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CONTINUING AUTHORITIES PROGRAM
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APPENDIX F

Continuing Authorities Program

SECTION I – PROGRAM OVERVIEW

F-1. Purpose and Applicability.

a. Purpose. This appendix provides the policy and procedural guidance for planning, design, and implementation of projects pursued under the legislative and administrative provisions of the Continuing Authorities Program.

b. Applicability. The new project implementation processes in this Appendix will apply to all CAP projects initiated (received initial work allowance) after 31 January 2006. In addition, Table F-1 describes the transition of any ongoing CAP project (received initial work allowance prior to 31 January 2006) to the new CAP project implementation processes. For the purpose of applying Table F-1:

(1) A “decision document” means: a Detailed Project Report for Section 204, 206, and 1135 projects if Federal costs exceed \$1M; a Planning and Design Analysis (PDA) for Section 204, 206, and 1135 projects with Federal costs less than \$1M; and a PDA for Section 14 and 208 projects. A Preliminary Restoration Plan is not considered a decision document.

(2) Because a PDA consists of all the planning and design activities to demonstrate that Federal participation is warranted and no formal report is required, “the approval date for the decision document” is the date on which the district determines to proceed with design activities. Further, for ongoing PDAs it will be necessary to separate the costs incurred for feasibility activities from those incurred for design activities by the district allocating the total costs incurred for the PDA between the costs of the planning portion of the PDA (feasibility phase costs) and the design portion of the PDA (design costs).

(3) A “work allowance” is a work allowance issued by HQUSACE located in Washington. A reprogramming action initiated by the district or the division is not considered a work allowance.

TABLE F-1 CAP TRANSITION	
Project Status as of 31 January 2006 (under Old Procedures)	Procedures for Further Work on Project
All Sections – Work not started	Follow new procedures for entire project.
Sections 103,107,111, and 205 -- 100% Federal portion (\$100,000) of feasibility study was under way	Complete 100% Federal portion of feasibility study. Follow new procedures for remainder of study and design/construction of project.
Sections 103, 107, 111, and 205 – Feasibility Cost Sharing Agreement (FCSA) was executed and decision document was not approved	Follow new procedures for remainder of study and design/construction of project.
Sections 206 and 1135 with Federal costs exceeding \$1M – Feasibility study was under way and decision document was not approved Sections 206 and 1135 with Federal costs NTE \$1M -- Feasibility level work on PDA was under way (district had not determined to proceed with design level work)	Complete feasibility study with 100% Federal financing of feasibility costs. Follow new procedures for design/construction of project. However, all feasibility costs will be included in total project costs in the Project Cooperation Agreement (PCA).
Section 204 with Federal costs exceeding \$1M – Feasibility study was under way and decision document was not approved Section 204 with Federal costs NTE \$1M, Section 14, and Section 208 -- Feasibility level work on PDA was under way (district had not determined to proceed with design level work)	If decision document is approved by 31 January 2007 -- Complete feasibility level work with 100% Federal financing of feasibility costs. Follow new procedures for design/construction of project. However, the PCA should include provision that all feasibility costs in excess of \$100K are shared 50/50 with sponsor. If decision document is not approved by 31 January 2007 – Stop all feasibility level work by 31 January 2007, except for negotiation of FCSA. Resume feasibility level work after FCSA execution. FCSA should include normal provision that all feasibility costs in excess of \$100K, including feasibility costs incurred prior to execution of FCSA, are shared 50/50 with sponsor.
Sections 204, 206, and 1135 with Federal costs NTE \$1M, Section 14, and Section 208 -- Design level work on PDA was under way (district had determined to proceed with design level work and PCA was not executed)	Continue design with 100% Federal financing of design costs in FY 2006, and in each <u>consecutive</u> year thereafter that the project receives a work allowance. If design is funded in <u>consecutive</u> years until fully funded, complete design at 100 percent Federal financing. Negotiate a PCA.
Sections 204, 206, and 1135 with	If design level work is not fully funded, and there is a

Federal costs exceeding \$1M, and Sections 103, 107, 111, and 205 – Design (P&S) underway and PCA was not executed	<p>fiscal year when the project does not receive a work allowance, stop all design work by March 31 of that fiscal year, except for negotiation of a PCA. Resume design level work after PCA execution.</p> <p>For Section 204, 206, and 1135 projects, include all feasibility and design costs in total project costs under the PCA.</p> <p>For Section 14 and 208 projects, include all feasibility and design costs, in excess of \$40K, in total project costs under the PCA.</p> <p>For Section 103, 107, 111, and 205 projects, include all design costs, but no feasibility costs, in total project costs under the PCA.</p>
All Sections – PCA was executed	New procedures will not apply.

F-2. Definitions.

a. The term “Continuing Authorities Program” or “CAP” means a group of 10 legislative authorities under which the Secretary of the Army, acting through the Chief of Engineers, is authorized to plan, design, and implement certain types of water resources projects without additional project specific congressional authorization. Table F-2 lists the CAP authorities and their project purposes.

b. The term “decision document” means the consolidated documentation of technical and policy analyses, findings, and conclusions upon which the District Commander bases the recommendation to the Major Subordinate Command Commander to approve the recommended project for implementation. The decision document will be used to support the PCA. Minimum decision document requirements are listed in Section II, paragraph F-10.f. (2) of this Appendix.

c. The term “feasibility phase” means the project formulation phase during which all planning activities are performed that are required to demonstrate that Federal participation in a specific project is warranted, culminating in approval of the decision document. All plan formulation must be completed during this phase, including all technical analyses, policy compliance determinations, and Federal and non-Federal environmental and regulatory compliance activities required for approval of the decision document.

d. The term “design and implementation phase” means the phase of the project during which all post feasibility phase activities (except for operation, maintenance, repair, rehabilitation, or replacement activities) are performed including negotiation and execution of the PCA, final design, preparation of contract plans and specifications,

construction, and any other activities required to construct or implement the approved project.

e. The letters “LERRD” mean lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas.

f. The letters “LERR” mean lands, easements, rights-of-way, and relocations.

g. The letters “LER” mean lands, easements, and rights-of-way.

h. The letters “OMRR&R” mean operation, maintenance, repair, rehabilitation, and replacement.

i. The letters “HQ RIT” mean a Regional Integration Team located in HQUSACE, Washington, D.C.

j. The letters “PED” mean preconstruction engineering and design.

k. The letters “GI” mean General Investigations.

l. The letters “MSC” mean Major Subordinate Command.

TABLE F-2 CAP AUTHORITIES		
AUTHORITY	US CODE	PROJECT PURPOSE
Section 14, Flood Control Act of 1946, as amended	33 USC 701r	Streambank and shoreline erosion protection of public works and non-profit public services
Section 103, River and Harbor Act of 1962, as amended (amends Public Law 79-727)	33 USC 426g	Beach erosion and hurricane and storm damage reduction
Section 107, River and Harbor Act of 1960, as amended	33 USC 577	Navigation improvements
Section 111, River and Harbor Act of 1968, as amended	33 USC 426i	Shore damage prevention or mitigation caused by Federal navigation projects

TABLE F-2 CAP AUTHORITIES		
Section 145, Water Resources Development Act of 1976, as amended	33 USC 426j	Placement of dredged material on beaches
Section 204, Water Resources Development Act of 1992, as amended	33 USC 2326	Beneficial uses of dredged material
Section 205, Flood Control Act of 1948, as amended	33 USC 701s	Flood control
Section 206, Water Resources Development Act of 1996, as amended	33 USC 2330	Aquatic ecosystem restoration
Section 208, Flood Control Act of 1954, as amended (amends Section 2, Flood Control Act of August 28, 1937)	33 USC 701g	Removal of obstructions, clearing channels for flood control
Section 1135, Water Resources Development Act of 1986, as amended	33 USC 2309a	Project modifications for improvement of the environment

F-3. General Principles.

a. Purpose. The purpose of the CAP is to plan and implement projects of limited size, cost, scope, and complexity. Although there is no specific minimum project size or cost, very small projects should not be pursued under CAP as they should be implemented by other Federal or non-Federal entities. Further, District Commanders, in coordination with the MSC Commanders, should consider termination of CAP feasibility activities when the estimated or actual total cost of feasibility studies equals or exceeds the estimated implementation cost including LERRD value. Finally, large or complex problems should be pursued under the specifically authorized programs.

b. General Requirements. Projects recommended for implementation pursuant to CAP authorities must be justified in accordance with the requirements of the applicable project purpose as discussed in Appendix E of this regulation and must be implemented in accordance with the applicable legal and policy requirements as further discussed in Section III of this Appendix.

c. Using CAP at Projects Specifically Authorized by Congress. CAP authorities may be used to provide additional improvements to a completed portion of a specifically authorized project so long as they do not impair or substantially change the purposes or functions of the specifically authorized project.

d. Multi-purpose Projects. Multi-purpose projects may be formulated using CAP authorities in accordance with procedures stated in Section IX of Appendix E of this regulation and as discussed in Section II, paragraph F-18 of this Appendix.

e. Plan Formulation, Evaluation, and Selection Principles.

(1) General. Plan formulation, evaluation, and selection will follow the procedures developed for specifically authorized studies and projects as discussed in Appendix E of this regulation, at a level of detail appropriate for the scope and complexity of the proposed CAP project. District staff, in coordination with MSC staff, will determine the appropriate level of detail of analyses required to produce a quality project in a reasonable time and at a reasonable cost. Simplified evaluation procedures may be adopted for low risk/low cost projects and when the consequences of failure are minimal and do not pose a threat to human life or safety. However, District and MSC Commanders cannot deviate from legislative requirements, or from policy or regulatory requirements of HQUSACE, the Department of the Army, Department of Defense, or other Federal agencies.

(2) Formulation and Evaluation. Alternative plans should be developed to the level of detail necessary to select a justified, acceptable, and implementable plan that is consistent with Federal law and policy and, to the extent that law and policy permit, consistent with the goals of the non-Federal sponsor. Benefit and cost, risk and uncertainty, cost effectiveness, and incremental cost analyses will be undertaken using procedures appropriate for the scope and complexity of the project. Further, as required by the National Environmental Policy Act of 1969 (NEPA) and other applicable statutes, when formulating measures and plans that will result in the recommendation for a project, the project delivery team must consider opportunities to reasonably avoid or minimize adverse environmental impacts and mitigation requirements.

(3) Guidance on model certification will apply to models used in the planning of CAP projects.

(4) Environmental Sustainability. As expressed in ER 200-1-5 (30 October 2003), in implementing the USACE Environmental Operating Principles and associated doctrine, the Corps must strive to achieve environmental sustainability, which is defined as “a synergistic process whereby environmental and economic considerations are effectively balanced through the life cycle of project planning, design, construction, operation and maintenance to improve the quality of life for present and future generations.” For all CAP projects, and particularly for those not implemented under the ecosystem restoration authorities, this principle is best satisfied through forethought in the formulation stage of project development. The goal is to design projects that will not degrade existing ecosystem quality while eliminating or minimizing the need for compensatory mitigation measures. Section II, paragraph F-20 of this Appendix provides basic guidance for formulation of ecosystem restoration projects and references to other environmental related guidance.

(5) Selection of a Plan. Plan selection will be in accordance with the guidance in Appendix E of this regulation for the applicable project purpose(s). Further, if a locally preferred plan (LPP) is proposed by a non-Federal sponsor, a decision document recommending such LPP may only be approved after a waiver has been obtained in accordance with Section II, paragraphs F-10.f.(3) and F-10.f.(4) of this Appendix.

(6) Guidance on Collaborative Planning will apply to the multipurpose project planning (Combined Plans) described in Section II, paragraph F-18 of this Appendix. In particular, the plan selection concepts will be incorporated into the plan development and recommendation process.

f. Modification of Design and Construction Standards.

(1) General. Corps design and construction standards can be modified to reduce project costs for CAP projects provided that the application of modified standards has no more than minimal increased risk to public health and safety, and has no more than a minimal impact on the operation, structure, or purposes of any existing Corps project. Modifications cannot result in adverse impacts or effects extending beyond the CAP project area. The basis for a modification of standards is a comparison of the risk of failure or improper functioning with the consequences of failure or improper functioning. However, modification of mandatory standards requires a waiver in accordance with ER 1110-2-1150. If a State permit is required for the non-Federal sponsor to operate the project, the applicable State engineering standards must be met.

(2) Coordination with non-Federal sponsors. Modification of standards pursuant to paragraph F-3.f.(1) of this Appendix must be discussed with the non-Federal sponsor so it recognizes and understands any risk that it may be assuming as part of its responsibilities under the PCA, including any potential effect on its OMRR&R responsibilities.

g. Project Implementation Process. CAP projects will be implemented in two phases: the feasibility phase and the design and implementation phase. Each phase is carried out under the provisions of a separate cost sharing agreement executed by the District Commander and the non-Federal sponsor. Guidance addressing these two phases is set forth in Section II, paragraphs F-10 and F-11 of this Appendix.

h. Requirements to serve as a non-Federal Sponsor.

(1) For projects pursued under Sections 14, 103, 107, 111, 145, 205, and 208, non-Federal sponsors must be public agencies able to enter into cost sharing agreements in accordance with the requirements of Section 221 of the Flood Control Act of 1970, as amended. Section 221 specifies that the non-Federal sponsor must be “a legally constituted public body with full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform.” The

non-Federal sponsor's responsibilities include paying its required share of project costs; provision or performance of LERRD (or LERR, as applicable) for the project; and performance of OMRR&R for the project, as applicable.

(2) For projects pursued under Sections 204, 206, and 1135, a non-Federal sponsor may be an entity that meets the "public body" requirement of Section 221, or may be a non-profit entity. In either event, the non-Federal sponsor must have the full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform. As with a public body non-Federal sponsor, a non-profit entity that serves as the non-Federal sponsor must be able to demonstrate not only its capability to participate during design and implementation of the project but also its long-term commitment and capability to finance and perform any necessary OMRR&R activities. Further, as required by Federal statute, the affected local government must consent to a non-profit entity being the non-Federal sponsor for a Section 204, 206, or 1135 project.

i. Federal Funds Used As Part of Non-Federal Sponsor Share. The non-Federal sponsor must not use Federal program funds to meet its obligations, including LERRD, for a project unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law. The term "Federal program funds" includes the funds or grants provided by a Federal agency as well as any non-Federal matching share or contribution that was required by such Federal program or grant.

F-4. Restrictions on Program Eligibility.

- a. Studies. CAP will not be used for study only activities.
- b. Specifically Authorized Projects. CAP will not be used to implement or replace any portion of a project specifically authorized by Congress.
- c. Existing Non-Federal Responsibilities. CAP will not be used to nullify or change an existing condition of non-Federal responsibility required for a project specifically authorized by Congress or implemented under a CAP authority.
- d. Non-Federal Operation and Maintenance. CAP will not be used to adopt a non-Federal project for future maintenance at Federal expense, to restore completed Corps projects to their authorized dimensions, or to accomplish required non-Federal maintenance at a Federally constructed project.
- e. Design Deficiencies. CAP will not be used to correct design deficiencies on another CAP project or a specifically authorized project.

F-5. Coordination Account. The Coordination Account is provided to District Commanders by authority line item under procedures established by the HQUSACE

Programs Integration Division (CECW-I). This account will be used for all initial contacts and site investigations with local interests until a potential Federal interest is identified and a decision by the non-Federal sponsor and the Corps is made to initiate the feasibility phase. The account should be used to screen out ineligible situations or cases where it is unlikely that a project eventually will be implemented. This account may also be used for internal coordination prior to establishing a project account, or non-project specific coordination activities such as participation in regional or national CAP review meetings. These funds may also be used for participation in regional meetings and interagency coordination where the primary means of Corps participation is through CAP projects. However, Coordination Account funds are not to be used as supplements for coordination activities which receive line item funding, such as EPA's National Estuary Program or the Coastal America initiative. Coordination account funds are not cost shared, will be counted against the authority's statutory annual program limit, but will not be counted against any specific per project limit. Coordination activities related to specific on-going projects will be accomplished using that project's funding account, and shared accordingly.

F-6. Program Cost Sharing.

a. Feasibility Phase. This phase will be initially Federally funded up to \$100,000. Any remaining feasibility phase costs will be shared 50/50 with the non-Federal sponsor pursuant to the terms of a CAP FCSA. If the feasibility phase can be completed for less than \$100,000, a CAP FCSA is not required. The Federally funded \$100,000 can only be used in the feasibility phase. Any unused portion of the Federally funded \$100,000 is not transferable to the design and implementation phase.

b. Design and Implementation Phase. All costs beyond the feasibility phase are considered total project costs and will be shared as specified in the authorizing legislation for that purpose. The specific requirements for each individual project must be detailed in the project's PCA.

F-7. Statutory Federal Participation Limits.

a. General. The CAP legislative authorities contain specific Federal financial participation limits which apply to (1) the amount of Federal participation allowed for each specific project implemented under a CAP authority (per project limit); (2) the amount of Federal participation under a CAP authority in any one fiscal year (annual program limit); or (3) both a per project limit and an annual program limit. Table F-3 displays the applicable per project and annual program Federal participation limits for each CAP authority. All Corps funds expended for feasibility and design and implementation activities are counted against the statutory per project and annual program limits. For Sections 204, 206, and 1135, expenditures by other Federal agencies on feasibility and design and implementation activities are included in the Federal share of the project cost and counted toward the Federal per project limits and annual program limits. For Sections 14, 103, 107, 111, 145, 205, and 208, expenditures of other Federal

agencies under their own authorities are not included in these Federal per project limits and annual program limits. For Section 107 projects for commercial navigation, Federal expenditures for operation and maintenance of the general navigation features are not counted toward the Federal per project limit and annual program limit. In no event will Civil Works funds be allotted to a project for the feasibility or design and implementation phases if the allotment would result in the applicable per project or annual program limit being exceeded. Refer to Section III, paragraph F-26.g of this Appendix for instructions regarding the Section 111 Federal participation limit. HQUSACE will monitor the annual program limits and will issue guidance on how to proceed in the event an annual program limit is approached. The amounts shown below as the annual program limit for Sections 204, 206, and 1135 is the limit on annual appropriations from Congress (and on obligation of those appropriations) for that authority. For the remaining authorities, the amounts shown below as the annual program limit is the annual limit of allotments from HQUSACE for that authority.

b. Costs in Excess of the Statutory Federal Per Project Participation Limit. There is no limit on the total project costs of a project implemented under CAP. However, Army policy does not permit continuing with planning of a project pursuant to CAP when after application of the appropriate Federal/non-Federal cost sharing percentages, it is estimated that the Federal share would exceed the applicable per project limit.

(1) If this is discovered before execution of the PCA, the study may be converted to the GI program in accordance with paragraph F-9 of this Appendix. As an alternative to conversion to the GI program (except in the case of Section 111), the non-Federal sponsor may offer to contribute funds for any costs that would normally be part of the Federal share but are over the per project limit. If the MSC Commander supports this offer, the MSC Commander shall treat the offer as a proposal for a policy deviation in accordance with Section II, paragraph F-10.f.(4) of this Appendix. In no event will Federal funds in excess of the per project limit be allotted to a project even if the non-Federal sponsor proposes to reimburse the Government for any amount in excess of the per project limit.

(2) If this is discovered after execution of the PCA, the non-Federal sponsor must contribute funds in accordance with the terms of the PCA for any costs that would normally be part of the Federal share but are over the per project limit or the PCA will be terminated (Table F-3).

TABLE F-3 STATUTORY FEDERAL PARTICIPATION LIMITS		
Authority	Per Project Limit (\$)	Annual Program Limit (\$)
Sec 14	1,000,000	15,000,000
Sec 103	3,000,000	30,000,000
Sec 107	4,000,000	35,000,000
Sec 111	5,000,000	N/A
Sec 145	N/A	N/A
Sec 204	N/A	15,000,000
Sec 205	7,000,000	50,000,000
Sec 206	5,000,000	25,000,000
Sec 208	500,000	7,500,000
Sec 1135	5,000,000	25,000,000

F-8. Converting GI Funded Studies or PED to CAP.

a. General. The MSC commander may approve transfer of an ongoing GI funded study or PED to CAP. However, the MSC commander may not use GI and CAP funds simultaneously on any study.

b. Converting GI 905(b) Studies to CAP. A new CAP study may be initiated based on the analyses of a GI 905(b) investigation which found that there is likely a Federal interest in pursuing further planning analyses.

(1) For a new CAP study that will continue with evaluation of the same or generally similar project that was the subject of the GI 905(b) investigations, the GI 905(b) investigations will be considered the initially Federally funded portion of the CAP feasibility phase. Therefore, the initial amount of such new CAP study that would be funded at 100 percent Federal expense will be reduced by the amount of funds expended for the GI effort. If it is determined that the cost of the GI efforts equaled or exceeded \$100,000, then all costs of the new CAP study will be shared with the non-Federal sponsor. None of the GI expenditures will be counted against the applicable CAP per project or annual program limits.

(2) For a new CAP study that will evaluate a project that is one of many that could result from a more encompassing GI 905(b) investigation (such as a watershed study), only that portion of the GI effort that is allocated by the district to the project being pursued under the new CAP study will be considered as the initially Federally funded portion of the CAP feasibility phase. Therefore, the initial amount of such new CAP study that would be funded at 100 percent Federal expense will be reduced by the

amount of funds expended for the GI effort that the district allocates to the project being studied. If it is determined that the cost of the GI efforts equaled or exceeded \$100,000, then all costs of the new CAP feasibility study shall be shared with the non-Federal sponsor. None of the GI expenditures will be counted against the applicable CAP per project or annual program limits.

c. Converting GI Funded Cost Shared Feasibility to CAP. Prior to converting to CAP, work for the GI cost shared feasibility study should be terminated in an orderly manner pursuant to the provisions of the existing GI FCSA. However, the MSC Commander may find it more appropriate to complete the ongoing GI effort and convert to CAP upon completion of the feasibility study. In any event, a conversion to CAP would require executing a CAP FCSA for any remaining feasibility phase items required to proceed to execution of a PCA. All costs of the CAP feasibility phase activities will be shared with the non-Federal sponsor. None of the GI expenditures will be counted against the applicable CAP per project or annual program limits.

d. Converting GI Funded PED to CAP. Prior to converting to CAP, work for a GI PED (pre-authorization) should be terminated in an orderly manner pursuant to the provisions of the existing Design Agreement. However, the MSC Commander may find it more appropriate to complete the ongoing GI effort and convert to CAP upon completion of the PED phase. In any event, a conversion to CAP would require execution of a PCA to address any remaining design activities and to proceed with construction. All remaining costs of the CAP design and implementation phase will be shared with the non-Federal sponsor. None of the GI expenditures will be counted against the applicable CAP per project or annual program limits. Conversion of a GI funded PED to CAP is only applicable for a project that has not been specifically authorized for construction by Congress. If a project has been specifically authorized for construction, it will not be transferred for implementation under CAP until Congress specifically deauthorizes the project or Congress specifically funds its implementation under a CAP authority in law.

F-9. Converting CAP Feasibility Studies to GI.

a. General. CAP studies must be converted to GI once it has been determined that the solution will be beyond the scope of CAP. If possible, any such determination should be made during that portion of the feasibility phase that is 100 percent Federally funded. The determination and supporting analyses will be documented.

b. Conversion to GI Prior to Execution of a CAP FCSA. If further study is required to complete a decision document, after the determination that a CAP study should be converted to the GI program, a new GI reconnaissance or feasibility phase study, as appropriate, will be started following the process for new GI studies. The process for new GI studies can be found in the annual Budget EC.

c. Conversion to GI After Execution of a CAP FCSA but Before Completion of the Feasibility Phase. If it is determined after execution of the CAP FCSA that a project should be converted to the GI Program, work under the CAP FCSA will be terminated in an orderly manner pursuant to the terms of the CAP FCSA, and a new GI feasibility phase study will be started following the process for new GI studies.

d. Conversion to GI After Feasibility Phase but Prior to Execution of PCA. If it is determined after completion of the feasibility phase but before execution of the PCA that a project should be converted to the GI Program, a new GI PED will be started following the process for new GI PED.

SECTION II – PROJECT IMPLEMENTATION

F-10. Feasibility Phase.

a. General. The feasibility phase encompasses the entire range of planning activities required to demonstrate that Federal participation in a project is warranted and justified. This phase will be initially Federally funded up to \$100,000. Any remaining feasibility phase costs will be shared 50/50 with the non-Federal sponsor pursuant to the terms of a CAP FCSA. If the feasibility phase can be completed for less than \$100,000, a CAP FCSA is not required. The Federally funded \$100,000 can only be used in the feasibility phase. Any unused portion of the Federally funded \$100,000 is not transferable to the design and implementation phase.

b. Initiation of Feasibility Phase.

(1) Request for Assistance. A feasibility phase is normally initiated based on receipt of a letter from a potential non-Federal sponsor stating its desire to participate in a solution, and acknowledging its financial responsibilities for the study and the project, if one is recommended.

(2) Legislative Action. A feasibility phase may also be initiated based on directions contained in authorization or appropriations act language or committee report language accompanying such legislation and receipt of a letter from a potential non-Federal sponsor stating its desire to participate in a solution, and acknowledging its financial responsibilities for the study and the project, if one is recommended.

c. Procedures to Obtain Federal Funding for Feasibility Phase.

(1) 100% Federally Funded Portion of Feasibility Phase. After the decision by the non-Federal interest and the Corps to initiate the feasibility phase, the district should request the funds necessary for the \$100,000 Federally funded portion of the feasibility phase.

(2) Cost Shared Portion of Feasibility Phase. Upon execution of the CAP FCSA (see paragraph F-10.d. of this Appendix), the district should request the remainder of the Federal funds (above the \$100,000 Federally funded portion) required for the feasibility phase.

(3) Funds Requests. The district should prepare and send the requests for funds, through the MSC Programs Office, to the appropriate HQ RIT for coordination with HQ Programs Integration Division (CECW-IP). Each request should identify the name of the project, the PWI, the CAP authority it will be implemented under, the total amount of funds requested, and, if the remainder of the feasibility phase will extend beyond one fiscal year, the amount of funds needed by fiscal year. The study should be entered into PRISM and P2 as soon as possible.

d. Feasibility Cost Sharing Agreement (FCSA). No CAP FCSA is required if the feasibility phase can be completed for \$100,000 or less. Any feasibility phase costs in excess of \$100,000 will be shared 50/50 with the non-Federal sponsor pursuant to the terms of a CAP FCSA executed by the District Commander and the non-Federal sponsor. The model CAP FCSA will be used. Authority to approve a CAP FCSA, including any deviations, and to execute the CAP FCSA will be in accordance with the implementation memo for the CAP FCSA. The CAP FCSA must be negotiated and executed during the 100 percent Federally funded portion of the feasibility phase and no funds in excess of \$100,000 will be allotted to a project until the CAP FCSA is executed. Subsequent to execution of the CAP FCSA, no work may be initiated until the non-Federal sponsor's appropriate proportional share of costs over \$100,000 has been made available either in cash or through an agreement on a schedule for an estimated value of non-Federal feasibility work (see paragraph F-15 of this Appendix) that is necessary for the feasibility phase.

e. Required Milestones. The purpose of the two required milestones listed below is to assure that continuing work on the feasibility phase is consistent with the policies, principles, priorities, procedures, and constraints of CAP, thus preventing excessive expenditures on questionable projects. The MSC Commander shall develop requirements, to be submitted by the district to the MSC, for the information necessary to support the determinations made at these milestones. These requirements should be consistent with the scope and scale of the situation under study. The MSC Commander may establish additional milestones as deemed necessary for each study.

(1) Federal Interest Determination. The first milestone is the determination that study efforts are likely to lead to project implementation. The purpose is analogous to that served by a 905(b) Report. The review would include consideration of problem specification, identification of Federal interest and potential for solution(s) that would result in a policy consistent project of a scope appropriate for CAP, with a willing and capable sponsor. This determination will be accomplished early enough in the Federally funded portion of the feasibility phase to ensure that there are no impediments to proceeding with the project.

(2) Alternatives Formulation Briefing. The second milestone is an Alternatives Formulation Briefing (AFB) that takes place after the alternative plans have been formulated and prior to the release of the draft decision document for public review. The purpose of the AFB is to ensure that plans have been properly formulated, legal and policy issues have been identified and a consensus on resolution has been reached, and the MSC concurs with the plan that will likely proceed into the design and implementation phase.

f. Decision Document Requirements and Approval.

(1) General. Subject to the minimum requirements set forth in paragraph F-10.f.(2) of this Appendix, the MSC Commander will establish decision document requirements and formats. The guidance in Appendix G of this regulation covering feasibility report content should help guide technical and policy decision document requirements.

(2) Decision Document Requirements. The minimum decision document and supporting documentation requirements are: a clear description of the recommended plan; demonstration of the project justification based on standard Corps project justification criteria for the particular project purpose in accordance with the general guidance applicable to the project purpose(s); documentation of the results of any request for a waiver of policy under paragraph F-10.f.(4) of this Appendix; documentation of compliance with appropriate Federal, State, and local environmental and regulatory requirements such as NEPA, etc., normally included in a feasibility study specifically authorized by the Congress; a completed Real Estate Plan consistent with the requirements of Chapter 12, ER 405-1-12; the non-Federal sponsor financial analysis and financing plan at a level of detail appropriate to the scale of the project; District Real Estate certification that the non-Federal sponsor has the capability to acquire and provide the required real estate interests; a detailed description of the non-Federal sponsor's local cooperation requirements; identification of the anticipated operation, maintenance, repair, replacement, and rehabilitation activities, including estimated costs; the feasibility level ITR certification; and the District Counsel statement of legal sufficiency for the decision documentation and NEPA process.

(3) Locally Preferred Plans. Projects may deviate from the NED and/or NER plan if requested by the non-Federal sponsor and approved by ASA (CW). The decision document may recommend locally preferred plans (LPP) formulated using the same procedures for specifically authorized projects described in paragraph 2-3.f.(4) of this regulation. Before a decision document recommending a LPP may be approved, a waiver request prepared in accordance with paragraph F-10.f.(4) of this Appendix must be approved by ASA (CW). When the LPP is clearly of less scope and cost and meets the Administration's policies for high priority outputs, a waiver is usually granted. For those cases, in which the LPP has costs in excess of the NED or NER plan, the decision document must describe and compare the NED or NER plan and the LPP and specify the

difference in the costs of the two plans and that the non-Federal sponsor agrees to pay all costs over the Federal share of the NED or NER plan. The LPP, in this case, must have outputs similar in-kind, and equal to or greater than the outputs of the Federal plan.

(4) Waiver for Deviation from Policy.

(a) Policy Waivers Identified During Feasibility Phase. The MSC Commander must seek a waiver for any deviation from policy and obtain a response coordinated through Headquarters and OASA (CW) staff before he or she can approve a decision document containing a deviation from policy. Waivers are required for any proposed deviation from general policy including but not limited to policies regarding plan formulation and cost sharing, as well as the specific policies on statutory Federal per project participation limits (see Section I, paragraph F-7.b.(1) of this Appendix), recommendation of a LPP (see paragraph F-10.f.(3) of this Appendix), limits on recreation costs (see paragraph F-19 of this Appendix), limits on cost shared monitoring (see paragraph F-21 of this Appendix), and implementing a Section 107 project (see Section III, paragraph F-25.d. of this Appendix). The MSC Commander must submit the waiver request to the appropriate HQ RIT together with a full explanation of the circumstances for the waiver. The appropriate HQ RIT will prepare a letter responding to the MSC request, which will be coordinated through Headquarters staff and the OASA (CW) staff. In no event will the decision document be approved until all deviations from policy have been addressed through waiver requests and the written response from the HQ RIT has been received by the MSC.

(b) Policy Waiver Identified After the Feasibility Phase but Before Execution of the PCA. The only waiver request that will be considered after approval of the decision document is a waiver of the specific policy on statutory Federal per project participation limits (see Section I, paragraph F-7.b.(1) of this Appendix) due to cost escalation identified during any design performed prior to execution of the PCA. The MSC Commander must submit the waiver request to the appropriate HQ RIT together with a full explanation of the escalation of costs between the approval of the decision document and the identification of the need for a waiver and the non-Federal sponsor's offer to contribute funds for any costs that normally would be part of the Federal share but are over the per project limit. The appropriate HQ RIT will prepare a letter responding to the MSC request, which will be coordinated through Headquarters staff and the OASA (CW) staff. In no event will the PCA be executed until the written response from the HQ RIT has been received by the MSC.

(5) Decision Document Approval. Approval of the decision document will be by letter of the MSC Commander to the District Commander, with a copy furnished to the appropriate HQ RIT. This authority may not be further delegated to the District Commander. The approval letter will certify that the requirements specified in this Appendix for approving the decision document have been satisfied; summarize the findings, conclusions, and rationale for approving the decision document; and certify that

the project addressed in the decision document is justified and is policy compliant or has received the necessary policy waivers.

g. Completion of the Feasibility Phase. The feasibility phase is completed when 1) the decision document, addressing a plan formulated in accordance with the Principles and Guidelines, has been approved by the MSC Commander or 2) the feasibility phase is terminated.

h. Termination of the Feasibility Phase. Following coordination with affected non-Federal interests, the feasibility phase should be terminated if analyses indicate a lack of Federal interest or a lack of public support or if a satisfactory letter of intent is not received from a potential non-Federal sponsor within a reasonable length of time (as determined by the MSC Commander in consultation with the District Commander). The phase is officially terminated when the District Commander so advises the MSC Commander and the appropriate HQ RIT of termination of the study. The District Commander will also notify Congressional delegations and non-Federal interests when the study has been officially terminated.

F-11. Design and Implementation Phase.

a. General. This phase follows completion of the feasibility phase and includes all of the activities that would normally be included in the PED and construction phases of specifically authorized projects. All costs incurred for this phase will be shared with the non-Federal sponsor in accordance with the cost sharing requirements of the applicable CAP authority.

b. Initiation of Design and Implementation Phase. This phase begins upon the MSC Commander approval of the decision document that recommends proceeding into the design and implementation phase. The first action of the design and implementation phase is negotiation and execution of a PCA.

c. Procedures to Obtain Federal Funding for Design and Implementation Phase.

(1) Initial Work Allowance to Negotiate and Execute PCA. Upon approval of the decision document by the MSC Commander, thus completing the feasibility phase, the district shall submit a request for funds, not to exceed \$50,000, to pay the Federal costs of negotiating the PCA and initiating design. While these costs are 100% Federally funded prior to the PCA, once the PCA is executed the Federal costs to negotiate the PCA and initiate design will be included in total project costs and shared with the non-Federal sponsor pursuant to the terms of the PCA. No additional funds in excess of \$50,000 will be allotted to a project until the PCA is executed.

(2) Remainder of Design and Implementation Phase. After execution of the PCA, the district should request the remaining funds required for the design and implementation phase as appropriate to comply with budgetary and contracting guidance.

(3) Funds Requests. The district should prepare and send the requests for funds, through the MSC Programs Office, to the appropriate HQ RIT for coordination with HQ Programs Integration Division (CECW-IP). Each request should identify the name of the project, the PWI, the CAP authority it will be implemented under, the total amount of funds requested, and if the design and implementation phase will extend beyond one fiscal year, the amount of funds needed by fiscal year. The request should also contain a current CAP Fact Sheet. The project information in PRISM and P2 should be updated as soon as possible.

d. PCA. The design and implementation phase will be conducted under the provisions of the PCA executed by the District Commander and the non-Federal sponsor. The appropriate model PCA will be used. Authority to approve the PCA, including any deviations, and to execute the PCA shall be in accordance with the implementation memo for the appropriate model.

(1) Design. The design portion will conclude with completion of the plans and specifications for the project. Compliance with all applicable environmental laws and regulations, including, but not limited to NEPA and Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1341) must be verified and documented during the design portion.

(2) Implementation. Once the design portion has been completed, the parties must decide whether to proceed with implementation of the project, or terminate the PCA, in an orderly manner pursuant to the provisions of the PCA. However, no Government or non-Federal sponsor construction work shall be initiated prior to compliance with all applicable environmental laws and regulations.

e. Solicitations for Contracts.

(1) Solicitations for contracts will not be issued prior to execution of the PCA unless approved in advance by the MSC Commander following the District's written request.

(2) Further, solicitations for construction contracts should not be issued until the District Chief of Real Estate has certified in writing that sufficient real property interests are available to support construction under such contracts. However, in exceptional circumstances the District Commander may proceed and issue a solicitation contrary to this general policy after full assessment of the risks and benefits of proceeding.

(3) In those cases where solicitations are issued without sufficient real property interests, or prior to PCA execution, as allowed above, the solicitation documents should advise potential bidders of such facts.

f. Contract Bid Opening.

(1) No contract bids will be opened prior to execution of the PCA and prior to receipt of the non-Federal sponsor's required cash contribution. In no event will this policy be waived.

(2) If the District Commander issued a solicitation for a construction contract without sufficient real property interests to support a construction contract as described in paragraph F-11.e.(2) of this Appendix, sufficient real property interests must be available to support implementation under that contract before submitted bids may be opened and considered. The MSC Commander may approve opening bids prior to sufficient real property interests being available after receipt and review of a District's written request that includes adequate justification and full risk and benefit assessment. Due to concerns regarding liability and fairness to potential bidders, approval of such requests are discouraged and should be granted only in exceptional circumstances.

g. Award of Construction Contracts. Construction contracts will not be awarded until the District Chief of Real Estate has certified in writing that sufficient real property interests are available to support implementation under that contract. HQUSACE will consider limited exceptions to this policy only after submission of a written request by the District, through and with the concurrence of the MSC Commander, to the appropriate HQ RIT that contains clear and persuasive evidence that the outstanding real property interests will be obtained in a timely manner, that proceeding to award poses no significant liability or risk to the Government, and that approval is otherwise appropriate considering all relevant facts and circumstances.

h. Completion of the Design and Implementation Phase. The design and implementation phase is completed when 1) the District Commander determines that project construction and any cost shared monitoring, to be performed after physical construction, is complete or 2) the PCA is terminated, in an orderly manner pursuant to the provisions of the PCA, prior to completion of project construction.

i. OMRR&R of the Project. Upon physical completion of the project, the District Commander will notify the non-Federal sponsor in writing that construction of the project is complete, and will provide the non-Federal sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R) Manual. Upon receipt of the notice of completion of construction of the project, the non-Federal sponsor will operate, maintain, repair, rehabilitate, and replace the project in accordance with the OMRR&R Manual.

j. Project Completion Report. After project completion, including any cost shared monitoring to be performed after physical construction is complete, and the final audit and project closeout, the District Commander will transmit a project completion report to the MSC. The report will contain a short description of the project, the final Federal and non-Federal feasibility and design and implementation costs by phase, and the date that

the non-Federal sponsor was provided notice of physical completion in accordance with the terms of the PCA.

F-12. Approval Authorities for Decision Documents and Agreements.

a. Decision Documents. As discussed in detail in paragraph F-10.f. of this Appendix, the MSC Commander is authorized to approve project decision documents that he or she certifies are in compliance with law and policy including those where necessary policy waivers have been received (see paragraph F-10.f.(4) of this Appendix). Decision document approval authority may not be delegated to the District Commander.

b. Agreements.

(1) Authorities With Approved Model Agreements. The authority to approve a CAP FCSA or PCA, including any deviations thereto and the authority to execute such agreements, will follow the authorities and procedures outlined in the implementation memo for the applicable model.

(2) Authorities Without Approved Model Agreements. In cases where there is not an approved model, the MSC Commander, must forward to the appropriate HQ RIT one hardcopy and an electronic copy of a PCA package each containing the following: a clean copy of the negotiated draft agreement; a copy of the negotiated draft agreement with the deviations indicated by redline/strikeout from the Section 205 structural flood damage reduction model; a list of the deviations from the Section 205 structural flood damage reduction model and detailed reasons for the deviations; Certificate of Legal Review signed by the District Counsel; CAP PCA Checklist; and current letter of intent from the non-Federal sponsor. All documents requiring signatures (CAP checklist, Certificate of Legal Review, and letter of intent) must be scanned so that required signatures are contained in the electronic files.

F-13. Post Implementation Federal and Non-Federal Sponsor Responsibilities. Once any CAP project or separable element, under any CAP authority, has been completed, the project will be treated in the same manner as a completed project that was specifically authorized by the Congress. This includes assuring non-Federal sponsor compliance with PCA responsibilities and the periodic inspection of projects.

F-14. After Action Reviews. As part of the Headquarters responsibility to monitor policy and procedural compliance in this program, HQUSACE and MSC CAP managers will meet to conduct policy and procedural after action reviews of projects with PCAs executed in the past year. The procedural reviews shall be based on HQUSACE and existing MSC documentation requirements for decision-making. In addition to monitoring policy and procedural compliance, these reviews will serve as a forum for identification of management and procedural problems, general policy issues, and successes which will in turn form the basis for any needed corrective action and continued evolution of program operating principles.

F-15. Non-Federal Feasibility Work and Non-Federal Design and Implementation Work.

a. General. Non-Federal feasibility work and non-Federal design and implementation work is planning, design, or implementation activities performed by the non-Federal sponsor in lieu of the Federal Government during the feasibility phase or design and implementation phase, respectively. Such work is often referred to as “work-in-kind”. Neither non-Federal feasibility work nor non-Federal design and implementation work includes activities the non-Federal sponsor must perform as required in the CAP FCSA or PCA, respectively, such as participation on the study coordination team or Project Coordination Team, performance of activities related to acquisition of LERRD, investigation or response actions under the Hazardous Substances article, and certain audit-related activities. Credit may be afforded only for non-Federal feasibility work or non-Federal design and implementation work performed after execution of the applicable agreement (CAP FCSA or PCA). Non-Federal sponsors will not be afforded credit against the non-Federal share of a CAP study or project or reimbursed for any work undertaken, or contributed, or provided, for a CAP study or project except as described below.

b. Feasibility Phase. In accordance with the principles of Section 105(a) of the Water Resources Development Act of 1986, as amended, the non-Federal sponsor may be afforded credit against its share of study costs for the value of non-Federal feasibility work performed during the feasibility phase.

(1) Performance of non-Federal feasibility work and affording of credit toward the non-Federal sponsor’s share is only applicable for the portions of feasibility studies beyond the first \$100,000 in cost, and for non-Federal feasibility work performed subsequent to execution of the CAP FCSA.

(2) Credit afforded in accordance with the principles of Section 105(a) is limited to credit for non-Federal feasibility work that does not result in any reimbursement to the non-Federal sponsor. Therefore, the credit for non-Federal feasibility work can only be applied toward the additional cash requirement. To determine the additional cash requirement, subtract from the total required non-Federal share of total study costs the costs that the non-Federal sponsor must incur under the CAP FCSA for participation in the study coordination team and certain audit-related activities. Any amount of non-Federal feasibility work that exceeds the additional cash requirement must be included in total study costs but will be a 100 percent non-Federal sponsor responsibility.

c. Implementation Phase. Pursuant to Section 215 of the Flood Control Act of 1968, as amended, the non-Federal sponsor may be afforded credit against its share of total project costs for the value of non-Federal design and implementation work performed during the design and implementation phase.

(1) In the CAP program, the policy is that the maximum amount of credit that can be afforded for non-Federal design and implementation work is limited so that it does not

result in any reimbursement to the non-Federal sponsor. Therefore, the credit for non-Federal design and implementation work can only be applied toward the additional cash requirement. To determine the additional cash requirement, subtract from the total required non-Federal share of total project costs the sum of the value of LERRD and the costs that the non-Federal sponsor must incur under the PCA for participation in the Project Coordination Team, investigations or response actions under the Hazardous Substances Article, and certain audit-related activities. Any amount of non-Federal design and implementation work that exceeds the additional cash requirement will be included in total project costs but will be a 100 percent non-Federal sponsor responsibility.

(2) For Section 1135 projects, no more than 80 percent of the non-Federal sponsor's share may be non-Federal design and implementation work.

(3) For Sections 14, 205 (structural), and 208 projects, non-Federal design and implementation work cannot be credited toward the 5 percent cash requirement.

d. Eligible Parties to Perform Non-Federal Feasibility Work or Non-Federal Design and Implementation Work. Non-Federal feasibility work and non-Federal design and implementation work for credit may only be provided by the non-Federal sponsor, and can be accomplished by the hired labor of the non-Federal sponsor or by contract administered by the non-Federal sponsor.

e. Determination of Value. The value of the non-Federal feasibility or design and implementation work will be estimated prior to the initiation of the effort. For the purposes of estimating total study costs or total project costs and projecting the non-Federal sponsor's cash requirement, the Corps and the non-Federal sponsor will agree upon a value for such work at the beginning of the study or design and implementation, as applicable. The actual amount of credit to be afforded for non-Federal feasibility or design and implementation work will be subject to an audit to determine reasonableness, allowability and allocability of the costs and will not exceed the actual costs incurred or the amount of the Government estimate of such work if the work had been performed by the Government, whichever is less. The Corps shall apply applicable Federal regulations, including OMB Circular A-87 or A-122 (for non-profit sponsors). The non-Federal sponsor must comply with applicable Federal and state laws and regulations, including the requirement to secure competitive bids for all work to be performed by contract.

f. Ineligible Activities. The non-Federal sponsor may not receive credit for supervision and administration of work performed by the Government or the Government's contractors. Many of the tasks included in the Supervision and Administration account during the design and implementation phase, including most of the contract management related activities, are inherent Government functions which may not be contracted out or assigned to others to perform (see Federal Acquisition Regulation subpart 7.5). The non-Federal sponsor will receive credit for supervision and

administration of any contracts that it awards subject to an audit to determine reasonableness, allowability, and allocability of the costs.

g. Other Contributions. Contributions of cash, funds, materials and services from other than the non-Federal sponsor may be accepted for ecosystem restoration projects (Sections 204, 206, and 1135) under the provisions of Section 203 of the WRDA of 1992. However, the value of such contributions will not be included in total project costs and will not be credited toward the non-Federal sponsor's share of total project costs.

F-16. Real Estate.

a. Real Estate Plan Requirements. The analysis of the nature and extent of real estate requirements must be conducted in accordance with Chapter 12 of ER 405-1-12, including consideration and identification of the specific interests, estates, and acreage required for the project. While all CAP decision documents must contain a Real Estate Plan (REP) prepared in accordance with Chapter 12, the level of detail required for each topic required to be discussed in the REP will vary depending on the scope and complexity of the project. The level of detail contained in the REP generally should match the level of detail contained in the balance of the project decision document.

b. Existing Projects. For projects involving modification of existing projects, the interests and estates acquired for the existing project, as well as any outgrants, must be analyzed by the District Real Estate Division to determine if sufficient rights are available for the project modification. A standard lease format has been prepared for Section 1135 projects and is included in Chapter 8 of ER 405-1-12.

c. Credit. The value and amount of credit given for LERRD required to be provided by the non-Federal sponsor will be determined after review and preliminary approval by the District Real Estate Division after consultation with the Project Manager.

F-17. Beneficial Uses of Dredged Material. There is a new budget category of work that includes Section 145, as amended and Section 204, as amended. The primary purpose of budgeting these types of projects under one line item is that beneficial use of dredged material and sediment management requires an integrated, systematic approach using all applicable authorities. This budgetary approach enhances the consideration and use of these authorities during dredging activities. Guidance on each individual authority is located in Section III of this Appendix.

F-18. Multi-Purpose CAP Projects.

a. General. In an effort to promote comprehensive collaborative planning, the formulation of multipurpose projects may be accomplished under CAP. The term "multi-purpose project" often is used to describe two different types of situations, each involving different formulation. In the first situation, a project is formulated as either a NED plan with incidental NER benefits or a NER plan with incidental NED benefits and costs are

shared according to one cost sharing formula. In the second situation, often referred to as “Combined Plans”, an NED plan and an NER plan are formulated together, i.e. have interdependent features, using a trade-off analysis. Combined Plans require complex evaluation and tradeoff analyses not normally consistent with the limited scope and complexity associated with CAP projects. Each of these two approaches is appropriate for consideration under CAP.

b. **Cost Allocation Between Purposes for Combined Plans.** If the districts wish to engage in the formulation and evaluation of Combined Plans, they should follow the procedures stated in Section IX of Appendix E of this regulation. However, in no case will the cost for a purpose included in the Combined Plan exceed the statutory Federal per project limit for that purpose under its applicable CAP authority. The cost for each purpose will include the separable costs, plus the joint costs allocated to each purpose. Cost allocation will be performed using the SCRUB method as described in Appendix E of this regulation. The costs for each purpose will be shared in accordance with the cost sharing formula for the applicable CAP authority. For accounting purposes, it is critical to keep track of the costs assigned to each purpose. Consultation with HQ is required prior to proceeding with the Combined Plan approach.

c. **Limitations.** Sections 14 and 1135 will not be used for multi-purpose planning under the CAP Program. Section 111 will not be used in conjunction with any other CAP authority besides Section 103. Further, Sections 145 and 204 will not be used in conjunction with any other CAP authorities besides Section 107.

d. **Recreation.** As used in this paragraph, the addition of recreation does not result in a “multi-purpose project”. For procedures and limitations for adding recreation to CAP projects, see paragraph F-19 of this Appendix.

F-19. Recreation.

a. **General.** Recreation features may be added to any project implemented under the CAP authorities (except for Section 14 and Section 208), if appropriate. Any recreation features should be formulated in accordance with current policies and procedures governing recreation (see Section VII of Appendix E of this regulation).

b. **Limits on Inclusion of Recreation Features.** For each CAP authority, justified separable recreation features may be added (except for Section 14 and Section 208) if the cost of such measures does not increase the Federal share of total project costs by more than 10 percent of the Federal share of total project costs without the added recreation, except as follows:

(1) When adding recreation to a multi-purpose project, the recreation costs must not exceed 10 percent of the total Federal cost of the combined purposes;

(2) Where the non-Federal sponsor has waived reimbursement of the value of LERRD as described in paragraph F-20.c.(5) of this Appendix, the 10 percent amount will be calculated on total project cost that does not include the value of LERRD for which the non-Federal sponsor waives reimbursement;

(3) The formulation of non-structural flood damage reduction projects is not constrained by the limitation of increased Federal cost for recreation; and

(4) Where a policy waiver has been approved in accordance with paragraph F-10.f.(4) of this Appendix.

c. Cost Sharing. Separable recreation features will be cost shared 50/50 with the non-Federal sponsor.

F-20. Ecosystem Restoration Policies Applicable to Section 204, Section 206, and Section 1135.

a. General. A discussion of policies applicable to ecosystem restoration may be found in Appendix E of this regulation, in ER 1165-2-501, and in EP 1165-2-502. This paragraph describes policies for projects formulated under Section 204, Section 206, and Section 1135.

b. Considerations in Determining Real Estate Requirements. Paragraph F-16 of this Appendix presents the general principles for determining real estate requirements for CAP projects. However, the formulation of ecosystem restoration projects generally can present challenges with regard to determining the acreage, interests, and estates required to support the implementation of ecosystem restoration projects under CAP authorities. Accordingly, the following policies, procedures, and three part analyses must be applied in determining the real estate requirements for such projects.

(1) Acreage Required. Identification of the acreage directly and physically required to implement and operate and maintain ecosystem restoration project features typically is similar to the efforts in non-ecosystem restoration projects and presents few unusual difficulties. However, determining what additional acreage may be required outside of the "footprint" of project features to reasonably ensure the production of the benefits upon which the project was formulated may be more complex. The need to include, and the amount of, acreage in addition to the footprint of project features and immediately surrounding areas should be carefully evaluated by the project delivery team. Factors to consider in making this determination include the physical integrity of the project, cost effectiveness, incremental costs, operation and maintenance requirements, and the risks associated with not including the additional acreage. For example, there may be an acceptable minimal risk that future land use detrimental to the project will occur on the land adjacent to the project footprint where it is owned in fee by a public agency whose mission is compatible with project outputs or where development of the adjacent land is legally restricted for the foreseeable future to purposes consistent

with project outputs. Inclusion of acreage in addition to that required for the footprint of project features must be directly tied to identified and measurable planning and implementation objectives, must not be simply assumed to be required for the project, and must be properly documented and justified. In some cases, an interest in all of the land benefiting from the project may not be required to reasonably ensure that the outputs justifying the project are obtained.

(2) Interest Required.

(a) General Policy. Determination of required interests (fee or permanent easement) must be driven by program, policy, and project requirements that ensure achievement of ecosystem benefits and protection of the Federal interest in a manner that best serves the public interest. As a matter of Corps policy, and as stated in ER 405-1-12, fee title is required as a general rule for all lands required for the construction and operation and maintenance of the project. The rationale for this general rule is that the land use requirements for implementation of CAP restoration projects, and the significant restrictions on remaining non-project land uses, generally are tantamount to fee ownership and to fee value. Further, where the restoration project provides the opportunity for use by the general public in ways consistent with the ecosystem restoration purpose, members of the general public should not be excluded from project lands that have been purchased, or otherwise provided, with public funds. Finally, fee title greatly reduces the risk that incompatible uses on project land will occur over the period of OMRR&R and, when compared to easement interpretation and enforcement that may vary from state to state, ensures that ownership rights vested in the project are clear and enforceable.

(b) Exceptions to General Policy Requiring Fee. Notwithstanding that fee title is generally the interest that must be provided to support CAP ecosystem restoration projects, there are circumstances where it may be appropriate to utilize permanent easements instead of fee. Such circumstances include:

i. where only select and easily identifiable and narrow affirmative rights are required for successful implementation of the project (for example, channel improvement rights or the right to flood);

ii. where project lands consist of the bed and immediate bank of a watercourse for the installation of features that improve habitat for aquatic resources (for example, root wads, shallow excavations, riffles, etc.);

iii. where the acreage of project lands, as assembled, is relatively small, is limited to that acreage necessary to construct and operate and maintain project ecosystem restoration features, and does not provide the opportunity for use by the general public in ways consistent with project purposes either because the lands are isolated from lawful public access (such as a public road, adjacent public lands, or publicly accessible watercourse) or because of the configuration of the project lands; or

iv. where project lands are owned in fee by public agencies other than the non-Federal sponsor and the owning agency cannot convey fee title and will not serve as a co-sponsor of the project; foreseeable future uses of the land by the public agency fee owner are compatible with project purposes; and public access is provided otherwise or is not compatible with project purposes.

(c) Approval Authority. Where one or more of the circumstances described above in sub-paragraph (2)(b) exist, and the project decision document, or other written request of the District, persuasively describes the need for an exception from the general policy rule, the MSC may approve use of a permanent easement instead of fee for the implementation of the CAP ecosystem restoration project where use of such easement will satisfy project requirements and protect the project benefits. All other requests for an exception to require easement rather than fee are discouraged and must be forwarded to the appropriate HQ RIT for review, coordination within HQUSACE, and approval.

(3) Estate Required. Once the appropriate interest is determined as described above, the corresponding standard estate must be used as explained and identified in Chapter 12 to ER 405-1-12. Except as otherwise provided in Chapter 12, all non-standard estates must be approved at HQUSACE with requests for such approval forwarded to the appropriate HQ RIT for review, coordination within HQUSACE, and approval.

c. Eligibility Limitations.

(1) Work on Other Federal Agency Lands. In the absence of specific legislative authority or direction of the Department of the Army, restoration projects will not be implemented on other Federal lands. Where incidental restoration benefits may accrue to lands owned by another Federal agency, these incidental benefits may be identified, but not included in the benefit evaluation.

(2) Remediation. Recommended projects will be for ecosystem restoration, not remediation of pollution problems covered by other statutes or for which others are liable. Remediation is typically for the purpose of meeting target criteria for contaminants or regulatory conditions related to human health and safety, rather than for ecosystem quality.

(3) Eradication of non-native or invasive species. Projects may be implemented for control of noxious or invasive species in situations where there is not another applicable Corps authority. This will be limited to a single action at any location. However, during formulation, the likelihood of obtaining positive outputs in sufficient quantity and/or for a sufficient period of time to justify the costs must be considered.

(4) Section 206 and Section 1135 projects with high LERRD values. The Corps ecosystem restoration mission is to apply its planning, hydrologic and engineering

expertise to solve large and/or complex restoration problems. Projects with very limited manipulation of the ecosystem that utilize extensive tracts of land appear to present themselves as preservation measures rather than restoration measures. Such projects are not appropriate civil works ecosystem restoration investments. Therefore, as an indicator of this potential situation, land values for a restoration project generally should not exceed 25 percent of total project costs. If the estimated LERRD value for a proposed project exceeds 25 percent of total project costs, the MSC must evaluate the project formulation to ensure that the project properly utilizes Corps expertise and is not land intensive. As part of its evaluation, the MSC must ensure that the project plan requires only the lands necessary to implement the project and to reasonably assure that the benefits sufficient to justify the project are achieved.

(5) Voluntary waiver of reimbursement of LERRD value in excess of non-Federal sponsor's percentage share for Section 206 and Section 1135 projects. If the MSC determines that the project properly utilizes Corps expertise, that the project plan is not land intensive, but that the estimated LERRD value exceeds 25 percent of total project costs (e.g., due to high land values in urban areas) the MSC may approve the project for implementation if the non-Federal sponsor provides a letter of intent to voluntarily waive reimbursement for the value of LERRD that exceeds the non-Federal sponsor's percentage share of total project costs. If the non-Federal sponsor does not voluntarily waive reimbursement for the value of LERRD that exceeds its percentage share of total project costs, any further efforts on the project should be suspended. Work on such suspended projects will continue only to the extent Congress provides funding specific to the project. If the non-Federal sponsor does provide the necessary letter of intent, the project decision document must clearly describe that the non-Federal sponsor has voluntarily agreed to waive reimbursement for the value of LERRD above its percentage share of total project costs, and the PCA must contain provisions for implementing this concept. Notwithstanding that the non-Federal sponsor has agreed to such a waiver, compliance with the following principles must continue:

(a) The project must be formulated so that only the lands necessary to implement the project and reasonably assure benefits sufficient to justify the project are required for the project;

(b) The estimated value of all project LERRD must be considered in comparison of alternatives for plan selection; and,

(c) The non-Federal sponsor must comply with all applicable provisions of Public Law 91-646, as amended and implementing regulations, for all LERRD that it must acquire to implement the project.

F-21. Monitoring and Adaptive Management.

a. Monitoring. Monitoring to be performed after physical construction is complete is rarely appropriate for CAP. Such monitoring will only be appropriate where

the uncertainty of achieving the projected outputs is high. All proposed monitoring to be performed after physical construction is complete must be clearly defined and justified in the project decision document. Such monitoring will be limited to no more than five years after completion of physical construction. The cost of such monitoring will be included in total project costs and shared with the non-Federal sponsor and will not exceed one percent of the costs included in total project costs for the features that are to be monitored minus the costs for monitoring. A waiver is needed pursuant to paragraph F-10.f.(4) of this Appendix to increase either of these limits (costs or duration). Monitoring will not be performed on recreation features. The non-Federal sponsor will be responsible for performance of OMRR&R during the monitoring period.

b. Adaptive Management. Adaptive management will not be performed and will not be a cost shared item in CAP projects.

F-22. Design Deficiency Corrections.

a. Design Deficiency Criteria. The engineering criteria described in ER 1165-2-119 for establishing the existence of a design deficiency apply to the establishment and correction of design deficiencies for CAP projects. Costs for all design deficiency corrections at non-Federally operated and maintained projects will be shared with the non-Federal sponsor in accordance with the current cost sharing for that purpose as established in the Water Resources Development Act of 1986, Public Law 99-662, as amended, unless, in the case of a project implemented with different cost sharing, an exception is granted by ASA (CW) during the investigation of the design deficiency.

b. Design Deficiency Correction for Uncompleted Project. Where the District Commander has not notified the non-Federal sponsor of completion of construction of the project in accordance with the terms of the PCA, the investigation and remediation of any design deficiency correction will be carried out and cost shared under the project PCA. The Federal share of all work on the project, including the deficiency correction, cannot exceed the statutory Federal per project participation limit.

c. Design Deficiency Correction for Completed Project. The following procedures will be followed where the District Commander already has notified the non-Federal sponsor of completion of the project. The MSC Commander may initiate a reconnaissance-level study of the project with the sole purpose of determining whether the improper functioning is the result of a design deficiency. This study will be funded at 100 percent Federal expense under Inspection of Completed Works and will be limited to no more than \$100,000. If the study concludes that a deficiency exists, the corrective works will be processed as a new project decision. Design and implementation work will be carried out under the original PCA, once it has been modified to reflect the addition of the deficiency correction work under the new decision document, and will be cost shared in accordance with the current cost sharing formula for that purpose as established in the Water Resources Development Act of 1986, Public Law 99-662, as amended, unless, in the case of a project implemented with different cost sharing, an exception is granted by

ASA(CW) during the reconnaissance-level study. However, if there is not an existing PCA for the project, one will be prepared to cover design and implementation work necessary to correct the design deficiency. The Federal share of all work on the project, including the deficiency correction, cannot exceed the statutory Federal per project participation limit. None of the costs of the work financed under Inspection of Completed Works will be counted against the applicable CAP per project limit.

SECTION III - SPECIFIC GUIDANCE FOR PROJECT AUTHORITIES

F-23. Section 14, Flood Control Act of 1946, as amended - Streambank and Shoreline Erosion Protection of Public Works and Non-Profit Public Services.

a. General. This program is designed to implement projects to protect public facilities and facilities owned by non-profit organizations that are used to provide public services that are open to all on equal terms. These facilities must have been properly maintained but be in imminent threat of damage or failure by natural erosion processes on stream banks and shorelines, and are essential and important enough to merit Federal participation in their protection. The streamlined formulation and justification procedures outlined in this paragraph are in recognition of the urgency of addressing such projects.

b. Eligible Facilities. Eligible facilities are: highways, highway bridge approaches, public works, churches, public and private non-profit hospitals, schools, and other public or non-profit facilities offering public services open to all on equal terms; and known historic properties whose significance has been demonstrated by a determination of eligibility for listing on, or actual listing on, the National Register of Historic Places. The historic property (ies) must be open to all on equal terms.

c. Restrictions. Although the facilities may be eligible for protection, the following situations are not eligible for implementation: work designed solely to protect undeveloped land or to protect non-essential, temporary, or mobile facilities; bank failure clearly not related to stream flow, storm, or wind driven waves; inadequate drainage (groundwater, surface runoff, overland flow, poor drainage undermining the facility itself and springs); facilities that are the cause of erosion (e.g. exfiltrating sewer-lines, drains, water lines, lagoons); erosion clearly and directly caused by the operation of a man-made project or facility (e.g. the use of navigation facilities or the operation of water control structures); levees or other facilities for which the owner has a contractual agreement with the Federal government to maintain; construction, repair, restoration, relocation, or modification of the facility to be protected; work within the limits of Corps projects which are operation and maintenance responsibilities of those projects; and work benefiting other Federal agencies, which will be accomplished on a cost reimbursable basis under other Corps programs.

d. Formulation and Justification. Following a finding of eligibility, and given the narrow geographic focus, low cost of these projects, and the imminent threat to the facilities, the formulation and evaluation should focus on the least cost alternative solution. The least cost alternative plan is considered to be justified if the total costs of the proposed alternative is less than the costs to relocate the threatened facility.

e. Valuation of LERRD. The valuation of LERRD for crediting purposes for a Section 14 project is the same as for any other project, except when the lands, easements or rights-of-way are part of the tract of land that includes the facility or structure being protected. In such cases, the non-Federal sponsor will not receive credit for the value of LERRD it provides that are part of the tract of land on which the facility or structure to be protected is located, if such tract of land is owned by either the non-Federal sponsor or the owner of the facility or structure on the date that the PCA is executed.

f. Project Cost Sharing. Projects implemented under this authority have the same project cost sharing requirements as structural flood damage reduction projects implemented under specific congressional authorization. The non-Federal sponsor is responsible for a minimum of 35 percent of total project costs to a maximum of 50 percent of total project costs during the design and implementation period. In accordance with the terms of the PCA, the non-Federal sponsor must pay 5 percent of total project costs in cash, provide all LERRD required for the project, participate in the Project Coordination Team, perform necessary non-Federal audits, and perform investigations necessary to identify the existence and extent of hazardous substances on LER required for the project. If the value of the non-Federal sponsor's contributions listed above is less than 35 percent of total project costs, the non-Federal sponsor must pay additional cash so that its contributions equal 35 percent of total project costs. OMRR&R is a 100% non-Federal responsibility. The non-Federal sponsor's required share determined above could increase if the Federal costs of planning, design, and implementation for the project exceed the statutory Federal per project participation limit for this authority and the non-Federal sponsor agrees to contribute funds for any costs that would normally be part of the Federal share but are over the per project limit (see Table F-3 and Section I, paragraph F-7.b. of this Appendix).

F-24. Section 103, River and Harbor Act of 1962, as amended - Beach Erosion and Hurricane and Storm Damage Reduction.

a. Eligibility. This authority may be used for protecting multiple public and private properties and facilities and single non-Federal public properties and facilities against damages caused by storm driven waves and currents. All projects must be formulated for hurricane and storm damage reduction, in accordance with current policies and procedures governing projects of the same type which are specifically authorized by Congress (see Section IV of Appendix E of this regulation). Any policies and procedures applicable to Federal participation in projects involving beach nourishment must apply to Section 103 projects involving beach nourishment.

b. Project Cost Sharing. Projects implemented under this authority have the same project cost sharing requirements as hurricane and storm damage reduction projects implemented under specific congressional authorization. The non-Federal sponsor is responsible for 35 percent of total project costs assigned to hurricane and storm damage reduction, plus 50 percent of total project costs assigned to recreation plus 100 percent of total project costs assigned to privately owned shores (where use of such shores is limited to private interests) during the design and implementation phase. Any costs assigned to protection of Federally owned shores are 100 percent Federal. See Appendix I of this regulation and ER 1165-2-130 for more detailed guidance regarding cost sharing of hurricane and storm damage reduction projects. In accordance with the terms of the PCA, the non-Federal sponsor must provide all LERRD required for the project, participate in the Project Coordination Team, perform necessary non-Federal audits, and perform investigations necessary to identify the existence and extent of hazardous substances on LER required for the project. If the value of the non-Federal sponsor's contributions listed above is less than the non-Federal sponsor's required share, the non-Federal sponsor must make a cash payment so that its contributions equal the required share. OMRR&R on non-Federally owned shores is a 100% non-Federal responsibility. The non-Federal sponsor's required share determined above could increase if the Federal costs of planning, design, and implementation for the project exceed the statutory Federal per project participation limit for this authority and the non-Federal sponsor agrees to contribute funds for any costs that would normally be part of the Federal share but are over the per project limit (see Table F-3 and Section I, paragraph F-7.b. of this Appendix).

F-25. Section 107, River and Harbor Act of 1960, as amended - Navigation Improvements.

a. General. Section 107 projects are to be formulated for commercial navigation purposes in accordance with current policies and procedures governing projects of the same type which are specifically authorized by Congress (see paragraph 3-2.d.(2) of this regulation and Section II of Appendix E of this regulation).

b. As modified by Section 201 of WRDA 1996, Public Law 104-303, Section 101 of WRDA 1986, Public Law 99-662, requires that the term "general navigation features" include dredged material disposal facilities required for construction or operation and maintenance of the other general navigation features. Accordingly for Section 107 projects, both the Federal costs of initial construction and the Federal costs of construction for subsequent dredged material disposal facilities count toward the per project limit. Studies of projects for which the per project limit would be reached as a consequence of the construction of future dredged material disposal facilities should be converted to a GI study unless a waiver is obtained pursuant to Section I, paragraph F-7.b(1) and Section II, paragraph F-10.f.(4). of this Appendix.

c. Project Cost Sharing. Projects implemented under this authority have the same project cost sharing requirements as commercial navigation projects implemented under specific congressional authorization.

(1) Commercial Navigation. The non-Federal sponsor is responsible for 10 percent of total costs of construction of the general navigation features (GNF) (including costs of construction of dredged material disposal facilities) for depths, excluding associated over-depth and entrance channel wave allowances, less than or equal to 20 feet, 25 percent of total costs of construction of the GNF (including costs of construction of dredged material disposal facilities) for depths, excluding associated over-depth and entrance channel wave allowances, in excess of 20 feet but equal to or less than 45 feet, and 50 percent of total costs of construction of the GNF (including costs of construction of dredged material disposal facilities) for depths, excluding associated over-depth and entrance channel wave allowances, in excess of 45 feet during the design and implementation period. In accordance with the terms of the PCA, the non-Federal sponsor will participate in the Project Coordination Team, perform necessary non-Federal audits, and perform investigations necessary to identify the existence and extent of hazardous substances on LER required for the project. If the value of the sponsor's contributions listed above is less than the non-Federal sponsor's required share, the non-Federal sponsor must make a cash payment so that non-Federal contributions equal the required share. In addition, the non-Federal sponsor must pay an additional 10 percent of the total costs of construction of the GNF (including costs of construction of dredged material disposal facilities) which will be offset by the value of LERR provided by the non-Federal sponsor for the project. Further, the non-Federal sponsor will be responsible for the construction and operation and maintenance of any local service facilities required for the project. Operation and maintenance (O&M) of the GNF will be a Federal responsibility. For projects in excess of 45 feet, the non-Federal sponsor is responsible for 50 percent of the increased costs of operation and maintenance. The non-Federal sponsor's required share determined above could increase if the Federal costs of planning, design, and implementation for the project exceed the statutory Federal per project participation limit for this authority and the non-Federal sponsor agrees to contribute funds for any costs that would normally be part of the Federal share but are over the per project limit (see Table F-3 and Section I, paragraph F-7.b. of this Appendix). The costs of O&M of the GNF are not counted toward the statutory Federal per project participation limit for Section 107.

(2) Recreational Navigation. The non-Federal sponsor is responsible for 50 percent of total project costs during the design and implementation period. In accordance with the terms of the PCA, the non-Federal sponsor must provide all LERRD required for the project, participate in the Project Coordination Team, perform necessary non-Federal audits, and perform investigations necessary to identify the existence and extent of hazardous substances on LER required for the project. If the value of the non-Federal sponsor's contributions listed above is less than 50 percent of total project costs, the non-Federal sponsor must make a cash payment so that its contributions equal 50 percent of total project costs. OMRR&R is a 100% non-Federal responsibility. The non-Federal

sponsor's required share determined above could increase if the Federal costs of planning, design, and implementation for the project exceed the statutory Federal per project participation limit for this authority and the non-Federal sponsor agrees to contribute funds for any costs that would normally be part of the Federal share but are over the per project limit (see Table F-3 and Section I, paragraph F-7.b. of this Appendix).

d. A Section 107 fact sheet including a project map must be prepared for all proposed Section 107 projects and submitted electronically to the appropriate HQ RIT for review, coordination within HQUSACE (including CECW-I), and consultation with OASA(CW) during the Federally funded portion of the feasibility phase. The CAP FCSA or the PCA (if a CAP FCSA is not required or has already been executed as of 31 January 2006) will not be executed until the OASA (CW) has concurred or non-concurred in proceeding with the project. However, in the event of non-concurrence, work on the project may proceed only to the extent that Congress makes specific allocations to the project. See page 43 of this Appendix for sample format of fact sheet.

e. If the decision document determines that the project is not economically justified, no further action shall be taken under this authority.

F-26. Section 111, River and Harbor Act of 1968, as amended - Shore Damage Prevention or Mitigation Caused by Federal Navigation Projects.

a. Purpose. This authority authorizes the planning of a justified level of work for prevention or mitigation of damages to both non-Federal public and privately owned shores to the extent that such damages can be directly identified and attributed to Federal navigation works located along the coastal and Great Lakes shorelines of the United States, and shore damage attributable to the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway. Further, the Corps is authorized to implement such a project without specific Congressional authorization if the Federal share of the first cost of implementation is \$5,000,000 or less.

b. Eligible work. Under this authority, Federal funds may only be used to address the shore damages caused by the Federal navigation works. If there are multiple causes for the damages, Federal participation in a Section 111 solution may continue only if the non-Federal sponsor agrees to bear all costs associated with correcting the shore damage not attributed to the Federal navigation works or if the integrated solution is pursued under both Section 111 and Section 103 as a Combined Plan in accordance with Section II, paragraph F-18 of this Appendix or under an authorized hurricane and storm damage reduction study or project. However, when there is a larger shore damage problem caused by more than just the Federal navigation works, a complete solution may be formulated under either an authorized hurricane and storm damage reduction study and project, or under Section 103. Section 111 cost sharing would apply to those portions of the project addressing damages caused by the Federal navigation works.

c. Coordination.

(1) Implementation measures proposed under this authority will be coordinated with other Federal and non-Federal shore protection projects in the same geographic area.

(2) To the extent practicable, any Section 111 projects and shore protection pursued under other authorities in the same area will be combined into a comprehensive regional project.

d. Restrictions.

(1) Geographic Limitation. Work under this authority extends only to the geographic limit of damages that can be directly identified and attributed to the navigation project.

(2) Construction, Operation, and Maintenance on Federally Owned Land. The Corps may not use this authority to provide shore damage control measures on Federally owned property when the Federal Government would be the major beneficiary. The Corps may include Federal property to be protected if the property is a small but integral part of the shore damage control measure but the Corps will not bear any financial responsibility for the share of project or maintenance costs attributable to these lands.

(3) Erosion Process. Works for prevention or mitigation of shore damages such as those caused by riverbank erosion or vessel generated wave wash will not be addressed under this authority.

e. Level of Mitigation. The target degree of mitigation is the reduction of shore damage to the level which would have existed without the influence of navigation works at the time such navigation works were accepted as a Federal responsibility. This authority will not be used to restore shorelines to historic dimensions.

f. Periodic Nourishment. Policy and procedures applicable to Federal participation in periodic nourishment for shore protection projects will apply to Section 111 projects with periodic nourishment.

g. Limit on Delegated Corps Implementation Authority. Section 111 provides the Secretary of the Army the authority to implement projects for which the estimated Federal first cost is \$5,000,000 or less (Feasibility phase costs are shared 50/50 with the non-Federal sponsor in accordance with Section I, paragraph F-6.a. of this Appendix; these costs are not included in computing the estimated Federal first cost). If the Federal share of implementation costs for a Section 111 project, including periodic nourishment during the period of analysis, would exceed \$5,000,000, the project may not proceed as a Federal undertaking without specific congressional authorization. This provision applies even if the non-Federal sponsor is willing to be responsible for the amount of the Federal share exceeding \$5,000,000. If at any time it becomes apparent that the Federal share of

total project costs would definitely exceed \$5,000,000, the Section 111 works may not proceed or continue as a Federal undertaking without specific Congressional authorization, and the work should be converted to GI in accordance with Section I, paragraph F-9 of this Appendix.

h. Items of Non-Federal Cooperation.

(1) Total Project Cost. The costs of implementing measures under this section must be shared in the same proportion as the cost sharing provisions applicable to the project causing the shore damage.

(2) Real Estate. The non-Federal sponsor's responsibility for providing interests in real estate, and for performance of facility or utility relocations, required for projects pursued under Section 111 will be the same as for the project causing the shore damage. HQUSACE should be consulted early in the formulation process if there are questions regarding this issue.

(3) Operation and Maintenance. The non-Federal sponsor is required to operate and maintain the mitigation measures, and, in the case of interests in real property acquired in conjunction with non-structural measures, to operate and maintain the property in accordance with regulations prescribed by the Corps.

(4) General. The above are items that are generally required to implement a project under this authority. However, given the wide variety of circumstances that could exist for Section 111 projects such items may not be appropriate for all projects. Therefore, for any projects proposed for implementation under this authority it is recommended that the details of the project be coordinated with the MSC, appropriate HQ RIT, and HQ Policy Compliance Division, early in the feasibility phase, to ensure that the appropriate items of cooperation are identified for the project.

F-27. Section 145, Water Resources Development Act of 1976, as amended – Placement of Dredged Material on Beaches.

a. General. The purpose of this authority is to provide for placement of beach quality sand, that has been dredged in constructing or maintaining navigation inlets and channels adjacent to such beaches, when the costs are greater than the least cost disposal plan, provided that (1) a State requests it, (2) the Secretary of the Army considers it to be in the public interest, (3) the additional cost of disposal is justified by reduction in potential hurricane and storm damages, (4) the non-Federal sponsor is willing to contribute the appropriate share of the additional costs, and (5) requirements for public use and access are provided. In cases where the additional costs for placement of the dredged material is not justified, the Corps may still perform the work if the State requests it, and the State or other non-Federal sponsor contributes 100 percent of the additional costs. Consideration must be given to the schedule of a State, or a political

subdivision of a State, for providing its share of funds for placing sand on beaches, and, to the extent practicable, accommodation of such schedule.

b. Feasibility Phase. There is no requirement to identify the NED plan for a Section 145 project. However, there is a need to demonstrate efficient use of Federal funds. The additional costs of the requested disposal must be justified by the NED benefits associated with the protection of the beach upon which the sand is placed and must meet all other related policies and procedures associated with storm damage reduction including but not limited to public access, environmental acceptability, cost sharing, and the provision of LERRDs. These analyses will be performed during the feasibility phase and shared 50/50 with the non-Federal sponsor.

c. Project Cost Sharing. The non-Federal sponsor is responsible for 35 percent of the additional costs of placement of the material. In accordance with the terms of the PCA, the non-Federal sponsor must provide all LERRD required for the project, participate in the Project Coordination Team, perform necessary non-Federal audits, and perform investigations necessary to identify the existence and extent of hazardous substances on LER required for the project. However, the non-Federal sponsor will not receive credit for the value of LERRD required for the project – only the incremental placements costs are shared by the Government. OMRR&R on non-Federally owned shores is a 100% non-Federal responsibility.

F-28. Section 204, Water Resources Development Act of 1992, as amended - Beneficial Uses of Dredged Material.

a. General. The purpose of this authority is to carry out projects for the protection, restoration, and creation of aquatic and ecologically related habitats, including wetlands, in connection with dredging for construction, operation, or maintenance by the Secretary of an authorized navigation project.

b. Determination of Base Plan. Disposal of dredged material associated with construction or maintenance dredging of navigation projects should be accomplished in the least costly manner consistent with sound engineering practice and meeting all Federal environmental requirements. This constitutes the base plan for the navigation purpose. If the base plan (least cost disposal alternative) includes disposal of material in a manner benefiting the environment the costs for this disposal are included in total costs of the general navigation features and funded accordingly. Where the disposal of material in a manner that benefiting the environment is not part of the base plan for the navigation purpose, the base plan shall serve as a reference point for determining the incremental costs of the ecosystem restoration features that are attributable to the environmental purpose.

c. Section 204(e) of WRDA 1992, as amended (often referred to as Section 207). Although it amends Section 204 of WRDA 1992, Section 207 of WRDA 1996 is a separate authority, which authorizes for navigation projects, subject to certain

requirements, the use of a disposal method that is not the least cost option if the incremental costs are reasonable in relation to the environmental benefits. Implementation of Section 207 is not covered by this Appendix. Therefore, the MSC and district should consult with the appropriate HQ RIT and the HQ Policy Compliance Division for appropriate guidance prior to considering use of this authority.

d. Project Cost Sharing. Any incremental costs above the cost of the base plan will be shared with the non-Federal sponsor. The non-Federal sponsor is responsible for 25 percent of total project costs of the Section 204 project during the design and implementation period. In accordance with the terms of the PCA, the non-Federal sponsor must provide all LERRD required for the project, participate in the Project Coordination Team, perform necessary non-Federal audits, and perform investigations necessary to identify the existence and extent of hazardous substances on LER required for the project. If the value of the non-Federal sponsor's contributions listed above is less than 25 percent of total project costs of the Section 204 project, the non-Federal sponsor must make a cash payment so that its contributions equal 25 percent of total project costs of the Section 204 project. OMRR&R is a 100% non-Federal responsibility.

F-29. Section 205, Flood Control Act of 1948, as amended - Flood Control.

a. General. Projects implemented under this authority are formulated for structural or non-structural measures for flood damage reduction in accordance with current policies and procedures governing projects of the same type which are specifically authorized by Congress (see Section III of Appendix E of this regulation).

b. Project Cost Sharing. Projects implemented under this authority have the same project cost sharing requirements as structural flood damage reduction projects or non-structural flood damage reduction projects implemented under specific congressional authorization.

(1) Structural Flood Damage Reduction Projects. The non-Federal sponsor is responsible for a minimum of 35 percent of total project costs to a maximum of 50 percent of total project costs during the design and implementation period. In accordance with the terms of the PCA, the non-Federal sponsor must pay 5 percent of total project costs in cash, provide all LERRD required for the project, participate in the Project Coordination Team, perform necessary non-Federal audits, and perform investigations necessary to identify the existence and extent of hazardous substances on LER required for the project. If the value of the non-Federal sponsor's contributions listed above is less than 35 percent of total project costs, the non-Federal sponsor must pay additional cash so that its contributions equal 35 percent of total project costs. OMRR&R is a 100% non-Federal responsibility. The non-Federal sponsor's required share determined above could increase if the Federal costs of planning, design, and implementation for the project exceed the statutory Federal per project participation limit for this authority and the non-Federal sponsor agrees to contribute funds for any costs that would normally be part of

the Federal share but are over the per project limit (see Table F-3 and Section I, paragraph F-7.b. of this Appendix).

(2) Non-Structural Flood Damage Reduction Projects. The non-Federal sponsor is responsible for 35 percent of total project costs during the design and implementation period. In accordance with the terms of the PCA, the non-Federal sponsor must provide all LERRD required for the project, participate in the Project Coordination Team, perform necessary non-Federal audits, and perform investigations necessary to identify the existence and extent of hazardous substances on LER required for the project. If the value of the non-Federal sponsor's contributions listed above is less than 35 percent of total project costs, the non-Federal sponsor must make a cash payment so that its contributions equal 35 percent of total project costs. OMRR&R is a 100% non-Federal responsibility. The non-Federal sponsor's required share determined above could increase if the Federal costs of planning, design, and implementation for the project exceed the statutory Federal per project participation limit for this authority and the non-Federal sponsor agrees to contribute funds for any costs that would normally be part of the Federal share but are over the per project limit (see Table F-3 and Section I, paragraph F-7.b. of this Appendix).

c. If the decision document determines that the project is not economically justified, no further action shall be taken under this authority.

F-30. Section 206, Water Resources Development Act of 1996, as amended - Aquatic Ecosystem Restoration.

a. General. The purpose of this authority is to develop aquatic ecosystem restoration and protection projects that improve the quality of the environment, are in the public interest, and are cost effective in accordance with current policies and procedures governing projects of the same type which are specifically authorized by Congress (see Section V of Appendix E of this regulation).

b. Project Cost Sharing. Projects implemented under this authority have the same project cost sharing requirements as ecosystem restoration projects implemented under specific congressional authorization. The non-Federal sponsor is responsible for 35 percent of total project costs during the design and implementation period. In accordance with the terms of the PCA, the non-Federal sponsor must provide all LERRD required for the project, participate in the Project Coordination Team, perform necessary non-Federal audits, and perform investigations necessary to identify the existence and extent of hazardous substances on LER required for the project. If the value of the non-Federal sponsor's contributions listed above is less than 35 percent of total project costs, the non-Federal sponsor must make a cash payment so that its contributions equal 35 percent of total project costs. OMRR&R is a 100% non-Federal responsibility. The non-Federal sponsor's required share determined above could increase if the Federal costs of planning, design, and implementation for the project exceed the statutory Federal per project participation limit for this authority and the non-Federal sponsor agrees to

contribute funds for any costs that would normally be part of the Federal share but are over the per project limit (see Table F-3 and Section I, paragraph F-7.b. of this Appendix).

F-31. Section 208, Flood Control Act of 1954, as amended - Snagging and Clearing for Flood Damage Reduction.

a. General. This authority provides for minimal measures to reduce nuisance flood damages caused by debris and minor shoaling of rivers. This authority is treated as a flood damage reduction project for policy eligibility and cost sharing purposes.

b. Restrictions. Work under this authority is limited to clearing and snagging or channel excavation and improvement with limited embankment construction by use of materials from the channel excavation. If investigation indicates that placement of revetment is needed to provide a complete and fully effective project, this work will be accomplished at the expense of the non-Federal sponsor.

c. Project Cost Sharing. Projects implemented under this authority have the same project cost sharing requirements as structural flood damage reduction projects implemented under specific congressional authorization. The non-Federal sponsor is responsible for a minimum of 35 percent of total project costs to a maximum of 50 percent of total project costs during the design and implementation period. In accordance with the terms of the PCA, the non-Federal sponsor must pay 5 percent of total project costs in cash, provide all LERRD required for the project, participate in the Project Coordination Team, perform necessary non-Federal audits, and perform investigations necessary to identify the existence and extent of hazardous substances on LER required for the project. If the value of the non-Federal sponsor's contributions listed above is less than 35 percent of total project costs, the non-Federal sponsor must pay additional cash so that its contributions equal 35 percent of total project costs. OMRR&R is a 100% non-Federal responsibility. The non-Federal sponsor's required share determined above could increase if the Federal costs of planning, design, and implementation for the project exceed the statutory Federal per project participation limit for this authority and the non-Federal sponsor agrees to contribute funds for any costs that would normally be part of the Federal share but are over the per project limit (see Table F-3 and Section I, paragraph F-7.b. of this Appendix).

F-32. Section 1135, Water Resources Development Act of 1986, as amended - Project Modifications for Improvement of the Environment.

a. Purpose. This authority provides for the review and modification of structures and operations of water resources projects constructed by the Corps for the purpose of improving the quality of the environment when it is determined that such modifications are feasible, consistent with the authorized project purposes, and will improve the quality of the environment in the public interest. In addition, if it is determined that a Corps water resources project has contributed to the degradation of the quality of the

environment, restoration measures may be implemented at the project site or at other locations that have been affected by the construction or operation of the project, if such measures do not conflict with the authorized project purposes.

b. Eligible Projects. A project must fit at least one of the categories described in the following sub-paragraphs.

(1) Modification of an Existing Corps Project. These are projects that incorporate modifications in the structures or operations of a permanent water resources project constructed by the Secretary of the Army in response to a Corps construction authority. For projects in this category, there is no requirement to demonstrate that the Corps project contributed to degradation.

(2) Restoration Projects. Restoration projects may be undertaken at those locations where the construction or operation of an existing Corps project has contributed to the degradation of the quality of the environment. These projects do not need to modify an existing Corps project.

(3) Joint projects. Where a project was constructed or funded jointly by the Corps and another Federal agency, those elements constructed or funded by the other Federal agency may be modified using the Section 1135 authority. Where the construction or operation of the joint project has contributed to the environmental degradation, projects may be undertaken which contribute to the restoration of the degraded ecosystem.

c. Project Cost Sharing. The non-Federal sponsor is responsible for 25 percent of total project costs during the design and implementation period. In accordance with the terms of the PCA, the non-Federal sponsor must provide all LERRD required for the project, participate in the Project Coordination Team, and perform necessary non-Federal audits. The non-Federal sponsor also must perform investigations necessary to identify the existence and extent of hazardous substances on LER required for the project except for the investigations necessary to identify the existence and extent of hazardous substances on LER owned by the United States and administered by the Corps. If the value of the non-Federal sponsor's contributions listed above is less than 25 percent of total project costs, the non-Federal sponsor must make a cash payment so that its contributions equal 25 percent of total project costs. OMRR&R is a 100% non-Federal responsibility. The non-Federal sponsor's required share determined above could increase if the Federal costs of planning, design, and implementation for the project exceed the statutory Federal per project participation limit for this authority and the non-Federal sponsor agrees to contribute funds for any costs that would normally be part of the Federal share but are over the per project limit (see Table F-3 and Section I, paragraph F-7.b. of this Appendix).

d. Non-Federal Design and Implementation Work. For all Section 1135 projects, the value of non-Federal design and implementation work that can be credited toward the

non-Federal sponsor's share of total project costs is limited to 80 percent of the non-Federal sponsor's share of total project costs.

e. OMRR&R. For Section 1135 projects, the costs of OMRR&R are a 100 percent non-Federal responsibility and the work is usually performed by the non-Federal sponsor. However, upon request by the non-Federal sponsor, the Government may perform the OMRR&R of a Section 1135 project modification on behalf of the non-Federal sponsor, if the entire Section 1135 project modification is on lands for which the Corps has the necessary real estate interest and is responsible for operation and maintenance (i.e. the land has not been leased to another agency for fish and wildlife purposes). In such event, the non-Federal sponsor must pay the Government, in advance of performance of such work, for the costs of OMRR&R attributable to the Section 1135 project modification. The decision to perform OMRR&R, on the behalf of the non-Federal sponsor, should be documented in the decision document and appropriate language should be included in the PCA addressing Government performance of OMRR&R.

f. Cost Allocation. The Section 1135 project features are in addition to the existing Corps project features, and they are distinct from mitigation. Therefore, the costs of the Section 1135 project feature will not be allocated to the existing Corps project, but must be shared in accordance with the provisions of Section 1135 of WRDA 1986, as amended.

SAMPLE - SECTION 107 PROJECT FACT SHEET

1. Project Name: Official Name of Project
2. a. Corps District:

b. Sponsor:
3. Congressional Delegation: List affected House and Senate members. Include congressional District numbers.
4. Location: Provide one or two sentences, sufficient to locate the vicinity of the study/project area.
5. Problem: Briefly describe the problem and the scope of the study/project in general terms.
6. Alternative Plans Considered. Briefly list the features of each alternative, explain why the alternative was not selected, and state whether the alternative met policy criteria.
7. Description of Likely Recommended Plan. Include a brief narrative description of the likely recommended plan, including major features and expected outputs. Give full coverage to features sensitive to the eligibility criteria of paragraph 3-2.d.(2) of ER 1105-2-100.
8. As of the date of this fact sheet, are there any policy waivers required, including a waiver for deviation from the NED Plan? If so, provide rationale for waiver and highlight waiver request in transmittal.
9. Scheduled Initial Construction Award (FY):
10. Authorization, appropriations act, or report language: Cite specific provisions, and attach copies of language.
11. Financial Information:
 - a. Feasibility Study Cost: \$ (Federal share: \$)
 - b. GNF Costs:
Total: \$ (Federal share: \$)
(Plans and specifications: \$)
(Construction: \$)

- c. LERR Costs: \$
- d. Local Service Facilities (LSF) costs: \$
- e. Ultimate Federal Cost: \$
- f. Benefit/Cost ratio:
- g. Average Annual O&M Costs: \$

12. Complete Funding History by FY (Include one line for each additional FY):

	AMOUNTS SPECIFIED ("NAMED") BY CONGRESS	NET ALLOCATIONS FOR FISCAL YEAR
FY		
FY		
FY		

13. Supplemental Information: Any additional information which may impact on an implementation decision on this project.

14. Project Map: Attach a map of the project area showing the navigation servitude boundaries superimposed over the general navigation features and local service facilities. The boundaries between the GNF and LSF must be clearly delineated.