



**US Army Corps
of Engineers®**
Honolulu District

Appendix E

Draft Real Estate Plan

**Tafuna, American Samoa, Flood Risk Management Study
Section 444 of the Water Resources Development Act (WRDA) of 1996
(Public Law 104-303)
as amended by Section 207 of the Water Resources Development Act of 1999
(Public Law 106-53)**

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Appendix E

TABLE OF CONTENTS

| | | |
|----|--|----|
| 1 | Executive Summary | 1 |
| 2 | Authority and Purpose..... | 2 |
| 3 | Project Description and Location | 3 |
| 4 | Sponsor’s Real Estate Interests..... | 10 |
| 5 | Estates Required..... | 11 |
| 6 | Federal Projects/Ownership | 13 |
| 7 | Navigation Servitude | 13 |
| 8 | Maps | 14 |
| 9 | Induced Flooding..... | 14 |
| 10 | Baseline Cost Estimate for Real Estate..... | 14 |
| 11 | Public Law 91-646 Relocation Benefits..... | 15 |
| 12 | Minerals, Timber, and Crop Activity | 16 |
| 13 | Assessment of Sponsor’s Acquisition Capability | 16 |
| 14 | Zoning | 16 |
| 15 | Acquisition Milestones..... | 17 |
| 16 | Public Facility or Utility Relocations..... | 18 |
| 17 | Environmental Impacts | 18 |
| 18 | Landowner Concerns | 18 |
| 19 | Notification to Sponsor | 18 |
| 20 | Other Relevant Real Estate Issues..... | 19 |
| 21 | References | 19 |

LIST OF FIGURES

| | |
|--|----|
| Figure 3-1. Study Area..... | 4 |
| Figure 3-2. Project Feature Map | 6 |
| Figure 3-3. Project Detail Map 1..... | 7 |
| Figure 3-4. Project Detail Map 2..... | 8 |
| Figure 14-1. Industrial Zone Map | 17 |

LIST OF TABLES

| | |
|--|----|
| Table 3-1. Real Estate Interest Required by Project Feature..... | 10 |
| Table 10-1. Baseline Cost Estimate for Real Estate..... | 14 |

LIST OF ATTACHMENTS

- Attachment 1: Sponsor’s Acquisition Capability Assessment
- Attachment 2: Letter Advising Against Early Acquisition
- Attachment 3: Sample Notice to Acquire Letter

1 Executive Summary

The Tafuna Flood Risk Management Study (Study) is authorized under Section 444 of the Water Resources Development Act (WRDA) of 1996 (Public Law 104-303) as amended by Section 207 of the Water Resources Development Act of 1999 (Public Law 106-53). Funding was received in May 2020 to initiate a Feasibility Study at full Federal expense under the Additional Supplemental Appropriations for Disaster Relief Act of June 6, 2019 (Public Law 116-20).

A Tentatively Selected Plan (TSP) was selected based on cost, ecological output, economic benefits, completeness, effectiveness, efficiency, and acceptability. The Study TSP includes constructing a flood barrier along Taumata Stream as well as non-structural measures of dry floodproofing structures and elevating residences. Construction activities and access are anticipated along the flood barrier corridor. Additionally, a staging area is planned in close proximity to the construction site. Minimal operation and maintenance requirements are expected for the TSP.

The Real Estate Plan (REP) is generally prepared as an appendix to the Feasibility Report to support the acquisition requirements of the TSP. The REP presents the real estate requirements, proposes the acquisition strategy, develops a cost estimate for real estate acquisition, and incorporates an internal technical review.

The Non-Federal Sponsor (NFS) for the Study is the Government of American Samoa, as represented by the Department of Public Works. Although the Study is 100% federally funded, a Feasibility Cost Sharing Agreement (FCSA) was executed in March 2020. The FCSA memorialized \$3M in Federal funds for the cost of the Study. Real estate acquisition coordination is with the American Samoa Department of Public Works.

The NFS is responsible for ensuring that it possesses the appropriate real estate interests for all real property required for the proposed project. TSP project features include a flood barrier, staging area, construction areas as well as non-structural floodproofing and elevating structures. The minimum estate required for the flood barrier is a perpetual flood protection levee easement totaling 2.3 acres. The minimum estate required for staging, construction, and site access is a temporary work area easement totaling 1.8 acres. The temporary work area easement is required for two (2) years during project construction.

Non-structural floodproofing is planned for up to 280 structures. While part of the Tentatively Selected Plan, Rights of Entry agreements for floodproofing are not considered to be a real estate interest to implement the proposed project. Floodproofing and elevating structures would be offered to property owners on a voluntary basis. Along with the Right of Entry agreement, a floodproofing agreement would be executed between the property owner and the NFS. A floodproofing agreement is not considered an estate that constitutes an interest in real property; therefore, there are no non-standard estates planned for the proposed project.

The estimated real estate cost associated with the TSP is approximately \$1,758,100, including all recommended lands, easements, rights-of-way, relocations, and disposals (LERRDs), administrative costs to be carried out by the NFS, and Government costs for LERRDs monitoring and certification. The estimated real estate cost estimate includes planned temporary relocations for floodproofing structures and elevating residences in accordance with Public Law 91-646. A limited exception exists to voluntary relocation payments when an eligible tenant is displaced to accomplish the voluntary elevation measure benefiting a property owner. The NFS will be assessed on its capability to acquire and provide the LERRDs necessary for the proposed project.

2 Authority and Purpose

The Tafuna Flood Risk Management Study (Study) is authorized under Section 444 of the Water Resources Development Act (WRDA) of 1996 (Public Law 104-303) as amended by Section 207 of the Water Resources Development Act of 1999 (Public Law 106-53). Funding was received in May 2020 to initiate a Feasibility Study at full Federal expense under the Additional Supplemental Appropriations for Disaster Relief Act of June 6, 2019 (Public Law 116-20).

The U.S. Army Corps of Engineers (USACE), in partnership with the Government of American Samoa, is identifying and assessing flood risk management alternatives. The Study evaluates flooding problems within the Tafuna area, specifically along waterways that meet the minimum flow velocity of 800 cubic feet per second (cfs) per the requirements of Engineer Regulation (ER) 1165-2-21. Flooding in the Tafuna area results from intense rainfall and a lack of well-defined stream channels. Typically, the streams are incapable of supporting small flood events such as a 10% (10-year) annual exceedance probability (AEP) flow. Flooding is exacerbated due to encroaching development in the flood plain, obstructions such as thick vegetation, and constrictions at bridges and culverts. The Study documents the results of evaluating alternatives and recommends a plan as the basis for project construction authorization.

Past studies include the Flood Hazard Study: Tafunafou, Tutuila, American Samoa (USACE Pacific Ocean Division, 1977), Tafuna Plain Drainage Study: Tutuila, American Samoa (USACE Pacific Ocean Division, 1994), Hydrologic and Hydraulic Engineering Analysis Tafuna Study Area (USACE Honolulu District, 2016), Hydrologic and Hydraulic Engineering Analysis Tafuna Study Area (USACE Honolulu District, 2019). The Flood Hazard Study evaluated the hydrologic and hydraulic characteristics of the streams and drainageways in the Tafuna area. The findings were adopted by the Federal Emergency Management Agency (FEMA) in May 1991 and used to develop the 1% (100-year) AEP floodplain for the Tafuna area. The Tafuna Plain Drainage Study identified the characteristics and flow paths of the major streams and drainage ways in the Tafuna plain. The information was intended to provide a basis for understanding the magnitude and causes of the existing flood problems in the area and was used by FEMA for the Flood Insurance Rate Maps for Tafuna. The 2016 Hydrologic and Hydraulic Engineering Analysis presented the methodology used and the results of the floodplain management study of the Leaveave Drainageway and Drainageway 2 in Tutuila. The 2019 Hydrologic and Hydraulic Engineering Analysis presented the methodology used and the results of the floodplain management study of Drainageway 4, 5, and Unnamed Stream 15 in Tutuila.

It is assumed that an Environmental Assessment is the appropriate National Environmental Policy Act (NEPA) document for the final array of alternatives. Environmental analysis will comply with all environmental laws as applicable. The analysis is anticipated to be completed by relying on existing literature, remote sensing technologies, and data available from other agencies for use in GIS.

The NFS for the Study is the Government of American Samoa, as represented by the Department of Public Works. Although the Study is 100% federally funded, a Feasibility Cost Sharing Agreement (FCSA) was executed in March 2020. The FCSA memorialized \$3M in Federal funds for the cost of the Study.

Generally, the Real Estate Plan (REP) is prepared by the USACE Honolulu District (District) as an appendix to the Feasibility Report. The REP presents the real estate requirements, proposes the acquisition strategy, develops a cost estimate for real estate acquisition, and incorporates

an internal technical review. USACE Mapping reviews tract ownerships and acreages to prepare exhibits for the REP. USACE Appraisal prepares (or contracts for) and approves a cost estimate or gross appraisal, as needed for acquisitions. USACE Environmental provides applicable compliance memoranda and/or documentation in accordance with NEPA, HEPA, National Historic Preservation Act (NHPA), and USACE Hazardous, Toxic, and Radioactive Waste (HTRW) policy.

Project real estate requirements include a review of NFS-owned parcels as well as recommended lands, easements, rights-of-way, relocations, and disposals (LERRDs) to be carried out by the NFS. LERRDs are requirements that the U.S. Government has determined the NFS must meet for the construction, operation, and maintenance of the project. If LERRDs are required, USACE Real Estate coordinates with the NFS and provides the NFS with a partner packet outlining the NFS's responsibilities and notice informing the NFS of the risks of early acquisition.

The information contained herein is tentative for planning purposes only. Final real property acquisition acreages, limitations, and cost estimates are subject to change after approval of a final Feasibility Report, including plan modifications that occur during the Preconstruction Engineering and Design Phase (PED).

3 Project Description and Location

American Samoa is an unorganized, unincorporated territory of the United States. An unorganized territory is one for which the Organic Act, establishing a civil government, has not been enacted by the U.S. Congress. American Samoa is located in the mid-South Pacific Ocean, a part of the Samoan Islands archipelago in Polynesia. American Samoa consists of five main islands (Tutuila, Aunuu, Ofu, Olosega, and Tau) and two coral atolls (Swains Island and Rose Atoll). Tutuila is the largest and most populous island, with a 58 square mile land area and approximately 56,000 residents.

The Study area is located on the main island of Tutuila on the Tafuna plain. The drainages of the Tafuna plain are mostly contained within Tualauta County, the largest and most populated county in American Samoa. These drainages include those that drain from higher elevations into the Leaveave Stream system as well as other minor basins on the Tafuna Plain. The central portion of the Tafuna Plain, located within its lower alluvial portion, is an area of focus for many government agencies due to the rate of development in the area and the potential for aggravated flood problems. See Figure 3-1, Study Area.



Figure 3-1. Study Area

According to past reports, the Tafuna-Leone plain experiences intense rainfall, and most stream channels are shallow and undefined. The streams are typically incapable of supporting small flood events, such as a 10% AEP (10-year flow) event. Flooding is intensified due to thick vegetation within the channels, flat topography, constrictions at bridges and culverts, and encroaching development into the flood plain areas.

A final array of structural alternative plans was formulated through combinations of screened management measures. Final Study alternatives included:

- Alternative A: No Action
- Alternative B: Channel Conveyance Improvements (Taumata and Leaveave)
- Alternative B1: Channel Conveyance Improvements and Flood Barriers (Taumata and Leaveave)
- Alternative C: Combined Structural and Non-Structural
- Alternative D: Non-Structural

3.1 Tentatively Selected Plan: Combined Structural and Non-Structural

Alternative C: Taumata Flood Barrier and Non-Structural Protection was selected as the Tentatively Selected Plan (TSP). Project features include:

1. Taumata Flood Barrier: 2,400 linear feet (average 7 feet height)
2. Construction Area/Access: 24-feet wide alongside project features
3. Staging Area: 0.5 acres
4. Non-Structural: floodproofing 38 structures, elevating 242 structures

Nonstructural flood risk management measures are techniques for reducing accountable flood damage to existing structures within a floodplain. These techniques consist of treatments to dry-proof, wet-proof, or elevate structures. Dry floodproofing consists of constructing or installing features designed to allow flood waters to reach a structure but diminish the flood threat by preventing flood waters from entering a structure (e.g., attaching watertight sealants on basement windows of residential property). Wetproofing consists of constructing or installing features designed to allow water to flow in and out of a structure but prevent the contact of water to essential utilities or mechanicals of the structure (e.g., filling a basement or elevating or protecting the HVAC system). Elevations involve raising the lowest finished floor of a building to a height that is above the flood level (e.g., raising a home).

Required equipment to construct this alternative could include, but is not limited to, the use of an excavator(s) and front loader. Storage of material and equipment will be required, and a staging area has been identified adjacent to the American Samoa Department of Public Works site. Any material stored in the staging area would be covered to reduce the loss of material due to erosion and avoid impacts to the adjacent environment. The staging area would be restored upon construction completion.

Construction is anticipated for two (2) years. After site preparation and vegetation removal activities, it is anticipated that construction of the flood barrier would occur. Minimal operations and maintenance requirements are expected for the alternative. Periodic inspection of all the features will be required and vegetation clearing and/or repairs may be completed as needed.



Tafuna Flood Risk Management Study - Alternative C

Tutuila, American Samoa



Figure 3-2. Project Feature Map

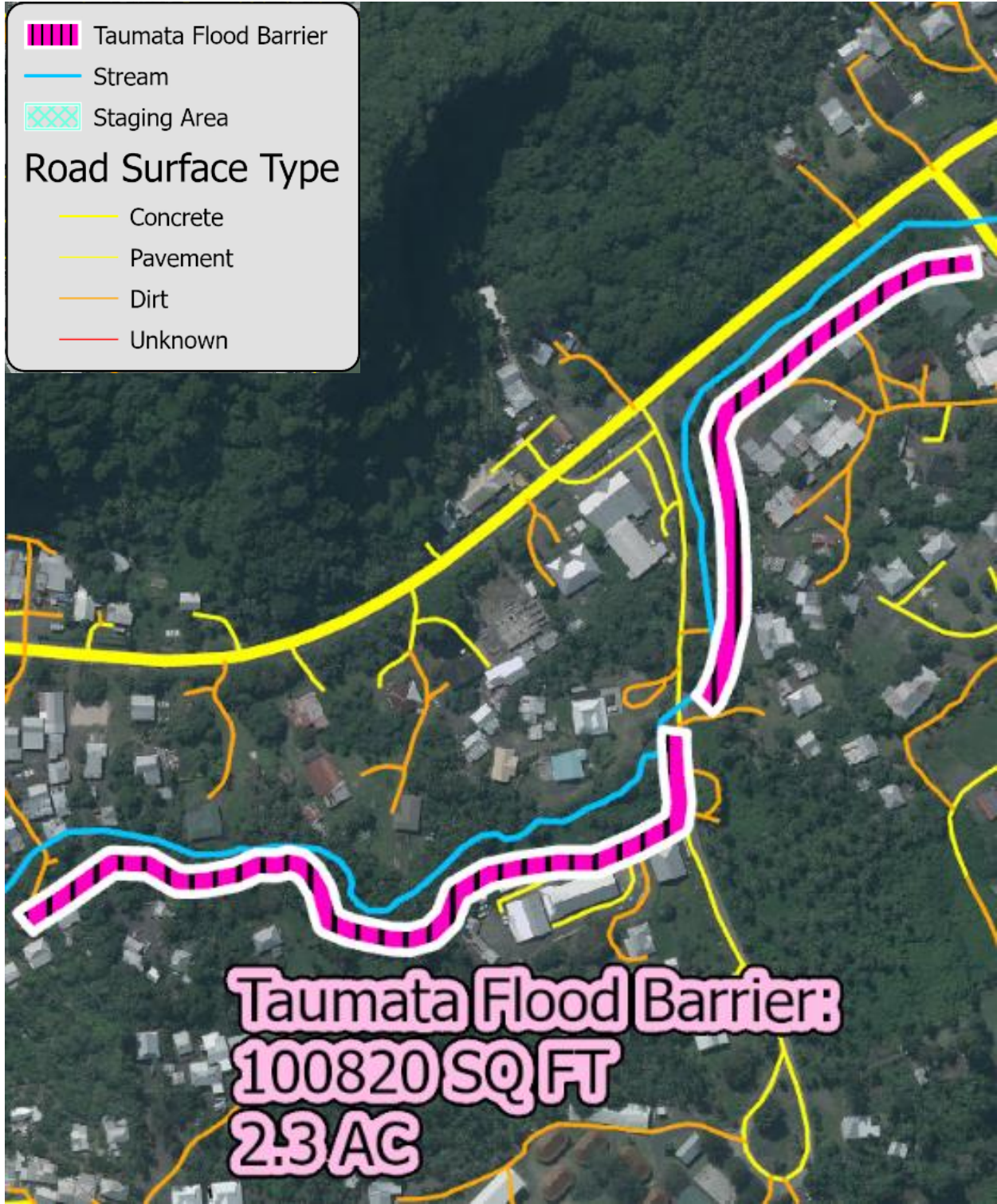


Figure 3-3. Project Detail Map 1



Figure 3-4. Project Detail Map 2

3.2 Structures in the Area

Structures and improvements in the Study area include residential structures, businesses, government buildings, and gravesites. Project features are not anticipated to affect these structures.

3.3 Staging and Construction

A 0.5-acre staging area has been identified near the eastern end of the Leaveave Stream located at the American Samoa Department of Public Works facility. Staging areas and site access must be established for the use and distribution of construction materials and equipment. The staging area generally contains contractor trailers, parking, fencing, and storage of equipment and materials. The staging area is estimated to accommodate construction for both planned structural features as well as equipment and supplies needed for non-structural floodproofing and elevating structures. The staging area is generally flat and within close proximity to project features.

Additionally, construction is planned within a 24-foot-wide corridor alongside the structural project features.

3.4 Site Access

It is anticipated that personnel, equipment, and imported materials would access project construction along public roadways parallel to the streams. Additional access points into the stream channel are currently being developed.

Access points identified within the public roadways can be used without additional real estate interests. Access points identified adjoining construction areas outside of the public roadway will be included in temporary work area easements as project features are refined.

3.5 Ownership by Project Feature

Land ownership and zoning data is extremely limited in American Samoa and has been noted on the Risk Register as a significant real estate risk. As an unincorporated territory, the U.S. Department of the Interior has official oversight over American Samoa. American Samoa supports three land tenure forms: communal, freehold, and individual. The following information is summarized from a journal article, *Individual Land Tenure in American Samoa*, in *The Contemporary Pacific* (Spring 1999).

Communal

According to the American Samoa Government, approximately 90% of land in American Samoa is communal land. Communal land is an integral part of the social organization and is tied to both the kinship system and village organization. The cognatic descent group ('âiga) are the "owners" of the land. Rights to land use come with membership in the descent group. Membership in the kin group is dependent on two factors: genealogy and service. Until membership is activated through service, rights (including land rights) in a kinship group are considered dormant.

The elected head of the descent group is the matai. A matai administers the family estates and ensures that land is used in the best interests of the 'âiga. The Final Act of Berlin (Article IV, section 1) signed in 1889 by the United States, Germany, and Great Britain attempted to

achieve political stability in the Samoan Islands by resolving land-claim disputes. The commission concluded that a chief's authority or *pule* was limited. While it might be strong at the individual level, any sale of 'âiga or family lands required the consent of the family members. Following the communal land tenure system, a registration system was initiated whereby every matai title was to be registered by 1906. The court assumed all titles not registered as invalid. The court also rejected title splitting, whereby two or more titles may be created from a single title.

Freehold

A freehold system also exists in some parts of American Samoa. Freehold land is that granted by the International Claims Commission in Apia before the United States took possession of eastern Samoa. Freehold land may be freely sold or transferred. From the Final Act of Berlin, the International Land Commission and the Supreme Court were established to adjudicate land claims of foreigners in American Samoa. Fourteen percent of the land was awarded to foreigners as freehold land.

Individual

Most of American Samoa's land is administered as communal land. However, 726 hectares (1,794 acres) are now registered as individually owned, which represents nearly one-quarter of all the land registered in the territory. Individually held land is concentrated in the Tafuna Plain. In 1945, the Supreme Court, for the first time, recognized personal ownership of land other than that of freehold land (*Tuimalu v. Samaile*). The court maintained that such individual property, rather than being returned to the 'âiga, was inheritable by children of the claimant

The following table summarizes the land areas and real estate interests by project feature. At this time, lot numbers, owners, and zoning information are unknown for project features.

Table 3-1. Real Estate Interest Required by Project Feature

| Project Feature | Lot Number | Approximate Area (Acres) | Owner | Zoning/ Property Class | Interest Required |
|-----------------------------|---------------|--------------------------|------------------------------|------------------------|---|
| 1. Taumata Flood Barrier | | 2.3 | Private | None | Flood protection levee easement (perpetual) |
| 2. Construction Area/Access | | 1.3 | Private | None | Temporary work area easement (2 years) |
| 3. Staging Area | | 0.5 | Government of American Samoa | None | Temporary work area easement (2 years) |
| 4. Non-Structural | Floodproofing | 38 structures | Private | None | Voluntary |
| | Elevating | 242 structures | Private | None | Voluntary |

See Figures 3-2 to 3-4.

4 Sponsor's Real Estate Interests

Based on a review of American Samoa's land tenure as well as jurisdictional water system, it is assumed that the NFS does not own any interests required for the permanent proposed project

feature. Unlike States, the waters adjacent to coastal villages in American Samoa are typically considered to be under local village jurisdiction. Villages traditionally enforce many restrictions on access to and use of coastal resources, according to a journal article, *American Samoa's Marine Protected Area System: Institutions, Governance, and Scale*, in the Journal of International Wildlife Law & Policy (October 2016). Additionally, a preliminary review of land in the project area indicates primarily residences and businesses surrounding Leaveave and Taumata Streams.

The project temporary staging area is planned for land owned by the Government of American Samoa located at the Department of Public Works. The staging area is anticipated to encompass 0.5 acres. See Figure 3-4.

5 Estates Required

The NFS will provide all LERRDs required for the construction, operation, and maintenance of the project. The NFS is instructed to acquire the minimum real estate interests necessary for the project. LERRDs required for the proposed project include:

Structural

5.1 Flood Protection Levee Easement

1. Taumata Flood Barrier: 2.3 acres

The minimum estate required for the flood barrier is a perpetual flood protection levee easement totaling approximately 2.3 acres.

Flood Protection Levee Easement Standard Estate

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 (levee) (floodwall)(gate closure) (sandbag closure), 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.

5.2 Temporary Work Area Easement

2. Construction Area: 1.3 acres
3. Staging: 0.5 acres

The minimum estate required for construction and staging, including access, is a temporary work area easement totaling approximately 1.8 acres. The temporary work area easement is estimated to be required for two (2) years during project construction.

Temporary Work Area Easement Standard Estate

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 of possession the land is granted to the United States, for use by 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 the 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.

Non-Structural

5.3 Right of Entry for Construction

While part of the Tentatively Selected Plan, Rights of Entry to complete floodproofing structures and elevating residences are not considered to be a real estate interest or requirement to implement the proposed project.

Floodproofing or elevating structures are not an integral component to the function of the proposed flood barrier. If floodproofing or elevating structures do not occur, the flood barrier would continue to function as intended. Floodproofing would be offered to property owners on a voluntary basis. If a property owner elects not to have the nonstructural flood risk management treatment performed on their structure, eminent domain would not be pursued. If all estimated Rights of Entry are not obtained by the NFS, USACE may still certify that the real estate requirements have been met in order to commence construction contract advertisement.

Up to two hundred eighty (280) Right of Entry for Construction agreements are estimated if planned property owners elect to floodproof or elevate private structures. Two hundred forty-two (242) structures have been identified for elevation, and thirty-eight (38) structures have been identified for floodproofing. For the purposes of this Study, 100% participation is assumed for cost estimating.

Along with the Right of Entry agreement, a floodproofing agreement would be executed between the property owner and the NFS. The floodproofing agreement would outline the flood risk management treatment that would be performed on the structure. It would also identify specific actions the property owner is required to take or abstain from to ensure the long-term performance of the flood risk management treatment. The floodproofing agreement would contain a covenant that conveys with the land to ensure long-term effectiveness of the floodproofing treatment.

Currently, there are no planned non-standard estates for the proposed project. A floodproofing agreement is not considered an estate that constitutes an interest in real property; it would contain conditions the owner must agree to and comply with. Prior to the NFS executing floodproofing agreements with property owners, USACE may assist the NFS with a draft floodproofing agreement. A final draft would be approved by Headquarters, USACE prior to the execution of a Project Partnership Agreement (PPA) or Local Cooperation Agreement (LCA).

Right of Entry for Construction. ENG Form 2803

1. The Owner hereby grants to the Government an irrevocable right to enter upon the lands hereinafter described at any time within a period of _____ (_____ months) from the date of this instrument, in order to erect buildings or any other type of improvements and to perform construction work of any nature.

2. *This permit includes the right of ingress and egress on other lands of the Owner not described below, provided that such ingress and egress is necessary and not otherwise conveniently available to the Government.*
3. *All tools, equipment, buildings, improvements, and other property taken upon or placed upon the land by the Government shall remain the property of the Government and may be removed by the Government at any time within a reasonable period after the expiration of this permit or right-of-entry.*
4. *The Government shall have the right to patrol and police the lands hereinafter described during the period of this permit or right-of-entry.*
5. *If aircraft flights over said lands, or entry upon the land by means of helicopter or other types of aircraft, are necessary, the Government shall inform the Owner, in advance, of each such flight or entry.*
6. *In the event that the Government does not acquire title or other necessary interest in said land prior to the expiration of this permit or right-of-entry, or other renewal thereof, the parties agree that, if any action of the Government's employees or agents in the exercise of this right-of-entry results in damage to the real property, the Government will, at its option, either repair such damage or make an appropriate settlement with the Owner. In no event shall such repair or settlement exceed the fair market value of the fee interest of the real property at the time immediately preceding such damage. The Government's liability under this clause may not exceed appropriations available for such payment and nothing contained in this agreement may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the Owner may have to make a claim under applicable laws for any other damage than provided herein. If the Government does not acquire such title or other necessary interest, damages would be limited to the decrease in the fair market value of the owner's remainder caused by such damage.*

6 Federal Projects/Ownership

Any interest in land provided as an item of local cooperation for a previous Federal project is not eligible for credit. There are no current proposed project features with prior Federal project credit. Additionally, there are no Federally owned lands within the LERRDs required for the proposed project.

7 Navigation Servitude

Leaveave and Taumata Streams are not navigable, thus navigation servitude is not applicable to this Study. The navigation servitude is the dominant right of the Government under the Commerce Clause of the U.S. Constitution (U.S. CONST. art.I, §8,cl.3) to use, control, and regulate the navigable waters of the United States and the submerged lands thereunder for various commerce-related purposes including navigation and flood control. In tidal areas, the servitude extends to all lands below the mean high-water mark. In non-tidal areas, the servitude extends to all lands within the bed and banks of a navigable stream that lie below the ordinary high-water mark.

Generally, it is the policy of the USACE to utilize the navigation servitude in all available situations, whether or not the project is cost-shared or fully Federally funded. Lands over which the navigation servitude is exercised are not to be acquired nor eligible for credit for a Federal navigation or flood control project or another project to which a navigation nexus can be shown.

8 Maps

Maps are intended as a preliminary tool to illustrate the Study area, LERRDs to be acquired, and lands within the navigation servitude. Detailed maps will be provided prior to the Notice to Acquire (NTA) notification to the NFS. For the Study location and Study area, refer to Figure 3-1. For LERRDs requirements, refer to Figures 3-2 to 3-4.

9 Induced Flooding

It is not anticipated that the proposed project would cause any induced flooding.

10 Baseline Cost Estimate for Real Estate

The baseline cost estimate for all project LERRDs is estimated at \$1,758,100, which includes required interests, relocation assistance, incremental real estate contingency, and incidental acquisition costs for both the NFS and Government.

Table 10-1. Baseline Cost Estimate for Real Estate

| Real Estate Requirement | Size (Acres) | Cost Estimate |
|--|---------------------|----------------------|
| Flood Protection Levee Easements | 2.3 acres | \$77,500 |
| Temporary Work Area Easements | 1.8 acres | \$9,700 |
| Improvements | | \$0 |
| Hazard Removals | | \$0 |
| Mineral Rights | | \$0 |
| Damages | | \$0 |
| Facility/Utility Relocations | | \$0 |
| Uniform Relocation Assistance | | \$914,800 |
| Incremental Real Estate Costs | | \$26,200 |
| Incidental Acquisition Costs: NFS | | \$495,000 |
| Incidental Acquisition Costs: Government | | \$234,900 |
| TOTAL | | \$1,758,100 |

The values for structural features of the baseline cost estimate were obtained from a Land Cost Estimate Report prepared by a licensed USACE appraiser, Northwestern Division, effective October 27, 2021. In accordance with USACE Real Estate Policy Guidance Letter 31, Real Estate Support to Civil Works Planning, a cost estimate is sufficient for projects in which the value of LERRDs is not expected to exceed 15 percent of total project costs. A cost estimate is not an appraisal as defined by the Uniform Standards Professional Appraisal Practice (USPAP); however, it conforms to USACE regulations. Cost is an estimate of fact, not an opinion of value, based upon land planning and engineering design parameters at a specific level of detail. As the design parameters are refined, the engineering and land planning facts may change necessitating a change in the cost estimate.

Incremental real estate costs are estimated at 30% of required real estate costs for risk-based contingencies. Incidental acquisition costs include a 10% contingency. Incidental acquisition costs are estimated to include NFS costs incurred for title work, appraisals, review of appraisals,

coordination meetings, review of documents, legal support, and other costs that are incidental to project LERRDs as well as Government costs for staff monitoring and reviewing and approving LERRDs. Costs for non-structural Rights-of-Entry and associated administrative costs are included in NFS and Government incidental acquisition costs. Assumptions are based on a per structure basis utilizing prior approved USACE Real Estate Plans involving non-structural measures. Relocation assistance costs are based on a per residential structure basis; see Section 11 below for more information.

11 Public Law 91-646 Relocation Benefits

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, PL 91 - 646, as amended, commonly called the Uniform Act, is the primary law for acquisition and relocation activities on Federal or federally assisted projects and programs. The NFS is required to follow the guidance of PL 91-646.

The nonstructural measures of elevating residences will be undertaken solely on a voluntary basis. As such, no relocation benefits are generally paid for voluntary measures as the act of elevating the home is considered a benefit. However, a limited exception exists when there is an eligible tenant in the property, and the tenant is displaced to accomplish the voluntary measure benefiting the property owner. In this case, the tenant may receive relocation benefits.

For purposes of this study, 21% of the housing units in the Study area are estimated as tenant-occupied (*American Samoa Overview*, National Oceanic and Atmospheric Administration, 2006). Relocation expenses are estimated at \$18,000 per relocation. Eligible tenants temporarily relocating are reimbursed for the cost of temporary alternate housing, meals and incidentals (such as laundry services), and the fees for disconnection and connection of utilities at the temporary residence. Alternate housing could be hotels or apartments, depending upon availability in the community. All temporary housing costs require advance approval by the NFS after first obtaining the prior written approval of USACE. Relocation assumptions are based on per diem rates in accordance with the Defense Travel Management Office (October 2021).

All conditions of temporary relocation must be reasonable. The NFS should return the tenant to his or her previous unit before three months. If any issues with elevating the structure arise, any residential tenant who is temporarily relocated for more than one year must be offered permanent relocation assistance, which may not be reduced by the amount of any temporary relocation assistance previously provided.

Tenants are entitled to receive relocation advisory services as well, including reasonable advance written notice of the following:

- Address of the suitable decent, safe, and sanitary dwelling to be made available for the temporary period; and
- Terms and conditions under which the tenant may lease and occupy a suitable decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and
- Provisions of reimbursement for all reasonable out of pocket expenses incurred in connection with the temporary relocation as noted above; and
- In addition to relocation advisory services, displaced tenants may be eligible for other relocation assistance, including relocation payments for moving expenses and

replacement housing payments for the increased costs of renting or purchasing a comparable replacement dwelling.

12 Minerals, Timber, and Crop Activity

There are no known surface or subsurface minerals that would impact the proposed project. Additionally, no known timber or crops are anticipated to be affected by the proposed project. Project construction is anticipated along streams.

13 Assessment of Sponsor's Acquisition Capability

An Assessment of the NFS's Real Estate Acquisition Capability will be conducted jointly with the NFS in preparation for the final Real Estate Plan. A sample Sponsor's Acquisition Capability Assessment is included in Attachment 1.

14 Zoning

According to the American Samoa Zoning Act (Title 26, Chapter 3), a zoning board has original jurisdiction to zone American Samoa, approve zoning maps, and grant variances. However, the American Samoa DPW provided the only zoning information available in the vicinity of the Project Area (American Samoa Industrial Zone Map, Department of Public Works, 1962). This information indicates uniform zoning information is not available. Therefore, no enactments of zoning ordinances are proposed in lieu of, or to facilitate, acquisition in connection with the proposed project. See Figure 14-1, Industrial Zone Map.



Figure 14-1. Industrial Zone Map

15 Acquisition Milestones

The following preliminary schedule estimates twenty-four (24) months for NFS LERRDs planning and acquisition. The planned timeline below will be mutually agreed upon by USACE Real Estate, Project Management, and the NFS.

The NFS's preliminary acquisition planning is estimated at ten (10) months as follows:

| | |
|-------------------|----------|
| Survey/Map/Title | 120 Days |
| Legal Description | 60 Days |
| Appraisal | 120 Days |

The NFS's LERRD acquisition is estimated at fourteen (14) months as follows:

| | |
|---------------------|----------|
| Documentation | 120 Days |
| Negotiation | 180 Days |
| Payment | 60 Days |
| LERRD Certification | 60 Days |

16 Public Facility or Utility Relocations

A preliminary review of the Civil Engineering Appendix and aerial maps indicate, at this phase of design, there are no utility or facility relocations anticipated for the proposed project.

17 Environmental Impacts

Potential environmental impacts resulting from the proposed project are being considered, including investigation under NEPA/HEPA, HTRW Policy, National Historic Preservation Act, Clean Water Act, Endangered Species Act, Coastal Zone Management Act, Fish and Wildlife Coordination Act, and Magnuson-Stevens Fishery Conservation and Management Act.

National Environmental Policy Act (NEPA)

It is assumed that an Environmental Assessment is the appropriate NEPA document for the final array of alternatives. Environmental analysis will comply with all environmental laws applicable. Analysis will be completed by relying on existing literature, remote sensing technologies, and data available from other agencies for use in GIS.

Hazardous, Toxic, and Radioactive Waste (HTRW) Policy

A review of environmental databases for American Samoa identified no reportable uncontrolled releases of contaminants within the immediate Study area. At this time, no HTRW issues are anticipated within the project footprint.

National Historic Preservation Act (NHPA)

In accordance with Section 106 of the National Historic Preservation Act (NHPA), USACE will consult with the American Samoa Historic Preservation Division, indigenous groups, and other interested individuals during the feasibility study process. Flood inundation effects have not previously been noted by the American Samoa Historic Preservation Division as a source of concern for cultural resources on the Tafuna-Leone Plain.

18 Landowner Concerns

No landowner concerns are anticipated at this time. Discussions between the NFS and landowners are ongoing as the tentatively selected plan is refined. Future plans may include discussions between the NFS and the 'âiga, the cognatic descent group of communal landowners, and the matai, the elected head of the descent group.

Other stakeholders consist of communities in the Tafuna area, American Samoa Environmental Protection Agency, and American Samoa Coastal Management Program. The USACE Study team has held meetings with local agencies, which have shown support for the proposed project.

19 Notification to Sponsor

The NFS, Government of American Samoa, as represented by the Department of Public Works, is involved in the planning process. The NFS will be provided a Local Sponsor Toolkit and

advised of the risks of acquiring LERRDs before the execution of the PPA. A Sample Letter Advising Against Early Acquisition is included in Attachment 2.

Additionally, once the LERRDs are finalized, a Notice to Acquire Letter will be transmitted to the NFS. The Notice to Acquire Letter serves as the formal instruction for the NFS to acquire the real estate interests needed for the proposed project. A Sample Notice to Acquire Letter is included in Attachment 3.

20 Other Relevant Real Estate Issues

There are no other known relevant real estate issues in the Study area.

21 References

American Samoa Department of Public Works, Industrial Zone Map, 1962.

National Oceanic and Atmospheric Administration, American Samoa Overview, 2006.

Raynal, Jeremy. *American Samoa's Marine Protected Area System: Institutions, Governance, and Scale*, October 2016, *Journal of International Wildlife Law & Policy*.

Stover, Marilyn, *Individual Land Tenure in American Samoa, The Contemporary Pacific*, Volume 11, Number 1, Spring 1999, 69–104, University of Hawaii Press.

U.S. Army Corps of Engineers, Honolulu District. *Feasibility Report/Environmental Assessment, Tafuna Flood Risk Management Study*, October 2021.

U.S. Army Corps of Engineers, Honolulu District. *Report Summary, Tafuna Flood Risk Management Study*, August 2020.

U.S. Army Corps of Engineers, Northwestern Division. *Land Cost Estimate*, effective 27 October 2021.

Attachment 1: Sponsor's Acquisition Capability Assessment

| Assessment of Non-Federal Sponsor's Real Estate Acquisition Capability | | |
|--|------------|-----------|
| <p>Project: Tafuna Flood Risk Management Study Project Authority: Section 444 of the Water Resources Development Act (WRDA) of 1996 (Public Law 104-303) as amended by Section 207 of the Water Resources Development Act of 1999 (Public Law 106-53) and Additional Supplemental Appropriations for Disaster Relief Act of June 6, 2019 (Public Law 116-20). Non-Federal Sponsor: American Samoa Government American Samoa Department of Public Works Name, Title Address Phone, email</p> | | |
| Legal Authority | Yes | No |
| 1. Does the NFS have legal authority to acquire and hold title to real property for project purposes? (statutory citation) | | |
| 2. Does the NFS have the power of eminent domain for the project (statutory citation) | | |
| 3. Does the NFS have "quick-take" authority for this project? | | |
| 4. Are there any lands/interests in land required for the project that are located outside the NFS's authority boundary? | | ✓ |
| 5. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? | | ✓ |
| 6. Will the NFS's in-house staff require training to become familiar with the real estate requirements of Federal projects, such as PL 91-646, as amended? | | ✓ |
| 7. If #6 is yes, has a reasonable plan been developed to provide training? | | NA |
| Willingness to Participate | Yes | No |
| 8. Has the NFS stated its general willingness to participate in the project and its understanding of the general scope and role? | | |
| 9. Is the NFS agreeable to signing a Project Partnership Agreement and supplying funding as stipulated in the agreement? | | |
| 10. Was the NFS provided the Local Sponsor Toolkit? Date | | |
| Acquisition Experience and Capability | Yes | No |
| 11. Taking into consideration the project schedule and complexity, does the NFS have the capability, with in-house staffing or contract support, to provide the necessary services, including surveying, appraisal, title, negotiation, condemnation, closing, and relocation assistance, as required for the project? | | |
| 12. Is the NFS's projected in-house staffing level sufficient considering its workload? | | |
| 13. Can the NFS obtain contractor support, if required, in a timely manner? | | |
| 14. Is the NFS's staff located within reasonable proximity to the project site? | | |
| 15. Will the NFS likely request USACE assistance in acquiring real estate? | | |
| Schedule Capability | Yes | No |
| 16. Has the NFS approved the tentative project real estate schedule and indicated its willingness and ability to utilize its financial, acquisition, and condemnation capabilities to provide the necessary project LERRDs in accordance with the proposed project schedule so the Government can advertise and award a construction contract as required by overall project | | |

Appendix E

| | | | |
|---|--|-------------------------|-----------|
| schedules and funding limitations? The anticipated NFS real estate acquisition timeframe for the project is twelve (12) months. NFS Initials: | | | |
| LERRD Crediting | | Yes | No |
| 17. Has the NFS indicating its understanding of LERRD credits and its capability and willingness to gather the necessary information to submit LERRD credits within six (6) months after possession of all real estate and completion of relocations so the project can be financially settled? NFS Initials: | | | |
| Past Action and Coordination | | Yes | No |
| 1. Has the NFS performed satisfactorily on other USACE projects? | | | |
| 2. Has the assessment been coordinated with NFS? | | | |
| 3. Does the NFS concur with the assessment? (provide explanation if no) | | | |
| With regard to the project, the NFS is anticipated to be: | | Select One | |
| Fully Capable: previous experience; financial capability; authority to hold title; in-house staff can perform necessary services (survey, appraisal, title, negotiation, closing, relocation assistance, condemnation) as required by the LERRDs. | | | |
| Moderately Capable: financial capability; authority to hold title; can perform, with contract support, necessary services (survey, appraisal, title, negotiation, closing, relocation assistance, condemnation) as required by the LERRDs. | | | |
| Marginally Capable: financial capability; authority to hold title; will rely on approved contractors to provide necessary services (survey, appraisal, title, negotiation, closing, relocation assistance, condemnation) as required by the LERRDs. | | | |
| Insufficiently Capable (provide explanation): financial capability; will rely on another entity to hold title; will rely on approved contractors to provide necessary services (survey, appraisal, title, negotiation, closing, relocation assistance, condemnation) as required by the LERRDs. | | | |
| USACE Prepared by: | | NFS Reviewed by: | |
| | | | |
| Tiffany Murray Realty Specialist USACE Honolulu District | | Name Title Office | |
| Date: | | Date: | |
| USACE Approved by: | | | |
| Considering the capability of the NFS and the ancillary support to be provided by contract services, it is my opinion that the risks associated with LERRDs acquisition and closeout of the project have been properly identified and mitigated. | | | |
| | | | |
| Erica Labeste Chief, Real Estate Branch U.S. Army Corps of Engineers Honolulu District | | Date: | |

Attachment 2: Sample Letter Advising Against Early Acquisition



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT
FORT SHAFTER, HAWAII 96858-5440

September 29, 2021

Real Estate Division

SUBJECT: Tafuna Flood Risk Management Study, Risks of Early Acquisition

Name
Title, Office
Address
City, State

Dear xx:

Reference is made to the Tafuna Flood Risk Management Study (Study) as authorized under Section 444 of the Water Resources Development Act (WRDA) of 1996 (Public Law 104-303) as amended by Section 207 of the Water Resources Development Act of 1999 (Public Law 106-53) and the Additional Supplemental Appropriations for Disaster Relief Act of June 6, 2019 (Public Law 116-20). The American Samoa Department of Public Works on behalf of the American Samoa Government, as the Non-Federal Sponsor, is responsible for ensuring that it possesses the authority to acquire and hold title for all real property required for the proposed project. The Non-Federal Sponsor shall provide one hundred percent (100%) of the lands, easements, rights-of-way, utility or public facility relocations, and dredged or excavated material disposal areas (LERRDs) as well as operation, maintenance, and repair required by the project.

The United States Army Corps of Engineers, Honolulu District, advises your office that there are risks associated with the acquisition of LERRDs prior to the execution of a Project Partnership Agreement (PPA) or Local Cooperation Agreement (LCA). The American Samoa Government will assume full and sole responsibility for any and all costs and liabilities arising out of premature acquisition. Project risks generally include, but are not limited to:

- a. Congress may not appropriate funds to construct the proposed project;
- b. The proposed project may otherwise not be funded or approved for construction;
- c. A PPA/LCA mutually agreed to by the Non-Federal Sponsor and the Government may not be executed;
- d. 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 the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended;
- e. The Non-Federal Sponsor may acquire interest or estates that are later determined by the Government to be inappropriate, inefficient, or otherwise not required for the project;
- f. The Non-Federal Sponsor may initially acquire insufficient or excessive real property acreage, which could result in additional negotiations and or/benefit payments under Public Law 91-646 or additional payment of fair market value to affected landowners;

Appendix E

g. The Non-Federal Sponsor may incur costs or expenses in connection with its decision to acquire LERRDs in advance of the executed PPA/LCA and the Government's Notice to Acquire (NTA).

If you have further questions, please contact the USACE Honolulu District, Real Estate Branch, at (808) 835-4055.

Sincerely,

Erica Labeste
Chief, Real Estate Branch
U.S. Army Corps of Engineers
Honolulu District

Attachment 3: Sample Notice to Acquire Letter



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, HONOLULU DISTRICT
FORT SHAFTER, HAWAII 96858-5440

September 28, 2021

Real Estate Division

SUBJECT: Tafuna Flood Risk Management Study, Notice to Acquire

Name
Title, Office
Address
City, State

Dear xx:

This letter serves as your Notice to Acquire the real estate interests needed from the American Samoa Government for the Tafuna Flood Risk Management Study (Study) as authorized under Section 444 of the Water Resources Development Act (WRDA) of 1996 (Public Law 104-303) as amended by Section 207 of the Water Resources Development Act of 1999 (Public Law 106-53) and the Additional Supplemental Appropriations for Disaster Relief Act of June 6, 2019 (Public Law 116-20). Enclosed are the final Authorization for Entry for Construction, Attorney's Certificate of Authority, and project real estate drawings. Also enclosed is the standard language to be used for the Channel Improvement Easement, Flood Protection Levee Easement, and Temporary Work Area Easement conveyance documents between the American Samoa Government, as the Non-Federal Sponsor, and private landowners.

In accordance with the Project Partnership Agreement (PPA) dated xx, the American Samoa Government is responsible for xx% of project costs and shall provide the real property interests and relocations required for the construction, operation, and maintenance of the project. As required by the PPA, the Government has determined the Channel Improvement Easements, Flood Protection Levee Easements, and Temporary Work Area Easements as shown on the real estate drawings are required for project implementation. The PPA also requires the American Samoa Government to comply with the Uniform Relocations and Assistance and Real Property Acquisition Policies Act, 42 U.S.C. § 4601, et. seq., and the Uniform Regulations, 49 C.F.R. part 24. More information can be found at <http://www.fhwa.dot.gov/realestate/realprop>.

After acquisition of the required real estate interests, the American Samoa Government shall complete and sign the Authorization for Entry for Construction and Attorney's Certificate of Authority. Please return the original signed authorization documents to the Corps of Engineers, Honolulu District Real Estate Branch, by mail to the address contained in the letterhead. In addition, the American Samoa Government shall provide copies of all conveyance documents for required real estate acquisitions to the Corps of Engineers. The Corps of Engineers requires the conveyance documents prior to advertising a construction contract. Copies of conveyance documents may be scanned and submitted electronically to the contact person below.

Appendix E

If you have any questions, please contact Tiffany Murray, Realty Specialist, at (808) 835-4065 or tiffany.murray@usace.army.mil.

Sincerely,

Erica Labeste
Chief, Real Estate Branch
U.S. Army Corps of Engineers
Honolulu District

Enclosures