

Selma, Alabama

Flood Risk Management Study

Integrated Feasibility Report and Environmental Assessment

APPENDIX D



US Army Corps
of Engineers
Mobile District

May 17, 2021



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D.1. Preamble

D.1.1. Study Authorization

This feasibility study is authorized by House Resolution No. 66, June 7, 1961:

Resolved by the Committee on Public Works of the House of Representatives, United States, that the Board of Engineers for Rivers and Harbors be, and is hereby, requested to review the report on Alabama-Coosa Branch of Mobile River, Georgia and Alabama, published as House Document No. 66, Seventy-fourth Congress, first, session, with a view to determining the advisability of providing improvements for flood control on Alabama River in Dallas County, Alabama.”

The Bipartisan Budget Act of 2018 (Public Law (P.L.) 115-123), Division B, Subdivision 1, Title IV, appropriates funding for the study at full Federal expense. As identified under this “Supplemental Appropriation” bill, the study is subject to additional reporting requirements and is expected to be completed within three years and for \$3 million dollars.

In accordance with the memorandum for the Commander dated February 25, 2020 from Headquarters (HQ) United States Army Corps of Engineers (USACE) to the South Atlantic Division (SAD), the investigation of streambank (bankline) erosion measures is being conducted under the authority of Section 1203 of America's Water Infrastructure Act of 2018 as authorized:

*“(a) Feasibility Reports.--The Secretary shall expedite the completion of a feasibility study for each of the following projects, and if the Secretary determines that the project is justified in a completed report, may proceed directly to preconstruction planning, engineering, and design of the project:
(1) Project for riverbank stabilization, Selma, Alabama.”*

D.1.2. Official Project Designation

Selma Flood Risk Management Study

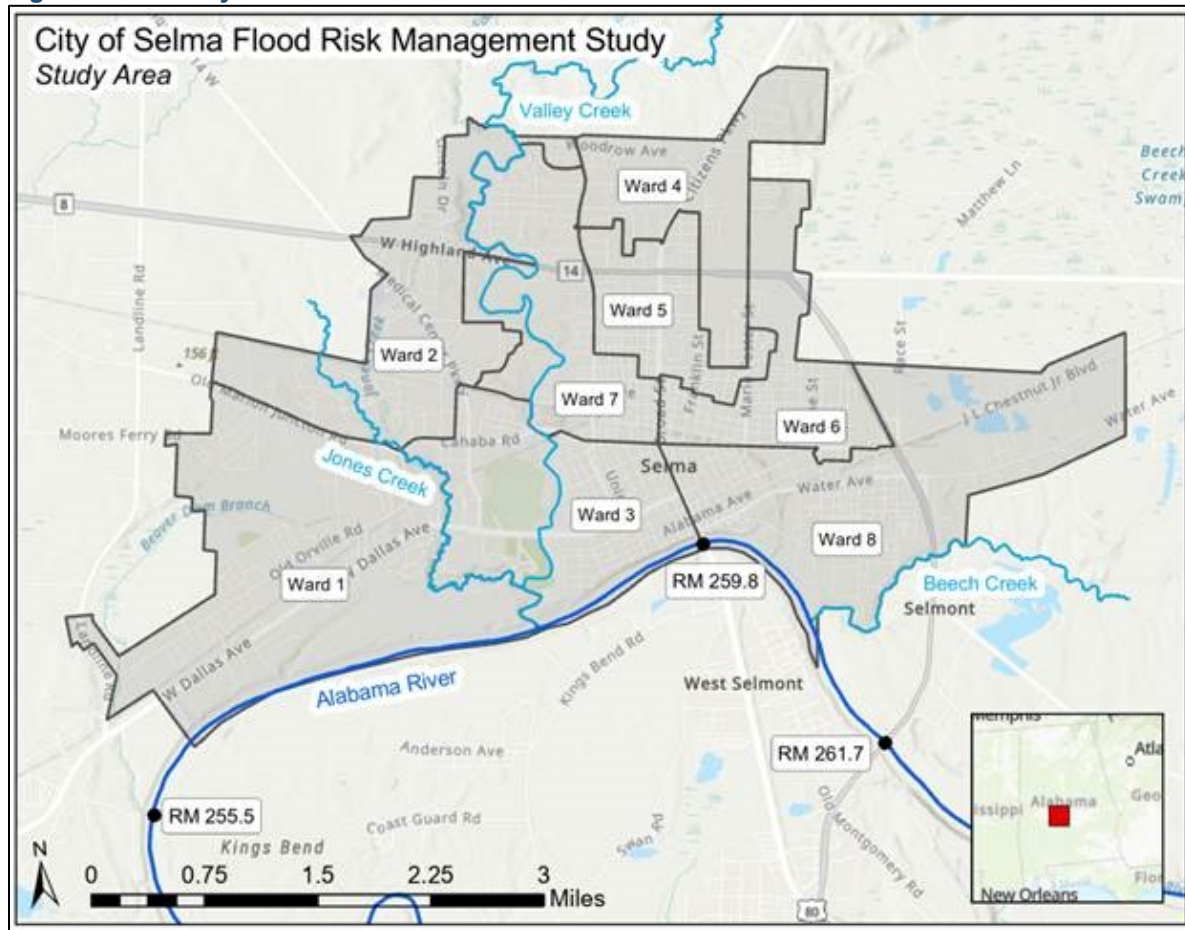
D.1.3. Study Area

Selma, the seat of Dallas County, is located in central Alabama a distance of 88 miles south of Birmingham, Alabama, and 50 miles west of Montgomery. It is situated on high bluffs on the right bank of the Alabama River about 215 miles above its mouth.

D.1.4. Reach Delineation

The Study Area is located along the Alabama River in the City of Selma, Alabama. The city itself is divided into wards with each having an elected representative as shown in **Figure D-1**. Wards 1, 3, 6 and 8, adjacent to River Mile(s) (RM) 256 through 261, experience frequent flooding and therefore the delineated study area have been evaluated for this study.

Figure D-1: Study Area



D.1.5. Non-Federal Sponsor

The Non-Federal Sponsor is the City of Selma (the “Sponsor” or “the City”). If approved and appropriated, the project will be cost-shared in accordance with the terms of the PPA.

D.2. Statement of Purpose

The purpose of this Real Estate Plan (REP) is to present the overall plan describing the minimum real estate requirements for the construction, operation, maintenance, repair and rehabilitation herein referred to as the Recommended Plan. This REP is tentative in nature and is to be used for planning purposes only in order to support the ongoing study of proposed flood risk management measures for the City of Selma. Although this report is written based on specific data research prepared by the Project Delivery Team (PDT), modifications to the proposed plan could occur during the review phase thus changing the final acquisition areas and/or administrative and land costs. Furthermore, due to the nature of this study, the level of detail provided herein is understood to be equivalent to the main report.

D.3. Project Description

D.3.1. Plan of Improvements

The proposed structural and non-structural measures for the Selma study area are listed below. Please reference the main report and other appendices for information on the screening criteria utilized in the development of the Recommended Plan.

D.3.1.1. Alternative 4 - Soldier Pile Wall Bank Stabilization + Flood Response Plan

Soldier pile wall construction is proposed along the bank of the Alabama River in Selma, Alabama commencing at Washington Street to a point paralleling with Lauderdale Street, and running adjacent to the footings of the Edmund Pettis Bridge. Further Engineering design refinements are anticipated which will have bearing on the LERRD footprint. The lands described in **Section D.4** detail the land acquisition requirements for the soldier pile wall.

Regarding the proposed Flood Response Plan (FRP), there are currently two documents available to the City of Selma. One is the Dallas County Natural Hazard Mitigation Plan. Among its objectives, this plan performs a risk assessment and makes broad recommendations on objectives to reduce risk associated with natural hazards. It does broadly and briefly discuss the continued “enforcement of flood ordinances to ensure no development occurs in flood prone areas (all jurisdictions)”. This plan is stated as “being updated” at this time. The other is the Selma, Alabama Code of Ordinances. This, among many other things, prohibits the development of structures below the base flood elevation.

Based on these findings, addressing floodplain management as described in the Recommended Plan during Draft Public Review provides little extra benefit to reducing life safety risk. If the hazard mitigation plan and City ordinances are followed, development in the base flood zone (100-year) would be highly discouraged to the extent practical and allowable.

However, neither the City Ordinances nor the existing Dallas County Mitigation Plan address the immediate response the City could take in the event of a flood. That is, what action should be taken to prepare, and respond to a flood event to ensure life safety. A focused FRP would fill this gap. This plan would address actions the City could take in the event of an incoming flood. These include:

- The identification of flood prone areas through floodplain mapping of several forecasted stages based on Southeast River Forecast Center river stage forecast;
- The appropriate level of response based on Southeast River Forecast Center river stage forecast;
- Evacuation routes for inhabited, flood prone areas; and
- Identification of critical infrastructure at risk.

D.4. Required Lands, Easements, and Rights-of Way (LER)

A synopsis of the project real estate requirements follows:

1. For the soldier pile wall features, 15 parcels are situated within the proposed construction area, and a preliminary acquisition estimate of 0.39 +/- of an acre, will be required in Perpetual Bank Protection Easement (Standard Estate #21), as

outlined in **Exhibits A and B**. The parcel data for the required LER is contained in Exhibit B.

2. In specific reference to the lands noted above, a portion of the soldier pile wall construction currently estimated at 0.11 +/- of an acre is situated within the Alabama Department of Transportation right-of-way for U.S. Highway 80 Business/Broad Street/Edmund Pettis bridge. It is anticipated that the Sponsor will need to obtain an approved Form MB-05 Grading/Landscaping Permit and MB-06a Cooperative Maintenance Agreement from ALDOT. As the current level of Engineering design progresses, coordination with Alabama Department of Transportation will be required for the small portion of the project area within the State right-of-way. In addition, a segment currently estimated at 0.08 +/- of an acre is situated within the City of Selma right-of-way for Washington Street.
3. It is duly noted that Unexploded Ordnance (UXO) neutralization site potentially required for the soldier pile wall construction has not been factored into the required LER or included in the BCERE. The Project Delivery Team was unable to determine a site pursuant to ongoing coordination with the Explosive Ordnance Disposal (EOD) authorities. Please reference the main report and cultural resources section for further information. From a real estate perspective, the outcome of this discussion could lead to additional land acquisition needs.
4. All access and staging requirements have been accounted for as construction is anticipated by barge on the Alabama River. Additional access is available via public right-of-way (Washington St and Broad St).
5. For the Flood Response Plan requirements, the current assumption is that signage along evacuation routes on major public highways in the Selma area will be synonymous with the intent of the Flood Response Plan, and no additional real estate interests will be needed for construction of the project. In this case, permission to place the signage in the public right-of-way would need to be obtained from the Alabama Department of Transportation (ALDOT).

D.4.1. Appraisal Information

A gross appraisal estimate for LERRD requirements was completed on December 3, 2019, with review date of December 4, 2019. The estimated market value for the Recommended Plan is outlined in **Section D.12**. Furthermore, the current state of housing availability was taken into consideration in a market survey analysis, provided under separate cover.

D.5. Non-Federal Sponsor Owned Lands

For the soldier pile wall features, Parcels 1107364002071000 and 1107364002062001, adjacent to the Alabama River, are vested in the Non-Federal Sponsor as of the date of this report.

D.6. Recommended Estates

There are no proposed non-standard estates for the plan.

D.6.1. Standard Estate for Structural Plan (Estate No. 21 – Bank Protection Easement)

“A perpetual and assignable easement and right-of-way in, on, over and across the land hereinafter described for the location, construction, operation, maintenance, alteration, repair, rehabilitation and replacement of a bank protection works, and for the placement of stone, riprap and other materials for the protection of the bank against erosion; together with the continuing right to trim, cut, fell, remove and dispose therefrom all trees, underbrush, obstructions, and other vegetation; and to remove and dispose of structures or obstructions within the limits of the right-of-way; and to place thereon dredged, excavated or other fill material, to shape and grade said land to desired slopes and contour, and to prevent erosion by structural and vegetative methods and to do any other work necessary and incident to the project; together with the right of ingress and egress for such work; 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.”

D.7. Existing Federal Projects

The William Bill Dannelly Reservoir (USACE Full Federal) project is within Dallas County, and perpetual flowage easements exist up to contour elevation 98 (primarily downstream of the railroad bridge) and up to contour elevation 99 (primarily upstream of the railroad bridge). On the west end of Selma downstream of Jones/Valley Creek, the flowage easements include the area up to contour elevation 97. None of the easements or fee lands for this project or other Federal projects are currently anticipated to be impacted by the Recommended Plan.

In addition to the above, the project is projected to extend into the State right-of-way for the U.S. Highway 80 Business, adjacent to the footings of the Edmund Pettis Bridge.

D.8. Federally-owned Lands

There are no Federally-owned lands included as part of the LER required for the Recommended Plan.

D.9. Navigational Servitude

Federal Navigational Servitude will be utilized in the construction of the proposed soldier pile wall bankline stabilization features lying below the mean high water mark. Federal Navigational Servitude is defined as “the dominant right of the Government under the Commerce Clause of the U.S. Constitution (U.S. CONST. art.I, Section 8, cl.3) to use, control and regulate the navigable waters of the United States and the submerged lands thereunder for various commerce-related purposes including navigation and flood control. 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.”

D.10. Maps

The preliminary real estate maps for the Recommended Plan are provided in **Exhibit A**.

D.11. Induced Flooding

There is no significant induced flooding that has been identified associated with the Recommended Plan.

D.12. Baseline Cost Estimate for Real Estate

Table D-1 is the total estimated 01-Lands and Damages costs for the Recommended Plan and is rounded to an estimated total of \$221,636, more or less:

Table D-1: Lands and Damages Costs for the Recommended Plan – Chart of Accounts

01A	PROJECT PLANNING	FEDERAL	NON-FEDERAL	TOTALS
	Other			
	Project Partnership Agreement (OC)	\$ -	\$ -	\$ -
01AX	Contingencies (%)	\$ -	\$ -	\$ -
	Subtotal	\$ -	\$ -	\$ -
01B	LANDS AND DAMAGES			
01B20	Acquisition by non-Federal sponsor	\$ -	\$ -	\$ -
01B40	Acq/Review of non-Federal sponsor	\$61,000.00	\$124,500.00	\$185,500.00
01BX	Contingencies (15%)	\$9,150.00	\$18,675.00	\$27,825.00
01R	RE PAYMENTS	FEDERAL	NON-FEDERAL	TOTALS
01R1	LAND PAYMENTS	\$ -		\$ -
01R1A	By Government	\$ -	\$ -	\$ -
01R1B	By non-Federal sponsor	\$ -	\$7,227.00	\$7,227.00
01R1C	By Government on behalf of non-Federal sponsor	\$ -	\$ -	\$ -
01R1D	Review of non-Federal sponsor	\$ -	\$ -	\$ -
01RX	Contingencies (15%)	\$ -	\$1,084.00	\$1,084.00

01R2	PL 91-646 Assistance Payments			
01R2A	By Government	\$ -	\$ -	\$ -
01R2B	By non-Federal sponsor	\$ -	\$ -	\$ -
01R2C	By Government on behalf of non-Federal sponsor	\$ -	\$ -	\$ -
01R2D	Review of non-Federal sponsor	\$ -	\$ -	\$ -
	TOTALS	\$70,150	\$151,486	\$221,636

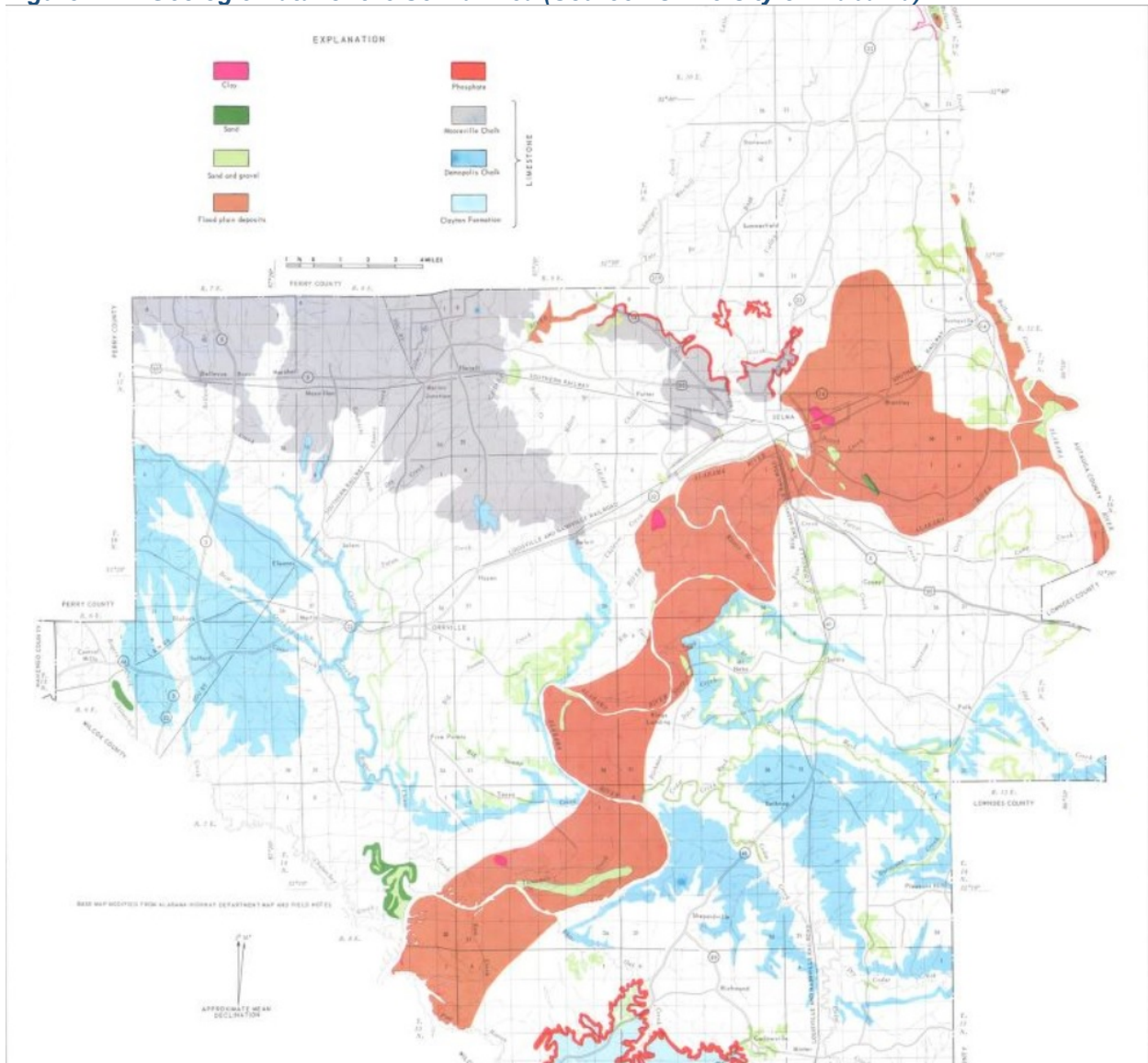
D.13. Compliance with Public Law 91-646

At this time, no land acquisition is expected which would trigger Public Law 91-646 Relocation Assistance payments. In the event of project approval, authorization, and appropriation, any approved relocation assistance requirements for the proposed plan and general acquisition requirements will be governed by the provisions of the Uniform Relocations Assistance and Real Property Acquisition Policies Act (P.L. 91-646), as amended, 49 Code of Federal Regulations Part 24, and applicable laws and regulations.

D.14. Minerals and Timber Activity

There are no known present or anticipated mineral extraction or timber harvesting activities within the proposed project footprint. Existing geological data graphically depicted in **Figure D-2** in the vicinity of Selma indicates an abundance of flood plain deposits, clay and other deposits. Based on research into current mineral exploitation endeavors in the area, the risk of third-party development of mineral activities is considered negligible, and is not expected to impact any proposed project features. During site visits, no mineral activity was observed, and no known exploratory activity is underway in this area.

Figure D-2: Geologic Data for the Selma Area (Source: University of Alabama)



D.15. Land Acquisition Experience and Capability of the Non-Federal Sponsor

USACE-RE personally met with City of Selma officials and coordinated the assessment of the Sponsor’s land acquisition experience and capabilities which is attached hereto as **Exhibit C subpart 1**.

D.16. Zoning

No application of zoning ordinances is anticipated in lieu of land acquisition.

D.17. Acquisition Schedule

The tentative real estate acquisition schedule for the soldier pile wall and flood response plan commences after completion of EN design, and after execution of the PPA.

Land surveys are expected to occur concurrently with the Engineering survey work. Furthermore, tract appraisals initiated by the Non-Federal Sponsor would be required after the execution of the PPA, and it is anticipated that the appraisals would run concurrently with the Sponsor’s initial title research/sufficiency. The anticipated timeframe for the tract appraisal and the initial title research/sufficiency activities is within 2 months after the execution of the PPA.

With exception of the ALDOT right-of-way for the Edmund Pettis Bridge, negotiations and closings occur after an appraised estimate of just compensation has been set and approved by USACE review appraiser. The risk of an inability of the Sponsor to meet this schedule deadline is considered High due to multiple local, state, and private entities in the project area. Further milestones are provided **Figure D-3**:

Figure D-3: PED Phase to Construction Award Schedule

PED Phase to Construction Award						
ID	Task	Duration (calendar days)	Start Date	Scheduled End Date	Predecessors	FY
1	Revise Final Report per comments and submit to Division	35	12-Aug-21	16-Sep-21		22
2	Signed Chief's Report	0	7-Oct-21	7-Oct-21		22
3	PED (Design) Phase					
4	<i>Receive Funds/Execute Design Agreement*</i>	180	7-Oct-21	5-Apr-22	2	22
5	Survey (includes meets and bounds)	120	5-Apr-22	3-Aug-22	4	22
6	Geotechnical Investigations/lab results	120	5-Apr-22	3-Aug-22	4	22
7	<i>100% Unreviewed Design Submittal (CW310)</i>	180	5-Apr-22	2-Oct-22	4	23
8	DQC Review and Incorporate Comments	15	2-Oct-22	17-Oct-22	7	23
9	Develop Final Design Package	15	17-Oct-22	1-Nov-22	8	23
10	Property Owner's Meeting	15	1-Nov-22	16-Nov-22	9	23
11	ATR/VE/IEPR Concurrent Review and Incorporate Comments	45	1-Nov-22	16-Dec-22	10	23
12	<i>RTA - Approved Plan Set (CW330)</i>	45	16-Dec-22	30-Jan-23	11	23
13	Construction Phase					
14	<i>Signed PPA (CW130) completed**</i>	90	30-Jan-23	30-Apr-23	12	23
15	Obtain Real Estate Easements/Certify Lands	180	30-Apr-23	27-Oct-23	14	24
16	Signed BCOES (CW320)	30	27-Oct-23	26-Nov-23	15	24
17	Issue Advanced Notice	1	26-Nov-23	27-Nov-23	16	24
18	<i>Advertise (CW401)</i>	30	27-Nov-23	27-Dec-23	17	24
19	<i>Award Construction Contract (CC800)</i>	90	27-Dec-23	26-Mar-24	18	24
20	Issue NTP	21	26-Mar-24	16-Apr-24	19	24
21	Construction Complete (18 Month Duration)	540	16-Apr-24	8-Oct-25	20	26
* - Assumes FY22 Funds are provided to initiate PED Phase						
** - Assumes Construction Dollars are provided in FY23						
SCHEDULE DURATION DATES ARE PRELIMINARY AND TENTATIVE						

D.18. Facility and/or Utility Relocations

According to the City of Selma and USACE Engineering investigations, there are no public utilities located within the project footprint. In addition, ALDOT indicated that no electric and gas lines traverse the project footprint within the State right-of-way for the Edmund Pettis Bridge but are researching additional detailed utility data in historical records. All other utilities upland of construction area or traversing the Alabama River will be avoided.

However, there are two municipal drainage pipe outfalls discharging into the Alabama River that will likely require alteration to construct the soldier pile wall. Final design drawings will determine the final configuration of the alteration required to accommodate the soldier pile wall construction.

Drainage pipe upstream of the bridge (i.e., to the east) has an invert elevation of approximately 118' which is above the planned top of wall, so either some form of a culvert drainage structure or if PED determines this area requires second tiered wall then we would tie into and extend the drainage pipe to outfall through the wall.

Drainage pipe downstream of the bridge (i.e., to the west) has an invert elevation of approximately 106 which will fall below the planned top of wall, so this pipe will require us to tie into and extend drainage pipe to outfall through the wall.

It is assumed due to the age of the outfalls and City maintenance that the drainage structure is owned by the City and that the City holds a compensable interest in those structures. In the PED phase, a Final Attorney's Opinion of Compensability shall be prepared pursuant to Para. 12-17, Chap 12, ER 405-1-12.

Per PGL 31, 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.

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.

D.19. Hazardous, Toxic, and Radioactive Waste (HTRW)

The City of Selma has conducted several Environmental Site Assessments since 2017 to identify Recognized Environmental Conditions (RECs) within the Study Area. Petroleum, gasoline, fertilizer, chemical cleaners and degreasers, paint products, solvents, and herbicides/pesticides were identified throughout seven properties that are situated in the general vicinity, but not within the proposed project footprint.

Historical placement of Unexploded Ordnances (UXOs) within the Alabama River may be cause for concern regarding the possibility of toxic chemical leeching into the riverbed. Several excavations have occurred; however, no sediment testing has been conducted to show the level of contamination, if any. Reference the Main report and Environmental section of the report for additional information.

D.20. Attitude of Property Owners

The Non-Federal Sponsor has been supportive of the aforementioned structural and non-structural measures to support community resiliency along the Alabama River in Selma. Public meeting held on 7 October 2020 did not indicate any patterns of support or opposition to the proposed project.

Pursuant to the requirements set forth in the Land Acquisition Policy Act of 1960, Public Law 86-645 (33 U.S.C. § 597), mandates landowner notification within six months after authorization, and "a reasonable time after initial appropriations."

Within six months after the date that Congress authorizes construction of a water resource development project under the jurisdiction of the Secretary

of the Army, the Corps of Engineers shall make reasonable effort to advise owners and occupants in and adjacent to the project area as to the probable timing for the acquisition of lands for the project and for incidental rights-of-way, relocations, and any other requirements affecting owners and occupants. Within a reasonable time after initial appropriations are made for land acquisition or construction, including relocations, the Corps of Engineers shall conduct public meetings at locations convenient to owners and tenants to be displaced by the project in order to advise them of the proposed plans for acquisition and to afford them an opportunity to comment. To carry out the provisions of this section, the Chief of Engineers shall issue regulations to provide, among other things, dissemination of the following information to those affected: (1) factors considered in making the appraisals; (2) desire to purchase property without going to court; (3) legal right to submit to condemnation proceedings; (4) payments for moving expenses or other losses not covered by appraised market value; (5) occupancy during construction; (6) removal of improvements; (7) payments required from occupants of Government acquired land; (8) withdrawals by owners of deposits made in court by Government, and (9) use of land by owner when easement is acquired. The provisions of this section shall not subject the United States to any liability nor affect the validity of any acquisitions by purchase or condemnation and shall be exempt from the operations of subchapter II of chapter 5, and chapter 7, of title 5. (Land Acquisition Policy Act of 1960, Public Law 86-645, 33 U.S.C. § 597)

D.21. Notifications to Non-Federal Sponsor

The Non-Federal Sponsor has been made aware of the risks of acquiring real estate interests required for the project prior to the signing of the PPA. In accordance with paragraph 12-31, Chapter 12, ER 405-1-12, Real Estate Handbook, a formal written notice identifying the risks associated with acquiring the LER for the project prior to the full execution of the PPA was provided to the Sponsor, and is attached hereto in **Exhibit C subpart 2**.

The City of Selma is the Non-Federal Sponsor (NFS) for the proposed project. Upon receipt of the formal notice to proceed with acquisition, 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.

Title to any acquired real estate will be retained by the NFS and will not be conveyed to the United States Government. The government will require access rights be provided by the NFS for entry to the project. Prior to advertisement of any construction contract, the NFS shall furnish to the government an Authorization for Entry for Construction (**Exhibit D**) 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.

During the acquisition process, 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 January 2, 1971, and amended by Title IV of the Surface Transportation Uniform Relocation Assistance Act of 1987, Public Law 100-17, effective April 2, 1989, in acquiring real estate interests for the proposed project, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act(s).

D.22. Recommendations

This report has been prepared in accordance with Paragraph 12-16 of Chapter 12 of the Real Estate Handbook, Corps of Engineers Regulation (ER) 405-1-12. It is recommended that this report be approved.

Karen M. Kennedy
District Chief of Real Estate
U.S. Army Corps of Engineers, Mobile District

Prepared by:

John J. Tetreau
Realty Specialist
CESAM-RE (Acquisition Branch)

Exhibit D-A: Real Estate Parcel Mapping



Exhibit D-B: Parcel Data – Bank Stabilization (Construction area)

PARCEL NO	JURISDICTION	LOCATED WITHIN PLSS LINES	ESTATE	ACRES
1107364002062001	Selma	Sec. 36, T17N, R10E	Bank Protection Easement (NFS-owned)	0.01
1107364002063000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.01
1107364002064000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.01
1107364002065000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.01
1107364002066000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.01
1107364002067000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.01
1107364002067001	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.01
1107364002068000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.01
1107364002071000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement (NFS-owned)	0.02
1107364002069000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.01
1107364002070000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.03
1107364001012000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.02
1107364001013000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.01
1107364001014000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.02
1107364001018000	Selma	Sec. 36, T17N, R10E	Bank Protection Easement	0.01
ROW (Broad St/US Hwy 80 Business/Edmund Pettis)	Selma	Sec. 36, T17N, R10E	Bank Protection Easement / License	0.11
ROW (Washington St)	Selma	Sec. 36, T17N, R10E	Bank Protection Easement / License	0.08

**Exhibit D-C: Assessment of NFS RE Acquisition Capability
Subpart 1**



DEPARTMENT OF THE ARMY
MOBILE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2888
MOBILE, ALABAMA 36628-0001

RRPLY PD
ATTENTION OF:
URACE-NAM-RR-A

31 May 2019

**SELMA FLOOD RISK MANAGEMENT STUDY
CITY OF SELMA, ALABAMA**

CITY OF SELMA, ALABAMA – NON-FEDERAL SPONSOR

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

1. LEGAL AUTHORITY:

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

Yes. Per Code of Alabama § 11-47-170(a), "Except as otherwise provided in subsection (b), whenever in the judgment of the council, commission, or other governing body of a city or town it may be necessary or expedient for the carrying out and full exercise of any power granted by the applicable provisions of this title or any other applicable provision of law, the town or city shall have full power and authority to acquire by purchase the necessary lands or rights, easements, or interests therein, thereunder, or thereover or, for the purposes for which private property may be acquired by condemnation, may proceed to condemn the same in the manner provided by this article, or by the general laws of this state governing the taking of lands or the acquiring of interests therein for the uses for which private property may be taken, and such proceedings shall be governed in every respect by the general laws of this state pertaining thereto or by the provisions on the subject contained in this article when the same are followed."

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

Yes. Code of Alabama §18-1A-1 promulgates Alabama Eminent Domain Code and provides standards for the acquisition of property by condemnors, the conduct of condemnation actions, and the determination of just compensation. It does not confer the power of .

minent domain, and does not prescribe or restrict the purposes for which or the persons by whom that power may be exercised. Procedures relating to the acquisition of property for public use, a condemnor, when acquiring property, shall comply with applicable provisions of Sections 18-1A-21 through 18-1A-40.

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

No. The State of Alabama does not authorize "quick take" condemnation. An owner shall not be required to surrender possession of property before the condemnor: (1) Pays the agreed purchase price; or (2) Pays, or deposits in accordance with this chapter, the amount awarded by the condemnation order. Except in an emergency, a condemnor may not require a person lawfully occupying property to move from a dwelling, nor to move his business or farm operation, unless he has received written notice from the condemnor at least 90 days before the date by which the move is required.

A condemnation action is commenced by filing a complaint for condemnation with the probate court in the county in which the property or any part thereof sought to be taken is located. (Acts 1985, No. 85-548, p. 802, §402.)

Service of process. (a) On the filing of the complaint, the probate court must enter an order appointing a day for the hearing thereof and must issue to the defendants a copy of the complaint and notice of the day set for the hearing unless such notice is waived. (b) Service upon a defendant of the notice with a copy of the complaint may be made in accordance with Rule 4 of the Alabama Rules of Civil Procedure.

d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary?

Tentatively Selected Plan has not been finalized as of the date of this assessment. The potential exists that certain project features will extend into State-owned lands or may require acquisition of property within the jurisdiction of the County.

All the beds and bottoms of the rivers, bayous, lagoons, lakes, bays, sounds and inlets within the jurisdiction of the State of Alabama are the property of the State of Alabama to be held in trust for the people thereof. The Alabama Department of Conservation and Natural Resources manages all submerged lands within the State of Alabama including navigable water bottoms, coastal bays and offshore state waters for a distance of three miles.

- e. **Any of the lands/interests in land required for the project owned by an entity whose property the sponsor cannot condemn?**

- i. **Private Property:** None identified. Property within unincorporated Dallas County is outside of the jurisdiction of the City of Selma.
- ii. **State-Owned Property:** Lands lying within the State rights-of-way including U.S. Highway 80 are outside of the Condemnation authority of the City. As aforementioned, all the beds and bottoms of the rivers, bayous, lagoons, lakes, bays, sounds and inlets within the jurisdiction of the State of Alabama are the property of the State of Alabama to be held in trust for the people thereof. Parcels arising from a tax delinquent status may be outside of the immediate condemnation authority of the Sponsor.

2. 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? Yes - the level of P.L. 91-646 familiarity will be contingent on the scope of the recommended plan. The City has not undertaken a major Federally-funded acquisition/relocation effort within the parameters of P.L. 91-646 in a number of years, and would require direction in implementation phase (if project approved and appropriated for construction). Further, the Sponsor has not executed the Real Estate requirements for a USACE project in recent history. If the project entails a minor land acquisition effort, the City may be able to carry out Real Estate obligations by familiarization with Federal policies. If a major land acquisition effort is required, the Sponsor would require intensive training in the provisions of P.L. 91-646. Non-Federal Sponsor Acquisition Guide & Uniform Act Resources from FHWA provided to City, <https://www.fhwa.dot.gov/ee/index.cfm?id=100&dau=1212>. Training courses in the provisions of P.L. 91-646 are also available from various private vendors.**
- b. **If the answer to 2(a) is "yes", has a reasonable plan been developed to provide such training? No - a path forward for training has not been developed to date inasmuch as a Tentatively Selected Plan has not been finalized.**
- c. **Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project?**
No, not at this time.
- d. **Is the sponsor's projected in-house staffing level sufficient considering its other workload, if any, and the project schedule?**
No, not at this time.

- c. **Can the sponsor obtain contractor support, if required, in a timely fashion?** Per Code of Alabama § 18-4-8, State Agencies are authorized to acquire contractor support to support compliance with Federal programs (namely, P.L. 91-646, 49 CFR Part 24, Uniform Relocation Act). Code of Alabama § 18-4-8 states "In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, a state agency may enter into contracts with any individual, firm, association, or corporation for service in connection with the programs, or may carry out its functions under this chapter through any federal or state agency or instrumentality having an established organization for conducting relocation assistance programs."
- f. **Will the sponsor likely request USACE assistance in acquiring real estate? (If "yes", provide description).** Depending on the degree or scope of recommended plan, USACE can provide assistance, at the request of the Sponsor and at the option of USACE Real Estate Division, provided all fiscal obligations are met as forth in the Project Partnership Agreement (PPA).

3. 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 (answer is contingent upon whether the real estate milestones have been defined at this point in the project)?** To be determined based on anticipated approvals, project approval, appropriations.

4. OVERALL ASSESSMENT:

- a. **Has the sponsor performed satisfactorily on other USACE projects (if applicable)?** N/A
- 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, please provide explanation).**

5. COORDINATION:

a. Has this assessment been coordinated with the sponsor? Yes

b. Does the sponsor concur with this assessment?

Yes. This concurrence is not to be considered an obligation for the sponsor to take any action or commit any resources at this time.

Accepted by Non-Federal Sponsor:

Dawn Melton (Signature)

Mayer (Title)

Prepared by:

Russell W. Blount, III (Signature)

**RUSSELL W. BLOUNT, III
ACTING CHIEF
TECHNICAL SERVICES BRANCH
REAL ESTATE DIVISION
U.S. ARMY CORPS OF ENGINEERS
MOBILE DISTRICT**

Reviewed and Approved by:

Derrick D. Moton (Signature)

**DERRICK D. MOTON
DEPUTY CHIEF
REAL ESTATE DIVISION
U.S. ARMY CORPS OF ENGINEERS
MOBILE DISTRICT**

Subpart 2

——Original Message——

From: Tetreau, John J CIV USARMY CESAM (USA)
Sent: Wednesday, October 9, 2019 7:50 AM
Subject: RE: Assessment of NFS RE Acq Capability Selma (City of Selma)

Good morning,

We appreciate the City's coordination and endorsement of the Non-Federal Sponsor Real Estate Acquisition Capability checklist, and we concur with assessment, and look forward to discussing with City further after our vertical chain reviews the study recommendations. We should have a countersigned copy returned to you as soon as possible. The City is not expected to acquire any real estate interests at this time. As a matter of fact, it is advisable for the City's interest to not acquire any Real Estate interests until an official Project Partnership Agreement is agreed to and endorsed by the City and USACE, which would be after the study is approved/appropriated and PED phase.

In line with the previous statement, the other document we sent advises the City of the risks of acquiring real estate prior to the joint execution of the Project Partnership Agreement. The City previously signed the risk notification for the Sec. 14 study at the historic Rail Depot back in 2018.

Thanks for all of your assistance,

John J. Tetreau
Realty Specialist
U.S. Army Corps of Engineers, Mobile District Real Estate Division (CESAM-RE)
109 Saint Joseph Street, Rm 7000
Mobile, Alabama 36602



CITY OF SELMA

DARRIO MELTON
MAYOR

October 8, 2019

Attn: USACE-SAM-RE-A
Department of the Army
Mobile District, Corps of Engineers
P.O. Box 2288
Mobile, AL 36628-0001

RE: Selma Flood Risk Management Study
Assessment of Non-Federal Sponsor's Real Estate Acquisition Capability

Dear Sir or Madam:

Enclosed/attached with this letter is the Assessment of Non-Federal Sponsor's Real Estate Acquisition Capability signed by Mayor Darrio Melton on behalf of the City of Selma, Alabama. Please understand that while the City has reviewed the contents of this assessment, it has not agreed or otherwise obligated itself to take any action nor commit any resources to the proposed Flood Risk Management Study at the present time.

Regards,


Mayor Darrio Melton



DEPARTMENT OF THE ARMY
MOBILE DISTRICT, CORPS OF ENGINEERS
P.O. BOX 2288
MOBILE, ALABAMA 36628-0288

REPLY TO
ATTENTION OF:

USACE-SAM-KE

17 July 2018

City of Selma
Planning Department
ATTN: Mr. Henry Thompson
P.O. Box 450
Selma AL 36702

Subject: Selma Sec. 14 Emergency Bank Stabilization Study – Formal Risk Notification
Letter to Non-Federal Sponsor

Dear Mr. Thompson,

The intent of this letter is to formally advise the City of Selma, as non-Federal Sponsor for the proposed project, of the risks associated with land acquisition prior to the execution of a 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.

While we acknowledge that no land acquisition is expected for the subject project based on the latest engineering designs, we are still required by regulation to notify the non-Federal Sponsor of the inherent risks associated with a cost-shared project of this nature.

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

- (1) Congress may not appropriate funds to construct the proposed project;
- (2) The proposed project may otherwise not be funded or approved for construction;
- (3) A PPA mutually agreeable to the non-Federal sponsor and the Government may not be executed and implemented;
- (4) 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;

(5) 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;

(6) 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 Lands, Easements, Rights-of-way, Relocations, Disposal Areas and/or Borrow Areas (LERRD);

(7) The non-Federal sponsor may incur costs or expenses in connection with its decision to acquire or perform LERRD in advance of the executed PPA and the Government's notice to proceed which may not be creditable under the provisions of Public Law 99-662 or the PCA. Reference ER 405-1-12 (Change 31; 1 May 98) Section 12-31 Acquisition Prior to PCA Execution.

Please acknowledge that the Non-Federal Sponsor for the proposed project accepts these terms and conditions.

Accepted on behalf of the Non-Federal
Sponsor:

 (Signature)

 (Title)

Prepared by:

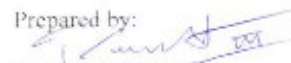

Russell W. Blount III
Section Chief
Acquisition Branch
Real Estate Division
Mobile District
U.S. Army Corps of Engineers

Exhibit D-D: Authorization for Entry for Construction and Attorney's Certificate of Authority

**AUTHORIZATION FOR ENTRY FOR CONSTRUCTION AND ATTORNEY'S
CERTIFICATE OF AUTHORITY**

I, (name of accountable official), (title) for (name of non-Federal sponsor), do hereby certify that the (name of non-Federal sponsor) has acquired the real property interests required by the Department of the Army, and otherwise is vested with sufficient title and interest in lands to support construction of (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 Engineers' Mobile District Office, Mobile, Alabama.

WITNESS my signature as (title) for (name of non-Federal sponsor) this _____ day of _____, 20__.

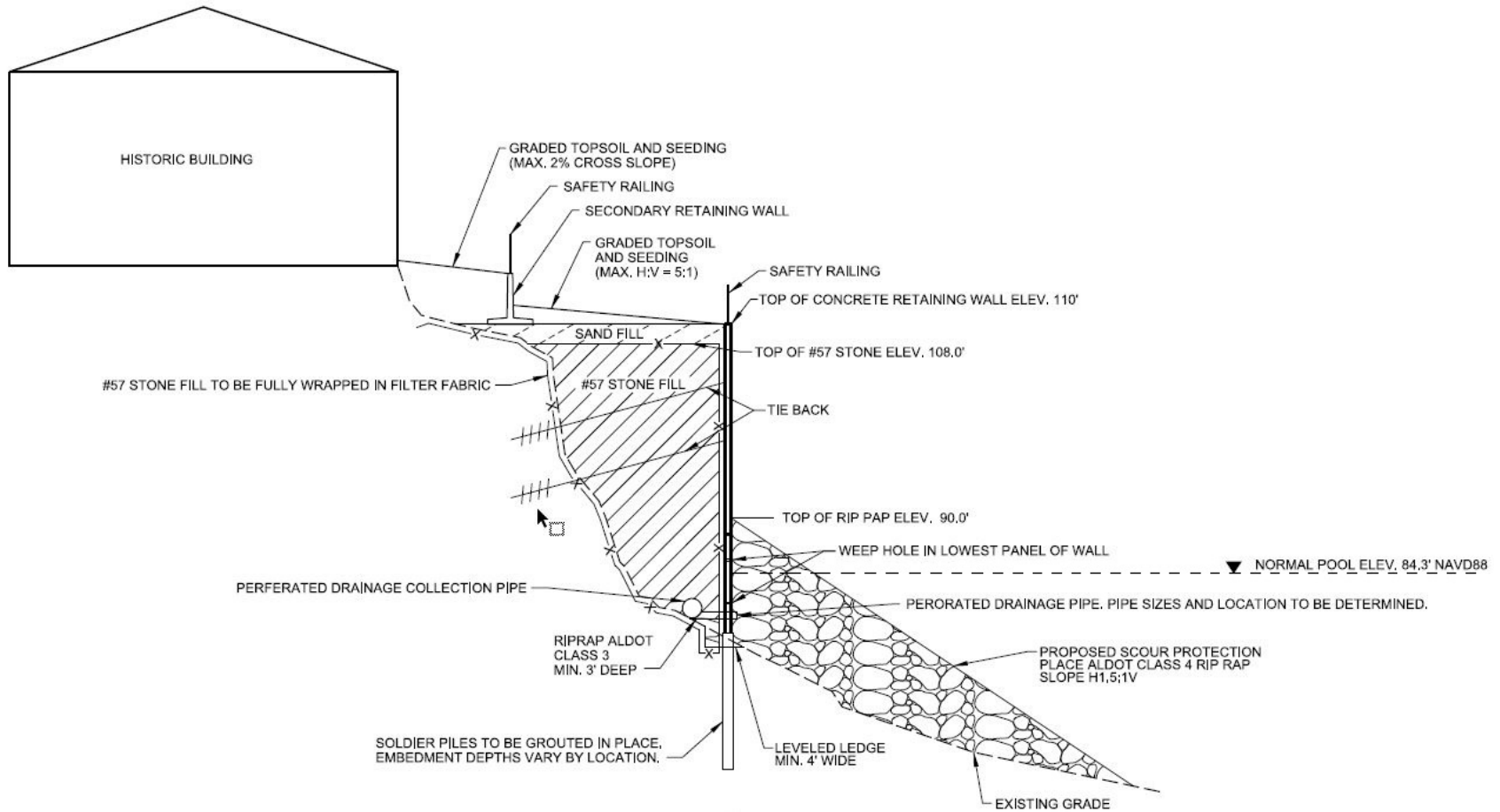
BY: (name)
(title)

I, (name), (title of legal officer) for (name of non-Federal sponsor), certify that (name of non-Federal sponsor) has 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.

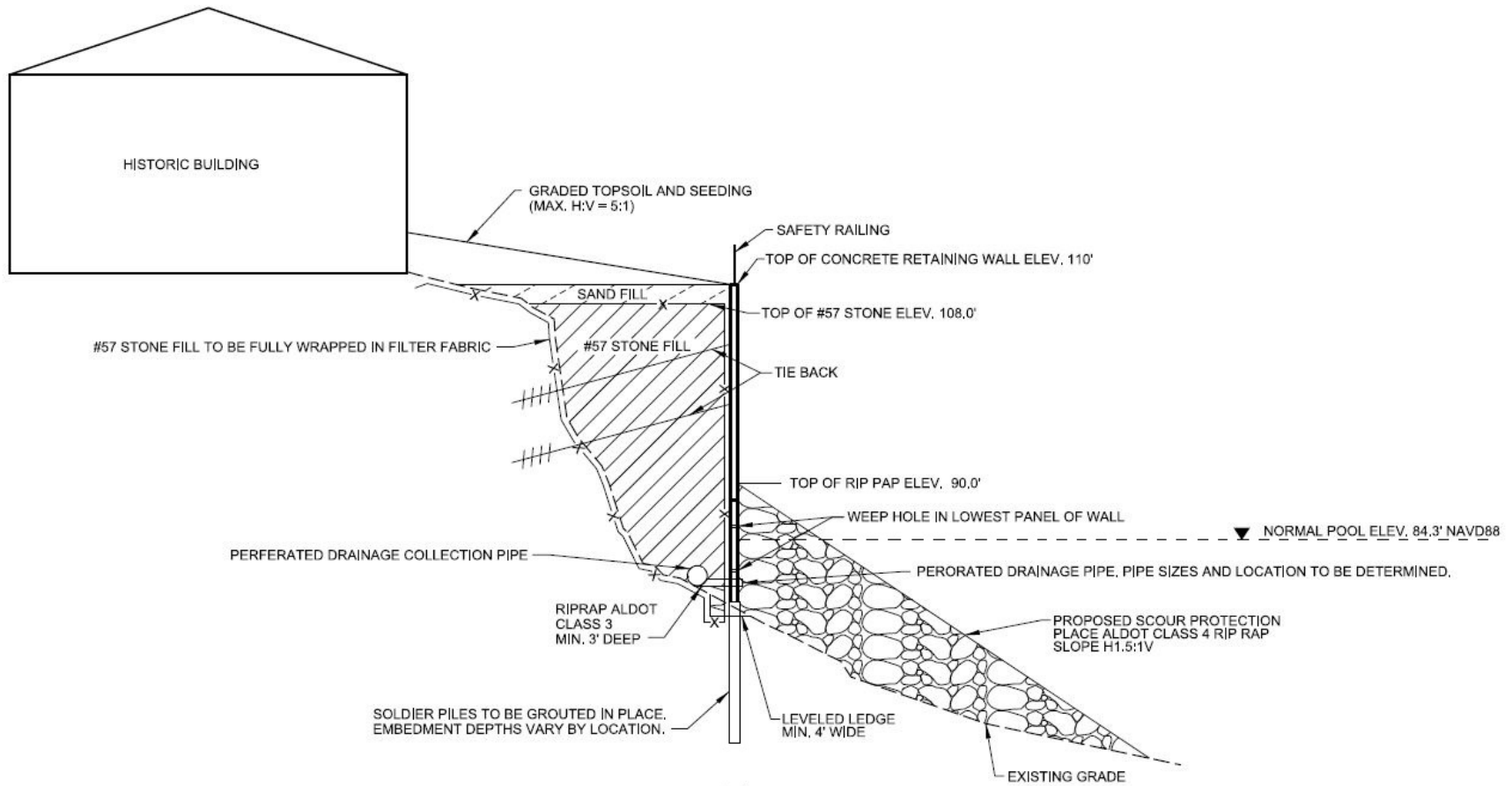
WITNESS my signature as (title) for (name of non-Federal sponsor), this _____ day of _____, 20__.

BY: (name)
(title)

Exhibit D-E: Typical Cross Sections for Streambank Stabilization Feature



D3 BANK STABILIZATION DETAIL
WITH SECONDARY RETAINING WALL
NTS



D3 BANK STABILIZATION DETAIL
NTS