

**APPENDIX D  
REAL ESTATE PLAN  
FOR THE  
DREDGED MATERIAL MANAGEMENT PLAN (DMMP)  
MILWAUKEE HARBOR, WISCONSIN**

## APPENDIX D

### REAL ESTATE PLAN

#### MILWAUKEE HARBOR, WISCONSIN DREDGED MATERIAL MANAGEMENT PLAN FOR A NEW DREDGED MATERIAL DISPOSAL FACILITY

##### AUTHORITIES

The Milwaukee Harbor Dredged Material Disposal Facility (DMDF) is conducted under the guidance of the **National Harbors Program: Dredged Material Management Plan dated July 21, 1994 (EC1165-2-200)**.

The Federal Navigation Project at Milwaukee Harbor, Wisconsin was initially authorized by the **River and Harbor Act of 1852**. The authorization was modified by the **River and Harbor Acts of 30 August 1935; 2 March 1945; 14 July 1960; and 23 October 1962**. The project provides for two breakwaters enclosing a 1200 acre outer basin and two inner piers protecting the river mouth. The project also provides for Federal Navigation approach channel and basin area within Lake Michigan; and navigational channels in the Kinnickinnic, Milwaukee and Menominee Rivers. Under Section 123 of the rivers and Harbor Act of 1970, a Confined Disposal Facility (CDF) was constructed and completed at Milwaukee Harbor (1975) for the purpose of containing dredged material that is unsuitable for open lake disposal. The CDF project was in cooperation with the City of Milwaukee acting through its Board of Harbor Commissioners and is operated by the Milwaukee Harbor Commission.

**The Water Resources Development Act of 1986, as amended (33 U.S.C. 2211)** defined cost sharing between the Federal Government and the local sponsor. The Act was amended in Sec. 201 of WARDA 1996; section Sec. 101(a) of WARDA 1986. (b) Operation and Maintenance.--Section 101(b) of such Act (33 U.S.C. 2211(b); 100 Stat. 4083) adding "dredged material disposal facilities." The Federal share of the cost of constructing land-based and aquatic dredged material disposal facilities that are necessary for the disposal of dredged material required for the operation and maintenance of a project

**Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 101 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2211)**, provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element.

##### LOCATION

The harbor is located within the City of Milwaukee, on the west shore of Lake Michigan about 85 miles north of Chicago. It is the major port on the Wisconsin shore of Lake Michigan and is served by

numerous domestic and foreign commercial vessels. The harbor extends four miles along the shore and has numerous deep-draft and recreational navigation facilities. South of Milwaukee Harbor to the Milwaukee-Racine County line, shoreline development consists of industrial developments, utility works and public parks as the Milwaukee County Park Commission owns the much of this shoreline. There is also residential development, including some undeveloped lands along the shoreline. The inner portion of Milwaukee Harbor is formed by the confluence of the Milwaukee, Menominee and Kinnickinnic Rivers. The banks of these rivers, within the harbor, are lined by many industrial, commercial and municipal facilities including coal yards, foundries, cement plants, sand and gravel yards, marine terminals, recreational boat sales and service centers, a municipal solid waste incinerator, and a municipal sewage treatment plant. The outer harbor is formed by the breakwaters which define the harbor-of-refuge. Development of the outer harbor is directed toward marine commerce and recreational boating. Terminals and piers are present for bulk general cargo and petroleum products. Other facilities include yacht clubs, public launching ramps and the U.S. Coast Guard Station. The mission and purpose of the Milwaukee Harbor Project is commercial navigation on the Great Lakes and connecting channels. The project also provides a harbor of refuge for commercial vessels and recreational pleasure craft.

### **NON-FEDERAL SPONSOR IDENTIFICATION**

As was performed with the original CDF project, the local sponsor for the is the Milwaukee Port Authority, which Acts through the Board of Harbor Commission, created in 1920, and is a department of the City of Milwaukee. The Commission, through the resources of the city, will provide all easements and rights-of-way necessary for the construction, operation and maintenance of the new DMDF project.

The Commission has provided local cooperation in the original project and will provide local cooperation for this project, as required by the Project Cooperation Agreement (PCA) and participate in project design.

The Commission has the full power, authority and capability to provide the items of local cooperation it has the legal status to obtain additional property if required for the construction and/or operation of the project. It also has the legal capability to provide its share of total project costs. Accordingly, the city has the capability to complete its portion of the project within the designated time frames. The Commission is capable of providing all required LERRDs necessary for project construction, operation and maintenance. The Commission is a legally constituted public body with the full power, authority, and capability to perform of the terms of the PCA. It has the power of eminent domain. Its legal department is fully capable of handling acquisitions and condemnations. Requirements of PL 91-646, acquisition policies and procedures, LERRDs crediting procedures, and the requirements for land acquisition have been discussed with the sponsor.

### **ESTATES** (including Project Lands)

The original Section 123 CDF was constructed under the Corps of Engineers rights of Navigational Servitude. In addition, the local sponsor, the Board of Harbor Commission acquired a land grant from the State of Wisconsin (who owns the bottomlands of Lake Michigan) for the construction of the disposal facility.

For access from the City roadway to the CDF, a standard road easement was the estate utilized for the original Section 123 Project. No additional estates are necessary for this project as the disposal area and access easements will lie within the same footprint of the previous project

## **PROJECT DESCRIPTION**

There is a need to develop additional dredged material disposal at Milwaukee Harbor. Originally, there were several alternatives, including open water disposal, expanding the existing facility to the north, upland disposal and raising the height of the facility at the site. The alternative which has been given priority is to construct a new DMDF on top of the existing CDF.

The existing CDF will be filled when the EPA's Legacy Act material and the Corp's FY08 O&M dredging is completed. At that time, the District would provide a letter to the Port Authority indicating the Section 123 CDF is filled per the Local Cooperation Agreement. The existing O&M Manual states that the Corps would dewater, grade and level all dredged materials contained within the CDF, and would place a ground cover consisting of clean material. The letter to the Port Authority will have to explain that these items have not been completed because the Corps is proposing to construct a new DMDF at the site.

## **SCOPE AND CONTENT**

- 1) Purpose - This Real Estate Plan (REP) addresses real estate matters associated with several levels of governments including the Detroit District Corps of Engineers, the Environmental Protection Agency and the Wisconsin Department of Natural Resources in development of an additional dredged material disposal at Milwaukee Harbor.
- 2) Description of LERRDs -The project consists of the construction of a new DMDF within a raised perimeter dike offset from the existing dikes around the previously authorized CDF for placement of dredged material.
- 3) The land needed for the project is owned by the local sponsor, the Board of Harbor Commission, and was acquired from a land grant from the State of Wisconsin for the construction of the original Section 123 CDF. The site is subject to Navigational Servitude. The Commission also owns the land on which the road easements are located. The Commission has the legal authority to acquire and hold title to real property for project purposes and, through the City of Milwaukee, has the power of eminent domain for this project. There is no lands or interests in land required for the project located outside the sponsor's political boundaries or lands required for the project owned by an entity whose property the sponsor cannot condemn.
- 4) The project does not include the requirement to acquire non-standard estates. The previous land grant from the State had already been acquired for the former Section 123 project.
- 5) The Federal 123 project lies fully or partially within the LERRDs required for the project.
- 6) There is Federally owned land included within the LERRDs required for the project.
- 7) A portion of the LERRDs required for the original project did lie below the Ordinary High Water Mark. Navigational servitude does apply to this project.
- 8) Drawings depicting the project area are attached.
- 9) It is not expected that flooding would occur as a result of the project.
- 10) A baseline cost estimate is provided in this Real Estate Plan (refer to "Real Estate Cost Estimate"

section of this plan).

- 11) Relocation assistance - There are no known Public Law 91-646 relocations necessary for the project. The Project will not require displacement of persons or businesses.
- 12) No present or anticipated mineral activity is within the Project area.
- 13) The sponsor is fully capable to perform the duties required for any acquisition associated with this project and management of the site (see previous section "Non-Federal Sponsor Identification").
- 14) The enactment of zoning ordinances will not be required for this project.
- 15) A schedule of the land acquisition milestones and LERRDs certification will be completed per the Project Schedule (see milestones in the section "Real Estate Management Plan").
- 16) No facility or utility relocations will be performed as a result of the project construction.
- 17) Environmental impacts relative to contamination (refer to "Environmental" section of this plan).
- 18) There is no known opposition from the public to this project
- 19) If applicable, the non-Federal sponsor will be notified in writing about the risks associated with acquiring land before the execution of the PCA. (Refer to narrative in "Real Estate Management Plan").
- 20) Other factors:
  - a. There are no special aquatic sites, including wetlands impacted by the acquisition.
  - b. There are no historical properties within the proposed Project area.
  - c. There are no cemeteries or public facilities within the Project area requiring relocation.
  - d. Plans and specifications do not identify any relocation of public utilities or roadways.

### **VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAYS, RELOCATIONS AND DISPOSAL AREAS:**

Since the LERRDs have already been acquired in the previous Section 123 Project, it is not necessary to determine a value for this project.

### **ENVIRONMENTAL**

As required by the National Environmental Policy Act of 1969 (NEPA), the Corps of Engineers will provide environmental documentation. An EA will be prepared for the recommended project and a Finding of No Significant Impact (FONSI) will be signed prior to contract advertising.

Coordination efforts with the State Historic Preservation Office (SHPO) for a prior project at the site was made. A determination was found that no properties eligible for or listed on the National Register of

Historic Places were located within the area of potential Project impact.

The Project was evaluated under the following acts, as amended: Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act of 1958, National Historic Preservation Act (NHPA), Michigan Coastal Zone Management Act of 1972, Endangered Species Act of 1973, Water Resources Development Act of 1976, Clean Water Act of 1977, and Clean Air Act, as well as, Executive Orders 11988 and 11990. The evaluation concluded the proposed Project would not cause significant adverse impacts on the human environment or environmental resources in the Project area.

### **REAL ESTATE MANAGEMENT PLAN**

Real Estate Division will further assess real estate requirements for the recommended plan, as well as, provide detailed information regarding LERRDs identified as necessary for the Project. In addition, the Real Estate Division will coordinate, monitor, and assist with all acquisition activities undertaken by the Non-Federal Sponsor. This will assure that the acquisition process complies with Federal and State laws specifically the requirements under the Federal Uniform Relocation and Acquisition Act (P.L. 91-646). The Real Estate Division will also attend District team meetings, review and provide input into draft and final reports prepared by the team, and participate in the internal technical review.

The Non-Federal Sponsor has been given detailed information regarding the requirements for LERRDs necessary for completion of the Project and fully anticipates meeting the current District schedule. The Real Estate Division will monitor and assist the Sponsor with all acquisition activities which will assure that the acquisition process complies with Federal and State laws.

Subsequent to execution of the PCA, the non-federal sponsor will be advised in writing to proceed with acquisition of the required interests in real estate. The schedule for land acquisition was coordinated with the project PM and the non-federal sponsor.

The Board of Harbor Commission will certify in writing to the Government, with appropriate documentation, that all LERRDs have been acquired after they review the PCA by 26 July 2007. This date for Real Estate Certification is reasonable, since the Board of Harbor Commission owns the lands needed for the project

**REAL ESTATE COST ESTIMATE**

Federal Administrative costs		\$16,000.00
Non-Federal Sponsor costs		
a. LERRDs value	\$0.00	
b. Administrative	\$0.00	
Total		<u>\$16,000.00</u>

**EXHIBIT "A"**

**DETROIT DISTRICT REAL ESTATE  
ASSESSMENT OF NON-FEDERAL SPONSOR  
REAL ESTATE ACQUISITION CAPABILITY**

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PROJECT: Dredged Material Disposal Facility (DMDF) Plan Milwaukee, Wisconsin

I. LEGAL AUTHORITY

a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes?

- Yes  
 No.

Initials RJ Date: 10 July 2006

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

- Yes  
 No.

Initials RJ Date: 10 July 2006

c. Does the sponsor have "quicktake" authority for this project?

- Yes  
 No.

Initials RJ Date: 10 July 2006

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

- Yes  
 No

Initials RJ Date: 10 July 2006

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

- Yes. State of Wisconsin  
 No

Initials RJ Date: 10 July 2006

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

Initials RJ Date 10 July 2006

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

- N/A

Initials RJ Date: 10 July 2006

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

- N/A.

Initials RJ Date: 10 July 2006

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

- Yes See a. above.

Initials RJ Date: 10 July 2006

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

- Yes  
 No

Initials RJ Date: 10 July 2006

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

- Yes  
 No

Initials RJ Date: 10 July 2006

III. OTHER PROJECT VARIABLES

a. Will the sponsor's staff be located within reasonable proximity to the project site?

- Yes  
 No

Initials RJ Date: 10 July 2006

b. Has the sponsor approved the project/real estate schedule/milestones?

- Yes  
 No

Initials RJ Date: 10 July 2006

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

- Yes  
 No

Initials RJ Date : 10 July 2006

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

- Yes The sponsor has performed successfully on other Corps of Engineers projects and has a full Real Estate Staff from the City of Milwaukee performing Real Estate functions.  
 No

Initials RJ Date: 1 September 2006

Prepared by:

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Signature

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/S/ DON C. ERWIN  
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Title