

FEASIBILITY REPORT
TOPEKA LOCAL LEVEE PROTECTION PROJECT
TOPEKA, KANSAS

APPENDIX C
REAL ESTATE PLAN

FEBRUARY 2008

DEPARTMENT OF THE ARMY
Kansas City District, U.S. Army Corps of Engineers
Kansas City, Missouri

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**REAL ESTATE PLAN
For
TOPEKA LOCAL LEVEE
PROTECTION PROJECT**

SHAWNEE COUNTY, KANSAS

This Real Estate Plan (REP) information is developed in support of the Feasibility Study for the subject project. The authority for this feasibility study is the continuing authority of Section 216 of the 1970 Flood Control Act. The Reconnaissance Report published in September 1997 identifies a potential Federal interest in flood risk management measures. The non-Federal sponsor (NFS) for the Feasibility Study is the City of Topeka. The purpose of this plan is to include information on any real estate activities that may be involved for the identified project. The project is located on the Kansas River in Shawnee County, Kansas. The project is currently estimated to involve approximately 22 parcels and 217 acres (Table 2.1).

1. PROJECT PURPOSE: To increase the reliability of the existing system to provide greater risk management against rare flood events as identified in the Reconnaissance Study and in support of the Feasibility Study. The Federal Levee System which provides flood risk management in the Topeka area includes approximately 38 miles of levee.

Geotechnical concerns are related to underseepage beneath the levee which may occur during high flow events. If underseepage is allowed to surface on the land side uncontrolled during a flood, it can create a failure of the levee foundation by piping. Underseepage pressures can be countered using either underseepage berms (additional soil placed on the ground surface) to prevent flow to the surface, or by pressure relief wells that provide a controlled path for the underseepage. Berms are the preferred method based on lower installation cost and maintenance needs, but require more real estate for installation and borrow areas.

Stability concerns have been identified at several of the concrete floodwall and closure gap structures. The direct pressure of high water on one side of the structure during a flood may cause either sliding, overturning, or breaking of the structure. The primary method to counter this concern is the installation of a stability berm on the land side of the structure to provide additional support. Structures that cannot be corrected using stability berms require replacement.

2. DESCRIPTION OF LANDS, EASEMENT, RIGHTS-OF-WAY, RELOCATION, DISPOSAL (LERRD): Project purposes require acquisition at a minimum of temporary easements that will include borrow area sites and temporary access. Temporary work area construction easements will be utilized for the underseepage berms because they will fall outside of the critical zone of the levee and will not be impacted by land management activities. No Fee Simple Acquisition is required for levee right-of-way (r-o-w) on this project. A disposal site is not required as the project plan is for all trees and branches to be burned on site and all topsoils to be used on the new surfaces. Construction debris will be hauled to a commercial landfill and therefore included as a construction cost.

Estates to be acquired by the NFS(s) are explained below and further detailed in Table 2.1:

a. Temporary Work Area Construction Easement: A temporary easement and right-of-way in, on, over and across (the land to be described) for a period not to exceed three (3) years,

beginning with the date of possession by the City of Topeka, for use by the United States, its representatives, agents, and contractors as a temporary ingress and egress route, construction area, and work area, including the right to move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the Topeka Local Levee Protection Project, Flood Risk Management 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.

b. Temporary Work Area Construction Easement, Borrow: A temporary easement and right-of-way in, on, over and across (the land to be described) for a period not to exceed three (3) years, beginning with the date of possession by the City of Topeka, for use by the United States, its representatives, agents, and contractors as a temporary borrow area, including the right to ingress and egress, 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 Topeka Local Levee Protection Project, Flood Risk Management 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.

Below is a summary of estates and project features to be acquired or utilized, estimated acres and estimated land values for the Non-Federal sponsor. **Note:** Land values are based on a Gross Appraisal, performed by Omaha District, U.S. Army Corps of Engineers, dated February 8, 2007.

ESTATE/Project Feature	ESTIMATED ACRES	ESTIMATED LAND VALUE
Temporary Construction Easement, Access and Work Area (3- year period) 5.5% FMV	12	\$98,900.00
Temporary Construction Easement, Borrow (3- year period) 100% FMV*	179	\$539,800.00
Deed Restriction (mitigation site on sponsor-owned land)	26	\$102,638.00
Estimated TOTAL	22 parcels 217	\$741,338.00

***Note:** Borrow is 100% Fair Market Value (FMV) due to the extent of top soil removal, up to 5 feet in some locations which will leave the land unusable for its current agricultural purposes. A safe assumption for planning purposes is to expect paying nearly 100% of FMV for this property. Final locations and quantities that will be taken from each site have not been finalized. Given

these circumstances it would be irrelevant to estimate a residual value of the lands after the borrow has been removed without the assistance of a timely appraisal.

3. **NON-FEDERAL OWNED LANDS:** The City of Topeka owns seven parcels of land in fee adjacent to the existing levee within the city boundary. Only temporary construction easement is needed over these seven parcels, so the non-federal sponsor shall only receive LERRD credit for this estate. In addition the project will require that one of the parcels be subject to a deed restriction for a mitigation site, and therefore the non-federal sponsor will receive LERRD credit for the value of this restriction. Of the seven city-owned parcels of land none were previously provided as an item of cooperation for another federal project.

The City of Topeka also has a permanent easement for the levee system and will not receive LERRD credit for this property (see paragraph 5).

4. **NON-STANDARD ESTATES:** There will be no non-standard estates required for this project.

5. **EXISTING FEDERAL PROJECT IN AREA:** The current levee systems in the City of Topeka are existing Federal projects, managed by the City of Topeka, and are located on opposite sides of the Kansas River and provide local flood risk management for the metropolitan area of Topeka, Kansas and surrounding communities. These Units were designed by the Corps of Engineers, Kansas City District, and constructed between 1962 and 1968. The sponsors will only receive credit for the newly provided lands, easements and right-of-ways.

6. **FEDERALLY OWNED LAND IN PROJECT AREA:** No federally funded land exists in the project area.

7. **NAVIGATIONAL SERVITUDE:** All of the proposed improvements are above the ordinary high water marks, so navigational servitude doesn't apply (CENWK-EC-HH memo dated March 12, 2007).

8. **REAL ESTATE MAPPING:** Maps of the proposed project areas are attached as EXHIBIT "A" Pages 1 – 9. Project scope is either a floodwall stability berm or an underseepage berm and the corresponding borrow areas and mitigation site/s. Mapping is consistent with the preferred alternative footprint, easements will be clearly defined as the feasibility issues are resolved.

9. **FLOODING INDUCED BY PROJECT:** The feasibility study requires the analysis of any induced damages due to raises in the water surface profile caused by raises of the studied levee unit. No levee raises are being proposed in the Topeka Levees Feasibility study; therefore, no induced damages are expected. In accordance, no physical takings analysis will be required.

10. **BASELINE COST ESTIMATE FOR REAL ESTATE:** Below is a summary table of the Real Estate Baseline Cost Estimate for LERRD, NFS incidental costs and In-House Labor costs by the Sponsor. In-house labor is listed below as a combined value. A rollup of all costs is included in Table 10.3.

Table 10.3: City of Topeka, KS, Project Costs (15% contingency included in all values)

	Waterworks	North Topeka Berm	North Topeka Mitigation	South Topeka Borrow	South Topeka Berm	South Topeka Floodwall Berm	Oakland Floodwall Berm	Oakland Berm	Oakland Borrow	TOTAL
Land Values	\$460	\$54,050	\$102,638	\$461,955	\$8,855	\$5,520	\$1,725	\$43,125	\$158,815	\$837,143.00
PL 91-646	\$0	\$0		\$0	\$0	\$14,031	\$0	\$0	\$0	\$14,031.00
Utilities	\$0	\$0		\$0	\$279,576	\$139,788	\$0	\$0	\$0	\$419,364.00
NON Fed. Incidental Costs	\$880	\$26,500		\$8,440	\$4,360	\$19,600	\$11,440	\$680	\$8,440	\$80,340.00
Govt. In-house Labor										\$28,771.00
PED Labor										
TOTAL	\$1,340	\$80,550	\$102,638	\$470,395	\$292,791	\$173,358	\$13,165	\$43,805	\$167,255	\$1,379,649

Note: Utility LERRD Values will continue to be updated due to lack of information on compensable rights of the utility relocations. See Section 16, paragraph 1.

11. RELOCATION ASSISTANCE (P.L. 91-646): The non-federal sponsor has been advised of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1948, as amended (Public Law 91-646). Relocation assistance may be needed for property owned by the Riviana Foods Inc. since its storage and business activities may be affected by the project construction activities.

12. MINERAL ACTIVITY IMPACTED PRESENT/FUTURE: At this time the COE is not aware of any outstanding mineral interests that need to be acquired or subordinated in the project area.

13. ASSESSMENT OF NON-FED SPONSOR LEGAL/PROFESSIONAL CAPABILITY: The non-Federal sponsor has land acquisition capabilities either through contract or in-house personnel and are fully capable of acquiring any lands necessary for the project. See Exhibit “B” for the Assessment of Non-Federal Sponsor’s RE Acquisition Capabilities Checklist. Financial capability is addressed in the main report.

14. ZONING ORDINANCES CONSIDERED IN LIEU OR/SUPPORT OF LERRD REQUIREMENTS: There are no zoning ordinances proposed in connection with the project.

15. REASONABLE, DETAILED, & COORDINATED TIMELINE FOR LERRD ACQUISITION: The following are proposed milestones for project implementation:

<u>Activity</u>	<u>Project TimeLine</u>
<i>Div. & HQ Review and Approval</i>	<i>Sept 2008</i>
<i>Feasibility Complete</i>	<i>December 2008</i>
<i>PED (2 years)</i>	<i>2010</i>
<i>Acquisition Plan to Sponsor</i>	<i>2010</i>
<i>Acquisition (18 months)</i>	<i>2011</i>
<i>LERRD Certification</i>	<i>2011</i>
<i>Construction (2 years)</i>	<i>2014</i>

16. **FACILITY/UTILITY RELOCATION:** There are known utilities in the area and further analysis will be needed to determine exact numbers and locations. A railroad exists near the South Topeka underseepage berm, but the project is not expected to interfere with railroad operations. Preliminary Attorney’s Opinion’s of Compensability Interest, as required by paragraph 12-17 (c) of Engineering Regulation 405-1-12 will be completed for all utility relocations as feasibility continues.

17. **IMPACT OF HTRW:** The land in the project is not known or suspected to contain hazardous and/or toxic wastes. The Kansas City District of the US Army Corps of Engineers did complete the Feasibility Study (FS) Hazardous, Toxic, and Radiological Waste (HTRW) assessment of the project area in 2005. Based on site visits and data search information, the known or suspected contaminant areas located in, on, under, or adjacent to the land required for the construction, operation and maintenance of the project were concluded as no further action or consideration required.

18. **OPPOSITION/SUPPORT OF PROJECT BY LOCAL LANDOWNERS:** The Corps of Engineers is not aware of any public opposition to this project at this time.

19. **NOTIFICATION TO NON-FEDERAL SPONSOR OF EARLY ACQUISITION OF LERRD:** The non federal sponsor will be issued a risk letter explaining the risk of acquiring lands prior to execution of the PCA and a final project design. During PED the construction limit will be clearly defined and an acquisition schedule set.

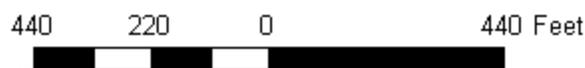
20. **OTHER RE ISSUES:** RE assumes that storage and/or disposal of excess material will be part of the construction contract.

A temporary easement will be needed on railroad property, so significant delays could result when negotiating acquisition instruments with the railroad.

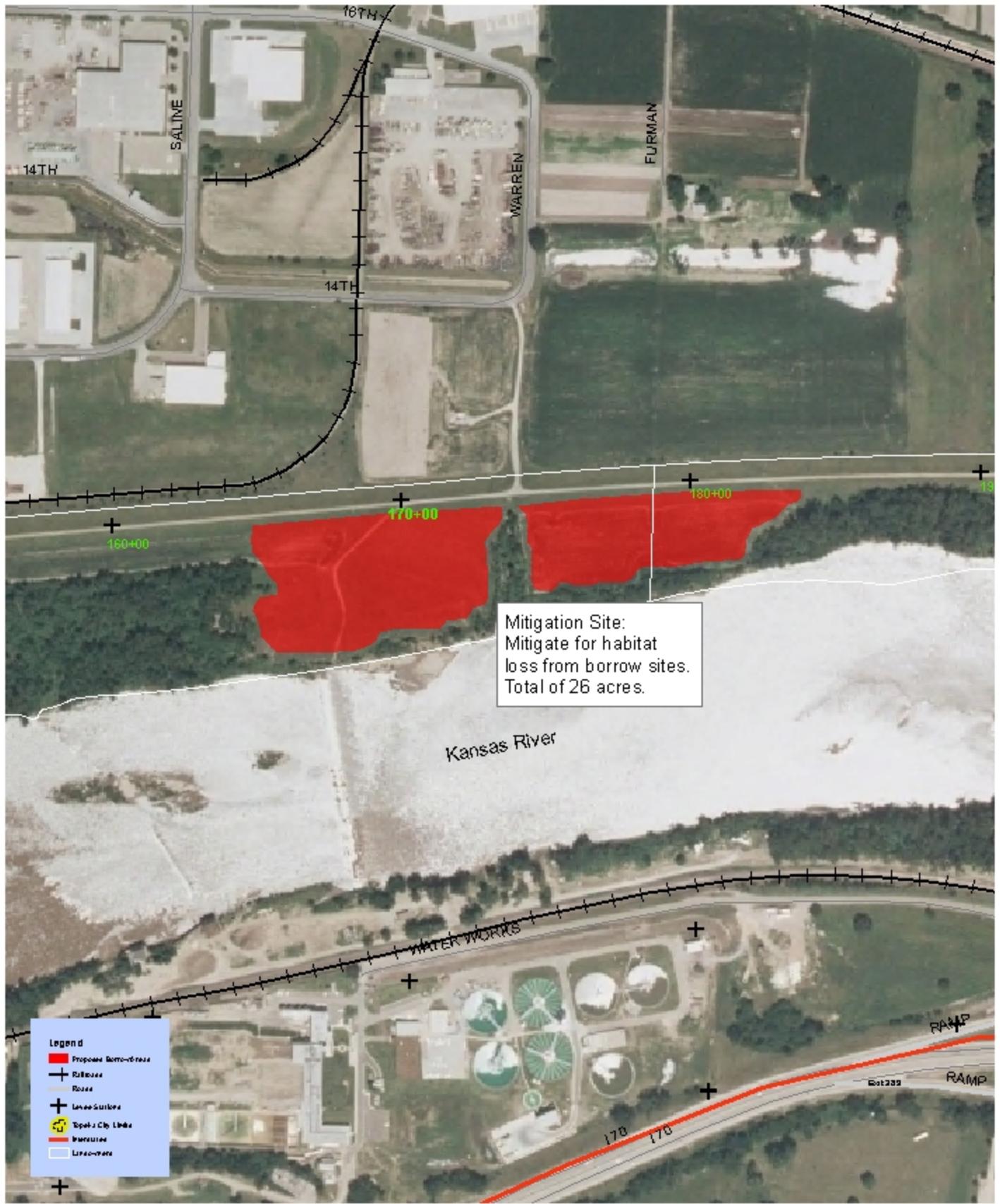
Two parcels near the North Topeka site (see attached map), owned by the non-federal sponsor, have been identified to mitigate the loss of habitat at the South Topeka borrow site. A “Notice and Declaration of Land Use Restriction” will need to be recorded to ensure that the parcels are maintained in accordance with a mitigation site plan prepared by CENWK-PM-PF. Any other use shall be restricted to a use that is compatible and subordinate to the Project purposes. This restriction shall run with the land and shall be binding on the heirs, successors and assigns of the Declarant.

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Topeka Levee Protection Project, Real Estate Site Plan



Topeka Levee Protection Project, Real Estate Site Plan



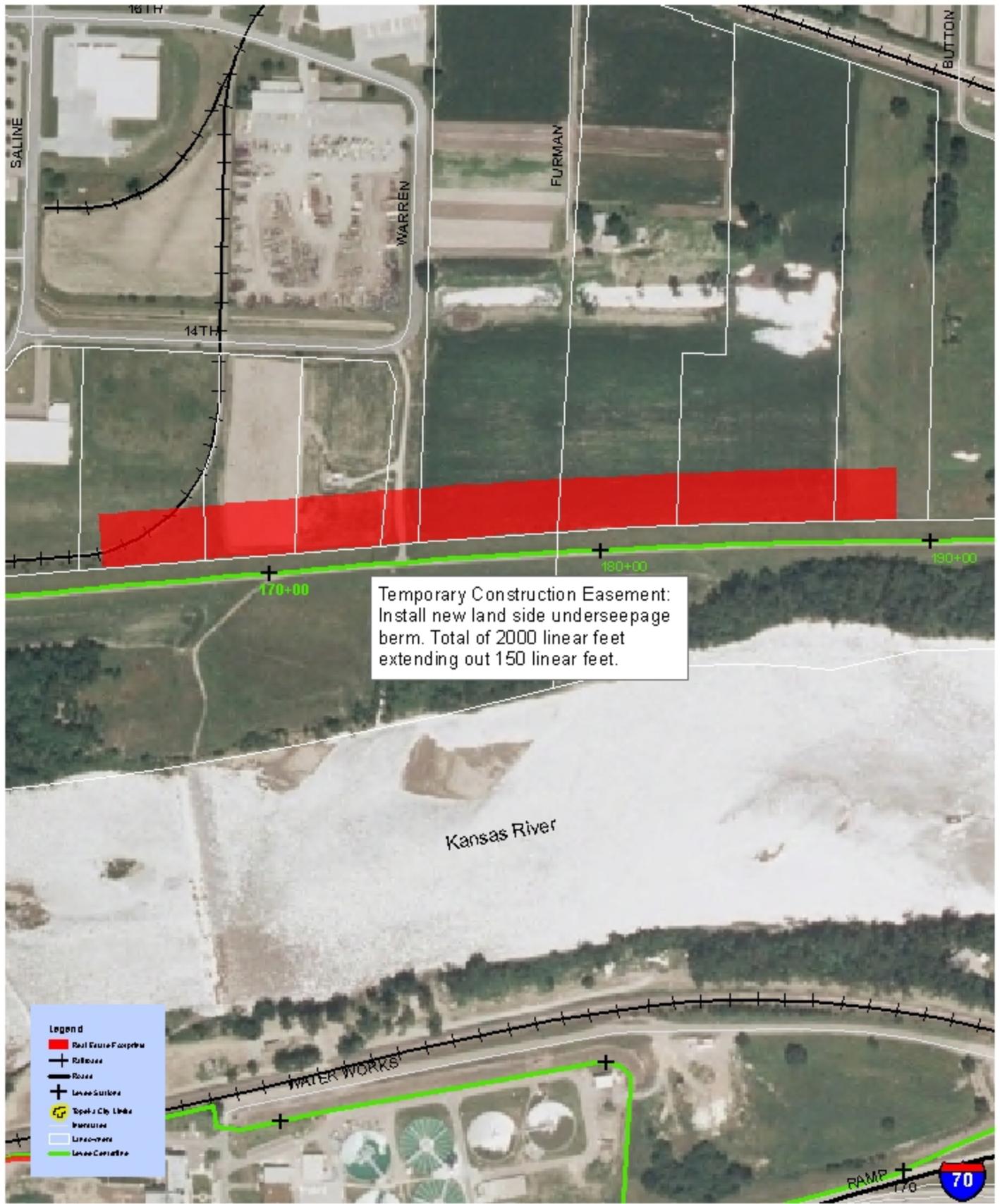
Mitigation Site:
Mitigate for habitat
loss from borrow sites.
Total of 26 acres.

- Legend**
- Proposed Borrow Areas
 - Railroad
 - Road
 - Levee Station
 - Topeka City Limits
 - Easement
 - Line-of-way



570 285 0 570 Feet

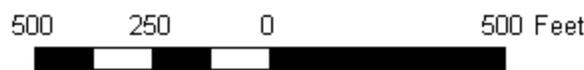
Topeka Levee Protection Project, Real Estate Site Plan



Temporary Construction Easement:
Install new land side underseepage
berm. Total of 2000 linear feet
extending out 150 linear feet.

Legend

- Real Estate Easement
- Right-of-Way
- Levee Structure
- Levee Centerline
- Topeka City Limits
- Interstate
- Levee Easement
- Levee Construction



Topeka Levee Protection Project, Real Estate Site Plan

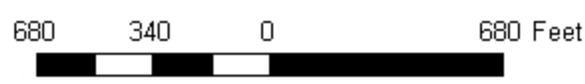


Topeka Levee Protection Project, Real Estate Site Plan

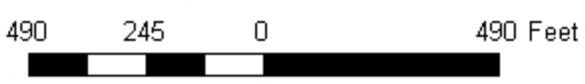
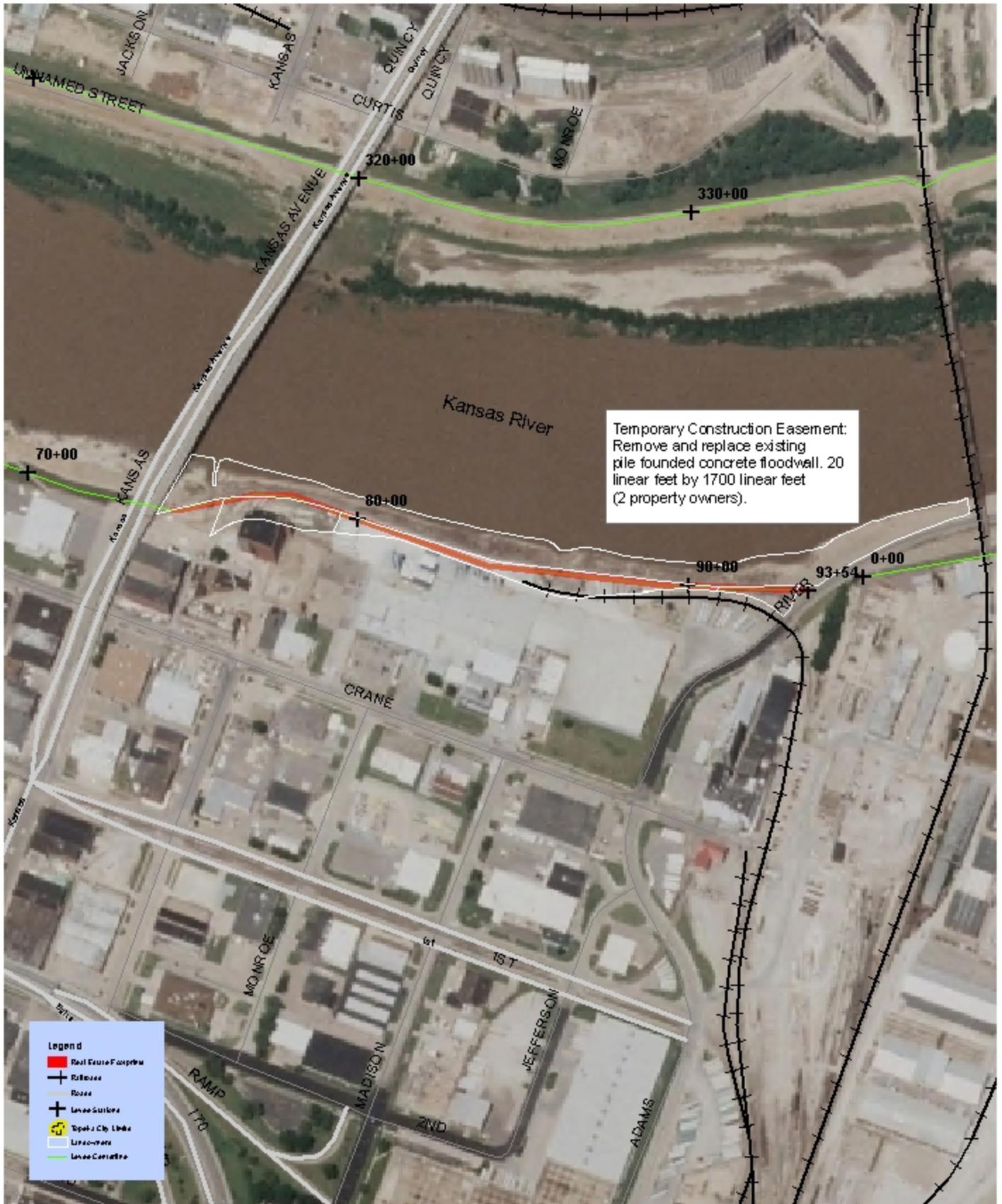


Temporary Construction Easement:
20 linear feet by 2400 linear feet

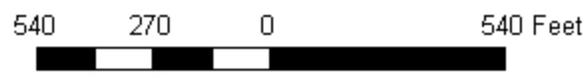
- Legend
- Levee Centerline
- Real Estate Easement
- Right-of-Way
- Levee Centerline
- Levee Centerline
- Topeka City Limits
- Levee Easement



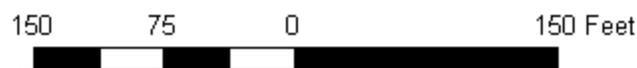
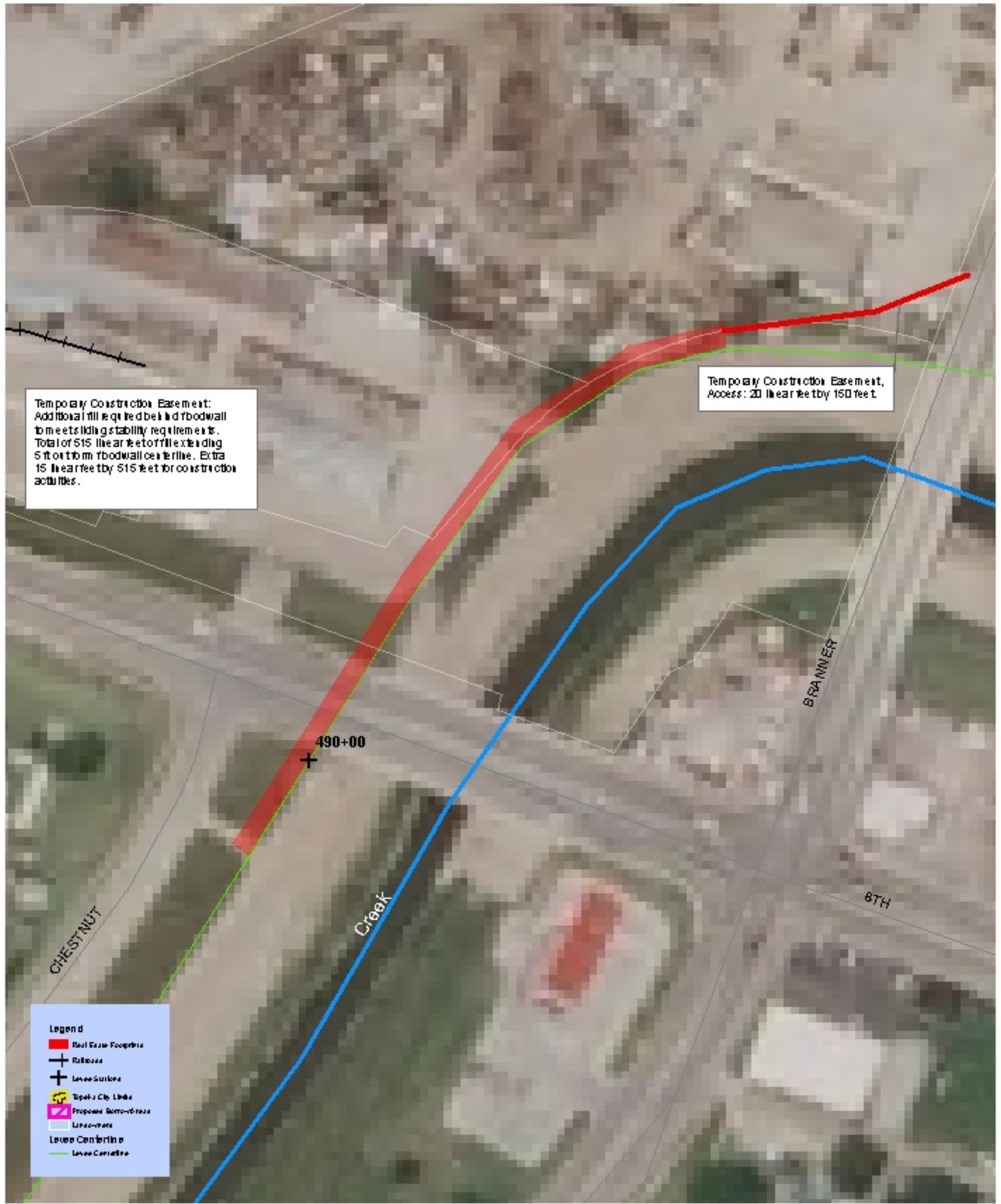
Topeka Levee Protection Project, Real Estate Site Plan



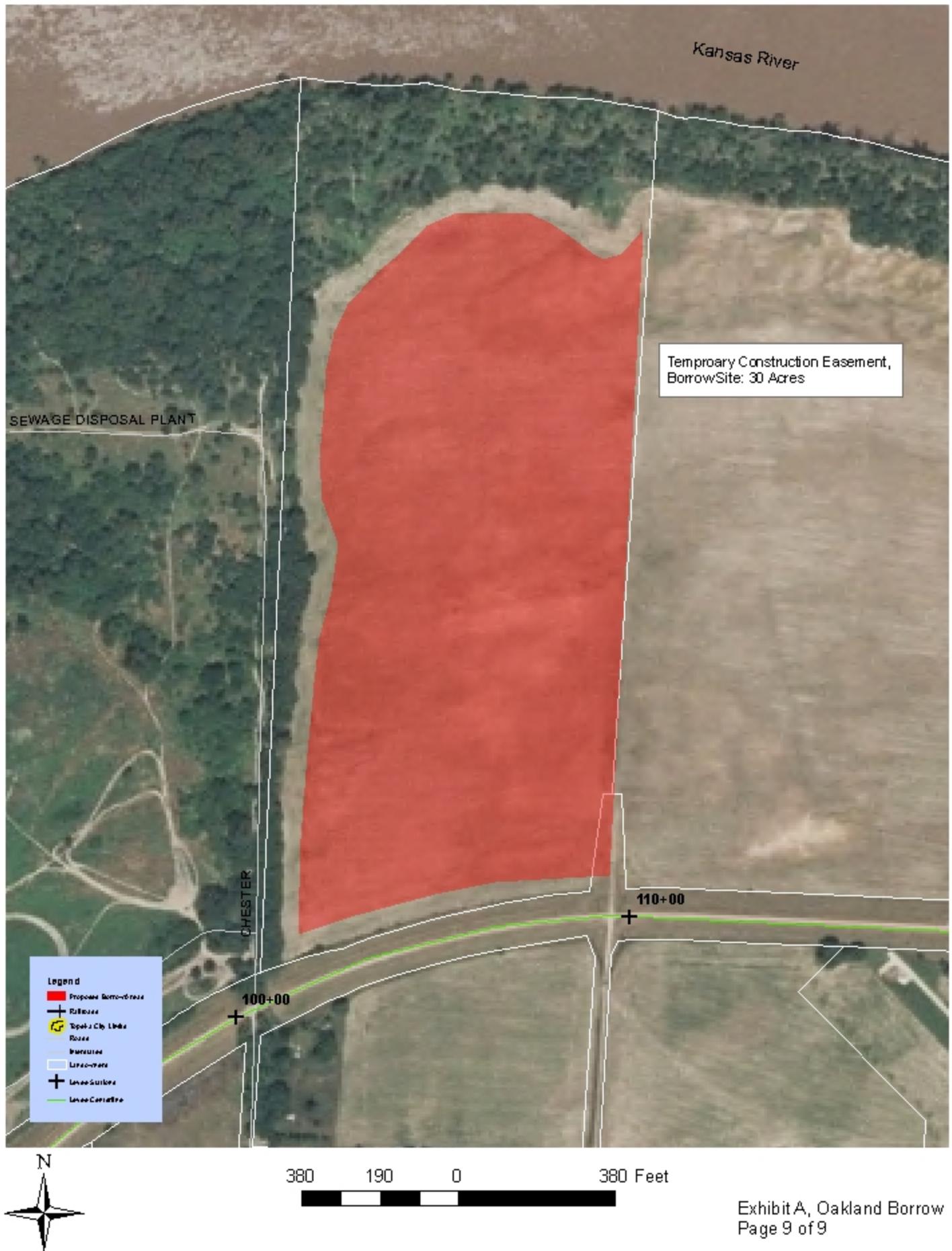
Topeka Levee Protection Project, Real Estate Site Plan



Topeka Levee Protection Project, Real Estate Site Plan



Topeka Levee Protection Project, Real Estate Site Plan



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

TOPEKA LOCAL LEVEE
PROTECTION PROJECT

I. Legal Authority:

- a. Does the sponsor have the 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? **No**
- d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? **No**
- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? **No**

II. Human Resource Requirements:

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirement of Federal projects including P.L. 91-646, as amended? **No, Coordination meetings will be held with sponsors to explain process and requirements.**
- b. If the answer to II.a. is "yes", has a reasonable plan been developed to provide such training? **N/A**
- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? **Yes**
- 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? **No**

III. Other Project Variables:

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

III. Other Project Variables:

- a. Will the sponsor's staff be located within reasonable proximity to the project site? **Yes**
- b. Has the sponsor approved the project/real estate schedule/milestones? **Only the feasibility study. Property acquisition has not been approved.**

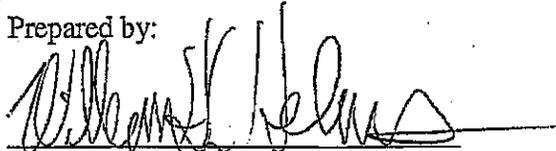
IV. Overall Assessment:

- a. Has the sponsor performed satisfactorily on other USACE projects? **Yes (Topeka Levee)**
- b. With regard to this project, the sponsor is anticipated to be **fully capable.**

V. Coordination:

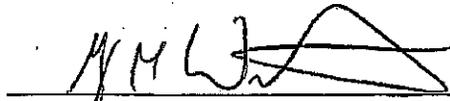
- a. Has this assessment been coordinated with the sponsor? **Yes**
- b. Does the sponsor concur with this assessment? **Yes**

Prepared by:



Willem Helms
Real Estate Specialist

Approved by:



Gregory G. Wilson
Chief, Real Estate Division

Date: 4/20/09

Kansas City District, Real Estate Division
QUALITY CONTROL PLAN/CHECKLIST FOR:
REAL ESTATE PLAN (Recon/Feasibility Studies)
 (ER 405-1-12, Chapter 12 (11) & EP 405-1-12 Figure 2-1b)

PROJECT: TOPEKA LEVEE PROTECTION PROJECT
 SPONSOR: CITY OF TOPEKA
 LOCATION: TOPEKA, KS

LABOR FUNDING AVAILABLE _____ LABOR CHARGE CODE _____

ACTIVITY DESCRIPTION

- attend PDT's
- provide in-house scope of work (Cost Estimate)
- receive project fact sheet, drawings, and maps
- action posted in REMIS
- establish criteria rapport with customer
- obtain realty data required to meet criteria
- prepare realty map
- request appraisals
- prepare report with all required content
 - purpose description of LEERD sponsor-owned project land non-standard estate ~~NA~~
 - existing Federal projects Federally-owned land navigational servitude map
 - flooding BCE relocation assistance mineral activity capability and experience
 - zoning ordinances schedule facility/utility relocations contaminants
 - support/opposition notification real estate issues
- coordinate report
- finalize plan

COMMENTS: _____

ALL CHECKED ITEMS REVIEWED BY:

William H. Helms
 Realty Specialist

Rosa E. Vacca
 Realty Specialist / Peer Review

Karl Mueller
 Branch Chief

Shirley J. [Signature]
 RE Attorney

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 Chief, Real Estate Division