

U.S. Army Corps of Engineers  
Norfolk District

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**HAMPTON, VIRGINIA  
HAMPTON ROADS BENEFICIAL USE OF  
DREDGED MATERIAL  
CONTINUING AUTHORITIES PROGRAM SECTION 204  
DRAFT DETAILED PROJECT REPORT AND  
ENVIRONMENTAL ASSESSMENT**

**APPENDIX E  
DRAFT REAL ESTATE PLAN**

**November 2024**

**HAMPTON, VIRGINIA**  
**HAMPTON ROADS BENEFICIAL USE OF DREDGED MATERIAL**  
**CONTINUING AUTHORITIES PROGRAM SECTION 204**  
**DRAFT DETAILED PROJECT REPORT AND ENVIRONMENTAL ASSESSMENT**  
**NOVEMBER 2024 DRAFT REAL ESTATE PLAN**

Table of Contents

1. Statement of Purpose.....	1
2. Real Estate Requirements.....	1
3. Real Estate Owned by the Non-Federal Sponsor .....	2
4. Non-Standard Estates .....	2
5. Existing Federal Projects.....	2
6. Federally Owned Land .....	3
7. Federal Navigation Servitude .....	3
8. Real Estate Mapping .....	3
9. Induced Flooding.....	3
10. Baseline Cost Estimate for Real Estate (BCERE).....	3
11. Uniform Relocation Assistance (Public Law 91-646) .....	4
12. Minerals and Timber Activity .....	5
13. Non-Federal Sponsor Capability Assessment .....	5
14. Land Use Zoning .....	5
15. Real Estate Acquisition Schedule.....	5
16. Facility and Utility Relocations.....	5
17. Environmental Contamination .....	6
18. Project Public Support.....	6
19. Non-Federal Sponsor Risk Notification .....	6
20. Other Pertinent Information .....	7

Exhibits and Attachments

Exhibit “A” – Real Estate Map

Exhibit “B” – Non-Federal Sponsor Capability Assessment Form



## 1. Statement of Purpose

- a) The purpose of this Real Estate Plan (REP) is to describe the minimum LERRD requirements for the construction, operation, and maintenance of the Hampton Roads Beneficial Use of Dredged Material Continuing Authorities Program Section 204 Draft Detailed Project Report and Environmental Assessment (the “Study”) Tentatively Selected Plan. This REP describes the estimated Land, Easements, and Right-of-Ways (LER) values, cost to acquire the LER, the types of real property interests (i.e., “estates”) required, property information, and other pertinent information relative to the real estate acquisition process and schedule. Further, this report identifies and describes the facility and utility relocations that may be necessary to complete prior to constructing the Tentatively Selected Plan (TSP). This REP is the first prepared for the Study and is an appendix to its Detailed Project Report and Environmental Assessment (the “main report”).
- b) Study Authorization: The U.S. Army Corps of Engineers has been authorized to conduct a feasibility study to evaluate federal participation in utilizing dredged material from a federal channel for the creation of a seabird island and fishery habitat. The Water Resources Development Act of 1992, Continuing Authorities Program (CAP) Section 204, provides authority for the USACE to beneficially use material dredged from authorized Federal navigational channels for the protection, restoration, and creation of aquatic and related habitats.

The purpose of the study is to beneficially use dredged material from a federal navigation channel to create a new sustainable and resilient island in Hampton Roads Harbor that will serve as the primary habitat for the Commonwealth of Virginia’s largest and most productive seabird colony that has been displaced by the expansion of the Hampton Roads Bridge Tunnel. This habitat will also provide ecological benefits to multiple fish and wildlife species.

- c) Non-Federal Sponsor: The non-federal sponsor (“Sponsor”) for the Study is the Commonwealth of Virginia Department of Wildlife Resources.

## 2. Real Estate Requirements

- a) Tentatively Selected Plan — The Tentatively Selected Plan is alternative 4b.5, a 5-acre nesting habitat with a 9.7-acre footprint at Hampton Bar with Anchorage F, or another federally maintained navigation channel, as the proposed borrow site (see Exhibit A).
  - (1) Environmental Mitigation — There is no requirement for environmental mitigation in this Study.
- b) Required Lands, Easements, Right-of-Ways (LER) — In accordance with the PPA, the Sponsor will be responsible for acquiring or ensuring the acquisition of all the LER required for the construction, operation, and maintenance of the Tentatively Selected Plan.

They shall provide, without cost to the United States, all necessary lands, easements, rights of way, relocations, and dredged material placement and borrow areas (LERRD) necessary for completing, inspecting, operating, maintaining, repairing, rehabilitating, or replacing the proposed project. The minimum interest for the placement of dredged material is fee, and no laydown area is needed as all material will be transported by either a pipeline in the water or by barge.

This Study requires 9.7 acres in fee of State bottomlands owned by the Sponsor and approximately 518,100 cubic yards of dredged material from a federally maintained navigation channel (borrow site) for construction of the island.

- c) Land Value Estimate — In accordance with USACE Real Estate Policy Guidance Letter No. 31, CEMP-CR, 11 Jan 19, subject: Real Estate Policy Guidance Letter No. 31-Real Estate Support to Civil Works Planning (PGL 31), a land appraisal cost estimate, or a “rough order of magnitude” estimate, was completed on August 31, 2023 for the Tentatively Selected Plan since the value of the real estate (land, improvements, and severance damages) was not expected to exceed fifteen percent of the total costs of the Tentatively Selected Plan. The real estate cost estimate is \$5,881.00 for LERRDs.

### **3. Real Estate Owned by the Non-Federal Sponsor**

The Commonwealth of Virginia Department of Wildlife Resources owns the LER required for the Tentatively Selected Plan at the Study site where the island would be constructed. While the sponsor is the State, as the Virginia Department of Wildlife Resources, the state bottoms require permitting from the Virginia Marine Resources Commission (VMRC) to build the island. Conversations have already begun between the State entities, and VMRC has already agreed to a permit as well as a land transfer to the Virginia Department of Wildlife Resources once the state bottoms become an island. The post-construction land transfer is expected to take 4-6 months.

### **4. Non-Standard Estates**

No real estate interests will be acquired for the Study. Therefore, non-standard estates will not be used for the proposed project. Non-standard estates are necessary only when there is no corresponding USACE approved standard estate for the real property interest required, or when changes to a corresponding standard estate (or previously approved non-standard estate) are desired. In such situations, a non-standard estate will be drafted in collaboration with the Sponsor, then distributed for approval by Headquarters USACE.

### **5. Existing Federal Projects**

There are no other known existing or planned federal projects that lie either partially or fully within the LER required for the Tentatively Selected Plan.

## **6. Federally Owned Land**

The Tentatively Selected Plan includes the beneficial use of approximately 518,100 cubic yards of dredged material for construction from a federally maintained channel, Anchorage F, or another federally maintained navigation channel within the vicinity of the Study site. Anchorage F is part of the Norfolk Harbor Navigation Improvements Project or Norfolk Harbor and Channels Project (see Main Report Section 2.3).

## **7. Federal Navigation Servitude**

The application of navigation servitude is not available for the Tentatively Selected Plan. Navigation servitude is the dominant right of the Federal Government under the Commerce Clause of the U.S. Constitution (Article 1, Section 8, Clause 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. Generally, the Federal Government does not acquire interests in real property that it already possesses or over which its use or control is, or can be, legally exercised. If navigation servitude is found to be available, then the Federal Government will generally exercise its right thereunder and, to the extent of such rights, will not acquire a real property interest in the land to which the navigation servitude applies.

## **8. Real Estate Mapping**

A real estate map is provided in **Exhibit “A.”**

## **9. Induced Flooding**

The Tentatively Selected Plan does not induce flooding.

## **10. Baseline Cost Estimate for Real Estate (BCERE)**

The BCERE establishes the estimated financial costs (for both the Government and Sponsor) that are attributed to the Tentatively Selected Plan’s real estate requirements. It is recorded in the 01-Lands & Damages and 30-Engineering & Design project cost accounts. Itemized under “Incidental” and “Land Value Estimate” cost categories, the BCERE provides a list of work activities/items with its associated estimated cost. The Tentatively Selected Plan’s total estimated real estate cost is **\$83,857.00**. Table-1 provides a summary of the BCERE.

Table-1: BCERE Summary

Project Cost Category	Cost	Contingency (%)	Contingency (\$)	Total Cost
01-Lands and Damages	\$43,881	20%	\$8,776	\$52,657
02-Utility/Facility Relocations	\$0	0%	\$0	\$0
30-PED	\$26,000	20%	\$5,200	\$31,200
<i>TOTAL</i>	<i>\$69,881</i>	<i>20%</i>	<i>\$13,976</i>	<i>\$83,857</i>

\*PED – Planning, Engineering, and Design

For civil works projects that are cost-shared between the Federal Government and a non-federal interest, the Water Resources Development Act of 1986 (“WRDA 86” or “Public Law 99-662”) assigns the Sponsor the responsibility of providing the LER, performing the facility/utility relocations, and fulfilling any disposal area requirements (collectively referred to as “LERRD”) for the project. All LERRD requirements must be performed in accordance with the project’s PPA, WRDA 86, and Public Law 91-646 (Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970), as amended.

LERRD costs represent a non-federal sponsor’s estimated upfront direct and indirect financial costs in fulfilling its real estate responsibilities. The Sponsor receives credit for their actual associated costs if found to be reasonable, allowable, and allocable. They must document all their LERRD expenses (i.e. receipts, invoices, official certified timesheets, etc.) and submit to USACE for review and approval as part of their claim for credit. LERRD costs are calculated by adding the non-federal costs in a project’s 01-Lands & Damages cost account with the cost in the project’s 02-Relocations (facility/utility) cost account. LERRD costs do not include federal costs.

The Sponsor’s estimated LERRD cost is **\$52,657.00**, which represents their approximate upfront financial obligation in fulfilling their real estate responsibilities to implement the Tentatively Selected Plan.

### **11. Uniform Relocation Assistance (Public Law 91-646)**

Public Law 91-646 provides uniform equitable treatment of persons and businesses displaced by a federal or federally-assisted project. Along with the PPA, it requires the Sponsor to provide assistance and certain benefits to be paid to all persons and businesses that are displaced and must be relocated from their residence or place of business due to a federally-funded project. The cost incurred by the Sponsor to provide relocation assistance is part of its LERRD responsibilities.

Residential and business relocation assistance benefits are not applicable to this Tentatively Selected Plan.

## **12. Minerals and Timber Activity**

There are no known present or anticipated mineral extraction or timber harvesting activities within the LER required for the Tentatively Selected Plan.

## **13. Non-Federal Sponsor Capability Assessment**

The Sponsor’s assessment of their real estate acquisition capabilities is provided in **Exhibit “B”**. The Sponsor has been identified as fully capable of performing or ensuring the performance of its real estate responsibilities. They possess the professional capability to acquire the real estate for the Tentatively Selected Plan and have sufficient general and legal authority to do so. The Sponsor has been advised of Public Law 91-646 requirements and the requirements for documenting expenses for credit purposes.

## **14. Land Use Zoning**

No application or enactment of local zoning ordinances is anticipated in lieu of or to facilitate the Tentatively Selected Plan’s LERRD requirements.

## **15. Real Estate Acquisition Schedule**

The Sponsor owns the land in State waters, and the borrow site is a federally maintained channel. No acquisition of real estate will be required and borrow material from Anchorage F currently scheduled to be available in 2027 (see Main Report Section 3.2.2). The proposed project schedule is outlined in Table-2 below.

Table-2: Project Milestones

Milestone	Forecasted Dates
Execution of Project Partnership Agreement with Sponsor	DEC 2025
Notice to Proceed to the Sponsor to Acquire Real Estate and Acquisition Start	DEC 2026
Sponsor’s Authorization for Entry for Construction	MAY 2027
USACE Real Estate Certification	MAY 2027
USACE’s Solicitation for Construction Contracts	MAY 2027
USACE’s Award of Construction Contracts	AUG 2027

## **16. Facility and Utility Relocations**

There are no anticipated utility or facility relocations in the Study footprint.

## **17. Environmental Contamination**

Based upon the environmental analysis of the Hazardous, Toxic, and Radioactive Waste (HTRW), there are no areas of concern in the project footprint. There are no environmental mitigation land requirements, and any movement of lands due to construction activities will not have a significant impact on the Study lands and environment. Implementation of the actional alternative is not anticipated to result in any generation or regulated release of HTRW.

## **18. Project Public Support**

There has been no major opposition to this Study expressed by public or private persons or organizations, and at least fifty letters or comments of support were received from the public. In addition, multiple interagency meetings have been held for the Study, and the Study is widely well-received.

## **19. Non-Federal Sponsor Risk Notification**

By letter dated November 29, 2022, a formal written notice was provided to the Sponsor on the risks associated with acquiring the real estate for the Recommended Plan in advance of signing a PPA. Those risks include, but may not be limited to, the following:

- 1) Congress may not appropriate funds to construct the Recommended Plan;
- 2) The Recommended Plan may otherwise not be funded or approved for construction;
- 3) A PPA mutually agreeable to the Sponsor and the Government may not be executed and implemented;
- 4) The 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;
- 5) The Sponsor may acquire interests or estates that are later determined by USACE to be inappropriate, insufficient, or otherwise not required for the Recommended Plan;
- 6) The 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 USACE's NTP; and

7) The Sponsor may incur costs or expenses in connection with its decision to acquire or perform LERRD in advance of the executed PPA and USACE's NTP Letter, which may not be creditable under the provisions of Public Law 99-662 or the PPA.

## **20. Other Pertinent Information**

It is important to note that some of the maps in the Main Report reflect public clamming grounds known as the Hampton Flats (see Section 3.4 of the Main Report, Habitat Location Screening), and the island will be east of these grounds. However, the area where the island is proposed is designated as a shellfish condemnation zone, meaning that these waters are restricted from any person, firm, or corporation to take shellfish. The public clamming ground is likely not in use since the area is under condemnation effective June 15, 2021 due to enterococcus.

This Real Estate Plan was prepared by the real estate project delivery team member Erica N. Park, who may be reached at (757) 201-7076 (email: [Erica.N.Park@usace.army.mil](mailto:Erica.N.Park@usace.army.mil)).

PREPARER:

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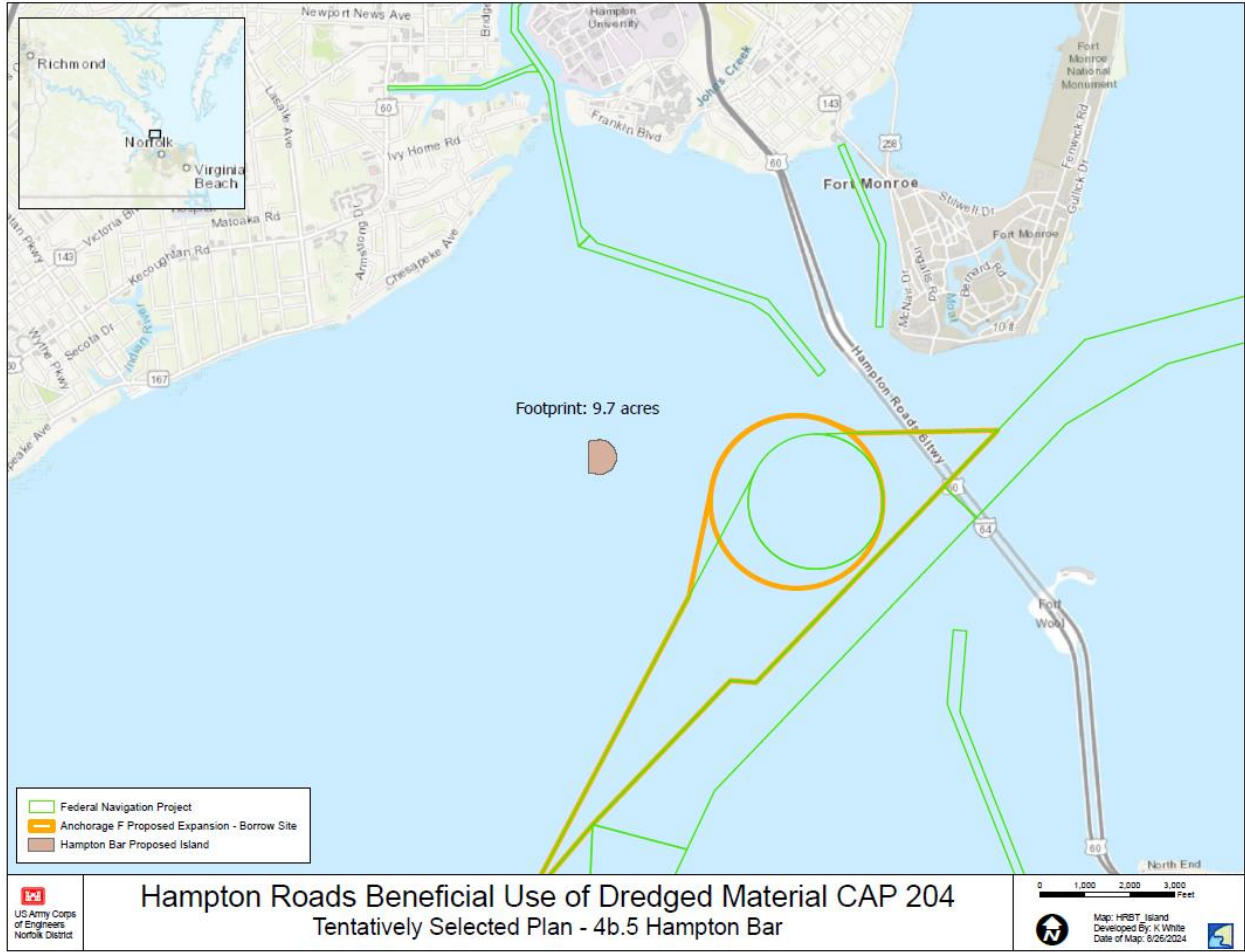
Erica N. Park  
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DISTRICT CHIEF OF REAL ESTATE:

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Donna Carrier-Tal  
Chief, Real Estate Division  
Norfolk District

# Exhibit A Real Estate Map



## EXHIBIT "B"

### NON-FEDERAL SPONSOR CAPABILITY ASSESSMENT

ER 405-1-12  
Change 31  
1 May 98

#### HAMPTON ROADS BENEFICIAL USE OF DREDGED MATERIAL CAP 204 PROJECT

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

##### I. Legal Authority:

- a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes? (yes/no - describe)

Yes, as the Commonwealth of Virginia, Board of Department of Wildlife Resources under VA Code 29.1-103. Authority under Admin code 2.2-1150 will go through the Department of General Services with approval from the Governor after the project is complete with permitting through VMRC for construction. The Secretary of Natural Resources is the same for VMRC and VA DWR, and they share the same attorney, allowing the transfer of authority from VMRC to VA DWR once the project is constructed (submerged aqueous land to island) to go smoothly.

- b. Does the sponsor have the power of eminent domain for this project? (yes/no - describe).

No. VMRC is sovereign immune, so the Virginia Department of Wildlife Resources (VA DWR) would not be able to use eminent domain.

- c. Does the sponsor have "quick-take" authority for this project? (yes/no - describe)

No. VMRC is sovereign immune, so VA DWR would not be able to use "quick-take" authority.

- d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? (yes/no - describe)

No, all the lands are within the Commonwealth of Virginia.

- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? (yes/no - describe)

No. The lands and interests are owned by the Commonwealth of Virginia.

##### II. Human Resource Requirements:

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91- 646, as amended? (yes/no - describe)

No additional training is needed.

- b. If the answer to II.a. is "yes," has a reasonable plan been developed to provide such training? (yes/no - describe)

- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? (yes/no - describe)

Yes, they have over 10 years of experience plus additional staff to assist on the project.

- d. **Is the sponsor's projected in-house staffing level sufficient considering its other work load, if any, and the project schedule? (yes/no – describe)**

Yes, and they have recently hired additional staff.

- e. **Can the sponsor obtain contractor support, if required in a timely fashion? (yes/no – describe)**

Yes. They have on-call contractors to assist with due diligence.

- f. **Will the sponsor likely request USACE assistance in acquiring real estate? (yes/no) (If "yes," provide description)**

No, the Sponsor does not intend to request USACE assistance in acquiring the real estate.

**III. Other Project Variables:**

- a. **Will the sponsor's staff be located within reasonable proximity to the project site? (yes/no – describe)**

Yes, the Sponsor is located within an hour of the project site.

- b. **Has the sponsor approved the project/real estate schedule/milestones? (yes/no)**

Yes, the Sponsor has approved the project milestones.

**IV. Overall Assessment:**

- a. **Has the sponsor performed satisfactorily on other USACE projects? (yes/no/not applicable)**

Yes. Not as the sponsor, but they assisted VDOT with acquisitions with the Kerr Dam office. They also assisted in the Dundas Road project with USACE Norfolk.

- 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," provide explanation)**

Fully capable.

V. **Coordination:**

a. **Has this assessment been coordinated with the sponsor?** (yes/no)

Yes

b. **Does the sponsor concur with this assessment? (yes/no) (If "no," provide explanation**

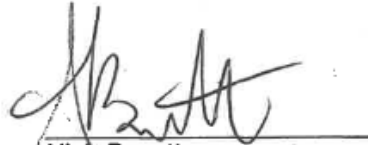
Yes, I received verbal concurrence of their assessment at the end of the call.

**Prepared by:**



**Erica Park  
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**Reviewed and approved by:**



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Acting Chief  
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**Ryan J. Brown**

**Executive Director**

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