

APPENDIX F
REAL ESTATE PLAN

Redwood City Harbor Navigation Improvement Feasibility Study,
Redwood City, California

PREPARED FOR THE
SAN FRANCISCO DISTRICT
SOUTH PACIFIC DIVISION

20 April 2015

PREPARED
BY THE
SACRAMENTO DISTRICT
REAL ESTATE DIVISION
SOUTH PACIFIC DIVISION

APPENDIX F

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1. Introduction.

The Feasibility Study is investigating navigation improvements to the existing federal channels at the Redwood City Harbor and San Bruno Shoal, located in San Francisco Bay¹. The existing project is maintained on an approximate three year dredging cycle to a project depth of -30' MLLW, with the last time the San Bruno Shoal was dredged as Fiscal Year 2006. As the need for construction materials in the South San Francisco Bay increased in the 1990s, the Port of Redwood City engaged USACE to conduct a reconnaissance study to determine if there was federal interest in conducting a feasibility study to investigate improvements to the navigation project. The reconnaissance study was completed in 1998 and recommended proceeding with a feasibility study. The Port and USACE executed a Feasibility Cost Share Agreement (FCSA) in July 2008.

A SMART planning Charette was completed in October 2012, and a favorable federal interest determination to continue the study was made on November 26, 2012.

The non-Federal sponsor is the Port of Redwood City. USACE and the Port of Redwood City executed a Feasibility Cost Sharing Agreement in 2008.

2. Project Authority.

River and Harbor Act of 1925

*That the Secretary of War is hereby authorized and directed to cause preliminary examinations and surveys to be made at the following-named localities:
Channel from Redwood City, California to the main channel in San Francisco Bay, with a view to securing a depth of thirty feet and width of three hundred feet.*

House Resolution 2511, adopted May 7, 1997

Resolved by the Committee on Transportation and Infrastructure of the United States House of representatives, That the Secretary of the Army is requested to review the report of the Chief of Engineers on Redwood City Harbor, California, published as House Document 104, 81st Congress, 1st Session, and any other pertinent reports to determine whether modifications of the recommendations contained therein are advisable at the present time in the interest of navigation improvements and related purposes at Redwood City Harbor, California, with particular reference to providing increased depths to accommodate new, larger vessels that now call on the port.

3. Project Description.

Redwood City Harbor, the only deepwater port in South San Francisco Bay, is located approximately 25 miles southeast of the City of San Francisco. An existing deep-draft navigation project, which was completed in 1965, is maintained by the U.S. Army Corps of Engineers (USACE). This proposed study will address deepening the project to a greater-than-authorized depth

¹ Federal navigational servitude concerning the existing USACE authorized deep draft channels has been confirmed with Office of Counsel.

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of 30 feet mean lower low water (MLLW) to accommodate the new, larger vessels that currently call on the port and require more than the authorized depth to carry more tonnage. The project area is defined as the location of potential alternative plans and the area directly or indirectly impacted by construction or operation. The study is considering measures at the Redwood City Harbor and San Bruno Shoal channels. A comprehensive list of potential dredge material placement sites that have been considered for this study include Ravenswood Pond Complex, Alviso Pond Complex, Eden Landing Pond Complex, Crown Memorial State Beach, Bay Farm Barrow Pit, Oakland International Airport, and SF-11 Alcatraz, an in-Bay passive sediment transport site near Dumbarton Bridge, and San Francisco Deep Ocean Disposal Site (SFDODS). The Tentatively Selected Plan (TSP) will place the dredged material at the San Francisco Deep Ocean Disposal Site with 5% wetland non-cover material classified unsuitable for SFDODS to Montezuma (upland beneficial reuse site). A map showing the location of all potential placement sites considered for this study, is shown in Figure 1. Redwood City, California, Project Area.

Bair Island and Greco Island are adjacent to the Redwood City Harbor and are considered to be in the project area because of potential project impacts. Bair Island is operated by the U.S. Fish and Wildlife Service and is the site of a restoration project. The bay water around Bair Island and Redwood City Harbor is within the Don Edwards Marine Protected Area.

Port facilities adjacent to the study area include two office complexes, a conference center, a restaurant, and public access facilities (boat launch, walkways, restrooms, and parking). The Port maintains three berth facilities at a depth of -3430 feet MLLW, and a small facility used to unload cement and aggregates via barge. Union Pacific Railway tracks are located directly alongside Port facilities. U.S. Highway 101 is approximately one mile west of the Harbor. The area surrounding the Harbor is zoned as General Industrial (GI), Industrial Restricted (IR), and Industrial Park (IP). Slightly further south of the Harbor, on the east side of HWY 101, the area is zoned Mobile Home (MH). Slightly north of the Harbor, on the east side of HWY 101, the area is zoned Commercial General (CG), Commercial General Restricted (CG-R), and Planned Community District (CMD).

Commented [PVZ1]: Is it 34 feet or 30 feet? I think it's 30 feet?

Commented [L2]: Concur 30 feet

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Figure 1. Redwood City, California, Project Area



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

The TSP is Alternative 1C: Deepen the channels at RWC Harbor and San Bruno Shoal to 32 ft and place dredged material at the San Francisco Deep Ocean Disposal Site (SF-DODS) with 5% wetland non-cover material to Montezuma (upland beneficial reuse site). This plan is complete because the placement site is available, permitted, and has capacity to receive all of the project's dredged material. It meets the primary study objective of shipping the forecasted volume of goods to and from the Port of Redwood City with greater efficiency, and it is the most cost effective plan. If the plan is implemented, the channel at Redwood City Harbor would range from 350 ft wide near the entrance to 288 ft throughout the rest of the channel. The channel alignment at the turn into Redwood City Harbor will retain the existing width but will be slightly shifted 6 ft to the east to avoid adverse impact to the Bair Island wetland restoration site. As the channel moves between Bair and Greco Islands in Reach 3 and continues through to the end of the project at the inner turning basin in Reach 5, the channel will narrow so the existing side slopes and Port infrastructure will remain undisturbed on either side of the channel. The channel will narrow by a total of 6 ft assuming 3:1 side slopes between -30 ft and -32 ft. The channel at San Bruno Shoal will remain approximately 500 ft wide and 29,850 ft (5.65 miles) long and will not be realigned. Both channels will be deepened from -30 ft to -32 ft MLLW. The side slopes of both channels will be maintained at 3:1. Approximately 887,750 CY (this volume will likely be lower) of material will be dredged from the channels and placed at the deep ocean disposal site (SF-DODS).

The non-Federal sponsor will acquire the minimum interests in real estate to support the construction and subsequent operation and maintenance of the USACE project. At this time, all activities will occur within the channel where Navigational Servitude applies.

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SFDODS is located in the Pacific Ocean, approximately 55 nautical miles west of the Golden Gate Bridge. The site is approximately 85 nautical miles from RWC Harbor and approximately 75 nautical miles from SBS channel. The site was established in 1994 by the Long Term Management Strategy agencies, and is managed by the EPA. This is the only site in the initial array that is fully permitted and has capacity to receive dredge material.

Once the Chief's Report is complete and approved, the San Francisco District Engineering Branch will prepare the final design. During this process the tract register and tract maps will be updated to reflect any modifications. This information will be used for future crediting purposes.

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 Recommended Plan. 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.

Staging Areas – The Non Federal Sponsor have several options for staging areas on property that they currently own at the foot of newly constructed wharves 1, 2 and 5. There are two large parking lots at the launch ramp and near the commercial office buildings. There is a 9-acre parcel near wharf 5 that is about 1/2 occupied and may be available for staging. It is estimated that staging areas at the wharves are approximately \$24.00 per square foot. Staging will cost approximately \$6300 per month with a 35% contingency or \$204,120 for two years. Approximately .5 acres will be needed for staging.

Commented [PVZ3]: How much area does the project need for staging? Is it 9 acres?

Commented [L4]: ½ acres or 17,500 square feet was estimated for parking and to locate a 1000 sq foot trailer/office.

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, however all dredging and pipeline removal activities will take place within the channel where Navigational Servitude applies.

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

The Port of Redwood City is approximately 18 nautical miles south of San Francisco on the western side of San Francisco. The existing federal Redwood City Harbor project includes the San Bruno Shoal Channel, located in the South Bay, the Entrance Channel, Outer Turning Basin, Connecting Channel, and Inner Turning Basin. The Redwood City Harbor channels range from 300 to 900 feet wide, 20,800 feet long, and 209 acres. The entire project is maintained to 30 feet MLLW. The Entrance Channel, Outer Harbor Turning Basin, Connecting Channel and Inner Harbor Turning basing are dredged every 1 to 2 years and were dredged in 2014. The San Bruno Channel is only dredged about every 10 years, and was last dredged in 2005.

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Bair Island and Greco Island are adjacent to the Redwood City Harbor and are considered to be in the project area. Bair Island is operated by the U.S. Fish and Wildlife Service and is the site of a restoration project. The bay water around Bair Island and Redwood City Harbor is within the Don Edwards Marine Protected Area.

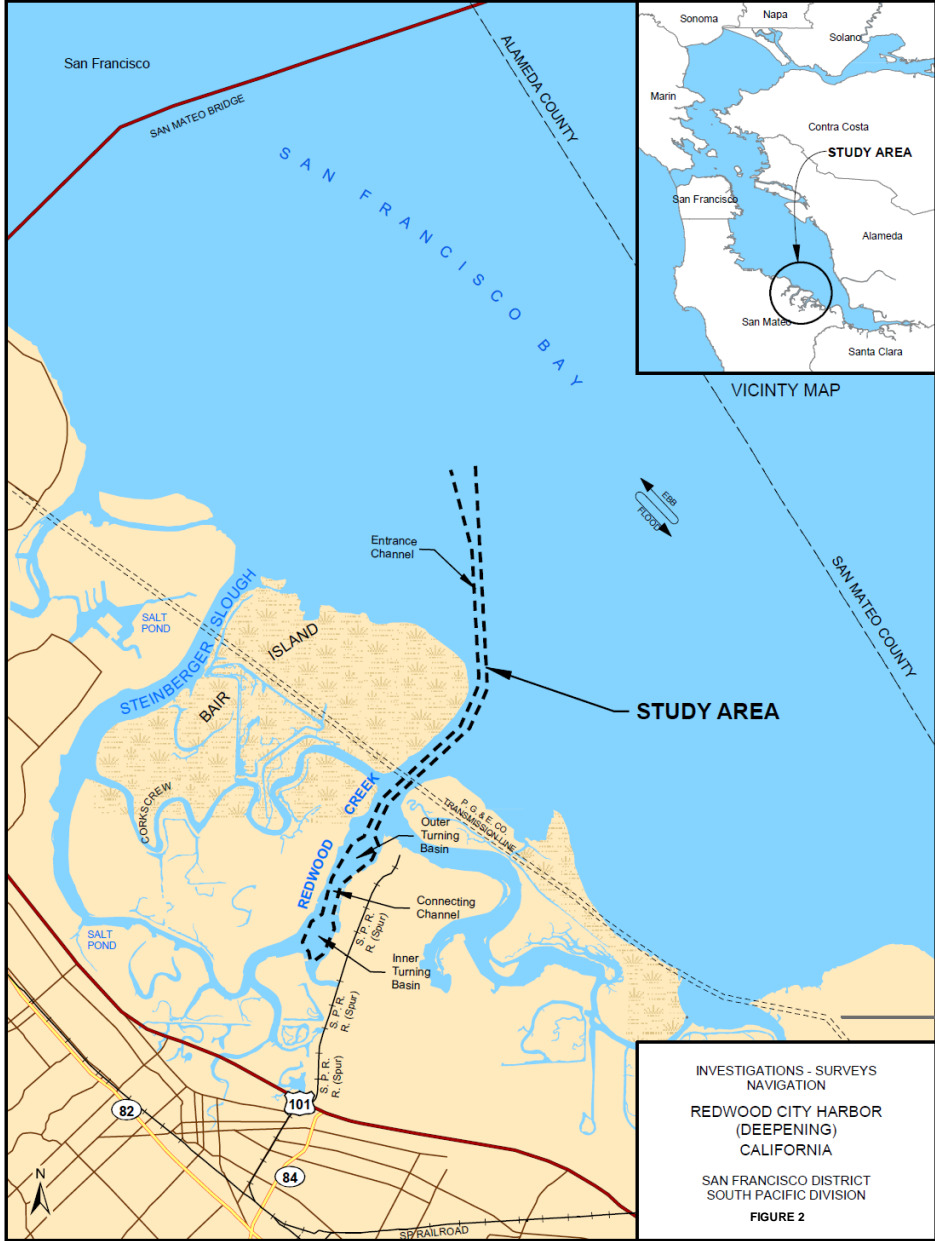
Commented [PVZ5]: If Blair and Greco Islands are considered to be in this project, then we need to show the impacted project footprints? The NFS would not receive land acquisition credit for land that was used on a previous federal project.

Commented [L6]: Concur – There should be no impact to Bair and Greco Islands. They are located adjacent to the channel that will be dredged only.

DRAFT - April 2015 DQC

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U.S. ARMY CORPS OF ENGINEERS



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

There are no Federally-owned lands needed for the Project.

9. Application of Navigational Servitude to the LERRDs Requirement.

There will be navigational servitude associated with the project. Navigational Servitude may be exercised under statutory rights and powers without obligation for compensation to the riparian landowners. The determination of the availability of the navigation servitude is a two-step process. First the Government must determine whether the project feature serves a purpose which is in the aid of commerce. Such purposes recognized by the courts include navigation, flood control and hydro-electric power. If it is so determined, then the second step is to determine whether the land at issue is located below the mean or ordinary high water mark of a navigable watercourse.

Navigational servitude may be applicable where deepening of the channel will take place located below the mean or ordinary high water mark of a navigable watercourse within Redwood City Harbor and San Bruno Shoal. This has been coordinated and discussed with SPN Office of Counsel.

10. Real Estate Map.

A project map is included in Exhibit A.

11. Anticipated Increased Flooding and Impacts.

No induced flooding is expected to occur from the project.

12. Cost Estimate.

Tentatively Selected Plan	Cost	Contingency	Total Costs Rounded
Code of Accounts 01	FEDERAL		
Fed RE Admin	\$23,750	(5%)\$1,250	\$25,000
Account 01	NON FEDERAL		
Staging Areas Duration 2 Years	\$151,200	(35%)\$52,920	\$204,120
Non Federal Admin	\$42,750	(5%)\$2,250	\$45,000
		TOTAL LERRD'S	\$274,120

*There are no real estate costs associated with disposals as actions are taken place in SF DODS and a small portion in Montezuma. These costs are captured under the Construction costs.

There are three pipelines that need to be relocated. A preliminary attorney's opinion of compensability has determined the pipelines to be non compensable. Pipeline relocations are

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estimated at \$15 million and are the responsibility and expense of the pipeline owners to relocate.

13. Relocation Assistance Benefits.

There are no Public Law 91-646 Relocations required in connection with the project.

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. There is no timber activity. Dredging would not involve construction or operation of any facilities on or adjacent to any land-based mineral resource areas delineated on land use plans, and therefore would not result in the loss of availability of a land-based mineral resource. Sand is mined from the San Francisco Bay for industrial and agricultural uses. Geographically, mining activity occurs in three areas: the Central Bay west of Angel Island; at Middle Ground Shoal just east of Port Chicago; and in the eastern portion of Suisun Channel (USACE, 2012e). The USACE's continued maintenance of the federal navigation channels, and placement of dredged materials under any of the action alternatives would not adversely impact sand mining because it would not interfere with sand mining activities. Sediments in the San Francisco Main Ship, Pinole Shoal, and Suisun Bay channels are primarily sand. The federal standard placement site for each of these channels is in water and adjacent to or very near the channel. Therefore, USACE's continued maintenance dredging and placement activities would not be expected to deplete sand mineral resources, because dredged material would be redeposited relatively close to the location where it was removed. Beneficial impacts could result if USACE contracted maintenance dredging of a federal channel with sand mineral resources (e.g., Suisun Bay Channel) to a sand mining contractor, thereby facilitating mining of this resource. Sand miners would be responsible for meeting all legal requirements, environmental clearance, and obtaining any necessary permits or licenses.

Commented [PVZ7]: This sentence does not make sense? Please clarify. Concur – that was a typo. Removed disposal site.

Commented [L8]: Concur – SFDODS disposal site was removed from sentence.

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

COORDINATION ONGOING TO CONFIRM. The non-Federal sponsors have real estate staff and experience in acquiring real estate for county, state and Federal projects.

16. Zoning Anticipated in Lieu of Acquisition.

There is no zoning needed for the project.

17. Acquisition Schedule.

An acquisition schedule is attached as Schedule A to this Real Estate Plan. The schedule has been coordinated with the Project Manager. The non-Federal sponsors will be directed to begin acquisition of temporary work area easements needed for staging for the project only after the PPA is fully executed.

Commented [PVZ9]: I would go ahead and reinsert this sentence, since the NFS will need to acquire TWAE.

Commented [L10]: Concur – Sentence reinserted.

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18. Description of Facility and Utility Relocations.

There are two active pipelines owned by Kinder Morgan and one abandoned 10" owned by Shell Oil Company that will need to be removed and relocated as they cross through the project area, see Figure 3 below. The pipeline relocations is estimated at \$15 million for three jet-fuel pipelines located underneath the channel at San Bruno Shoal. The estimated total project cost is \$61 million. SPN Office of Counsel preliminary attorney's legal opinion has determined the pipelines to be non compensable.

In the event it is determined that the non-Federal sponsor does not have the capability to compel the owner of a facility obstructing a navigation project to remove the facility at owner cost and the non-Federal sponsor does not elect to directly negotiate with the facility owner for the removal of the facility, if the non-Federal sponsor is not a state, the non-Federal sponsor will request that the state exercise any capability that it has to compel the facility removal at owner costs. If the state does not have the capability to compel removal at owner cost, both the non-Federal sponsor and the state must request, in writing to the District Engineer, that the Corps exercise its rights under the navigation servitude and applicable Corps permit conditions to require the owner to perform the removal of the facility at owner expense. The letter from the state must be signed by the governor or a state official that the governor specifically designates to make the request. Based upon a request from the non-Federal sponsor and the state, the Corps will exercise its rights under the navigation servitude to compel removals at owner cost. If the state has the authority to compel removals at owner cost but declines to exercise its authority or does not have the authority but is not willing to request that the Corps exercise its authority, the Corps will not exercise its rights under the navigation servitude to compel relocations at owner cost. Under these circumstances, the navigation project cannot be implemented or recommended for implementation unless the non-Federal sponsor is willing to directly negotiate with facility owners for facility removal recognizing that any payments or reimbursements by the non-Federal sponsor to the facility owner would not be creditable against the non-Federal sponsor's required additional 10 percent share.

Further guidance is found in Policy Guidance Letter 44, Relocations and Removals at Navigation (Harbor Projects) located in Exhibit C.

Table 1 – Utility Relocations

Approx. Survey Project Stations	Channel	Description	Owner	Depth of Burial	Bottom of Trench Elevation (MLLW) Range
38+00	San Bruno Shoal	10" and 12" Pipelines	Kinder Morgan	2.6' to 6.8'	-35.80 to -39.67
148+70	San Bruno Shoal	Non-Operational 10" Pipeline	Shell	3.7' to 6.2'	-34.11 to -36.63

Figure 3. Location of Jet-fuels pipelines beneath San Bruno Shoal

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

Recent operations and maintenance (O&M) sediment sampling to -32.5 feet mean lower low water (MLLW) indicates that material in Reach 5B (located at the inner turning basin in the Redwood City Harbor Channel) contains elevated total polychlorinated biphenyls (PCBs) concentrations. The highest concentration of total PCBs found in Reach 5B was 356 micrograms per kilogram or 0.356 parts per million (ppm) in the -32 to -32.5 foot depth range. According to 40 CFR 761, soil containing less than 1 ppm of PCBs is unregulated for disposal under the Federal Toxic Substances Control Act whether it is left on-site or removed from the site. If the material proposed for dredging exhibits PCBs concentrations that are greater than 1 ppm but less than 50 ppm, the material becomes classified as PCB remediation waste and must be disposed of in accordance with 40 CFR 761.61.

The Project Delivery Team (PDT) is current collecting additional sediment chemistry data to characterize the vertical extent of PCBs concentrations in Reach 5B. These test results will inform future planning decisions regarding whether the material is suitable for available

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placement sites in and around the San Francisco Bay. If the material does not meet placement site acceptance criteria, the material will have to be disposed of at a landfill regardless of whether the PCBs concentrations are above 1 ppm or below 50 ppm. Test results will be available in July 2015.

20. Attitude of Landowners.

A NEPA scoping meeting was held in December 2014 for the study in order to inform the public about the study scope and gather input on the proposed alternatives.. Comments from the meeting were favorable, constructive and supportive.

Commented [PVZ11]: Why is this the case? If the concentrations are below 1 ppm, can't the materials be sent to SF-DOD? They can be sent to SF-DOD but the new test results that are not completed until July 2015 may contain concentrations above 1 ppm.

Commented [L12]: Concur – the concentrations below 1 ppm can be sent to SFDODS. The tests results must be above 1 ppm and below 50 ppm to reclassify the material as remediation waste. Sentence amended.

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SCHEDULE A – ACQUISITION SCHEDULE

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

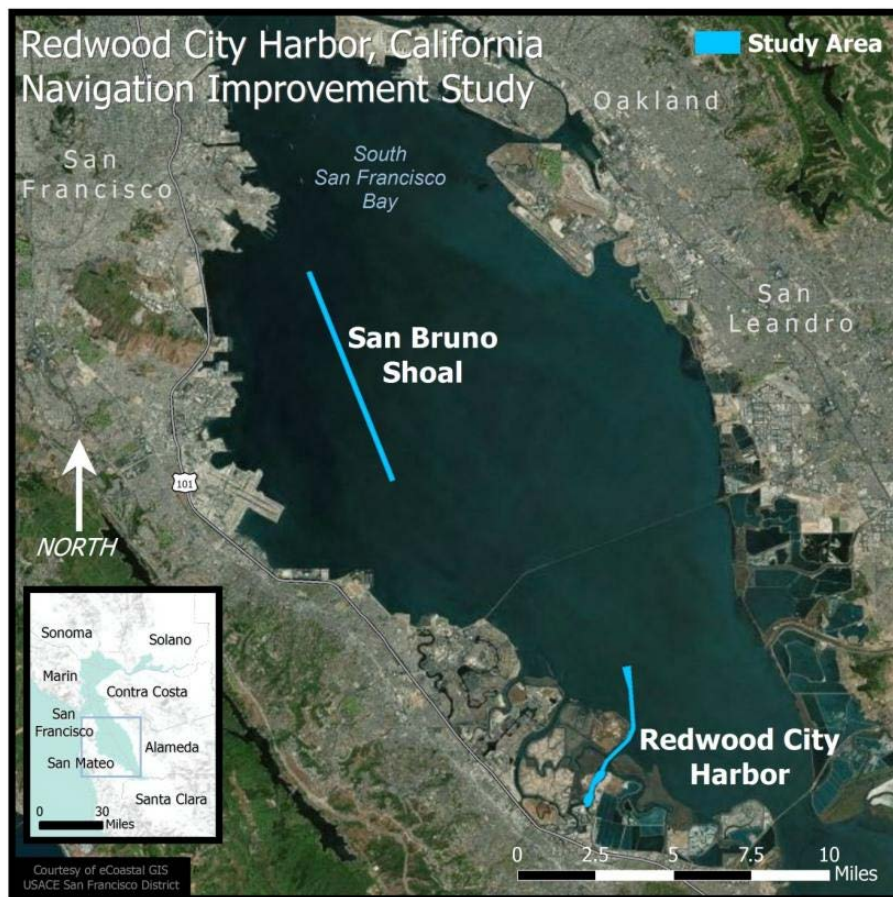
Commented [L13]: No time frame has been extended to 1.5 years to include negotiations and coordination required by NFS, State, Corp, Kinder Morgan, and Shell..

*COE – Corps of Engineers
 *NFS – Non-Federal Sponsor

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EXHIBIT A

PROJECT MAP



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EXHIBIT B

ASSESSMENT OF NON-FEDERAL SPONSOR'S
REAL ESTATE ACQUISITION CAPABILITY
Redwood City Harbor Deepening Project GI

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 – Except for lands in the San Bruno Shoals Channel
- c. Does the sponsor have “quick-take” authority for this project?
NO
- d. Are any of the lands/interests in land required for the project located outside of the sponsor's political boundary?
NO – Except for lands at San Bruno Shoals Channel
- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn?
NO

II. Human Resource Requirements:

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including PL 91-646, as amended?
YES
- b. If the answer to II. A. is “yes”, has a reasonable plan been developed to provide such training?
No, not yet planned
- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project?
YES
- d. Is the sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule?
YES
- e. Can the sponsor obtain contractor support, if required, in a timely fashion
YES
- f. Will the sponsor likely request USACE assistance in acquiring real estate?
Yes, for any pipeline relocation in the San Bruno Shoals Channel –
Policy Guidance 44, Relocations and Removal at Navigation (Harbor) Projects (Exhibit C)
protocol must be followed before Federal participation or assistance can occur.

Commented [PVZ14]: Laurie and Bonievue, Do we know this for sure? The NFS will be requesting the Government to assist them in the relocations of the pipelines?

Commented [L15]: Yes the NFS requested assistance from the Corps in the assessment sheet. Don't know if the NFS is familiar with the protocol from PGL 44. PGL 44 has been enclosed as a Exhibit to provide guidance for deep draft utility relocations.

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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?

PENDING – Project Schedule is still being developed and coordinated with the non federal sponsor.

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

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EXHIBIT C

CECW-AA

20 Oct 95

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS

SUBJECT: Policy Guidance Letter (PGL) No. 44, Relocations and Removals at Navigation (Harbor) Projects

1. Purpose. This PGL sets forth U.S. Army Corps of Engineers policy regarding the relocation and removal of facilities interfering with Federal navigation improvements. This guidance supersedes previous guidance on this subject. The guidance is applicable to navigation projects for harbors or inland harbors.

2. Background. Under Section 101(a) of the Water Resources Development Act of 1986 (WRDA 86), as amended by the Water Resources Development Act of 1988, the non-Federal sponsor provides the lands, easements, rights-of-way, relocations (other than utility relocations) and dredged material disposal areas necessary for the project. The non-Federal sponsor also is to perform or assure the performance of all relocations of utilities necessary to carry out the project. The law does not define what constitutes a relocation nor delineate who will be responsible to bear the costs of the relocation except that for utility relocations for projects of depth greater than 45 feet, one-half of the costs of relocation shall be borne by the owner of the facility being relocated and one-half by the non-Federal sponsors. Under Section 101(a)(2) of WRDA 86, as amended, the value of lands, easements, rights-of-way, relocations and dredged material disposal areas and the costs of utility relocations borne by the sponsor shall be credited to the additional 10 percent share of general navigation facilities costs.

3. Problem. Private property rights within navigable waters are subject to the common law principle of navigation servitude which is the public's right of free use of all streams and water bodies for navigation despite the private ownership of the bottom or shoreline. Therefore, no further Federal real estate interest is required for navigation projects in navigable waters below the ordinary high water mark. In support of the principle of navigation servitude and in exercise of Congress' power over navigation stemming from the Commerce Clause of the Constitution, Section 10 of the River and Harbor Act of 1899 requires approval from the Corps of Engineers prior to placing obstructions or excavating or disposing of material in navigable waters. Permits under Section 10 do not authorize interference with any existing or proposed Federal project and provide that the permittee pay for any corrective measures to comply with permit conditions. This PGL provides guidance on the interaction of the Federal rights under the navigation servitude and associated Federal permits and the non-Federal sponsor responsibilities under Section 101(a) of WRDA 86, as amended, with regard to relocations and removals of obstructions at Federal navigation projects.

4. Policy.

a. Relocation Definition. The term "relocation" shall mean providing a functionally equivalent facility, regardless of the depth of the navigation project, to the owner of an existing utility, cemetery, highway, railroad (including a bridge thereof), or other public facility (excluding existing bridges over navigable waters of the United States) when such action is authorized in accordance with applicable legal principles of just compensation. A "relocation" is also providing a functionally equivalent facility when such action is specifically provided for, and is identified as a relocation, in the authorizing legislation for a navigation project or any report referenced in the authorizing legislation. Providing a

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functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

b. Discussion of Definition

(1) A relocation must occur when a facility or part of a facility must be altered, lowered, raised, or removed to allow for the construction, operation, or maintenance of the general navigation features of a project, including those necessary to enable the removal of borrow material or the proper disposal of dredged or excavated material, and the owner of the facility is entitled to a substitute facility due to just compensation principles. Just compensation principles generally dictate that a substitute facility is the proper measure of just compensation when the facility's owner has a compensable real property interest that must be extinguished in the land on which the facility is located; there is a public necessity for the service provided by the facility; and market value has been too difficult to find, or the application of market value would result in injustice to the owner or public. This definition focuses on the issue of just compensation as between the facility owner and the Federal government and takes into account all rights that the Federal government has within the navigation servitude. Therefore, the owner of a facility within the navigation servitude has no compensable real property interest that must be extinguished with regard to the Federal government for the portion of the structure within the navigation servitude and the owner of the facility within the servitude is not entitled to a substitute facility when compelled to remove the facility because it is an obstruction to the Federal navigation project.

(2) A relocation also must occur when it is specifically authorized as a relocation by Congress. When an authorizing document approved by Congress specifies that the alteration, lowering, raising, or removal and attendant replacement of a facility or portion of a facility constitutes a relocation, it is treated as a relocation even when it does not otherwise meet the definition discussed in paragraph 4.b.(1). The non-Federal sponsor will be required to perform or assure the performance of the relocation and the value of the relocation (or the costs borne by the non-Federal sponsor for any utility relocation) is creditable against the non-Federal sponsor's required additional 10 percent repayment under Section 101(a)(2) of WRDA 86, as amended. This definition of a relocation is included in this PGL to recognize that facility alterations, lowerings, raisings, and removals and attendant replacements have been authorized as relocations even though they do not meet the definition of a relocation discussed in paragraph 4.b.(1). For future navigation project formulation and preparation of feasibility reports, the definitions of relocations, removals and deep draft utility relocations contained in this PGL will be used to categorize and assign costs for actions involving facilities interfering with proposed navigation improvements authorizing legislation for a navigation project or any report referenced in the authorizing legislation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

(3) If removing an obstruction falls within the definition of a relocation presented in 4.b.(1) and 4.b.(2), the non-Federal sponsor will be required to perform or ensure the performance of the relocation. For a relocation other than a utility relocation, the value of the relocation is creditable against the non-Federal sponsor's required additional 10 percent payment under Section 101(a)(2) of WRDA 86, as amended. For a utility relocation, the non-Federal sponsor's actual costs in performing or assuring the performance of the utility relocation are creditable against the non-Federal sponsor's required additional 10 percent repayment under Section 101(a)(2) of WRDA 86, as amended. In

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practice, under the terms of the project cooperation agreement (PCA), the cost of the relocation will be the basis for computing non-Federal sponsor credit for all relocations.

(4) If removing an obstruction within the navigation servitude does not fit within the definition of a relocation as discussed in paragraph 4.b.(1) and 4.b.(2), it will be treated as a removal necessary for the general navigation features (GNF) of the project, unless it qualifies as a deep draft utility relocation under paragraph 4.c. Removals are discussed in paragraph 4.d.

c. Deep-Draft Utility Relocations.

(1) "Deep draft utility relocations" are handled differently and are only applicable to projects authorized at a depth of greater than 45 feet. A deep draft utility relocation is defined as providing a functionally equivalent facility to the owner of an existing utility serving the general public when such action is not a "relocation" as defined in paragraph 4.a. and is necessary for the construction, operation, or maintenance of the general navigation features of the project, including those necessary to enable the removal of borrow material or the proper disposal of dredged or excavated material. In accordance with Section 101 (a)(4) of WRDA 86, as amended, one-half of the cost of the deep draft utility relocation shall be borne by the utility owner and one-half shall be borne by the non-Federal sponsor. Actual costs of deep draft utility relocations borne by the non-Federal sponsor up to 50 percent of the total cost of the utility relocation will be creditable against the non-Federal sponsor's additional 10 percent share.

(2) The Corps may compel deep draft utility relocations if confronted with reluctant utility owners. However, such involuntary deep draft utility relocations would be for the purpose of facilitating project construction and would not serve to change the statutory requirement for 50/50 cost sharing between the non-Federal sponsor and the utility owner. Therefore, in those cases where the utility owners are compelled to relocate, the non-Federal sponsor is responsible for one-half of the cost of these deep draft utility relocations. Administrative and any legal costs incurred by the Corps to compel deep draft utility relocations would be shared 50/50 between the non-Federal sponsor and the utility owner.

d. Removals.

(1) Where there is an obstruction to a navigation project that is within the navigation servitude, and that obstruction does not fit within the definition of a deep draft utility relocation as presented in paragraph 4.c. or the definition of a relocation in paragraph 4.a., the obstruction will be removed at owner cost to accommodate the navigation project.

(2) Where the non-Federal sponsor has the capability to compel the owner of a facility obstructing a navigation project to remove the facility solely at owner cost, the non-Federal sponsor will be required to exercise this capability. The capability of the non-Federal sponsor to successfully compel the removal of facilities at owner cost will be jointly assessed by the Corps and the non-Federal sponsor. Factors in this assessment will include the legal authorities available to the non-Federal sponsor and their strength, the applicability of the non-Federal sponsor's authorities to the Federal navigation project and the record of success in exercising the non-Federal sponsor's authorities. The non-Federal sponsor may also elect to directly negotiate with the owner of a facility obstructing a navigation project for the removal of the facility in lieu of exercising any non-Federal sponsor or Corps authorities to compel the facility removal at owner cost. However, any payments or reimbursements by the non-Federal sponsor to the facility owner for the removal of the facility would not be creditable against the non-Federal sponsor's required additional 10 percent repayment under Section 101(a) (2) of WRDA 86, as amended.

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(3) In the event it is determined that the non-Federal sponsor does not have the capability to compel the owner of a facility obstructing a navigation project to remove the facility at owner cost and the non-Federal sponsor does not elect to directly negotiate with the facility owner for the removal of the facility, if the non-Federal sponsor is not a state, the non-Federal sponsor will request that the state exercise any capability that it has to compel the facility removal at owner costs. If the state does not have the capability to compel removal at owner cost, both the non-Federal sponsor and the state must request, in writing to the District Engineer, that the Corps exercise its rights under the navigation servitude and applicable Corps permit conditions to require the owner to perform the removal of the facility at owner expense. The letter from the state must be signed by the governor or a state official that the governor specifically designates to make the request. Based upon a request from the non-Federal sponsor and the state, the Corps will exercise its rights under the navigation servitude to compel removals at owner cost. If the state has the authority to compel removals at owner cost but declines to exercise its authority or does not have the authority but is not willing to request that the Corps exercise its authority, the Corps will not exercise its rights under the navigation servitude to compel relocations at owner cost. Under these circumstances, the navigation project cannot be implemented or recommended for implementation unless the non-Federal sponsor is willing to directly negotiate with facility owners for facility removal recognizing that any payments or reimbursements by the non-Federal sponsor to the facility owner would not be creditable against the non-Federal sponsor's required additional 10 percent share.

(4) When a facility is removed at owner cost, the facility removal cost and any cost to replace the facility at a new location (for example at a greater depth) will be an owner cost. The administrative and legal cost to the non-Federal sponsor or the Corps of requiring the owner to remove the obstruction will be considered GNF costs and shared accordingly. Corps regulatory program funds will not be used for accomplishing removals or permitting owner replacements of removed facilities. Costs to the owner of a facility for its removal and any owner replacement costs, including any costs voluntarily paid or reimbursed by the non-Federal sponsor, will be accounted for as associated costs of the project and are not shared GNF costs or non-Federal sponsor costs for lands, easements, rights-of-way or relocations. As associated costs, owner removal and replacement costs are economic costs of the project that must be reflected in the calculation of net national economic development benefits. Where necessary, the Corps may also have the option to remove the obstruction itself. The costs to the Corps of removing the obstruction will be considered costs of the general navigation features of the project and shared accordingly. In these cases, the Corps will pursue appropriate remedies for reimbursement to the Corps and the non-Federal sponsor of the costs by the owner of the obstruction.

e. Court Actions. In the event a court determines that the owner of a facility within the navigation servitude is entitled to payment of just compensation as a result of a removal action, that compensation amount will be considered a cost for lands, easements, and rights-of-way, which the non-Federal sponsor will be required to pay in accordance with Section 101(a)(3) of WRDA 86, as amended. If the court also determines the appropriate measure of just compensation is provision of, or payment based on, a substitute facility, this will be considered a relocation, which the non-Federal sponsor will be required to provide in accordance with Section 101(a)(3) of WRDA 86, as amended.

5. Decision Process.

a. Feasibility Phase Survey. During the feasibility phase of the project, the Corps, in cooperation with the non-Federal sponsor, will identify all the facilities obstructing the proposed navigation project and determine, in each case, the ownership interest of the facility owner (for lands located outside the navigation servitude) and the Federal, state or local instrument (permit, easement, etc.), if any, through which the facility owner has use of the land. The survey will also determine, for facilities outside the navigation servitude, the nature of the use of the facility and whether the owner of the facility is entitled to a substitute

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facility. These surveys would be part of the cost of the feasibility study and would be cost shared on a 50-50 basis with the non-Federal sponsor.

b. Definition of Responsibilities. Based on the results of the information collected in the surveys of the facilities, the navigation feasibility report will clearly define responsibilities and assign costs for altering, lowering, raising, or removing and replacing facilities within the navigation servitude in accordance with the policies presented in this PGL. Responsibilities and costs will be assigned to the non-Federal sponsor or facility owners. A step-by-step decision process for classifying actions as relocations, removals or deep draft utility relocations is enclosed. It is recognized that considerations of costs and schedules may preclude final decisions on compensability and the need to provide substitute facilities during the feasibility study. In these cases the feasibility study will clearly define responsibilities and costs for relocations and removals based on preliminary findings but qualify these findings as subject to modification based on more detailed and complete post authorization studies. The feasibility report will also include a determination of the responsibility to compel removals including the assessment of the capability of the non-Federal sponsor and the state to compel removals at owner cost and, as applicable, the letters from the non-Federal sponsor and the state requesting the Corps to exercise its rights under the navigation servitude to compel removals at owner cost. In accordance with the policies presented in paragraph 4.d., the responsibility to compel relocations at owner cost will be assigned to the non-Federal sponsor, the state, or the Corps.

6. Regulation Modification. This PGL refines significantly the guidance concerning relocations and removals provided in ER 1165-2-131. Regulations will be modified, as required, to incorporate the guidance contained in this policy letter.

FOR THE COMMANDER:

/s/

Encl STANLEY G. GENEGA
Major General, USA
Director of Civil Works