

APPENDIX H

REAL ESTATE PLAN

SOUTH SAN FRANCISCO BAY SHORELINE
Alviso Ponds and Santa Clara County, California
Interim Feasibility Study

PREPARED FOR THE
SAN FRANCISCO DISTRICT
SOUTH PACIFIC DIVISION, U.S. ARMY CORPS OF ENGINEERS

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PREPARED
BY THE
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SOUTH SAN FRANCISCO BAY SHORELINE
Alviso Ponds and Santa Clara County, California Interim Feasibility Study (Shoreline Study)
REAL ESTATE PLAN

1. Introduction

The purpose of the Shoreline Study is to address flood risk management and ecosystem restoration problems and opportunities along the southern portion of San Francisco Bay in Northern California. The decision document, a General Investigation Interim Feasibility Report and Environmental Impact Statement/Report (Integrated Document) for the South San Francisco Bay Shoreline, Alviso Ponds and Santa Clara County, California, is expected to be the basis for a recommendation to Congress for authorization of a new project. The Real Estate Plan is prepared in accordance with ER 405-1-12, Section 12-16, Real Estate Plan and in support of the Feasibility Study for the South San Francisco Bay Shoreline. The future project would be located near the community of Alviso, California and the San Jose – Santa Clara Water Treatment Plant.

The non-Federal sponsors (NFS) for the study and future project are the Santa Clara Valley Water District (SCVWD) and the California State Coastal Conservancy (SCC). The U.S. Fish and Wildlife Service (USFWS) and City of San Jose are major landowners within the study area.

This report is tentative in nature, focuses on the Recommended Plan, and is to be used for planning purposes only. There may be modifications to the plans that occur during Pre-construction, Engineering and Design (PED) phase, thus changing the final acquisition area(s) and/or administrative and land costs.

2. Project Authority

The Shoreline Study was originally authorized by Congress in 1976 to assess the need for flood protection along San Francisco Bay. A subsequent flood risk management study, completed in 1992 by the U.S. Army Corps of Engineers (USACE), found that a Federal flood risk management project along the South San Francisco Bay shoreline was not economically justifiable, largely because the future without project condition needed to assume that Cargill, Incorporated would continue to maintain existing salt pond levees that separate San Francisco Bay from developed inland areas due to their economic interest in keeping ocean and river water from diluting the brines of its salt-making operations. These salt pond levees were not engineered structures; however, they provided incidental flood protection for the surrounding communities.

In 2003, the Federal government and State of California (State) began planning a restoration project when they acquired 15,100 acres of salt ponds along southern San Francisco Bay from Cargill, Incorporated. The planned restoration project would affect the utility of the salt pond levees as flood risk management structures. As a result, the U.S. House of Representatives requested that the USACE review its previous study on flood risk management along the San Francisco Bay shoreline to determine whether changed conditions in the study area would

lead to an economically justified flood risk management project, as well as to investigate opportunities for ecosystem restoration.

The USACE completed an initial reconnaissance analysis in September 2004, which determined that due to the current and future anticipated conditions in the South Bay, it was likely that a Federal flood risk management and ecosystem restoration project would be justified. On October 24, 2005, the USACE, the Santa Clara Valley Water District, and the California State Coastal Conservancy initiated an interim feasibility study on the southern portion of the South Bay, including the Alviso Ponds and other lands and water stretching from southwest Fremont to Palo Alto in Santa Clara County.

In 2011, the study partnership reduced the geographic scale of the interim feasibility study to cover Ponds A9-A16, owned by the United States of America and managed by the United States Fish and Wildlife Service, hereafter "USFWS lands", Pond A18 (owned by the City of San Jose), and adjacent shoreline areas between Alviso Slough/Guadalupe River and Coyote Creek. This area was determined to have the highest risk for future flood damages due to its subsidence and future sea level rise. This study area also represents an opportunity to combine flood risk management and ecosystem restoration, as the restoration of Ponds A9-15 and A18 can only be accomplished after flood risk management for the adjacent inland areas has been addressed.

3. Project Description

The Recommended Plan is located near the community of Alviso, California and the San José-Santa Clara Water Pollution Control Plant (Wastewater Facility). There are three significant streams in the area: Alviso Slough, which is to the west of Alviso; Coyote Bypass, which is north of the water treatment plant; and Artesian Slough, which flows out of the Wastewater Facility. Alviso is bordered by New Chicago Marsh, and Ponds A12, A13 and A16. Pond A18 is to the north of the Wastewater Facility.

The National Economic Development and National Economic Restoration Plan (NED/NER) is a 12.5 foot flood risk management levee and ecosystem restoration on Pond A18, (non-Federally owned) and Ponds A9-15 with the recent passage of the Water Resources Reform and Development Act of 2014 (WRRDA 2014) and the recent Implementation Guidance to propose restoration on other Federal lands.

The Recommended Plan is Alternative 3 in the Integrated Document and is described as Alviso North levee alignment 15.2-foot Levee a 30:1 Ecotone (see enclosed Project Maps, Exhibit A).

The Recommended Plan includes flood risk management features (a levee and tidegate constructed on Federal and non-Federal lands), ecosystem restoration of Pond A18 with a 30:1 Ecotone, and a pedestrian bridge crossing Artesian slough and ecosystem restoration of Ponds A9-A15 (Federally owned) and recreation features on their lands. Pond restoration includes constructing features, such as starter and pilot channels, to prepare the ponds for connection with tidal flows, constructing a bayside transitional habitat zone adjacent to the proposed flood risk management levee, and breaching the ponds to allow natural sedimentation processes to create tidal marsh habitat over time. The ecosystem restoration actions would be guided by monitoring and adaptive management.

With the passage of the WRRDA 2014 and recent Implementation Guidance, the Corps will include the ecosystem restoration of the USFWS lands as part of the project, to be cost shared between the USACE and the non-Federal sponsor. The study has determined that the proposed levee, whose western segment falls primarily on USFWS lands, is the most cost effective flood risk management option. Due to the adjacency of the USFWS lands and the community of Alviso, a levee providing flood protection to the community of Alviso must fall at least partially on USFWS lands.

4. Description of Land, Easements, Rights-Of-Way, Relocation, and Disposal Areas (LERRDs)

The Recommended Plan is shown in the table below to achieve the project goals. The non-Federal sponsors will acquire the minimum interests in real estate to support the construction and subsequent operation and maintenance of the future USACE project. Real estate interests associated with constructing, operating, and maintaining the USFWS ecosystem restoration and recreation features do not need to be acquired by the non-Federal sponsor.

Once the project partnership agreement (PPA) process is complete, the San Francisco District Engineering Branch will prepare the final design for advertisement and construction. During this process the tract register and tract maps will be updated to reflect any modifications to include final staging areas, access requirements, construction haul routes, and recreation features. This information will be used for future crediting purposes.

Lands for the proposed USACE and USFWS projects consist primarily of former salt production ponds located to the west of the city of Milpitas and north of cities of San Jose and Santa Clara (see enclosed project maps). Pond A18 is immediately adjacent to the Wastewater Facility and Ponds A9-A15 located to the north of the community of Alviso (separated by New Chicago Marsh, on USFWS lands).

The Recommended Plan includes a new flood risk management levee along the existing pond levees that separate Ponds A12, A13, and A16 from New Chicago Marsh, and along the existing southern boundary of Pond A18. The USACE TSP also includes a transitional habitat feature (a 30:1 slope "ecotone") adjacent to the bayward side of the proposed levee along Pond A18. The proposed USFWS project includes a similar 30:1 ecotone along the proposed USACE levee along Ponds A12 and A13.

Project recreation features do not require additional LERRs for implementation. All recreation features for the project share space with the levee footprint. Trails and pedestrian bridges are coincident with the levee crest.

The different types of acquisitions are as follows:

Flood Protection Levee Easement will be required estimated at 29 acres.

Permanent Road Easement will be required estimated at 7 acres.

An MOU with USFWS lands to include approximately 25 acres for the levee alignment, 2.5 for O&M, 7 acres for staging and approximately 2,100 acres for ecosystem restoration as well as public access. See Exhibit D for draft MOU.

A Fee Estate for Ecosystem Restoration on approximately 850 acres on Pond A18 is required

An estimated 1.5 acres, more or less, will be required in Fee to secure public access for the proposed tide gate/pedestrian bridge that crosses Artesian Slough.

Temporary Work Area Easement will be required for staging areas and haul routes on private lands as identified in Exhibit A2 estimated at 45 acres. An anticipated 5 year TWAE easement will be required.

Temporary Work Area Easement will be required to support Borrow Areas. The sponsor will be required to provide 960,000 cubic yards of Borrow for the project levees, approximately 54 acres in support of the project. The sponsor has identified three projects, Upper Llagas Creek, Upper Guadalupe River and Permanente Creek, all of which are located within 30 miles from the project site. Upper Llagas Creek and Upper Guadalupe River are current Corps projects where the sponsor is required to obtain the necessary real estate and would be NOT be eligible to receive credit under LERRD's for a South San Francisco Shoreline Project. Permanente Creek is a non-Corps project; however the sponsor identified this location where Borrow will be generated and readily available for the Shoreline project levees. A Temporary Work Area Easement for approximately 20 acres, will be required to acquire the necessary borrow at Permanente Creek. An anticipated 5 year TWAE easement will be required.

An estimated 0.263 acres of the total 0.496 acres of Southern Pacific Transportation lands will require a relocation agreement for the removal and replacement of the railroad tracks. The remainder 0.233 acres is estimated for the levee alignment feature.

There is no need for disposal areas. All material that cannot be used as structural fill will be used as common fill within the project footprint.

The following Table 1 summarizes the estimated LERRDs for the USACE TSP, based on the project cadastral maps and tract register dated 8 August 2014 and 3 April 2015.

Table 1. LERRDS FOR RECOMMENDED PLAN - Levee Height of 15.2, Pond A18 Restoration with a 30:1 ecotone transitional Habitat, Pedestrian Bridge crossing Artesian Slough and Tidegate

Pond or Feature	Owner	Estate	Acres
Levee	USFWS, Southern Pacific Transportation (Project features that require lands on railroad property may cause potential delays in acquisition based on recent interactions with railroad companies on other USACE projects), local government agencies and private owners	MOU with USFWS ¹ and FLPE for City of San Jose and other private owners, and a non-standard estate for levee alignment feature with SLC for Artesian Slough.	~54 acres
Permanent Road Easement for Levee	USFWS, local government agencies, private owners & State of California	Permanent Road Easement	~7
Ecosystem Restoration on Pond A18 & Ponds A9-15	City of San Jose	Fee	~850 acres on Pond A18 & approx 2,135 on USFWS
Temporary Work Area Easement for Staging & Hauling	Various	TWAE (staging & haul routes on private lands)	~45
Temporary Work Area Easement for Borrow	Various	TWAE	~20
Total (USACE Project):			~3100 ac

5. LERRDs Owned by the Non-Federal Sponsor and Crediting

Credit will only be applied to LERRDs owned and/or held by the sponsors that fall within the “project footprint,” namely the LERRDs required for the TSP. Lands outside of the project requirements and that may be acquired for the sponsor’s own purposes which do not support the minimum interests necessary to construct, operate and maintain the Project would not be creditable LERRDs. Only land deemed necessary to construct, operate and maintain the plan would be creditable. The value of potentially creditable lands owned by the sponsors is included in the TSP’s cost estimate.

In 2003, the Department of the Interior and the State of California purchased salt making rights that had been reserved by Cargill in a previous conveyance of the lands encompassing Ponds A9-A16 to the United States. The majority of the funding for the purchase of the reserved salt making rights was provided by the State of California. Section 4027(c)(1)(b) of WRDA 2007 provides that the NFS shall receive credit for its portion of the acquisition costs for lands acquired by the State and Federal government in 2003 but currently owned by the United State of America and managed by the USFWS, (see below for Section 4027 language). The credit calculation will be based on the actual acquisition costs borne by the State of California for reserved salt making rights in the lands that are included within the USACE project.

SEC. 4027. SOUTH SAN FRANCISCO BAY SHORELINE, CALIFORNIA.

(a) *IN GENERAL.*—The Secretary, in cooperation with non-Federal interests, shall conduct a study of the feasibility of carrying out a project for—

- (1) flood damage reduction along the South San Francisco Bay shoreline, California;
- (2) restoration of the South San Francisco Bay salt ponds (including on land owned by other Federal agencies);
- and
- (3) other related purposes, as the Secretary determines to be appropriate.

(b) *REPORT.*—

(1) *IN GENERAL.*—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report describing the results of the study under subsection (a).

(2) *INCLUSIONS.*—The report under paragraph (1) shall include recommendations of the Secretary with respect to the

project described in subsection (a) based on planning, design, and land acquisition documents prepared by—

(A) the California State Coastal Conservancy;

(B) the Santa Clara Valley Water District; and

(C) other local interests.

(c) *CREDIT.*—

(1) *IN GENERAL.*—In accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), and subject to paragraph (2), the Secretary shall credit toward the non-Federal share of the cost of any project authorized by law as a result of the South San Francisco Bay shoreline study—

(A) the cost of work performed by the non-Federal interest in preparation of the feasibility study that is conducted before the date of the feasibility cost sharing agreement; and

(B) the funds expended by the non-Federal interest for acquisition costs of land that constitutes a part of such a project and that is owned by the United States Fish and Wildlife Service

(2) *CONDITIONS.*—The Secretary may provide credit under paragraph (1) if—

(A) the value of all or any portion of land referred to in paragraph (1)(B) that would be subject to the credit has not previously been credited to the non-Federal interest for a project; and

(B) the land was not acquired to meet any mitigation requirement of the non-Federal interest.

6. Standard Federal Estates and Non-Standard Estates

The non-Federal sponsor will be required to acquire the minimum interest in real estate that will support the construction and subsequent operation and maintenance of the proposed USACE project.

The following standard estates (with definitions) are identified as required for the project:

Flood Protection Levee Easement: 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.

Road Easement: A (perpetual [exclusive] [non-exclusive]and assignable) (temporary) easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. __, __ and __) for the location, construction, operation, maintenance, alteration replacement of (a) road(s) and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; (reserving, however, to the owners, their heirs and assigns, the right to cross over or under the right-of-way as access to their adjoining land at the locations indicated in Schedule B); ¹ subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

Temporary Work Area Easement (TWAE): A temporary easement and right-of-way in, on, over and across (the land described in Schedule A) (Tracts Nos. __, __ and __), for a period not to exceed _____, beginning with date possession of the land is granted to the State Coastal Conservancy and Santa Clara Valley Water District, for use by the United States, State Coastal Conservancy and/or Santa Clara Valley Water District, its representatives, non-Federal sponsors, 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.

Temporary Work Area Easement (above) will also apply Borrow Areas.

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

Fee simple is the standard estate for ecosystem restoration project features.

Non-standard estate

A non-standard estate for lands on State of California/State Lands Commission property for the levee feature may be required as California Code of Regulation does not currently allow State Lands Commission to grant perpetual interests over lands held in public trust. The non-standard estate, once determined, will be forwarded to SPD and HQ's for review and approval.

7. Description of any Existing Federal Projects in or Partially in the Proposed Project

There are two existing Corps civil works projects the Santa Clara Valley Water District is also a part of, Upper Guadalupe Flood Control and Upper Llagas Creek. They are within 30 miles from the Shoreline project site. During construction Upper Guadalupe and Upper Llagas Creek will generate an estimated 315,000 cubic yards and 500,000 cubic yards of borrow material, respectively. Borrow material from these locations will be readily available for the Shoreline project levees. Upper Llagas Creek and Upper Guadalupe River are current Corps projects where the sponsor is required to obtain the necessary real estate and would be NOT be eligible to receive credit under LERRD's for South San Francisco Shoreline Project.

In addition, there is one potential Federal projects in the project area.

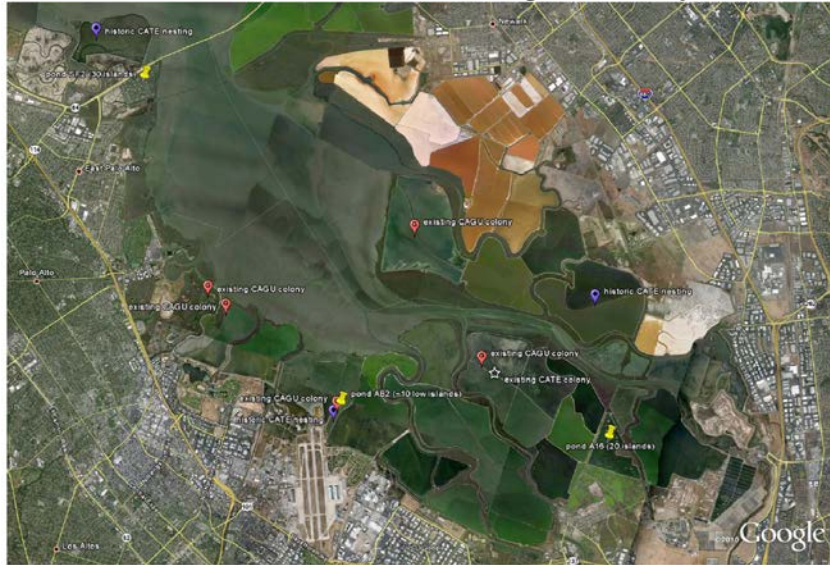
Inland Avian Predation Management Project

This project involves the enhancement of Caspian tern habitat at sites outside of the Columbia River basin to support Federal Columbia River Power System Biological Opinion requirements associated with the Inland Avian Predation Management Plan and estuary Caspian tern management efforts. The parties involved in this include the USFWS, the USACE, and the United States Bureau of Reclamation. This action will help ensure that colonies of terns can be successfully established and managed at sites within the Don Edwards San Francisco Bay National Wildlife Refuge. Approximately 2.4 acres of Caspian tern habitat would be restored/enhanced as part of this project and approximately 0.65 acres of plover habitat would be restored/enhanced.

These islands would be distributed amongst two sites (known as Pond SF-2 and Pond A-16) which are separated geographically by approximately 10 miles in the vicinity of East Palo Alto, CA and Milpitas, CA. Three tern nesting sites and one plover nesting site would be enhanced at SF-2 while two tern nesting sites and one plover nesting site would be restored at Pond A16.

Due to limited construction routes, the project is pursuing the option of using helicopter and not ground transportation. The anticipated construction schedule for this project is November 2014 – March 2015, well before the proposed Shoreline Project construction schedule, therefore there are no conflicting schedule in terms of construction access needs.

Inland Avian Predation Management Project



8. Description of any Federally owned Land Needed for the Project

Federal lands will be required in order for the USACE to implement the Alviso segment of the proposed flood risk management levee (along Ponds A12, A13, and A16) and with the recent passage of WRRDA 2014, the USACE project will propose to include the ecosystem restoration and recreation features on USFWS lands Ponds A9-A15. An MOA, permit, or other instrument between the NFS and USFWS is needed that would allow the necessary access for project construction and OMRR&R. Ponds A9-A15 were purchased in 2003 with the majority of funding provided by the non-Federal sponsor. Section 4027 (c)(1)(b) of WRDA 2007 provides that the NFS shall receive credit for its portion of the acquisition costs for lands acquired by the state and Federal government in 2003 but currently owned by USFWS (see below for Section 4027 language). The credit calculation will be based on the lands that are included within the future USACE project. Also included below is language for Section 1025 of the Water Resources Reform and Development Act of 2014.

SEC. 4027. SOUTH SAN FRANCISCO BAY SHORELINE, CALIFORNIA.

(a) *IN GENERAL.*—The Secretary, in cooperation with non-Federal interests, shall conduct a study of the feasibility of carrying out a project for—

- (1) flood damage reduction along the South San Francisco Bay shoreline, California;
 - (2) restoration of the South San Francisco Bay salt ponds (including on land owned by other Federal agencies);
- and
- (3) other related purposes, as the Secretary determines to be appropriate.

(b) *REPORT.*—

- (1) *IN GENERAL.*—Not later than 3 years after the date of enactment of this Act, the Secretary shall submit to Congress a report describing the results of the study under subsection (a).
- (2) *INCLUSIONS.*—The report under paragraph (1) shall include recommendations of the Secretary with respect to the

project described in subsection (a) based on planning, design, and land acquisition documents prepared by—
(A) the California State Coastal Conservancy;
(B) the Santa Clara Valley Water District; and
(C) other local interests.

(c) CREDIT.—

(1) IN GENERAL.—In accordance with section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d–5b), and subject to paragraph (2), the Secretary shall credit toward the non-Federal share of the cost of any project authorized by law as a result of the South San Francisco Bay shoreline study—

(A) the cost of work performed by the non-Federal interest in preparation of the feasibility study that is conducted before the date of the feasibility cost sharing agreement; and
(B) the funds expended by the non-Federal interest for acquisition costs of land that constitutes a part of such a project and that is owned by the United States Fish and Wildlife Service.

(2) CONDITIONS.—The Secretary may provide credit under paragraph (1) if—

(A) the value of all or any portion of land referred to in paragraph (1)(B) that would be subject to the credit has not previously been credited to the non-Federal interest for a project; and
(B) the land was not acquired to meet any mitigation requirement of the non-Federal interest.

SEC. 1025 of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), Pub. L. No. 113-121, § 1025, 128 Stat. 1229 provides discretionary authority to the Secretary of the Army to carry out an authorized water resources development project on Federal land that is under the administrative jurisdiction of another Federal agency, where the cost of the acquisition of such Federal land has been paid for by the non-Federal interest for the project, after the non-Federal interest has entered into a memorandum of understanding with the Federal agency sponsors that includes such terms and conditions as the Secretary of the Army determines to be necessary.

9. Application of Navigational Servitude to the LERRDs Requirement

There are no navigational servitude issues associated with this project.

10. Project Maps

See Exhibit A.

11. Anticipated Increased Flooding and Impacts

Based on hydraulic modeling results, there will be no increased flooding from the proposed project, from either the flood risk management or ecosystem restoration actions.

12. Cost Estimate

The cost estimate is from a report prepared by SPK Appraisal Section in 2013 at the request of the San Francisco District. The highest and best use remains recreation and the land was appraised as such with the exception of project lands managed by the USFWS. The values of these lands are based on the non-Federal sponsor's acquisition per acre at \$4,052. Section 4027 (c)(1)(b) of WRDA 2007 provides that the NFS shall receive credit for its portion of the acquisition costs for USACE project lands on USFWS lands (see Section 8 for Section 4027 language).

The real estate estimates for the LPP LERRDs and the NED/NER LERRDs is presented in the following tables:

Table 2- Real Estate LERRDs RECOMMENDED Plan Levee Height of 15.2, Pond A18 Restoration with a 30:1 Ecotone transitional Habitat & Restoration on USFWS Lands (approximately 10 acres more than the NED/NER)

USACE Recommended Plan Lands and Damages rounded (01 Account)	3,100 ac	\$11,674,000
Incremental RE Costs rounded (25% contingency of lands & damages) (01 Account) *No contingencies applied to USFWS lands		\$650,000
Non Federal Administrative Costs rounded (includes 5% contingency) (01 Account)		\$660,000
Federal Administrative Costs rounded (includes 5% contingency) (including crediting) (01 Account)		\$275,000
Total LERRDs plus Administrative Costs rounded (01 Account)		\$13,259,000 *
Cost Estimate for Utility/Facility Relocations rounded (**Relocation costs only include the removal and replacement of the railroad tracks associated with the closure structure.)		\$455,000
Relocation Cost Contingency (27%) (02 Account) rounded		\$118,000
Relocation Escalation costs rounded (1.5%) (02 Account)		\$8,000
Total LERRDs (rounded)		13,840,000 rounded

Table 3 - Real Estate LERRDs NED/NER Levee Height of 12.5' with Pond A18 Restoration and Ponds A9-15 on USFWS lands (approximately 10 acres less than the LPP)..

USACE Recommended Plan Lands and Damages rounded (01 Account)	3090 ac	\$11,572,000
plied to USFWS lands		\$650,000
Non Federal Administrative Costs rounded (includes 5% contingency) (01 Account)		\$660,000
Federal Administrative Costs rounded (includes 5% contingency) (including crediting) (01 Account)		\$275,000
Total LERRDs plus Administrative Costs rounded (01 Account)		\$13,157,000
Cost Estimate for Utility/Facility Relocations rounded		\$455,000
Relocation Cost Contingency (27%) (02 Account) rounded		\$123,000
Relocation Escalation costs rounded (1.5%) (02 Account)		\$9,000
Total LERRDs (rounded)		13,744,000 rounded

*Sponsor is eligible for credit on approximately 2,139 acres more or less of USFWS lands, an estimated \$8,666,580, per Section 4027 (c)(1)(b) of WRDA 2007 and the passage of the Water Resources Reform and Development Act (WRRDA) of 2014 and language in Section 1025 relevant to the Shoreline Study. Also, Implementation Guidance provides the opportunity to propose ecosystem restoration of the USFWS lands as part of the NED/NER Plan or potential LPP, to be cost shared between the USACE and the non-Federal sponsor.

The value of the 10 additional acres, more or less, identified for the LPP will not be eligible for credit.

LERRD Breakdown required for FRM features v. Ecosystem Restoration features

NED/NER 12.5' ft levee		Approx acres	
FRM		140 ac	\$1,400,980
ER Pond A18		850 ac	\$3,105,000
ER USFWS Ponds A9-15		2135 ac	\$8,651,020
			NED/NER Total \$13,200,000 (rounded)
RECOMMENDED PLAN (LPP) 15.2' ft levee			
FRM		150 ac	\$1,501,980
ER Pond A18		850 ac	\$3,106,000
ER USFWS Ponds A9-15		2135 ac	\$8,651,020
			LPP Total \$13,300,000(rounded)

13. Relocation Assistance Benefits.

The non-Federal sponsors must comply with the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970, as amended, 42 U.S.C. 4601 *et seq.* (P.L. 91-646, “the Uniform Act”) and provide relocation assistance to qualifying residences and businesses within the project area that are displaced, as defined in the Uniform Act, as a consequence of USACE project implementation. However, no displacements will be required for the TSP.

The sponsor has also been advised of PL 91-646 requirements to pay Fair Market Value for property as part of the acquisition necessary for the project and the requirements for documenting expenses for credit purposes.

14. Mineral / Timber Activity.

There are no valuable minerals impacted by this project. There was no enhancement for mineral deposits included in the cost estimate.

15. Non-Federal Sponsor's Ability to Acquire.

The non-Federal sponsors have real estate staff and experience in acquiring real estate for county, State and Federal projects. They have not previously received credit for lands described in this report and required for this project. Pond A18 is currently owned by City of San Jose, which supports the project and has indicated a willingness to transfer these lands to the NFS.

Chapter 1405 of the California legislature's Santa Clara Valley Water District Act of 1951 (as amended) declares, "...The District may exercise the right of eminent domain, either within or without said District, to take any property necessary to carry out any of the objects of purposes of this act..."

16. Zoning Anticipated in Lieu of Acquisition.

There is no zoning in lieu of acquisition planned in connection with the project.

16. Real Estate Acquisition Schedule.

REAL ESTATE ACQUISITION SCHEDULE				
Project Name: South San Francisco Bay Shoreline Study	USACE Start	USACE Finish	NFS Start	NFS Finish
Receipt of preliminary drawings from Engineering/PM	March 2013	December 2015		
Receipt of final drawings from Engineering/PM	October 2016	February 2017		
Execution of PPA	October 2016	February 2017		
Formal transmittal of final drawings & instruction to acquire LERRDS ("Take Letter")	February 2017	March 2017		
Conduct landowner meetings (if applicable, NFS responsibility)			March 1, 2017	April 30, 2017
Prepare/review mapping & legal descriptions			March 1, 2017	April 30, 2017
Obtain/review title evidence			March 1, 2017	April 30, 2017
Obtain/review tract appraisals			March 1, 2017	April 30, 2017
Conduct negotiations			April 2017	July 2017
Perform closing			July 2017	December 2018
Prepare/review condemnations			Mar 2017	Apr 2017
Perform condemnations			Apr 2017	Mar 2018
Obtain Possession			Begin March 2017	January 2018
Complete/review PL 91-646 benefit assistance			N/A	N/A
Conduct/review facility and utility relocations.			June 2018	June 2019
Certify all necessary LERRDS are available for construction	Begin January 2018	March 2018	Begin Jan 2018	March 2018
Prepare and submit credit requests (3 months)			March 2018	Dec 2018
Review/approve or deny credit requests (2 months)	June 2018	Dec 2018		
Establish value for creditable LERRDS in F&A cost accounting system	Dec 2018	April 2019		

***California State Coastal Conservancy & the Santa Clara Valley Water District will enter into an agreement with USFWS for Ponds A9-16. Santa Clara Valley Water District will acquire all other real estate required for the project.**

COE - Corps of Engineers
 NFS - Non-Federal Sponsor

18. Description of Facility and Utility Relocations.

For cost-shared projects, such as USACE, the SCVWD and State Coastal Conservancy have the responsibility to perform or assure the performance of relocations. The term "relocation" as defined in applicable law and regulations, generally means providing a functionally equivalent facility to the owner of an existing utility, cemetery, highway, or other eligible public facility, and railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, protecting in place or replacement (and attendant removal) of the affected facility or part thereof. Project features that require lands on railroad property may cause potential delays in acquisition based on recent current events on other USACE projects.

Consistent with requirements of Real Estate Policy Guidance Letter No. 31 – Real Estate Support to Civil Works Planning Paradigm (3x3x3) the preparation of a real estate assessment is appropriate for this feasibility study because the estimated total cost to modify all project utility/facility relocations identified in Table 4 below, Utility/Facility Inventory (including the value of any additional lands that may be required for perform the relocations) do not exceed 30 percent of estimated total project costs. Here, total project costs for the Recommended Plan is estimated at \$173.9M (October 2015 Price Levels) and the utility relocations are estimated at \$581,000 (whereas the NED/NER is estimated at \$111.3M and utility relocations are estimated at \$587,000) which is below the 30% threshold.

The real estate assessment discussed herein is based upon the following assumptions to assist in preliminarily analyzing and determining compensability for planning and budgeting purposes during the feasibility phase:

If an impacted utility/facility is likely supported by a permit that has been issued to the utility/facility owner by the underlying property owner, and the terms of the permit include conditional language stating the utility/facility owner must relocate the impacted utility/facility at its own expense at request of the underlying fee or easement owner, the relocation was categorized as a non-compensable relocation, the costs of which are borne by the utility/facility owner and/or the non-Federal sponsor, and not included in the total project cost estimate.

If the owner of the impacted utility/facility likely has an easement or real property interest in the underlying land, and the utility/facility so impacted preliminarily appears to meet the criteria for the provision of a substitute and/or replacement facility under the substitute facilities doctrine, the relocation was categorized as a compensable relocation, the costs of which are borne by the non-Federal sponsor and included in the total project cost estimate.

The proposed relocation of the City of San Jose's electrical line, the removal and replacement of railroad tracks associated with the flood gate at the railroad, and PG&E power lines are preliminarily assumed to be compensable since the utility/facility owners likely have a compensable interest in the underlying land; however, for feasibility purposes, it is presently

assumed that compensation will take the form of the provision of a substitute facility, the cost of which will be borne by the non-Federal sponsor and is included in the total project cost estimate. Following is an inventory of the utilities/facilities that have been identified as impacted by the project and likely requiring relocation.

Table 5. Utility/Facility Inventory NED/NER

Project Area Location	Station Location	Type	Utility/Facility Owner	Compensable Interest	Cost
				Yes or No	
Buried, along east side of Artesian Slough, north of proposed flood gate	96+00	Electrical	Wastewater Facility- City of San Jose	YES	NED/NER: \$102K + 1.27 contingency + 1.015 escalation = \$131,000 LPP: \$130,000
Running North-South between Ponds A15, A13, A12, and Pond A16, NCM, and Alviso	44+00	Removal and replacement of the Railroad tracks (assoc with flood gate at the railroad)	Southern Pacific Transportation	YES	NED/NER: \$46K + 27% contingency + 1.015 escalation = \$59,296 LPP: \$58,000
North-south through Pond A18 and into WPCP area	130+00	Power Line	PG&E	YES	NED/NER: \$308K + 27% contingency + 1.015 escalation = \$397,027 LPP: 393,000
TOTAL ROUNDED					NED/NER: \$587K (contingency is 27%) LPP: \$581K (contingency is 26%)

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

19. STATEMENT NON-FEDERAL SPONSOR NOTIFICATION

The non-Federal sponsors were notified in writing about the risks associated with acquiring land for the proposed project on August 23, 2013; see Exhibit C.

20. Hazardous, Toxic, and Radiological Waste (HTRW).

There are no known HTRW issues associated with the proposed project.

26. Attitude of Landowners.

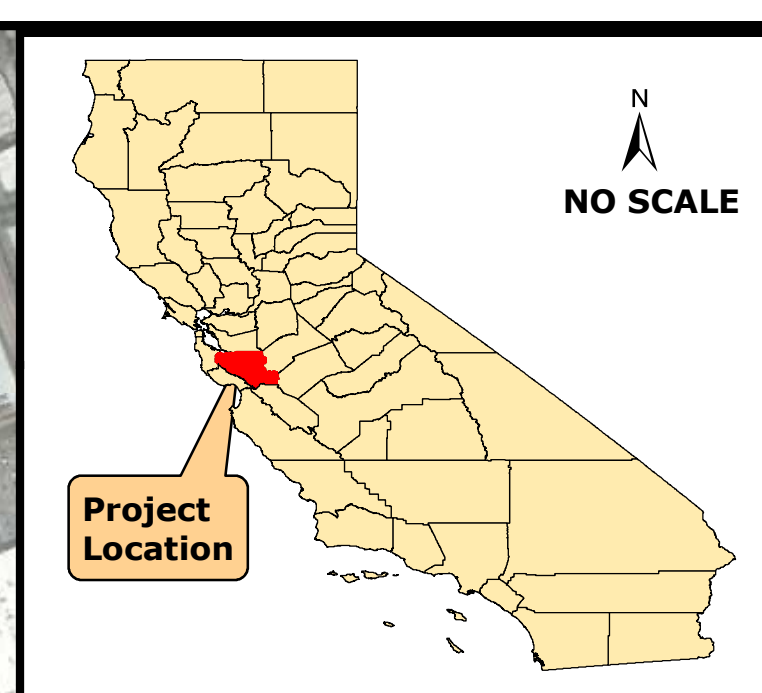
Both the USFWS and City of San Jose (Pond A18) have expressed support for the project and have indicated their intention to cooperate.

EXHIBIT A PROJECT MAPS



U.S. Fish & Wildlife Service Don Edwards San Francisco Bay National Wildlife Refuge New Chicago Marsh





FINAL
As Applicable

PROJECT MAP

DEPARTMENT OF THE ARMY
USING SERVICE _____

LOCATION OF PROJECT

STATE CALIFORNIA
COUNTY SANTA CLARA
DIVISION SOUTH PACIFIC
DISTRICT SACRAMENTO
ARMY AREA SIXTH
8.1 MILES N OF SAN JOSE
OF _____



TRANSPORTATION FACILITIES

RAILROADS SOUTHERN PACIFIC
STATE ROADS HWY 101 & HWY 237
FEDERAL ROADS HWY 880
AIRPORTS SAN JOSE MUNI. AIRPORT

ACQUISITION

TOTAL ACRES ACQUIRED _____
FEE _____

PUBLIC DOMAIN (WITHDRAWN) _____
(USE PERMIT) _____

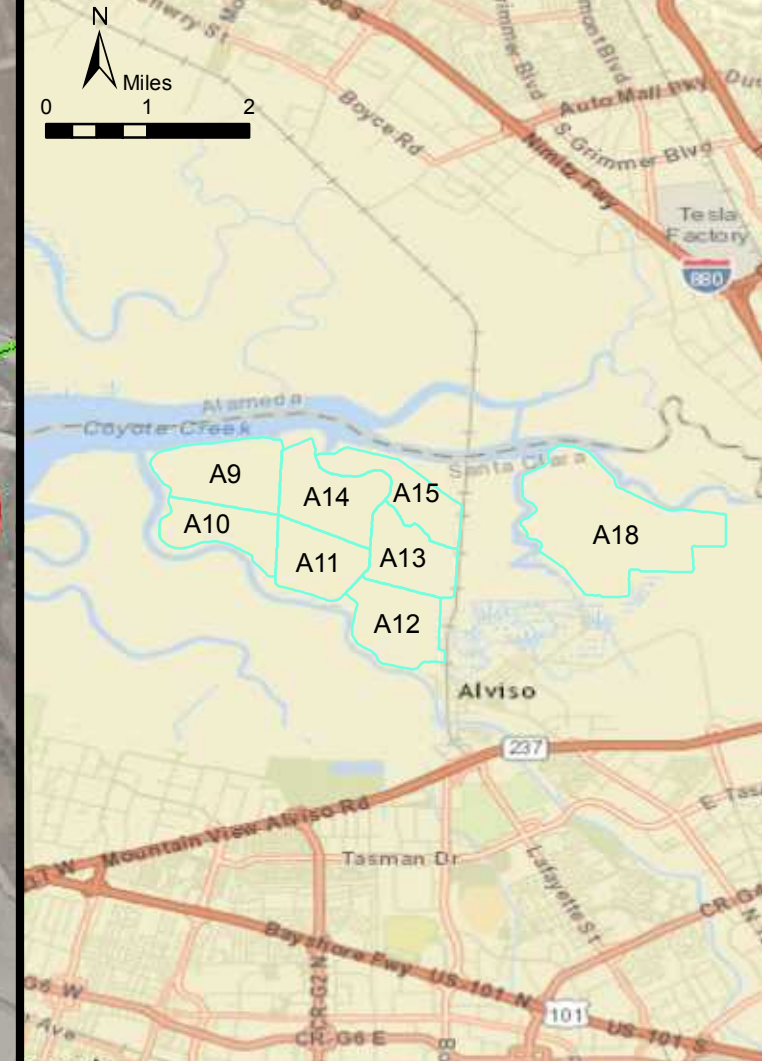
USE PERMIT (Other than P.D.) _____

TRANSFER (WITHDRAWN) _____
(USE PERMIT) _____

LEASE _____

EASEMENT RESERVED IN FEE DISPOSAL _____

LESSER INTERESTS (EASEMENT) _____
(PERMIT) _____
(LICENSE) _____



DISPOSAL

TOTAL ACRES DISPOSED _____
SOLD _____

PUBLIC DOMAIN (WITHDRAWN) _____
(USE PERMIT) _____

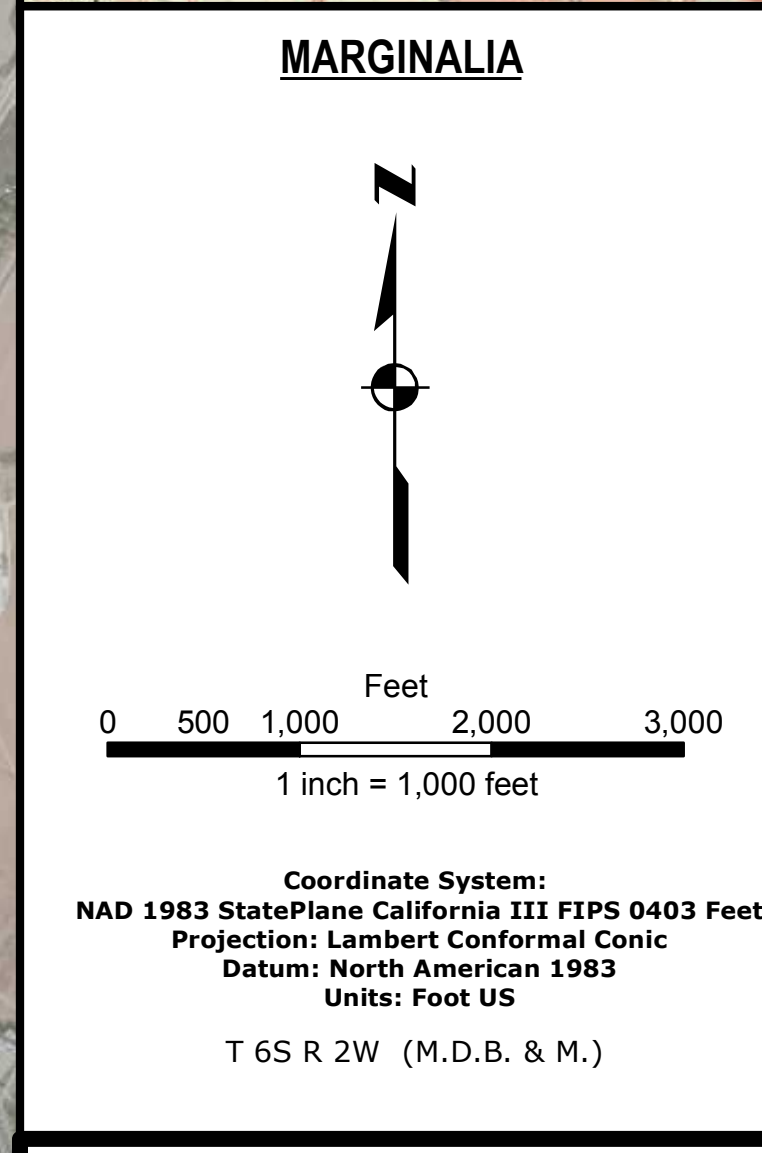
USE PERMIT (Other than P.D.) _____

TRANSFERRED (FEE) _____

LEASES TERMINATED _____

LESSER INTERESTS TERM _____

REASSIGNED _____
ACRES TO _____



LEGEND

EXCEPT FOR SPECIAL SYMBOLS SHOWN BELOW, MAP SYMBOLS ARE STANDARD IN U.S. ARMY FIELD MANUAL, FM 21-31, TOPOGRAPHIC SYMBOLS, DEC. 1968.

- PARCEL
- COUNTY
- Alviso_Ponds

Estates

- FPLE
- PRE
- HAUL ROUTE
- STAGING

REAL ESTATE OWNERSHIP/ESTATE MAP		
DEPARTMENT OF THE ARMY OFFICE OF THE SACRAMENTO DISTRICT ENGINEER SOUTH PACIFIC DIVISION		
CARTOGRAPHER <u>J. Henriksen</u> CARTO TECH. _____ CHECKED BY _____	SANTA CLARA COUNTY REAL ESTATE CALIFORNIA	
SUBMITTED BY <u>Steve Carey</u> CHIEF, CADASTRAL SECTION	SOUTH SAN FRANCISCO BAY SHORELINE PROJECT	
RECOMMENDED BY <u>Stan Wallin</u> CHIEF, ACQ. & MGMT. BRANCH	APPROVED BY <u>Sharon Caine</u> DATE _____ CHIEF, REAL ESTATE DIVISION	
OFFICE, CHIEF OF ENGINEERS, WASHINGTON 25, D.C.	REVIS CODE: _____	Date Saved: 4/7/2015 12:19:57 PM
REVIS UNIQUE ID: _____	INSTALLATION OR PROJECT NO. _____	SHEET 1 OF 1 DRAWING NO. _____

TRACT ACQUISITION REGISTER: Shoreline Project - Santa Clara County, April 03, 2015.								
APN	PARCEL AREA	FPLE	PRE	TWAE			Ecosystem Restoration	APN
	ACRES	ACRES	ACRES	Staging ACRES	Borrow ACRES	Haul Route ACRES	ACRES	sum ACRES
015-25-012	0.35	0.015	0.024					0.039
015-25-023	13.61	0.283	0.212					0.496
015-25-025	1.48	0.225	0.113					0.337
015-25-028	1.37	0.165	0.113					0.277
015-26-001	2.96	0.488	0.116					0.604
015-26-015	0.16	0.134	0.020					0.154
015-26-023	1.40	0.303	0.114					0.417
015-26-027	3.38	0.169	0.070					0.239
015-28-007	5.15	1.074	0.196					1.270
015-29-003	10.17	0.001	0.019					0.020
015-29-004	20.52	0.688	0.135					0.823
015-30-071	51.02			2.536		0.832		3.368
015-31-008	600.63			24.250		14.117		38.366
015-32-018	12.96	0.398						0.398
015-32-019	0.89	0.011						0.011
015-32-020	26.44	0.654	0.049					0.703
015-32-029	144.29	2.329						2.329
015-32-030	17.24	7.147	1.185					8.332
015-32-031	31.37	1.639						1.639
015-32-032	9.42	2.513	0.381					2.895
015-32-033	115.49	0.136	0.013					0.149
015-32-034	31.83	0.120	0.003				13.180	0.124
015-32-043	432.20	25.061	2.886				404.000	431.947
015-33-043	350.63	6.529	0.189				341.640	348.358
015-33-053	12.73	1.962	0.052					2.014
015-33-054	16.35	0.753	0.103			0.211		1.066
015-38-005	103.17	1.241	0.421					1.662
015-47-005	1.09					0.006		0.006
022-30-050	66.10					0.359		0.359
Public Road	N/A					2.500		2.500
015-32-042	432.05						432.050	432.050
015-33-016	409.32						408.970	408.970
15-33-037	52.85						21.5000	21.500
15-33-038	476.19						476.1900	476.190
15-33-039	38.06						3.7047	3.705
15-33-040	311.20						311.1991	311.199
15-33-041	306.93						306.6349	306.635
15-33-042	58.78						1.8702	1.870
15-33-044	4.3901						1.3527	1.353
15-33-045	13.1883						2.3781	2.378
15-33-046	234.7730						234.7730	234.773
15-33-053	12.7273						12.7273	12.727
342-05-062	158.0300				7.500			7.500
342-63-004	67.5400				7.500			7.500
189-03-019	5.0836				5.000			5.000
	2925.76	54.04	6.41	26.79	20.00	18.02	2972.17	3064.252
FLOOD PROTECTION LEVEE EASEMENT								
TEMPORARY WORK AREA EASEMENT (Staging, Borrow, Haul Route etc.)								
PERMANENT ROAD EASEMENT								
Ecosystem Restoration								

DRAFT Feasibility Study SUBJECT to CHANGE

EXHIBIT B- Staging and Haul Routes



EXHIBIT C

NFS Notification of Risks prior to notification & P.L. 91-646



DEPARTMENT OF THE ARMY
U. S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

REPLY TO
ATTENTION OF

August 23, 2013

Acquisition & Management Branch

Mr. Samuel P. Schuchat, Executive Officer
California State Coastal Conservancy
Attention: Ms. Amy Hutzel
1330 Broadway, 13th Floor
Oakland, CA 94612-2530

Dear Ms. Hutzel:

It is our understanding that the California State Coastal Conservancy (SCC) is undertaking real estate activities/acquisition management, and acquisition of land it anticipates will be required for the proposed South San Francisco Bay Shoreline Project. This is prior to execution of the Project Partnership Agreement (PPA), and prior to the Government's formal notice to proceed with its acquisition after PPA execution.

We caution you that there are many risks associated with acquisition under such circumstances and that, as the non-Federal sponsor, your agency assumes full and sole responsibility for any and all costs, or liability arising out of the acquisition effort. Generally, these risks include, but may not be limited to the following:

- a. The Congress of the United States may not appropriate funds to construct the proposed project.
- b. A PPA mutually agreeable to the SCC and the Federal Government may not be executed and implemented.
- c. SCC 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), 42, U.S.C. 9601-9675.


d. SCC may acquire interests or estates in real property that are later determined by the Government to be inappropriate, insufficient, or otherwise not required for the project.

e. SCC may initially acquire insufficient or excessive real property acreage that may result in additional negotiations, payment of Public Law 91-646 (as amended) benefits, or payments of fair market value to affected landowners that could have been avoided by delaying acquisition until after PCA execution and the said formal notice by the Corps to commence acquisition of land and right of way.

f. SCC may incur costs or expenses in connection with its decision to acquire or perform acquisition activities in advance of the executed PCA and the Government's notice to proceed which may not be creditable under the provisions of Public Law 99-662, The Water Resources Development Act of 1986, or the PCA.

Should you have any questions, please contact Project Manager, Caleb Conn at (415) 503-6849 or Realty Specialist, Bonieeve Delapaz at (415) 503-6745

Sincerely,



SHARON CAINE
Chief, Real Estate Division

Copy Furnished:

Caleb Conn - USACE Project Manager (VIA EMAIL ONLY)



**DEPARTMENT OF THE ARMY
U. S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922**

REPLY TO
ATTENTION OF

August 23, 2013

Acquisition & Management Branch

Mr. Beau Goldie, Chief Executive Officer
Santa Clara Valley Water District
Attention: Mr. Ngoc Nguyen
5750 Almaden Expressway
San Jose, CA 95118-3686

Dear Mr. Nguyen:

It is our understanding that the Santa Clara Valley Water District (SCVWD) is undertaking real estate activities/acquisition management, and acquisition of land it anticipates will be required for the proposed South San Francisco Bay Shoreline Project. This is prior to execution of the Project Partnership Agreement (PPA), and prior to the Government's formal notice to proceed with its acquisition after PPA execution.

We caution you that there are many risks associated with acquisition under such circumstances and that, as the non-Federal sponsor, your agency assumes full and sole responsibility for any and all costs, or liability arising out of the acquisition effort. Generally, these risks include, but may not be limited to the following:

- a. The Congress of the United States may not appropriate funds to construct the proposed project.
- b. A PPA mutually agreeable to the SCVWD and the Federal Government may not be executed and implemented.
- c. SCVWD 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), 42, U.S.C. 9601-9675.

d. SCVWD may acquire interests or estates in real property that are later determined by the Government to be inappropriate, insufficient, or otherwise not required for the project.

e. SCVWD may initially acquire insufficient or excessive real property acreage that may result in additional negotiations, payment of Public Law 91-646 (as amended) benefits, or payments of fair market value to affected landowners that could have been avoided by delaying acquisition until after PCA execution and the said formal notice by the Corps to commence acquisition of land and right of way.

f. SCVWD may incur costs or expenses in connection with its decision to acquire or perform acquisition activities in advance of the executed PCA and the Government's notice to proceed which may not be creditable under the provisions of Public Law 99-662, The Water Resources Development Act of 1986, or the PCA.

Should you have any questions, please contact Project Manager, Caleb Conn at (415) 503-6849 or Realty Specialist, Bonieevee Delapaz at (415) 503-6745

Sincerely,



SHARON CAINE
Chief, Real Estate Division

Copy Furnished:

Caleb Conn - USACE Project Manager (VIA EMAIL ONLY)

EXHIBIT D

A MEMORANDUM OF UNDERSTANDING BETWEEN THE USFWS, SANTA CLARA VALLEY WATER DISTRICT AND THE STATE COASTAL CONSERVANCY WILL BE INSERTED HERE.

EXHIBIT E

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

I. Legal Authority:

a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes?

YES

b. Does the sponsor have the power of eminent domain for this project?

YES

c. Does the sponsor have "quick-take" authority for this project?

YES

d. Are any of the lands/interests in land required for the project located outside of 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?

YES (USFWS lands)

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 PL 91-646, as amended?

NO. Relocation assistance is not required for this project.

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. The SCC acquires property all the time and the SCVWD has real estate support staff.

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
- b. Has the sponsor approved the project/real estate schedule/milestones?
YES

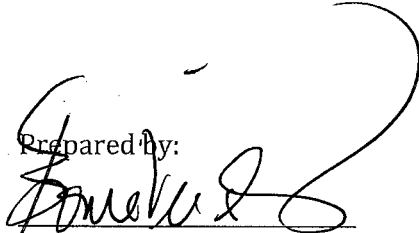
IV. Overall Assessment:

- a. Has the sponsor performed satisfactorily on other USACE projects?
YES
- b. With regard to this project, the sponsor is anticipated to be: (Capable – Highly Capable – Not capable, etc.)
HIGHLY CAPABLE

V. Coordination:

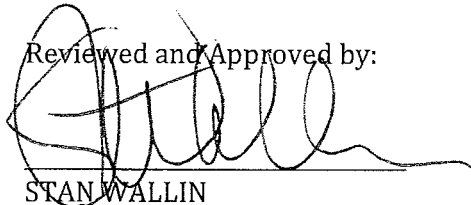
- a. Has this assessment been coordinated with the sponsor?
YES
- b. Does the sponsor concur with this assessment?
YES

Prepared by:



BONIEVEE A. DELAPAZ
Real Estate Specialist

Reviewed and Approved by:



STAN WALLIN
Chief, Real Estate Division