

APPENDIX F

Continuing Authorities

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SECTION I – OVERVIEW

F-1. Purpose. This appendix provides the general program principles, policies and planning guidance for nine legislative authorities under which the Secretary of the Army, acting through the Chief of Engineers, is authorized to plan, design, and construct certain types of water resource and ecosystem restoration projects without additional and specific congressional authorization. These authorities are called the Continuing Authorities Program (CAP) when referred to as a group. Except as discussed herein, existing guidance should be followed.

F-2. Program Authorities. The nine legislative authorities that make up the CAP are:

a. Section 14, Flood Control Act of 1946 (PL 79-526), as amended, for emergency streambank and shoreline erosion protection for public facilities and services;

b. Section 103, River and Harbor Act of 1962 (PL 87-874), as amended, amends PL 727, an act approved August 13, 1946 which authorized Federal participation in the cost of protecting the shores of publicly owned property from hurricane and storm damage;

c. Section 107, River and Harbor Act of 1960 (PL 86-645), as amended, for navigation;

d. Section 111, River and Harbor Act of 1968 (PL 90-483), as amended, for mitigation of shoreline erosion damage caused by Federal navigation projects;

e. Section 204, Beneficial Uses of Dredged Material, Water Resource Development Act of 1992 (PL 102-580), as amended;

f. Section 205, Flood Control Act of 1948 (PL 80-858), as amended, for flood control;

g. Section 206, Aquatic Ecosystem Restoration, Water Resources Development Act of 1996 (PL 104-303), as amended;

h. Section 208, Flood Control Act of 1954 (PL 83-780), as amended, originally Section 2, Flood Control Act of August 28, 1937 (PL 75-406) for snagging and clearing for flood control;

i. Section 1135, Project Modifications for Improvement of the Environment, Water Resource Development Act of 1986 (PL 99- 662), as amended.

F-3. General Principles.

a. Purpose. The purpose of the CAP is to plan, design, and construct projects of limited scope and complexity. This mission works best when the program is used to solve the problems for which it was designed, leaving complex projects to the specifically authorized program and very small projects to other Federal or non-Federal entities.

b. Level of Detail. District staff will use common sense and professional judgment to perform the appropriate level of detail of analyses 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. This does not authorize commanders to deviate from legislative or regulatory requirements imposed by Department of the Army, Department of Defense, or other agencies.

c. Engineering.

(1) Corps design and construction standards can be modified to reduce project costs for CAP projects provided that the modified standards create no substantially increased risk to public health and safety, or substantially impact the operation, structure, or purposes of the parent project if the CAP project is modifying an existing Corps project. The basis for a modification of standards is a comparison of the risk of failure or improper functioning of a project with the consequences of failure or improper functioning. However, modification of mandatory standards requires a waiver in accordance with paragraph 19 of [ER 1110-2-1150](#).

(2) Modification of standards must be discussed with project sponsors so that they recognize and understand any risk that they will be expected to share. Modification of standards cannot extend beyond the boundaries of the CAP project. When a state permit is required for the sponsor to operate the projects, the applicable state engineering standards must be met.

F-4. Statutory Federal Funding Limits.

a. General. The program's legislative authorities contain specific Federal funding limits. Depending on the authority, these limits are imposed variously on the Federal allocations on projects as well as limits on annual allocations or appropriations for the specific authority. These limitations are displayed on Table F-1. For sections 204, 206, and 1135, expenditures by other Federal agencies on activities or items included in the "total project cost" as defined in the cost sharing agreements are included within the Federal share of the project cost and counted toward the Federal funding limitations. For Sections 14, 103, 107, 111, 205, and 208, expenditures of

other Federal agencies under their own authorities are not included within these funding limitations.

b. **Projects in Excess of Statutory Federal Funding Limits.** Corps policy discourages implementing projects using a CAP authority when application of the appropriate Federal/non-Federal cost sharing percentages would result in a Federal share that exceeds the statutory per project Federal funding limit. However, such projects may proceed if the project sponsor agrees to pay all of what would have been Federal costs in excess of the statutory Federal funding limit. In no event shall Federal funds in excess of the statutory Federal project limits be allotted even if later reimbursed by the sponsor.

F-5. Non-Federal Sponsor.

a. For all authorities except Sections 1135, 204, and 206, non-Federal sponsors must be public agencies able to enter in an agreement in accordance with the requirements of Section 221 of the Flood Control Act of 1970. Section 221 specifies that the non-Federal sponsor 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.”

b. For Section 1135, 204, and 206 projects, a sponsor can meet the requirements of Section 221, or can be a national non-profit organization that is capable of undertaking future requirements for operation, maintenance, repair, replacement and rehabilitation (OMRR&R), or may be any non-profit organization if there is no future requirement for OMRR&R. All potential sponsors must be able to provide any required lands, easements, rights-of way, relocations and dredged or excavated material disposal areas (LERRD). For section 204 and 206 projects, the affected local government must consent to the non-profit entity being a sponsor.

F-6. Program Eligibility.

a. **General Project Requirements.** Work funded under the CAP shall meet the requirements of Federal interest and Corps responsibility set forth in one of the nine legislative authorities (paragraph F-2.). Any project recommended shall be justified in accordance with the requirements of the project purpose as discussed in Appendix E, shall be complete in itself, and shall not obligate the Federal government to future work except in those cases in which maintenance by the Federal government is specified by law or allowed by policy.

b. **Modification of Existing Corps Projects.** A Corps project, whether specifically authorized by the Congress or implemented as a CAP project, is eligible for modification under

this program once the project has been completed to the full extent permitted by its authorization, including authorized post-authorization changes. The modification must provide for a new, complete in itself improvement which will not impair or substantially change the purposes of the authorized project, nor be used to restore these projects to their authorized dimensions. MSC commanders may approve modifications to projects not fully constructed to the limits of their authorization if the modification is a distinct separable element of the overall project and does not modify or replace the unconstructed elements of the original project. Project modifications considered under the CAP will be formulated to meet the additional, incrementally justified needs that each authority was intended to address. The CAP will not be used to primarily modify projects to increase operational efficiency. Any project deficiencies will be accomplished in accordance with [ER 1165-2-119](#).

c. Converting Studies Specifically Authorized by the Congress. The MSC commander may approve transfer of an ongoing specifically authorized study to the CAP. The MSC commander may not use specifically authorized and CAP funds simultaneously.

d. Converting to the Specifically Authorized Program. CAP studies may be converted to the specifically authorized program when it has been determined that the solution will be beyond the scope of the CAP. If additional study is required, study initiation will follow the process for new start feasibility studies. For a project authorization, a decision document must be prepared and submitted for review in the same manner as if it were a specifically authorized feasibility study.

e. Multi-purpose Projects. Multipurpose projects may be formulated under more than one of the Program authorities. However, one of the Program's legislative authorities shall be designated as the primary authority for project implementation. Headquarters approval is required prior to proceeding with studies and projects using project purposes for which there is no existing continuing authority, or purposes for which the Administration has established specific budgetary restrictions.

f. Restrictions on Program Eligibility.

(1) Specifically Authorized Projects. The CAP shall not be used to construct a project specifically authorized by the Congress. This prohibition includes any unconstructed or uncompleted authorized portion of such a project.

(2) Existing Non-Federal Responsibilities. This Program shall not be used to nullify or change an existing condition of non-Federal responsibility required for a project specifically authorized by Congress.

(3) Non-Federal Operation and Maintenance. This Program shall not be used to adopt a non-Federal project for future maintenance at Federal expense or to accomplish non-Federal maintenance at a Federally constructed project.

(4) Grants, Reimbursements, or Contributions. Local interests will not be reimbursed for work undertaken by them on a CAP project except as authorized by law and contained in an approved cost share agreement.

(5) Minimum Cost of Projects. The district commander, in coordination with the MSC commander, should consider termination of planning and design activities when the estimated or actual total cost of these studies equals or exceeds the estimated total construction cost including LERRD.

F-7. Project Cost Sharing.

a. General. Unless otherwise specified in this guidance, cost sharing policies applicable to studies and projects that are specifically authorized are applicable to studies and projects pursued under the CAP. The non-Federal sponsor may not use funds from other Federal agencies for part or all of their required non-Federal contribution unless the Federal granting agency verifies in writing that the use of these funds is expressly authorized by statute.

b. Section 103, 107, 111 and 205 Studies.

(1) Feasibility. The feasibility study is initially Federally funded up to \$100,000. Remaining study costs will be shared equally with the study sponsor.

(2) Plans and Specifications. Costs for preparation of plans and specifications will be initially Federally financed and later recovered from the sponsor during project construction as part of total project implementation cost.

c. Section 14 and 208 Studies. The costs of planning and design will be initially Federally financed up to \$40,000. These funds are not considered part of the project implementation cost, although these costs will be counted against the statutory Federal per project limit. Any additional costs for planning and design will be initially Federally financed and later recovered from the sponsor during project construction as part of total project implementation cost.

d. Section 204, 206, and 1135 Studies. The non-Federal sponsor's share of the costs for all planning and design work, whether done in one or two stages, completed prior to execution of a project cooperation agreement will be initially Federally financed. The non-Federal sponsor

will be responsible for these costs when the project cooperation agreement is executed. These costs are considered to be part of the total project cost and cost shared at the cost sharing rate specified in the individual authorizing legislation.

F-8. Real Estate.

a. 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.

(1) The nature of the estate obtained for CAP projects will be in accordance with [ER 405-1-12](#). With respect to ecosystem restoration projects, fee title is generally required. However, for all authorities an easement estate may be appropriate based on the extent of the interest required for the implementation, operation and maintenance of the project. If an estate less than fee is recommended consideration should be given to the potential effects on preservation of the physical integrity of the project and to risks associated with achieving benefits that serve to justify the project cost.

(2) The district Real Estate Division may approve the use of an interest less than fee for projects if such use is justified in the Real Estate Plan (REP) and a standard estate is used. Requests for approval of a non-standard estate must be sent in writing through the Division to HQUSACE (ATTN: CERE-A) for approval, except where the estate serves the intended project purpose, substantially conforms with and does not materially deviate from the corresponding standard estate, and does not increase costs or potential liability of the Government. If these criteria are met, the District Chief of Real Estate has the authority to approve such estates in accordance with Chapter 12 of [ER 405-1-12](#). Changing an estate from easement to fee, or vice versa, is not within the scope of the District's approval authority.

(3) 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 Real Estate Division to determine if sufficient rights are available for the project modification.

b. Credit. The value and amount of credit given for LERRD required to be provided by the non-Federal sponsor shall be determined by the Real Estate Division after consultation with the Project Manager.

c. Real Estate Plan (REP). A comprehensive REP must be prepared in accordance with Chapter 12 of [ER 405-1-12](#). The level of detail required will vary depending on the scope and complexity of the project.

F-9. Plan Formulation, Evaluation, and Selection Principles.

a. General. Plan formulation, evaluation, and selection will follow the procedures developed for specifically authorized studies and projects discussed in Appendix E. However the level of detail will reflect the scope and complexity of the proposed CAP project.

b. Formulation. Alternative plans should be developed to the level of detail necessary to select a justified, acceptable, and implementable plan while meeting the goals of the sponsor.

c. Evaluation. Risk and uncertainty analyses of all project outputs will be undertaken using procedures appropriate to the complexity of the project. Cost effectiveness and incremental cost analysis will be necessary for ecosystem restoration studies and shall be accomplished at a level appropriate to the size and complexity of the project.

d. Selection of a Plan. Plan selection will be in accordance with the guidance for the applicable project purpose in Appendix E.

F-10. Financial Analysis. For CAP projects a financial analysis, consistent with the complexity of the financing involved, is required. For most CAP projects, the financial analysis requirements can be satisfied by a statement of financial capability and financing plan in the form of a letter from the non-Federal sponsor. The analysis will be part of the decision documentation. If a Detailed Project Report is prepared, a short narrative should be included in the "Findings and Conclusions" section. In more complicated cases, a preliminary capability statement, financing plan and supporting financial information as described in Appendix D are required.

F-11. Approval Authorities.

a. Decision Documentation. MSC commanders will establish the documentation requirements and procedures that are required for project approval, and will approve such documentation accordingly. MSC commanders may not further delegate the documentation approval authority to district commanders.

b. Documents. MSC commanders are authorized to approve all CAP decision documents, including Preliminary Restoration Plans, Detailed Project Reports and all other decision documents regardless of the cost of the project recommended. This authority may not be further delegated.

c. Project. MSC commanders are authorized to approve CAP projects for construction based on approved documentation. This may occur anytime following completion of the planning phase when there is sufficient information to make a construction decision. This authority may not be further delegated to district commanders.

d. Withdrawal of Project Approval. MSC commanders upon the recommendation of the district commander may withdraw project approval. This decision will be made after consultations, as appropriate, with the sponsor, Headquarters, and, if necessary, the Assistant Secretary of the Army (Civil Works).

e. Agreements.

(1) MSC commanders are authorized to approve feasibility cost share agreements and project cooperation agreements that do not deviate from approved models. Only the authority to approve feasibility cost share agreements may be further delegated to the District Engineer.

(2) In cases where there is not an approved model, or deviations are proposed, subsequent to project approval, the MSC commander will provide to HQUSACE (CECW-AR) six hard copies of the negotiated draft agreement with the deviations indicated by marking up a copy of the model agreement; an electronic file containing the draft agreement, an explanation of the deviations, the Certification of Legal Review from the district, one copy of the approved decision document, the district commander's assessment of financial capability, a checklist meeting CECW-AR requirements, and a current letter from the non-Federal sponsor. A copy of the transmittal memorandum, and if not previously provided, a copy of the current project fact sheet and decision document should also be provided to CECW-P.

(3) Approved project cooperation agreements may be executed by the district commander subsequent to completion of all environmental compliance actions including receipt of water quality certification for the entire project, and commitment of construction funds. If the state will not provide water quality certification at the time the cost share agreement for implementation of the project is scheduled to be executed, contact CECW-AR for guidance on how to proceed prior to executing the cost share agreement.

F-12. Design Deficiency Corrections.

a. Design Deficiency Study. If a completed CAP project is found not to be operating as originally intended, the MSC commander may initiate a Federally funded reconnaissance level study of the project. This report will serve as the decision document. The correction will be processed as a new project decision under the original Federal limit. Design deficiency corrections will be accomplished in accordance with [ER 1165-2-119](#).

b. Design Deficiency Criteria. The criteria for establishing the existence of a design deficiency and the appropriate cost sharing of the correction are the same criteria for those governing the correction of specifically authorized projects.

c. Funding Limit. The authority for Federal financial participation in the study and implementation of design deficiency corrections rests in the original project authorization. Therefore, Federal funding for the correction is limited to the remaining per project funding authority of the original project.

Table F-1: CAP Federal Funding Limits

<u>Authority</u>	<u>Project</u>	<u>Annual Program</u>
Section 14	1,000,000*	15,000,000
Section 103	3,000,000	30,000,000
Section 107	4,000,000*	35,000,000
Section 111	5,000,000*	NA
Section 204	N/A	15,000,000
Section 205	7,000,000	40,000,000
Section 206	5,000,000	25,000,000
Section 208	500,000	7,500,000
Section 1135	5,000,000	25,000,000

* See Section 2 for additional guidance concerning funding limits applicable to this authority. Annual program limits are appropriation limits for sections 1135, 204, and 206. For the remaining authorities, these are annual allocation limits.

SECTION II – AUTHORITY SPECIFIC GUIDANCE

F-13. Section 14, Flood Control Act of 1946, as amended.

a. General. This program is designed to implement projects to protect public or non-profit public facilities and/or services which are open to all on equal terms, have been properly maintained but threatened by natural processes on stream banks and shorelines, and are essential and important enough to merit Federal participation in their protection.

b. Eligible Facilities:

(1) highways, highway bridge approaches, public works, churches, public and private nonprofit hospitals and schools and other nonprofit public services;

(2) known cultural resources whose significance has been demonstrated by a determination of eligibility for listing on, or actual listing on, the National Register of Historic Places and/or equivalent State register. The cultural resource 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:

(1) work designed solely to protect undeveloped land or to protect non-essential, temporary, or mobile facilities;

(2) bank failure clearly not related to stream flow, storm, or wind driven waves;

(3) inadequate drainage (groundwater, surface runoff, overland flow, poor drainage undermining the facility itself and springs);

(4) when the facility itself is the cause of erosion (e.g. exfiltrating sewer-lines, drains, water lines, lagoons);

(5) 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;

(6) levees or other facilities for which the owner has a contractual agreement with the federal government to maintain;

(7) repair, restoration, relocation, or modification of the facility to be protected;

(8) work within the limits of Corps projects which are properly operation and maintenance responsibilities;

(9) 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, formulation and evaluation must establish that the facilities to be protected provide economic benefits in excess of the project costs. Given the narrow geographic focus, low cost, and impending threat to facilities, the evaluation should focus on the least cost alternative solution. The least cost alternative plan is assumed to be justified, if it costs less than relocation of the threatened facility. It is not necessary to account for interest during construction in project costs for Section 14 projects.

e. Valuation of LERRD. The valuation of LERRD for crediting purposes for Section 14 projects is the same as for any other project, except for cases in which 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 shall not receive credit for the value of LERRD it provides that (a) are part of the tract of land on which the facility or structure to be protected is located and (b) are owned by either the non-Federal sponsor or the owner of the facility or structure when the cost share agreement for implementation of the project is executed.

f. Cost Sharing. Total project costs, including any planning and design costs in excess of \$40,000, are cost shared. The non-Federal sponsor must provide all LERRD necessary for the project. The minimum non-Federal share is 35 percent. Five percent of the non-Federal sponsor's share shall be in cash. If the value of credited LERRD plus the five percent cash is less than the applicable minimum percentage additional cash is required to reach the minimum amount. The maximum non-Federal contribution is 50 percent. Operation, maintenance, repair, rehabilitation and replacement (OMRR&R) costs are 100 percent non-Federal.

F-14. Section 103, River and Harbor Act of 1962, as amended.

a. Eligibility. This authority may be used for protecting multiple public or private properties and facilities, and for the protection of single non-Federal public properties, against damages caused by storm driven waves and currents. All projects must be formulated for hurricane and storm damage reduction (HSDR), in accordance with current policies and procedures governing projects of the same type which are specifically authorized by the Congress.

b. Cost Sharing. The non-Federal sponsor must provide all LERRD. Costs assigned to protection of Federally owned property are 100 percent Federal. Costs assigned to protection of privately owned undeveloped lands and shores which are not open to the public are 100 percent non-Federal. Costs assigned to areas where criteria for public uses are met are 35 percent non-Federal.

F-15. Section 107, River and Harbor Act of 1960, as amended.

a. General. Projects implemented under this authority are formulated for commercial navigation in accordance with current policies and procedures governing projects of the same type which are specifically authorized by the Congress.

b. Cost Sharing. The cost sharing formula for navigation projects is very complex. See Appendix E for more information, especially regarding disposal areas and relocations. The cost share agreement for each project will contain appropriate details. This is a general summary. The non-Federal sponsor provides all lands, easements, relocations and rights-of-way (LERR). The non-Federal share of the costs of deepening from zero to 20 feet below mean low water (mlw) is ten percent. Over 20 feet below mlw to 45 feet below mlw, the non-Federal share is 25 percent and for depths in excess of 45 feet mlw the non-federal share is 50 percent. For all depths the non-Federal sponsor shall provide an additional cash contribution equal to ten percent of the general navigation features. This amount may be repaid over a period not to exceed 30 years. The cost of LERR is credited against the ten percent. OMRR&R for depths to 45 feet mlw is a Federal cost. Incremental costs for OMRR&R of depths over 45 feet mlw are shared equally with the non-Federal sponsor.

c. Federal Financial Limit on OMRR&R. In addition to the per project limit, total Federal expenditures for construction and OMRR&R under the Section 107 authority are limited to the greater of \$4,500,000 or 2.25 times the Federal costs of the project, including costs for the feasibility through the construction phases. These expenditures are computed on a present worth basis starting with the date the sponsor accepts the project. The discount rate to be used in determining the value of the future OMRR&R expenditures will be the rate applicable to the evaluation of Federal water resource projects in the Federal fiscal year of the first construction contract award. Table F-2 contains sample calculations. When Federal participation ceases, the operation and maintenance of the project becomes the responsibility of the sponsor. Regardless of the financial limit on future OMRR&R as computed in this paragraph, the period of Federal participation in OMRR&R of Section 107 projects will not exceed 50 years.

F-16. Section 111, River and Harbor Act of 1968, as amended.

a. Purpose. This authority authorizes the planning and design 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. This includes shore damage attributable to the Atlantic Intracoastal Waterway and the Gulf Intracoastal Waterway. The Corps is authorized to construct such a project if the Federal share of the first cost of construction 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 if the non-Federal sponsor

Table F-2
Sample Computations to Determine
Total Project Limit and Limit on Federal OMRR&R
for Section 107 Projects

The limit of Federal participation in operation and maintenance is as follows:

(1) Compute the total project limit of Federal expenditure. Total Project Limit = Total Federal Costs (feasibility through end of construction) x 2.25. The minimum total project limit is \$4.5 million.

(2) Compute the limit for Federal OMRR&R. Federal OMRR&R limit = Total Project Limit – Total Federal Costs (feasibility through end of construction).

Examples

Project Data	Project A	Project B
1. Federal Costs	(\$000)	(\$000)
Feasibility Study	150.0	430.0
Plans and Specifications	60.0	75.0
Construction	1,100.0	3,100.0
<u>Total Federal Costs</u>	1,310.0	3,605.0
Estimated Average Annual Federal OMRR&R (from DPR)	530.0	150.0
2. Total Project Limit		
Total Federal Costs x 2.25	2,947.5	8,111.25
<u>Total Project Limit</u>	4,500.0	8,111.25
3. Federal Limit for Future OMRR&R		
Total Project Limit	4,500.0	8,111.25
<u>--Total Federal Costs</u>	<u>1,310.0</u>	<u>3,605.0</u>
Federal Limit for Future OMRR&R	3,190.0	4,506.25

agrees to bear all costs associated with correcting the shore damage not attributed to the Federal navigation works. However, when there is a larger shore damage problem caused by more than just the Federal navigation works, a complete solution should be formulated under either an authorized hurricane and storm damage study and project, or under Section 103 of the Rivers and Harbors and Flood Control Act of 1968 (PL 90-483). Section 111 cost sharing would apply to those portions of the study and project addressing damages caused by the Federal navigation works.

c. Coordination.

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

(2) To the extent practicable, section 111 projects and shore protection pursued under other authorities in the same area, shall 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. The Corps will not bear any financial responsibility for the proportionate share of project or maintenance costs for 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 formulated to restore shorelines to historic dimensions.

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

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. If the Federal share of implementation costs for a Section 111 project, including periodic nourishment during the period of analysis, exceeds \$5,000,000, the project may not proceed as a Federal undertaking without specific congressional authorization. This provision applies even if the local project sponsor is willing to be responsible for the amount of the Federal share exceeding \$5,000,000. If at any time up through opening of bids for the initial construction it becomes apparent that the Federal share of implementation costs would definitely exceed \$5,000,000, the Section 111 works may not proceed as a Federal undertaking without specific Congressional authorization.

h. Local Cooperation.

(1) Total Project Cost. The costs of implementing measures under this section shall be cost-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 necessary interests in real estate required for the section 111 project shall 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 nonstructural measures, to operate and maintain the property for public purposes in accordance with regulations prescribed by the Corps of Engineers.

F-17. Section 205, Flood Control Act of 1948, as amended.

a. General. Projects implemented under this authority are formulated for flood control in accordance with current policies and procedures governing projects of the same type which are specifically authorized by Congress.

b. Cost Sharing. Projects implemented under this authority have the same project cost sharing requirements as flood control projects implemented under specific congressional authorization. Feasibility costs in excess of \$100,000 are shared equally with the sponsor. The non-Federal sponsor must provide all LERRD necessary for the project. The minimum non-Federal share of all structural flood control costs incurred subsequent to the feasibility phase, as defined in the cost share agreement, is 35 percent. Five percent of the non-Federal sponsor's share shall be in cash. If the value of credited LERRD plus the five percent cash is less than the

applicable minimum percentage, additional cash is required to reach the minimum amount. The maximum non-Federal contribution is 50 percent. OMRR&R costs are 100 percent non-Federal. The non-Federal share of non-structural flood control costs incurred subsequent to the feasibility phase, as defined in the cost share agreement is 35 percent. Details on cost sharing for flood control projects can be found in Appendix E.

F-18. Section 208 Flood Control Act of 1954, as amended.

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 control 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 local sponsor.

c. Cost Sharing. Total project costs, including any planning and design costs in excess of \$40,000, are cost shared. The non-Federal sponsor must provide all LERRD necessary for the project. The minimum non-Federal share of the implementation costs is 35. Five percent of the non-Federal sponsor's share shall be in cash. If the value of credited LERRD plus the five percent cash is less than the applicable minimum percentage additional cash is required to reach the minimum amount. The maximum non-Federal contribution is 50 percent. OMRR&R costs are 100 percent non-Federal.

F-19. Ecosystem Restoration Authorities (Sections 1135, 206, and 204). This paragraph provides programmatic guidance common to sections 1135, 206, and 204. Additional guidance, specific to each authority, is located in paragraphs F-19, F-20, and F-21. A more complete discussion of policies applicable to ecosystem restoration may be found in Appendix E, Section V, of this regulation, in [ER 1165-2-501](#) and [EP 1165-2-502](#).

a. Objective. The objective of ecosystem restoration is to restore degraded ecosystem structure, function, and dynamic processes to a less degraded, more natural condition. This involves consideration of the ecosystem's natural integrity, productivity, stability and biological diversity. In those situations where a more natural condition cannot be reasonably achieved, such as restoring a warm water ecosystem downstream of a dam with cold water discharges, projects that improve the future condition may be proposed for implementation.

b. Eligibility. These program authorities should be used to develop and implement projects that improve the quality of the environment in the public interest and are cost-effective. They must be justified on the basis of monetary and non-monetary benefits and will not result in environmental degradation. Study-only proposals will not be funded.

(1) Work on other Federal lands should be limited to cases where one or more of the following criteria are met:

- (a) The other Federal agency does not have an ecosystem restoration mission.
 - (b) The work is an integral part of a larger project.
 - (c) The site is the optimum place to achieve the proposed outputs in the watershed.
- (2) Output considerations.

(a) Species to benefit. Proposals that would change the existing natural productivity of ecosystems in an area primarily to benefit one or more species not normally, or historically, found in those ecosystems should not be pursued.

(b) 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 shall 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 will be considered.

(3) Public interest. These projects are to improve the quality of the environment in the public interest. For projects where the land on which the majority of the physical ecosystem restoration will occur is in the ownership of a single firm, individual, club, or association with restrictive membership requirements, it must be demonstrated clearly that the restoration benefits are in the overall public interest and that the benefits do not accrue primarily to the property owner.

(4) Recreation features. Recreation benefits will not be used to justify an ecosystem restoration project. Limited recreational features compatible with the ecosystem outputs for which the project is designed are permissible. Recreation features must be justified, cost-shared 50-50, and not increase the Federal cost of the ecosystem restoration project by more than 10 percent without prior approval of the Assistant Secretary of the Army for Civil Works.

(5) Lands. Proposals that consist primarily of land acquisition are not appropriate civil works ecosystem restoration investments as there are other Federal and state programs through

which land acquisition may be pursued to accomplish restoration or protection. Generally, land value should not exceed 25 percent of total project costs. Projects with land costs exceeding this target are not likely to be given a high priority for budgetary purposes.

(6) Mitigation. Projects should be designed to avoid any requirement for fish and wildlife mitigation. Projects implemented using these authorities may not be used as wetland banks or mitigation credit for the non-Federal sponsor.

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

d. Justification. An ecosystem restoration project is justified when the combined monetary and non-monetary benefits of the project justify its monetary and non-monetary costs. Units of output must be defined, benefits specified, and cost of production evaluated. Units of environmental outputs must be specified in quantitative and qualitative terms. The use of units that measure an increase in ecosystem value and productivity are preferred. Some examples of possible metrics that may be used include habitat units, acres of increased spawning habitat for anadromous fish, stream miles restored to provide fish habitat, increases in number of breeding birds, increases in target species and diversity indices. The models or methodologies used to define and quantify outputs must be explained. Abbreviated techniques may be appropriate, including professional judgment. The value of the restoration must be supported in terms of importance as defined in terms of institutional, public and technical recognition. Additional discussion of this topic is found in Appendix E, Section V.

e. Cost Effectiveness – Incremental Cost Analysis. The project documentation must demonstrate how the cost effectiveness of the proposed plan was determined. A sufficient number of implementable plans should be evaluated, including consideration of alternative methods and sizes, to determine the optimal range of project costs relative to outputs. Formulation should be incremental so that the relationship between the quantity of outputs and the incremental cost is evident. The analysis should include a brief description of the various increments carried forward, the outputs for various increments, the cost per increment of output, and identification of the most cost efficient plan. If the most cost efficient plan is not the recommended plan, then reasons for selecting an alternative plan must be discussed.

f. Monitoring. Monitoring may be necessary to determine if the predicted outputs are being achieved and to provide feed back for future projects. Cost shared post-implementation monitoring will rarely be required. It may be warranted when the risk and uncertainty of achieving the projected outputs is high. Cost shared post-implementation monitoring must be clearly defined, justified, and shall be limited to no more than five years. The cost of monitoring

included in the total project cost and cost shared with the non-Federal sponsor shall not exceed one percent of the total first cost of the ecosystem restoration features. The non-Federal sponsor will be responsible for maintenance during the monitoring period. If additional monitoring is necessary consideration should be given to designating it as an O&M activity to be paid for by the sponsor.

g. **Work-in-Kind.** Work-in-kind is discretionary and does not include activities the sponsor must perform as required in the cost sharing agreements, including participation on the Project Coordination Team, activities related to acquisition of LERRD, or response to the Hazardous Substances article. For projects pursued under sections 1135 and 206, work-in-kind may be provided at any time subsequent to execution of the cost share agreement.

(1) **Eligible Parties.** Work-in-kind may only be provided by the non-Federal project sponsor and can be accomplished by the staff of the non-Federal sponsor or by contract administered by the non-Federal sponsor.

(2) **Requirements.** The dollar value of the in-kind effort will be established prior to the initiation of the in-kind effort. The value will be negotiated, based on a detailed government estimate and sponsor proposal, between the Federal Government and the non-Federal sponsor, applying applicable Federal regulations, including OMB Circular A-87. The non-Federal sponsor will comply with applicable Federal and state laws and regulations, including the requirement to secure competitive bids for all work to be performed by contract. Efforts credited as work-in-kind will be subject to audit and if the actual costs are less than the negotiated amount, the value of the credit will be reduced accordingly.

(3) **Other Contributions.** Contributions of cash, funds, materials and services from other than the non-Federal sponsor may be accepted for ecosystem restoration projects under the provisions of Section 203 of the WRDA of 1992. However, such contributions, including work by volunteers, will not be credited to the non-Federal share, but will be applied to the entire project. Therefore these contributions will reduce both the Federal and non-Federal shares of the project cost.

(4) **Limits.** Credit for work-in-kind may not result in any reimbursement of the non-Federal sponsor. The work-in-kind when combined with the non-Federal provision of LERRD cannot exceed the value of the non-Federal share. See paragraph F-20.b.(2) below for discussion of an exception for section 206.

h. **Non-Federal Responsibilities.** If the value of LERRD provided represents less than the non-Federal share of the total project costs, the non-Federal sponsor shall provide, during the period of implementation, a cash contribution for section 204 and/or work-in-kind for sections 1135 and 206 to make its total contribution equal to 25 percent for sections 204 and 1135, and 35

percent for section 206. The specific requirements for each individual project will be detailed in the cost share agreement.

i. Reimbursement. If the value of required LERRD provided by the non-Federal sponsor exceeds its share of the total project costs, the Government shall reimburse the non-Federal sponsor for the excess amount.

j. Project life. Project benefits and costs will be described over equivalent periods of time. While a useful project life of 50 years is ordinarily to be expected, projects for ecosystem restoration with a useful life of less than 50 years can be recommended and approved. This subject should be considered when defining operation and maintenance responsibilities and the nature of the interest in lands to be acquired.

F-20. Beneficial Uses of Dredged Materials, Section 204, Water Resources Development Act of 1992, as amended.

a. Purpose. Section 204 (a) authorizes the Secretary 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. Base Plan. Disposal of dredged material associated with the 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 ecosystem restoration project is part of the base plan, it is a navigation (harbor or inland system) construction or maintenance cost and funded accordingly. Where the ecosystem restoration project is not part of the base plan for the navigation purpose, the base plan serves as a reference point for measuring the incremental costs of the ecosystem restoration project that are attributable to the environmental purpose.

c. Cost-Sharing. Ecosystem restoration projects under Section 204 are funded as navigation construction or operation and maintenance costs up to the level of the base plan. For costs above this baseline, the non-Federal share of the project shall be 25 percent of the incremental costs associated with construction of the ecosystem restoration project, including provision of all LERRD. The non-Federal sponsor shall also be responsible for 100 percent of OMRRR associated with the ecosystem restoration.

d. Work-in-Kind. No credit will be allowed for work-in-kind.

F-21. Aquatic Ecosystem Restoration, Section 206, Water Resources Development Act of 1996, as amended.

a. Purpose. The purpose of the program is development of aquatic ecosystem restoration and protection projects that improve the quality of the environment, are in the public interest, and are cost effective.

b. Cost Sharing.

(1) The non-Federal share of the costs of aquatic ecosystem restoration projects shall be 35 percent. The non-Federal sponsor shall provide all LERRD required for the restoration project and shall also be responsible for 100 percent of the OMRR&R.

(2) Section 210 of WRDA of 1999 states that before October 1, 2003 the Federal share of the cost may be provided in the form of reimbursements of project costs. The guidance implementing this provision will be provided at a later date.

c. Work-in-Kind. The entire non-Federal share of the total project cost may be credited work-in-kind.

F-22. Project Modifications for Improvement of the Environment, Section 1135, Water Resources Development Act of 1986, as amended.

a. Purpose. This section provides authority to review and modify the 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. 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. Categories of Eligible Projects. A project must fit at least one of the following categories and may incorporate elements that fit more than one of these categories. All projects proposed must be consistent with the authorized purpose. Additional eligibility criteria are provided at paragraph F-17.c.

(1) Modification of an existing Corps project. These are projects that incorporate modifications in the structures; project fee or easement lands; 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 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. Cost Sharing. The non-Federal share of the costs of section 1135 modifications shall be 25 percent. The sponsor shall provide LERRD required for the restoration project which are not otherwise available due to the construction and operation of the existing project.

d. Work-in-kind. For all section 1135 projects approved subsequent to 12 October 1996, not more than 80 percent of the non-Federal share of the total project cost may be credit for work-in-kind.

e. Operation and Maintenance. Operation and maintenance is usually 100 percent non-Federal. However, If the entire section 1135 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), the Corps may assume responsibility for the OMRR&R of the section 1135 project modification.

f. Cost Allocation. The ecosystem restoration features are in addition to authorized project purposes, and they are not for mitigation. Therefore, the costs of the project modifications shall not be allocated to other project purposes, but should be considered solely as ecosystem restoration costs and shared in accordance with the provisions of Section 1135 of WRDA of 1986, as amended.

SECTION III - PROCEDURES

F-23. Introduction. This section contains a brief discussion of the procedures for CAP from prior to initiation of a study to completion of a project.

F-24. Coordination Account. Limited funds may be provided for non-project specific coordination activities such as for participation in regional meetings and interagency coordination for programs such as Coastal America. These funds may also be used for preliminary site visits and discussions with potential sponsors in order to determine potential eligibility for pursuing a project using one of the CAP authorities. However, these funds are not to be used as supplements for coordination activities, such as EPA's National Estuary Program, which receive line-item funding. These funds will not be considered part of the study or project implementation costs, or counted against the statutory per project limit.

F-25. Preliminary Restoration Plan (PRP) for sections 1135, 206 and 204.

a. General. The initial step for a proposed ecosystem restoration project using these authorities is the preparation of a PRP. Development of PRPs should be coordinated among applicable offices to optimize use of existing data and to generate ideas. In this plan, the proposed project features are identified. For section 1135 projects, this should include a discussion of the existing project features or functions being modified, and/or a description of the degradation attributed to the project. The nature and scope of the ecosystem restoration features are outlined, the outputs projected based on an analysis of with and without project conditions, and the importance of these outputs discussed. Known risk factors, if any, affecting output, quantity, quality and sustainability should be considered. For section 204 projects it is critical that operations be actively involved in the development of the PRP. Coordination with a willing non-Federal sponsor is an important element of this phase. Before the next phase may be funded a letter of intent from the sponsor acknowledging its financial responsibilities in the study and project (if approved) must be obtained. The plan will serve as the basis for an understanding among all of the involved parties of the work proposed. For projects with a Federal cost of \$1,000,000, or less, the PRP will serve as the basis for initiation of a combined planning and design phase resulting in environmental compliance documentation and plans and specifications.

b. Funding. Each PRP is limited to \$10,000. These funds will not be considered part of the total project cost and will not be cost shared.

F-26. Planning and Design Analysis (PDA). This is the pre-implementation phase for all potential section 14 and section 208 projects. It is also the pre-implementation phase for section 1135, section 206 and section 204 projects with a Federal cost of less than \$1,000,000.

a. General. The PDA consists of all planning and design activities required to demonstrate that Federal participation in a project is warranted. Formulation and design will be completed, including all technical, and Federal environmental and regulatory compliance activities necessary to approve the project and award the first construction contract.

b. Reporting Requirements. No formal report is required by Headquarters. However, backup material will be retained in the project files. The NEPA compliance documentation may be used as the primary means for coordination of the project.

F-27. Feasibility Phase. For sections 103, 107, 111, 205 and proposed section 1135, 206, and 204 projects with a Federal cost exceeding \$1,000,000 a Feasibility phase is required.

a. General. The study will complete the plan formulation process, including the selection of a plan, generally in accordance with guidance for feasibility studies that are specifically authorized by the Congress. The level of detail shall be appropriate to the scope and complexity of the recommended solution and sufficient to proceed directly into the preparation of contract plans and specifications. Environmental compliance activities should be completed during this phase. The implementation cost share agreement should be negotiated with the sponsor prior to completion of the phase

b. Reporting Requirements. A detailed project report (DPR) should be prepared following, as appropriate, the guidance covering feasibility report contents in Appendix G. The report must contain a clear discussion of future OMRR&R requirements, a recommendations section clearly describing the recommended plan, either an Environmental Assessment and signed Finding of No Significant Impact or an Environmental Impact Statement as appropriate and a list of the non-Federal sponsor's responsibilities.

F-28. Report Approval. When formulation has been completed and a plan meeting the legislative and policy requirements for Corps implementation has been identified, the project documentation may be approved by the MSC. For projects with a PDA phase this will occur towards the end of that phase. DPRs will be approved at the end of the Feasibility phase.

F-29. Plans and Specifications. This stage may be initiated when: (1) the DPR has been approved and (2) it has been determined that the model cost share agreement will be used

without deviations, or the request for approval of deviations or the negotiated draft agreement, in cases where there is no model, has been submitted to Headquarters.

F-30. Project Approval.

a. Section 14, 208 and 1135, 206 and 204 projects with a Federal cost of less than \$1,000,000. Project approval will occur upon approval of the PDA documentation by the MSC towards the end of the PDA phase.

b. Sections 1135, 206 and 204 with a Federal cost over \$1,000,000. Project approval will occur concurrently with DPR approval, which is why NEPA compliance must be complete at that time.

c. Sections 103, 107, 111, and 205. Project approval may occur when the decision document has been approved, project costs and schedule are sufficiently firm, and the project cooperation agreement has been approved and is ready for execution. Normally this will occur during the preparation of plans and specifications.

F-31. Commitment of Construction Funds. MSCs will request Headquarters' commitment of construction funds subsequent to project approval and prior to execution of the project cooperation agreement. For most projects this will occur towards the end of the PDA or plans and specifications phase. For those 1135 and 206 projects with a plans and specifications phase, this request may occur early in the plans and specifications phase, subject to completion of environmental compliance activities, in order to allow the sponsor to receive credit for work-in-kind during that phase.

F-32. Construction.

a. Condition for Advertising for Bids. Advertising for bids may proceed after the project cooperation agreement has been executed and the district real estate element has certified that all necessary LERRD are available. Earlier advertisement may be authorized in response to special circumstances but not prior to execution of the project cooperation agreement.

b. Construction Procedures. Procedures for constructing approved projects are generally the same as employed for projects that are specifically authorized by the Congress.

c. Continuing Construction Contracts. Continuing construction contracts will be used instead of lump sum construction contracts when the construction period is expected to extend

into the next fiscal year. The continuing construction clause directed for use in Continuing Authorities Program project construction contracts is contained in the Engineer Federal Acquisition Regulations Supplement.

d. Project Completion Report. After providing the non-Federal sponsor with an Operation and Maintenance manual, completion of any cost-shared monitoring, and the final audit and project closeout, the MSC commander will transmit a project completion report to Headquarters. The report will contain a short description of the project, the final Federal and non-Federal planning, design, and construction costs by phase and the date the project was turned over to the sponsor.

F-33. Notification. When granting approval to initiate a new study and when requesting commitment of funds for construction, the MSC commander will provide headquarters (Attn: CECW-P) a brief fact sheet describing the project, including cost, schedule and sponsor.