

CHAPTER 5 REHABILITATION AND INSPECTION PROGRAM (RIP)

Section I - General

5-1. Rehabilitation and Inspection Program. The RIP is the USACE program that provides for inspections of FCW's, the rehabilitation of damaged FCW's, and the rehabilitation of Federally authorized and constructed hurricane or shore protection projects (HSPP).

5-2. RIP Policy. USACE may rehabilitate FCW damaged or destroyed by flood, and Federally authorized and constructed hurricane or shore protective structures damaged or destroyed by wind, wave, or water action of an other than ordinary nature. This assistance may be provided subject to the policy of Chapter 2, and the policy, criteria, and conditions of this chapter. All aspects of work related to rehabilitation of damaged flood control works and HSPP's are to be addressed using all available methods of urgency, exigency, and expediency, consistent with providing responsive, cost effective assistance. Contracts for repair of damaged FCW's will be awarded within 60 days of project approval, or, if the equipment rental method of repair is used, then the repair work must be initiated within 60 days of project approval. Any exception to this 60-day time frame must be approved by the MSC, and reported via SITREP. See paragraph 5-20.j. for time frames for HSPP Rehabilitation Assistance.

a. Rehabilitation Assistance and Active Status. Rehabilitation Assistance is limited to Federal and non-Federal FCW's, and Federally authorized and constructed HSPP's, that are in an Active status in the RIP at the time of the hurricane, storm, or flood event and which are damaged by floods, hurricanes, or coastal storms. See paragraph 5-6 below for information on Active status. No flood control project deemed to be in an unacceptable condition (e.g., for severe deficient maintenance, or unsound engineering) will be placed in an Active status. No flood control project will be placed in an Active status if the public sponsor does not have apparent intent or capability to adequately maintain the project.

b. Rehabilitation Assistance Scope. Rehabilitation Assistance is limited to repair or restoration of an FCW to its pre-disaster condition and level of protection (e.g., the actual elevation of the levee, allowing for normal settlement.)

(1) Improvements to design and equipment (e.g., geomembranes) that are a result of state of the art technology, and are commonly incorporated into current designs in accordance with sound engineering principles, are permissible, and are not considered betterments.

(2) Increasing the cross section (but not the height) of a levee is not considered a betterment if the increase is considered to be reasonable and necessary.

c. Rehabilitation Assistance Not Permitted. Structures built for channel alignment, navigation, recreation, fish and wildlife, land reclamation, drainage diversion, or to protect against land or shoreline erosion or salt water intrusion are not FCW's, and are not permitted Rehabilitation Assistance. Section 32 streambank erosion demonstration projects are not permitted Rehabilitation Assistance.

d. Damage from Other Than Floods and Coastal Storms. FCW's damaged by occurrences other than floods, hurricanes, or coastal storms (e.g., non-flood disasters such as earthquakes or volcanic eruptions) are permitted RIP Rehabilitation Assistance. In such instances, HQUSACE approval is required prior to initiation of the PIR, and project approval authority will be at HQUSACE level.

e. Bank protection works, river control structures, or other projects constructed by USACE (to include Section 14 projects and specifically authorized bank protection projects) are not eligible to receive Rehabilitation Assistance. Exceptions may be granted by HQUSACE on a case-by-case basis. No FCCE funds will be expended investigating potential exceptions without prior approval from HQUSACE. The project approval process of this chapter and EP 500-1-1 will be followed for exceptions when approved. For exceptions to be considered:

(1) No other repair authority may exist.

(2) There must be a significant Federal interest in restoring the project. Mere construction of the project by USACE, ongoing maintenance by the public sponsor, and/or existence of a PCA does not constitute significant Federal interest. Significant Federal interest includes a favorable determination that the structure would likely be constructed as a new project under contemporary USACE criteria for a similar type of project.

(3) Rehabilitation must be beyond normal Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R) provisions for which the project was designed and agreed to in the PCA executed between USACE and the public sponsor.

f. Poor Maintenance. Rehabilitation Assistance will not be provided to an FCW that, as a result of poor maintenance, has deteriorated to the point that substantial reconstruction is required.

g. Deficient or Deferred Maintenance. If deficient or deferred project maintenance is outstanding when damage to an FCW occurs, then the deficient and deferred maintenance will be accomplished by or at the expense of the public sponsor, either prior to or concurrently with approved Rehabilitation Assistance. When work accomplished by USACE corrects

accumulated deferred or deficient maintenance, the estimated deferred maintenance cost will be borne by the public sponsor and paid prior to the start of actual project rehabilitation. This work will not be creditable toward the sponsor's cost share.

h. **Alternative Plans.** In providing Rehabilitation Assistance, alternative plans (e.g., levee setback, revetments, bulkheads, or sea walls) for providing equivalent protection by an FCW will be developed and compared on a technical and economic basis. Any increase in Federal cost resulting from a public sponsor's preference of any alternative, other than the one that is least expensive to the Federal Government when all Federal costs are included, will be borne by the public sponsor.

i. **Design and Construction Deficiencies.** Rehabilitation Assistance will not be used to correct design or construction deficiencies of existing projects constructed by USACE, except as a last resort emergency measure to protect human life.

j. **Deliberate Levee Cuts.** Repair of deliberate levee cuts is a public sponsor responsibility. It will be accomplished at non-Federal expense, except in cases where the cut was made in accordance with paragraph 4-3.h.

k. **Rehabilitation Assistance at Military Installations.** FCW Rehabilitation Assistance on military installations will not be accomplished under PL 84-99. Rehabilitation work at military installations may be provided under 10 U.S.C. 2854 or other applicable authorities.

l. **Channel Projects.** Restoration of channel improvement projects to pre-flood hydraulic capacity is permitted under PL 84-99 when floodwaters have deposited debris and silt such that the channel capacity has been decreased to 75 percent or less of the pre-flood capacity. Removal of normal or annual siltation will not be funded using FCCE funds, as this is a normal sponsor O&M responsibility.

m. **Loss of Vegetative Cover.** When loss of vegetative cover is a direct result of the flood event, to include those losses caused by prolonged inundation, use of FCCE funding for revegetation is appropriate. Areas outside of structural damage should be evaluated based on the threat to the structural integrity of the unit, the probability of natural revegetation, and past maintenance practice. The possibility of natural revegetation will always be considered as the primary option for revegetation.

n. **Modification Limitation.** Rehabilitation Assistance will not be used to modify an FCW to increase the degree of protection or capacity, to provide protection to a larger area, or to correct deficiencies in the project.

o. Betterments. Betterments wanted and paid for by the public sponsor may be accomplished provided they are related to the basic rehabilitation project and they can be accommodated in the construction of the basic rehabilitation project. Betterments are funded 100 percent by the public sponsor. The costs of such betterments will not be included in the rehabilitation project cost or economic evaluation. For informational purposes only, betterment costs will be included with cost estimate data.

p. Dewatering. Only dewatering costs incurred by a Corps contractor that are associated with actual repair activities are eligible for Corps funding. Dewatering for other purposes (e.g., to return agricultural land to production) is the responsibility of the public sponsor, and is not eligible for Corps funding.

q. Minimum Required Construction Cost. If the estimated construction cost (not including contingency amounts, or E&D or S&A amounts) to repair damages to an FCW is less than \$15,000, then no Rehabilitation Assistance is permitted. The repair will be mandatorily categorized as sponsor maintenance, and will be the public sponsor's O&M responsibility to repair. Determination of the estimated construction cost is made without regard to any cost sharing requirements.

r. Benefit Cost Ratio. Rehabilitation Assistance projects must have a favorable BCR (i.e., > 1.0) in accordance with the Principles and Guidelines contained in Chapter 6, ER 1105-2-100, regarding National Economic Development (NED) Benefit Cost Analysis.

s. Projects with Multiple Public Sponsors. For each hydrologically independent FCW project with multiple public sponsors, the entire FCW must meet all RIP provisions to be eligible for Active status and for Rehabilitation Assistance. It is the responsibility of the multiple public sponsors, and not of USACE, to coordinate all necessary sponsor actions, responsibilities, and obligations under the RIP.

t. Haul Roads. Haul road restoration activity is an acceptable cost under authorized PL 84-99 activities when Corps activity has degraded the haul road's condition from the condition that existed immediately prior to the beginning of the Corps activity.

(1) All contracts for floodfight efforts or rehabilitation efforts will contain the following clause, or wording that is similar in spirit and intent: "The contractor shall preserve and protect all existing private access roads, haul roads, and/or right-of-way roads. At completion of the work and prior to the contractor leaving the project/work site, the contractor shall restore to pre-project conditions all such roads at its own expense. Restoration/repair efforts shall include replacement of base rock and/or surface treatment as required."

(2) When administering floodfight or rehabilitation contracts with the haul road restoration clause, the responsible district will be diligent in recording and documenting the pre-project

condition of the haul roads to be used. Documentary evidence will include a statement or record addressing the overall condition of the haul road, and photographs and/or videotape of the haul road. For floodfight activities that begin in the hours of darkness, all efforts will be made to record haul road conditions as soon as weather/light conditions allow.

(3) Haul road restoration activity is not intended to restore the haul road to its original design standard, or to the "acceptable" standard set forth for non-Federal levees in EP 500-1-1. It is, instead, intended to restore the haul road to its pre-project condition. Proper stewardship of funds will be exercised, e.g., if a floodfight operation caused additional gravel to be placed on the levee crown road to provide an adequate bearing surface for haul vehicles, then the restoration effort would likely consist of a limited amount of grading, but not gravel removal. Districts will exercise good judgment in requiring haul road restoration when the levee rehabilitation effort will occur shortly after the floodfight effort is completed.

(4) For repairs done by equipment rental contracts or Corps force labor accounts, the responsible district will ensure that its actions are in accord with the contract requirements specified above.

u. Debris Detention Basins. Debris detention basins, if a designed and integral component of a flood control project, may be rehabilitated for damages caused by a flood event. However, removal of accumulated debris is the public sponsor's O&M responsibility, and is not eligible for Rehabilitation Assistance.

v. Standard Limits for Costs.

(1) For construction contracting using PL 84-99 funds, contingency amounts are limited in order to allow HQUSACE maximum flexibility to address new emergencies. For dredging contracts, the maximum allowable contingency percentage is 15 percent of the construction cost of the project. For all other types of contracts, the maximum allowable contingency percentage is 10 percent of the construction cost of the project.

(2) E&D costs for projects where the construction cost is less than \$100,000 are limited to a maximum of 10 percent.

(3) E&D costs for projects where the construction cost is greater than \$100,000 are limited to a maximum of six percent, or \$11,000, whichever is greater.

(4) S&A costs for projects where the construction cost is less than \$100,000 are limited to a maximum of 10 percent.

(5) S&A costs for projects where the construction cost is greater than \$100,000 are limited to a maximum of six percent, or \$11,000, whichever is greater.

(6) Should circumstances merit higher amounts for E&D and/or S&A, then justification will be included in the initial funding request, or with a supplemental funding request.

5-3. Eligibility for Inclusion in the RIP.

a. General. Eligibility for inclusion in the RIP specifies the broad categories of FCW's that can be admitted into the RIP. Eligibility for inclusion implies no obligation on the part of USACE or on the part of the public sponsor. The following types of FCW are eligible for inclusion in the RIP:

(1) Federally authorized and constructed HSPP's.

(2) Federally constructed, locally maintained levees and floodwalls.

(3) non-Federally constructed, locally maintained levees and floodwalls that provide a minimum of a 10-year level of protection with 2 feet of freeboard to an urban area, or a minimum of a 5-year level of protection with 1 foot of freeboard to an agricultural area.

(4) Federally constructed, locally maintained flood control channels.

(5) non-Federally constructed, locally maintained flood control channels that provide a minimum of a 10-year level of protection. [NOTE: Interior drainage channels within the protected area of a levee system are not flood control channels.]

(6) Pump stations integral to FCW.

(7) Federally constructed, locally maintained flood control dams.

(8) non-Federally constructed, locally maintained flood control dams.

b. Ineligible Categories. The following categories of FCW are ineligible for inclusion in the RIP:

(1) Structures built for channel alignment, navigation, recreation, fish and wildlife, land reclamation, bank protection, or drainage diversion. Structures built to protect against land or shoreline erosion. Structures built to protect against salt-water intrusion.

(2) Those FCW operated and maintained by USACE or other Federal agencies. This category includes those FCW operated with USACE Operations and Maintenance, General funds, and FCW funded with Mississippi River and Tributaries funds.

(3) USACE or other Federal agency projects uncompleted or under construction.

(4) Any non-Federal FCW under construction.

(5) Projects built by USACE under authority of Section 32 of the Streambank Erosion Control Evaluation and Demonstration Act of 1974.

(6) Those FCW constructed, modified, or repaired with financial assistance from other Federal agencies (e.g., Bureau of Reclamation, FEMA, and Natural Resources Conservation Service), unless exceptions are granted by HQUSACE.

(7) Secondary levees, unless they protect human life.

(8) Channel-type FCW with a drainage area less than 1.5 square miles, or a capacity less than 800 cfs.

(9) Any levee (other than a ring levee that provides 360 degrees of protection) that is not tied to high ground at each end of the levee. High ground may be natural (e.g., a bluff, a hill, or a slope) or constructed (e.g., a highway bridge or overpass embankment, an elevated roadway, or a floodwall.)

5-4. Funding.

a. Inspections. Funding for Initial Eligibility Inspections (IEI's), and Continuing Eligibility Inspections (CEI's) for non-Federal FCW's, will be in accordance with ER 11-1-320. Funding for the maintenance inspections (CEI's) of Federal FCW will be O&M, General, 96x3123.

b. FCW Rehabilitation Investigations and Rehabilitation Work. These activities will be funded in accordance with ER 11-1-320.

c. FCW Database Management. FCW Database management is a primary and inherent emergency management responsibility. Funding for management of the FCW Database is provided for under the annual Class 380 allocation.

Section II - Administration of the RIP

5-5. RIP Establishment and Maintenance. Districts will establish and maintain a RIP in accordance with this chapter and EP 500-1-1. The RIP includes the establishment and maintenance of an automated FCW database for FCW's, the performance of Initial Eligibility Inspections (IEIs) for non-Federal FCW's, the performance of Continuing Eligibility Inspections (CEI's) for FCW's, and rehabilitation of damaged FCW.

a. FCW Database. Districts will establish and maintain an automated FCW Database of all known FCW's, Federal and non-Federal. The FCW Database will include the information listed in EP 500-1-1 for all Federal projects, all non-Federal Active projects, and for previously Active but currently Inactive projects. The FCW Database will include as much information as is available for Inactive projects. A nationwide levee database is being developed. Refer to EP 500-1-1, paragraph 5-3, for procedures regarding the FCW Database.

b. Inspection Process. Refer to EP 500-1-1, paragraph 5-5, regarding general information on the USACE inspection methodology, rating codes, project condition codes, and related items for RIP inspections.

(1) Non-Federal FCW.

(a) Request for IEI. The public sponsor of an Inactive non-Federal FCW may request an IEI for the purpose of becoming Active in the RIP. Funding for IEI's will be requested from HQUSACE on an as needed basis.

(b) IEI's. The IEI will consist of an on-site inspection of the FCW using the Inspection Guide in EP 500-1-1, Appendix A. The IEI will be used to establish the acceptable and minimum performance levels for non-Federal FCW to gain an Active status in the RIP. IEI's will be conducted by technical staff experienced in FCW design, construction, maintenance, and damage investigations.

(c) First CEI After IEI. The first CEI following the IEI will be accomplished within two years after Active status is attained, or after the sponsor has notified the district that all minimally acceptable ratings have been upgraded to an acceptable level, whichever is earlier.

(d) CEI's. CEI's will normally be conducted biennially for non-Federal FCW. For sponsors of projects with historically good ratings, the district may extend the frequency of inspection to a triennial basis. Districts will conduct CEI's using the Inspection Guide in Appendix A, EP 500-1-1 for all non-Federal FCW's in an Active status. A project condition code (in accordance with paragraph 5-5, EP 500-1-1) will be given for each CEI conducted.

(2) Federal FCW's.

(a) IEI's. IEI's are not conducted on Federal FCW's. Federal FCW's are considered to be in an Active status when the Corps turns over the project to the public sponsor for operation and maintenance.

(b) CEI's. CEI's will be conducted at least biennially for Federal FCW, unless ER 1130-2-530 permits a longer period. The CEI is used to verify that the FCW continues to meet minimum acceptable performance levels for the RIP. Districts will conduct CEI's using the

Inspection Guide in EP 500-1-1, or in accordance with ER 1130-2-530. A project condition code (in accordance with paragraph 5-5, EP 500-1-1) will be given for each CEI conducted.

c. Reporting Results of Inspections.

(1) IEI's. Results of IEI's will be provided to the public sponsor within 30 days of the inspection. The district will prominently note that Marginally Satisfactory item(s) must be upgraded to Satisfactory within no more than three years. The district should consider notifying the FEMA Region, the state emergency management agency, and the local level (e.g., county) emergency management agency of inspection results. These notifications may be done on an inspection by inspection basis, or via a consolidated report covering multiple inspections.

(2) CEI's. Results of CEI's will be provided to the public sponsor within 30 days of the inspection. FCW's that have undergone a CEI with a project condition code of Acceptable or Minimally Acceptable will retain an Active status in the RIP. The district will prominently note that Marginally Satisfactory items must be upgraded to Satisfactory within a period of not more than two years. As an exception to this, if the CEI is within the three-year grace period of the IEI that resulted in a project condition code of Minimally Acceptable, then the public sponsor will have the original IEI three year period, but no additional time, to upgrade the Marginally Satisfactory items from the IEI.

(3) An FCW that receives a project condition code of Unacceptable is immediately placed in an Inactive status. See paragraph 5-8.

(4) When an Active FCW changes to Inactive status because of an Unacceptable condition on a CEI, in addition to notifying the public sponsor, the district will notify the state emergency management agency and the local level (e.g., county) emergency management agency. The purpose of these notifications is to ensure that the responsible emergency management officials are aware that the Inactive flood control project will no longer provide a reliable level of protection against flooding, and the agencies may need to review or adjust their emergency response plans. These notifications may be done on an inspection by inspection basis, or via a consolidated report covering multiple inspections, and may include both IEI and CEI.

(5) When a levee that has been certified for the National Flood Insurance Program receives a project condition code of Unacceptable, the district will notify the MSC in writing. The MSC will notify the appropriate FEMA region of the Unacceptable condition.

d. Eligibility Disagreements. If a public sponsor disagrees with an Unacceptable condition given by USACE for an IEI or CEI, the district will inform the sponsor of its right to submit a reclama. The reclama must include pertinent engineering data. Validation of or comment on the reclama by a responsible Professional Engineer is preferable, but not mandatory, at the

public sponsor's option. If the district stands by its original decision after considering the reclama, the district will notify the sponsor in writing of why it rejects the reclama, and advise the sponsor of its right to appeal to the Division Engineer.

(1) Districts and MSC's will submit appeals up to the Chief, Operations Division, HQUSACE. The decision at USACE Headquarters will be considered final.

(2) If the sponsor's reclama is upheld on appeal, then the FCW will return to an Active status. Any damage incurred by the FCW during the reclama/appeal process will be eligible for Rehabilitation Assistance (assuming all other criteria are met) if the appeal is upheld.

e. Information for Sponsors of Inactive FCW. Districts will be proactive in providing information to sponsors of Inactive FCW concerning upgrading their projects in order to become Active in the RIP. This includes providing Levee Owner's Manuals.

5-6. Active Status. Only those FCW in an Active status at the time of the flood or storm event may receive Rehabilitation Assistance under authority of PL 84-99. A project is considered Active if it has a public sponsor, and meets one of the following:

a. Is a non-Federal FCW that has:

(1) Received an IEI by USACE, with a project condition code of Acceptable or Minimally Acceptable, and,

(2) Received a project condition code of Acceptable or Minimally Acceptable on the latest CEI.

b. Is a non-Federal FCW that was damaged in a flood, but has a valid written request from the public sponsor requesting an IEI on file at the responsible district headquarters that was received prior to the flood event, but for which the IEI had not been performed by USACE. Projects in this category will be given an IEI, and must be subsequently determined to meet all eligibility requirements needed for Active status in order to be placed in an Active status and be eligible to receive Rehabilitation Assistance. Sound engineering judgement and reasonable extrapolations will be applied when inspecting and evaluating the damaged levee.

c. is a Federally constructed, locally maintained FCW that met acceptable ICW maintenance standards during the latest CEI.

d. is a Federally authorized and constructed HSPP that met acceptable ICW maintenance standards during the latest ICW inspection.

5-7. (Reserved.)

5-8. Inactive Status. Any FCW eligible for inclusion in the RIP (see paragraph 5-3) that is not in an Active status is considered to be in an Inactive status. Inactive status includes any FCW that was previously in an Active status, but was removed from Active status by USACE because of reasons such as receiving a project condition code of Unacceptable on a CEI, dissolution of the public sponsor, or withdrawal of sponsorship by the public sponsor. Inactive FCW will not receive PL 84-99 Rehabilitation Assistance. FCW remain in an Inactive status until receiving a project condition code of Acceptable or Minimally Acceptable on an IEI.

Section III - Rehabilitation Assistance

5-9. Actions After Occurrence of a Flood Event.

a. Notice to Public Sponsors. District commanders will issue a Notice to Public Sponsors immediately after significant flood events to alert public sponsors of Active projects that a submittal deadline is in effect for USACE assistance to repair damaged FCW under PL 84-99. The submittal deadline will be 30 calendar days from the date the floodwaters recede to bankfull. For special conditions, MSC commanders may extend the deadline for an additional 30 days. The format is provided in EP 500-1-1, Chapter 5, Figure 5-2.

b. Project Information Reports (PIR's). PIR's for Rehabilitation Assistance will be prepared in accordance with EP 500-1-1, paragraph 5-11.

(1) Benefit to Cost Ratio. The BCR must be greater than 1.0 for the PIR to be approved.

(2) PIR Approval Authority. The approval authority for Rehabilitation Assistance PIR's is the Division Commander. The Division Commander may delegate approval authority to a member of the Senior Executive Service on the division staff, or a permanently designated Deputy Division Engineer. Further delegation of authority to approve PIR's is not permitted.

c. Interagency Process for Nonstructural Alternatives. The intent of this interagency process is to allow those agencies with programs for nonstructural alternatives to repairing levees the opportunity to work with public sponsors who may wish to consider a nonstructural alternative. When needed, an Interagency Levee Task Force (ILTF), headed by USACE, will be implemented. (See paragraph 5-24 for additional information regarding the ILTF.) To implement the interagency *Federal Levee Policy*, MSC's will notify other Federal agencies, such as the Natural Resources Conservation Service (NRCS) and the U.S. Fish and Wildlife Service, of all applications for Rehabilitation Assistance being processed by USACE.

d. General Procedures. For general procedures to be followed after occurrence of a flood event, refer to EP 500-1-1, Chapter 5, Section III.

5-10. Cooperation Agreements.

a. Non-Federal FCW's. Prior to USACE providing Rehabilitation Assistance for FCW's, a CA will be executed between the public sponsor and USACE. The CA for Rehabilitation Assistance is provided in EP 500-1-1, Appendix B, Figure B-1.

b. Federal FCW's. A CA is generally not used for Rehabilitation Assistance on a Federal FCW, because Federal projects have a Project Cooperation Agreement (PCA) from the original construction of the project. In lieu of a CA, the district will notify the public sponsor of its requirements (e.g., normal a-b-c's) via memorandum. In the event that no PCA exists from the original construction, or no PCA was executed when a non-Federal FCW was declared to be a Federal FCW through Congressional Act, or the original PCA does not adequately cover required aspects of the current rehabilitation effort, then a CA is required. The CA for Rehabilitation Assistance is provided in EP 500-1-1, Appendix B, Figure B-2.

5-11. Cost Share Determination.

a. Cost Sharing Percentages. Rehabilitation of non-Federal projects will be cost shared at 80 percent Federal and 20 percent from the public sponsor for cost sharable items. Rehabilitation of Federal projects will be at 100 percent Federal cost for cost sharable items. See paragraph d. below for cost sharable items.

b. USACE Costs. USACE will fund, at 100 percent Federal cost, costs associated with the preparation and approval of PIR's, and engineering and design costs for approved projects. USACE costs will also include updating O&M Manuals for Federal projects to reflect changed conditions due to the rehabilitation effort.

c. Public Sponsor Costs. The public sponsor is responsible for providing certain items at 100 percent local cost. These items do not constitute credit towards the public sponsor's local cost share. Public sponsor costs include:

- (1) any costs associated with normal a-b-c's.
- (2) accomplishment of normal or deferred or deficient maintenance items.
- (3) any betterments to the project.

d. Cost Sharable Items. Cost sharable items include construction costs, supervision and administration (S&A) costs, and contingency costs for construction.

e. Exceptions to Normal Cost Sharing and Cost Sharable Items. Under certain circumstances, cost sharing, USACE costs, and cost sharable items (subparagraphs a., b., and d., above), will be modified as follows:

(1) Transportation of borrow material from the closest acceptable borrow source (as determined by USACE) is a cost sharable item. Increased (incremental) transportation costs of borrow material not from the closest acceptable borrow source (as determined by USACE) will be borne 100 percent by the public sponsor. These incremental costs are not creditable toward the public sponsor's cost share.

(2) As an exception to paragraph b. above, cost sharing for PIR's and engineering and design work is required under the following conditions:

(a) Once a Project Information Report is approved, any additional investigation costs or E&D costs incurred because of a sponsor-requested change to the scope of work, FCW alignment, or similar items will be cost shared at 50 percent Federal cost and 50 percent local cost. If the sponsor-requested change results in a lower overall Federal cost, then the Federal cost share will revert to 100 percent.

(b) Once a PIR has been approved, any additional project costs incurred because of a public sponsor's inability or unwillingness to sign the CA (regardless of the reason leading to the inability or unwillingness) within a reasonable time will be cost shared at 50 percent Federal and 50 percent local. A "reasonable time" is defined as 30 days, absent extraordinary circumstances.

(3) If the public sponsor prefers an alternative method of repair that is not the least cost to the Federal government alternative, the public sponsor shall pay 100 percent of the additional costs above the least cost alternative.

f. Manner of Contribution. The local cost share contribution may be cash, work in kind, or a combination of these.

(1) Work in kind consists of labor, equipment, supplies, and/or services provided by the public sponsor. Labor is defined as blue collar-type work normally paid on an hourly wage basis, comparable to Federal Wage Grade positions.

(2) Credit for accomplishment of work in kind is determined by the estimated cost for USACE to perform or contract for the same work. When determining work-in-kind effort, public sponsors will not to be penalized for contracting or work efficiencies.

(3) Work in kind done by the public sponsor will be inspected by USACE to ensure it conforms to USACE requirements.

g. Use of Funds from Other Federal Agencies. A public sponsor may use funds from other Federal agencies to meet its local cost share, provided the granting Federal agency confirms in writing that use of such funds is not prohibited by law.

h. Final Accounting. Upon project completion, a final accounting will be performed to determine proper payment of the local cost share. Any work in kind performed will be credited first, and then cash payments will be credited. If the actual amount of the local share exceeds 20 percent, then any cash payments above the 20 percent level will be refunded to the public sponsor, in accordance with ER 11-1-320. No reimbursement for work-in-kind in excess of 20 percent is authorized.

5-12. Special Circumstances for USACE Constructed FCW.

a. Design/Construction Deficiencies. Policy on correction of design and/or construction deficiencies at USACE-constructed, locally operated and maintained projects is set forth in ER 1165-2-119. It states that work to correct design or construction deficiencies may be recommended for accomplishment under existing project authority without further Congressional authorization, if applicable requirements are met. Deficiencies will not be corrected with FCCE funds, except as a last resort emergency measure to protect human life.

b. Changed Conditions. In instances where the need for project modification is due to changed physical condition since project construction, the project should be reviewed under the authority of Section 216 of the 1970 Flood Control Act, or other appropriate study authority.

Where appropriate, necessary Congressional authorization should be pursued to correct problems with the project. Deficiencies due to changed conditions will not be corrected with FCCE funds.

5-13. Environmental Considerations.

a. General. Most rehabilitation projects fall under the exemptions contained in 33 CFR 323.4 or are permitted by Nationwide Permit Number 3 (NWP 3) (Maintenance) or by NWP 31 (Maintenance of Existing Flood Control Activities). Regional General Permits issued by District Commanders may also allow for certain maintenance or repair activities. For work not so exempted or permitted by general permits, the standard permit evaluation will be followed unless the MSC Commander approves the use of emergency procedures, in accordance with 33 CFR 325.2(e)(4), based on a determination that normal procedures will result in an unacceptable hazard to life, a significant loss of property, or an immediate and significant economic hardship.

(1) NWP 3 authorizes the repair, rehabilitation, or replacement of previously authorized and currently serviceable structures or fill under the authorities of both Section 404 and Section 10 of the Rivers and Harbors Act of 1899.

(2) NWP 31 authorizes the maintenance of existing flood control facilities (including debris basins, detention/retention basins, and channels), that were previously authorized by the Corps by Individual Permit, General Permit, by 33 CFR 300.3, or did not require a permit at the time it was constructed, or were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance (i.e., a Federal project).

(3) Section 404(f)(1) of the CWA, as implemented by 33 CFR 323.4(a)(2), specifically exempts routine maintenance of levees (which includes tree cutting and tree root removal) from the requirement to obtain a Department of the Army (DA) Permit, pursuant to Section 404. This exemption is applicable to all levees constructed before 1972, and to those levees that were constructed since that date, that required and received DA Permits for construction. It is assumed that any non-Federal levee that is Active in the RIP has been appropriately investigated and determined to be in compliance with applicable provisions of the CWA, and has received the necessary permits for construction.

(a) The routine maintenance exemption applies only within the physical limits of the levee.

(b) The requirements for (and exemptions from) DA Section 404 Permits apply only to those levees involving work within the waters of the United States (U.S.) (as defined at 33 CFR Part 328).

(c) Levees (or sections of levees) that are not within the waters of the U.S. do not require DA approval, either under Section 404 or Section 10.

(d) Other permits (e.g., from a State Fish and Wildlife Agency) may be required regardless of the need for a DA permit.

(e) Levee maintenance does not include any modification that changes the character, scope, or size of the original fill design for the levee.

(4) Some local jurisdictions have passed laws and ordinances prohibiting tree cutting or tree root removal. ER 500-1-1, in implementing 33 CFR Part 203 and Public Law 84-99, takes precedence over state and local laws and ordinances addressing this matter. This situation applies even when the public sponsor is performing (or contracting for) this work on a non-Federal levee.

(5) Mechanized tree and root removal within nonstructural channels may require authorization under Section 404 and/or Section 10.

(6) EM 1110-2-301, Guidelines for Landscape Planting at Floodwalls, Levees, and Embankment Dams, provides criteria for the design of landscape plantings at levees. Refer to this manual for guidance on root-free and vegetation-free zones.

b. Water Quality. If the processing of an individual DA Permit is required, a Section 401 Water Quality Certificate, or waiver thereof, must be obtained from the state, if a DA Section 404 discharge is involved. District commanders will establish reasonable periods of time for states to act on 401 certification requests in accordance with 33 CFR 325.2(b)(1)(ii) and will seek to obtain advance 401 certification from states to cover emergencies.

c. Coastal Zone Management. District commanders will develop procedures with those states having approved Coastal Zone Management (CZM) plans to ensure that those states complete their actions on CZM certifications as quickly as possible.

d. Inclusion in Operation Plans. The procedures developed to implement subparagraphs b. and c. above will be included in the MSC and District Operation Plans for disasters. Similar procedures will be arranged with states that have assumed control of the Corps Section 404 permit program through transfer.

e. Environmental Assessment. An environmental assessment will be made of actions to be taken on each approved project. Guidance provided in paragraph 2-3.k. will be followed.

f. Executive Order 11988. The provisions of EO 11988 are normally not applicable to the rehabilitation of FCW to pre-disaster condition. However, a major rehabilitation project, one requiring extensive engineering and design and a significantly changed footprint, is to be evaluated for its impact on the floodplain. In those instances where the overall impacts of the project could be so adverse that restoration would be imprudent, repairs will be made only if the project protects human life and does not create a 1-foot increase in the floodway water surface elevation used to design the main levee. The repair of pump stations is not considered to be adverse and incompatible development of the floodplain, and should not affect approval of a Project Information Report.

g. Endangered Species Act. The Endangered Species Act procedures contained in 50 CFR Part 402 (Section 7) and in ER 1105-2-100, paragraph 7-33b.(10), will be implemented at the earliest possible moment, after the initial repairs have started, so as to avoid delays that could cause unacceptable risks to life or property.

h. National Historic Preservation Act. Section 106 of the National Historic Preservation Act of 1966 requires the Corps to take into account the effects of its undertakings on historic properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. The procedures defining how the Corps meets these

statutory responsibilities are contained in 36 CFR Part 800, "Advisory Council on Historic Preservation: Protection of Historic Properties." Specific procedures to be followed during a disaster or emergency are contained in section 800.12, "Emergency situations." MSC's and districts may develop, in consultation with the Advisory Council and others, standard procedures during a disaster and/or emergency; they may follow provisions of programmatic agreements that contain specific provisions for addressing historic properties in emergencies; or, in the absence of specific procedures, provide opportunities to comment as specified in section 800.12(b)(2). Procedures for processing Department of the Army Permits in emergency situations are described in 33 CFR Part 325.2(e)(4) and the treatment of historic properties in permit areas can be found in Appendix C of Part 325.

5-14. Initial Repairs - Breached Levees. In some circumstances, such as when a massive breach occurs and typical rehabilitation time would be significant, initial repairs may be justified. Initial repairs are intended to restore a minimum level of protection (normally a 10- to 25-year level of protection) to reduce the threat of recurrence of substantial damages to life and property, until such time as the standard rehabilitation process can be finished. Preparation of an Initial Repairs PIR requires CECW-OE concurrence. Approval authority for an Initial Repairs PIR is the Division Commander. See EP 500-1-1, paragraph 5-14.e. for additional information.

a. Justification for Initial Repairs. The following justification criteria for Initial Repairs have been developed. The closing of breached levee sections using Initial Repairs may be considered if:

(1) For Federal and non-Federal urban levees, the threat to life and property is considered greater than was present in the pre-flood condition.

(2) For Federal and non-Federal levees which protect predominantly agricultural areas but have one or more urbanized areas, the risk of flooding in the urbanized areas in the current (breached) conditions is greater than 5 percent (i.e., a 20-year or more frequent flood event would cause damages to properties in urban areas). A determination must be made that in the breached condition, actual physical damages in urbanized areas would be caused by the occurrence of a 5 percent chance flood event.

(3) For Federal and non-Federal agricultural levees, the breaches must be filled to drain crop lands and/or initiate land restoration.

(4) For Federal and non-Federal agricultural levees, the lands are likely to be returned to crop production by the next planting season, and,

(a) The cost of the initial repair is less than \$10 per acre; or,

(b) The current risk of substantial flooding to residential, commercial, public, and industrial properties is greater than 10 percent (10-year or more frequent flood event would cause damage to developed properties); or,

(c) The cost of the initial repair is less than \$50 per acre protected and the risk of flooding is greater than 20 percent chance (5-year or more frequent flood event would flood croplands.)

b. Compliance. Appropriate environmental compliance and Endangered Species Act procedures must be complied with, when applicable.

c. Completeness of the Action. All breaches in a continuous levee which affect the residual risks and other conditions specified in this paragraph must be filled and the costs included in the justification decision.

d. Economic Analysis. The economic analysis of the future permanent repair will be based on the costs and benefits of the *total repair* as measured by comparing the total cost of restoration (Initial Repairs plus final repair) to the economic benefits attainable had the initial repairs not been undertaken. Districts must include the initial repair costs in the overall economic analysis of the project when final repair costs are determined in the PIR. In deciding whether or not to effect an Initial Repair, the District and the public sponsor must be cognizant of the fact that undertaking an Initial Repair may preclude a permanent repair, if the BCR of the permanent repair is not met.

e. Need for PIR. An abbreviated PIR is used to document the necessity of an Initial Repair. See EP 500-1-1, paragraph 5-14, for the format to be used.

f. Risk of Flooding. As used in this paragraph, the term *risk of flooding* pertains to the risk of actual lands and properties being flooded, and not the level of protection afforded by the breached levee.

5-15. Relief Wells. Relief wells are components of many Active levee projects. Rehabilitation of relief wells, as part of an overall levee rehabilitation project, is necessary to maintain the integrity of the project. However, rehabilitation of relief wells by USACE should not accomplish work that should be the public sponsor's responsibility to perform. Allowable relief well costs for PL 84-99 rehabilitation projects are as follows:

a. Well Replacement and/or Cleanout. Well replacement and/or well cleanout is allowable if (1) the well was inundated, and (2) the damage to the well can be reasonably judged to have been caused by (a) flowing water, (b) floating debris impacting the well components, or (c) other reasonable causes, and *not* by an improperly functioning flap or lack of proper maintenance by the sponsor.

b. Housing. Repair or replacement of the housing is allowable if (1) the housing was inundated, and (2) damage can be reasonably judged to have been caused by the flood event.

c. Foundation and/or Drainage Problems. Repairs to the foundation and/or to correct drainage problems are allowable if (1) the well was inundated, and (2) damage can be reasonably judged to have been caused by the flood event.

d. Well Rehabilitation. Well rehabilitation is allowable if (1) the well was inundated, and (2) damage can be reasonably judged to have been caused by the flood event, and not by an improperly functioning flap.

e. Related Components. Repair or replacement of gaskets, bolts, washers, lids, standpipes, checkvalves, and similar components are a sponsor responsibility and not an allowable charge for Rehabilitation Assistance unless the well is eligible for cleanout (paragraph a. above), and it can be reasonably determined that the component was damaged by the flood.

f. Paint/Painting. Painting costs are not allowable except as incidental to other allowable charges.

g. Piezometer Repair or Replacement. Piezometer repair or replacement is an allowable rehabilitation cost.

Section IV - Nonstructural Alternatives to Structural Levee Rehabilitation

5-16. Authority and Policy. Under PL 84-99, the Chief of Engineers is authorized, when requested by the non-Federal public sponsor, to implement nonstructural alternatives (NSA's) to the rehabilitation, repair, or restoration of flood control works damaged by floods or coastal storms. The option of implementing an NSA project (NSAP) in lieu of a structural repair or restoration is available only to non-Federal public sponsors of FCW's eligible for Rehabilitation Assistance in accordance with this regulation, and only upon the written request of such non-Federal public sponsors.

a. Principal Purposes. The principal purposes of an NSAP are for floodplain restoration, provision or restoration of floodways; and/or reduction of future flood damages and associated FCW repair costs. [NOTE: Habitat restoration is recognized as being a significant benefit that can be achieved with an NSAP, and may be a significant component of an NSAP, but is not considered to be a principal purpose under this authority.]

b. Sponsor Requirement. A sponsor is required for an NSAP. The NSAP sponsor must be either a public sponsor as defined in paragraph 2 -3.r. of this regulation, or another Federal

agency. The NSAP sponsor must certify that it has the legal authority and financial capability to provide for the required items of local cooperation.

c. USACE and NSAP Management. The Corps will not be responsible for the operation, maintenance, or management of any NSAP implemented in under authority of PL 84-99.

d. Rejection of NSAP Consideration. The Corps may, in its sole discretion, reject any request for an NSAP which would lead to significantly increased flood protection or flood fighting expenses for public agencies, FCW sponsors, public utilities, or the Federal Government; or, threaten or have a significant adverse impact on the integrity, stability, or level of protection of adjacent or nearby flood control works; or, lead to increased risk of loss of life or property during flood events.

e. Responsibilities of the NSAP Sponsor. The responsibilities of the NSAP non-Federal sponsor are to operate and maintain the NSAP; provide, or arrange for and obtain, all funding required to implement the NSAP in excess of what the Corps provides; and to accept the transfer of ownership of any lands or interests in lands acquired by the Corps and determined by the Corps to be necessary to implement the NSAP.

f. Responsibilities of Other Federal Agencies Acting as NSAP Sponsor. The Corps may participate with one or more Federal agencies in NSAP's. If the Corps is the lead Federal agency, based on mutual agreement of the Federal agencies, then a non-Federal NSAP sponsor is required. If another Federal agency is the lead Federal agency, then Corps participation in the NSAP will be based on the content of this section, with appropriate allowances for effecting an NSAP in accordance with the authority and ultimate goal of the lead Federal agency. A Memorandum of Agreement with the other Federal agency(s) involved is required.

g. Responsibilities of the Requesting FCW Project Public Sponsor. The FCW project sponsor must request that the Corps undertake an NSAP in lieu of rehabilitation of the FCW, in accordance with the public sponsor's applicable laws, ordinances, rules, and regulations. If not also the NSAP sponsor, the FCW project sponsor must divest itself of responsibility to operate and maintain the FCW involved in the NSAP, and provide to the NSAP sponsor such lands or interests in lands as it may have which the Corps determines are necessary to implement the NSAP.

h. Cessation of Corps Participation. Corps participation in development and implementation of an NSAP may cease, at the sole discretion of the Corps, one year after the date of approval of rehabilitation of the damaged FCW or the date of receipt of the FCW public sponsor's request for an NSAP, whichever is earlier, if insufficient progress is being made to develop and implement the NSAP for reasons beyond the control of the Corps. In

such circumstances, the Corps may determine, at its sole discretion, that Rehabilitation Assistance for the damaged flood control project may also be denied.

i. Non-Limitation of USACE Involvement. Nothing in this section shall be construed to limit the participation of other Federal, State, tribal, local, and private agencies in the development, implementation, or future operations and maintenance of an NSAP, subject to the limitations of such participating agency's authorities and regulations.

j. Further USACE PL 84-99 Assistance. After assumption of the NSAP operation and maintenance responsibility to the NSAP sponsor or the lead Federal agency, the Corps will not provide any flood-related assistance anywhere within the formerly protected area of the FCW, except for rescue operations. As an exception, on a case-by-case basis, certain structural flood control works (or elements thereof) repaired or set back as part of the implementation of an NSAP having a non-Federal sponsor may be considered for future flood-related assistance. Normal RIP policies and procedures apply.

k. Environmental Considerations. NSAP's are subject to the same environmental requirements, restrictions, and limitations as are structural rehabilitation projects. See paragraph 5-13.

l. Reimbursement for Acquisition of Land. For the acquisition of land, interests in land, easements, and rights of way for an NSAP, reimbursement may be made to the non-Federal sponsor of the NSAP. Such reimbursements are subject to the normal Corps land acquisition process, funding caps set forth in paragraph 5-17, and availability of appropriations.

m. Combining Land Acquisition Funding. For the acquisition of land, interests in land, easements, and rights-of-way, Corps funding may be combined with the funding of other Federal agencies, absent specific statutory language or principle prohibiting such combinations, under the terms of an MOA with another Federal agency.

5-17. Funding for NSAP's.

a. Cost Share Principle. There is no set percentage for the Federal share or local cost share for an NSAP. The Corps may bear up to 100 percent of the costs for an NSAP, subject to the limitations set forth in paragraph 5-17.b. below.

b. Determination of USACE Cost Cap. Exclusive of the costs of investigation, report preparation, engineering and design work, and related costs, Corps expenditures for implementation of an NSAP are limited to the lesser of (1) the Federal share of rehabilitation construction costs of the project were the FCW to be structurally rehabilitated in accordance with this regulation, or (2) the Federal share of computed benefits which would be derived from

such structural rehabilitation. Exceptions to this cost cap policy may be requested from HQUSACE.

c. Allowable Costs. Allowable costs and expenses for NSAP's are:

- (1) Acquisition of land or interests in land.
- (2) Removal of structures, including manufactured homes, for salvage and/or reuse purposes.
- (3) Demolition and removal of structures, including utility connections and related items.
- (4) Debris removal and debris reduction.
- (5) Removal, protection, and/or relocation of highways, roads, utilities, cemeteries, and railroads.
- (6) Construction to promote, enhance, control, or modify water flows into, out of, through, or around the nonstructural project area.
- (7) Nonstructural habitat restoration, to include select planting of native and desirable plant species, native species nesting site enhancements, etc.
- (8) Total or partial removal or razing of existing reaches of levee, to include removal of bank protection structures and riprap.
- (9) Protection/floodproofing of essential structures and facilities.
- (10) Supervision, administrative, and contract administration costs of other allowed expenses.

5-18. NSAP Cooperation Agreement. In order to clearly define the obligations of the Corps and non-Federal interests, a CA (with a non-Federal sponsor) or a Memorandum of Agreement (MOA) (with other Federal agencies) is required for an NSAP. NSAP CA's require HQUSACE approval.

a. Non-Federal Interests. For NSAP's, non-Federal interests shall:

- (1) Provide without cost to the United States all borrow and dredged or excavated material disposal areas necessary for the project;

(2) Hold and save the United States free from damages due to the project, except for damages due to the fault or negligence of the United States or its contractor; and

(3) Maintain and operate the NSA project after completion in a manner satisfactory to the Chief of Engineers.

b. Costs. The CA or MOA must address all pertinent costs for the NSAP, and which agency is responsible for each.

c. Other Federal Agency Funding. NSAP CA's shall not prohibit non-Federal interests from accepting funding from other Federal agencies, so long as the provision of such other Federal agency funding is not prohibited by statute.

d. Contributed Funds. Contributed funds may be accepted without further approval by the Chief of Engineers upon execution of the CA by all parties. The required certificate of the district commander will cite 33 USC § 701h as the pertinent authority.

e. Prohibition of Future USACE Assistance. The prohibition of future assistance described in paragraph 5-16.j., above, must be included in the NSAP CA.

f. EO 11988. NSAP CA's shall include acknowledgment of, and a statement of planned adherence to, Executive Order 11988, Floodplain Management, 3 CFR 117 (1977 Compilation), by the NSAP sponsor.

g. Legal Restrictions. The CA must include a statement of legal restrictions placed on formerly protected lands that would preclude future use and/or development of such lands in a fashion incompatible with the purposes of the NSAP.

Section V - Rehabilitation Assistance for Hurricane/Shore Protection Projects

5-19. USACE Common Policy on Non-Federal Responsibilities for OMRR&R for HSPP Projects. HSPP projects are formulated to provide hurricane and storm damage reduction. HSPP projects include hurricane/tsunami protective structures, beach nourishment projects, beach enhancement projects, and other types of projects that protect residential and commercial portions of the coastal shoreline. HSPP projects may be "soft" (i.e., consisting of sacrificial beaches, berms, and/or sand dunes), "hard" (e.g., consisting of a concrete sea wall), or a combination of the two. The non-Federal sponsor must operate, maintain, repair, replace, and rehabilitate the completed project. The unique aspect of beach protection projects is the provision for continuing Federal participation in the periodic nourishment of these projects where sand is placed on the beach, berm, or dune to replenish eroded material. Nourishment is undertaken when necessary to replace storm-induced losses and prevent erosion of the beach design section. Nourishment may be planned for on a recurring schedule, e.g., every five years, or on a complete "as-needed" basis.

5-20. HSPP Projects - General Policies for Rehabilitation.

a. Eligibility. To be eligible for Rehabilitation Assistance, an HSPP must be a completed element of a Federally authorized hurricane or shore protective structure project, and repair/restoration to a pre-storm condition is necessary to allow for adequate functioning of the project. The proposed work must have a benefit to cost ratio greater than 1.0. Recreation benefits will not be used in the BCR calculation.

b. Locally Constructed Portions of an Authorized HSPP. Completed portions of an authorized HSPP that were constructed by non-Federal interests are eligible for Rehabilitation Assistance when approval of such construction was obtained from the Commander, HQUSACE or a designated representative prior to the storm event. An HSPP project or functional element thereof is considered to be complete when it has been formally transferred to the non-Federal public sponsor for OMRR&R.

c. Limit on FCCE-Funded Work. Emergency repair and rehabilitation of HSPP's with FCCE funds will be limited to that necessary to allow for adequate functioning of the project, or restoration to pre-storm condition, whichever is less.

d. The Risk Test. The need for funding under PL 84-99 will be based on an assessment of the risk to life and property, and the need for immediate action. In no case, however, will an HSPP be restored with PL 84-99 funds beyond its pre-storm condition.

e. The Extraordinary Storm. To be eligible for Rehabilitation Assistance, the HSPP must be substantially eroded/damaged by wind, wave, or water action *of an other than ordinary nature*. USACE defines this as an "extraordinary storm". An extraordinary storm

is a storm that, due to length or severity, creates weather conditions that cause significant amounts of damage to a Hurricane/Shore Protection Project.

(1) "Length or severity" refers to a Category 3 or higher hurricane as measured on the Saffir-Simpson scale, or a storm that has an exceedance frequency equal to or greater than the design storm of the project.

(2) "Significant amounts of damage" have occurred when:

(a) the cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds one million dollars and is greater than two percent of the original construction cost (expressed in current day dollars) of the HSPP or separable element thereof; or,

(b) the cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds six million dollars; or,

(c) more than one-third of the planned or historically placed sand for renourishment efforts for the HSPP (or separable element thereof) is lost; or,

(d) when only rehabilitation of hard features is involved, the criteria of paragraph 5-2.q. are met.

f. Extraordinary Storm Justification. The PIR must include justification that substantiates the occurrence of an extraordinary storm. The determination of whether a storm qualifies as extraordinary will be made by the Director of Civil Works, in consultation with the Assistant Secretary of the Army for Civil Works (ASA(CW)) if necessary. PIR justification will include relevant data from the National Weather Service. Saffir-Simpson scale Category I and Category II hurricanes (as measured at the HSPP project) are presumed to be ordinary storms in the absence of a preponderance of evidence that indicates a different conclusion.

g. Uncompleted HSPP's. Rehabilitation Assistance using PL 84-99 funds will not be provided for uncompleted HSPP's eroded by storm events. Uncompleted HSPP eroded by storm events before they are formally transferred to the non-Federal public sponsor will be restored to their design dimensions using Construction, General funds. Costs will be shared by the non-Federal public sponsor as project construction costs under the terms of the PCA.

h. Funding the Restoration Work. In most cases, the non-Federal public sponsor will wish to fully restore the HSPP soft features where only a partial restoration is justified under the provisions of PL 84-99. In other cases, normal scheduled renourishment is required in the near future. In other cases, USACE will require that full restoration must be undertaken as a

condition of receiving HSPP Rehabilitation Assistance. In such cases, the degree of project restoration eligible for rehabilitation funding under PL 84-99 versus the periodic nourishment to be accomplished under the terms of the PCA will be decided on a case-by-case basis by the Director of Civil Works, in conjunction with the ASA(CW) if necessary.

(1) In the PIR preparation, the district will apply the principle that, while an 'average' periodic renourishment cycle is estimated (normally in the PCA or the General Design Memorandum for the original HSPP), the need for periodic renourishment is most often associated with replacement of erosive losses that occurred during ordinary (vice extraordinary) storm events.

(2) Other considerations to be used in making the assessment on degree of restoration required are addressed in EP 500-1-1, Chapter 5, Section V.

i. Sharing Dredge Mobilization/Demobilization Costs. The essentially fixed costs of dredge mobilization and demobilization for a given project will be borne proportionally among contributing sources of funds. These costs will not be borne solely as a cost of rehabilitation under PL 84-99 unless FCCE funds are the only source of funds for the renourishment effort.

j. Scheduling HSPP Rehabilitation Assistance Work. HSPP Rehabilitation Assistance work should be scheduled so that completion will occur before the beginning of the next major storm season (e.g., 1 June for the Atlantic hurricane season.) Inability to do so is normally sufficient justification to disapprove HSPP Rehabilitation Assistance, because it indicates the lack of an emergency situation regarding rehabilitation of the HSPP.

Section VI - Other Provisions of the RIP

5-21. Levee Owner's Manual.

a. Authority. Pursuant to PL 84-99, the Corps will provide a levee owner's manual to the public sponsor of all FCW's in an Active status in the RIP.

b. Policy.

(1) Non-Federal projects. A copy of the Corps-developed levee owner's manual will be provided to sponsors of Active non-Federal projects. The levee owner's manual includes standards that must be met to gain and maintain an Active status in the Rehabilitation and Inspection Program. The levee owner's manual may also be provided, upon request, to the sponsor of an Inactive non-Federal project so that the sponsor may evaluate the project and prepare for an Initial Eligibility Inspection to gain an Active status in the Rehabilitation and Inspection Program.

(2) Federal projects. The Operations and Maintenance Manual specified by Section 208.10(a)(10) of Title 33, Code of Federal Regulations, will fulfill the requirement of providing a levee owner's manual if the Corps has not provided a separate levee owner's manual to the public sponsor of a Federal project.

c. Procedural requirements. Upon initial publication, and when substantive changes are made in the Rehabilitation and Inspection Program, the Corps will provide copies of the Levee Owner's Manual to public sponsors of Active non-Federal flood control works. Other levee sponsors, or owners of private levees who intend to seek sponsorship and Active status in the RIP, will be provided a copy of the Levee Owner's Manual upon request.

5-22. Regional Variances on Vegetation Standards - Policy.

a. Authority and Background. Section 202(g) of WRDA 96 required the U.S. Army Corps of Engineers to undertake a comprehensive review of its levee vegetation policy. The review included examining current policies in view of the varied interests in providing flood control; preserving, protecting, and enhancing natural resources; protecting the rights of Native Americans pursuant to treaty and statute; and other factors as appropriate.

b. Applicability. The policy contained in this paragraph implements the Section 202(g) requirement, and applies to all Active Federal and non-Federal levees, except for Mississippi River and Tributaries (MR&T) levees. This policy also applies to all levees for which the U.S. Army Corps of Engineers has sole responsibility for maintenance and repair activities using Operations and Maintenance, General, (O&M, Gen) funding.

c. Policy - Federal and Non-Federal Levees. The public sponsor of an Active flood control levee may seek a variance from Corps policy (i.e., Appendix A of EP 500-1-1, and ER 1130-2-530) so as to allow additional vegetation to grow on levees, when allowing such vegetation would preserve, protect, and/or enhance natural resources, and/or protect the rights of Native Americans. Such variances will only be granted if:

(1) the safety, structural integrity, and functionality of the levee are retained; and,

(2) accessibility for inspection and flood fighting purposes is retained; and,

(3) the level of protection does not fall below the level necessary for levee certification under the National Flood Insurance Program if the levee is currently so certified; and,

(4) the level of protection does not fall below the minimum permissible for PL 84-99 acceptability (i.e., 5-year level of protection for agricultural levees and 10-year level of protection for urban levees).

d. Policy - O&M, Gen-funded Levees. Districts may apply variances to standing Corps policy regarding levee vegetation on O&M, Gen-funded levees as long as the conditions of paragraph c. above are met.

e. Regional Variance Agreement. The Regional Variance Agreement (RVA) is a memorandum of agreement to which the Corps, and appropriate tribal, state, and local entities, are signatories, that provides regional variances for multiple levees.

f. Approval Authority.

(1) Regional Variance. The approval authority for granting a Regional Variance is the district commander. This authority may not be delegated.

(2) Regional Variance Agreement.

(a) The approval authority for an RVA is the district commander. This authority may not be delegated.

(b) If multiple districts have geographical responsibility for the area covered by an RVA, then the Division Commander may sign the RVA, or the Division Commander may designate a lead district whose commander will manage/sign a multi-district RVA.

g. Procedures.

(1) A separate Regional Variance must be issued for each levee not covered by an RVA.

(2) Procedures and considerations for granting Regional Variances and RVA's are in paragraph 5-8.k. and Appendix D of EP 500-1-1.

5-23. Dams. Federal dams, and non-Federal dams with the principal function of providing flood control and/or flood damage reduction, are eligible for inclusion in the RIP. "Principal function" means that the dam is capable of containing the precipitation of a 200-year return frequency storm prior to use of the spillway.

a. Federal Dam Projects. WRDA 86 authorized the Corps to cost share in the construction of dams, with a public sponsor taking over O&M responsibility upon completion of the dam. Such projects gain an Active status in the RIP upon turnover of responsibility to the public sponsor and upon verification by the appropriate Corps office that the dam's principal function is flood control.

b. Non-Federal Dam Projects. A non-Federal dam can gain an Active status in the RIP. To do so, it must have flood control as its principal function, and it must pass a Corps Initial

Eligibility Inspection in the same manner as a non-Federal levee. Due to the unique aspects of dams and dam construction, it will be a non-Federal expense to compile the necessary data (e.g., ground borings, seismic considerations, as-builts of the structure, etc.) for the Corps to make an "office review" prior to any on-site IEI.

c. Rehabilitation Assistance for Dams. Only those components of the project necessary for flood control are eligible for Rehabilitation Assistance. This includes the dam structure itself, the spillway, outlet works, etc. Other components that are not flood control features (e.g., features for hydropower, recreation use, visitor centers, etc.) are not eligible for Rehabilitation Assistance.

d. Funding. Funding for field investigations, IEI's, CEI's, and rehabilitation for dams will be covered under the same categories as are these actions for other flood control works.

e. Procedures. Refer to EP 500-1-1, paragraph 5-20, for procedural information regarding dams in the RIP.

5-24. Interagency Levee Task Force. By memorandum dated 18 February 1997 with the subject of *Floodplain Management and Procedures for Evaluation and Review of Levee and Associated Restoration Projects*, the Office of Management and Budget (OMB) and the Council on Environmental Quality (CEQ) directed USACE to take the Federal agency lead for Interagency Levee Task Forces (ILTF). In their directive, OMB and CEQ mandated that appropriate Federal agencies fully consider relevant options, including nonstructural alternatives, during evaluation and review of levee repair and rehabilitation projects and associated restoration necessitated by floods or coastal storms. Repair agencies (such as the Corps) are also directed to ensure that relevant Federal and local agencies have the opportunity to comment on the project specifications and suggest appropriate modifications.

a. ILTF Goal. The overall goal of the ILTF process is to achieve a coordinated, rapid, and effective multi-agency response to damaged flood and floodplain management systems, while ensuring a cost effective approach to flood damage mitigation, floodplain management and the protection of important environmental and natural resources inherent to the floodplain. It is not intended to deny access to existing programs for levee repair that are in accord with sound financial and environmental practices, and the policies and procedures of ER 500-1-1 or other Federal agencies' authorities.

b. ILTF Activation. Based on the information available during and after a flood event, activation of an ILTF may be directed by HQUSACE. When an MSC identifies a need for an ILTF, but has not received instructions from HQUSACE to initiate the process, the MSC shall forward its request for ILTF activation to HQUSACE (ATTN: CECW-OE) for action. In either case, HQUSACE, by memorandum, will designate the appropriate MSC commander as the

lead Corps official (LCO) for the ILTF. The MSC commander may delegate LCO authority to the Deputy Division Commander or to a member of the Senior Executive Service on the Division staff. No further delegation is permitted. When multiple states are involved in a flood event, a separate ILTF will be set up for each state. An LCO will be appointed for each ILTF that is activated.

c. Funding.

(1) Generally, the Federal Emergency Management Agency (FEMA) will provide funds for ILTF activities under Emergency Support Function #3 (ESF #3) activities. In addition, FEMA will normally provide space, telecommunications support, mail costs, common user support requirements, and related support for the ILTF in the Disaster Field Office.

(2) Upon activation of an ILTF, and when FEMA (ESF #3) funds are not available for ILTF activities, the responsible MSC will submit a written request for funds to HQUSACE for each ILTF, in accordance with ER 11-1-320. ILTF activities will be funded under Class 370 for costs not covered by FEMA.

(3) Other participating agencies will provide for their own personnel and per diem costs for participation on the ILTF. Class 370 funds may not be used to fund personnel and per diem costs for ILTF participants from other agencies.

(4) All district-level and division-level levee rehabilitation efforts, and specifically division and district coordination with an ILTF, will be appropriately funded under Class 310, 320, or 340. Class 370 funds will be used only for ILTF "organizational" activities.

d. Direction and Control of an ILTF. Once initiated or approved by HQUSACE, the ILTF shall be established to review all proposals for repair and restoration of flood damaged levees and associated systems. The ILTF shall include representatives of each involved Federal agency and appropriate State, Tribal and local agencies.

(1) The LCO will ensure that the ILTF meets regularly to resolve all issues.

(2) Each repair proposal from a Federal agency (e.g., a PL 84-99 rehabilitation by USACE, an Emergency Watershed Program repair under Natural Resources Conservation Service authority, etc.) will be provided to ILTF members for review and comment prior to final action by the responsible Federal agency. A minimum of 24 hours should be provided for this review and comment period, but this time will generally not exceed 72 hours.

(3) In evaluating proposals, each agency shall consider, to the extent appropriate and practicable, nonstructural alternatives and design modifications that will:

(a) Reduce flood damages to the applicant and adjacent upstream and downstream localities.

(b) Lower long term cost to the taxpayer.

(c) Improve the environment or environmental conditions, to include water quality.

(d) Assist public and private landowners in fulfilling their conservation objectives or obligations related to protected species, wetland restoration, and riparian habitat protection.

(e) Address flood damage on a system-wide or watershed basis.

(f) Ensure compatibility with existing local or regional floodplain management and ecosystem plans, approved forest land plans, hazard mitigation plans, and resource management plans.

(g) Allow agencies to use their authorities in implementing repairs that achieve enhanced environmental values. This includes improvement of fish and wildlife habitat, species diversity, and reducing risks of future flood damages.

e. Participating Agencies. The LCO will invite appropriate State, tribal, and local agencies to participate in the ILTF, and will, as a minimum, invite the following Federal agencies:

(1) Department of Agriculture (Natural Resources Conservation Service).

(2) Department of Commerce (National Marine Fisheries Service and the Economic Development Administration).

(3) Department of Housing & Urban Development.

(4) Department of the Interior (US Fish and Wildlife Service, Bureau of Reclamation, Bureau of Land Management, and US Geological Survey).

(5) Department of Transportation.

(6) Environmental Protection Agency.

(7) Federal Emergency Management Agency.

(8) Small Business Administration.

f. ILTF Charter. An ILTF charter format (the Basic Charter) is provided in EP 500-1-1, Figure 5-6. Each ILTF will operate under the guidelines of the Basic Charter until such time as a revised charter is agreed upon by the participating agencies. Significant changes from the Basic Charter will be coordinated with HQUSACE (CECW-OE) prior to distribution of the revised charter for signature among the participating agencies. The LCO will be the Corps signatory of the charter.