



U.S. Army Corps of Engineers
Charleston District

APPENDIX E

CHARLESTON HARBOR POST 45
CHARLESTON, SOUTH CAROLINA

Real Estate

03 October 2014

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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 feasibility report for the Charleston Harbor Post 45 Study and is written to the same level of detail. The author of this report is familiar with the Project area. The South Carolina State Ports Authority (SCSPA) is the non-Federal sponsor for the project. Date of this report is August 2014.

1.2 Study Authority

This report addresses the impediments imposed by the Port of Charleston's existing federal navigation channels to the growing containership size. The Federal channels serving the port's major container terminals are authorized to a depth of -45 feet mean lower low water (MLLW). New industry standards are trending to larger, deeper containerships that can accommodate larger volumes of cargo.

The U.S. Army Corps of Engineers initiated this study at the request of the South Carolina State Ports Authority under the authorization provided by Section 216 of the Flood Control Act of 1970.

Section 216 of the Flood Control Act of 1970 (Public Law 91-611) allows the review of completed projects:

“The Secretary of the Army, acting through the Chief of Engineers,

is authorized to review the operation of projects the construction of

which has been completed and which were constructed by the Corps of Engineers in the interest of navigation, flood control, water supply, and related purposes, when found advisable due to significantly changed physical or economic conditions, and to report thereon to Congress with recommendations on the advisability of modifying the structures or their operation, and for improving the quality of the environment in the overall public interest.”

1.3 Project Location

Charleston Harbor (Figure 1.3-1) is located in a natural tidal estuary formed by the confluence of the Cooper, Ashley, and Wando Rivers that serves the Port of Charleston. The total area of the Harbor is approximately 14 square miles. The study area encompasses the offshore entrance channel, offshore and landside confined dredged material disposal sites, inner harbor channels, and any extension of these water bodies and shorelines that are potentially impacted by channel enlargement alternatives. Navigation concerns include three main problems: insufficient Federal channel depths, difficult currents, and restrictive channel widths and turning basins.

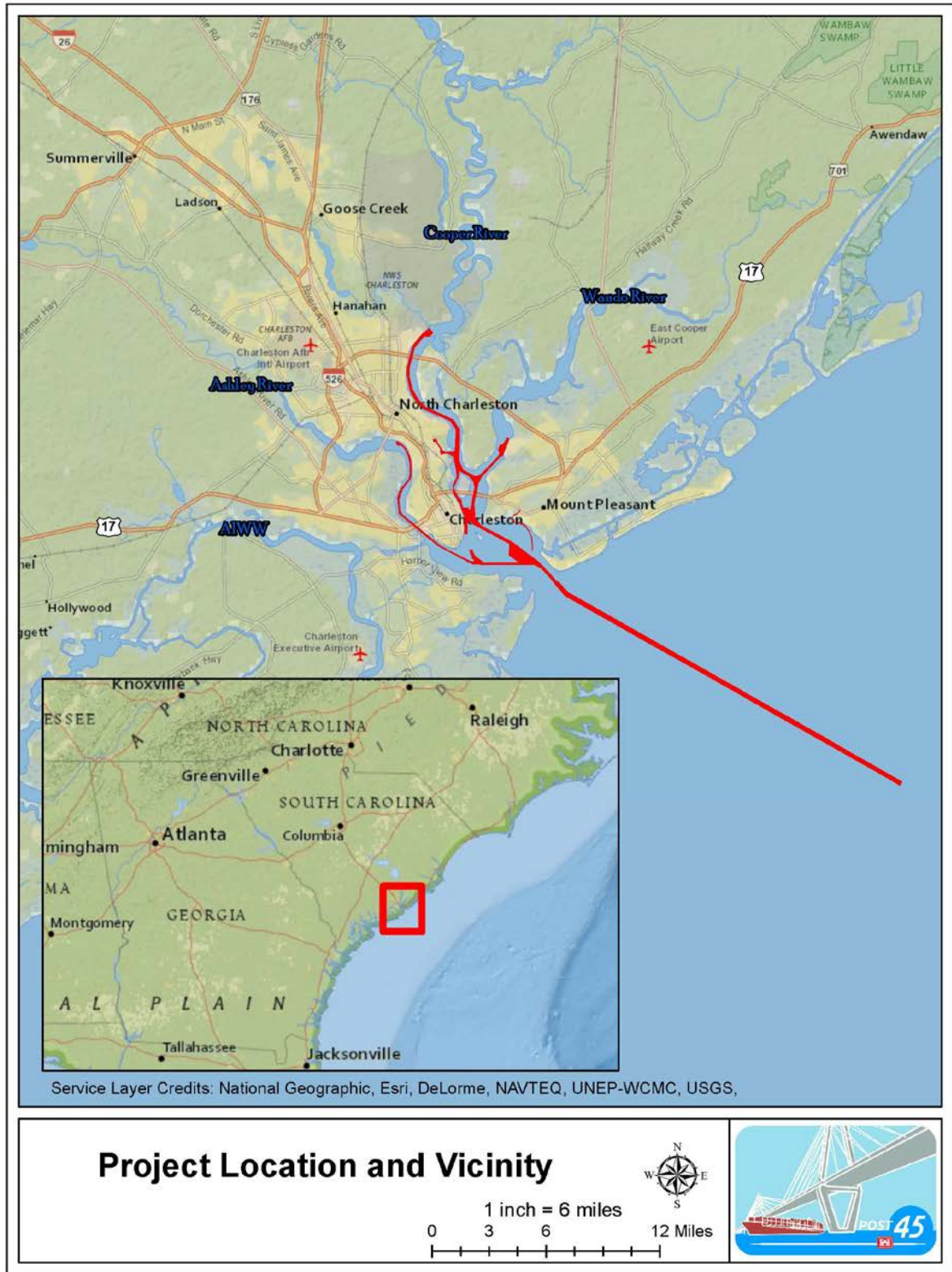


Figure 1.3-1 Project Vicinity/Location Map

1.4 Project Description

The purpose of this study is to develop and evaluate alternate plans to decrease unit transportation costs for ships using Charleston Harbor and also improve vessel transiting efficiency and safety. The Feasibility Report presents an assessment of Federal interest in navigational improvements to Charleston Harbor that contributes to the national economic development.

Alternative solutions for correcting problems and providing deeper and wider channels for more efficient transit of large commercial vessels with more cargo tonnage were identified for evaluation of costs, benefits, and environmental impacts associated with implementation. The Tentatively Selected Plan (TSP), Alternative 52 /48', is the Locally Preferred Plan (LPP). As shown at Figure 1.4-1, the TSP includes extending and deepening the entrance channel in combination with deepening and widening the inner harbor and contains the following navigation improvements:

- Deepen the existing entrance channel from a project depth of 47 feet to 54 feet over the existing 800-foot bottom width, while reducing the existing stepped 1000-foot width to 960 feet from an existing depth of 42 feet to a depth of 49 feet.
- Extend the entrance channel approximately three miles seaward from the existing location to the 54-foot project depth contour.
- Deepen the inner harbor from an existing project depth of 45 feet to 52 feet to the Wando Welch container facility on the Wando River and the new SCSPA container facility on the Cooper River, and 48 feet for the reaches above that facility to the Northern Charleston container facility (over varying expanded bottom widths ranging from 400 to 1,800 feet).
- Enlarge the existing turning basins at the Wando Welch and new SCSPA terminals to accommodate Post Panamax Generation 2 and 3 container ships.

- Enlarge the North Charleston Terminal turning basin to accommodate Post Panamax Generation 2 container ships.
- Place dredged material and raise dikes at the existing upland confined disposal facilities at Clouter Creek, Yellow House Creek, and/or Daniel Island; and for material dredged from the lower harbor, placed at the Ocean Dredged Material Disposal Site (ODMDS). Place rock along the outside of the entrance channel for a beneficial use of dredged material.

1.5 Environmental Impacts

The TSP would impact approximately 281 acres of wetlands due to changes in salinity and approximately 29 acres of hardbottom habitat in the extended footprint of the entrance channel. Mitigation for wetland impacts includes preservation of 831 acres of wetlands. While the USACE avoided some impacts to hardbottom habitat, a least cost plan for placement of rock involves constructing 8 new 33-acre reef sites to mitigate for hardbottom areas not previously dredged and within the navigation channel as a result of deepening and/or extending the entrance channel beyond its current, authorized depth of 47 feet. Four will be located along the north side of the channel and 4 will be located along the south side of the channel. At the request of the SCDNR Artificial Reef Program, approximately 240,000 cy of rock material will also be deposited at the 25 acre Charleston Nearshore Reef site. Details pertaining to the mitigation plan and associated monitoring and adaptive management of the project can be found in Appendix P.

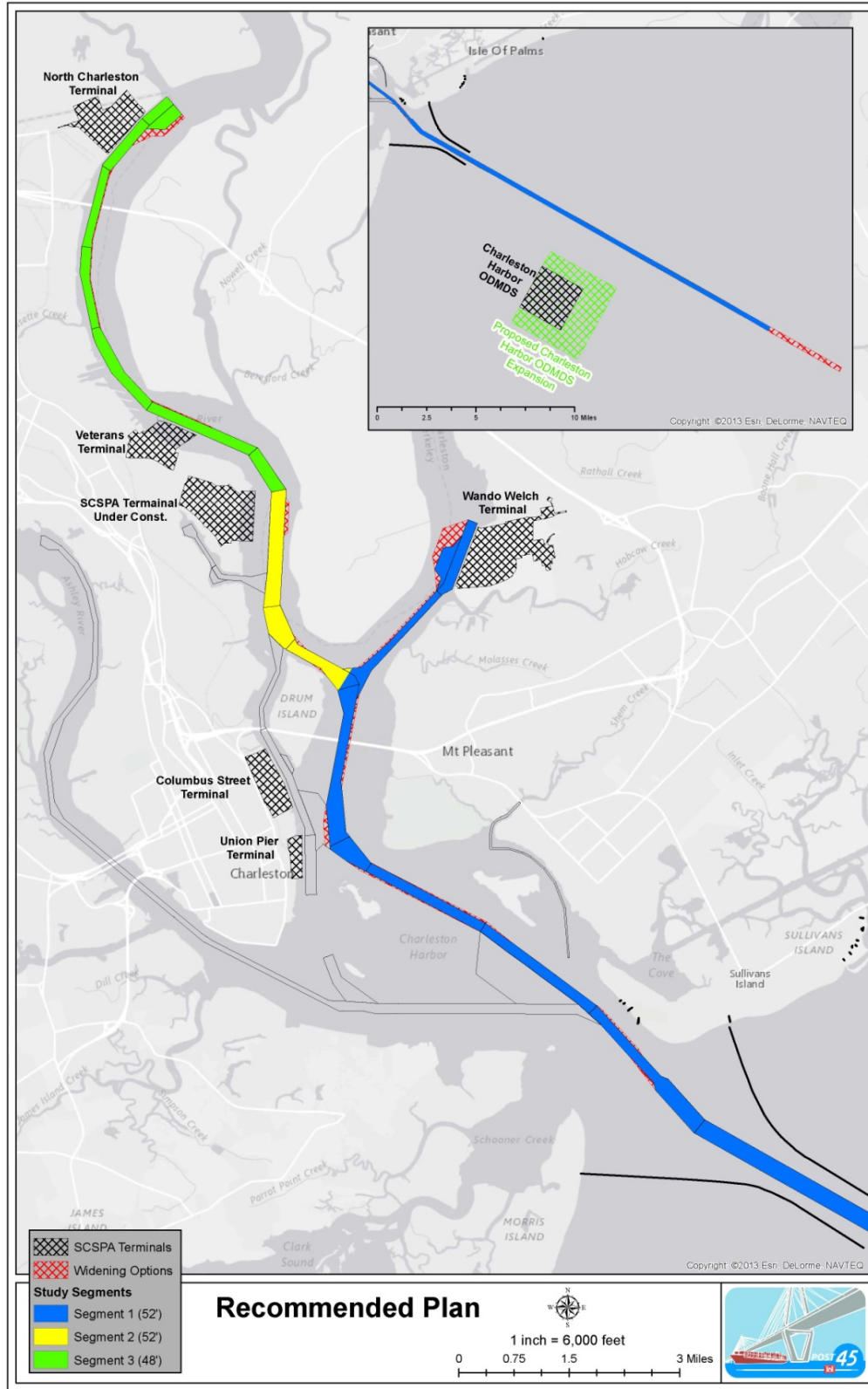


Figure 1.4-1 Recommended Plan 52'/48'

1.6 Real Estate Requirements

1.6.1 Channel Deepening, Widening and Turning Basin Expansion

No acquisition of real estate interest is required for deepening and widening the entrance channel and the inner harbor or enlarging the existing turning basins. As the project has a nexus to commerce and navigation, the Government will exercise its rights under navigation servitude to construct the project. All dredging will be below Mean High Water (MHW). Areas to be widened are shown in red at Figure 1.4-1 above and the segments to be deepened are shown in blue, yellow and green.

In accordance with ER 1105-2-100, USACE is considering beneficial use of dredged material as a part of the Charleston Harbor Post 45 Project. The following options are Offshore Dredged Material Disposal Area (ODMDS) berm creation, hardbottom habitat creation, Crab Bank enhancement, Shutes Folly enhancement and nearshore placement off Morris Island.

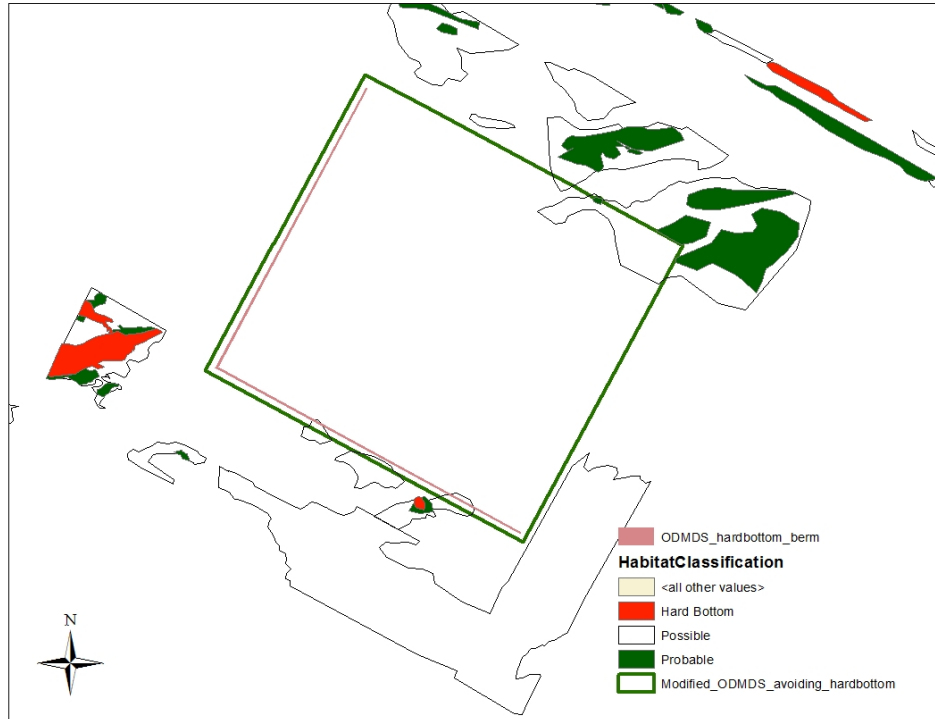


Figure 1.6-2 Proposed ODMS Habitat Berm

1.6.2 ODMS Berm Creation

This beneficial use project will consist of a berm created with material from the entrance channel. The project would involve the use of limestone material dredged from the entrance channel to construct an “L” shaped berm (i.e., artificial reef) along the south and west perimeter of the ODMS (Figure 1.6-2). The reef would serve multiple purposes, including hardbottom habitat, fish habitat, and sediment containment. Construction of the berm will be under exercise of navigation servitude and work will be coordinated with resource agencies.

1.6.3 Hardbottom Habitat Creation

This beneficial use option utilizes limestone rock that will be dredged from within the entrance channel as substrate for sessile invertebrates, and structure for fish species after being placed within

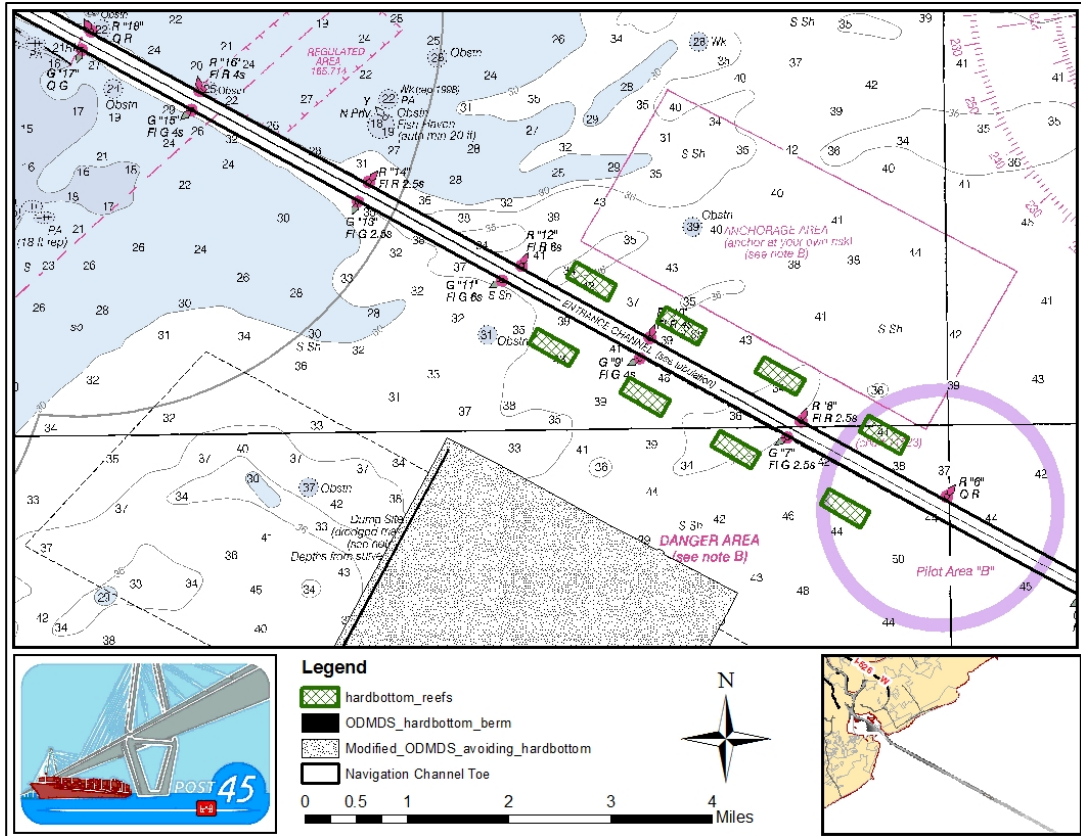


Figure 1.6-3 Theoretical Depiction of Locations for Hardbottom Reefs

strategic locations nearby the channel. USACE will construct 8 new 33-acre reef sites. Four will be located along the north side of the channel and 4 will be located along the south side of the channel. For a theoretical depiction of the location of these reefs see Figure 1.6-3. Prior to construction the locations of these reefs will be refined and coordinated with the resource agencies. Construction of hardbottom habitat creation will be under exercise of navigation servitude.

1.6.4 Crab Bank Enhancement

A beneficial use of dredged material project to enlarge Crab Bank by placing material on the channel side of the island running from north to south would help to support the avian species that utilize the island for nesting, roosting, and foraging. This beneficial use concept involves enlarging Crab Bank

from roughly 22 acres to roughly 58 acres (Figure 1.6-4). Navigation servitude applies and work will be coordinated with resource agencies.



Figure 1.6-4 Crab Bank Beneficial Use Concept

1.6.5 Shutes Folly Enhancement

Shutes Folly (Figure 1.6-5) provides nesting habitat for colonial seabirds due to its isolated nature, small size, and lack of predators. It is one of only nine active nesting sites in the entire state. Skimmers and oyster catchers like the shell hash that effaces the eastern side of Shutes Folly. Additionally, Castle Pinckney, an historic site, sits atop the island. It is one of the oldest fortifications of its kind still extant and was built to provide defense of the coast. The site is experiencing erosion on the eastern end. This beneficial use project consists of excavating marl and clay materials from Bennis, Hog Island, and Horse Reaches and depositing the material onto barges to be towed to areas around the eastern side of Shutes Folly Island where it will be used to construct a berm around the 0

ft contour to an elevation of +8 feet MLLW. Navigation servitude applies and work will be coordinated with resource agencies.



Figure 1.6-5 Shutes Folly Beneficial Use Concept

1.6.6 Disposal Areas

Existing upland disposal sites and an existing offshore disposal site noted as “ODMDS” on Figure 1.6-6 will be used for the project. The ODMDS 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. Dredge from the upper harbor reaches would go to Yellowhouse Creek Disposal Area, Clouter Creek Disposal Area and Daniel Island Disposal Area. Dredge from the lower harbor would go the ODMDS.

1.6.7 Acquisition of Mitigation Lands

As a result of the project, indirect impacts are expected to occur through a shift from fresh/brackish marsh to brackish/salt marsh. Changes in the salinity level of a wetland can alter the vegetative composition, soils, and habitat function of the system. As a means of determining the impacts to wetlands the Uniform Mitigation and Assessment Method (UMAM) was utilized. The UMAM provides a standardized procedure for assessing the ecological functions provided by wetlands/surface waters, the amount that those functions are reduced by a proposed impact, and the amount of mitigation necessary to offset that loss. Through the UMAM analysis it was determined that 280.96 acres of wetlands are impacted and that approximately 831.08 acres of mitigation lands would need to be acquired to offset the wetlands impacts. Another UMAM analysis will be completed during Preconstruction, Engineering and Design (PED) and the acreage could decrease or increase at that time. However, for planning purposes we are assuming that 831.08 acres will need to be acquired.

Discussions with the US Forest Service (USFS) generated a list of potential mitigation sites that would be desirable to add to the Francis Marion National Forest (FMNF). Upon acquisition, the lands would

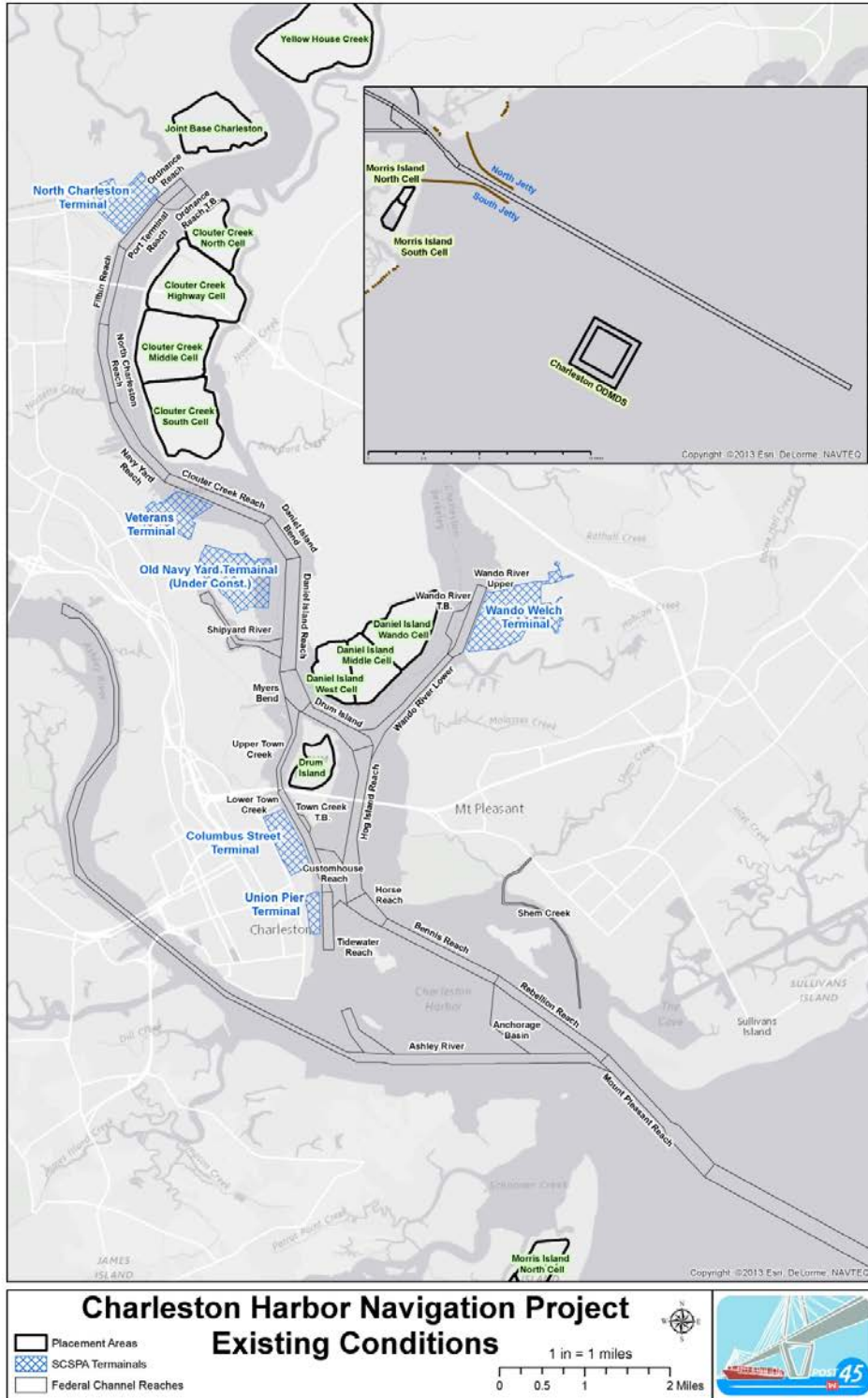


Figure 1.6-6 Existing Disposal Areas for the Project

be conveyed to the USFS for long term stewardship. All properties are strategically located within the FMNF proclamation boundary and are within the Cooper River Basin as shown at Figure 1.6-7. These properties are targeted for preservation due to their natural characteristics and vulnerability to development.

It has been determined that preservation of land within the proclamation boundary of the Francis Marion National Forest best meets the needs for compensatory mitigation. The preserved lands would provide important physical, chemical and biological functions for the Cooper River Basin and will contribute to the sustainability of the watershed by ensuring the functions of bottomland hardwood wetlands and emergent wetlands on these properties are sustained in perpetuity. The preservation parcels will also enhance lands already within the Francis Marion National Forest by functioning as a buffer to future development. The region will continue to experience population growth, industrial/commercial development, and changes in land use.

Lands meeting the needs for compensatory mitigation and proposed for preservation would be acquired in fee by the non-federal sponsor and then conveyed to the United States of America. Those lands would then be under the administrative control of the USFS for operational and management purposes.

For planning purposes, specific parcels are not currently targeted for acquisition. Multiple parcels containing more acreage than the estimated acreage required for mitigation are shown on the maps. During PED, after the final UMAM analysis and the final determination of acreage are made, a decision will be made as to which parcels to acquire for mitigation. The acreage required for mitigation could either decrease or increase based on the results of the final UMAM analysis. The

non-federal sponsor will cooperate with USFS during the preliminary acquisition process to ensure that after review of a title examination a particular parcel is acceptable to the USFS. The non-federal sponsor will also coordinate closely with USFS to make sure that the conveyance deed is an acceptable format to the Government. The USFS cannot accept lands that have been acquired through eminent domain so all acquisitions will have to be from willing sellers. Land will be acquired in fee simple.

Based on Policy Guidance Letter No. 31 – Real Estate Support to Civil Works Planning Paradigm (3x3x3), for projects in which the value of real estate (lands, improvements, and severance damages) are not expected to exceed ten percent of total project costs (total cost to implement project), a cost estimate (or rough order of magnitude (ROM)) will be acceptable for purposes of feasibility phase. A ROM estimated was approved for the project in February 2014 and revised due to acreage changes in July 2014. The cost per acre for mitigation lands is estimated to be \$4,500. For planning purposes it is anticipated that 2 landowners will be impacted by the acquisition of mitigation lands.

1.7 Utility/Facility Relocation

There are no utility/facility relocations with this project.

1.8 Existing Projects

The River and Harbor Act of 1852 initially authorized navigation improvements to Charleston Harbor. Later, the passage of the River and Harbor Act of 1878 authorized the deepening of a channel through the ocean bar to a depth of 21- feet MLW, as well as the construction of a pair of jetties as a means of stabilizing the new channel. In 1898 and 1904, additional dredging occurred in Charleston Harbor to secure channel depths of 26 and 30 feet deep, respectively. In October 1940, a 35-foot project was authorized up Town Creek and the Cooper River to the North Charleston Terminal area.

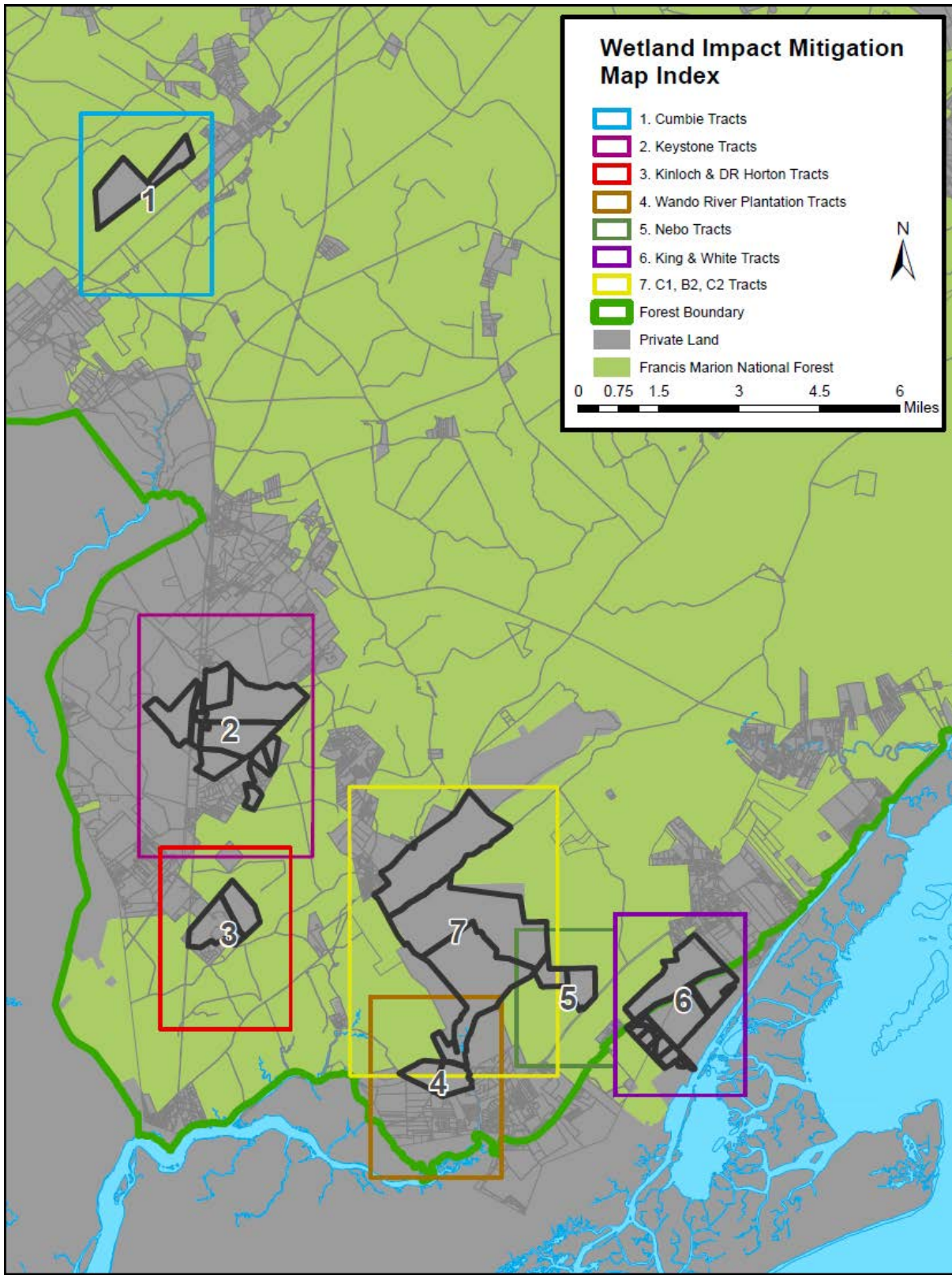


Figure 1.6-7 Parcels Suitable for Mitigation

By 1996 the entrance channel had been deepened to 42 and the major interior channels had been deepened to 40 feet. The Charleston Harbor Federal navigation project currently allows for limited 2-way traffic and consists of channels, turning basins, an anchorage, contraction dikes, jetties and disposal areas. The channels have been enlarged through the past 160 years and the authorized depth supporting the major terminals is at elevation -45 feet mean lower low water. Construction of the existing authorized project was initiated in 1998. All of the 1996 authorized changes have been completed with the exception of the Daniel Island Turning Basin. This feature has not been constructed because the terminal it would service was relocated from Daniel Island to the old Naval Base. The unconstructed turning basin is being currently reevaluated to determine if its construction is still in the federal interest.

1.9 Project Sponsor Responsibilities and Capabilities

The SCSPA 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.

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.

1.10 Government Owned Property

The SCSPA owns the Clouter Creek, Daniel Island and Drum Island Disposal Areas in the project area. The Federal government owns Yellowhouse Creek and the Joint Base Charleston Disposal Areas in the project area.

1.11 Historical Significance

It is anticipated that no cultural or historic resources would be affected by the project. Remote sensing surveys will be conducted in all areas proposed for widening to ensure that incidental damage to those resources will be avoided. Therefore, no cumulative effect to these resources would result from this project. See Appendix O and the EIS for more detailed information.

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)

USACE has collected samples and conducted physical/chemical, toxicological, and bioaccumulation evaluations on sediment samples for the purpose of determining where and how sediment dredged during potential deepening can be disposed. Laboratory results indicated that dredged material meets requirements for disposal of sediments offshore at the Charleston ODMDS. Results of the testing will be documented in an MPRSA Section 103 evaluation for approval by the EPA. See Appendix O Cumulative Impacts for further information.

1.14 Navigation Servitude

Navigation Servitude is applicable to this 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 ER 405-1-12, Chapter 12, Section 12-7, Navigation Servitude, 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

A Notice of Intent (NOI) was published in the Federal Register (Vol. 76, No. 156, August 12, 2011) to advertise the intent of USACE to write an Environmental Impact Statement. In accordance with the NEPA, an information letter was sent to resource agencies, tribes and special interest groups on August 11, 2011. Additionally, NEPA scoping meeting information was mailed to interested parties in November, 2011. A scoping meeting with the resource agencies was held on October 4, 2011. Public meetings were held December 13, 2011, and April 30, 2013, at Mark Clark Hall, the Citadel to discuss the proposed project and solicit for comments. Written comments from Federal, state, and local governmental agencies, various private and non-profit organizations, and individuals are included in NEPA Scoping Appendix Q. The project is supported by the public. No contact has been made with landowners in the areas proposed for mitigation acquisition as specific sites will not be identified until PED.

1.19 Acquisition Schedule

The project sponsor is responsible for acquiring real estate interests required for the project. The sponsor will receive an official notice to proceed with real estate acquisition when the PPA has been executed. When the final UMAM has been completed, the specific sites for acquisition will be identified and the sponsor notified. It is expected that acquisition can be completed within 9-12 months. After project approval the Project Sponsor, Project Manager and Real Estate Technical Manager will formulate the milestone schedule to meet dates for advertisement and award of a construction contract.

1.20 Estates for Proposed Project

The fee estate will be used for the project:

FEE.

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

1.21 Other Real Estate Considerations

There are no other known real estate considerations.

1.22 Real Estate Estimate

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 measure.

Table 1.22-1.

Real Estate Estimate

a. Lands Cost (831.08 acres)* 2 impacted landowners		3,739,860
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		60,000
Federal	50,000	
Non-federal	<u>10,000</u>	
	60,000	
Sub-Total		3,799,860
Contingencies (25%)*		15,000
TOTAL		3,814,860
ROUNDED		\$3,815,000

* Land cost includes contingency established during valuation
* Contingency included in BCERE is for administrative costs only

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

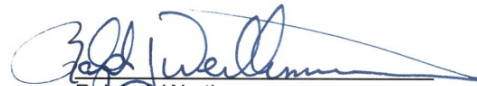
		Federal	Non-Federal	Total
01B	LANDS AND DAMAGES			
01B40	Acquisition/Review of NFS	10,000		10,000
01B20	Acquisition by NFS		50,000	50,000
01BX	Contingencies (25%)	2,500	12,500	15,000
	Subtotal	12,500	62,500	75,000
01G	Temporary Permit/License/ROE			
01G10	By Government			
01G20	By NFS			
01G30	By Government on Behalf of NFS			
01GX	Contingencies (25%)			
	Subtotal			
01H	AUDIT			
01H10	Real Estate Audit			
01HX	Contingencies (25%)			
	Subtotal			
	REAL ESTATE LAND PAYMENTS			
01R				
01R1B	Land Payments by NFS		3,739,860	3,739,860
	PL91-646 Relocation Payment			
01R2B	by NFS			
01R2D	Review of NFS			
01RX	Contingencies (25%)		0	0
	Subtotal		3,739,860	3,739,860
	TOTALS	12,500	3,802,360	3,814,860
	ROUNDED TO			\$3,815,000

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

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
Charleston Harbor Post 45**

I. Legal Authority:

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

Powers of the Authority – SC Code 54-3-140

- b. Does the sponsor have the power to eminent domain for this project? **YES**

Acquisition of Property – SC Code 54-3-150; Use of Certain State Property – SC Code 54-3-170; Right to Institute Action – SC Code 28-2-210

- c. Does the sponsor have “quick-take” authority for this project? **YES**

Eminent Domain Procedures Act – SC code 28-2-10 et seq; but subject to challenge: Proceedings to Challenge Condemnor's Right to Condemn – SC Code 28-2-470

- 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? **NO**

**Exhibit B
1st page**

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**

SIGNATURE PAGE TO FOLLOW

**Exhibit B
2nd page**

Prepared by:



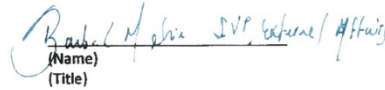
Belinda S. Estabrook
Senior Realty Specialist

Reviewed and approved by:



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

SC State Ports Authority by:



(Name)
(Title)



REPLY TO
ATTENTION OF:

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

July 17, 2014

Real Estate Division

SUBJECT: Charleston Harbor Post 45 General Investigation for Navigation Improvement

Ms. Barbara L. Melvin
Senior VP, External Affairs
South Carolina State Ports Authority
P.O. Box 22287
Charleston, South Carolina 29413

Dear Ms. Melvin:

The intent of this letter is to formally advise South Carolina State Ports Authority, 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 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 PPA.

We appreciate the Port'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
Chief, Real Estate
Savannah District