
Appendix E

Real Estate

FY: 2024

Project Title: Beattyville, KY FRM Project

Project No.: 498982

Location: Lee County, Kentucky

TABLE OF CONTENTS

1.	Purpose	1
2.	Project Authorization	1
3.	Project Description	1
4.	Estates	3
5.	Non-Standard Estates	6
6.	Existing Federal Projects/Lands	6
7.	Navigation Servitude	6
8.	Project Area Maps.....	6
9.	Possible Induced Flooding	6
10.	Baseline Cost Estimate for Real Estate	6
11.	Relocation Assistance Benefits (P.L. 91-46).....	8
12.	Mineral/Timber Activity	10
13.	Sponsor Capability	10
14.	Zoning Ordinances Enacted	10
15.	Acquisition Schedule with Milestones	10
16.	Utilities/Facilities to be Relocated	11
17.	HTRW Considerations.....	12
18.	Owner Attitude/Issues	12
19.	Sponsor Notified of Risks of Advance Acquisition.....	12
20.	Any Other Real Estate Issues	12

LIST OF TABLES

Table 1.	Summary of real estate acquisitions and required instruments.....	2
Table 2.	Baseline Cost Estimate for Real Estate.....	7
Table 3.	Cost estimate by phase.....	8
Table 4.	Summary of estimated P.L. 91-646 relocation assistance benefits.....	9
Table 5.	Acquisition schedule for fee acquisitions (mandatory buy-outs).....	10
Table 6.	Acquisition schedule for nonstructural project implementation.....	10

LIST OF EXHIBITS

Exhibit E-1.	Real Estate Mapping
Exhibit E-2.	Assessment of Non-Federal Sponsor's Real Estate Acquisition Capability
Exhibit E-3.	Sample Deed Restriction
Exhibit E-4.	Risk Letter

1. PURPOSE

This Real Estate Plan (REP) presents the real estate requirements for the Beattyville, KY Flood Risk Management Project (Project) in accordance with ER 405-1-12. This REP supports the Integrated Feasibility Report and Environmental Assessment. It is tentative in nature and preliminary for planning purposes only. The plan includes estimated land values and costs associated with the acquisition of lands, easements, and rights-of-way. Anticipated requirements for lands, easements, rights-of-way, relocations, and disposal areas (LERRD) are based on information furnished by the project development team (PDT).

2. PROJECT AUTHORIZATION

Section 6 of the Flood Control Act of 1939, P.L. 76-396 authorizes the Secretary of the Army to perform examinations and studies for flood control on the Kentucky River and its tributaries. An explanatory statement in the Consolidated Appropriations Act of 2022 (P.L. 117-103), Division D, Title 1, authorized funds for a flood control study at Beattyville, Kentucky. Section 105(a) of the Water Resources Development Act of 1986, P.L. 99-662, as amended (33 U.S.C. 2215a), specifies the cost-sharing requirements.

3. PROJECT DESCRIPTION

The Project is located in Beattyville, Lee County, Kentucky. The non-Federal Sponsor (NFS) is the Lee County Fiscal Court. Beattyville is located in eastern Kentucky, approximately 60 miles southeast of Lexington, KY, at the confluence of the North and South Forks of the Kentucky River. The recommended plan is a fully nonstructural plan that includes wet and dry floodproofing, raise in place, and fee acquisitions of eligible structures in Beattyville. The plan also includes implementation of a flood warning and emergency evacuation plan (FWEPP). Recreation features, such as a walking trail, playground, parking area, and a kayak launch, will be constructed on approximately 8 acres of land that will be acquired in the regulatory floodway. See Section 9 of the Engineering Appendix for more detailed descriptions of the floodproofing measures as well as the proposed recreation features.

The nonstructural portion of the recommended plan will involve wet floodproofing of 30 non-residential structures, dry floodproofing of 10 non-residential structures, elevation of one residential structure, and fee acquisition of 7 tracts located in the floodway. Acquisition of properties identified for fee acquisitions will be mandatory, with the expectation that the NFS would exercise their power of eminent domain if acquisition by negotiation is unsuccessful. The fee acquisition tracts contain 12 structures that will be removed from the floodway (7 by demolition, 5 by relocation). Floodproofing measures are voluntary. Owners of structures identified for floodproofing that choose to participate will be required to grant the NFS a permanent real estate interest in the property; whether that is a restrictive covenant or permanent easement is to be determined. The actual number of structures that receive a nonstructural treatment may change once each structure is evaluated on a case-by-case basis. It is anticipated that floodproofing may not be feasible for some structures in Beattyville given their condition and structural integrity.

Kentucky River, Beattyville, Kentucky Flood Risk Management
Project Feasibility Study Appendix E Real Estate

In accordance with CECW-ZA Memorandum dated 22 July 2024 entitled Guidance for Nonstructural Project Planning and Implementation, the Nonstructural Implementation Plan (Appendix G) was developed, which provides a detailed description of the eligibility requirements and implementation procedures of the nonstructural measures. In summary, once a Project Partnership Agreement (PPA) is executed, the NFS will perform preliminary title work to verify ownership and notify the landowners of structures identified as eligible for voluntary nonstructural benefits by the feasibility study of their eligibility to participate in the nonstructural program. Landowners that elect to participate must submit an application. The application will require granting a Right-of-Entry for Survey and Exploration (ROE) to the USACE and the NFS. The ROEs will support Phase 1 Environmental Site Assessments (ESA) and inspections to determine the structural integrity of each structure.

Landowners and the NFS will then enter into Floodproofing Mitigation Agreements which will delineate the responsibilities of each party and be tailored to each individual property. The mitigation agreement will include a provision that the landowner agrees to grant the NFS a permanent real estate interest over the footprint of the structure. The interest will prohibit the landowner from altering the flood protection measure and provide the NFS the right to inspect the structure to ensure compliance. Landowners will be required to waive their right to an appraisal and fair market value for the real estate interests conveyed to the NFS. In lieu of a fair market value payment, the structure will be floodproofed in accordance with the mitigation agreement at no cost to the landowner. The only costs to the landowner would be the requirement to abate hazardous materials (asbestos, lead-based paint, etc.) and perform any necessary structural repairs prior to construction, if applicable. The NFS will obtain sufficient evidence of title prior to finalizing the acquisition of any real estate interests.

Upon execution of the mitigation agreement and granting of a permanent real estate interest to the NFS, the landowner will be responsible for soliciting and hiring a licensed contractor to design and construct the floodproofing measure in accordance with the mitigation agreement. The cost of the design and construction will be paid by the NFS. Certification of the Availability of Real Estate Interests will be required prior to issuing a notice to proceed with construction of any floodproofing measures. The PDT in coordination with the NFS will establish a process to track the progress of mitigation agreements, coordinate design reviews, and ensure real estate certification is complete prior to any construction. Upon Project completion, the NFS will maintain a shareable database with the USACE that tracks the operation and maintenance surveys they will regularly conduct to ensure compliance with Project requirements.

Four structures proposed for wet floodproofing are owned by the NFS. The NFS will be required to abide by the implementation plan when floodproofing their own structures, including providing clear title and recording a similar real estate instrument on their property as the privately owned structures. For NFS-owned structures, a deed restriction in the form of a restrictive covenant that runs with the land would be used in lieu of a permanent easement. A mitigation agreement between the NFS and itself would not be feasible; however, the PDT in coordination with the NFS will determine the best means of ensuring that the NFS meets the requirements set forth in the implementation plan.

The FWEPP portion of the recommended plan may include several components, such as flood inundation mapping, evacuation planning, creation of a local floodplain management plan, installation of flood sensors and sirens, etc. The only FWEPP components that would require real

estate acquisitions are flood sensors and sirens. The NFS would need to acquire a permanent real property interest anywhere such FWEEP infrastructure is constructed.

Utility and facility relocations are expected to be negligible. Most utility impacts will not rise to the level of a relocation as they will involve either the permanent disconnection of utilities from structures being demolished or temporary service interruption to individual structures during implementation of floodproofing measures.

A summary of real estate acquisitions can be found in Table 1

Table 1. Summary of real estate acquisitions and required instruments.

Measure	Acres	No. of Acquisitions	No. of Structures	Real Estate Instrument(s) Required
Fee acquisition (mandatory buy-outs)	11.44	7	12	Fee Acquisition Deed
Wet Floodproofing	N/A	30	30	ROE, Flood Proofing Mitigation Agreement, Permanent Easement / Restrictive Covenant
Dry Floodproofing (non-residential)	N/A	10	10	ROE, Flood Proofing Mitigation Agreement, Permanent Easement / Restrictive Covenant
Dry Floodproofing (residential)	N/A	1	1	ROE, Flood Proofing Mitigation Agreement, Permanent Easement
FWEEP	UNK	UNK	0	Permanent Easement Deed

4. ESTATES

The standard estate Fee will be required for all mandatory buy-outs. Fee title is also required anywhere recreation features will be constructed.

FEE

The fee simple title to (the land described in Schedule A) (Tracts Nos. _____, _____ and _____), subject, however, to existing easements for public roads and highways, public utilities, railroads, and pipelines.

Should the FWEEP include installation of sirens and/or sensors, the NFS will acquire permanent easements wherever such features are located. While there is no standard estate for the installation of flood warning and emergency evacuation infrastructure, ER 405-1-12 allows the District Chief of Real Estate to approve a non-standard estate if it serves the intended project purpose, substantially conforms with, and does not materially deviate from the corresponding standard estate and does not increase the costs nor potential liability of the Government. LRL proposes the following estate language be used for FWEEP infrastructure acquisitions. It is considered a minor deviation from the standard estate Flood Protection Levee Easement and has

been approved by LRL Office of Counsel for the installation of flood warning and emergency evacuation sirens and sensors for another project within the district.

FLOOD PROTECTION LEVEE EASEMENT (modified for FWEEP infrastructure)

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 warning and emergency evacuation (sensor) (siren), 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.

CECW-ZA Memorandum dated 22 July 2024 entitled Guidance for Nonstructural Project Planning and Implementation sets forth the following standard estate to be acquired for projects with nonstructural residential elevations and basement fill-in measures. See Exhibit E-3 for a sample Deed Restriction. This language will be used for the one proposed residential elevation. This easement would be applied to the footprint of the structure and will not encumber the entire parcel.

PERPETUAL RESTRICTIVE EASEMENT FOR RESIDENTIAL ELEVATION

A perpetual and assignable easement for the establishment, maintenance, operation and use of a restricted area in, on, over and across only that portion of land occupied by a residential structure(s) as described (in Schedule C or Exhibit A), said residential structure(s) to be elevated in connection with the construction, operation, maintenance, repair, replacement, and rehabilitation of the (Project Name and Authorization), consisting of the right to (prohibit human habitation between the ground level and the first floor of the elevated structure, to prohibit construction or placement of any enclosure or permanent obstruction or impairment of the flow of water between the ground level and the first floor of the elevated structure, and to prohibit other uses of the elevated structure or the land that would impair, contravene, or interfere with the integrity of the elevated structure) (to prohibit the enclosure of flood vents to the infilled basement); (together with the right of ingress and egress, with advanced owner notification, over and across other portions of the property for the purpose of inspecting and monitoring the residential structure and project measures located on said land, and for the purpose of enforcing the rights, land use restrictions, and prohibitions set forth herein); reserving to the grantor(s), heirs, successors and assigns, all such rights and privileges as may be used without interfering with or abridging the rights, easement, and restrictions hereby acquired, including the right to (utilize the area between the ground level and the elevated structure for parking and storage;) to demolish and rebuild the structure with a first floor elevation that is three (3) feet above the community Base Flood Elevation requirement; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; 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.

CECW-ZA Memorandum dated 22 July 2024 entitled Guidance for Nonstructural Project Planning and Implementation requires the use of Rights of Entry (ROEs) for Survey and Exploration to support implementation of the nonstructural measures. The ROEs will be obtained by the sponsor to facilitate investigations of each structure to support design efforts.

RIGHT OF ENTRY FOR SURVEY AND EXPLORATION

An assignable easement, in, on, over and across the land described in Exhibit "A" for a period of () months beginning with the date possession of the land is granted to the _____, consisting of the right of the _____, its representative, agents, contractors and assigns to enter upon said land to survey, stake out, appraise, make borings; and conduct tests and other exploratory work necessary to the design of a public works project; together with the right to trim, cut, fell, and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles as required in connection with said work; subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowner(s), their heirs, executors, administrators, successors and assigns, all such right, title, interest and privilege as may be used and enjoyed without interfering with or abridging the rights and easement hereby acquired.

If utility relocations are necessary, the standard estate Utility and/or Pipeline Easement will be required for all relocated utilities.

UTILITY AND/OR PIPELINE EASEMENT

A perpetual and assignable easement and right-of-way in, on, over and across (The land described in Schedule A) (Tracts Nos._____, _____ and _____) for the location, construction, operation, repair and patrol of (overhead) (underground) (specifically name type of utility or pipeline); 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 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.

At this time, it is unknown whether temporary work areas or staging and storage areas will be needed to implement the Project. Should they be necessary once design is complete, the standard estate Temporary Work Area Easement will be required for all such areas.

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 _____, beginning with date possession of the land is granted to the United States, 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 _____ 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.

5. NON-STANDARD ESTATES

A non-standard estate may be necessary for implementation of the recommended plan. The NFS will need the ability to protect the Project benefits as well as the Federal investment on floodproofed structures using some form of permanent real estate instrument. HQUSACE Real Estate (CEHQ-RE) is currently formulating guidance for implementation of nonstructural projects Corps-wide. Interim Guidance applicable to residential floodproofing only was issued by CECW-ZA in July 2024 setting forth a standard estate for residential elevations and basement in-fill. No standard estate has been approved for non-residential floodproofing measures. If a new standard estate for non-residential structures is not available during implementation of the Project, the PDT, in coordination with the NFS, will submit a request through the MSC to CEMP-CR for approval. Whichever estate is ultimately utilized for floodproofed structures, the easement or restriction will only apply to that portion of land occupied by the structure.

6. EXISTING FEDERAL PROJECTS/LANDS

No Federal projects or lands are located within or near the Project area.

7. NAVIGATION SERVITUDE

Navigation servitude does not apply.

8. PROJECT AREA MAPS

See Exhibit E-1 for preliminary Project area mapping.

9. POSSIBLE INDUCED FLOODING

No induced flooding is anticipated as a result of Project construction, operation, or maintenance.

10. BASELINE COST ESTIMATE FOR REAL ESTATE

A baseline cost estimate for real estate (BCERE) was prepared for the proposed recommended plan. This estimate includes NFS incidental acquisition costs (survey, title, appraisal, etc.), estimated fair market value of acquisitions, P.L. 91-646 relocation assistance benefits, and Federal administrative expenses. The fair market value estimate of the proposed acquisitions (buy-outs) has been reviewed and approved by the LRL staff appraiser.

In accordance with CECW-ZA Memorandum dated 22 July 2024 entitled Guidance for Nonstructural Project Planning and Implementation, owners of structures identified for floodproofing, both residential and non-residential, will be required to waive their right to just compensation in writing for the real estate interest to be acquired and release the NFS from any requirement or obligation to be informed of the market value of the easement. The owners will

Kentucky River, Beattyville, Kentucky Flood Risk Management
Project Feasibility Study Appendix E Real Estate

receive a direct benefit as a result of the floodproofing measure being constructed at no cost to them, and as a result will not be further compensated.

This estimate does not include the cost of any utility/facility relocations or any acquisitions that may be required to support them as no such acquisitions are anticipated.

This estimate does include a nominal cost for the acquisition of small easements in downtown Beattyville for the installation of FWEEP sirens.

This estimate only includes costs to acquire or floodproof privately owned lands and structures. While no model PPA exists for nonstructural projects, the PDT is assuming that the PPA will exclude acquisition and incidental costs associated with publicly owned property from total project costs. The Recommended Plan includes floodproofing of four structures owned by the NFS and one owned by the City of Beattyville. While compensation is not paid to landowners for the easements acquired over floodproofed structures, there remain incidental costs associated with those easement acquisitions (title, survey, attorney fees, etc.) that are typically creditable LERRD items. Such costs incurred floodproofing publicly owned structures will likely not be creditable and so are not included in this estimate. The Recommended Plan also includes the partial fee acquisition of a tract of land in the floodway owned by the City of Beattyville. LERRD credit will likely not be authorized for the fair market value or incidental acquisition expenses associated with the acquisition of that tract of land, and it has been excluded from this cost estimate as well.

See the next section for a description of how the P.L. 91-646 relocation assistance payments have been estimated.

The estimated cost of real estate acquisitions and P.L. 91-646 residential and nonresidential relocations, including NFS incidental costs and Federal administrative costs is approximately \$2.4 million.

Table 2. Baseline Cost Estimate for Real Estate

Account	Cost Estimate	Contingency	Total with Contingency
01 - Lands and Damages			
a. Flood Protection Measure Costs			
6 Fee Acquisitions (12 structures)	\$575,000	20%	\$690,000
10 Easement Acquisitions (FWEEP sirens)	\$10,000	100%	\$20,000
b. P.L. 91-646 Relocation Costs			
Buyouts (permanent)	\$399,000	50%	\$599,000
Floodproofing (temporary)	\$111,000	30%	\$145,000
c. Non-Federal Incidental Costs*	\$643,000	20%	\$772,000
Lands and Damages Total	\$1,738,000	20% - 100%	\$2,226,000
30 - Federal Administrative Costs			
Federal Administrative Cost Total	\$170,000		\$170,000
Total Real Estate Project costs	\$1,908,000		\$2,396,000

*All costs associated with the acquisition of floodproofing easements/restrictive covenants are included in the NFS incidental costs (survey, title, attorney fees, etc.) as no compensation will be paid for the actual value of the interests being acquired.

The implementation plan calls for a phased approach to project construction based on the measure being implemented and the characteristics of the structure being floodproofed. The cost estimate broken down by Project phase is in Table 3.

Table 3. Cost estimate by phase.

Contract#	01 Account	01 Contingency	30 Account	Total
1 – FWEEP	\$106,000	\$30,000	\$20,000	\$156,000
2 – ACQUISITIONS	\$1,076,000	\$335,000	\$47,000	\$1,458,000
3 – ESSENTIAL	\$182,000	\$41,000	\$40,000	\$263,000
4 – HISTORIC	\$374,000	\$82,000	\$63,000	\$519,000

11. RELOCATION ASSISTANCE BENEFITS (P.L. 91-46)

The NFS shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public 91-646, as amended (Uniform Act), in acquiring lands, easements, and rights-of-way required for the construction, operation, and maintenance of the Project, including those necessary for relocations, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

The Uniform Act authorizes payment of relocation benefits to displaced persons as a result of Federal and Federally assisted programs in certain circumstances. Those benefits are separate from and in addition to the acquisition payments for real property. Estimated benefits for residential displacements include moving and replacement housing expenses. Relocation benefits for non-residential displacements are limited to moving and related expenses, including search expenses and, if applicable, reestablishment expenses.

A portion of a mobile home park located in the floodway will be acquired to support the Project. Currently, there are five mobile homes located on the property in the acquisition area, and that number has changed over the course of the study. The mobile homes are owned by their occupants who rent their lots from the landowner. The most recent flood and associated cleanup led to significant damage to the underground utilities in the center of the park, limiting the landowner's ability to fully rent the park. According to the landowner, all the mobile homes currently on site are in good condition and could be relocated upon acquisition. Given the condition of the mobile homes and the relatively small number that will need to be relocated, finding suitable replacement sites for the mobile homes is not expected to be problematic. Each eligible mobile home owner will be eligible for up to \$9,570 in replacement housing assistance as tenants of the park. Housing of last resort payments are not expected to be necessary.

There are seven nonresidential structures being acquired in fee. Two are vacant structures with no active business on the premises so payments beyond moving of personal property are not anticipated. The remaining nonresidential acquisitions are either small businesses (hair salon, canoe rental, small engine repair, etc.) or the partial acquisition of the above-mentioned mobile home park. Relocating the small businesses may present a challenge given the limited availability of real estate outside of the floodplain within downtown Beattyville. Early coordination with the landowners and their tenants will be crucial to ensuring business relocations do not cause delays in implementation. Finding available vacant land outside the floodplain in the vicinity of Beattyville to reestablish the mobile home park is not expected to be a challenge; however, the location is unlikely to be as close to the heart of downtown Beattyville as the current location.

The July 2024 guidance from CECW-ZA on implementation of residential nonstructural projects prohibits the provision of relocation assistance benefits to temporarily displaced residential owner-occupants. Only residential tenants are authorized temporary relocation assistance benefits if they are displaced by construction. The Project includes only one residential elevation, and a temporary relocation assistance payment to the residential tenant has been included in the BCERE.

Implementation guidance for nonresidential nonstructural projects has not been published as of report writing. The Uniform Act does allow for payment of relocation assistance benefits to businesses that will be shut down due to a project which requires the occupant to vacate the property, or which denies physical access to the property. In such instances, the business can be temporarily relocated and reimbursed for all reasonable out of pocket expenses. Based on interior inspections of 22 of the 40 nonresidential structures proposed for floodproofing, the PDT does not anticipate that any business will require temporary relocation of the entire business; however, a few businesses may require temporary relocation of some building contents to storage for the duration of construction. Most surveyed structures have enough space within the structure to shift the building's contents around inside the building during a phased construction. The costs of such shifting would be included in the construction costs and would not be considered a relocation expense. Several nonresidential building occupants cannot temporarily relocate due to the public

safety / public service nature of their operations (grocery store, emergency services dispatch, police station, health clinic, post office, etc.). Implementation of floodproofing measures in those structures will be phased and carefully coordinated to limit or prevent service interruptions.

Approximately 25% of the nonresidential structures that were inspected may require some building contents to be moved and stored offsite temporarily to facilitate construction. Because the PDT was not able to inspect the interior of all nonresidential structures, it is assumed that ratio will hold and that roughly 25% of impacted nonresidential structures will require temporary relocation of building contents. The cost estimate above includes such moving and temporary storage expenses based on typical moving and storage expenses in the region. Table 4 summarizes the anticipated P.L. 91-646 relocation assistance benefits.

Table 4. Summary of estimated P.L. 91-646 relocation assistance benefits.

Type	No. of Displaced Persons	No. of Displaced Businesses	Estimated Benefits
Temporary Relocation Assistance	1	10 (estimated)	\$111,000
Permanent Relocation Assistance	5	8	\$399,000
TOTAL	6	18	\$510,000

12. MINERAL/TIMBER ACTIVITY

There is no mineral or timber activity in the area that would impact Project construction, operation, or maintenance.

13. SPONSOR CAPABILITY

The NFS has been deemed moderately capable of acquiring the necessary real estate for Project purposes with contractor support. The Sponsor Capability Assessment is attached as Exhibit E-2.

14. ZONING ORDINANCES ENACTED

No application or enactment of zoning ordinances is proposed in lieu of, or to facilitate, acquisition in connection with the project.

15. ACQUISITION SCHEDULE WITH MILESTONES

While a timeline with specific dates is unavailable at this time, the NFS is expected to be able to adhere to the following general schedules. The fee acquisition of the mandatory buyouts will follow real estate acquisition steps typical of Federal projects. The acquisition of the required real estate interests to support the nonstructural portion of the project will take a different course. Proposed schedules for both types of acquisitions are below with estimated durations. Given that this Project

may be implemented in phases depending on funding, this schedule is subject to change and will be updated as more information is received.

Table 5. Acquisition schedule for fee acquisitions (mandatory buy-outs).

Activity	Duration
Notice to proceed with real estate acquisitions issued	After PPA execution and finalized design
Preliminary real estate acquisition work (survey, title, appraisal, etc.)	6-9 months
Negotiations	2-4 months
Final title review and closing	1-3 months
Condemnation (if necessary)	Additional 6 months
Certification of real estate interests	1 month
Process LERRD credit requests	As requests are received
Total	24 months

Table 6. Acquisition schedule for nonstructural project implementation.

Activity	Duration
Preliminary title research/ownership verification	1-3 months
Notification of eligibility sent to landowners	Upon verification of ownership
Owners submit application / grant ROE	TBD - owners will be informed of the deadline to apply to remain eligible.
Phase 1 ESAs & structural inspections	2-3 months
NFS investigates title, prepares survey	2-3 months
Mitigation agreement (negotiations and execution)	6-12 months
Landowner completes HTRW abatement/structural repairs	As needed (duration depends on extent of HTRW or repair needs)
Final title review and closing	1-3 months
Certification of real estate interests	1 month
Process LERRD credit requests	As requests are received

16. UTILITIES/FACILITIES TO BE RELOCATED

As no large structural elements are included in the Project, no utility impacts that would rise to the level of a relocation are anticipated. Only temporary service interruptions to structures being floodproofed are expected as a result of the Project. However, if the need for a utility relocation is identified during the design phase, an Attorney's Opinion of Compensability will be prepared for each impacted utility to determine whether or not the utility owner possesses a real property interest. The NFS will be responsible for performing all utility/facility relocations.

One of the fee acquisitions is a partial acquisition of a City of Beattyville owned parcel on which a small playground, restroom, and picnic shelter are located. These structures are in the floodplain and require maintenance and clean-up after flood events. While a new playground is included in the Project as a beneficial reuse of the floodplain, the partial acquisition of the city-owned playground parcel does not constitute a facility relocation. LRL-OC examined the question and determined that the proposed action for the playground, restroom, and picnic shelter does not comply with the requirements of ER 405-1-12, Chapter 12, paragraph 12-8(c). Specifically, there is no legal or factual necessity to replace the structures once removed under Kentucky law. Additionally, payment of fair market value of the land acquired to the landowner as opposed to providing a substitute facility would not result in manifest injustice to the owner or the public.

ANY CONCLUSION OR CATEGORIZATION CONTAINED IN THIS REAL ESTATE PLAN, OR ELSEWHERE IN THIS PROJECT REPORT, THAT AN ITEM IS A UTILITY OR FACILITY RELOCATION TO BE PERFORMED BY THE NON-FEDERAL SPONSOR AS PART OF ITS LERRD RESPONSIBILITIES IS PRELIMINARY ONLY. THE GOVERNMENT WILL MAKE A FINAL DETERMINATION OF THE RELOCATIONS NECESSARY FOR THE CONSTRUCTION, OPERATION, OR MAINTENANCE OF THE PROJECT AFTER FURTHER ANALYSIS AND COMPLETION AND APPROVAL OF FINAL ATTORNEY'S OPINIONS OF COMPENSABILITY FOR EACH OF THE IMPACTED UTILITIES AND FACILITIES.

17. HTRW CONSIDERATIONS

Refer to main report Section 2.4.7 for a description of the status of the District's investigation into the presence of hazardous, toxic, and radioactive waste (HTRW). Phase 1 ESAs will be completed by the USACE prior to acquisition for all impacted properties, both the mandatory acquisitions and structures being floodproofed. For property owners who elect to participate in the nonstructural portion of the Project, any HTRW, such as asbestos or lead-based paint, found in their structure must be abated prior to construction at the landowner's expense.

18. OWNER ATTITUDE/ISSUES

The Beattyville community is ambivalent to the Project currently. There appears to be a lack of belief among residents that any Federal flood risk management project will actually be implemented in Beattyville.

19. SPONSOR NOTIFIED OF RISKS OF ADVANCE ACQUISITION

The sponsor was notified of the risk of advanced acquisition on May 14, 2025. See Exhibit E-4 for a copy of the risk letter sent to the NFS.

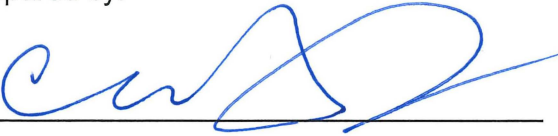
20. ANY OTHER REAL ESTATE ISSUES

One of the structures proposed for floodproofing is a United States Post Office located on privately-owned property. Any proposed floodproofing of this structure must be carefully planned

Kentucky River, Beattyville, Kentucky Flood Risk Management
Project Feasibility Study Appendix E Real Estate

in coordination with the US Postal Service so as not to disrupt mail services in Beattyville and the surrounding area.

Prepared by:

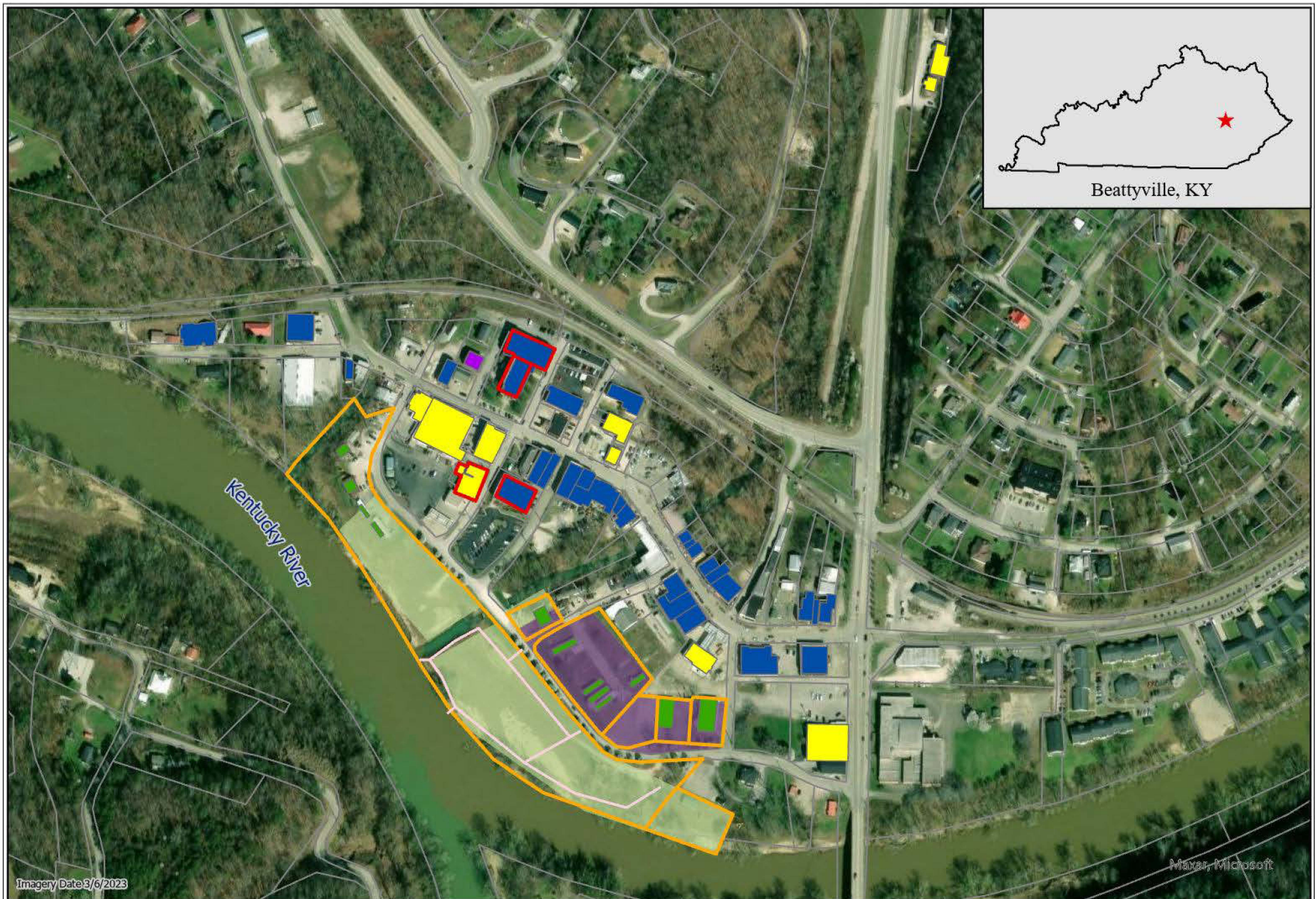


Carrie Fry
Realty Specialist
Louisville District

This REP is in compliance with applicable regulations, policy, and delegations.



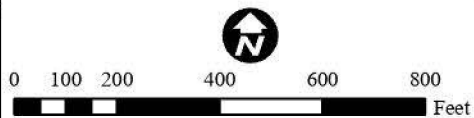
Ashley N. Klimaszewski
Chief, Real Estate
Louisville District



Imagery Date: 3/6/2023

Maxar, Microsoft

- | | |
|------------------------------------|---------------------|
| Fee Acquisition Tracts | NFS Owned Structure |
| Structure Acquisition (demolition) | Recreation Features |
| Nonresidential - Dry Floodproofing | Recreation Trail |
| Residential - Elevation | Plantings |
| Nonresidential - Wet Floodproofing | |



BEATTYVILLE
LEE COUNTY
KENTUCKY



US ARMY CORPS OF ENGINEERS
REAL ESTATE DIVISION
LOUISVILLE DISTRICT

DATE: MAR 2025

SHEET: EXHIBIT E-1

**KENTUCKY RIVER, BEATTYVILLE, KY
GENERAL INVESTIGATION FEASIBILITY
STUDY**

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

Sponsor(s): _____

Lee County Fiscal Court

Authority:

Section 6 of the Flood Control Act of 1939, PL 76-396 authorizes the Secretary of the Army to perform examinations and studies for flood control on the Kentucky River and its Tributaries, Kentucky, and the Consolidated Appropriations Act of 2022 (PL 117-103), Division D, Title 1, through an explanatory statement authorized funds for a flood control study at Beattyville Kentucky.

Non-Federal Sponsor Real Estate Contact:

Steve Mays, Judge Executive

I. Legal Authority

- a. Does the non-Federal Sponsor have legal authority to acquire and hold title to real property for project purposes?**

Yes ☒ No _____

**Non-Federal Sponsor is authorized to acquire and own land by authority of
KRS 67.080 & 67.083** _____.

Note: If NO; who will acquire LERRD? Who will hold title?

- b. Does the non-Federal Sponsor have the power of eminent domain for this project?**

Yes ☒ No _____

The use of eminent domain is authorized by KRS 67.085 & KRS 58.140 _____.

Note: If NO, who will acquire tracts if condemnation is required?

- c. Does the non-Federal Sponsor have "quick-take" authority for this project?**

Yes ☒ No _____

**Non-Federal Sponsor's "quick-take" authority is authorized by
Kentucky Eminent Domain Act of 1975, KRS 416.610** _____.

Note: If NO; will lack of "quick take" authority impact the project schedule?

- d. The non-Federal Sponsor has reviewed the project maps and confirmed that all of the lands/ interests in land required for the project are located inside of their political boundary.

Yes X No _____

Note: If NO; what is the plan for acquiring? Can the non-Federal Sponsor hold title to land outside of their political boundary?

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

Yes _____ No X

Note: If YES; what is the plan for acquiring?

Section I. 
Realty Specialist

Date: 12 / 15 / 29

II. Financial Capability

- a. The non-Federal Sponsor has reviewed and concurs with the real estate cost estimates.

Yes X No _____

Note: If NO; provide the anticipated resolution.

- b. It has been established by the responsible district element that the non-Federal Sponsor is financially capable of fulfilling all requirements identified in the Project Partnership Agreement (PPA).

Yes X No _____ The sponsor anticipates seeking grants and other sources of funding to make up their portion of a cost share should it exceed their financial capability. The proposed phased implementation will allow the project to proceed as funds are secured.

Note: If NO; is another entity going to provide the non-Federal Sponsor with financial assistance?

Section II. 
Realty Specialist

Date: 12 / 15 / 29

III. Willingness To Participate

- a. The non-Federal Sponsor has stated in writing its general willingness to participate in the project and its understanding of the general scope of the project and its part of the project.

Yes _____ FCSA with the NFS was signed on 1/23/23, no LOI was received.

Letter of Intent from the NFS dated ____/____/____.

Note: If more than one sponsor is to be involved explain the Real Estate roles of each non-Federal Sponsor.

- b. The non-Federal Sponsor is agreeable to signing a project partnership agreement and supplying funding as stipulated in the agreement.


Yes X

- c. The non-Federal Sponsor was provided the Local Sponsors Toolkit

on 8 / 9 / 2023.

http://www.lrd.usace.army.mil/Portals/73/docs/RealEstate/Non-Federal_Sponsor_Package.pdf

Section III.


Realty Specialist

Date: 12 / 16 / 27

IV. Acquisition Experience and Capability

- a. Taking into consideration the project schedule and complexity, the non-Federal Sponsor has the capability with in-house staffing or contract capability, to provide the necessary services such as surveying, appraising, title, negotiating, condemnation, closings, and relocation assistance that will be required for the acquisition of properties for this project.

Yes ☒ No ☐

Note: If work will be done in-house give brief summary, staff size, expertise, experience, etc.

- b. The non-Federal Sponsor's staff is familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended.

Yes ☐ No ☒

Note: If NO; additional funding for USACE training/ oversight will be required.

- c. The non-Federal Sponsor can obtain contractor support and meet project schedules.

Yes ☒ No ☐

Note: If NO; does the acquisition timeline account for this?

- d. The non-Federal Sponsor's staff is located within a reasonable proximity to the project site.

Yes ☒ No ☐

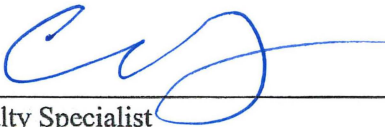
Note: If NO; provide summary of plan to make contact; i.e., project office, travel, local contractors etc.

- e. Will USACE assistance likely be requested by the non-Federal Sponsor in acquiring real estate?

Yes ☐ No ☒

Note: If YES; provide a summary of the level of support that will be requested. Will a Memorandum of Agreement be required in accordance with the Project Partnership Agreement?

Section IV.


Realty Specialist

Date: 12 / 14 / 27

V. Schedule Capability

The non-Federal Sponsor has approved the tentative project/ real estate schedule/ milestones and has indicated its willingness and ability to incorporate its financial, acquisition, and condemnation capability to provide the necessary project LERRDs in accordance with proposed project schedules so the Government can advertise and award the construction contract as required by overall project schedules and funding limitations.

Yes ☐ No ☒ No project implementation schedule has been prepared.

Section V.


Realty Specialist

Date: 12 / 16 / 27

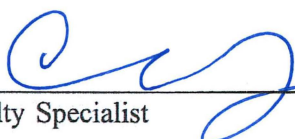
VI. LERRD Credits

The sponsor has indicated its understanding of LERRD credits and its capability and willingness to gather the necessary information to submit as LERRD credits in within six months after possession of all real estate and completion of relocations in order that the project can be financially closed and there can be a final financial accounting with a proper settlement with the non-Federal Sponsor.

Yes ☒

Note: If a multi-year phased project discuss plan for interim submittals.

Section VI.


Realty Specialist

Date: 12 / 16 / 27

VII. Capability

With regard to this project, the non-Federal Sponsor is anticipated to be:
moderately capable.

Note: Choices are: fully capable, moderately capable, marginally capable, and insufficiently capable.

- a. Fully Capable: *Previous experience. Financially capable. Authority to hold title. Can perform, with in house staff, the necessary services (survey, appraisal, title, negotiation, closing, relocation assistance, condemnation & "quick-take" authority) required to provide LERRD.*
- b. Moderately Capable: *Financially capable. Authority to hold title. Can provide, with contractor support, the necessary services (survey, appraisal, title, negotiation, closing, relocation assistance and condemnation authority) required to provide LERRD. Quick-take authority will be provided by_____.*
- c. Marginally Capable: *Financially capable. Authority to hold title. Will rely on approved contractors to provide the necessary services (survey, appraisal, title, negotiation, closing, and relocation assistance). Quick-take authority and authority to condemn will be provided by_____.*
- d. Insufficiently Capable: *Financially capable. Will rely on approved contractors to provide the necessary services (survey, appraisal, title, negotiation, closing, and relocation assistance). Quick-take authority and authority to condemn will be provided by_____.
Will rely on_____ to hold title.*

Summarize what support will be provided to the non-Federal Sponsor to ensure project success.

VIII. Coordination

This assessment has been coordinated with the non-Federal Sponsor and it concurs with the assessment.

Yes X

This assessment has been coordinated with:

Name: Steve Mays
Title: Judge Executive


Prepared by:

Carrie Fry
Realty Specialist
Real Estate Division
Louisville District

Considering the capability of the non-Federal Sponsor and the ancillary support to be provided by n/a, and identified above, it is my opinion that the risks associated with LERRD acquisition and closeout have been properly identified and appropriately mitigated.


Chief, Real Estate Division
Louisville District

Non-Federal Sponsor Representative:

Signature: 
Name: Steve Mays
Title: Judge Executive
Date: 7/12/24

This sample serves as a guide for Non-Federal Interests (NFI) who acquire real estate interests for nonstructural projects. The NFI is not required to utilize this model, but language contained herein such as the language of the easements and covenants must be included in the deed executed by the NFI. Districts should ensure this deed and easement language are compliant with the laws and regulations of the state in which the instrument will be recorded.

DEED RESTRICTION

KNOW ALL MEN BY THESE PRESENTS that on the date, at the place and before the undersigned witnesses and Notary Public(s), duly commissioned and qualified in and for the County and State indicated, personally came and appeared:

OWNER, individually, a person of the full age of majority domiciled in the County of _____, State of _____, who stated under oath that she/he is (*marital status*) and that her/his mailing address is _____;

OWNER, individually, a person of the full age of majority domiciled in the County of _____, State of _____, who stated under oath that she/he is (*marital status*) and that her/his mailing address is _____;

(hereinafter referred to as "Vendors"), who declared that they grant, bargain, sell, convey, transfer, assign and deliver, with all legal warranties and with full substitution and subrogation in and to all rights and actions of warranty which said Vendors have or may have against all preceding owners and vendors, unto:

(*NFI*), represented herein by, (*name of agent and title*), whose mailing address is _____

(herein referred to as "Vendee"), in connection with the U.S. Army Corps of Engineers' (*Project Name, County, State*) a perpetual restrictive easement over a portion of the property located at (*property address*), acquired by the VENDORS by deed recorded in Book____, Page ____, Entry # _____ on (*date*), in (*County/State*), whose property description is attached hereto and made a part hereof:

Perpetual Restrictive Easement for Residential (Elevation/Basement In-Fill)

A perpetual and assignable easement for the establishment, maintenance, operation and use of a restricted area in, on, over and across only that portion of land occupied by a residential structure(s) as described (in Schedule C or Exhibit A), said residential structure(s) to be elevated in connection with the construction, operation, maintenance, repair, replacement, and rehabilitation of the (Project Name and Authorization), consisting of the right to (*prohibit human habitation between the ground level and the first floor of the elevated structure, to prohibit construction or placement of any enclosure or permanent obstruction or impairment of the flow of water between the ground level and the first floor of the elevated structure, and to prohibit other uses of the elevated structure or the land that would impair, contravene, or interfere with the integrity of the elevated structure*) (*to prohibit the enclosure of flood vents to the infilled basement*); (*together with the right of ingress and egress over and across said land for the purpose of inspecting and monitoring the residential structure and project measures located on said land, and for the purpose of enforcing the rights, land use restrictions, and prohibitions set forth herein*); reserving to the grantor(s), heirs, successors and assigns, all such rights and privileges as may be used without interfering with or abridging the rights, easement, and restrictions hereby acquired, including the right to (utilize the area between the ground level and the elevated structure for parking and storage;) to demolish and rebuild the structure with a first floor elevation that is three (3) feet above the community Base Flood Elevation requirement; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; 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.

AND IT IS FURTHER AGREED AND UNDERSTOOD by and between the parties hereto that the VENDOR choosing to voluntarily participate in the (*Project Name*) and having granted the right to the (*NFI*) to (*describe the floodproofing measures*) at no cost to the VENDOR, the VENDOR covenants and agrees for itself, its successors and assigns, forever, that this Deed is made and accepted upon the following covenants, which covenants shall be binding upon and enforceable against the VENDOR, its successors and assigns, in perpetuity or until such time as the structure no longer exists or the project is de-authorized by Congress; and that the notices, covenants, and restrictions set forth herein are a binding covenant on the Property herein described and shall be deemed to run with the land in perpetuity:

1. For structures which are elevated 4 feet or more above base flood elevation -

Owner will not enclose the areas below the base flood elevation and those areas will only be used for the parking of vehicles, limited storage, and/or access to the structure;

2. *For structures which are elevated less than 4 feet above base flood elevation - All enclosed areas below the base flood elevation must be equipped with vents permitting the automatic entry and exit of flood water.*
3. No mechanical, electrical, or plumbing devices associated with the structure will be installed below the base flood elevation.
4. The (NFI) will monitor adherence to the conditions of the Perpetual Restrictive Easement and the aforementioned covenants through physical inspection of the property from the public street. However, should the structure not be visible from the street due to fences, vegetation or any other obstruction, the (NFI) shall have the right to enter the parcel after providing reasonable notice to the VENDOR in order to assess adherence to the terms of the easement.
5. These covenants shall be enforceable, at law or in equity, by the (NFI), and the VENDOR(S) agree that the (NFI) may demand repayment of the cost of construction or may institute legal action against the VENDOR to recover the cost of construction if the VENDOR fails to abide by the conditions of the Perpetual Restrictive Easement and the aforementioned covenants.
6. Alterations to the area below the elevated structure which do not violate the terms of the perpetual restrictive easement are not subject to 33 USC 408 and do not require the owner to obtain a Section 408 permit.

VENDOR(S) warrants that the land and structure over which these rights and easement are conveyed are owned by VENDOR(S) in fee, and that any and all state, county and city taxes, up to and including the taxes due and eligible in the year _____ are paid with all subsequent ad valorem taxes to be paid by VENDOR when same become due and payable.

Mortgage and conveyance certificates are waived and the parties hereto release and relieve the undersigned notary(ies) and the attorney closing this transaction from any and all liability and/or responsibility in connection with the non-production thereof and the preparation and execution of this Deed Restriction.

THUS DONE AND SIGNED on the ____ day of _____, 20____ in the
presences of the two undersigned and competent witnesses, who hereunto signed their
names with said **VENDOR**.

Witness

Owner

Witness

Owner

ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 20__, before me personally appeared,

(*Owners*), who executed the foregoing instrument
as their free act and deed.

(Seal)

NOTARY PUBLIC

My Commission Expires:

ACCEPTED:

_____	(Non-Federal Interest Name)
Witness	By: _____
_____	(Name, Title)
Witness	

ACKNOWLEDGEMENT

STATE OF _____

COUNTY _____

On this ____ day of _____, _____, personally appeared ____ (name of NFI Officer), (title), (NFI Agency Name), known to me to be the person described in the foregoing Agreement and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(Seal)

NOTARY PUBLIC

My Commission Expires:

***May need to add additional certificate that NFI official is authorized to commit entity in this Agreement.*



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOUISVILLE DISTRICT
600 DR. MARTIN LUTHER KING JR PL
LOUISVILLE, KY 40202

Exhibit E-4

May 14, 2025

Real Estate Division
Acquisition & Technical Services

Steve Mays, Judge Executive
Lee County Fiscal Court
P.O. Box G
Beattyville, KY 41311

Dear Judge Mays:

This letter is to confirm that if the Lee County Fiscal Court acquires any real estate interests for the proposed Beattyville Flood Risk Management Project prior to the signing of a Project Partnership Agreement (PPA) it does so at its own risk. The Corps of Engineers is required by regulation to inform you in writing of the risks associated with advance land acquisition. These risks include, but are not limited to, acquiring the wrong land, as well as acquiring too much or too little land with regard to tracts and estates, and acquiring lands contaminated with Hazardous, Toxic, or Radioactive Wastes (HTRW) which are not necessary for the construction, operation, or maintenance of the project. In addition, until the PPA is signed there is not a cost sharing agreement for construction of the project and the Corps of Engineers cannot guarantee that credits will be given for land acquisition or that the project will be built.

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

In accordance with the terms of the PPA, the Non-Federal Sponsor will be entitled to credit against its share of total project costs for the value of lands, easements, and rights-of-way required for the project. The value is based on approved appraisals plus incidental costs of acquiring the real property interests. All claims for credit must be supported by appropriate documentation such as invoices, cancelled checks, and certified timesheets.

If you have any questions regarding real estate requirements for the proposed project, please contact me at carrie.a.fry@usace.army.mil or 502-315-6957.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carrie A. Fry", is written over a horizontal line.

Carrie A. Fry
Realty Specialist
Acquisition & Technical Services Branch
Real Estate Division, Louisville District
U.S. Army Corps of Engineers