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

SEP 14 2009

CECW-PB

MEMORANDUM FOR COMMANDER, South Pacific Division (CESPD-DE)

SUBJECT: Implementation Guidance for Section 5051 of the Water Resources Development Act of 2007 (WRDA 2007) – San Francisco, California

1. Section 5051 of WRDA 2007 provides discretionary authority to the Secretary, in cooperation with the Port of San Francisco, California, to carry out the project for repair and removal, as appropriate, of Piers 30–32, 35, 36, 70 (including Wharves 7 and 8), and 80 in San Francisco, California, substantially in accordance with the Port's redevelopment plan. There is authorized to be appropriated $25,000,000 to carry out this section. A copy of Section 5051 is enclosed.

2. General. Subject to the requirements set out herein, actions to repair or remove piers and wharves under Section 5051 may be undertaken if primarily for the purpose of drift and debris removal. The Corps direct involvement will be primarily in development of scopes of work for all contracts, performance of contract and construction management, and review of sponsor designs for construction. However, no work may be undertaken under this authority until such time as funds are specifically appropriated by Congress for such purpose. Any work undertaken will be limited to the funds appropriated.

3. Decision document. A letter report will be prepared to support each agreement entered into with the non-Federal sponsor under this authority. The letter report will describe the proposed work, identify the non-Federal sponsor, address the implementation responsibilities of the parties, address the financial capability of the non-Federal sponsor to meet the cost sharing requirements, describe the status of environmental compliance, and present information on the cost and schedule for the work. The Division Commander has approval authority for the letter report under this authority and may delegate this authority to the District Commander. The following requirements also apply:

a. Environmental Analysis. The requirements of the National Environmental Policy Act (NEPA) and other environmental laws must be met. NEPA compliance and receipt of State water quality certification must be completed prior to the execution of any agreement for construction. The non-Federal sponsor is required to obtain any applicable State or local permits.

b. Cost Sharing. The work to be performed is primarily for purposes of drift and debris removal and will be cost shared consistent with the authority provided in Section 202 of the

Water Resources Development Act of 1976. The Federal share of the cost of the work shall be two-thirds, with the non-Federal share provided in cash. No work-in-kind credit or reimbursement for work performed by the non-Federal sponsor is authorized under this authority.

c. Real Estate. The non-Federal interest, at no cost to the Government, will be responsible for providing all lands, easements, rights of way, relocations and disposal areas (LERRDs) necessary for this work. The Government will not include the value of LERRDs in the total cost of the work, nor provide any credit or reimbursement for the LERRDs.

d. Operation and Maintenance. The non-Federal sponsor will perform, and be responsible for 100 percent of the costs of operation, maintenance, repair, replacement and rehabilitation associated with this work.

4. Agreements. An agreement between the Corps and the non-Federal sponsor must be executed prior to initiating design or construction under this authority. Using funds specifically appropriated under this authority, the San Francisco District will develop a Design and Construction Agreement with the non-Federal interests for repair and/or removal of the listed piers. Close coordination shall be maintained through the vertical team in development of this Agreement. The negotiated draft Agreement should be forwarded to the SPD-RIT to obtain approval from the ASA(CW). The Agreement package should contain: a clean copy of the negotiated draft Agreement; Certificate of Legal Review signed by the District Counsel; a letter of intent; the non-Federal sponsor's signed Self-Certification of Financial Capability for Agreements; and the decision document approved by the Division or District Commander.

FOR THE COMMANDER:

Encl

STEVEN L. STOCKTON, P.E.
Director of Civil Works

WRDA 2007 AUTHORIZING LANGUAGE

SECTION 5051. SAN FRANCISCO, CALIFORNIA.

(a) IN GENERAL.—The Secretary, in cooperation with the Port of San Francisco, California, may carry out the project for repair and removal, as appropriate, of Piers 30–32, 35, 36, 70 (including Wharves 7 and 8), and 80 in San Francisco, California, substantially in accordance with the Port's redevelopment plan.

(b) AUTHORIZATION OF APPROPRIATION.—There is authorized to be appropriated $25,000,000 to carry out this section.

Enclosure