

PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION

APPENDIX C

REAL ESTATE PLAN

Integrated Feasibility Report and Environmental Impact Statement



US Army Corps
of Engineers®
Seattle District

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REAL ESTATE PLAN

PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT

**Real Estate Division Seattle District
U.S. Army Corps of Engineers**

January 2016

Project Partners:

U.S. Army Corps of Engineers

Washington Department of Fish and Wildlife

**U.S. ARMY CORPS OF ENGINEERS – SEATTLE DISTRICT
4735 EAST MARGINAL WAY SOUTH, SEATTLE WA 98134-2385
WWW.NWS.USACE.ARMY.MIL**

REAL ESTATE PLAN
PUGET SOUND NEARSHORE ECOSYSTEM
RESTORATION PROJECT

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REAL ESTATE PLAN

PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT (PSNERP)

THIS REAL ESTATE PLAN (REP) IS CONSISTENT WITH THE LEVEL OF DETAIL CONTAINED IN THE PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT (PSNERP) FEASIBILITY/ENVIRONMENTAL IMPACT STATEMENT. THIS REP WAS DEVELOPED UTILIZING LIMITED INFORMATION AVAILABLE DURING THE FEASIBILITY STUDY PHASE OF THE PROJECT. IT WILL BE UPDATED TO FULLY COMPLY WITH ER 405-1-12 DURING THE PRE-CONSTRUCTION ENGINEERING AND DESIGN (PED) PHASE.

1.0 INTRODUCTION

1.1 Real Estate Plan Purpose

This Real Estate Plan (REP) is presented in support of the Puget Sound Nearshore Ecosystem Restoration Project (PSNERP). The project is authorized under Section 209 of the River and Harbor Act of 1962 (P.L. 84-874) and was initiated as a USACE Civil, Title 1 general investigation study under Public Law 106-60 (29 September 1999). The purpose of the REP is typically to identify lands, easements, rights-of-way, relocations and disposal sites (LERRD) necessary to support construction, operation and maintenance of the proposed project. However, due to the limited design information available at this time, this plan seeks to provide information on any real estate activities that may be involved for the identified project based on current information available.

The REP is tentative in nature; it is for planning purposes only and both the final real property acquisition lines and real estate cost estimates provided are subject to change based on the final project design.

The Non-Federal Sponsor (NFS) for this project is the Washington Department of Fish and Wildlife (WDFW).

1.2 General Project Background and Description

As of 2014, 13 fish and marine mammal species in Puget Sound are listed as threatened or endangered or identified as candidate species under the ESA. Within the Study area, there are three listed endangered species and 10 threatened species. Recovery plans for eight of the ESA-listed species have been or are being developed by the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Fish

and Wildlife Service. Actions proposed by the Nearshore Study support salmon recovery consistent with NOAA's salmon recovery plans.

All sites of the recommended plan include critical habitat for Endangered Species Act (ESA) listed species. The study area is located within the nearshore zone of the Puget Sound Basin located in the northwest Washington, and consists primarily of rural residential and agricultural zoning. The project is comprised of the Duckabush River Estuary, Nooksack River Delta and North Fork Skagit River Delta sites (*See Exhibit A for an overview of the site locations*). The total project cost, based on the 2016 Cost Estimate is \$452,286,000; Total cost for Lands, Improvements and Damages is \$20,451,365, or 5% of the total project cost.

1.2.1 Duckabush River Estuary: The Duckabush River is located in Jefferson County and is one of several major river systems in the Hood Canal Subbasin draining the east slope of the Olympic Mountains to Hood Canal. The broad Duckabush River delta fans out into Hood Canal where Highway 101 causeway crosses the estuary, spanning the main channel and a northern distributary channel via bridges. The area south of the river delta is primarily a basaltic shoreline with a few pocket beaches. Residential development is concentrated primarily just south of the estuary.

The proposed action for the Duckabush River Estuary would restore the natural geomorphology to the Duckabush River delta wetlands by removing major roadway obstructions, excavating channels and removing fill. The restoration proposal would include the removal of the Highway 101 causeway and bridges across the estuary, allowing significant restoration of tidal exchange in the Duckabush River Estuary. An elevated roadway on a 2,100-foot-long bridge would be constructed in a new alignment further upstream from the existing highway, allowing for tidal exchange to occur and distributary channels to develop while maintaining the key transportation route on Highway 101. Berms along the river would be removed to restore channel migration and channels would be excavated at or near their historical configurations, which would reestablish tidal and freshwater connections throughout the estuary. (*See Exhibit B, 1.2.1 for Duckabush River Estuary map and site features.*)

1.2.2 Nooksack River Delta: This action area is in Whatcom County and is centered on the Lummi Reservation north of Bellingham in the San Juan/Georgia Strait Subbasin. It encompasses nearly all of the Nooksack and Lummi River deltas below Ferndale, Washington. The Nooksack River has progressively built its delta toward and around the Lummi Peninsula. The course of the main river has alternated to either side of the Lummi Peninsula, altering the balance of freshwater and sediment delivery.

The proposed action for the Nooksack River Delta would address levees, roads and other barriers to restore water and sediment processes throughout the historical Nooksack River delta. The restoration proposal includes actions on both the Nooksack River and Lummi River. Approximately 60% (12,000 linear feet) of the

Nooksack River's right and left bank dikes will be removed, allowing the river to be reconnected to historical tidal areas and floodplain habitats. A new setback levee will be constructed along the right bank of the Nooksack River to maintain existing levels of flood risk management in the area while still allowing reconnection of high value floodplain habitats. The setback levee will generally follow the existing Ferndale Road alignment, as the existing embankments are already raised and the road provides primary access to portions of the Lummi Indian Reservation.

There are no setback levees proposed for the left bank of the Nooksack River because the restored area is uninhabited north of Marine Drive and ties into high ground. In addition to the levee removals and setback levee construction on the Nooksack River, large woody debris structures will also be installed in the river to promote hydraulic stability and improve habitat complexity. On the downstream end of the project footprint, a flood-prone portion of the community of Marietta will be relocated to restore a small portion of the floodplain, avoid flooding impacts from the left bank levee removal, and avoid additional project costs associated with providing flood risk management features to this relatively small area.

A new water control structure (i.e., diversion feature) will be installed at the confluence of the Lummi and Nooksack Rivers. This structure is intended to facilitate transfer of freshwater and sediment to the Lummi River, while preventing avulsion of the mainstem to the west. The Lummi River channel will be regraded to reconnect it to Nooksack River flows, allowing the Lummi River to better match invert to water surface elevation of the Nooksack River, increase conveyance capacity, and encourage normal geomorphic processes in the river.

On the Lummi River, approximately 12,000 linear feet of berm would be removed to regain all of the shoreline complexity and dynamic shoreline processes on the north bank in the vicinity of North Red River Road, west of Haxton Way. A new setback levee will be constructed along the north bank of the Lummi River to allow reconnection of high value floodplain habitats while maintain existing levels of flood risk management in the area. As described above, the setback levees are required to maintain social and tribal acceptability at the site.

Finally, the restoration proposal includes several road removals and/or relocations. Portions of existing roadways will be removed or raised to allow for floodplain restoration in the areas where levees are removed. Construction of new bridges or installation of culverts on both the Nooksack and Lummi Rivers will allow tidal exchange across the restored Nooksack River Delta (*See Exhibit B, 1.2.2 for Nooksack River Delta map and site features*).

1.2.3 North Fork Skagit River Delta: This action area is located in Skagit County along the lower reach of the North Fork of the Skagit River, south of LaConner. Extensive diking of the North Fork Skagit River has caused substantial loss of estuarine connectivity.

The restoration proposal includes actions on both the south and north banks of the North Fork Skagit River. Approximately 13,000 feet of levee along the south bank will be lowered to allow creation of a tidal channel network on the south side of the river. In addition to lowering levees, a new levee will be constructed along a road alignment (Rawlins Road) to promote riverine and tidal exchange in the project area, to isolate the restoration area from surrounding agriculture, and to maintain existing levels of flood risk management to surrounding land and infrastructure. This setback levee alignment follows the embankment for Rawlins Road and ties into the coastal dike system. On the north bank of the river, approximately 3,140 feet of shore armoring would also be lowered. Existing topography and an upland levee provide site boundaries and flood risk management without the need for a new levee on the river's north side; the northern boundary ties into high ground and the existing Diking District 9 levee. Planned breaches in the lowered levee and in the area of armor removal as well as excavated channels on both banks of the river will allow for water to access the newly restored floodplain. Replanting lowered levees will restore a natural riparian corridor along the river.

The current alternative also includes levee lowering and excavation of new tidal channels on the eastern portion of the project footprint. (*See Exhibit B, 1.2.3 for North Fork Skagit River Delta map and site features.*)

1.3 Previous Studies

There are no prior written real estate plans for this project.

2.0 Description of Lands, Easements, Rights-of-Ways, Relocations and Disposals (LERRD)

Based on the current feasibility level of design, the project features impact a combination of private, public and tribal lands totaling approximately 2,480 acres. An estimated 220 parcels will be affected either fully or partially by this project.

Due to the limited level of detail associated with the current project phase, all lands within the project footprint were valued as fee simple interests. Anticipated real estate interests have been identified in Section 4.0, however, the project is unable to identify specific estates with affected parcels at this phase of the project. A detailed evaluation of the appropriate real estate interests to be acquired will be determined during PED and will be refined and reflected within the updated REP. Full coordination will take place with the vertical team.

The tables below identify the parcels, acreages affected, and ownership type for each of the project sites. This information is tentative in nature and will be revised during PED. The values per parcel are not included in the table below – rather, for the purposes of this REP, the project site value is based on fee simple and is provided as a lump-sum amount in the BCERE Summary Table (See Section 11). The updated estimated value, affected acreages and associated real estate interests will be identified and included with the updated REP.

Duckabush River Estuary

Parcel ID	Project Acres	Ownership Type
502164001	0.09	Public
502164004	0.51	Private
502164010	1.36	Public
502164011	0.05	Private
502164012	7.37	Public
502164014	4.52	Private
502164039	0.20	Private
502164041	0.01	Private
502164049	0.55	Public
502164051	2.39	Public
502164052	4.72	Public
502164053	0.22	Private
502164055	4.10	Public
502211001	11.07	Public
502211002	5.91	Public
502211003	9.88	Public
502211004	2.85	Public
502211019	0.14	Private
980700522	0.04	Private
981002228	0.93	Private
981002229	0.26	Public
981002324	0.04	Private
981002325	0.03	Private
981301409	0.06	Private
981301410	0.06	Private

Parcel ID	Project Acres	Ownership Type
981301411	0.11	Private
981301412	0.27	Private
TOTAL ACRES (rounded)	58 acres (Estimated Value: \$252,365)	-----

NOTE: Although some residential parcels are affected, the current project footprint does not impact the actual structure. As a result PL 91-646 requirements are not currently associated with this site.

Nooksack River Delta

Parcel ID	Project Acres	Ownership Type
380101067469	34.14	Private
380101999902	3.61	Tribal/Public/Private
380101999905	187.94	U.S. Dept of Interior/Tribal
380102066107	76.37	Private
380102395080	0.76	Private
380102999902	4.73	Tribal/Public/Private
380103999902	0.72	Tribal/Public/Private
380110070485	2.00	Private
380110080471	0.18	Private
380110086471	0.25	Private
380110092468	0.15	Private
380110999902	18.54	Tribal/Public/Private
380111999902	11.91	Tribal/Public/Private
380114999902	7.31	Tribal/Public/Private
380115999905	5.27	Tribal/Public/Private
380204020286	3.30	Public
380204080449	45.82	Public
380205016144	0.98	Private
380205050285	19.87	Private
380205052223	19.88	Private

Parcel ID	Project Acres	Ownership Type
380205061512	10.32	Private
380205066453	27.34	Private
380205117360	35.31	Private
380205121103	45.84	Private
380205140175	99.41	Private
380205218305	4.83	Private
380205235240	25.89	Private
380205246369	6.03	Private
380205251306	5.34	Private
380205254480	61.78	Private
380205391202	173.18	Public
380205445489	46.48	Public
380205495245	30.22	Public
380206125500	0.60	Private
380206472043	20.87	Private
380206999902	0.93	Tribal/Public/Private
380206999905	21.24	U.S. Dept. of Interior/Tribal
380207348051	55.25	Tribal
380207424149	23.04	Tribal
380207435426	14.76	Private
380207498032	27.46	Tribal
380207999902	1.46	U.S. Dept. of Interior/Tribal
380207999905	35.22	U.S. Dept. of Interior/Tribal
380208027211	6.07	Private
380208032099	5.16	Tribal
380208040177	1.23	Private
380208041166	1.29	Private
380208042146	1.36	Private

Parcel ID	Project Acres	Ownership Type
380208042156	1.31	Public
380208043138	1.37	Tribal
380208076102	6.18	Tribal
380208104054	0.17	Tribal
380208110431	82.94	Private
380208127524	14.58	Private
380208177039	0.91	Private
380208200113	3.43	Public
380208209018	12.22	Public
380208210211	171.59	Public
380208255420	78.48	Public
380208283015	0.82	Public
380208294092	10.77	Public
380208308225	10.42	Public
380208316019	1.91	Public
380208359085	15.76	Public
380208378003	1.60	Private
380208417366	8.74	Private
380217336550	1.96	Public
380217341533	0.19	Private
380217346544	0.05	Private
380217349531	0.12	Private
380217350523	0.06	Private
380217350526	0.14	Private
380217352521	0.08	Private
380217352559	0.30	Private
380217354518	0.14	Private
380217356549	0.19	Private

Parcel ID	Project Acres	Ownership Type
380217359511	0.14	Private
380217359543	0.07	Public
380217361515	0.19	Private
380217361542	0.13	Public
380217362560	0.19	Private
380217363536	0.07	Public
380217364499	0.07	Private
380217366555	0.20	Private
380217368526	0.51	Private
380217373485	0.11	Public
380217373491	0.07	Private
380217373545	0.28	Private
380217377507	0.08	Private
380217377510	0.13	Public
380217378524	0.42	Private
380217382475	0.18	Tribal
380217384498	0.13	Private
380217388520	0.13	Public
380217389493	0.33	Private
380217390461	0.03	Private
380217391488	0.10	Public
380217392516	0.08	Public
380217394457	0.02	Private
380217394482	0.16	Public
380217399452	0.05	Public
380217399479	0.11	Private
380217401497	0.07	Tribal
380217402493	0.14	Private

Parcel ID	Project Acres	Ownership Type
380217405464	0.18	Private
380217405489	0.07	Private
380217405527	0.20	Public
380217406446	0.05	Private
380217407483	0.13	Public
380217407486	0.06	Public
380217410460	0.06	Private
380217413439	0.04	Public
380217415457	0.19	Private
380217417435	0.03	Public
380217419432	0.02	Private
380217420452	0.13	Private
380217422468	0.50	Private
380217427444	0.15	Private
380217427448	0.29	Private
380217428461	0.16	Private
380217428473	0.37	Private
380217430423	0.07	Public
380217436415	0.07	Public
380217436452	0.17	Private
380217439435	0.09	Private
380217452435	0.61	Private
380217461450	5.64	Private
380217488384	0.96	Private
380217488408	5.20	Private
390231062054	37.47	Private
390231183033	22.50	Private
390231240211	38.44	Private

Parcel ID	Project Acres	Ownership Type
390231276082	12.14	Private
390231333060	25.99	Private
390231362322	1.34	Private
390231448194	40.92	Private
390232082203	38.26	Private
390232085068	13.58	Private
390232086116	14.05	Private
390232086140	0.74	Private
390232118298	20.23	Private
390232160124	5.59	Private
390232168205	12.01	Private
390232210015	26.07	Private
390232265136	45.55	Private
390232291054	34.49	Private
ln3801029999	0.41	U.S. Dept. of Interior/Tribal
TOTAL ACRES <i>(rounded)</i>	2,080 acres <i>(Estimated Value: \$10,899,000)</i>	-----

NOTE: The shaded parcels (36) signify residential improvements to the property, according to County Assessor records. As a result, PL 91-646 requirements are assumed (See Section 12).

North Fork Skagit River

Parcel ID	Project Acres	Ownership Type
P15517	2.41	Private
P15523	2.81	Private
P15556	20.16	Private
P15575	0.22	Private
P15610	0.45	Private

Parcel ID	Project Acres	Ownership Type
P15614	7.26	Private
P15539	5.93	Private
P15519	0.98	Public
P15634	1.01	Public
P15636	1.40	Public
P15640	3.44	Public
P15661	23.15	Private
P15571	33.07	Private
P15551	20.10	Private
P15554	13.80	Private
P15555	7.17	Private
P15637	0.19	Private
P15643	3.44	Private
P15512	44.20	Private
P15515	2.55	Private
P15670	0.75	Private
P15514	35.05	Private
P15960	0.37	Private
P15918	0.003	Private
P15576	0.90	Private
P15920	0.04	Private
P15511	12.03	Private
P15531	2.28	Private
P15607	0.13	Private
P15952	0.46	Private
P15552	1.51	Private
P15927	0.22	Private
P15541	8.11	Private

Parcel ID	Project Acres	Ownership Type
P15540	0.00	Private
P15513	2.02	Private
P15559	28.0	Private
P15929	0.40	Private
P15639	0.85	Public
P15527	0.24	Public
P15570	5.88	Private
P15518	43.03	Private
P15953	0.12	Private
P15961	0.46	Private
P15520	1.30	U.S.A.
P15558	3.50	Private
TOTAL ACRES <i>(rounded)</i>	342 acres <i>(Estimated Value: \$9,300,000)</i>	-----

NOTE: The shaded parcels (21) signify residential improvements to the property, according to County Assessor records. As a result, PL 91-646 requirements are assumed (See Section 12).

2.1 Access

Specific access points have not been identified for this phase of the project, but will be determined during the PED phase. For the purposes of the currently level of design, it is assumed that access will be from public right-of-way or NFS acquired lands/easements. Preliminary information indicates that in addition to access during the construction period, perpetual road easements may also be required for Operation and Maintenance once construction is complete. Any temporary access/perpetual road easements will also be identified/confirmed during PED.

2.2 Staging

Specific staging areas have not been identified for this phase of the project, but will be determined during the PED phase. Where possible, the staging areas will be located within the project footprint. The NFS will be required, at a minimum, to acquire a standard Temporary Work Area Easement to address staging areas.

2.3 Borrow

Sources for borrow material have not been identified for this phase of the project, but will be identified when subsurface explorations are conducted during PED. Every effort will be made to secure enough borrow material from the study footprint excavations.

However, if not enough material is available, it is anticipated that borrow/temporary work area easements will be secured, as appropriate.

2.4 Disposal

Suitable excavated materials are intended to be re-utilized within the proposed project footprint as much as feasible. Any material unsuitable for re-use will be disposed of at a commercial disposal site to be identified during PED.

3.0 Non-Federal Sponsor Owned LERRD

Of the approximate 2,480 acres of land currently estimated for the project, the NFS currently owns approximately 640 acres in fee. These land are available for the project, but not sufficient to cover all improvements. As a result, the NFS will be required to acquire additional lands/estates for the project prior to construction, however, they have been advised of the risk of acquiring additional lands prior to signing the Project Partnership Agreement (PPA) (*Risk Letter dated August 23, 2013*). Due to the preliminary nature of the project, LERRD credit eligibility for NFS-owned lands will be determined during the PED phase. Any NFS land owned more than five years prior to the date of the PPA will not be eligible for incidental administrative LERRD crediting, as per ER 405-1-12, Chapter 12, paragraph 12-36.

4.0 Estates

Due to the current level of design and limited hydrology data, definitive estates have not been identified or assigned to individual parcels, however, at a minimum, the following standard estates are *anticipated* to be utilized for land acquisition purposes upon completion of the design developed during the PED phase.

Fee – The fee simple title to the land described in Exhibit ____/Section ____, Subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines. (*For those parcels/areas identified for ecosystem restoration purposes only which cannot be acquired under an easement*).

Perpetual Road Easement -- A perpetual exclusive easement and right-of-way in, on, over and across the land described in Exhibit A for the location, construction, operation, maintenance, alteration, replacement of roads and appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the owners, their heirs and assigns, the right to cross over or under the right-of-way as access to their adjoining land at the locations indicated in Exhibit A subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines. (*For Operation and Maintenance access to restoration features, if not accessible from public roadways or fee-owned property by NFS*).

Temporary Work Area Easement -- A temporary easement and right-of-way in, on, over and across the land described in Exhibit A for a period not to exceed ____ (____) years, beginning with date of possession of the land is granted to the United States, for use by the United States, its representatives, agents, and contractors as a work area,

including the right to borrow and/or deposit fill, spoil and waste material thereon, move store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the _____ Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines. *(For staging or other temporary work areas).*

Perpetual Channel Improvement Easement -- A perpetual and assignable right and easement to construct, operate, and maintain channel improvement works on, over, and across (the land described in Schedule A) (Tracts Nos. _____, _____, and _____) for the purposes as authorized by the Act of Congress approved _____, including the right to clear, cut, fell, remove, and dispose of any and all timber, trees, underbrush, buildings, improvements, and/or other obstructions therefrom; to excavate, dredge, cut away, and remove any or all of said land and to place thereon dredge or spoil material; and for such other purposes as may be required in connection with said work of improvement; reserving, however, to the owners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads, and pipelines. *(For any potential Channel Improvement Easements where fee may not be applicable).*

Perpetual Flowage Easement (Occasional Flooding) – The perpetual right, power, privilege and easement occasionally to overflow, flood and submerge the land described in Exhibit A in connection with the operation and maintenance of the project as authorized by the Act of Congress approved _____, together with all right, title and interest in and to the structure; and improvements now situated on the land, except fencing (and also excepting _____ (here identify those structures not designed for human habitation which the District Engineer determines may remain on the land)); provided that no structures for human habitation shall be constructed or maintained on the land, that no other structures shall be constructed or maintained on the land except as may be approved in writing by the representative of the United States in charge of the project, and that no excavation shall be conducted and no landfill placed on the land without such approval as to the location and method of excavation and or placement of landfill; the above estate is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used and enjoyed without interfering with the use of the project for the purposes authorized by Congress or abridging the rights and easement hereby acquired; provided further that any use of the land shall be subject to Federal and State laws with respect to pollution. *(For any possible occasional induced flooding outside of project footprint caused by project that may be identified during PED phase where fee may not be applicable).*

5.0 Non-Standard Estates

Due to the current limited level of design, it is unknown if any Non-Standard Estates will be required for this project. As design and project footprint maps are further defined, any Non-Standard Estate(s) will be composed and submitted to HQ for approval as early as possible to ensure the justification is sound and will serve the project purpose.

6.0 Existing Federal Projects Within the LERRD Required for the Project

No known existing Federal projects are located within the LERRD required for the project footprint.

7.0 Federally-Owned Lands within the LERRD

7a. Duckabush River Estuary: There are no federally owned lands included within the LERRD required for the project.

7b. Nooksack River Delta: Based on the Cost Estimate developed for Nooksack, the U.S. Department of Interior/Tribal owns approximately 246 acres within the project footprint. The Lummi Tribe continues to be supportive of the project, paving the way for WDFW to obtain easements on affected tribal lands. Another possible option is to have the Lummi Tribe sign the PPA for the sole purpose of providing project lands at the Nooksack site.

7c. North Fork Skagit River Delta: Based on the Cost Estimate developed for North Fork, USA owns 1.3 acres within the project footprint. The acreage owned by the USA is designated as a water area and appears to be public hunting and/or fishing access. There has been no discussion with the agency regarding this project, to date. The affected parcel is on the fringe of the project footprint – it is anticipated that during PED, the final design will tighten up the project footprint, eliminating the need for this acreage.

8.0 Navigational Servitude

The navigation servitude is the dominant right of the Government under the commerce Clause of the U.S. Constitution to use, control and regulate the navigable waters of the United States and submerged lands thereunder.

The Puget Sound Nearshore study area consists of the nearshore zone, which includes beaches and the adjacent tops of coastal banks of bluffs, the shallow waters in estuarine deltas, and the tidal water from the head of tide to a depth of approximately 10 m relative to the mean lower low water (MLLW). The project features study area does not serve in aid of commerce, as defined in ER 405-1-12 (paragraph 17-7c). Based on the MLLW determination, coupled with research performed by USACE Seattle District Regulatory Navigation Section, Federal Navigational Servitude is not applicable to, and will not be invoked for this project site.

9.0 Real Estate Maps

A set of maps that depict the project area as it is currently known, and the affected tracts are included in Exhibit B. A more detailed real estate map depicting the final project footprint to include definitive real estate interests required, location of utilities/facilities, as applicable, and lands required for Operation and Maintenance (O&M) will be developed during PED.

10.0 Induced Flooding

For the purposes of the PSNERP Feasibility Report, and due to the limited design and hydrology data currently available, the study team assumed there is no induced flooding outside of the project footprint as shown in Exhibit B. As a result, no Physical Takings Analysis was performed. Induced flooding determination will be further addressed during the PED phase based on additional project design and hydrology data. For more information, please see the Hydrology Appendix to the main report.

11.0 Baseline Cost Estimate for Real Estate (BCERE)

Land Cost Estimates for LERRD values, rather than Gross Appraisals were utilized as the basis of the USACE Civil Cost Share Program real estate planning support for this project. This approach was authorized via an exception to policy waiver, dated 10 July 2012 by Scott Whiteford, USACE Director of Real Estate (see Exhibit C). The Land Cost Estimate approach also conforms with Policy Letter No. 31, which was published January 10, 2013.

The Land Cost Estimates for the current 3 project sites have been performed as the sites have been identified as part of the Tentatively Selected Plan (TSP). Consequently, the Land Cost Estimate reports were developed during different years and range from 2012 to 2015. Based on the location of the sites (outlying, urban areas) and land use (agricultural, wetlands), market values are assumed to have remained stable with marginal growth, if any. Due to the limited design, basic project footprint and the initial land cost analysis for this phase of the project (*land values are estimated to be 5% of total project costs*), along with funding limitations, the land cost estimates were not revised to 2015 levels, as the results were anticipated to be negligible. Land value estimates will be updated/refined during PED to reflect the final design and updated project land values.

BCERE SUMMARY TABLE

Project Cost Factors	Duckabush River Estuary	Nooksack River Delta	North Fork Skagit River Delta
Project Footprint Acreage/ Number of Parcels Affected	58 acres 26 parcels	2,080 acres 147 parcels	342 acres 45 parcels
Land Values per Assessor (<i>fee value + contingency</i>)	\$252,365	\$10,899,000	\$9,300,000
PL 91-646 Relocation Costs (<i>w/contingency – See Sec 12.0</i>)	\$0.00	\$3,802,260	\$4,047,340
Utility/Facility Relocation Costs(<i>w/contingency-Sec 17.2</i>)	\$47,561,000	\$82,939,000	\$0
NFS Admin Costs (<i>based on \$8K/parcel; \$10K/parcel involving relocations + 10% contingency</i>)	\$228,800	\$976,800	\$211,200
		\$396,000	\$231,000
Federal Admin Costs (<i>based on \$2,500/parcel; \$3K/parcel involving relocations+ 10% contingency</i>)	\$71,500	\$305,250	\$66,000
		\$118,800	\$69,300
Total LERRD Estimated Costs/Site	\$48,113,665	\$99,437,110	\$13,924,840
Total LERRD Estimated Costs per Project (rounded)	\$161,475,615		

12.0 Uniform Relocation Assistance (PL 91-646) for Displaced

Residences, Businesses and Farms

Within the preliminary project footprint, there are several residential structures that would have to be removed. Relocation assistance benefits to residents may be applicable including storage of household goods, moving costs, lodging, incidentals, differential payments, etc. Due to limited budget/schedule, on-site/detailed research was not performed, however, some preliminary relocation costs have been estimated based on PL 91-646 guidance (Federal Register, Volume 80 Issue) and the following assumptions and scope:

- Residential structures (assume structures are owned by resident)
- Moving costs (based on 6-room house)
- Real Estate costs (recording fees, realtor's fee, appraisals, closing costs)

Comparable Housing Replacement (up to \$22,500 allowed for differential pay if comparable housing is not available)

Based on the number of parcels identified as containing improvements based on County Assessor data (See Section 2), the following identifies an initial estimate associated with PL 91-646 using the assumptions above:

PL 91-646 Cost Factors	Duckabush River Estuary	Nooksack River Delta	North Fork Skagit River Delta
No. of affected residential structures	0	36	21
Improvements Value per Assessor	0	\$2,229,000	\$2,963,300
Moving Costs <i>(\$1,600/residence)</i>	0	\$57,600	\$33,600
Real Estate Costs <i>(\$10,000/residence)</i>	0	\$360,000	\$210,000
Housing Replacement <i>(\$22,500/residence)</i>	0	\$810,000	\$472,500
<i>Sub-Totals of Costs</i>	0	<i>\$3,456,600</i>	<i>\$3,679,400</i>
<i>Contingency (10%)</i>	0	<i>\$345,660</i>	<i>\$367,940</i>
Total PL 91-646 Costs	0	\$3,802,260	\$4,047,340

13.0 Mineral Activity

The project lands consists primarily of agricultural, residential and river delta lands. In preliminary discussions with WDFW, there are no known outstanding mineral/mining interests or active mining operations in the project area that could affect implementation of the project. Further research will be performed during PED.

14.0 Non-Federal Sponsor Capability Assessment

The NFS has exhibited land acquisition experience on projects throughout Washington State, and is highly capable of acquiring lands to support the project and is considered fully capable of meeting the real estate requirements for the project. The Capability Assessment specifies WDFW has the option for power of eminent domain under the legislative provisions of RCW 77.12.037. As public meetings continue to be held during PED, the NFS will be able to gauge public willingness to provide the real estate interests required for the project. Based on feedback during the public meetings, and if essential, the NFS would engage early in the process to initiate the required legislative actions, enabling them to exercise the power of public domain, as needed. Previous projects that have involved WDFW include Deepwater Slough, Section 1135, Goldsborough Creek, Section 206 and, Issaquah Creek Fish Passage. Exhibit D provides an assessment of the NFS’ real estate acquisition capability.

Article III of the Project Partnership Agreement (PPA) will require the NFS to make available to the Corps of Engineers (COE) all lands required for construction of the

proposed project. When the NFS completes and signs the Certification of Lands – Authorization for Entry and Attorney’s Certificate (Exhibit E), the NFS certifies that it owns or controls a sufficient interest in the lands required for construction, and subsequent operation and maintenance of the subject project; and the NFS grants the COE permission to enter at reasonable times in a reasonable manner upon the subject lands for the purpose of constructing and performing operation and maintenance activities for the project.

15.0 Zoning Ordinances in Lieu of Acquisition

No zoning ordinances are currently proposed in lieu of, or to facilitate LERRD acquisition in connection with this project.

16.0 Acquisition Schedule

At this time, no schedule has been identified for development of the Project Partnership Agreement (PPA). Real Estate Acquisitions will begin once a PPA is fully executed between USACE and the NFS. The NFS will be asked to certify their minimum realty estate interests necessary to support the project construction and maintenance.

The following acquisition schedule is based on the premise that the project could potentially impact approximately 220 landowners and several utilities. Should all three (3) projects be initiated concurrently, the NFS could utilize the option to contract for services to meet the acquisition schedule. As stated in the Capability Assessment, the NFS has the ability to obtain contractor support (See Exhibit D). The schedule below provides the estimated total amount of time to complete the acquisition of real estate for the construction of the project features based on preliminary information available at this time. This schedule is only for purposes of the current feasibility study and will be updated during PED. Acquisition tasks may be performed concurrently, as applicable:

Rights-of-Entry (ROEs), Mapping	1-2 years
Obtain Title and Appraisals	2-3 years
Negotiations	2-3 years
Closing	1-2 years
LERRD Certification	1-2 years

17.0 Description of Facility/Utility Relocations

17.1(a). Duckabush River Estuary

Facility/Utility Identification, Ownership, Project Impact

The Hwy 101 bridge will be relocated to the west and Duckabush Road will be realigned both horizontally and vertically to connect with the new Hwy 101 bridge. A new bridge will replace the existing culvert at Shorewood Drive. The area has electricity, telephone and internet, which will be relocated to the new alignment of Hwy 101. The area does not have public water/sewer services – development relies on private septic systems and private/group wells.

17.1(b). Nooksack River Delta

Facility/Utility Identification, Ownership, Project Impact

Preliminary Utility/Public Facility relocations anticipated include the following:

- Ferndale Road at Lummi River
 - Realign portion of roadway
 - Install new bridge over Lummi River

- Slater Road at Lummi River
 - Realign portion of roadway
 - Install new bridge over Lummi River

- Slater Road at Nooksack River
 - Install new bridge over Tennant Creek

- Hillaire Road at Lummi River
 - Realign portion of roadway
 - Install new bridge over Lummi River

- Imhoff Road at Lummi River
 - Realign portion of roadway
 - Install new bridge over Lummi River

- Haxton Way at Lummi River
 - Realign portion of roadway
 - Install new bridge over Lummi River

- Marine Drive
 - Raise road and add box culverts

- Utility Relocations
 - Water, Overhead Power, Telecommunications

17.1(c). North Fork Skagit River Delta

Facility/Utility Identification, Ownership, Project Impact

The utilities in the area appear to be related to existing structures identified for removal. Consequently, the utilities associated with these structures would be removed/abandoned, as applicable, but are not considered relocation costs.

17.2 Preliminary or Final Attorney’s Opinion of Compensability

Based on guidance contained in ER 405-1-12, Chapter 12, Paragraph 12-8.b, the actions identified in Section 17.1 and noted in the table below are considered utility/facility relocation costs. The total project cost is \$452,286,000; Total relocation costs are \$130,500,000, or 29% of the total project cost. Real Estate Policy Guidance Letter No. 31 indicates that if the costs of relocation of facilities and utilities do not exceed 30% of the total project costs, a preliminary compensable interest report is not required, however, once PED level of design is complete, a Final Attorney’s Opinion of Compensability may be prepared at that time (See Exhibit F). Since the relocation costs are less than 30% of the total project costs, and in accordance with Policy Letter No 31, Paragraph 4.b.(1)(a)(b), a real estate assessment has been performed:

- (a) Yes, the identified utility/facility are generally of the type eligible for compensation under the substitute facilities doctrine, and
- (b) Yes, the affected utilities/facilities (roads) are assumed to be public ownership.

As a result of the real estate assessment, the cost of providing substitute facilities has developed. For the purposes of the current project phase, estimated relocation costs are identified in Table below.

PROJECT SITE	UTILITY/FACILITY RELOCATION ACTION	ESTIMATED COST	TOTAL COST/SITE
Duckabush River Estuary (+ 46% contingency)	Hwy 101 Relocation/ Duckabush Road Realignment	\$41,681,380	\$47,561,000
	Shorewood Road New Bridge	\$5,244,320	
	Electrical/Telecommunications Relocation	\$635,100	
Nooksack River Delta (+ 40% contingency)	Raise Road/Add Box Culverts	\$27,489,000	\$82,939,000
	New Bridges (6)	\$41,293,000	
	New Utility Installation	\$14,156,800	
North Fork Skagit River (+ 30% contingency)	No new utilities, demo/abandonment only	\$0	\$0
TOTAL ESTIMATED RELOCATION COSTS			\$130,500,000

17.3 Conclusion/Categorization Studies

ANY CONCLUSION OR CATEGORIZATION CONTAINED IN THIS REAL ESTATE PLAN, OR ELSEWHERE IN THIS PROJECT REPORT, THAT AN ITEM IS A UTILITY OR FACILITY RELOCATION TO BE PERFORMED BY THE NON-FEDERAL SPONSOR AS PART OF ITS LERRD 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.

18.0 HTRW

A Phase I HTRW assessment was conducted for each of the 3 project sites. For ecosystem restoration projects, it is assumed the NFS will provide clean, uncontaminated lands. A summary of the assessment for each site is provided below:

18a. Duckabush River Estuary: A Phase 1 Environmental Site Assessment was conducted in conformance with the scope and limitations of ASTM E1527-13: *Standard Practice for Environmental Site Assessments*, and ER 1165-2-132: *HTRW Guidance for Civil Works Projects*. The assessment was initially conducted by the USFWS in 2010, and completed by the U.S. Army Corps of Engineers (Corps) in 2015. This assessment has revealed no evidence of recognized environmental conditions in connection with the proposed project footprint, nor any conditions at neighboring sites which have the potential to affect work at the project site. See the Duckabush River Estuary Engineering Appendix B for the complete Phase I assessment.

18b. Nooksack River Delta: A Phase 1 Environmental Site Assessment was conducted in conformance with the scope and limitations of ASTM E1527-13: *Standard Practice for Environmental Site Assessments*, and ER 1165-2-132: *HTRW Guidance for Civil Works Projects*. The assessment was initially conducted in 2011 by the USFWS, and updated in 2015 by the U.S. Army Corps of Engineers (Corps). The assessment revealed several recognized environmental conditions in connection with areas adjacent to the project footprint, although all but one of these sites have no potential to impact the proposed project. The one exception is the Wilder Hazardous Waste Landfill site, located approximately a half mile east of the project footprint. There was determined to be a small risk of contaminants in the landfill being mobilized by flooding as a result of the proposed project. B Because detailed hydraulic modeling has not been completed, there is uncertainty about the potential of a hydraulic connection to the adjacent HTRW site in the future with-project condition. To resolve this uncertainty, hydraulic modeling will be completed during PED. See the Nooksack Engineering Appendix B for the complete Phase I assessment.

18c. North Fork Skagit River Delta: A Phase 1 Environmental Site

Assessment was conducted in conformance with the scope and limitations of ASTM E1527-13: *Standard Practice for Environmental Site Assessments*, and ER 1165-2-132: *HTRW Guidance for Civil Works Projects*. The assessment was initially conducted in 2010 by the USFWS, and updated in 2015 by the U.S. Army Corps of Engineers (Corps). This assessment has revealed one potential recognized environmental condition in connection with the proposed project footprint, known as the Rexville Grocery site. However, due to the contaminants involved, degradation rates of those contaminants, topography, and the half mile distance between the Grocery and the subject property, this site is not expected to interact in any way with the proposed project. As a result, this assessment has revealed no evidence of recognized environmental conditions in connection with the proposed project footprint, nor any conditions at neighboring sites which have the potential to affect work at the project site. See the North Fork Skagit River Delta Engineering Appendix B for the complete Phase I assessment.

19.0 Landowner Attitude

Over the course of the project development, the NFS has been engaged with local ecosystem restoration organizations, to include the Tribes, Salmon Recovery Groups, local governments, etc. The support for the project from these organizations has been positive. A 90-day open public comment period was held on the PSNERP Draft Feasibility Report and Environmental Impact Statement (DFR/EIS) by the Corps of Engineers. The comment period ran from October 10, 2014 through January 8, 2015. The overall general consensus of the comments were mixed. All comments received during the public meeting have been recorded and considered in the development of the Final FR/EIS report. (*See Section 8 of the main report and Appendix H for specific comments*). The Corps and NFS will continue to include stakeholders and the public as additional information and design data becomes available during PED. The Nearshore Study also maintains a website (www.pugetsoundnearshore.org), which serves as the primary resource for information including study background, events, technical reports, program documents, and progress of the study.

20.0 Risks Associated with Advanced Land Acquisition

The NFS have been notified in writing of the risks of acquiring any additional lands for the project prior to the execution of the PPA (*Risk letters were sent to WDFW August 23, 2013*).

21.0 Additional Information

Due to the preliminary nature of the proposed project design footprint, title reports were not secured. A thorough title analysis will be conducted during PED to identify any Third Party Interests that may impede the appropriate land acquisition for the proposed project. All property interests acquired in support of the proposed project must take priority over any competing third party interests that could defeat or impair the NFS' title to the property or interfere with construction, operation and maintenance of the project. Such third party interests should be cleared from title, or subordinated to the interests being made available to the project by the NFS. Outstanding third party interests are unknown at this time.

EXHIBIT A

PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT SITE OVERVIEW



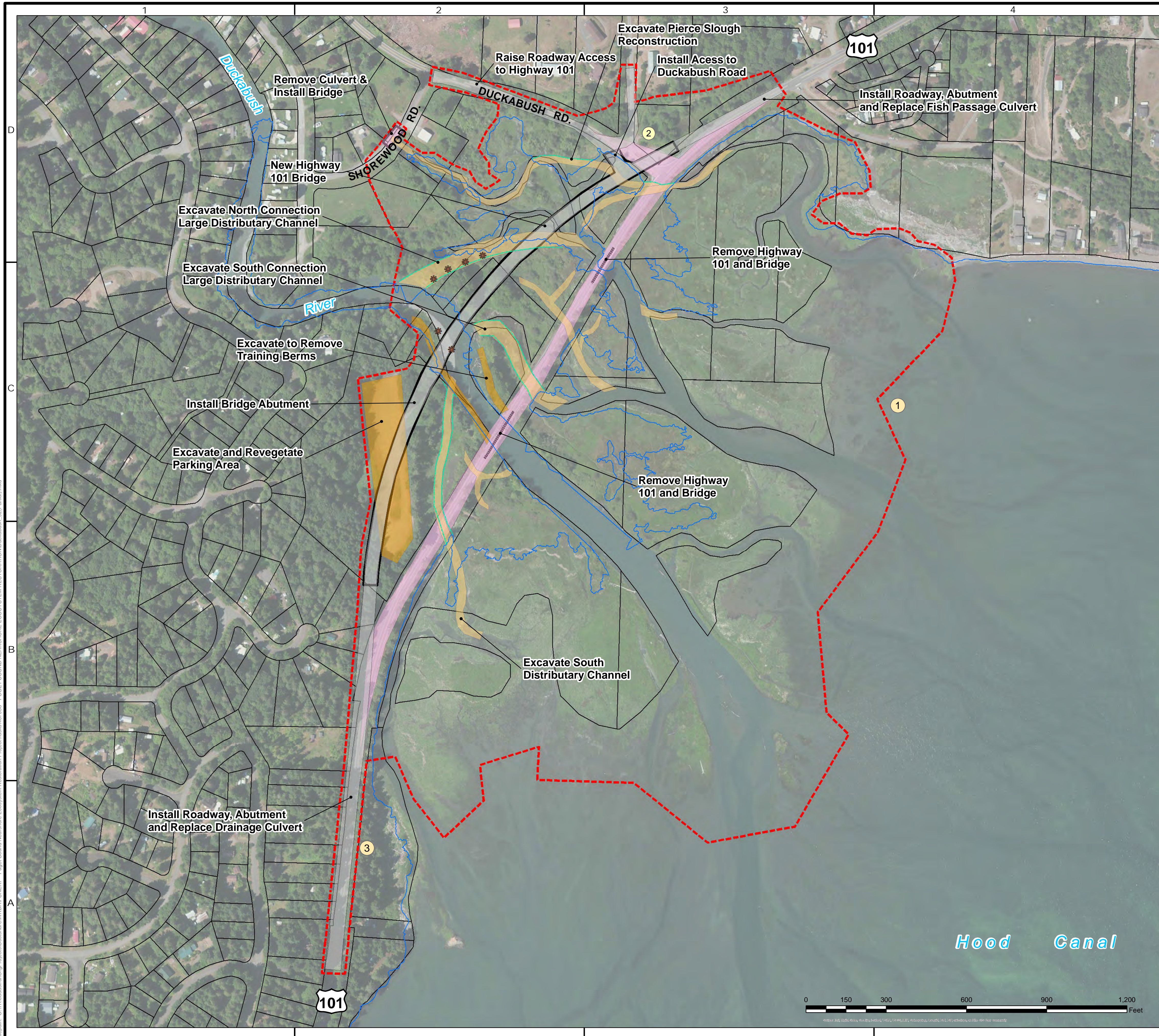
PSNERP Sites



EXHIBIT B

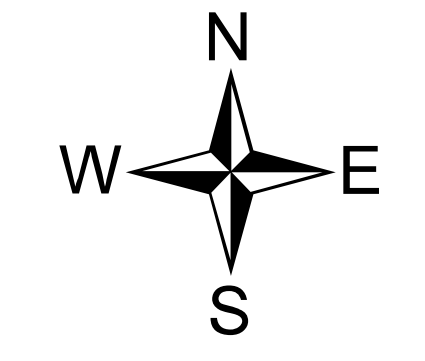
REAL ESTATE MAPS

- **Duckabush River Estuary**
- **Nooksack River Delta**
- **North Fork Skagit River Delta**



PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT

Duckabush River Estuary



LEGEND

- Required Project Lands
- Large Wood Placement
- Existing Tide MHHW
- Proposed Tide MHHW
- Roadway
- Excavation - Lowland
- Dredging - Bucket - Land
- Demolition/Removal
- New Bridge

NOTES

PSNERP ID #: 1012

Exhibit B

VICINITY MAP



Number	Date	Appr.	Drawn	Discipline
3	21 JUN 2016			
2	7 OCT 2015			
1	5 OCT 2015			

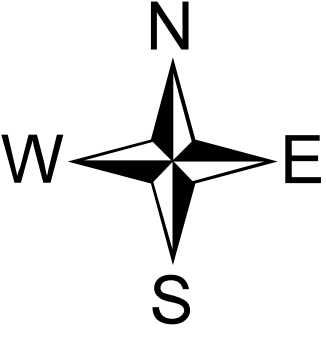
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Drawn by: DBH	File #: SEE SE-RE-TR
Created by: DBH	Rev: 23 NOV 2015
Prepared by: REAL ESTATE DIVISION TECHNICAL RESOURCES CAD/STRAL	
U.S. ARMY ENGINEER DISTRICT, SEATTLE CORPS OF ENGINEERS SEATTLE, WASHINGTON	

PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT
Duckabush River Estuary
 WASHINGTON COUNTY

Plate Number:
1.2.1
 Sheet 1 of 3

IF SHEET MEASURES LESS THAN 22" X 34" IT IS A REDUCED PRINT. REDUCE SCALE ACCORDINGLY.

Nooksack River Delta



LEGEND

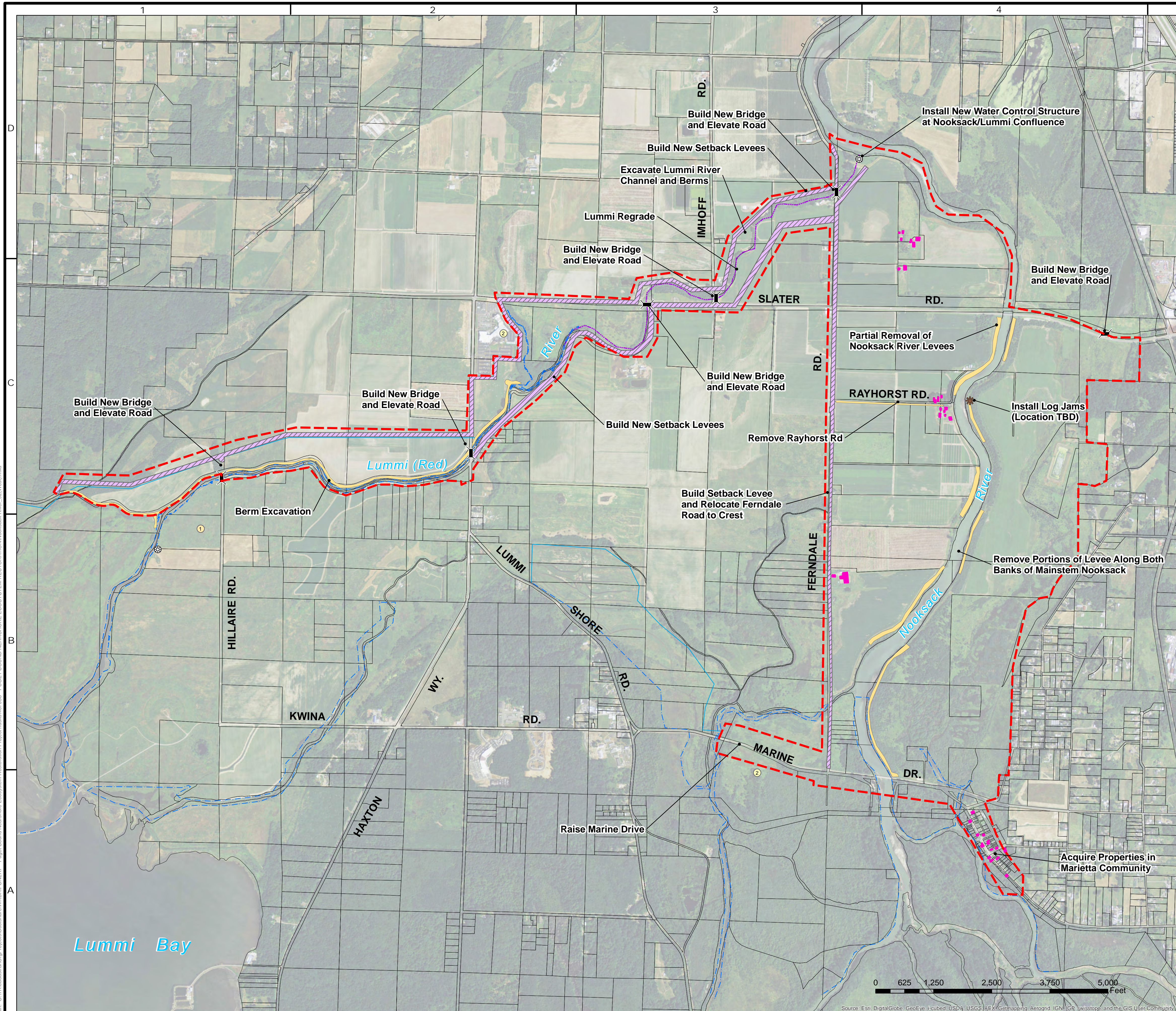
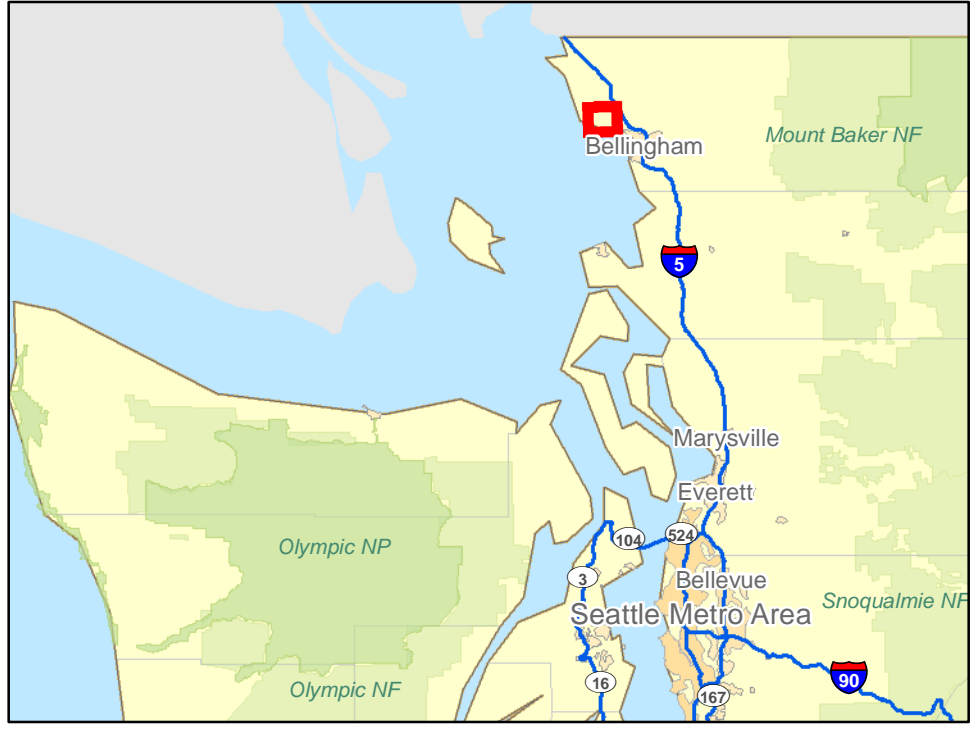
- - - Required Project Lands
- Bridge - Deck and Appurtenances
- Hydraulic Structures
- Large Wood Placement
- Remove Buildings
- Excavation - Lowland
- Channel Rehab/Creation
- Side Cast
- Existing Tide MHHW
- Proposed Tide MHHW
- Whatcom County Parcels

NOTES

PSNERP ID #: 1055

Exhibit B

VICINITY MAP



Source: Esri, DigitalGlobe, GeoEye, Earthstar (USA), USGS, AeroGRID, IGN, SCS, Swisstopo, and the GIS User Community

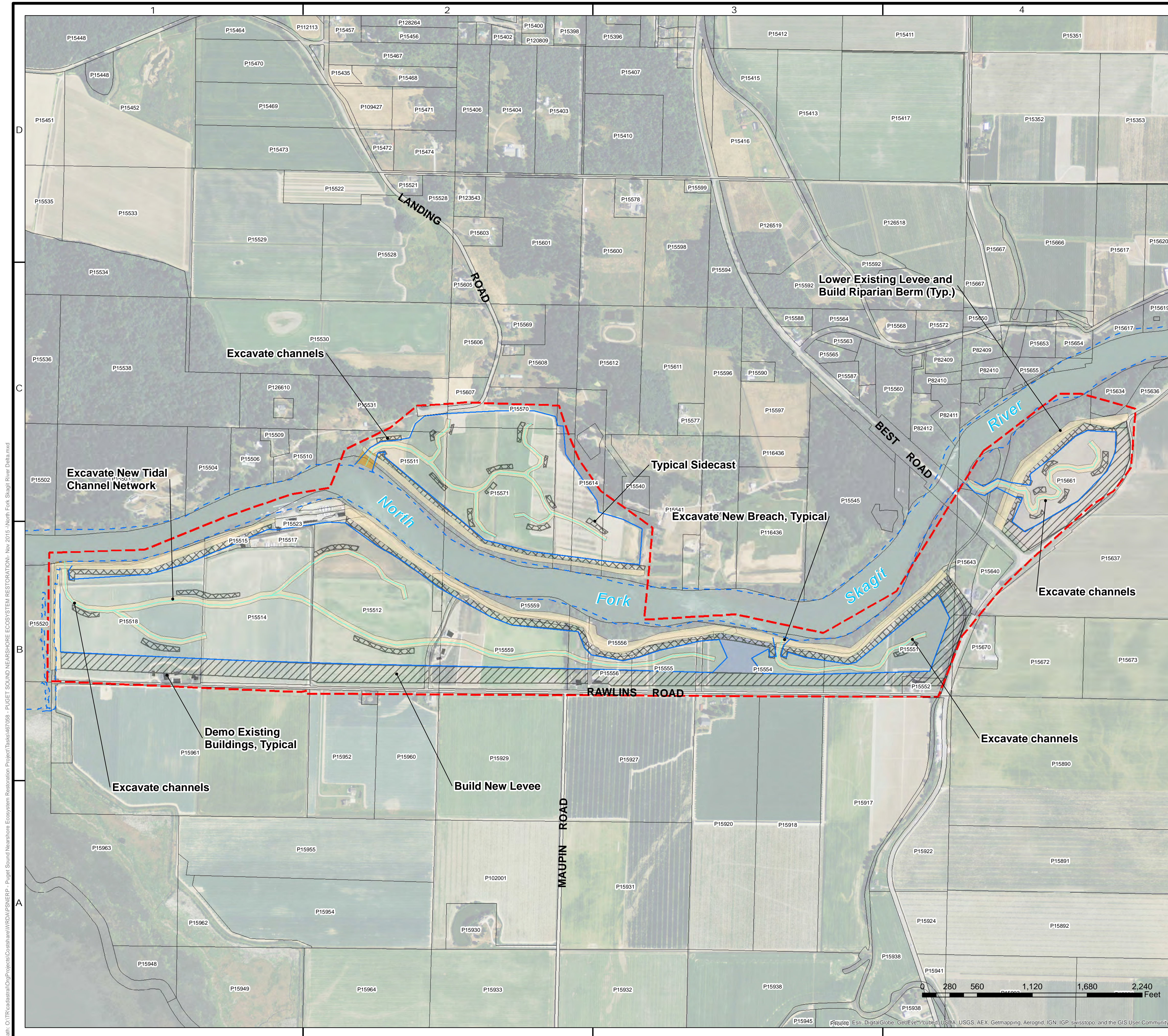
Project Boundary Adjustment	21 JUN 2016	7/8/14	7/8/14
PROJECT DESIGN CUT DOWN BY ABOUT HALF	1	1	1

Date	15 AUG 2011
File #	SEE SE-RE-TR
Rev	23 NOV 2015
Designed by	JEF
Drawn by	DBH
Created by	
U.S. ARMY ENGINEER DISTRICT, SEATTLE	
CORPS OF ENGINEERS	
SEATTLE, WASHINGTON	
REAL ESTATE DIVISION	
TECHNICAL RESOURCES	
CADASTRAL	

PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT
Nooksack River Delta
WASHINGTON
WHATCOM COUNTY

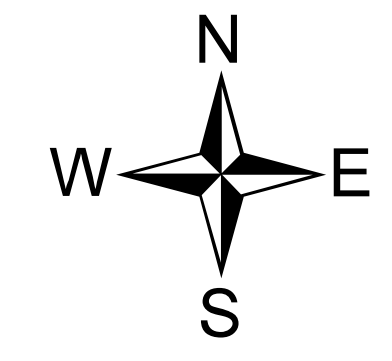
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PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT

North Fork Skagit River Delta



LEGEND

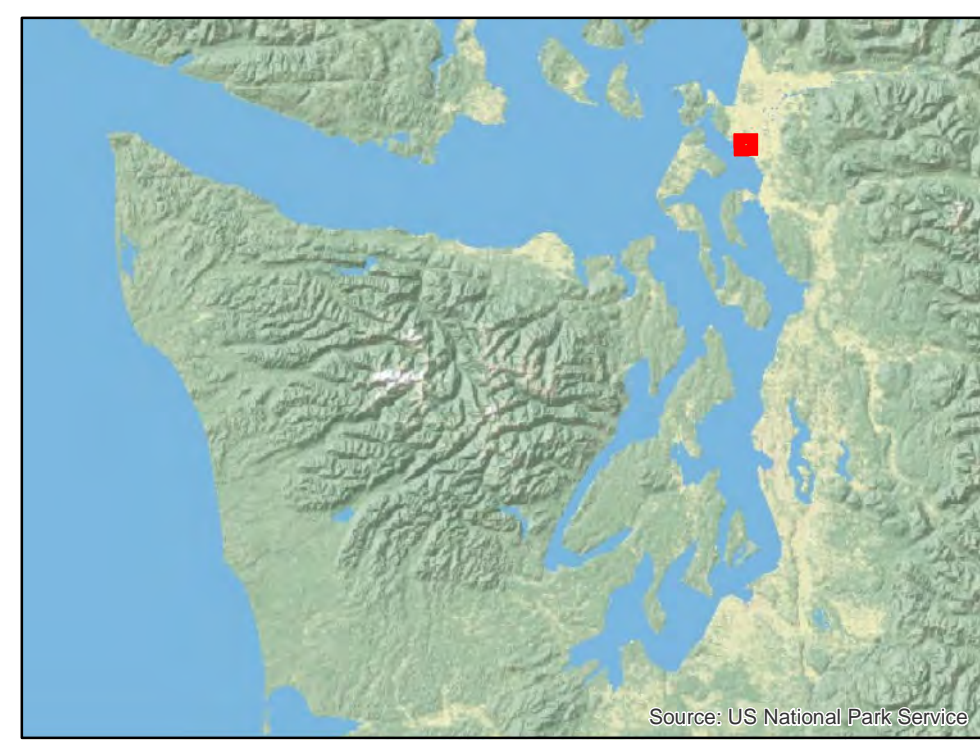
- Required Project Lands
- Proposed Tide MHHW
- Existing Tide MHHW
- Channel Rehab/Creation
- Buildings
- Dredging - Bucket - Land
- Excavation - Lowland
- Haul, Place, Compact
- Remove Concrete Pad
- Set Back Levees
- Side Cast
- Skagit County Parcels

NOTES

PSNERP ID #: 1102

Exhibit B

VICINITY MAP



Designated by:	JKF	Date:	15 AUG 2011
Drawn by:	DJH	File #:	SEE SE-RE-TR
Created by:	DJH	Rev:	23 NOV 2015
Prepared by:	REAL ESTATE DIVISION TECHNICAL RESOURCES CAD/STRAL	U.S. ARMY ENGINEER DISTRICT, SEATTLE CORPS OF ENGINEERS SEATTLE, WASHINGTON	

PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT
North Fork Skagit River Delta
WASHINGTON
SKAGIT COUNTY

Plate Number:
1.2.3
Sheet 3 of 3

IF SHEET MEASURES LESS THAN 22" X 34" IT IS A REDUCED PRINT. REDUCE SCALE ACCORDINGLY.

EXHIBIT C

APPROVAL TO WAIVE APPRAISAL REQUIREMENTS FOR PUGET SOUND NEARSHORE ECOSYSTEM RESTORATION PROJECT, dtd 10 Jul 2012



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET, NW
WASHINGTON, DC 20314-1000

JUL 10 2012

CEMP-CR

MEMORANDUM THRU Northwestern Division, U.S. Army Corps of Engineers, Attn: CENWD-RE, Jana Brinlee, 1125 NW Couch Street, Suite 500, Portland, OR 97208-2870

FOR Seattle District, U.S. Army Corps of Engineers, Attn: CENWS-RE-RS, Christopher Borton, 4735 East Marginal Way South, Seattle, WA 98124-2385

SUBJECT: Information Paper and Request for Approval to Waive Appraisal Requirements for Puget Sound Nearshore Ecosystem Restoration Project

1. References:

a. EC 405-1-04, paragraph 4-21, Appraisal, dated 30 Dec 2003.

b. CECW-CP Memorandum, dated 8 Feb 2010, U.S. Army Corps of Engineers Civil Works Project.

2. Reference 1.a., paragraph 4-21 instructs that gross appraisals are generally required for feasibility studies. However, in full support of the Civil Works Planning Paradigm and Smart Planning (Reference 1.b.), your request to utilize cost estimates for 14 of the 15 sites (gross appraisal required for Livingston Bay only) are approved. Once the project is further defined, please ensure that any valuation products are developed and scaled based on the requirements, decision making, and risk management.

3. POC for this action is Tonya Bright at 202-761-4904.

FOR THE COMMANDER:

Enclosure

SCOTT L. WHITEFORD
Director of Real Estate

PUGET SOUND NEARSHORE

Sites:	Total Project Costs In Millions \$\$	RE COST	RE Total % of Project	DIRECTOR BULLETIN CRITERIA			PROPOSED CRITERIA*			JUSTIFICATION FOR APPRAISAL
				WITHIN 5% CAP AND UNDER \$1M	COST EST	BRIEF GROSS APRSL	GROSS APRSL	WITHIN 10% CAP OR UNDER \$1M	COST EST	
Beacon Field	2.90	204,000	7.05			Y		Y	Y	
Chambers	529.70	5,900,000	2.70				Y	Y	Y	
Deepwater	5.05	244,000	3.08	Y	Y			Y	Y	
Dear Harbor	6.35	678,000	10.68			Y		Y	Y	
Dugalla Bay	60.50	7,600,000	12.56				Y	N		Y
Everett	405.00	10,700,000	2.62				Y	Y	Y	
Harber	14.05	264,000	1.88	Y	Y			Y	Y	
Livingston Bay	11.55	4,500,000	38.56				Y	N		Y
Milton Island	5.00	208,000	4.06	Y	Y			Y	Y	
Nooksack	449.50	9,000,000	2.00				Y	Y		Y
Point Whitney	10.30	472,000	4.58	Y	Y			Y	Y	
Snow Salmon	42.00	2,300,000	5.48			Y		Y	Y	
Spencer	19.00	1,100,000	5.79			Y		Y	Y	
Tahuya	33.00	182,000	0.55	Y	Y			Y	Y	
Telegraph	210.00	11,900,000	5.67			Y		Y	Y	
* Proposed Criteria is what NWS wants considered for purposes of this project										
The valuation results will be utilized in Decision Documents (see EC 405-1-04, 4-19 (b))										
Time is of the essence for NWS to successfully complete real estate valuation by 30 Jun 2012.										



Criteria allowed can cost redetermine approval due to critical funds

EXHIBIT D

ASSESSMENT OF NON- FEDERAL SPONSOR REAL ESTATE ACQUISITION CAPABILITY



DEPARTMENT OF THE ARMY
SEATTLE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

REPLY TO
ATTENTION OF

**PUGET SOUND NEARSHORE ECOSYSTEM
RESTORATION PROJECT**

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

I. Legal Authority:

- a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes? YES NO
- b. Does the sponsor have the power of eminent domain for this project? YES NO
However, there is a vehicle to secure this option, if needed, via RCW 77.12.037.
- c. Does the sponsor have "quick-take" authority for this project? YES NO
- d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? YES NO
The project is within Washington state.
- e. Are any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn? YES NO
The Lummi Nation owns some of the project lands. They have indicated support for the project and have been an engaged partner.

II. Human Resources Requirements:

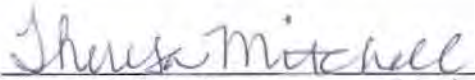
- a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended? YES NO
- b. If the answer to II.a. is "yes," has a reasonable plan been developed to provide such training? YES NO N/A
- c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? YES NO
- d. Is the sponsor's projected in-house staff level sufficient considering its other work load, if any, and the project schedule? YES NO
- e. Can the sponsor obtain contractor support, if required, in a timely fashion? YES NO
- f. Will the sponsor likely request USACE assistance in acquiring real estate? YES NO
(If "yes," provide description).


III. Other Project Variables:

- a. Will the sponsor's staff be located within reasonable proximity to the project site?
 YES/NO
- b. Has the sponsor approved the project/real estate schedule/milestones? YES/NO

Sections I, II, III prepared by:

Sections I, II, III reviewed/approved by NFS


Theresa Mitchell
PSNERP Project Manager 3/7/16


Clay Sprague
Lands Division Manager

Sections IV/V to be completed jointly by NFS and USACE Real Estate Specialist

IV. Overall Assessment:

- a. Has the sponsor performed satisfactorily on other USACE projects?
 YES/NO
- b. With regard to this project, the sponsor is anticipated to be:
 - Highly capable
 - Fully capable
 - Moderately capable
 - Marginally capable
 - Insufficiently capable. (If sponsor is believed to be "insufficiently capable" provide explanation).

V. Coordination:

- a. Has this assessment been coordinated with the sponsor? YES/NO
- b. Does the sponsor concur with this assessment? YES/NO
(If "no," provide explanation).

Prepared by:



Diane B. Hintz
Realty Specialist

Reviewed and approved by:


 3/21/2016
Christopher D. Borton PATRICIA M. FATHERREE
Chief, Real Estate Division

EXHIBIT E

**DRAFT CERTIFICATION
OF LANDS,
ATTORNEY'S
CERTIFICATE AND
THIRD PARTY RISK
ANALYSIS**

DATE

Department of the Army
Seattle District, Corps of Engineers
ATTN: Real Estate Division
Post Office Box 3755
Seattle, Washington 98124-3755

RE: Certification of Lands and Authorization for PROJECT NAME located
in LOCATION DESCRIPTION (City/County)

Dear Ladies and Gentlemen:

By Project Partnership Agreement dated the DATE OF PPA, the NAME OF NON-FEDERAL SPONSOR assumed full responsibility to fulfill the requirements of non-federal cooperation as specified therein and in accordance with the NAME OF PROJECT AUTHORITY, as amended.

This is to certify that the NAME OF NON-FEDERAL SPONSOR has sufficient title and interest in the lands hereinafter shown on Exhibit A, attached, in order to enable the NAME OF NON-FEDERAL SPONSOR to comply with the aforesaid requirements of non-federal cooperation.

Said lands and/or interest therein are owned or have been acquired by the NAME OF NON-FEDERAL SPONSOR, and are to be used for the construction, maintenance and operation of the above referenced project and include but are not limited to the following specifically enumerated rights and uses, except as hereinafter noted:

1. NAME, LANGUAGE OF PROPOSED REAL ESTATE INTERESTS
 - 2.
- ETC.

The _____ **NAME OF NON-FEDERAL SPONSOR** does hereby grant to the United States of America, its representatives, agents and contractors, an irrevocable right, privilege and permission to enter upon the lands hereinbefore mentioned for the purpose of prosecuting the project.

The Public Sponsor certifies to the United States of America that any lands acquired subsequent to the execution of the Cooperation Agreement that are necessary for this project have been accomplished in compliance with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (Public Law 91-646) as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR, Part 24.

NON-FEDERAL SPONSOR AND CITY/STATE

DATE: _____

BY: _____

**NON-FEDERAL SPONSOR SIGNATUREE
TITLE**

ATTORNEY'S CERTIFICATE

RE: Certification of Lands and Authorization for PROJECT NAME located in LOCATION DESCRIPTION (City/State)

I, _____, an attorney admitted to practice law in the State of _____ certify that:

I am the attorney for the NON-FEDERAL SPONSOR AND CITY/STATE (hereinafter referred to as the "Public Sponsor").

I have examined the title to _____ [Parcel # (s)] of land identified by the U.S. Army Corps of Engineers as needed for the NAME OF PROJECT, located on the LOCATION DESCRIPTION and included in the Certification of Lands and Authorization for Entry document to which this Certificate is appended.

The Public Sponsor is vested with sufficient title and interest in the described lands required by the United States of America to support the construction, operation, and maintenance of the NAME OF PROJECT.

There [] are (see attached risk analysis) [] are no outstanding third party interests of record that could defeat or impair the title and interests of the Public Sponsor in and to the lands described, or interfere with construction, operation, and maintenance of the Project. Such interests include, but are not limited to, public roads and highways, public utilities, railroads, pipelines, other public and private rights of way, liens and judgments. To the extent such interests existed prior to acquisition of the described lands by the Public Sponsor such interests have either been cleared or subordinated to the title and interests so acquired except as provided in the attached risk analysis.

The Public Sponsor has authority to grant the Certification of Lands and Authorization for Entry to which this Certificate is appended; that said Certification of Lands and authorization for entry is executed by the proper duly authorized authority; and that the authorization for entry is in sufficient form to grant the authorization therein stated.

DATED AND SIGNED at _____, this ____ day of _____ 20__.

NAME OF ATTORNEY FOR NFS
Attorney

**RISK ANALYSIS FOR OUTSTANDING
THIRD PARTY INTERESTS**

RE: Certification of Lands and Authorization for PROJECT NAME *located*
in LOCATION DESCRIPTION (City/State)

There are outstanding third party interests of record in and to the lands required for the Project. An evaluation of those interests is as follows:

1. IDENTIFICATION OF THIRD PARTY INTERESTS:

2. ASSESSMENT: (Discuss whether the exercise of that interest is likely to physically impair the Project. Discuss the legal implications if the interest is not cleared or subordinated. Discuss the practical impediments to the exercise of the interest such as any required permits, land use restrictions, or compensation.)

3. PLAN TO RESOLVE: (Discuss recourse available to protect the Project in the event the outstanding interest is exercised).

Signed:

NAME OF ATTORNEY FOR NFS
Attorney

DATE _____

EXHIBIT F

REAL ESTATE POLICY
GUIDANCE
LETTER NO. 31



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET NW
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CEMP-CR

JAN 10 2013

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Real Estate Policy Guidance Letter No. 31-Real Estate Support to Civil Works Planning Paradigm (3x3x3)

1. References.

- a. Memorandum, CECW-CP, 8 February 2012, Subject: U.S. Army Corps of Engineers Civil Works Feasibility Study Program Execution and Delivery
- b. ER 5-1-11, USACE Business Process, 1 November 2006
- c. EC 405-1-04, Appraisal, 30 Dec 2003
- d. ER 1105-2-100, Planning Guidance Notebook, 22 Apr 2000
- e. ER 405-1-12, Chapter 12, Real Estate Roles and Responsibilities for Civil Works, Cost Shared and Full Federal Projects, Change 31, 1 May 1998

2. Purpose. In accordance with reference a, this memorandum provides interim policy and guidance for real estate efforts associated with feasibility studies under the new Planning Paradigm, "SMART Planning," and the 3x3x3 rule. In accordance with the 3x3x3 rule, all feasibility studies should be completed within three years, at a cost of no more than \$3 million, utilize three levels of vertical team coordination, and be of a "reasonable" report size.

3. Background. Real Estate has been fully engaged in the implementation of the 3x3x3 by actively participating in each webinar, the planning modernization workshop, and serving as part of the HQ Transition Team. In accordance with references b-e, Real Estate involvement is essential to the development and implementation of any pre-authorization project. Paragraph 12-16 of reference a. outlines the significant topics that must be covered in a real estate plan (REP). The level of detail necessary to apply the requirements of real estate policy and guidance will vary depending on the scope and complexity of each project.

As outlined in Chapter 12, the minimum interests in real property necessary to support various types of projects must be identified. As projects are scoped at the beginning of the feasibility phase (via a Charette or other forum), it is essential that Real Estate become familiar with the project authority and purposes to make a determination of the minimum interests and estate(s), both standard and non-standard, necessary as projects are scoped and alternatives evaluated. If a

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SUBJECT: Real Estate Policy Guidance Letter No. 31-Real Estate Support to Civil Works Planning Paradigm (3x3x3)

non-standard estate will be needed, this should be discussed with MSC and HQ Real Estate as early as possible to ensure that the justification is sound and will serve the project purpose.

4. Policy. Typically, the attorney's preliminary opinion of compensability and gross appraisals are two areas that require more detail than may be readily available during the start of the feasibility phase, and are critical to determination of accurate estimates for real estate and total project costs. Due to the focus on 3 years or less for study duration, it will be essential for Real Estate to be adaptable and scale its requirements, decision making, and risk management in proportion to the significance of total project costs.

a. Gross Appraisals:

Specific to gross appraisals, EC 405-1-04 provides that cost estimates are utilized for preliminary planning of projects and in other cases, brief gross appraisals are acceptable. For purposes of the feasibility phase, the detail will vary as outlined below.

- (1) 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) will be acceptable for purposes of the feasibility phase.
- (2) For projects in which the value of real estate (lands, improvements, and severance damages) do not exceed 30 percent of total project costs (total cost to implement project), a brief gross appraisal will be acceptable for purposes of the feasibility phase. A brief gross appraisal will follow format issued by Chief Appraiser.
- (3) For projects in which the value of real estate (lands, improvements, and severance damages) exceed 30 percent of total project costs (total cost to implement project), a full gross appraisal will be prepared in accordance with the appraisal regulation and guidance provided by EC 405-1-04 and the Chief Appraiser.

b. Attorney's Opinion of Compensability:

As described in paragraph 12-17 of Chapter 12, utility/facility relocations may require preliminary attorney's opinions of compensability. While the practice of obtaining preliminary attorney's opinions of compensability provides a high degree of certainty with regard to project costs during the feasibility phase, such opinions can be time consuming and may provide more certainty than may be optimal for feasibility purposes when potential utility/facility relocation costs do not constitute a large percentage of total project costs. In support of the goals set out in the new planning paradigm described in reference a., Districts shall adhere to the following guidance:

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SUBJECT: Real Estate Policy Guidance Letter No. 31-Real Estate Support to Civil Works Planning Paradigm (3x3x3)

- (1) Where the estimated total cost to modify all project utility facility relocations, including the value of any additional lands that may be required to perform the relocations does not exceed 30 percent of estimated total project costs, the District Office of Real Estate shall, in lieu of an attorney's opinion of compensability prepare a real estate assessment. Such a real estate assessment, will address the following questions:

- (a) Is the identified utility facility generally of the type eligible for compensation under the substitute facilities doctrine (e.g., school, highway, bridge, water and sewer systems, parks, etc.)
- (b) Does the District have some valid data or evidence that demonstrates that it has identified an owner with a compensable interest in the property

If the answer to both questions is yes, then the District Office of Real Estate shall reflect the cost of providing a substitute facility in the Real Estate Plan (REP) and all other feasibility study cost estimates. If the answer to either or both questions is no, the District shall not reflect the cost of a substitute facility in the REP or other feasibility study cost estimates. However, the REP narrative should still include a discussion on the facility with results of analysis and project impact. For cost shared projects, the non-federal sponsor must be advised that the inclusion of substitute facilities costs in the REP or other use feasibility study estimates is for planning and budgeting purposes only and does not constitute a preliminary or final determination of compensability by the agency regardless of whether the cost of substitute facilities are reflected in the feasibility study documents. Using a real estate assessment does not eliminate the need to obtain a final attorney's opinion of compensability prior to execution of the PPA.

- (2) Where the estimated total cost to modify all project facility relocations, including the value of any additional lands that may be required to perform the relocations, has public or political significance or the costs exceed 30 percent of estimated total project costs, a preliminary opinion of compensability shall be prepared for each owner's facilities. The level of documentation for each relocation item should be based on the significance of the relocation item to project formulation and estimated project costs.

Real Estate products, such as the REP, must be adaptable and scaled based on the project scope. Additionally, Real Estate must utilize the risk register to highlight areas where cost, schedule or uncertainty is greater in order to manage risk. Going forward, the Real Estate Division will continue to work closely with the Planning and Policy Division, Engineering and Construction Division, the Programs Integration Division and the National Law Firm on the Planning SmartGuide. This SmartGuide will provide more on procedures, tips, techniques and tools for

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SUBJECT: Real Estate Policy Guidance Letter No. 31-Real Estate Support to Civil Works
Planning Paradigm (3x3x3)

specific types of planning projects to aid in implementation of the new Planning Paradigm. All
bulletins and updates on the SmartGuide can be found at:

<http://planning.usace.army.mil/toolbox/>.

5. Duration. The policies stated herein will remain in effect until amended or rescinded by Policy
Memorandums, Policy Guidance Letters, Engineers Circulars or Engineer Regulations.

FOR THE COMMANDER:



SCOTT L. WHITEFORD
DIRECTOR OF REAL ESTATE

DISTRIBUTION:

COMMANDER,
GREAT LAKES AND OHIO RIVER DIVISION (CELRD-PDS-R)
MISSISSIPPI VALLEY DIVISION (CEMVD-TD-R)
NORTH ATLANTIC DIVISION (CENAD-PD-E)
NORTHWESTERN DIVISION (CENWD-PDS)
PACIFIC OCEAN DIVISION (CEPOD-RE)
SOUTH ATLANTIC DIVISION (CESAD-PDS-R)
SOUTH PACIFIC DIVISION (CESPD-ET-R)
SOUTHWESTERN DIVISION (CESWD-ET-R)

CF:

COMMANDER,
DETROIT DISTRICT (CELRE-RE)
HUNTINGTON DISTRICT (CELRH-RE)
LOUISVILLE DISTRICT (CELRL-RE)
NASHVILLE DISTRICT (CELRN-RE)
PITTSBURGH DISTRICT (CELRP-RE)
MEMPHIS DISTRICT (CEMVM-RE)
NEW ORLEANS DISTRICT (CEMVN-RE)
ROCK ISLAND DISTRICT (CEMVR-RE)
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ST. PAUL DISTRICT (CEMVP-RE)
VICKSBURG DISTRICT (CEMVK-RE)
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NEW ENGLAND DISTRICT (CENAE-RE)
NEW YORK DISTRICT (CENAN-RE)
NORFOLK DISTRICT (CENAO-RE)

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SUBJECT: Real Estate Policy Guidance Letter No. 31-Real Estate Support to Civil Works
Planning Paradigm (3x3x3)

KANSAS CITY DISTRICT (CBNWK-RE)
OMAHA DISTRICT (CENWO-RE)
PORTLAND DISTRICT (CENWP-RE)
SEATTLE DISTRICT (CENWS-RE)
WALLA WALLA DISTRICT (CENWW-RE)
ALASKA DISTRICT (CEPOA-RE)
HONOLULU DISTRICT (CEPOH-PP-RE)
JACKSONVILLE DISTRICT (CESAJ-RE)
MOBILE DISTRICT (CESAM-RE)
SAVANNAH DISTRICT (CESAS-RE)
ALBUQUERQUE DISTRICT (CESPA-RE)
LOS ANGELES DISTRICT (CESPL-RE)
SACRAMENTO DISTRICT (CESPK-RE)
FORT WORTH DISTRICT (CESWF-RE)
GALVESTON DISTRICT (CESWG-RE)
LITTLE ROCK DISTRICT (CESWL-RE)
TULSA DISTRICT (CESWT-RE)
CECC-R