eligible for relocation assistance benefits under the Act.

12 MINERAL/TIMBER ACTIVITY

There is no known mineral activity currently occurring inside the proposed project area. There is no known timber harvesting within the proposed project boundary. It is recommended that a title search be done to determine if any mineral/timber rights exist on parcels being acquired for this proposed project.

13 NON-FEDERAL SPONSOR'S LEGAL AND PROFESSIONAL CAPABILITY TO ACQUIRE AND PROVIDE LANDS, EASEMENTS, AND RIGHTS-OF-WAY

The NFS Acquisition Capability Assessment has been completed and is included as Exhibit C to this REP.

14 APPLICATION OR ENACTMENT OF ZONING ORDINANCES

At this time there are no foreseen enactments of zoning ordinances to facilitate acquisition of real property in connection with this proposed project.

15 REAL ESTATE ACQUISITION SCHEDULE

Currently, the proposed project is anticipated to be implemented in phases, with construction beginning at the upstream end of the project area and progressing downstream. However, because the proposed project is only at 10 percent design, the anticipated phases have not yet been determined. The acquisition of long term easements and temporary work area easements, and rights-of-entry needed for the Recommended Plan would be accomplished over several months, with the acquisition of all of the real estate interests required for each respective phase completed in advance of contracting for construction of that phase. The schedule below reflects an approximate realistic timeline to complete the acquisition activities.

Table 3. Real Estate Acquisition Schedule Milestones

Final Project Plans and Specifications Submitted to NFS	30 days after Construction Drawings finalized
Obtain Surveys	60 days after plans and specs submitted
Obtain Title Evidence	45 days after obtaining surveys
Obtain Appraisals and Reviews	75 days after obtaining title evidence
Prepare Offer Letters	15 days after obtaining appraisals
Conclude Negotiations	75 days after start of negotiations
Conclude Closings	45 days after concluding negotiations
NFS Attorney Certify Availability of LERRD	30 days after concluding closings
USACE RECO Certify LERRD	15 days after NFS Attorney Certifies LERRD
Review LERRD Credit Request	45 days after receiving LERRD documents
Approve or Deny LERRD Credit Request	10 days after concluding LERRD review

16 FACILITY/UTILITY RELOCATIONS

For cost-shared projects, the non-Federal Sponsor is responsible for performing facility and utility relocations in support of the project. The term “relocation” generally means providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility, and railroad when such action is authorized in accordance with applicable legal principles of just compensation.

In accordance with Policy Guidance Letter 31 (PGL-31), the total facility/utility relocation cost for this project does not exceed 30% of total project costs, so the PDT has completed a real estate assessment in lieu of a preliminary attorneys opinion of compensability. The real estate assessment described in this REP for the relocation of a powerline is based upon information gathered by the PDT, the NFS, and the company who owns, operates, and maintains the powerline.

Details of Proposed Relocated Utility

Type – 115Kv Transmission Line

Name – Lolo-Nez Perce, Pole Structures 33/10 & 34/1

Owner – Avista Utility Company

Ownership Type – Easement

Description – This powerline runs across Reach 1 and has a 2-pole structure within in the footprint of the project. The structure is located in an area designed for flood plain construction to include grading of approximately 4 ft. of topsoil around the structure. Engineers from both the PDT and Avista have confirmed this amount of grading will negatively impact the pole structures integrity and that the best course of action is to either relocate the pole structure out of the floodplain construction area or replace the pole structure in its current location with a concrete footing with steel pole which is designed to withstand a marine environment and can be submerged. The differences in cost for these options are approximately \$30,000, with the proposed cost of relocating the wooden poles at \$70,000 and replacing the wooden structure with the concrete/steel structure at \$100,000. Avista owns a powerline corridor easement through this area and the relocation of the pole structures would be contained within the already existing easement so acquisition of lands for the new structures would not be required.

Based on the information above, discussions with the Sponsor and Avista Utility Company, it is assumed that Avista Utility Company has a compensable interest since they have an easement for the underlying land. Easement deeds to Avista for the powerline corridor have not been submitted to the Real Estate office for confirmation. For feasibility purposes, it is assumed that compensation for the relocation will be the provision of a substitute facility, the cost of which will be borne by the non-Federal Sponsor and is included in the total project cost estimate. A Final Attorney's Opinion of Compensability will be completed during the PED Phase and completed prior to any Notice to Proceed to the NFS.

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 LER 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 IMPACT ON REAL ESTATE ACQUISITION FROM SUSPECTED OR KNOWN CONTAMINANTS

The NFS fully understands their responsibilities for assessing the properties for any potential presence of hazardous waste materials as defined and regulated under CERCLA. The LER estimate is predicated on the assumption that all lands and properties are clean and require no remediation. A Phase I Environmental Site Assessment was conducted in September 2020 for this project, no Recognized Environmental Conditions (REC), Controlled REC's, or other historic REC's were identified in the analysis. Also, there were no petroleum sites or releases of petroleum within or adjacent to the project area. Appendix H of the main report includes the

Phase I Environmental Site Assessment report and provides a more detailed description of the hazardous, toxic, and radioactive waste in the vicinity of the project footprint.

18 SUPPORT/OPPOSITION FOR THE PROJECT

There is no known opposition to the proposed project.

Federal agencies such as the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service declined formal cooperating agency status; however, they are participating as coordinating agencies, meaning that they will assist in identifying issues and provide specific information, data, and analyses related to their areas of expertise.

19 NON-FEDERAL SPONSOR NOTIFICATION OF RISKS OF PRE- PPA ACQUISITION

The NFS has been advised in writing of the risks associated with acquiring land prior to the execution of the Project Partnership Agreement. A copy of this letter is displayed as Exhibit D of this report.

20 OTHER REAL ESTATE ISSUES

The proposed project footprint impacts lands that are currently used for agricultural purposes. These lands are designated TA lands which are under lease for growing wheat and hay. Sections of farmland within the footprint, although impacted by the project, do not contain any project features that would negatively impact production. The areas that are impacted by project features include channel realignment, bank grading, and floodplain construction. The BIA manages these agricultural leases for the land owner. Any correspondence or activity regarding these leased lands will be coordinated with the BIA.

21 RECOMMENDATION

Prepared by:

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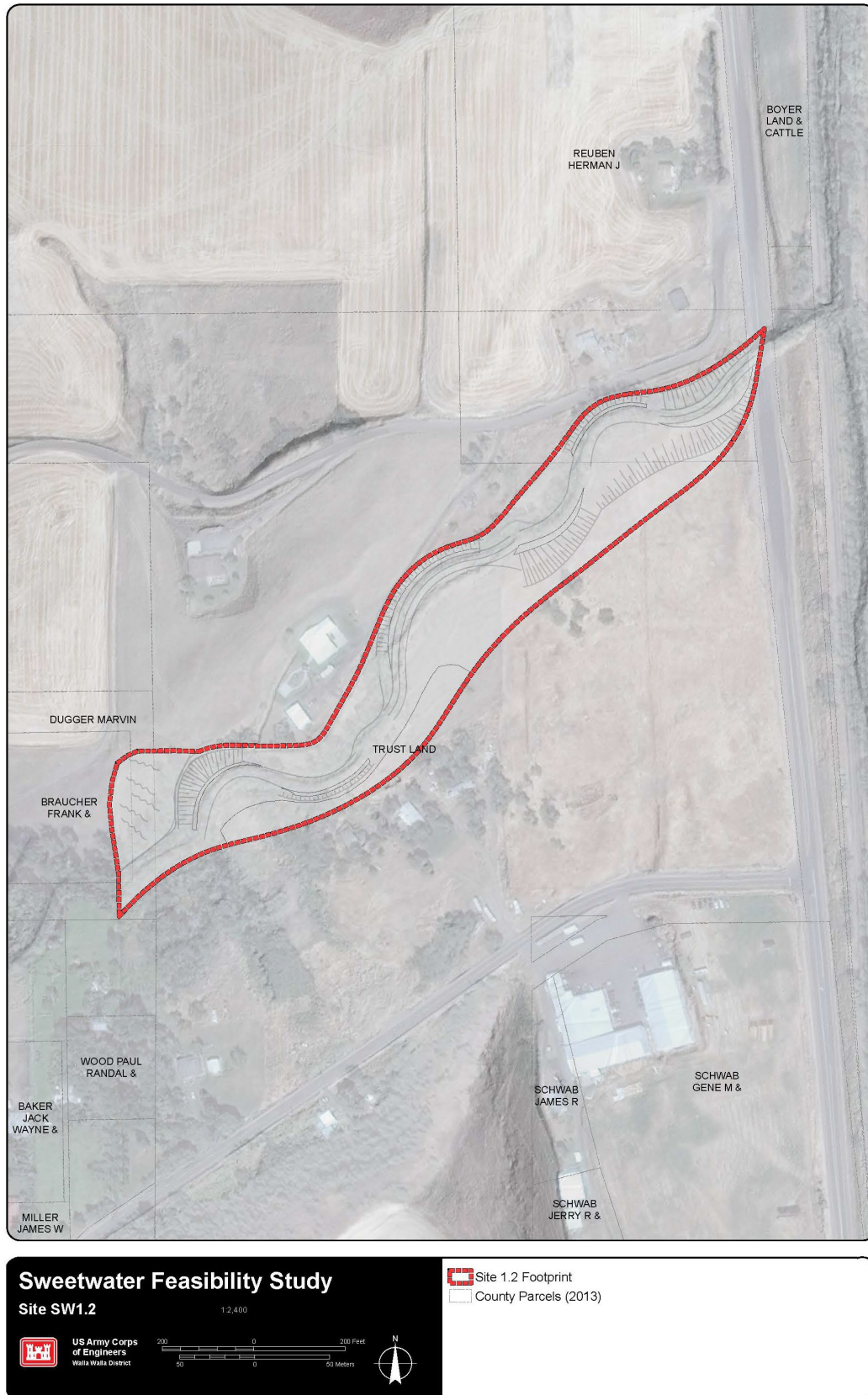
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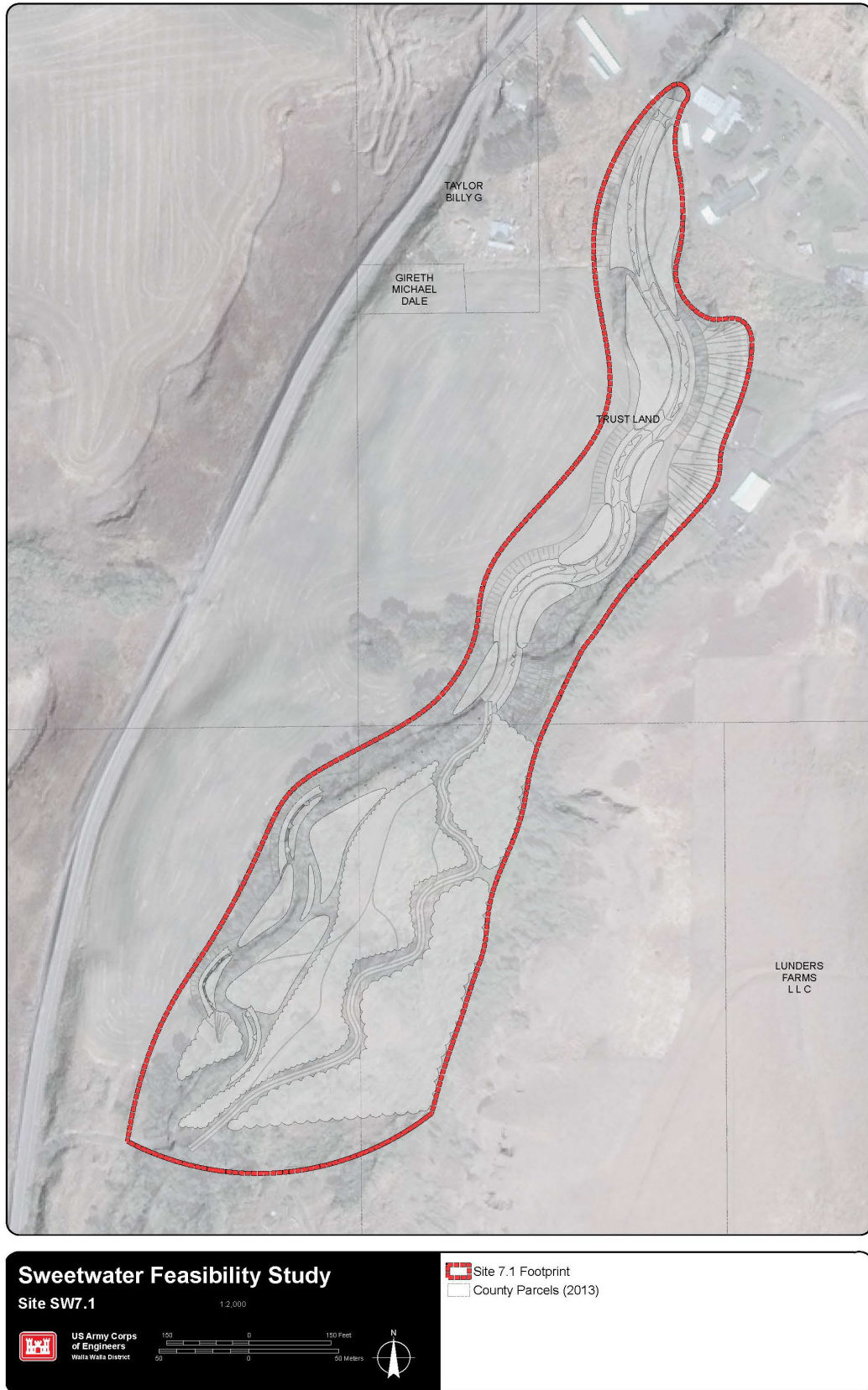
EXHIBIT A, PROJECT AREA MAPS



Map of Project Area, Reach 1

Sweetwater Creek Ecosystem Restoration Feasibility Report with Integrated Environmental Assessment
Appendix F, Real Estate Plan





Map of Project Area, Reach 7

EXHIBIT B, INGRESS/EGRESS AND STAGING AREA MAPS



Sweetwater Creek 203 - Access Roads and Staging Areas

Reach #1



-  Project Footprint (Approx. 8.75 ac.)
-  Staging Area (Approx. 2.05 ac.)
-  Access Roads (Approx. 0.73 ac.)

Sweetwater, Nez Perce County, ID
Section - 23 Township - 35N Range - 4W
Tracts: 314, 325, 342D

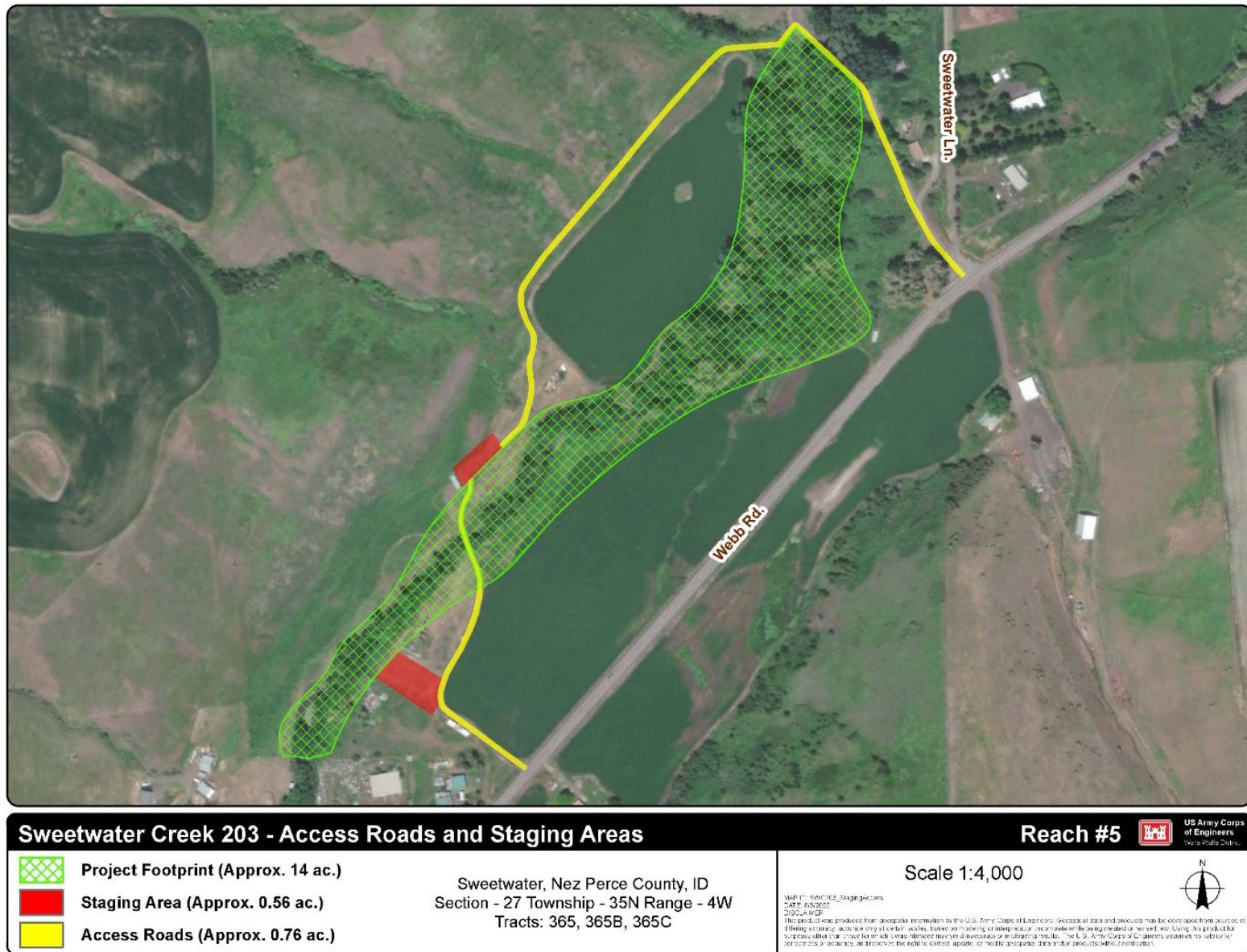
Scale 1:4,000



Map 17- SW/CRC2_StagingAreas
DATE: 6/2/2022
PROJECT: 17-00000
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Map of Ingress/Egress and Staging Areas, Reach 1

Sweetwater Creek Ecosystem Restoration Feasibility Report with Integrated Environmental Assessment
Appendix F, Real Estate Plan



Map of Ingress/Egress and Staging Areas, Reach 5

Sweetwater Creek Ecosystem Restoration Feasibility Report with Integrated Environmental Assessment
Appendix F, Real Estate Plan



Map of Ingress/Egress and Staging Areas, Reach 7

EXHIBIT C, ASSESSMENT OF NON-FEDERAL SPONSOR'S ACQUISITION CAPABILITY

ER 405-1-12
Change 31
1 May 98

APPENDIX 12-E

**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/no)**

Yes, the NFS has the authority to acquire real property in accordance with 25 USC 5108, but do not have the authority to hold title to real property according to 25 USC 5105, "Title to lands or any interest therein acquired pursuant to this Act for Indian use shall be taken in the name of the United States of America in the trust for the Tribe or individual Indian for which acquired."

Also reference 25 CFR 151.

- b. **Does the sponsor have the power of eminent domain for this project? (yes/no)**

No, the NFS does not have the power of eminent domain for this project.

- c. **Does the sponsor have "quick-take" authority for this project? (yes/no)**

No, the NFS does not have quick-take authority for this project.

- d. **Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? (yes/no)**

No, all lands required for the project are within the lands of the Nez Perce Reservation.

- e. **Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? (yes/no)**

Yes, the NFS cannot condemn Tribal Allotment lands, these lands are held in trust by the Federal Government for individual Indians.

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? (yes/no)**

No, the current project does not anticipate any relocations under P.L. 91-646.
- b. **If the answer to II.a. is "yes," has a reasonable plan been developed to provide such training? (yes/no)**

N/A
- c. **Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? (yes/no)**

Yes, NFS has a land services division within the Tribal Government to facilitate acquisition of lands and real estate activities. BIA regional office is located in Lapwai, ID and is able to assist as well.
- d. **Is the sponsor's projected in-house staffing level sufficient considering its other work load, if any, and the project schedule? (yes/no)**

Yes, the NFS staffing level is sufficient to perform real estate activities.
- e. **Can the sponsor obtain contractor support, if required in a timely fashion? (yes/no)**

Yes, the NFS can obtain contractor support in a timely fashion.
- f. **Will the sponsor likely request USACE assistance in acquiring real estate? (yes/no) (If "yes," provide description)**

No, the NFS is not likely to request USACE support in acquiring real estate.

III. Other Project Variables:

- a. **Will the sponsor's staff be located within reasonable proximity to the project site? (yes/no)**

Yes, the NFS staff is located in close proximity, within 3 miles to the project site.

- b. **Has the sponsor approved the project/real estate schedule/milestones? (yes/no)**

Yes, the sponsor is supportive of the project and is aware of project milestones.

No, the NFS has not approved the real estate acquisition schedule. Currently it is still being developed and will need additional HQ USACE input for non-standard estate approval before finalizing the schedule.

IV. Overall Assessment:

- a. **Has the sponsor performed satisfactorily on other USACE projects? (yes/no/not applicable)**

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.**

Based on the information in this capability checklist, the NFS is anticipated to be fully capable.

v. **Coordination:**

- a. **Has this assessment been coordinated with the sponsor? (yes/no)**

Yes.

- b. **Does the sponsor concur with this assessment? (yes/no) (If “no,” provide explanation)**

Yes, the sponsor agrees they are fully capable of the acquisition process if approval is granted from the Nez Perce Tribe Executive Committee.

Prepared by:



Jon McNulty
Realty Specialist

Reviewed and approved by:



Allison Needham
Chief, Real Estate Division

Sweetwater Creek Ecosystem Restoration Feasibility Report with Integrated Environmental Assessment
Appendix F, Real Estate Plan

McNulty, Jon M CIV USARMY CENWW (USA)

From: Shawn Kaschmitter <shawnk@nezperce.org>
Sent: Tuesday, May 16, 2023 9:04 AM
To: McNulty, Jon M CIV USARMY CENWW (USA)
Cc: Herzog, Kathryn M CIV USARMY CENWW (USA); Marcie Carter
Subject: [Non-DoD Source] REACC

Jon,

I finally have some direction and feedback on the real estate acquisition capability checklist.

First, the notes:

- I. a. The Tribe can in fact hold land in fee.
- III. a. within "3" miles to the project site.
- IV. a. "..." no projects listed under this section. Looks unfinished.

For V. b.

Marcie has received an answer after meeting with Kim Cannon and Rich Ferguson concerning an answer. They agreed that the answer is "yes" the NPT is fully capable of this process **if approved by NPTEC** during the next phase. The NFS also acknowledges that the document was reviewed in coordination with the Corps and notes concerning questions or comments are listed above.

Shawn Kaschmitter
Nez Perce Tribe
DFRM - Watershed
Lapwai Project Manager

**EXHIBIT D, NON-FEDERAL SPONSOR NOTIFICATION OF RISKS OF PRE-PPA
ACQUISITION**



CERTIFIED MAIL

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, WALLA WALLA DISTRICT
201 NORTH 3RD AVENUE
WALLA WALLA, WA 99362-1876

April 6, 2022

Real Estate Division

SUBJECT: Sweetwater Creek Ecosystem Restoration Project, Nez Perce County,
Idaho, Section 203.

Chairman Samuel N. Penney
Nez Perce Tribal Executive Committee
P.O. Box 365
Lapwai, ID 83540

Dear Chairman Penney:

This letter is to notify the Nez Perce Tribe hereinafter referred to as the non-Federal sponsor (NFS), that should the NFS acquire lands or real estate interest in lands for the subject project, prior to the signing of the Project Partnership Agreement (PPA), it does so at its own risk and bears full and sole responsibility for any and all costs, responsibility, or liability arising out of the acquisition effort. We are required by U.S. Army Corps of Engineers, Engineering Regulation 405-1-12, to inform you in writing of the risks associated with advance land acquisition. These risks include, but are not 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) The 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 the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended;
- (5) The NFS may acquire interest or estates that are later determined by 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

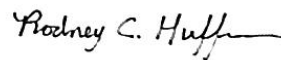
under Public Law 91-646 (covering relocations of families, farms and or businesses) as well as the payment of additional fair market value to affected landowners which could have been avoided by delaying acquisition until after the PPA execution and the Government's notice to commence acquisition and performance of Lands, Easements, Rights-of-Way, Relocations and Disposals (LERRD); and

(7) The non-Federal sponsor may incur costs or expenses in connection with its decision to acquire or perform LERRD in advance of the execution of the PPA and the Government's notice to proceed which may not be creditable under the provisions of the Public Law 99-662 or the PPA.

Upon execution of a PPA, you will receive written notice to proceed with the real estate acquisition. All land acquisition for the project must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646.

If you have any questions or need additional information, please contact Realty Specialist, Jon McNulty, at 509-527-7324 or by email at Jon.M.McNulty@usace.army.mil.

Sincerely,



Rodney C. Huffman
Chief, Real Estate
Real Estate Contracting Officer


MCNULTY
HUFFMAN/RE
IM-SM

RE