

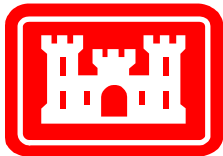
**FEASIBILITY REPORT  
AND  
ENVIRONMENTAL ASSESSMENT**

**WILMINGTON HARBOR NAVIGATION  
IMPROVEMENTS  
Appendix D - Real Estate**



**June 2014**

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**US Army Corps  
of Engineers**

**Wilmington District**

# Appendix D

## Real Estate

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## **Section 1. The Real Estate Report**

### **1.1 Statement of Purpose**

This report is tentative in nature, focuses on the Tentatively Selected 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 cost. The Real Estate Appendix is intended to support the Integrated Feasibility Report and Environmental Impact Statement for the Wilmington Harbor Navigation Improvements project. The author of this report is familiar with the Project area. The State of North Carolina Department of Natural Resources, Division of Water Resources, is the non-Federal sponsor for the project. Date of this report is January 2014.

### **1.2 Study Authority**

This study is being conducted in response to the Resolution of the Committee on Transportation and Infrastructure, Docket 2755, dated June 28, 2006, which reads as follows:

*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 Cape Fear – Northeast (Cape Fear) River, published as House Document 164, 105th Congress, and other pertinent reports to determine whether any modifications of the recommendations contained therein are advisable in the interest of navigation improvements and associated water resource development opportunities for Wilmington Harbor, North Carolina.*

### **1.3 Project Location**

The study area includes Wilmington Harbor, the Eagle Island dredged material disposal site, and the Offshore Dredged Material Disposal Site (ODMDS), and the surrounding affected environment (Figure 1.3-1). Wilmington Harbor is an approximately 36.2 mile navigation channel which begins at the outer ocean bar at the mouth of the Cape Fear River in Brunswick County, NC, and extends upwards to the City of Wilmington in New Hanover County, NC, where it services the Port of Wilmington. The Port is a major contributor to the economic activity of both counties, moving about 3.5 million tons and \$6.4 billion in goods in 2010, and providing \$500 million in sales, property, corporate and personal taxes. Commodities include bulk cargo and containers, with imports and export both well-represented. The authorized depth of the channel is 44 ft at the ocean bar and entrance channel, then 42 ft for the channel up to the Cape Fear Memorial Bridge. In the last couple miles of the project, upstream of the bridge, the authorized depth decreases to 38 ft and then 34 ft. Channel widths outside of the turning basin range from 200 ft at the north end of the project, to 900 ft at the entrance channel. The turning basin has a maximum width of 1,200 ft.

### **1.4 Project Description**

The selected plan contains both the Bald Head Entrance Channel, which will be realigned to the west of the existing channel (Figure 1.4-1), and the Battery Island Turn to which changes will be made to increase the available turning radius from about 2,850 to 3,900 feet (Figure 1.4-2).

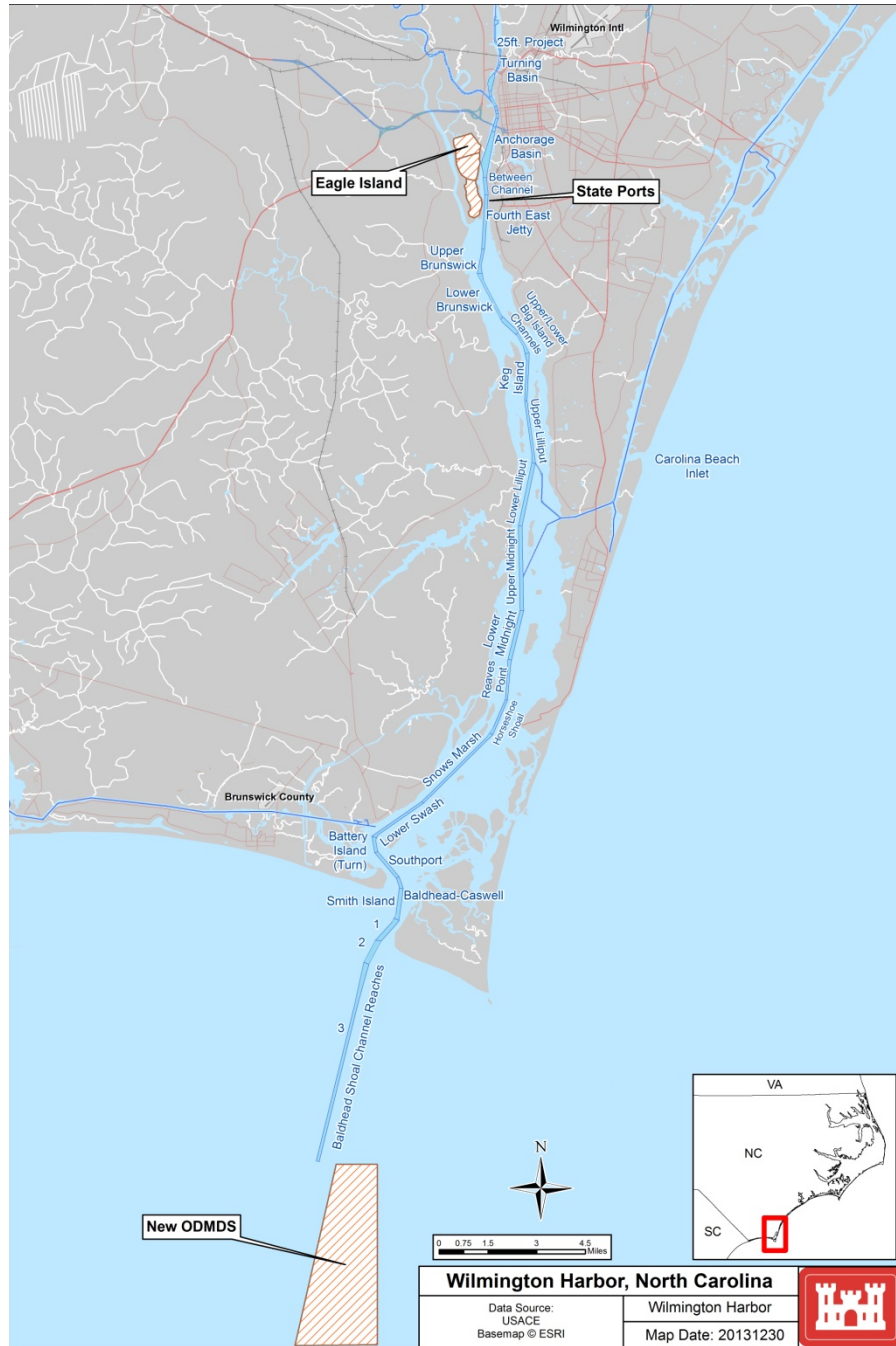


Figure 1.3-1 Project Vicinity/Location Map

The current channel alignment in this area has proven susceptible to rapid and persistent shoaling theoretically attributable to a combination of natural forces and impacts from adjacent, private beach renourishment projects, and Federal beach placement projects. Because of the shoaling and reduced channel width in Baldhead Shoal Channel Reach 1, ships that normally could pass each other can no longer do so in this area, leading to transit delays. Moving the channel was analyzed as a way of obtaining a one-time reduction in the volume dredged. A volume reduction can be obtained by moving the channel to the west away from the shoal that forms on the east

side of the channel until the channel starts to cut into the bank on the west side of the channel which offsets reductions obtained from the move away from the shoal on the east side of the channel.

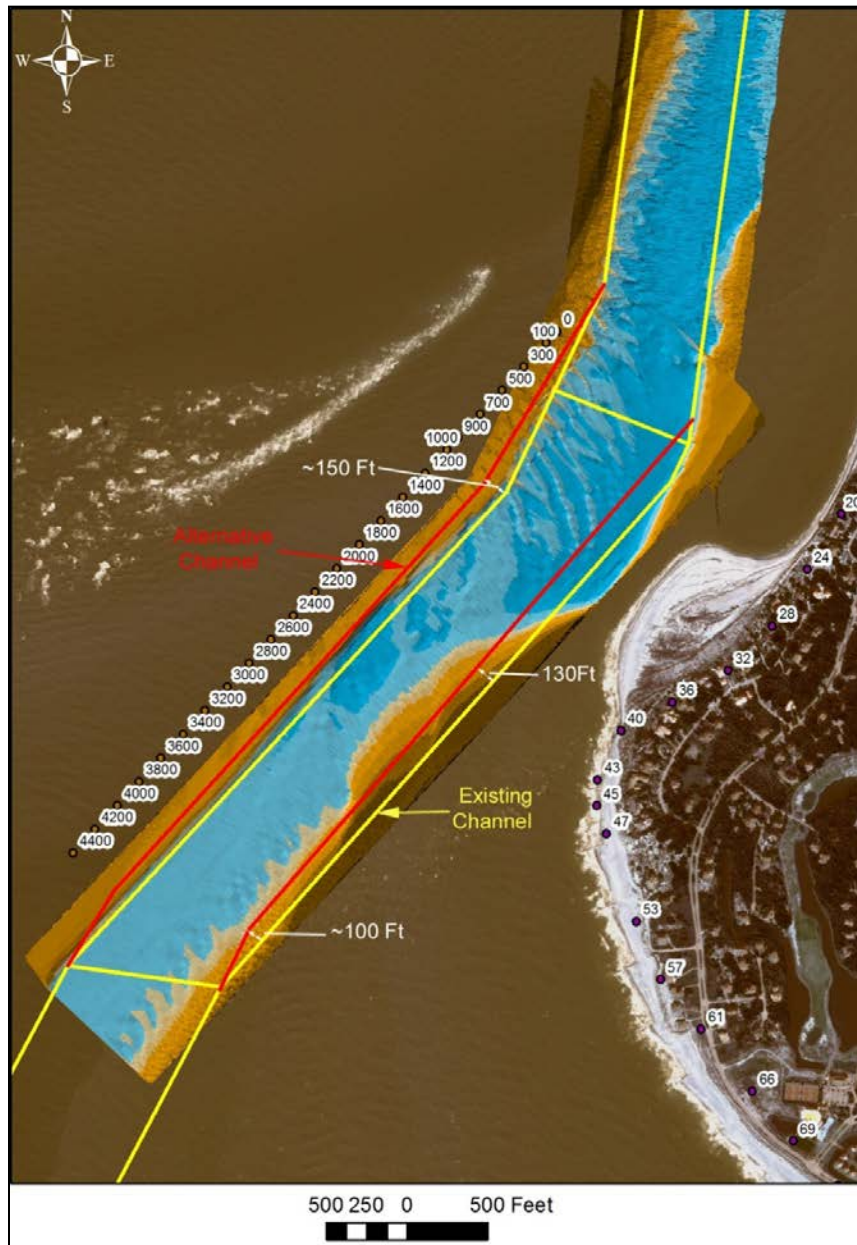


Figure 1.4-1 Relocated Channel with Offsets from Existing Alignment

The Battery Island Turn is problematic for some of the larger container vessels currently calling on the Port of Wilmington. Vessels are at times being forced to delay their transit and await favorable tide conditions. There are opportunities for realigning or widening the Battery Island Turn, which would potentially improve navigation safety and efficiency and reduce delays for the impacted vessels. The following improvements are proposed for the Battery Island Turn. (1)

Battery Island channel is widened to 750'; (2) A 750' wide by about 1,300' long cutoff provided between Battery Island and Lower Swash channels; (3) Additional tapers are provided where Southport and Lower Swash channels join the widened Battery Island channel. These geometric changes, shown in Figure 1.4-2, increase the available turning radius from about 2,850' to about 3,900'.

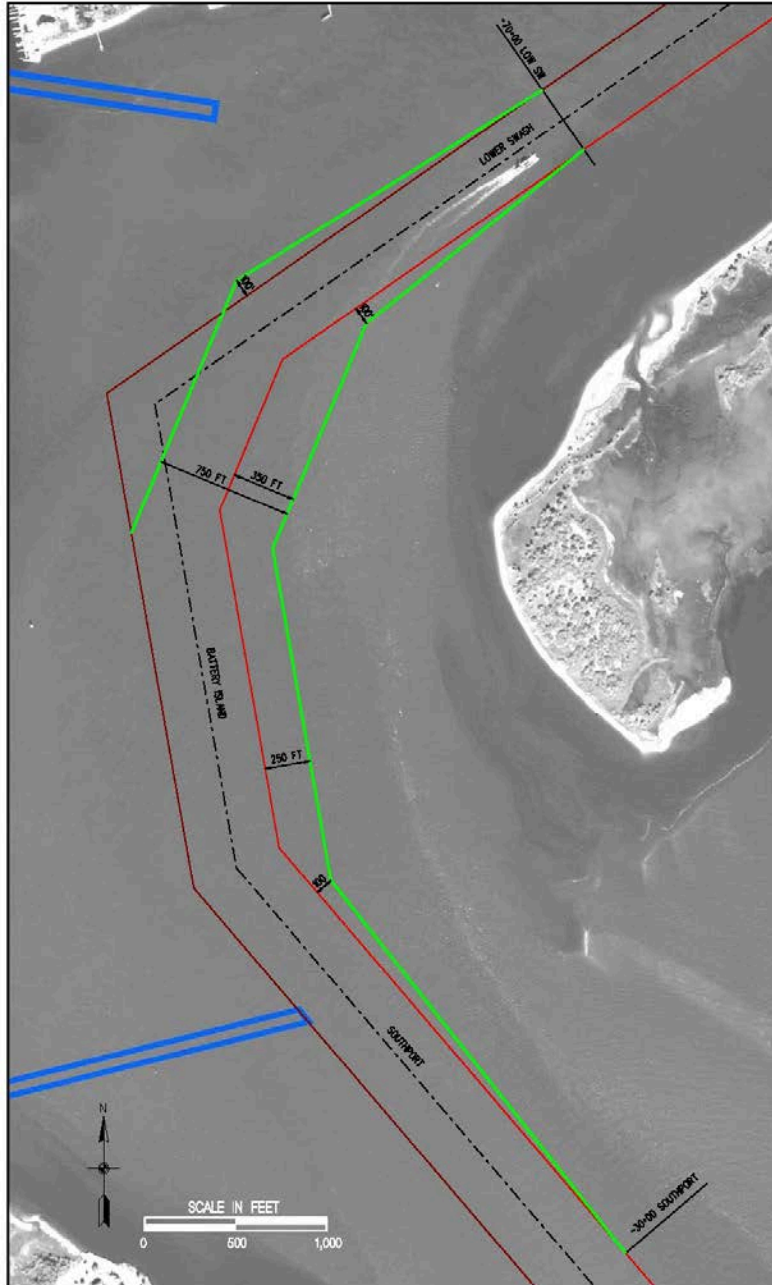


Figure 1.4-2 Proposed Improvements to Battery Island Turn

### 1.5 Real Estate Requirements

No acquisition of real estate interest is required for the realignment of the channel at Bald Head or for widening of the turn at Battery Island. As the project has a nexus to commerce and navigation,

the Government will exercise its rights under navigation servitude to construct the project. No staging or temporary work areas are required.

An existing offshore disposal site noted as "ODMDS" on Figure 1.3-1 will be used for the project. The site is a designated EPA site that is more than 3 nautical miles offshore. The Corps will provide dredged material testing results to EPA and EPA will provide a letter of concurrence for use of the site for project purposes.

## **1.6 Utility/Facility Relocation**

There are no utility/facility relocations with this project.

## **1.7 Existing Projects**

The Wilmington Harbor Navigation Channel is a federally authorized and maintained navigation channel.

## **1.8 Environmental Impacts**

The project will cause no adverse environmental impacts. See Section 2 of the Integrated Feasibility Report and Environmental Impact Statement for more detailed discussion.

## **1.9 Project Sponsor Responsibilities and Capabilities**

The State of North Carolina will be the non-Federal Project Sponsor (NFS). The NFS has the responsibility to acquire all real estate interests required for the Project. The NFS shall accomplish all alterations and relocations of facilities, structures and improvements determined by the government to be necessary for construction of the Project. The sponsor will have operation and maintenance responsibility for the project after construction is completed.

Title to any acquired real estate will be retained by the NFS and will not be conveyed to the United States Government. Prior to advertisement of any construction contract, the NFS shall furnish to the government an Authorization for Entry for Construction (Exhibit "A" to the Real Estate Appendix) to all lands, easements and rights-of-way, as necessary. The NFS will also furnish to the government evidence supporting their legal authority to grant rights-of-way to such lands. The NFS shall comply with applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, approved 2 January 1971, and amended by Title IV of the Surface Transportation Uniform Relocation Assistance Act of 1987, Public Law 100-17, effective 2 April 1989, in acquiring real estate interests for the Project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act(s). An Assessment of the Non-Federal Sponsor's Capability to Acquire Real Estate is at Exhibit "B" to the Real Estate Appendix

The non-Federal sponsor is entitled to receive credit against its share of project costs for the value of lands it provides and the value of the relocations that are required for the project. Generally, for the purpose of determining the amount of credit to be afforded, the value of the LER is the fair market value of the real property interest, plus certain incidental costs of acquiring those interests, that the non-federal sponsor provided for the project as required by the Government.

For this project no real estate interests are required for acquisition. All work will be accomplished through exercise of navigation servitude; the NFS will not receive LERRD credit in instances where navigation servitude is applicable. Should any unexpected real estate requirements be identified during PED, the NFS will be responsible for acquiring those interests in as set forth in the preceding paragraphs.

The NFS should not acquire lands required for the project prior to execution of the Project Partnership Agreement (PPA). Should the NFS proceed with acquisition of lands prior to execution



of the PPA, it is at the risk of not receiving credit or reimbursement for any costs incurred in the connection with the acquisition process should the PPA not be signed. There is also risk in acquiring lands either not needed for the project or not acquired in compliance with requirements for crediting purposes in accordance with 49 CFR Part 24, dated March 2, 1989. As a matter of policy a letter (Exhibit "C") dated 14 January 2014 outlining the risks of early acquisition was provided to the NFS.

### **1.10 Government Owned Property**

There is no Federally owned land within the areas proposed for construction of the project.

### **1.11 Historical Significance**

Archaeologically, the importance of the area as a maritime center is shown by the large number of shipwrecks and abandoned shipyards. Previous investigation of the entrance channel at Bald Head Island revealed one target within the APE that may represent a shipwreck (Hall 1999). Three shipwrecks and one engine boiler are within the APE for the proposed realignment at Battery Island (Jackson et al. 1996). See Section 2.09 of the Integrated Feasibility Report and Environmental Impact Statement for more detailed discussion.

### **1.12 Mineral Rights**

There are no known mineral activities within the scope of the proposed project.

### **1.13 Hazardous, Toxic, and Radioactive Waste (HTRW)**

No HTRW are known within the areas of proposed construction. See Section 2.14 of the Integrated Feasibility Report and Environmental Impact Statement for more detailed discussion.

### **1.14 Navigation Servitude**

Navigation Servitude is applicable to the project. For those lands required for construction that lay below the mean high water mark, navigation servitude will apply. Navigation servitude is the dominant right of the Government under the Commerce Clause of the U.S. Constitution (U.S. CONST. Art.I, §8,cl.3) to use, control and regulate the navigable waters of the United States and the submerged lands hereunder for various commerce-related purposes including navigation and flood control. In tidal areas, the servitude extends to all lands below the, mean high water mark. In non-tidal areas, the servitude extends to all lands within the bed and banks of a navigable stream that lie below the ordinary high water mark. The determination of the availability of the navigation servitude should be made on a case by case basis and consists of a two -step process. First the government must determine whether the project serves a purpose that has a nexus to navigation. Purposes recognized by the courts to have the nexus include navigation, flood control and hydroelectric power. If determined that such a nexus exists, 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. As a general rule, the Government does not acquire interests in real property that it already possesses or over which its use or control is or can be legally exercised. Therefore, if the navigation servitude is found to be available as a result of application of the process described in subparagraph b of this paragraph, then the Government will generally exercise its rights hereunder and, to the extent of such rights, will not acquire a real property interest in the land to which the navigation servitude applies. Generally, it is the policy of the U.S. Army Corps of Engineers (USACE) to utilize the navigation servitude in all situations where available, for cost shared and full Federal projects.

### **1.15 Zoning Ordinances**

Zoning ordinances are not of issue with this project. Application or enactment of zoning ordinances is not to be used in lieu of acquisition.

**1.16 Induced Flooding**

There will be no flooding induced by the construction or the operation and maintenance of the project.

**1.17 Public Law 91-646, Relocation Assistance Benefits**

There are no relocations of individuals, businesses or farms for this project.

**1.18 Attitude of Property Owners**

The project is fully supported. There are no known objections to the project from stakeholders within the project area.

**1.19 Acquisition Schedule**

There is no acquisition required for the project. However, should any requirement be identified during PED, the project sponsor is responsible for acquiring such real estate interests. Upon project approval, the Project Sponsor, Project Manager and Real Estate Technical Manager will formulate the milestone schedule (should any real estate acquisition become necessary) to meet dates for advertisement and award of a construction contract.

**1.20 Estates for Proposed Project**

No estates are proposed. Navigation servitude is applicable.

**1.21 Other Real Estate Considerations**

There are no outstanding real estate considerations

**1.22 Real Estate Estimate**

There is no real estate acquisition required. The estimated real estate costs include the land cost for acquisition of land, relocation costs, and federal and non-federal administrative costs. Administrative costs are those costs incurred for verifying ownership of lands, certification of those lands required for project purposes, legal opinions, analysis or other requirements that may be necessary during Planning, Engineering and Design (PED). A 25% contingency is applied to the estimated total for these items. Table 1.22-1 is a summary of the real estate cost by category.

Table 1.22-1 Real Estate Estimate

a. Lands Cost	0
b. Improvements (Residential)	0
(Commercial)	0
c. Mineral Rights	0
d. Damages	0
e. P.L. 91-646 Relocation Costs	0
f. Acquisition Cost Administrative	10,000

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Federal	5,000	
Non-federal	<u>5,000</u>	
	10,000	
 Sub-Total		 10,000
 Contingencies (10%)		 1,000
 <b>TOTAL</b>		 <b>11,000</b>
<b>ROUNDED</b>		<b>\$11,000</b>

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### 1.23 Chart of Accounts

The cost estimate for all Federal and non-Federal real estate activities necessary for implementation of the project after completion of the feasibility study for land acquisition, construction, LERRD, and other items are coded as delineated in the Cost Work Breakdown Structure (CWBS). This real estate cost estimate is then incorporated into the Total Current Working Estimate utilizing the Microcomputer Aided Cost Engineering System (MCACES).

Table 1.23-1 Chart of Accounts

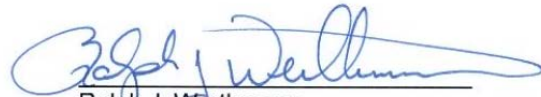
		<b>Federal</b>	<b>Non-Federal</b>	<b>Total</b>
01B	LANDS AND DAMAGES			
01B40	Acquisition/Review of NFS	5,000		5,000
01B20	Acquisition by NFS		5,000	5,000
01BX	Contingencies (10%)	500	500	1,000
	Subtotal	5,500	5,500	11,000
01G	Temporary Permit/License/ROE			
01G10	By Government			
01G20	By NFS			
01G30	By Government on Behalf of NFS			
01GX	Contingencies (10%)			
	Subtotal			
01H	AUDIT			
01H10	Real Estate Audit			
01HX	Contingencies (10%)			
	Subtotal			
	REAL ESTATE LAND			
01R	PAYMENTS			
01R1B	Land Payments by NFS			
	PL91-646 Relocation Payment by			
01R2B	NFS			
01R2D	Review of NFS			
01RX	Contingencies (10%)			
	Subtotal			
	TOTALS	5,500	5,500	11,000
	<b>ROUNDED TO</b>			<b>\$11,000</b>

This Real Estate Appendix has been prepared in accordance with policy and guidance set forth in ER 405-1-12, Chapter 12, Real Estate Planning and Acquisition Responsibilities for Civil Works Projects.

Prepared by:

  
Realty Specialist

Reviewed and approved by:

  
Ralph J. Werthmann  
Savannah District  
Chief, Real Estate Division

## **Section 2. Exhibits**

**Exhibit A - Authorization for Entry for Construction**

**Exhibit B – Assessment of Non-Federal Sponsor’s Real Estate Acquisition Capability**

**Exhibit C – Risk of Early Acquisition Letter to Sponsor**

**AUTHORIZATION FOR ENTRY FOR CONSTRUCTION**

I \_\_\_\_\_, \_\_\_\_\_ for the  
(Name of accountable official) (Title)

(Sponsor Name) \_\_\_\_\_, do hereby certify that the \_\_\_\_\_ (Sponsor Name) has acquired the real property interest required by the Department of the Army, and otherwise is vested with sufficient title and interest in lands to support construction for (Project Name, Specifically identified project features, etc.). Further, I hereby authorize the Department of the Army, its agents, employees and contractors, to enter upon \_\_\_\_\_  
(identify tracts)

to construct (Project Name, Specifically identified project features, etc.) as set forth in the plans and specifications held in the U. S. Army Corps of Engineers' (district, city, state)

WITNESS my signature as \_\_\_\_\_ for the  
(Title)

(Sponsor Name) this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BY: \_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Title)

**ATTORNEY'S CERTIFICATE OF AUTHORITY**

I, \_\_\_\_\_, \_\_\_\_\_ for the  
(Name) (Title of legal officer)

(Sponsor Name), certify that \_\_\_\_\_ has  
(Name of accountable official)

authority to grant Authorization for Entry; that said Authorization for Entry is executed by the proper duly authorized officer; and that the Authorization for Entry is in sufficient form to grant the authorization therein stated.

WITNESS my signature as \_\_\_\_\_ for the  
(Title)

(Sponsor Name), this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

BY: \_\_\_\_\_  
(Name)  
\_\_\_\_\_  
(Title)

**Exhibit A**

**Assessment of Non-Federal Sponsor's  
Real Estate Acquisition Capability  
Wilmington Harbor Navigation Improvement Project**

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 to eminent domain for this project? **YES**
- c. Does the sponsor have "quick-take" authority for this project? **YES**
- d. Are any of the land/interests in the land required for this project located outside the sponsor's political boundary? **NO**
- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? **NO**

II. Human Resource Requirements:

- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P. L. 91-646, as amended? **NO**
- b. If the answer to II.a. is "yes", has a reasonable plan been developed to provide such training? (yes/no)
- 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 work load, 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? **Only in advisory capacity**

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? **NO – Project Milestone will be developed during PED; will be joint effort between RE, PM and NFS**



IV. Overall Assessment:

- a. Has the sponsor performed satisfactory on other USACE projects?  
**YES**
- b. With regard to the project, the sponsor is anticipated to be: **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:

  
\_\_\_\_\_  
Realty Specialist

Reviewed and approved by:

  
\_\_\_\_\_  
Ralph J. Werthmann  
Chief, Real Estate Division

**Exhibit B**  
**2nd page**



DEPARTMENT OF THE ARMY  
SAVANNAH DISTRICT, CORPS OF ENGINEERS  
100 W. OGLETHORPE AVENUE  
SAVANNAH, GEORGIA 31401-3640

January 14, 2014

Real Estate Division

SUBJECT: Wilmington Harbor Improvements Project – Real Estate Acquisition

Mr. Tom Reeder, Director  
North Carolina Division of Water Resources  
1611 Mail Service Center  
Raleigh, North Carolina 27699-1611

Dear Mr. Reeder:

The intent of this letter is to formally advise the State of North Carolina, as the potential non-Federal sponsor for the proposed project, of the risks associated with land acquisition prior to the execution of the Project Partnership Agreement (PPA) or prior to the Government's formal notice to proceed with acquisition. If a non-Federal sponsor deems it necessary to commence acquisition prior to an executed PPA for whatever reason, the non-Federal sponsor assumes full and sole responsibility for any and all costs, responsibility, or liability arising out of the acquisition effort.

Generally, these risks include, but may not be limited to, the following:

- a. Congress may not appropriate funds to construct the proposed project;
- b. The proposed project may otherwise not be funded or approved for construction;
- c. A PPA mutually agreeable to the non-Federal sponsor and the Government may not be executed and implemented;
- d. The non-Federal sponsor may incur liability and expense by virtue of its ownership of contaminated lands, or interests therein, whether such liability should arise out of Local, State, or Federal laws or regulations including liability arising out of CERCLA, as amended;
- e. The non-Federal sponsor may acquire interests or estates that are later determined by the Government to be inappropriate, insufficient, or otherwise not required for the project;
- f. The non-Federal sponsor may initially acquire insufficient or excessive real property acreage which may result in additional negotiations and/or benefit payments under P.L. 91-646 as well as the payment of additional fair market value to affected landowners which could have been avoided by delaying acquisition until after PPA

**Exhibit "C"**

-2-

execution and the Government's notice to commence acquisition and performance of LERRD; and

g. The non-Federal sponsor may incur costs or expenses in connection with its decision to acquire or perform LERRD in advance of the executed PPA and the Government's notice to proceed which may not be creditable under the provisions of Public Law 99-662 or the PPA.

We appreciate the State's participation in this project. Should you have questions or concerns pertaining to this letter please feel free to contact Ms. Belinda Estabrook at (912) 652-5667.

Sincerely,



Ralph J. Werthmann,  
Savannah District  
Chief, Real Estate Division  
Real Estate Contracting Officer