

Draft

Appendix L
Real Estate Plan

Draft

REAL ESTATE PLAN
FOR
FLAT CREEK WATERSHED
SECTION 206
AQUATIC ECOSYSTEM RESTORATION PROJECT
HALL COUNTY, GEORGIA



**US Army Corps
of Engineers**
Mobile District

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FLAT CREEK WATERSHED

SECTION 206, AQUATIC ECOSYSTEM RESTORATION PROJECT

REAL ESTATE PLAN

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REAL ESTATE PLAN
FOR
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SECTION 206, AQUATIC ECOSYSTEM RESTORATION PROJECT
HALL COUNTY, GEORGIA

1. THE REAL ESTATE PLAN

This Real Estate Plan (REP) is tentative in nature and is to be used for planning purposes only in order to support the Feasibility Phase of the Flat Creek, Section 206, Aquatic Ecosystem Restoration Project. Although this report is written based on specific data research prepared by the Project Delivery Team (PDT), modifications to the proposed plan could occur during the review phase thus changing the final acquisition areas and/or administrative and land costs. Furthermore, due to the nature of this study, the level of detail provided herein is understood to be equivalent to the main report.

The gross values contained in this report were prepared by USACE, Mobile District appraiser. These values were determined using data from public records, and from interviews with local professionals. The sales of comparable properties that are used in the valuation represent the best available comparisons in terms of physical proximity, location, access and highest and best use. A number of bona fide vacant land sales for each property type were compiled to offer reasonable support for unit land values to be used in calculating aggregate real estate costs for the project.

2. AUTHORITY

The Flat Creek Watershed, in the City of Gainesville and Hall County, Georgia, has been identified in multiple studies as an impacted watershed. In 2005, the City of Gainesville received a grant under Section 319(h) of the Clean Water Act (CWA) of 1977 (P.L. 92-500), administered by the Georgia Environmental Protection Division (GAEPD), for the development of a restoration plan for the Flat Creek Watershed. As a result, the City of Gainesville and Hall County have cooperatively identified and prioritized potential watershed improvement projects to stabilize and restore specific reaches of Flat Creek affected by past and ongoing development activities. At the same time, the City and County followed procedures to select watershed improvement projects for potential Section 206 funding through the U.S. Army Corps of Engineers (USACE) Aquatic Ecosystem Restoration Program, which was authorized under Section 206 of the Water Resources Development Act (WRDA) of 1996 (P.L. 104-303).

Water Resources Development Act of 1996 (WRDA), Section 206, Aquatic Ecosystem Restoration provision authorizes the Secretary to carry out aquatic ecosystem restoration and protection projects if it is determined that the project 1) will improve the quality of the environment and is in the public interest; and 2) is cost effective. Projects funded using this authority must be for restoration of aquatic ecosystem structure and function. No relationship to an existing Corps project is required. Not more than \$5,000,000 in Federal funds may be expended for a project undertaken pursuant to this authority.

The non-Federal share will be 35 percent of the total feasibility and implementation costs, including provisions of all Lands, Easements, Right-of-way, Relocations, and Disposals (LERRDs), feasibility, design, plans and specifications, materials and construction, and 100 percent of any OMR&R costs in accordance with the decision document and the Project Partnership Agreement (PPA). The entire sponsor share may be work-in-kind, including plans and specifications, materials, and project construction. However, if the value of the Non-Federal Sponsor's (NFS) contributions is less than 35 percent of the total project costs, the NFS must make a cash payment so that its contributions equal 35 percent of total project costs (See ER 1105-2-100, Appendix F, Amendment #2).

3. PROJECT DESCRIPTION

The Flat Creek Watershed is located in the Chattahoochee River Basin in the upper Piedmont physiographic province. The Chattahoochee River Basin is part of the larger Apalachicola-Chattahoochee-Flint (ACF) Rivers Basin, which flows south to the Gulf of Mexico and also drains portions of Alabama and Florida (See vicinity map attached as Exhibit "A"). Flat Creek is an eastern tributary to Lake Lanier, the largest lake (38,500 acres) located entirely within the State of Georgia. The Flat Creek Watershed encompasses 7,337 acres (698 acres of which are inundated by Lake Lanier) and contains a total of 31 stream miles (6 miles of main stem and approximately 25 miles of tributaries). Flat Creek is located entirely within the political boundaries of Hall County. Approximately 38 percent of the watershed is located in the City of Gainesville, and less than 1 percent is located in the City of Oakwood. The total incorporated area of the watershed is approximately 2,617 acres, of which approximately 2,553 are located in Gainesville and 64 are located in Oakwood. The City of Gainesville, which is the county seat, and Hall County, GA are the combined Non-Federal Sponsors for the proposed project.

For the purposes of existing conditions analysis, the watershed has been divided into three subwatersheds: Upper Flat Creek (headwaters), Lower Flat Creek, and the Flat Creek Embayment (includes Lake Lanier backwaters). The three subwatersheds have roughly equal areas and notable land use differences. A delineation of these subwatersheds is shown in Exhibit "B" attached hereto.

The Flat Creek Watershed has experienced significant growth and development over the last 20 years, and this trend is expected to continue. According to the US Census Bureau, the 1990 population estimate for Hall County was 95,428, and the 2006 population estimate was 173,256. This 82 percent increase is primarily due to growth in and around the City of Gainesville (county seat), as well as growth on the south side of the County

associated with the metropolitan Atlanta area. These population increases are associated with more intensive land uses, which can increase nonpoint source pollution and potentially impact streams.

Thus, land uses throughout the Flat Creek Watershed were reviewed for this assessment and are described in the below sub-paragraphs. See Exhibit “C” attached hereto for all proposed stream restoration and BMP retrofit project vicinity locations.

The dominant land uses in the Flat Creek Watershed as a whole are residential, comprising 35 percent of the entire area, and industrial/commercial comprising 34 percent of the area. The Upper Flat Creek Subwatershed is dominated by industrial and commercial areas, while the Lower Flat Creek and Embayment Subwatersheds are predominantly residential.

Industrial and commercial areas in the Upper Flat Creek Subwatershed comprise 76 percent of the subwatershed, which is a factor in the high percent impervious cover (51 percent). The Upper Flat Creek Subwatershed contains a number of poultry processing plants and feed mills, contributing to the high percentage of industrial areas. Another 11.4 percent of the subwatershed is categorized as transportation, communication, utilities, transitional, and institutional which, in Upper Flat Creek, consist primarily of the area’s railroads and rail stations. Only 20 percent of the Upper Flat Creek Subwatershed is residential.

Both the Lower Flat Creek and Embayment Subwatersheds are dominated by medium density residential land use, which is defined as areas developed for single-family residential use in which most houses are situated on ¼-acre to 2-acre lots. As a result, the percent of impervious cover in these subwatersheds is much less than in the Upper Flat Creek Subwatershed. Because of the presence of Lake Lanier backwaters, 24 percent of the Embayment Subwatershed is characterized as reservoir. If the lake were unaccounted for in this subwatershed, the percentage of total residential areas (45 percent) in the Embayment would be comparable to that of Lower Flat Creek (which is 43 percent residential). One difference between the Lower Flat Creek and Embayment Subwatersheds is the much higher percentage of commercial land use in the Lower Flat Creek Subwatershed (33 versus 2 percent).

The data for forest land use illustrate a notable difference among the three subwatersheds. Forest land use accounts for 17.4 percent of the Embayment, 15.9 percent of Lower Flat Creek, but only 1.3 percent of the Upper Flat Creek Subwatershed. Of the 892 acres of forested land in the Flat Creek Watershed, over 370 acres, surrounding Lake Lanier, is protected and classified as undevelopable land. While all three subwatersheds exhibit a high degree of development, the Upper Flat Creek Subwatershed is almost completely built out. Land use in the Upper Flat Creek Subwatershed is over 50 percent impervious, significantly higher than the average imperviousness in the watershed as a whole (25 percent). This clearly shows the degree of imperviousness within this watershed and

exhibits the highly developed nature of the Upper Flat Creek Subwatershed.

Approximately 21.6 miles of streams were assessed for the Flat Creek Ecosystem Restoration Report (ERR) from late April through late May 2007. The stream inventory collection covered the three delineated subwatersheds within the Flat Creek Watershed: Embayment, Lower Flat Creek, and Upper Flat Creek. A total of 389 data points were collected in the Flat Creek Watershed to complete the assessment. The data collected were used to characterize the condition of the watershed, prioritize stream projects, and identify the extent and location of potential stream restoration projects. A global positioning system (GPS) unit was used to note the locations of various channel alterations, including anthropogenic channel impacts, hydrologic alterations, bank erosion, inadequate buffers, water quality problems, and structural maintenance issues, as well as physical stream habitat score and channel types.

There were 383 occurrences (totaling 12.9 miles on either bank of 21.6 miles assessed) of inadequate buffers recorded in the Flat Creek Watershed. The most frequently recorded inadequate buffer types include man-made structures within the 25-foot riparian buffer, impervious areas, cleared or maintained parallel rights-of-ways, maintained lawns, old fields, and utility crossings or perpendicular rights-of-way. Of the riparian buffers assessed, the largest percentage of disrupted buffers was found in Upper Flat Creek, followed by Lower Flat Creek, and then the Embayment. The vast majority of riparian interruptions in this subwatershed resulted from residential/commercial lawn areas and parallel rights-of-way existing within the 25-foot buffer. However, the Upper Flat Creek Subwatershed was found to have the highest percentage of riparian interruptions in the Flat Creek Watershed, where approximately 89 percent of the observed stream miles had at least one type of interruption.

The high percentage of riparian interruptions in the Upper and Lower Flat Creek Subwatersheds may be attributed to the highly urbanized character of the land. The majority of the interruptions in these subwatersheds can be directly related to structures in the 25-foot riparian buffer, impervious areas, cleared maintained parallel rights-of-way, and residential/commercial lawns. These types of interruptions are typical in highly developed watersheds in urban areas. Conversely, the Embayment Subwatershed contains fewer riparian interruptions because it is less developed and less impacted by urbanization. The majority of encroachments that do occur in the Embayment Subwatershed are man-made structures in the 25-foot riparian buffer, impervious areas, or cleared/maintained perpendicular rights-of-way.

As described in the Ecosystem Restoration Report (ERR), dated September 2008, the highly developed nature of the Upper and Lower Flat Creek Subwatersheds has resulted in straightening and dredging of streams, development in riparian areas, and piping of many stream segments, resulting in poor habitat assessment scores and many instances of aggrading, widening, and incising channels. Stream restoration and Best Management

Practices (BMP) retrofitting projects are recommended as two effective methods to improve streams such as Flat Creek that are affected by nonpoint source pollution and flashy pulses of stormwater. Based on stream and BMP assessments, potential project areas were identified. These include stream restoration measures and BMP retrofit and/or maintenance measures. Stream restoration measures are recommended to return the streambed to a more natural condition, preventing further bank erosion and habitat degradation. BMP retrofit projects are recommended to complement stream restoration projects by treating stormwater before it enters the stream. The purpose of the ERR was to detail the development of watershed improvement measures and create a plan for implementation of a cost-effective project aimed at the improvement of aquatic ecosystems and physical habitat in Flat Creek.

The tentatively selected plan described herein was chosen based on an in-depth Ecosystem Restoration Screening Process. The Watershed Assessment within this planning process resulted in 2 project sites that are located exclusively in the upper Flat Creek headwaters. Table 3.2 provides a list of each site being considered, project site number, map sheet reference number, type of project, and the estimated acreage of these proposed restoration sites, access, and staging areas.

TABLE 3.2

	Project Site No.	Sheet Ref. No.	Project feature	Total Site Acreage (including staging & access)
1	32	C-2 & C-3	Streambank stabilization	2.07
2	33	C-1	Streambank stabilization	2.12
	Total:			4.19

4. REAL ESTATE ACQUISITION

The requirements for lands, easements, rights-of-way and relocations, and disposal/borrow areas (LERRDs) should include the rights to construct, operate, maintain, repair, replace, rehabilitate, and patrol channel/streambank improvements, ecosystem restoration works, and BMP retention basin retrofits (if applicable) within the project area. The areas proposed for restoration will be acquired through a formally approved Bank Stabilization Easement. It is not anticipated that the sites identified for restoration by the USACE-SAM Engineering Division will be acquired in fee simple as the majority of the acquisition is located within existing floodways and along creek banks.

The proposed easement is restrictive in that the encumbered areas cannot be used for any buildings or structures by the property owners, and the easements include the right by the sponsor to remove and /or plant trees and vegetation, excavate or cut the land and dredge, and place dredged or other materials on the site. The easements are to be located on

undeveloped areas of currently minimal use in and along Flat Creek.

In addition to the land rights needed for the restoration sites, there are also LERRD requirements detailed herein for perpetual road easements for access to the sites and temporary staging areas (3 years) for construction purposes. All proposed road easements should not exceed 20' in width. It should be noted that a great deal of consideration was put into identifying the location of the access and staging areas in order to avoid disruption of local businesses and residents, but still meet the needs of the proposed project. Of the proposed 2 project sites, it is estimated that 24 parcels will be impacted, of which 6 are currently vested to the Non-Federal Sponsor. Based on the proposed engineering project footprints, this correlates to an approximate total of 4.19 acres to be acquired for the restoration construction, staging, and access. The acreage breakout and number of parcels impacted is provided in Table 4-1.

Furthermore, it is anticipated that materials excavated during construction will be used for fill where needed or hauled from the project area to an approved designated disposal area. If additional fill is required, it will be obtained from an approved commercial source. Fill obtained from a commercial source is considered a construction cost and would not be credited as part of the LERRD.

The Upper Flat Creek headwaters are in a part of Gainesville that was developed after World War II and features a large proportion of industrial development. As previously mentioned in Section 3 of this report, all three subwatersheds exhibit a high degree of development, but Upper Flat Creek Subwatershed is almost completely built out. To better describe each site and its associated LERRD requirements, the following real estate acquisition narrative will be broken into subsections 1 and 2 below. The specific project sites are identified by their respective site number.

1. SITE # 32 – See Exhibit “D” and Exhibit “D-1”

a. SHEET REFERENCE NO: C-2 and C-3

b. LOCATION: Site #32 is situated along both banks of Flat Creek between Dorsey Street and Atlanta Highway

c. DESIGN TYPE: Streambank Stabilization

d. SITE DESCRIPTION: The proposed project consists of approximately 1,800 feet of streambank restoration between Dorsey Street and Atlanta Highway. These stabilizations are intermittently planned for both sides of the creek along this distance. According to the Hall County Flood Maps, Sheets 187 and 189, Flat Creek and its banks are considered to be in the floodway. A wetlands determination was not currently available, but floodway limitations are very similar to wetlands class development limitations. There are no improvements that will be impacted by site footprint as no development is allowed in the floodway. The zoning along this stretch of creek is a mixture of

General Business, Industrial, and Residential uses. An environmental restoration easement covering approximately 1.20 acres is required for the proposed streambank restoration.

- e. **DESIGN FEATURES/RESTORATION COMPONENTS:**
 - i. **Bank Grading and Stabilization:** Site clearing and grubbing, grading, live willow stakes, turf matrix, riprap, site restoration seeding/mulching, root wad/footer logs, bracing boulders.
 - ii. **Engineered Rock Riffle:** riprap and 3' diameter boulders.
 - iii. **Riparian Zone Restoration:** Native hardwood plantings and vegetation/seeding/mulching.

 - f. **O&M CONSIDERATIONS:** Stabilization and vegetative management of streambank.

 - g. **ACCESS:** A perpetual road easement containing approximately .63 acres is expected to be acquired along an existing parallel utility road that is used for maintaining the sanitary sewer line. This route will allow for the least amount of disruption to adjoining landowners. It is possible that the NFS already holds the necessary rights for this access road.

 - h. **STAGING:** A temporary work area easement (3 years) containing approximately .24 acres will be required at various points along the project footprint in order to construct. Locations of these staging areas have been placed in existing clear areas along the access road.
2. **SITE # 33 – See Exhibit “E” and Exhibit “E-1”**
- a. **SHEET REFERENCE NO:** C-1

 - b. **LOCATION:** Site #33 is located along the banks of Flat Creek between Highland Terrace and Hilton Drive, Gainesville, GA.

 - c. **DESIGN TYPE:** Streambank Stabilization

 - d. **SITE DESCRIPTION:** The proposed project consists of approximately 700 feet of streambank restoration between Highland Terrace and Hilton Drive. The streambank restoration and stabilization measures are intermittently planned for both sides of the creek along this distance. According to Hall County Flood Maps, Sheets 186 and 188, Flat Creek and its banks are considered to be in the floodway. A wetlands determination was not currently available, but floodway limitations are very similar to wetlands class development limitations. There are no improvements that will be impacted by site footprint as no development is allowed in the floodway. The zoning along the north side of the creek is both for industrial and residential uses. The

zoning on the south side of the creek is for industrial use only. An environmental restoration easement containing approximately .80 acres is required for the proposed streambank restoration.

e. DESIGN FEATURES/RESTORATION COMPONENTS:

- i.** Bank Grading and Stabilization: Site clearing/grubbing/grading, live willow stakes, turf matrix, riprap, and site restoration seeding/mulching
- ii.** Engineered Rock Riffle: riprap and 3’ diameter boulders
- iii.** Riparian Zone Restoration: Native hardwood plantings and vegetation/seeding/mulching

f. O&M CONSIDERATIONS: Stabilization and vegetative management of streambank.

g. ACCESS: Ingress and egress at the site is along an existing sanitary sewer line easement on the north side of Flat Creek which extends from Hilton Drive. Unless it is determined by the NFS that this existing easement cannot be used for project access, then a perpetual road easement covering approximately 1.2 acres will be required for access.

h. STAGING: A temporary work area easement covering approximately .12 acres is required for staging construction equipment for an estimated period of 3 years. The staging area has been placed in existing clear area adjoining the access road.

Table 4-1

Sheet Reference #	Site# / Measure	Feature	Acreage Breakout	Parcel ID #'s impacted	Ownership
C-2 / C-3	32	Restoration	1.20	North side of Creek:	Private
		Staging area	0.24	01131-001022	“
		Access	0.63	01131-001024A	
				01131-001025	
				01131-001026A	
				01131-001029	
				01131-001031B0	
				01131-001031A	
				01131-001032	
				01131-001033A	
				01131-001034	
				00129-001020	
				001129-001004	
				r/w – no parcel#	
		South side of Creek:	City-owned		
		01131-001036	“		
		01131-001035			
		01131-001034			
		01131-001031			
		01131-001032			
		01131-001033			
		01129-001005	Private		
	Total:		2.07		

C-1	33	Restoration	.80	North side of Creek:	
	33	Staging area	.12	00127-001096	
	33	Access	1.2	00127-003083	Private
				South side of Creek:	
				00128-002009G	
				00127-003133	
	Total:		2.12		
	Total:		4.19	24	

5. UTILITY RELOCATION

There are no known utility relocations within the footprint required for the project.

6. EXISTING PROJECTS

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

7. ENVIRONMENTAL IMPACTS & POTENTIAL HAZARDOUS, TOXIC, RADIOACTIVE WASTE (HTRW)

Construction of the proposed project is not expected to cause adverse environmental impacts. However, the National Environmental Policy Act (NEPA) portion of the combined report will be formalized into the combined NEPA document. Several key components of the NEPA document have essentially been completed as part of the planning process to date and are incorporated into this study report. The NEPA document will be completed concurrently with the study report. All relevant issues typically addressed in the NEPA process will be included in the final report.

A Phase I Environmental Site Assessment (ESA) and HTRW report was completed for the subject properties impacted by Site Alternatives 32 and 33. This assessment included site reconnaissance that indicated no visible Recognized Environmental Conditions (RECs) upon the subject properties. Environmental questionnaires were mailed to surrounding property owners and those responses received revealed no additional environmental restraints. Historical aerial photographs portray only gradual residential development surrounding the subject properties. In addition, research was conducted via the use of environmental databases to pinpoint possible environmental or HTRW conditions on the subject or adjacent properties.

The final opinion, as further documented in the Environmental Appendix to the main study report, reveals that adjacent properties to the proposed sites appear to have been impacted these stream segments based on the reported spills and deteriorated habitat quality found in the 2009 watershed study (CH2M HILL, 2009). Most impacts have been transient in nature. Overall creek water quality has been deteriorated due to long term

surface run-off from the surrounding municipal area. However, there was no evidence identified that the creek bottom sediments or banks of the creek have been environmentally impacted. The identified RECs are not anticipated to have a negative impact on the USACE Mobile District proposed property use to ecologically restore the creek banks and prevent further erosion. As such, these sites appear to be suitable for the implementation of an aquatic ecosystem restoration project, under Section 206 of the Water Resources Development Act of 1996, as amended.

8. NON-FEDERAL SPONSOR RESPONSIBILITIES, CAPABILITIES, AND RISK NOTIFICATION

The City of Gainesville and Hall County, GA are the combined Non-Federal Sponsors (NFS) for the proposed project. 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.

Title to any acquired real estate will be retained by the NFS and will not be conveyed to the United States Government. The government will require access rights be provided by the NFS for entry to the project. Prior to advertisement of any construction contract, the NFS shall furnish to the government an Authorization for Entry for Construction (Exhibit “F”) 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.

Based on documentation provided by the City of Gainesville, the NFS has “quick take” authority which is an expedited version of condemnation that allows the local government to file a complaint in circuit court and gain immediate title to the property. Furthermore, the City of Gainesville Charter, Sec. 2, states that the “*City of Gainesville shall have the right and privilege of eminent domain and acting through its city commission or successor governing body is authorized and empowered to condemn property within its corporate limits, and also without its corporate limits anywhere in the State of Georgia for municipal purpose.*” In addition to providing the right of condemnation for the typical purposes of erecting public buildings, public utilities and their associated distribution systems, public streets, sidewalks, and parking, this condemnation authority also extends to cover “*other public purposes and improvements.*” This authority statement is thereby understood to cover ecosystem restoration projects.

During the acquisition process, 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 proposed project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act(s).

An Assessment of Non-Federal Sponsor's Real Estate Acquisition Capability Form was accepted and acknowledged by the NFS on 23 June 2010 which is attached hereto as Exhibit "H". The NFS does have the legal authority to acquire and hold title to real property. It is the intent of the NFS to use in-house personnel or contractor support to acquire the necessary land interests for the proposed project.

The NFS is entitled to receive credits against its share of project costs for the value of lands it provides and the value of any relocation that may be required for the project. The value of the real property interests will also include the documented incidental costs of acquiring such interests, as determined by the Government, to be reasonable. Credit for sponsor owned lands that may have been acquired more than 5 years from the effective date of the Project Partnership Agreement (PPA) will not include incidental costs. Credit for real property owned by the sponsor at the effective date of the PPA will be based on the fair market value of the land at that time. For land acquired after the effective date of the PPA, credit will be based on the fair market value at time of acquisition and administrative costs will be based on actual documented costs submitted by the sponsor.

9. GOVERNMENT OWNED PROPERTY

No federal government owned lands are within the LER required for the project.

10. HISTORICAL SIGNIFICANCE

At this time, there are no known significant cultural resources in the proposed project area. However, to comply with Section 106 of the National Historic Preservation Act, the restoration feature locations that comprise the selected feature formulation(s) that will be carried forward must be investigated for archaeological resources or documented as to why no archaeological survey was conducted. If an archaeological site is encountered during the Phase I investigation, sufficient work shall be conducted so as to definitively determine the site's National Register of Historic Places eligibility. Sites determined eligible for the NRHP will be avoided, or, if not possible, mitigated in accordance with 36 CFR 800.

11. MINERAL RIGHTS

There are no mineral rights to be acquired within the scope of the proposed project. During site visits, no mineral activity was observed.

12. 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. Currently, there is no expectation for relocation benefits based on the project footprints.

13. ATTITUDE OF PROPERTY OWNERS

During the course of this study, public involvement and education were an important method of obtaining feedback from local citizens and potentially impacted property owners, as well as an avenue for promoting watershed management and stewardship. As such, public meetings were held in the City of Gainesville on August 8, 2007, March 25, 2008, and August 26, 2008 to educate and inform citizens on the project and address any questions or concerns. These public meetings were advertised through web sites and published public notices.

Throughout this process, there were no objections noted regarding the proposed project by landowners within the project area. As a result, no opposition is anticipated. However, it is noted that landowners have not been individually contacted regarding proposed land acquisitions because acquisition authority has yet to be granted.

14. ACQUISITION SCHEDULE

The NFS has indicated that existing in-house personnel are capable of acquiring the real estate interests necessary for the proposed project. If needed, the NFS can also obtain contractor support in a timely fashion in order to meet future acquisition milestones. It is projected that acquisitions will take approximately 12 months, and can begin when final plans and specs have been completed and the PPA has been executed. The NFS, USACE Project Manager and Real Estate Technical Manager will formulate the milestone schedule upon project approval to allow adequate time to complete the real estate acquisition to meet the advertisement for construction date(s).

In addition, the NFS has accepted and acknowledged the terms and conditions set out in the Non-Federal Sponsor Risk Notification Letter which is attached hereto as Exhibit "I". In sum, this risk notification letter advises the NFS of the risks associated with land acquisition prior to the execution of the PPA or prior to the Government's formal notice to proceed with said acquisition.

15. RECOMMENDED ESTATES FOR PROPOSED PROJECT

- a) **BANK PROTECTION EASEMENT:** This standard easement is recommended for the proposed streambank restoration footprints along Flat Creek.

A perpetual and assignable easement and right-of-way in, on, over and across the land hereinafter described for the location, construction, operation, maintenance, alteration, repair, rehabilitation and replacement of a bank protection works, and for the placement of stone, riprap and other materials for the protection of the bank against erosion; together with the continuing right to trim, cut, fell, remove and dispose therefrom all trees, underbrush, obstructions, and other vegetation; and to remove and dispose of structures or obstructions within the limits of the right-of-way; and to place thereon dredged, excavated or other fill material, to shape and grade said land to desired

slopes and contour, and to prevent erosion by structural and vegetative methods and to do any other work necessary and incident to the project; together with the right of ingress and egress for such work; 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.

- b) **TEMPORARY WORK AREA EASEMENT:** The standard Temporary Work Area Easement will be used for those sites identified as staging areas for construction.

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 City of Gainesville and/or Hall County, GA, the Non-Federal Sponsors, for use by the Non-Federal Sponsor, its representatives, agents, and contractors as a (work area), including the right to (borrow and/or deposit fill, spoil and waste material thereon) (move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the Flat Creek Watershed Aquatic Ecosystem Restoration 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.

- c) **ROAD EASEMENT:** Due to the Operation and Maintenance (O&M) requirements expected after construction of these restoration measures, the standard perpetual road easement is recommended for the future access to the project sites.

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, maintenance, alteration replacement of (a) road(s) and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

16. REAL ESTATE ESTIMATE

A Gross Appraisal Value Estimate, effective date of 6 May 2010, was prepared by USACE-SAM-RE-P staff appraiser to determine an estimated fair market value of the lands required for the proposed project. The Market Data Approach was determined to be

a sound approach in that sales in the subject neighborhood were used to provide a value indicator for the subject properties. Land class and other site specific information was used in the valuation. According to current guidance provided by SAD, a gross appraisal was the prudent means of applying land values for this particular project. Land values are shown in Table 16-1. *(Note: It is recognized that a less stringent reconnaissance level appraisal can sometimes be performed in lieu of a gross appraisal. This can be due to budgetary restrictions imposed by the project and the limited site information available which would render a gross appraisal inefficient from an administrative cost standpoint).*

The estimated real estate costs in Table 16-1 include the cost for acquisition of land and federal and non-federal administrative costs. Administrative costs are those costs incurred for verifying ownership of lands, surveys, mapping and legal descriptions, certification of those lands required for project purposes, appraisals, title insurance/legal opinions, negotiations, oversight analysis and/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 16-1
Real Estate Cost Estimate Summary**

a. Lands and Improvements 24 parcels				189,000
			subtotal	189,000
b. Mineral Rights				0
c. Damages				0
d. P.L. 91-646 Relocation costs				0
e. Administrative Cost				34,000
	Relocation	Acquisition	Total	
Federal	n/a	8,000	8,000	
Non-Fed	n/a	26,000	26,000	
	0	34,000	34,000	
Sub-Total				223,000
Contingencies (25%)				55,750
TOTAL				278,750
ROUNDED				280,000

The Baseline Cost Estimate for Real Estate (BCERE) 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 BCERE is then incorporated into the Total Current Working Estimate utilizing the Microcomputer Aided Cost Engineering System (MCACES) in accordance with ER 5-1-11, ER 37-2-10, and ER 1110-2-1302. . The Chart of Accounts at Table 16-2 shows the CWBS for real estate activities inclusive of all proposed sites.

**Table 16-2
Chart of Accounts**

01A	PROJECT PLANNING	FEDERAL	NON-FEDERAL	TOTALS
	Other			
	Project Cooperation Agreement			
01AX	Contingencies (25%)			
	Subtotal			
	LANDS AND DAMAGES/PERMITS			
01B40	Acquisition/Review of NFS	8,000		8,000
01B20	Acquisition by NFS		26,000	26,000
01BX	Contingencies (25%)	0	0	0
	Subtotal	8,000	26,000	34,000
01F	PL 91-646 ASSISTANCE		0	0
01F20	By PS		0	0
01FX	Contingencies (25%)		0	0
	Subtotal		0	0
	REAL ESTATE LAND PAYMENTS			
01R1B	Land Payments by NFS			189,000
01R2B	PL91-646 Relocation Payment by NFS		0	0
01R2D	Review of NFS	8,000		0
01RX	Contingencies (25%)			55,750
	Subtotal	8,000	26,000	278,750
	TOTALS			278,750.00
	ROUNDED			280,000.00

17. NAVIGATIONAL SERVITUDE

The Federal Navigational Servitude doctrine arises from two related components: navigation power which is derived from the commerce clause of the U.S. Constitution giving Congress regulatory power over navigable waters; and navigation servitude which provides that certain private property may be taken, without compensation to the

landowner, if the taking is necessary to exercise the navigation power. Private ownership of land below navigable or tidal waters is acquired and held subject to the dominant public right of navigation. This dominant public right may be exercised by Congress without giving rise to a compensable taking. Exercise of Federal Navigational Servitude is not applicable to the subject project as the focus of this project is for ecosystem restoration rather than for commerce related purposes.

18. EXTENT OF INDUCED FLOODING

Based on modeling conducted by CH2M HILL, there is no induced flooding expected for Site #32 or Site #33 as these streambank restoration projects will not affect any areas outside of the existing floodplain. Based on these modeling expectations, no additional acquisitions will be required as a result of induced flooding.

19. APPLICATION OF ZONING ORDINANCES

Currently, there is no expectation of the NFS enacting zoning ordinances in lieu of, or to facilitate, land acquisition in connection with the proposed project.

20. EXHIBITS/FIGURES/TABLES

1. Exhibit “A” – Vicinity Map of Study Area
2. Exhibit “B” – Hall County, Flat Creek Subwatersheds
3. Exhibit “C” – Stream Restoration and BMP Retrofit Project Vicinity Locations
4. Exhibit “D” – Project Site #32 Tax Map & Photos
5. Exhibit “D-1” – Project Site #32 Footprint
6. Exhibit “D-1” – Project Site #32 Footprint (continued)
7. Exhibit “E” – Project Site #33 Tax Map & Photos
8. Exhibit “E-1” – Project Site #33 Footprint
9. Exhibit “F” – Authorization for Entry for Construction
10. Exhibit “G” – Assessment of NFS RE Acquisition Capability
11. Exhibit “H” – NFS Risk Notification Letter

Exhibit "A" – Vicinity Map of Study Area

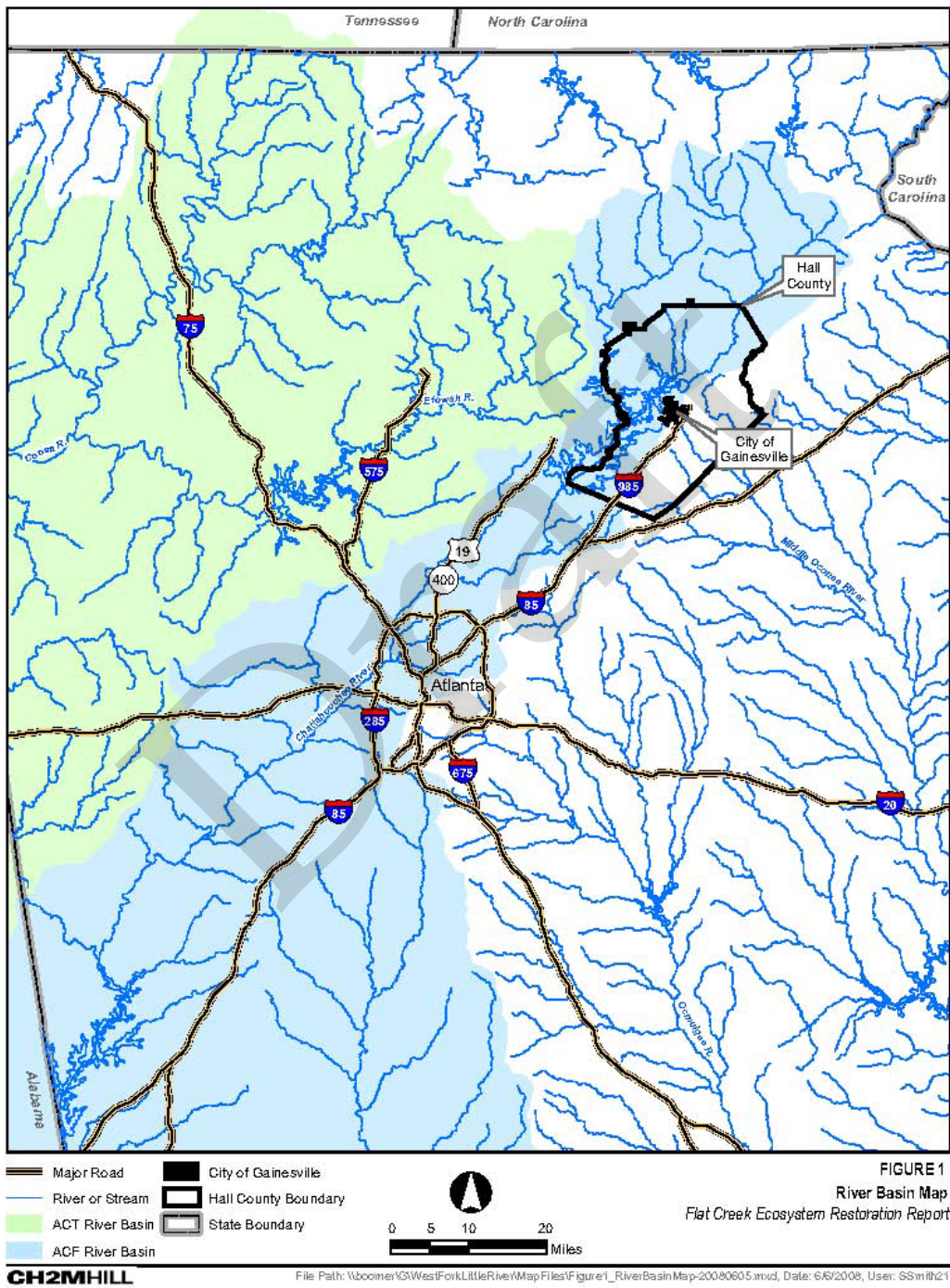


Exhibit “B” – Hall County, Flat Creek Subwatersheds
Note: Upper Flat Creek Subwatershed is outlined in red

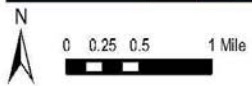
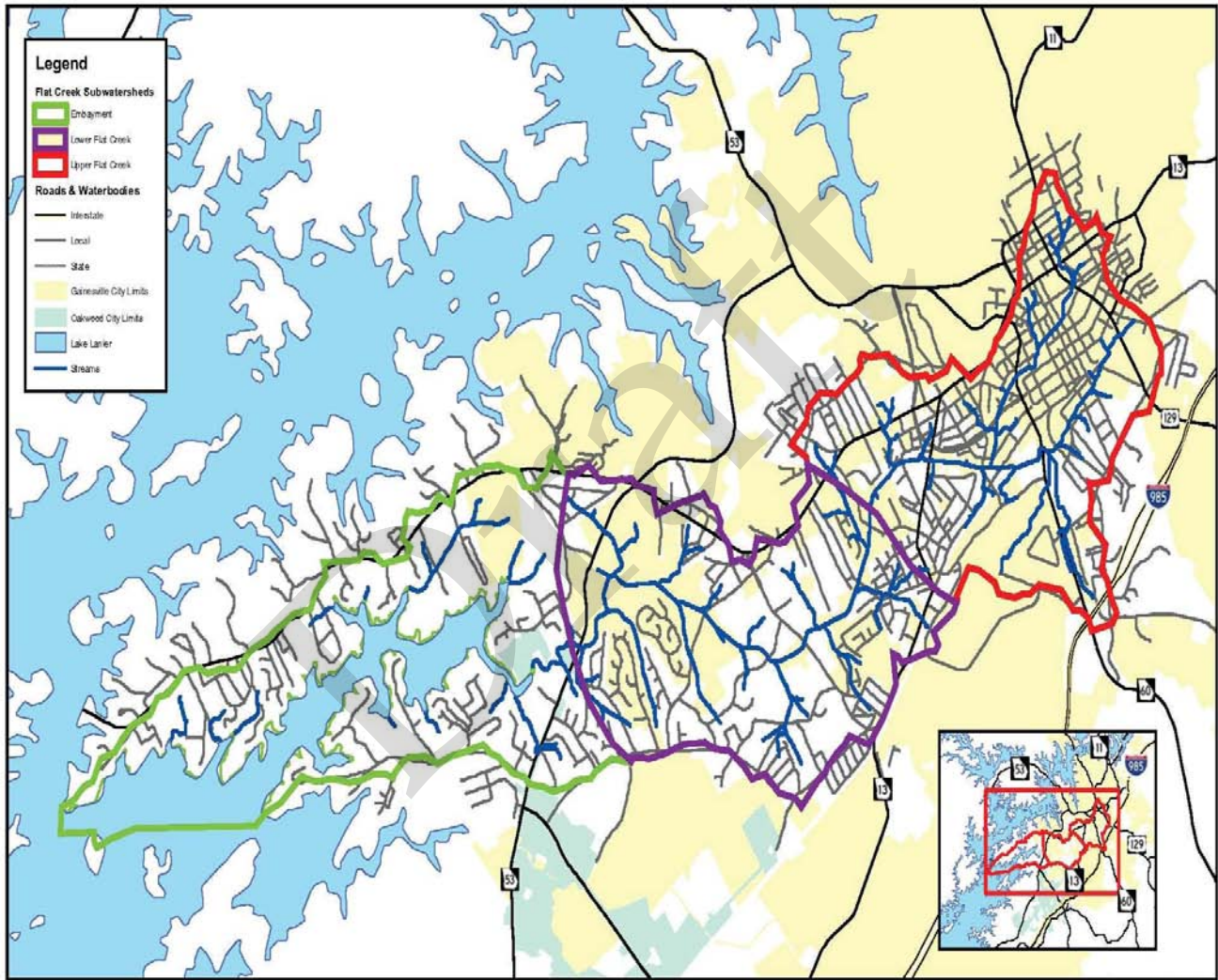


FIGURE 2
 Flat Creek Watershed
 Flat Creek Ecosystem Restoration Report
CH2MHILL

\\PEACHTREE\PROJ\CT11\YOF\GAINESVILLE\GAS\56886\GIS\365886_FLATCREEK\MAP\DOCS\UPDATED\FIGURE2-1.MXD FIGURE2-1.PDF 7/20/2007, DD\clman

Exhibit "C" – Stream Restoration and BMP Retrofit Project Vicinity Locations

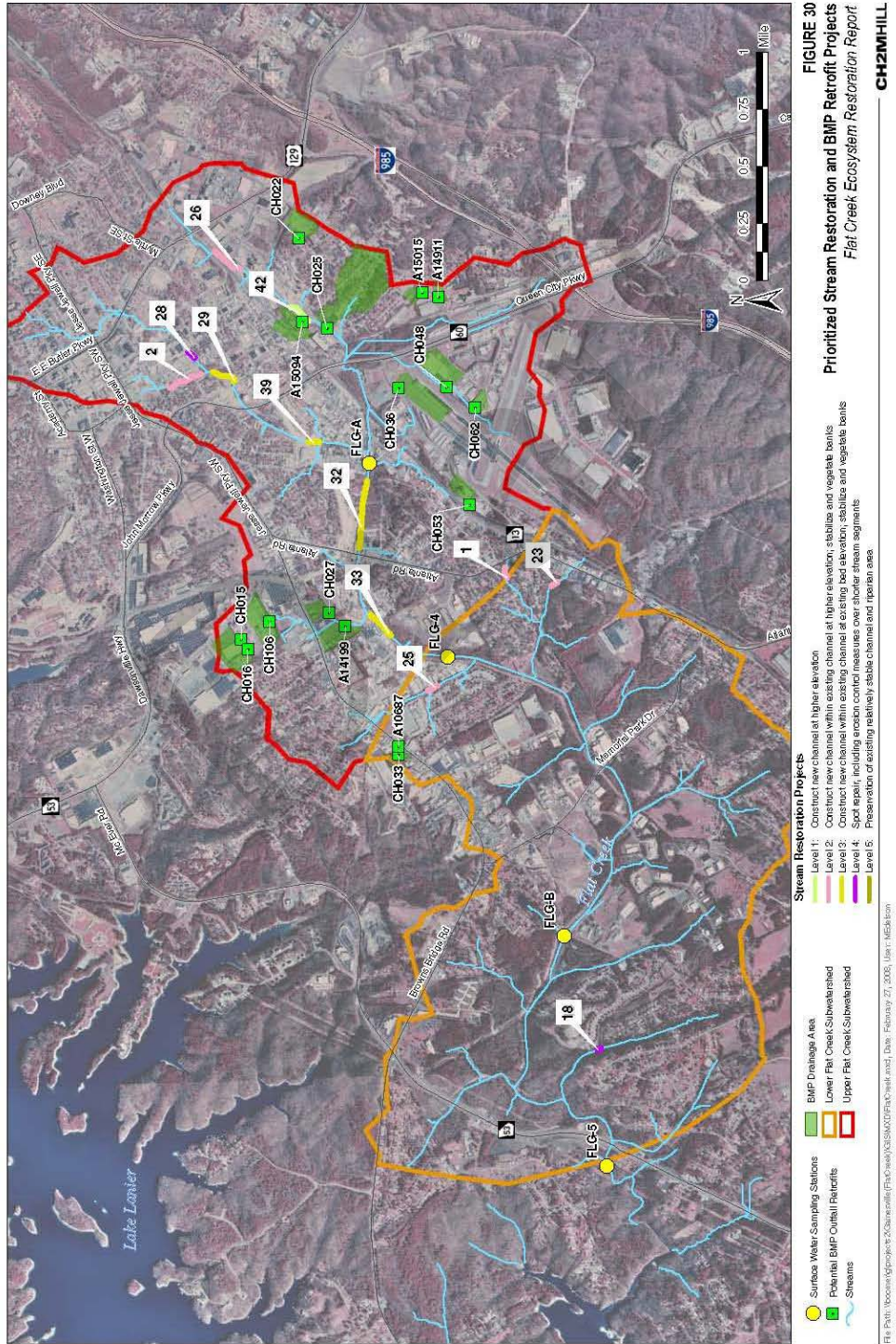


EXHIBIT “D” – Project Site #32

Flat Creek Recommended Stream Restoration Project #32

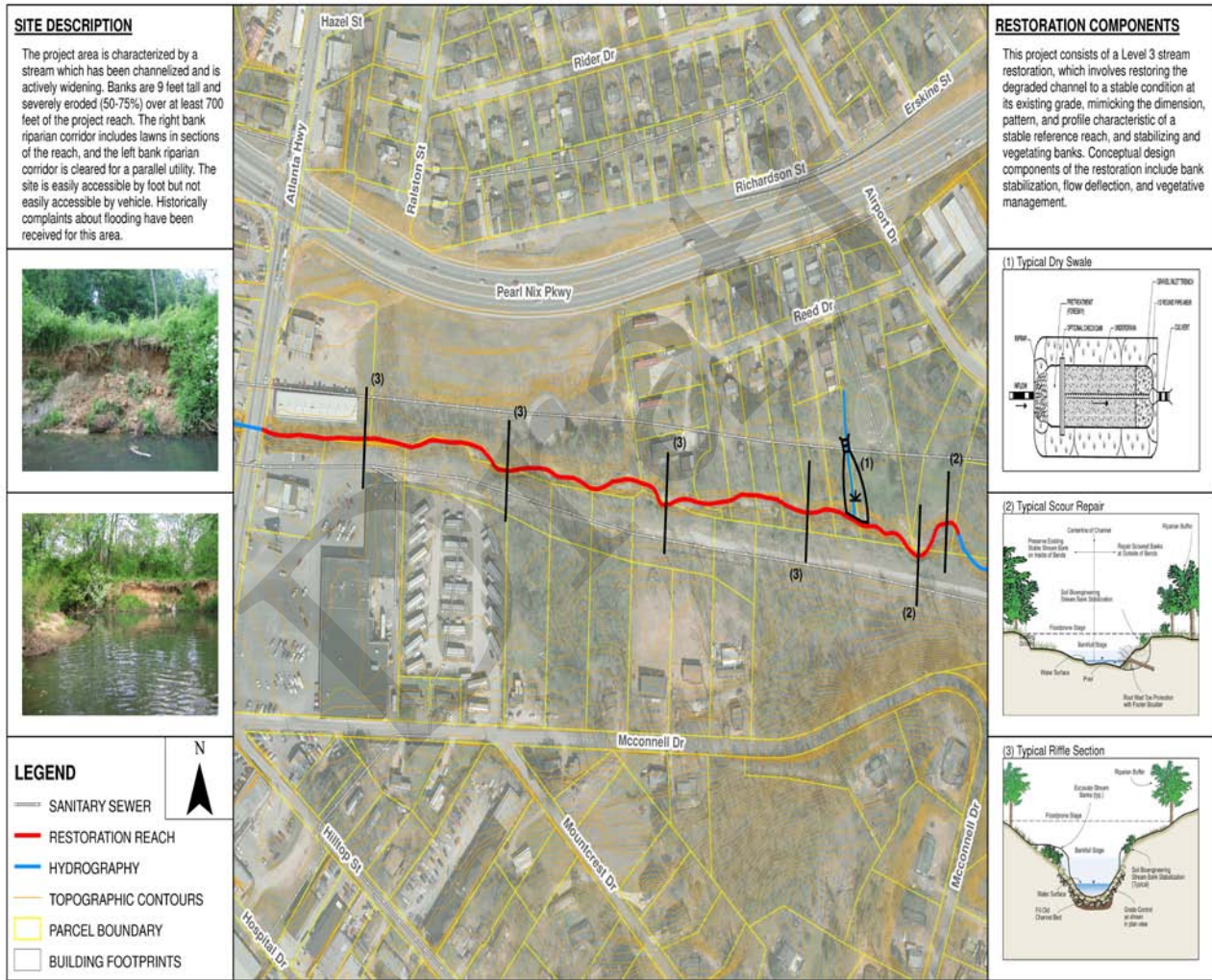


Exhibit "D-1" – Project Site #32

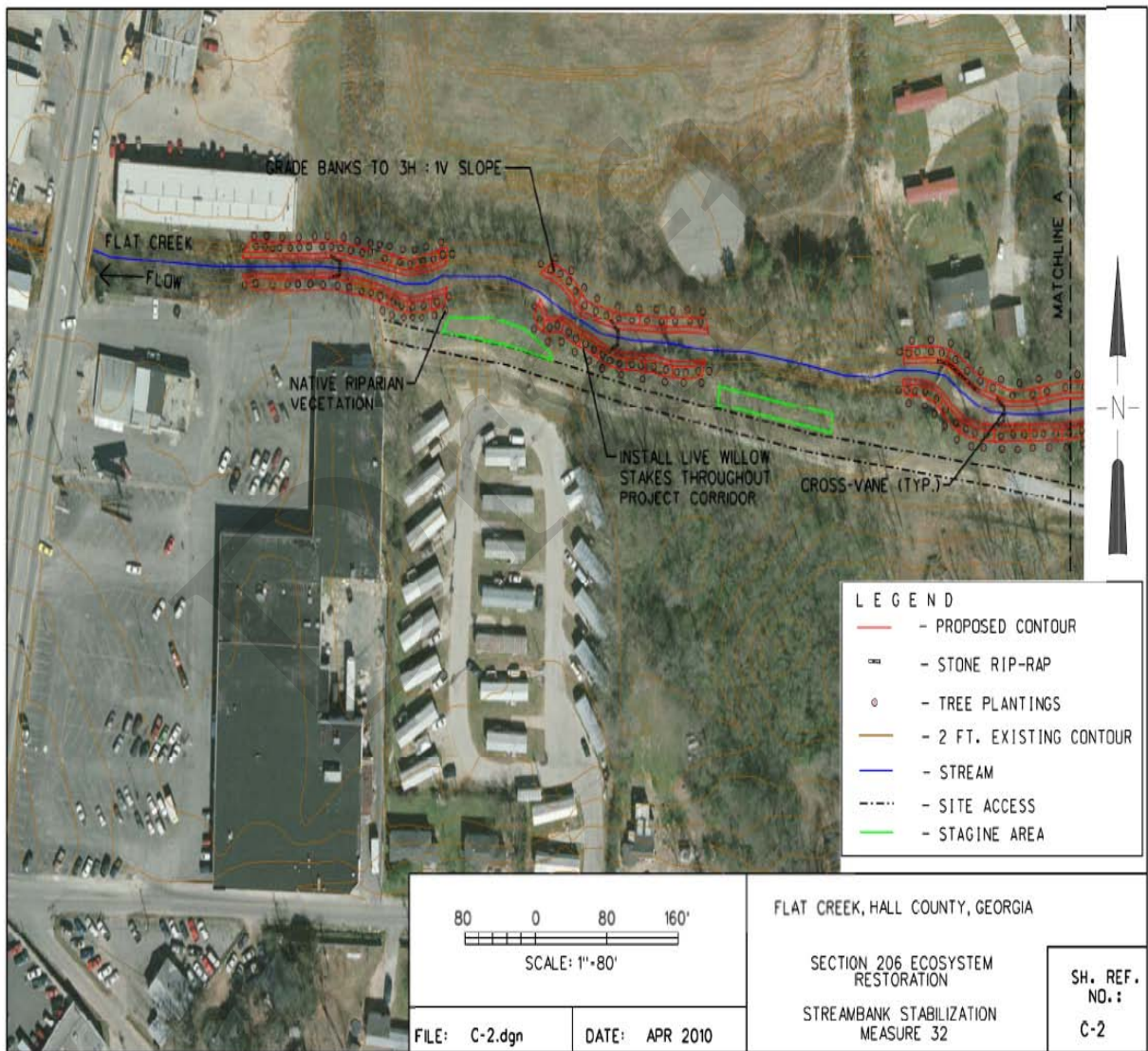


Exhibit “D-1” – Project Site #32 (continued)

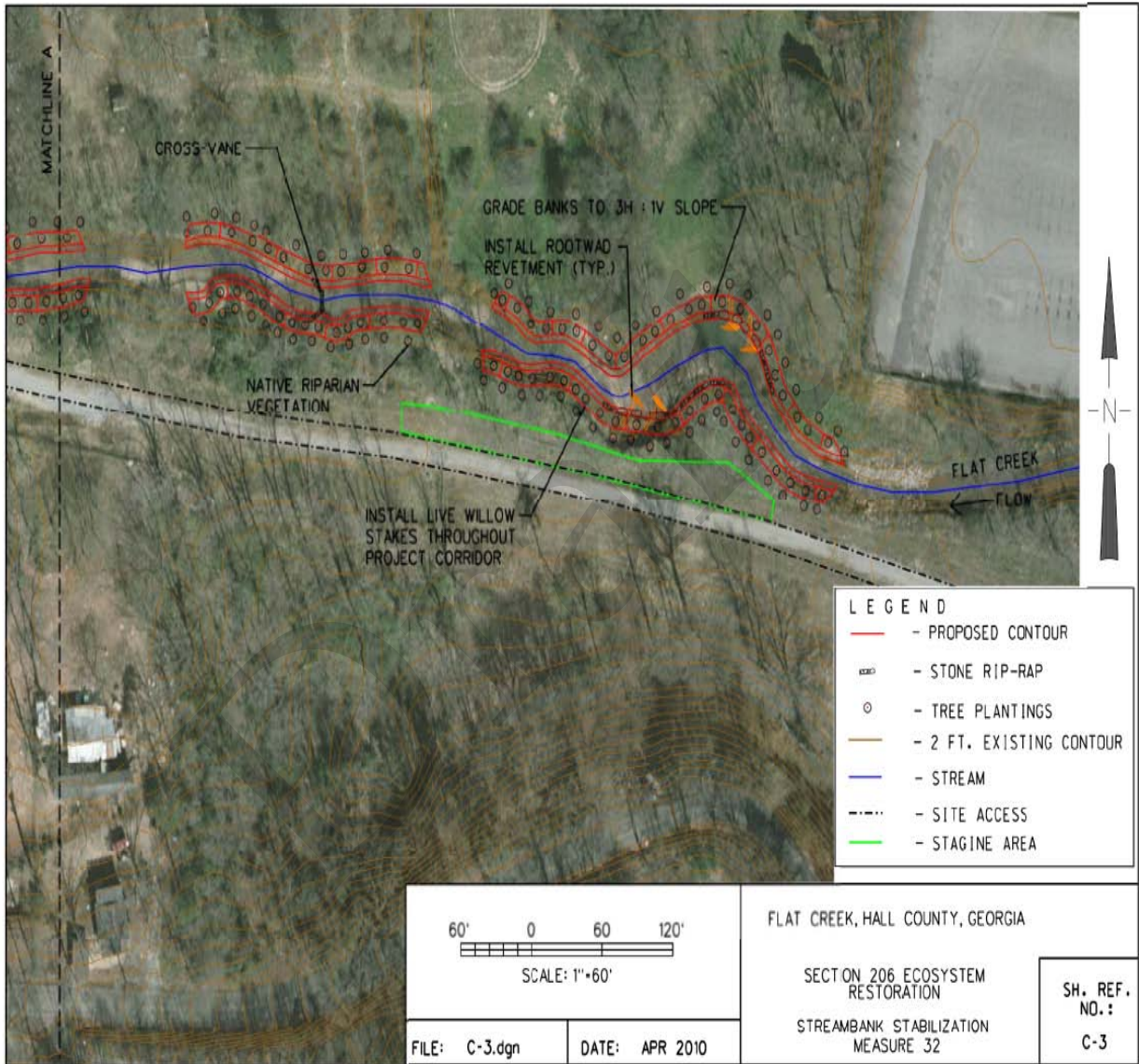


Exhibit “E” – Project Site #33

Flat Creek Recommended Stream Restoration Project #33

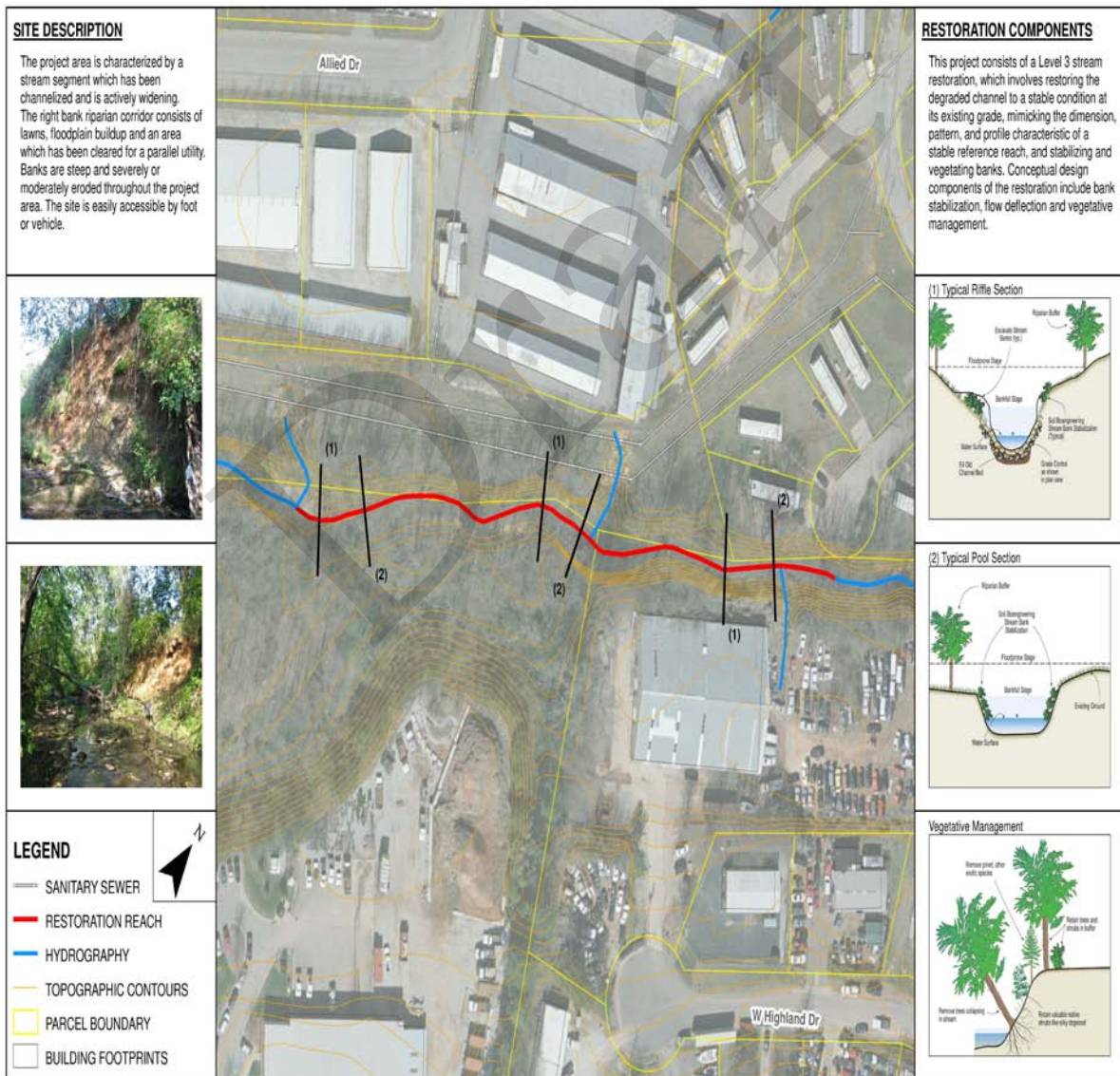


Exhibit "E-1" – Project Site #33

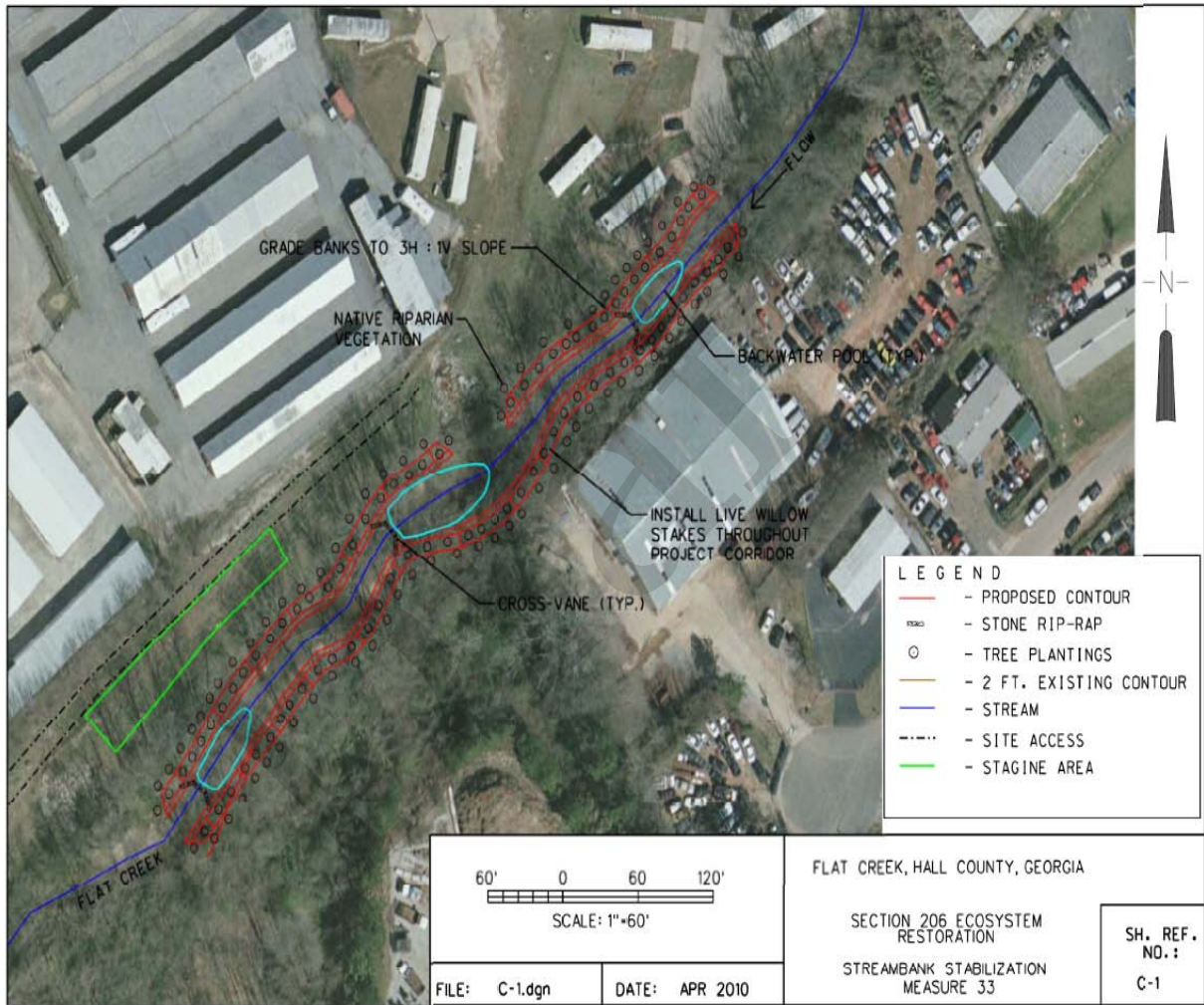


Exhibit “F”

AUTHORIZATION FOR ENTRY FOR CONSTRUCTION

I, (name of accountable official), (title) for (name of non-Federal sponsor), do hereby certify that the (name of non-Federal sponsor) has acquired the real property interests required by the Department of the Army, and otherwise is vested with sufficient title and interest in lands to support construction of (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 Office, (city and state)

WITNESS my signature as (title) for (name of non-Federal sponsor) this _____ day of _____, 20_____.

BY: (name)
(title)

ATTORNEY’S CERTIFICATE OF AUTHORITY

I, (name), (title of legal officer) for (name non-Federal sponsor), certify that (name of non-Federal sponsor) has 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 (title) for (name of non-Federal sponsor), this _____ day of _____, 20_____.

BY: (name)
(title)

Exhibit "G"

SECTION 206, FLAT CREEK
ECOSYSTEM RESTORATION PROJECT
HALL COUNTY, GEORGIA

CITY OF GAINSVILLE, GEORGIA – NON FEDERAL SPONSOR

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

1. LEGAL AUTHORITY:

- a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes? *YES*
- b. Does the sponsor have the power of eminent domain for this project? *YES*
- c. Does the sponsor have "quick-take" authority for this project?
- d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? *YES*
- e. Any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? *No*
 - i. Private Property:
 - ii. State-Owned Property:

2. HUMAN RESOURCE REQUIREMENTS:

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended? *No*
- b. If the answer to 2(a) is "yes", has a reasonable plan been developed to provide such training?
- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? *YES*

- d. Is the sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule? *YES*
- 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? (If "yes", provide description). *No*

3. OTHER PROJECT VARIABLES:

- a. Will the sponsor's staff be located within reasonable proximity to the project site? *YES*
- b. Has the sponsor approved the project/real estate schedule milestones (answer is contingent upon whether the real estate milestones have been defined at this point in the project)?

4. OVERALL ASSESSMENT:

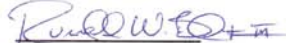
- a. Has the sponsor performed satisfactorily on other USACE projects (if applicable)? *N/A*
- b. With regard to this project, the sponsor is anticipated to be: Highly capable; Fully capable; Moderately capable; Marginally capable; Insufficiently capable. (If sponsor is believed to be insufficiently capable, please provide explanation). *N/A*

5. COORDINATION:

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

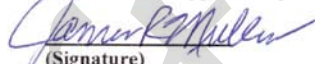
Accepted by Non-Federal Sponsor:
Jim Collins (Signature) *JIM COLLINS*
 ASSISTANT DIRECTOR (Title)
 GAINESVILLE PUBLIC UTILITIES

Prepared by:


(Signature)

RUSSELL W. BLOUNT III
PLANNING SECTION
REAL ESTATE DIVISION

Reviewed and Approved by:


(Signature)

JAMES R. MULLENS
CHIEF, PM&C BRANCH
REAL ESTATE DIVISION
U.S. ARMY CORPS OF ENGINEERS
MOBILE DISTRICT

Draft

Exhibit "H"



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

REPLY TO
ATTENTION OF:

Real Estate Division
Planning Section

23 June 2010

City of Gainesville Public Utilities
Attn: Tim Collins, Assistant Director
757 Queen City Parkway
Gainesville, GA 30501

Subject: Section 206, Flat Creek Aquatic Ecosystem Restoration Project, City of Gainesville,
Hall County, GA. - Non-Federal Sponsor Risk Notification Letter

Dear Mr. Collins,

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

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


- (1) Congress may not appropriate funds to construct the proposed project;
- (2) The proposed project may otherwise not be funded or approved for construction;
- (3) A PPA mutually agreeable to the non-Federal sponsor and the Government may not be executed and implemented;
- (4) The non-Federal sponsor may incur liability and expense by virtue of its ownership of contaminated lands, or interests therein, whether such liability should arise out of local, state, or Federal laws or regulations including liability arising out of CERCLA, as amended;
- (5) The non-Federal sponsor may acquire interests or estates that are later determined by the Government to be inappropriate, insufficient, or otherwise not required for the project;
- (6) The non-Federal sponsor may initially acquire insufficient or excessive real property acreage which may result in additional negotiations and/or benefit payments under P.L. 91-646 as well as the payment of additional fair market value to affected landowners which could

have been avoided by delaying acquisition until after PPA execution and the Government's notice to commence acquisition and performance of LERRD;


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

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

Accepted on behalf of the Non-Federal
Sponsor:

 **TIM COLLINS**
(Signature)
ASSISTANT DIRECTOR
GAINESVILLE PUBLIC UTILITIES

Prepared by:


Russell W. Blount III
Planning Section
Real Estate Division
Mobile District
U.S. Army Corps of Engineers