

APPENDIX B

REAL ESTATE REQUIREMENTS

REAL ESTATE APPENDIX

**Southport, NC Section 14 Emergency Stream Bank and
Shoreline Erosion Protection Project**

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SECTION 1. GENERAL

1.1. Guidance

1.1.1 Engineer Regulations

1. ER 405-1-12, Chapter 5 - Acquisition, 5 September 1978, Draft Revision, 9 June 2003
2. ER 405-1-12, Chapter 6 - Relocation Assistance Program, 23 March 1979, Draft Revision, 2 May 2003
3. ER 405-1-12, Chapter 12 - Real Estate Roles and Responsibilities for Civil Works: Cost Shared and Full Federal Projects, 1 May 1998, Draft Revision, 8 March 2003

1.1.2 Engineer Circulars

1. EC 405-1-11, Real Estate Acquisition, 30 December 2003

1.1.3 United States Code

1. 42 USC, Chapter 61 - Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs

1.1.4 Code of Federal Regulations

1. Code of Federal Regulations, Title 49, Part 24 - Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs

SECTION 2. THE REAL ESTATE REPORT

2.1 Statement of Purpose

This report is tentative in nature and is to be used for planning purposes only. The report is written based on specific data from Wilmington District and the tax assessor's office in Brunswick County, North Carolina. There may be modifications to the plans that occur during Planning, Engineering and Design (PED) phase, thus changing the final acquisition area(s) and/or administrative and land cost. The Real Estate Appendix is intended to support the Detailed Project Report and Environmental Assessment (DPR/EA) for the Southport, NC Section 14 Emergency Stream Bank and Shoreline Erosion Protection Project. The Real Estate Appendix focuses on the Tentatively Selected Plan (TSP). The author of this report is familiar with the general Project area. The City of Southport is the non-Federal sponsor for the project. Date of this report is September 2011.

2.2 Study Authority

This project, protection of a city wastewater pumping station located on the shoreline of the City of Southport, North Carolina, would be pursued under the authority of Section 14 of the Flood Control Act of 1946, as amended, for emergency stream bank and shoreline erosion protection. Section 14 authorizes the US Army Corps of Engineers (USACE) to study, design, and construct emergency stream bank and shoreline works to protect public services including (but not limited to) streets, bridges, schools, water and sewer lines, National Register sites, and churches from damage or loss by natural erosion.

2.3 Project Location

The study area is located in Southport, North Carolina, as shown in Figure 2.3-1. The City of Southport is located near the mouth of the Cape Fear River in southeastern North Carolina and has a population of approximately 2,500.

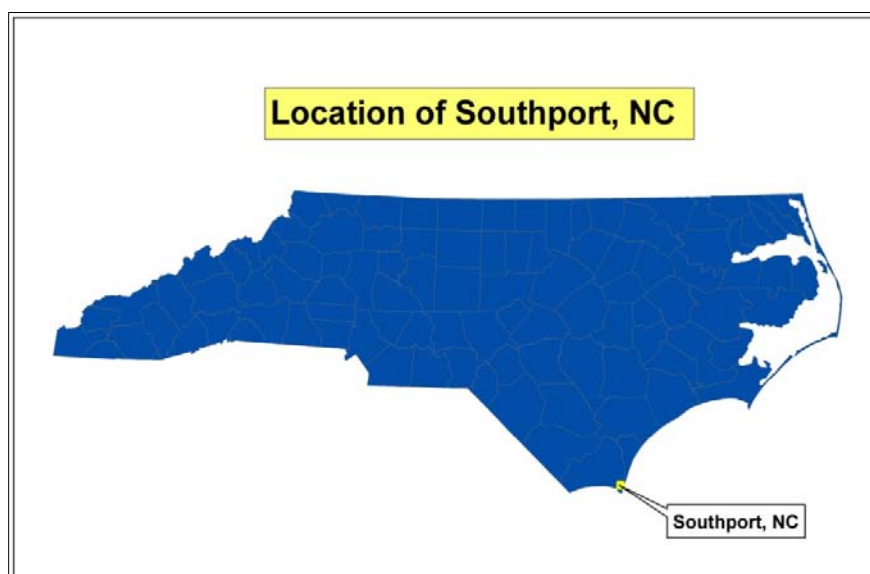


Figure 2.3-1 – Project Location

The subject wastewater pumping station site is located in the southern area of Southport on the river shoreline, at the intersection of West Bay Street and South Lord Street as shown in Figures 2.3-2 and 2.3-3



Figure 2.3-2 - Project Vicinity/Location Map

2.4 Project Description

The objective of the Southport, NC Section 14 project is to provide reliable protective measures to prevent the ongoing stream bank and shoreline erosion at the site from destructively impacting the wastewater pumping station. The Section 14 program is designed for protection of essential, properly-maintained public facilities in imminent threat of damage or failure from natural stream bank and shoreline erosion processes. The subject wastewater pumping station qualifies under the Section 14 program, since it is maintained by the City of Southport as a key element of the municipal wastewater system, and is under imminent threat of damage or failure from continuing shoreline erosion at the site. The Preferred Alternative (shoreline erosion protection) focuses on implementing reliable shoreline stabilization to alleviate the threat of damage or failure to the wastewater pumping station from shoreline erosion. This plan will provide a stone revetment to stabilize the existing shoreline in the vicinity of the waste water pumping station. The stone revetment will be constructed along approximately 350 linear feet of shoreline. The existing concrete debris and stone will be removed from the shoreline and replaced with a layer of bedding stone topped with armor stone.



Figure 2.3-3 – Wastewater Pumping Station

2.5 Real Estate Requirements

The requirements for lands, easements, rights-of-way and relocations, and disposal/borrow areas (LERRDs) should include the rights to construct, maintain, repair, operate, patrol and replace a floodwall, including all appurtenances thereto within the project area. All components of the project can be constructed under standard easements.

The total footprint of the stone revetment is approximately 0.18 of an acre. The mean high water line is at approximately the four foot contour. Of the 0.18 of an acre, 0.11 of an acre is above elevation 4 feet and 0.07 of an acre is below elevation 4 feet. Of the 0.11 of an acre above the 4 foot elevation, 0.05 acres is on city owned land. The remaining 0.06 of an acre is across two privately owned parcels with each having about 0.03 of an acre impacted. A permit from the State of North

Carolina is required for the portion of the revetment below elevation 4 feet since that is considered lands of the state. A staging area of about 0.05 of an acre will be on the city owned land. Access to the site will be by public road. A county landfill is available for disposal of existing rubble. The impacted areas on show at Figure 2.5.1 and a summary of the land required for the project is at Table 2.5-1.



Figure 2.5.1 – Real Estate Map

2.6 Utility/Facility Relocation

The term "relocation" shall mean providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway or other public facility or town when such action is authorized in accordance with applicable legal principles of just compensation or as otherwise provided by Federal statute or any project report or House or Senate document referenced therein. Providing a functionally equivalent facility may take the form of adjusting, altering, lowering, raising, or replacement and attendant removal of the affected facility or part thereof. It is important to note that relocation assistance under Public Law 91-646 relates specifically to displaced persons, and should be distinguished from the separate concept of facility or utility relocations. No facility or utility relocations are required for the project.

**Table 2.5 - 1
Land Requirements for the TSP**

TSP	Impacted Parcels	Flood Protection Levee Easement Acres	Temp Work Area Easement Acres	Permit	Land Cost	Land Owners
Revetment Construction						
Bay Street Parcel # 237LH05102	1	0.05	0.05		0.00	City of Southport
Bay Street Parcel # 237LH05101	3	0.03			0.00	Roy & Cheryl Daniel
Bay Street Parcel # 237LH051	1	0.03			0.00	John & Roberta Doshier
Lands Below MHW				0.07		State of North Carolina
TOTALS	3				0.00	
ROUNDED	3	0.11	0.05	0.07	0.00	

2.7 Existing Projects

There are no known existing Federal projects that lie fully or partially within the footprint of the proposed project.

2.8 Environmental Impacts

Construction of the proposed tentatively selected plan is not expected to have any adverse environmental impacts to the proposed project area.

2.9 Project Sponsor Responsibilities and Capabilities

The City of Southport will be the non-Federal Project Sponsor (NFS). The NFS has the responsibility to acquire all real estate interests required for the Project. The NFS shall accomplish all alterations and relocations of facilities, structures and improvements determined by the government to be necessary for construction of the Project. The NFS will have operation and maintenance responsibility for the project after construction is completed.

Title to any acquired real estate will be retained by the NFS and will not be conveyed to the United States Government. Prior to advertisement of any construction contract, the NFS shall furnish to the government an Authorization for Entry for Construction (Exhibit "A" to the Real Estate Appendix) to all lands, easements and rights-of-way, as necessary. The NFS will also furnish to the government evidence supporting their legal authority to grant rights-of-way to such lands. The NFS shall comply with applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, approved 2 January 1971, and amended by Title IV of the Surface Transportation Uniform Relocation Assistance Act of 1987, Public Law 100-17, effective 2 April 1989, in acquiring real estate interests for the Project, and inform all affected persons of

applicable benefits, policies, and procedures in connection with said Act(s). A form for the Assessment of the Non-Federal Sponsor's Capability to Acquire Real Estate is at Exhibit "B" to the Real Estate Appendix.

The non-Federal sponsor is entitled to receive credit against its share of project costs for the value of lands it provides and the value of the relocations that are required for the project except for cases in which required LER is part of the tract of land that includes the facility or structure being protected. In such cases, the NFS shall not receive credit for the value of the LER it provides that are part of the tract of land on which the facility or structure to be protected is located and are owned by either the NFS or the owner of the facility or structure when the PPA for the project is executed. Generally, for the purpose of determining the amount of credit to be afforded, the value of the LER is the fair market value of the real property interest, plus certain incidental costs of acquiring those interests, that the non-federal sponsor provided for the project as required by the Government.

The NFS should not acquire lands required for the project prior to execution of the Project Partnership Agreement (PPA). Should the NFS proceed with acquisition of lands prior to execution of the PPA, it is at the risk of not receiving credit or reimbursement for any costs incurred in the connection with the acquisition process should the PPA not be signed. There is also risk in acquiring lands either not needed for the project or not acquired in compliance with requirements for crediting purposes in accordance with 49 CFR Part 24, dated March 2, 1989. A letter dated September 19, 2011 was sent to the NFS to notify the NFS of the risks associated with early acquisition. The letter is included in the REP as Exhibit "C".

2.10 Government Owned Property

There are no known Government owned lands within the limits of the proposed project.

2.11 Historical Significance

The project area lies within the boundary of the Southport Historic District. However there are no known historic sites in the area proposed for project construction.

2.12 Mineral Rights

There are no known mineral activities within the scope of the proposed project.

2.13 Hazardous, Toxic, and Radioactive Waste (HTRW)

A field inspection of the project area was made by personnel from the Environmental Resources Section, Planning and Environmental Branch, U.S. Army Corps of Engineers, Wilmington District. This site focused on areas that would be impacted by the proposed project. Based on this site visit, an investigation of aerial photos, and a search of known HTRW databases, no evidence of hazardous and toxic wastes was found. Therefore, it is not expected that any hazardous and toxic waste sites would be encountered or impacted during construction of the TSP.

2.14 Public Law 91-646, Relocation Assistance Benefits

Public Law 91-646, Uniform Relocation Assistance provides entitlement for various payments associated with federal participation in acquisition of real property. Title II makes provision for relocation expenses for displaced persons, and Title III provides for reimbursement of certain expenses incidental to transfer of property. There are no relocations required for this project.

2.15 Attitude of Property Owners

There is no known property owner opposition to the project.

2.16 Acquisition Schedule

The project sponsor is responsible for acquiring real estate interests required for the project. The acquisition of the easements needed for the project is not considered to be complicated and should not pose difficulty to the NFS. It is projected that acquisitions will take approximately 3 – 6 months, and can begin when final plans and specs have been completed and the PPA has been executed. The Non-Federal Project Sponsor, Project Manager and Real Estate Technical Manager will formulate the milestone schedule upon project approval to meet dates for advertisement and award of a construction contract. Exhibit D provides a general schedule with the sequence for the milestones.

2.17 Estates for Proposed Project

The estates to be used for the project are standard estates and require no special approvals. The Flood Protection Levee Easement will be used for construction of the revetment, and the Temporary Work Area Easement can be used for the staging area.

FLOOD PROTECTION LEVEE EASEMENT.

A perpetual and assignable right and easement in (the land described in Schedule A) (Tracts Nos, _____, _____ and _____) to construct, maintain, repair, operate, patrol and replace a flood protection floodwall, including all appurtenances thereto; reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

TEMPORARY WORK AREA EASEMENT.

A temporary easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. _____, _____ and _____), for a period not to exceed 24 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 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 Southport Section 14 Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

2.18 Navigation Servitude

The project is not for commerce related purposes and has no nexus to navigation, therefore navigation servitude does not apply.

2.19 Real Estate Estimate

An informal value estimate was performed in September 2011 to determine land values for the project. Due to offsetting benefits, the required easements are determined to have a \$0 value. As a matter of policy the Federal Rule of offsetting benefits is applied in determining credit for shore erosion projects. The North Carolina Court of Appeals in June 2000, held in NC Department of Transportation V. Rowe, (97-1470-2) that special project benefits may offset compensation due for a taking and that general project benefits may not offset compensation. This interpretation of North Carolina general statutes is consistent with the Federal Rule.

The estimated real estate costs include the land cost for acquisition of land, relocation costs, and federal and non-federal administrative costs. Administrative costs are those costs incurred for verifying ownership of lands, certification of those lands required for project purposes, legal opinions, analysis or other requirements that may be necessary during Planning, Engineering and Design (PED). A 25% contingency is applied to the estimated total for these items. Table 2.19-1 is a summary of the real estate.

**Table 2.19-1
Real Estate Estimate**

a. Lands		
3 Parcels - Floodwall, Staging		-
b. Improvements		-
(Residential)		-
(Commercial)		-
c. Mineral Rights		-
d. Damages		-
e. P.L. 91-646 Relocation costs		-
f. Acquisition Cost - Admin (2 ownerships)		45,000
Federal	5,000	
Non-federal	<u>40,000</u>	
	45,000	
1 Permit	5,000	5,000
Sub-Total		50,000
Contingencies (25%)		12,500
TOTAL		62,500
ROUNDED		\$62,500

2.20 Chart of Accounts

The cost estimate for all Federal and non-Federal real estate activities necessary for implementation of the project after completion of the feasibility study for land acquisition, construction, LERRD, and other items are coded as delineated in the Cost Work Breakdown Structure (CWBS). This real estate cost estimate is then incorporated into the Total Current Working Estimate utilizing the Microcomputer Aided Cost Engineering System (MCACES). The Chart of Accounts is below at Table 2.20-1.

Table 2.20-1.
Chart of Accounts

		FEDERAL	NON-FEDERAL	TOTALS
01A	PROJECT PLANNING			
	Other	-	-	-
	Project Cooperation Agreement	-	-	-
01AX	Contingencies (25%)	-	-	-
	Subtotal	-	-	-
01B	LANDS AND DAMAGES			
01B40	Acq/Review of PS	5,000	-	5,000
01B20	Acquisition by PS	-	40,000	40,000
01BX	Contingencies (25%)	1,250	10,000	11,250
	Subtotal	6,250	50,000	56,250
01G	Temporary Permits/Lic/ROEs			
01G10	By Govt	-	-	-
01G20	By PS	-	5,000	5,000
01G30	By Govt on Behalf of PS	-	-	-
01GX	Contingencies (25%)	-	1,250	1,250
	Subtotal	-	6,250	6,250
01H	AUDIT			
01H10	Real Estate Audit	-	-	-
01HX	Contingencies (25%)	-	-	-
	Subtotal	-	-	-
01R	REAL ESTATE LAND PAYMENTS			
01R1B	Land Payments by PS PL91-646 Relocation Pymt	-	-	-
01R2B	by PS	-	-	-
01R2D	Review of PS	-	-	-
01RX	Contingencies (25%)	-	-	-
	Subtotal	-	-	-
	TOTALS	6,250	56,250	62,500
ROUNDED TO				\$62,500

Exhibits

AUTHORIZATION FOR ENTRY FOR CONSTRUCTION

I _____, _____ for the
(Name of accountable official) (Title)

(Sponsor Name) _____, do hereby certify that the _____ (Sponsor Name) has acquired the real property interest required by the Department of the Army, and otherwise is vested with sufficient title and interest in lands to support construction for (Project Name, Specifically identified project features, etc.). Further, I hereby authorize the Department of the Army, its agents, employees and contractors, to enter upon _____
(identify tracts)

to construct (Project Name, Specifically identified project features, etc.) as set forth in the plans and specifications held in the U. S. Army Corps of Engineers' (district, city, state)

WITNESS my signature as _____ for the
(Title)

(Sponsor Name) this __ day of _____, 20_____.

BY: _____
(Name)

(Title)

ATTORNEY'S CERTIFICATE OF AUTHORITY

I, _____, _____ for the
(Name) (Title of legal officer)

(Sponsor Name), certify that _____ has
(Name of accountable official)

authority to grant Authorization for Entry; that said Authorization for Entry is executed by the proper duly authorized officer; and that the Authorization for Entry is in sufficient form to grant the authorization therein stated.

WITNESS my signature as _____ for the
(Title)

(Sponsor Name), this _____ day of _____, 20_____.

BY: _____
(Name)

(Title)

Exhibit A

**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 to eminent domain for this project? **yes**
- c. Does the sponsor have "quick-take" authority for this project? **yes**
- d. Are any of the land/interests in the land required for this project located outside the sponsor's political boundary? **no**
- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? **no**

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 – City attorney will perform work**
- d. Is the sponsor's projected in-house staffing 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**
- f. Will the sponsor likely request USACE assistance in acquiring real estate? **no**

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? **N/A**
Milestone schedule will be developed upon project approval and PPA completion.

**Exhibit B
1st page**

IV. Overall Assessment:

- a. Has the sponsor performed satisfactory on other USACE projects?
N/A
- b. With regard to the project, the sponsor is anticipated to be: **fully capable**

V. Coordination:

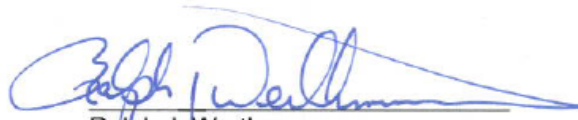
- a. Has this assessment been coordinated with the sponsor? **yes**
- b. Does the sponsor concur with this assessment? **yes**

Prepared by:



Belinda Estabrook
Realty Specialist

Reviewed and approved by:



Ralph J. Werthmann
Chief, Real Estate Division

Exhibit B
2nd page



DEPARTMENT OF THE ARMY
SAVANNAH DISTRICT, CORPS OF ENGINEERS
100 W. OGLETHORPE AVENUE
SAVANNAH, GEORGIA 31401-3640

September 19, 2011

Real Estate Division

Subject: Southport Section 214 Project – Real Estate Acquisition

Ms. Regina W. Alexander
City of Southport
201 E. Moore Street
Southport, North Carolina 8461

Dear Ms. Alexander:

The intent of this letter is to formally advise the City of Southport, as the potential non-Federal sponsor for the proposed project, of the risks associated with land acquisition prior to the execution of the 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.

Generally, these risks include, but may 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 LERRD; and

Exhibit C
1st Page

(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 PPA.

We appreciate the City's participation in this project. Should you have questions or concerns pertaining to this letter please feel free to contact Ms. Belinda Estabrook at (912) 652-5667.

Sincerely,



Cindy B. Turner
Savannah District
Acting Chief, Real Estate Division
Real Estate Contracting Officer

Exhibit C
2nd Page

REAL ESTATE MILESTONES

_____, 2011

PROJECT: Southport Section 214

REQUIREMENTS: Acquisition of 2 parcels in easement interest and permit from the State

DATE		REQUIREMENT	RESPONSIBLE PARTY
Projected	Actual		
		Plans & Specs Provided to Sponsor	CESAS-PM
		Sponsor Notified of Risks for RE Acquisition Prior to Execution of PPA	CESAS-RE
		PPA Executed	CESAS & Sponsor
		Final ROW drawings to Sponsor	CESAS-PM
		Estates provided to Sponsor	CESAS-RE
		Surveys Initiated	Sponsor
		Surveys Complete	Sponsor
		Survey Maps Submitted to SAS-RE for Review and Approval	Sponsor
		Maps Reviewed and Approved	CESAS-RE
		Title Evidence Initiated	Sponsor
		Title Evidence Complete	Sponsor
		Title Evidence Submitted to CESAS-RE for Review	Sponsor
		Title Evidence Reviewed	CESAS-RE

Exhibit D
1st Page

	Appraiser's Resume' Submitted for Approval	Sponsor
	Appraiser Approved	CESAS-RE
	Appraisals Initiated	Sponsor
	Appraisals Submitted to CESAS-RE for Review and Approval	Sponsor
	Appraisals Approved	CESAS-RE
	Initiate Negotiations for Acquisition	Sponsor
	Complete Acquisitions	Sponsor
	Submit LERRDs for Review	Sponsor
	Review LERRDs	CESAS-RE
	Initiate Condemnations if Required	Sponsor
	Review Condemnations	CESAS-RE
	Complete Condemnations (Obtain Possession)	Sponsor
	Complete PL 91-646 Assistance	Sponsor
	Review PL 91-646 Payments	CESAS-RE
	Review & Certify Real Estate	CESAS-RE
	Advertise for Construction	CESAS-PM
	Submit Credit Request	Sponsor
	Review Credit Request	CESAS-RE
	Approve Crediting	CESAS-RE

Schedule will be completed as soon as PPA is executed. Realty Specialist, Project Manager and Sponsor will develop schedule to allow adequate time to obtain real estate and to meet schedule set for advertisement for construction.

Exhibit D
2nd Page