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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 (CAP). CAP consists of a group of nine 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-1 lists the CAP authorities, the Authority/Title is the commonly referenced name based on the “section” of the Act which first provided the authority. Overview and policies for each purpose are found in the identified Chapter 3 paragraph of this Engineer Regulation (ER).

TABLE F-1 CAP AUTHORITIES		
AUTHORITY/TITLE	US CODE	PROJECT PURPOSE
Section 14, Flood Control Act of 1946, as amended. <i>Emergency Streambank and Shoreline Protection.</i>	33 USC 701r	Flood Risk Management (See 3-3)
Section 103, Rivers and Harbors Act of 1962, as amended (amends Public Law 79-727). <i>Small Beach Erosion Control.</i>	33 USC 426g	Coastal Storm Risk Management (See 3-4)
Section 107, Rivers and Harbors Act of 1960, as amended. <i>Small River and Harbor Improvement Projects.</i>	33 USC 577	Navigation improvements (See 3-2)
Section 111, River and Harbor Act of 1968, as amended. <i>Shore Damage Prevention or Mitigation.</i>	33 USC 426i	Prevention or mitigation of shore damage caused by Federal navigation projects
Section 204, Water Resources Development Act of 1992, as amended. <i>Regional Sediment Management.</i>	33 USC 2326	Beneficial Uses of Dredged Material/Regional Sediment Management
Section 205, Flood Control Act of 1948, as amended. <i>Small Flood Control Projects.</i>	33 USC 701s	Flood Risk Management (See 3-3)
Section 206, Water Resources Development Act of 1996, as amended. <i>Aquatic Ecosystem Restoration.</i>	33 USC 2330	Aquatic Ecosystem Restoration (See 3-5)

TABLE F-1 CAP AUTHORITIES		
Section 208, Flood Control Act of 1954, as amended (amends Section 2, Flood Control Act of August 28, 1937). <i>Snagging and Clearing for Flood Control.</i>	33 USC 701g	Snagging and Clearing for Flood Risk Management (See 3-3)
Section 1135, Water Resources Development Act of 1986, as amended. <i>Project Modifications for Improvement of Environment.</i>	33 USC 2309a	Project modifications for improvement of the environment (See 3-5)

b. Applicability. Project implementation processes, policies and guidance in this Appendix apply to all CAP projects. Additional policy, processes, and guidance from the specifically authorized program for each project purpose (flood risk management, navigation, aquatic ecosystem restoration, coastal storm risk management, etc) found within this ER also apply. The annual Civil Works (CW) Program Execution Circular, Engineer Circular (EC)-2-2xx or its successor (for FY2016 it was EC-2-211), contains guidance on how current fiscal year funding will be issued as well as metrics for measuring annual execution performance.

c. Roles and Responsibilities. Management of CAP for most actions and decisions has been delegated down to the Commander of the Division (the Major Subordinate Command; MSC). Headquarters USACE (HQUSACE) is responsible for development of the draft President's budget, response to authorization and appropriation act and report language, allocation of funds, monitoring of policy and procedural compliance, and program-wide financial and physical performance measures. Division management is responsible for providing regional leadership of the program, policy compliance, coordinating review and approval of CAP decision documents, coordinating requests to the appropriate HQ Regional Integration Team (RIT) for review and approval of waivers or other submittals requiring HQ or ASA (CW) approval, and quality control of project-level data contained within USACE information systems (P2, CAP database, etc). District management is responsible for execution of all CAP Projects to include: assignment of project manager and team members to plan, design, and construct CAP projects; coordinate with sponsors; submit CAP decision documents to Division for review and approval; Project records; and maintain CAP project data.

F-2. References.

- a. Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies. U.S. Water Resources Council. 10 March 1983.

F-3. Definitions.

a. *Decision document* means the consolidated documentation of feasibility, technical and policy analyses, findings, and conclusions upon which the District Commander bases the recommendation to the Major Subordinate Command (MSC) Commander to approve the recommended project for implementation. A *decision document* will be used to support the Project Partnership Agreement (PPA) or PPA amendment. Minimum *decision document* requirements are listed in, paragraph F-11.f. (2) of this Appendix.

b. *Design and implementation (DI) phase* means the phase of the project during which post *feasibility phase* activities are performed including negotiation and execution of the PPA, final design, preparation of contract plans and specifications (P&S), construction, monitoring, adaptive management, closeout, and any other DI activities required to construct or implement the approved project. This does not include operation, maintenance, repair, rehabilitation, or replacement activities.

c. *Feasibility (F) 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 environmental and regulatory compliance activities required for approval of the *decision document*.

d. *Federal Interest Determination (FID)* refers to the MSC approval memo used to verify that the project potentially meets the requirements of Federal Interest and Corps responsibility as set forth in one of the CAP Authorities. The memorandum is prepared by the district once a project has been funded (not using Coordination funds), makes use of existing data, and must be accomplished prior to receipt of any additional funding. The FID is not considered a *decision document*.

e. *Initial work allowance* refers to funding issued by HQUSACE to start a new CAP project. Work allowances are also used for reallocation of funds between projects. Only the funding from HQUSACE to start a new project are called *initial work allowances*.

f. *Monitoring* shall mean activities, including data collection and analysis, that are necessary to determine if predicted outputs of the Project (aquatic ecosystem only) are being achieved.

g. *Non-profit entity* shall mean an organization incorporated under the applicable laws of the State in which it operates as a non-profit organization, exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501), and whose purposes include and are directly related to the purpose of the project.

h. *Scale, scaled, or scalability* refers to the amount of effort, resources, and time to be invested that should be commensurate with the magnitude, complexity and cost of the project.

F-4. General Principles.

a. General. The purpose of the CAP is to plan and implement projects of limited size, cost, scope, and complexity in an accelerated manner as compared to traditional specifically authorized projects. HQUSACE, Division (MSC), and District planning, review, and design actions will adhere to the intent of the applicable Corps regulations but will be *scaled* appropriately for the size and complexity of the projects. While HQUSACE maintains responsibility for ensuring national consistency of the program, the regional management of CAP has been delegated to each MSC Commander. It is the MSC's responsibility to ensure the appropriate level of detail, including levels of effort in data collection, analyses, models, and reviews to be performed, is proportional to and a function of the magnitude, complexity, and cost of the project. The MSCs will create and implement process guidance ensuring that program and project level procedures are current and *scaled* appropriately for CAP.

b. Principles. A CAP project must meet the requirements of Federal interest and Corps responsibility set forth in one of the nine legislative authorities; must 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; must have a cost share sponsor who is willing and capable of meeting their responsibilities; does not require Congressional authorization and has established Federal cost limits.

c. Cost. There is no specific minimum project size or cost; very small projects will not be pursued under CAP as they could be implemented by other Federal or non-Federal entities. Small projects, where the *design and implementation* cost is less than or equal to the *feasibility* cost, will be terminated. Likewise, large or complex projects where the likely cost of the solution will be beyond the scope of CAP will not be pursued under CAP. This limit applies when the Federal share of the project is estimated to exceed the applicable per-project limit after application of the appropriate Federal/non-Federal cost sharing percentages, see paragraph F-7. For any CAP study underway in which a determination is made that the likely cost of the solution will be beyond the scope of CAP, the study will be terminated and orderly shutdown of all ongoing tasks will be accomplished. These projects may be considered under the specifically authorized program, see paragraph F-9.

d. Schedule. CAP projects are expected to be completed in a timely and efficient manner. Since CAP projects are generally small, non-complex, and used to provide solutions for a group of specific water resource issues, the basic expectations for time

required to complete the various phases/steps of a CAP project are as follows (subject to the availability of Federal funding).

(1) *Federal Interest Determination*. Not to exceed 4 months from receipt of funding.

(2) *Feasibility*. 1 to 2 years from executing the feasibility cost sharing agreement (FCSA).

(3) *Design and Implementation*. Execute the project partnership agreement (PPA) within 6 months of the approved *decision document*, and initiate development of the plans and specifications.

e. 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.

f. 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. See paragraph F-5.b of this Appendix.

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

h. 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 for 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, environmental compliance, or regulatory requirements of HQUSACE, the Department of the Army, the Department of Defense, or other Federal agencies.

(2) Formulation and Evaluation. Alternative plans will be developed following SMART planning principles and methodologies. Overall, alternatives will be developed using the level of detail necessary to make an informed decision on the practicability,

acceptability and implementability of the 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) Review Policy for CAP. The following apply to CAP.

(a) All CAP projects are excluded from Type I Independent External Peer Review (IEPR) except Section 205 and Section 103 or those projects that include an EIS or meet the mandatory triggers for Type I IEPR.

(b) Exclusions from Type I IEPR for Section 205 and Section 103 projects will be approved on a case by case basis by the MSC Commander, based upon a risk informed decision process, and may not be delegated.

(c) Type II IEPR is still required for those CAP projects where life safety risk is significant as documented in the approved Review Plan.

(d) The MSC will establish an appropriate review procedure. Review Plans are required for all CAP projects. MSCs are strongly urged to adopt a programmatic approach to review of CAP projects, such as use of programmatic or model review plans. CAP programmatic or model review plans shall be approved by the MSC Commander.

(e) The Review Management Organization (RMO) for Agency Technical Review (ATR) for CAP projects may be the home MSC in lieu of a National Planning Center of Expertise (PCX). The PCXs will continue to serve in their roles of providing advice and may serve as the RMO under appropriate agreements with an MSC. The ATR lead is to be outside the home MSC unless the CAP review plan justifies an exception and is explicitly approved by the MSC Commander.

(f) For CAP projects, ATR of the cost estimate will be conducted by pre-certified district cost personnel within the region or by the Cost Engineering Agency Technical Review and Mandatory Center of Expertise (Cost Engineering MCX) located in the Walla Walla District. A pre-certified list of cost personnel has been established and is maintained by the Cost Engineering MCX. The ATR team member responsible for reviewing the cost estimate will coordinate with the Cost Engineering MCX for execution of cost review and cost certification. The Cost Engineering MCX will be responsible for final cost certification and may be delegated at the discretion of the Cost Engineering MCX.

(g) Review by the Risk Management Center is only required for dam and levee safety projects. However, the MSC commander will insure that all *decision documents*

involving flood and coastal related risk reduction measures are fully and appropriately reviewed and all issues resolved and that a consistent and appropriate level of communicating risk and uncertainty is reflected in the study documents.

(h) Model Certification. Approval of planning models is not required for CAP projects, but planners should utilize certified models if they are available. MSC commanders remain responsible for assuring the quality of the analyses used in these projects. The ATR certification package will include an explicit statement that says that the models and analyses are used appropriately and in a manner that is compliant with Corps policy, and they are theoretically sound, computationally accurate, and transparent. The ATR certification package will address any limitations of the model or its use documented in study reports.

(i) All CAP deliverables will undergo District Quality Control (DQC) review.

(4) 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 an LPP may only be approved after a waiver has been obtained in accordance with paragraphs F-11.f.(3) and F-11.f.(4) of this Appendix.

i. 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 must be discussed with the non-Federal sponsor so they recognize and understand any risk that they may be assuming as part of their responsibilities under the PPA, including any potential effect on their Operation, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R) responsibilities. In addition, the sponsor will hold and save the United States free from all damages arising from the construction, operation, maintenance, repair, rehabilitation, and replacement of the project and any betterments, except for damages due to fault or negligence of the United States or its contractors.

j. Project Implementation Process. CAP projects will be implemented in two phases: the *feasibility phase (F)* and the *design and implementation phase (DI)*. 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 paragraphs F-11 and F-12 of this Appendix.

k. Requirements to serve as a non-Federal Sponsor. Section 221 of the Flood Control Act of 1970, as amended, states that the non-Federal sponsor must be “(1) a legally constituted public body (including a federally recognized Indian tribe); or (2) a nonprofit entity with the consent of the affected local government, that has full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform.”

(1) For projects pursued under Sections 14, 103, 107, 111, 205, 208, and 204 (with flood risk management [FRM] or coastal storm risk management [CSRM] purpose) a legally constituted public body shall act as the sponsor for study, design, and construction. Where a nonprofit entity is one of the sponsors, the agreements must make clear that both sponsors are jointly and severally responsible and liable for the Hold and Save obligations identified in the PPA. In addition, the agreement will require in all cases that the public body (alone or jointly with the nonprofit entity) is responsible for OMRR&R of the project.

(2) For projects pursued under Sections 206, 1135, and 204 (with aquatic ecosystem restoration [AER] purpose) a nonprofit entity is eligible to act as the sole sponsor for study, design, and construction. During the 100 percent Federally funded portion of the Feasibility Phase, the district must identify, and coordinate with, the affected local government. As with a legally constituted public body, any non-profit entity that proposes to act as a sponsor must be able to demonstrate that it has 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. For agreements addressing construction of a project, the nonprofit entity must demonstrate the capability to satisfy a sponsor's responsibilities under the agreement, including payment of its required share of project costs; provision or performance of lands, easements, rights-of-way, relocations, and dredged or excavated material disposal areas for the project, as applicable; and performance, in perpetuity, of any non-Federal OMRR&R. 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.

l. Other Federal Funds Used As Part of Non-Federal Sponsor Share. A non-Federal interest may use, and the Secretary of the Army may accept, funds provided by a Federal agency under any other Federal program, to satisfy, in whole or in part, the non-Federal share of the cost of the study or project if the Federal agency that provides the funds determines that the funds are authorized to be used to carry out the study or project. A letter must be provided by the Federal granting agency stating that it has determined that the funds are authorized to be used to carry out the Corps study or project. The name of the Federal agency and the date of the letter should be shown in the agreement checklist provided with the draft agreement package.

F-5. Restrictions on Program Eligibility.

a. Studies. CAP will not be used for study only activities. Districts will **NOT** initiate studies under CAP that belong under the Investigations Program based on anticipated cost and/or complexity. Ongoing studies will do an orderly shutdown at any time it is determined that the costs and/or complexity of the project should be under the Investigations Program.

b. Specifically Authorized Projects. CAP will not be used to implement or replace any portion of a project specifically authorized by Congress, until Congress specifically deauthorizes the project or Congress specifically funds its implementation under a CAP authority in law.

c. CAP projects will not be developed as building blocks or in a sequence in an effort to avoid what should be analyzed as a larger scale project. In addition, CAP will not be used to alter the benefits or the cost of a future Project.

d. 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. CAP also will not be used to relieve a non-Federal sponsor of a legal obligation (e.g. something required by law, court order, etc.).

e. 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.

f. Design Deficiencies. New CAP projects will not be used to correct design deficiencies on another CAP project or a specifically authorized project.

F-6. Program Cost Sharing by Phase.

a. *Feasibility Phase*. For all Sections except Section 204 and 111, the Feasibility phase may be initially Federally funded up to \$100,000. Any remaining *feasibility phase* costs will be shared equally (50% each) with the non-Federal sponsor pursuant to the terms of a CAP Feasibility Cost Sharing Agreement (FCSA). If the *feasibility phase* can be completed for less than \$100,000, a CAP FCSA is not required, but is recommended. 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*. For Section 204 projects, the *feasibility phase* is performed at 100 percent Federal cost and a FCSA is not required. For Section 111 projects, the *feasibility phase* costs above the initial \$100,000 shall be cost shared in the same proportion as the cost-sharing provisions applicable to the construction of the Federal navigation project causing the shore damages.

b. *Design and Implementation Phase.* All costs, except OMRR&R 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 Partnership Agreement (PPA).

c. Cost Sharing Waiver for Territories and Indian Tribes of the U.S. Section 1032 of WRRDA 2014 amends Section 1156 of WRDA 1986 to provide an adjustment waiver amount of \$455,000 that can be applied to the non-Federal sponsor's cash requirement for both the study and construction of a project. Section 1119 of WRDA 2016 further amends Section 1156 of WRDA 1986 to apply to American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands, Puerto Rico, the Trust Territory of the Pacific Islands, and for any Indian tribe (as defined in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130)).

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-2 displays the applicable per-project and annual program Federal participation limits for each CAP authority. **All Corps CAP 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, 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.** 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 are the limits 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 limits are the annual limits of allotments from HQUSACE for that authority.

b. Costs in Excess of the Statutory Federal Per-project Participation Limit. 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 it is estimated that the Federal share would exceed the applicable per-project limit and this estimated exceedance is discovered before execution of the PPA, the study may be converted to the Investigations (I) program in accordance with paragraph F-9 of this Appendix. As an alternative to conversion to the Investigations program, 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 paragraph F-11.f.(4) of this Appendix and it will require HQ approval. 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 it is estimated that the Federal share would exceed the applicable per-project limit and this estimated exceedance is discovered after execution of the PPA, the non-Federal sponsor must contribute funds in accordance with the terms of the PPA for any costs that would normally be part of the Federal share but are over the per-project limit or the PPA will be terminated.

TABLE F-2 STATUTORY FEDERAL PARTICIPATION LIMITS		
Authority	Per-project Limit (\$)	Annual Program Limit (\$)
Sec 14	5,000,000 ^{1/}	20,000,000
Sec 103	10,000,000 ^{2/}	30,000,000
Sec 107	10,000,000 ^{1/}	50,000,000
Sec 111	10,000,000 ^{1/}	N/A
Sec 204	10,000,000 ^{1/}	50,000,000
Sec 205	10,000,000 ^{1/}	55,000,000
Sec 206	10,000,000 ^{1/}	50,000,000
Sec 208	500,000	7,500,000
Sec 1135	10,000,000 ^{1/}	40,000,000

^{1/}Per-project Limit is valid for projects whose initial Federal construction contract was or will be awarded on or after 10 June 2014, per WRRDA 2014 Section 1030.

^{2/}Per-project Limit is valid for projects whose initial Federal construction contract was or will be awarded on or after 16 December 2016, per WRDA 2016 Section 1167. If a contract was awarded prior to the enactment of WRDA 2016, the DCW may approve the project to utilize current per-project limits.

F-8. Converting Investigations (I) Funded Studies or PED to CAP.

a. General. The MSC commander may approve transfer of an ongoing study funded under Investigations or pre-construction engineering and design (PED) to CAP.

However, the MSC commander may not use Investigations and CAP funds simultaneously on any study.

b. Converting Investigations Studies to CAP. Unstarted Investigations studies that are determined to be a better fit under CAP can convert to CAP at any time as “Unstarted.” An Investigations study which has already been started and has found that there is likely a Federal interest in pursuing further planning analyses, may convert to CAP and will be considered “Active,” if the investigation was active in the prior two years. Prior to converting to CAP the Investigations phase must be terminated; CAP and Investigations funds may not be spent simultaneously. As soon as the PDT determines that an ongoing Investigations study qualifies for CAP, the HQ RIT will coordinate a meeting with HQUSACE Planning and Policy Division and HQUSACE Project Integration Division to determine an appropriate path forward. Most Investigations studies that are converted to CAP will be converted into the Feasibility phase, and if \$100,000 has been spent on the study, then all additional CAP funding will be cost shared equally with the sponsor, except for Sections 204 and 111 projects. Refer to paragraph F-6.a. Prior to converting to CAP, work for the Investigations cost shared feasibility study must be terminated pursuant to the provisions of the existing Investigations FCSA. Once it is determined by CECW-I that funds are available to be allocated to the CAP study, then a CAP FCSA must be negotiated and executed, and all funds will be cost shared equally. However, if a study is at the Agency Decision Milestone (ADM), it may be determined, at the meeting held to complete the ADM with the HQUSACE Planning and Policy Chief, that the study should complete the feasibility report with the existing Investigations funds, resulting in a recommendation for construction to be performed using CAP. Following the final report, the study would convert into the DI Phase of CAP. None of the Investigations expenditures will be counted against the applicable CAP per-project or annual program limits.

c. Converting Investigations Funded PED to CAP. Prior to converting to CAP, work for an Investigations funded PED (pre-authorization) must be terminated pursuant to the provisions of the existing agreement. However, the MSC Commander may find it more appropriate to complete the ongoing Investigations effort and convert to CAP upon completion of the PED phase. In any event, a conversion to CAP would require execution of a PPA 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 Investigations expenditures will be counted against the applicable CAP per-project or annual program limits. Conversion of an Investigations 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 Investigations.

a. General. As soon as it has been determined that the likely Federal cost of the solution will be beyond the applicable Federal per-project limit, the CAP study must be terminated, or if study authority exists, it may be converted to Investigations. The determination and supporting analyses will be documented in the project records maintained at the district. If study authority does not exist, the district will need to work with the sponsor to identify the options on how they can pursue a study.

b. Conversion to Investigations Prior to Execution of a CAP FCSA. If further study is required to complete a *decision document*, after the determination that a CAP study will be converted to the Investigations (I) program, a CAP FCSA will be executed to complete any remaining feasibility phase items. If study authority exists a new-start Investigations feasibility study may be started following the process for new-start Investigations studies found in the annual Civil Works Program Development Policy EC.

c. Conversion to Investigations 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 may be converted to the Investigations Program, work under the CAP FCSA will be terminated pursuant to the terms of the CAP FCSA, and a new-start Investigations feasibility study will be started following the process for new start Investigations studies found in the annual Civil Works Program Development Policy EC.

d. Conversion to Investigations after completion of *Feasibility phase* will require a meeting between HQUSACE Planning and Policy Division and HQUSACE Project Integration Division to determine a path forward.

SECTION II – PROJECT IMPLEMENTATION

F-10. Coordination Account.

a. General. The Coordination Account is provided to District Commanders by authority line item under procedures established by the HQUSACE Programs Integration Division (CECW-I). Each district will use established Coordination Accounts for each authority and will keep coordination funding separate from project funding. Coordination funds will be used for all initial contacts with potential sponsors, maintaining the CAP Database, creation of P2 projects, and initial actions required for project requests. These funds can 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 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.

b. Project Requests.

(1) Letter of Request. A new project/study is normally identified 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 new project/study may also be identified 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.

(3) Initial Site Visit. An initial site visit will be performed using coordination funds. Corps staff that participate in the initial site visit will be experienced enough to determine if the project is potentially eligible to be included as a CAP project. In addition, it should be verified that the sponsor understands their responsibilities for partnering with the Corps for the proposed project. The coordination funds will be used to screen out ineligible situations or cases.

(4) P2 and CAP Database. If the requested study is potentially eligible, then the project should be created in P2 using CAP templates and the CAP Database before the *feasibility phase* is started. In the CAP Database the project will be marked as "unstarted," and project details including current capability will be entered. Corps staff should maintain a line of communication with the non-Federal sponsor until funding is available to initiate the *feasibility phase*. The project schedule will be resourced in P2 as soon as it is known that the project will be funded.

(5) New Starts. The HQ CAP manager will determine when new starts are affordable and will coordinate with the MSC CAP managers to identify which projects should be started. Since new starts are limited, only those projects that have the following information in the CAP database will be considered: date of letter of request, date of recent site visit to verify that the site is potentially eligible, verification that the sponsor is willing and able to move forward, and the district and MSC have entered their priority ranks. In addition, Section 14 projects must have preliminary risk and consequence information to ensure projects with the highest risk and consequence are funded.

F-11. 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.

(1) Initiation of *Feasibility Phase*. *Feasibility* is started once HQ issues the *initial work allowance*.

(2) 100 Percent Federally Funded Portion of *Feasibility Phase*. For new starts, the district will receive up to \$50,000 to determine if there is Federal interest. If a Federal interest is found by the district and the *Federal Interest Determination* is approved by the MSC, then the district must update the CAP database with the approval date and request the remainder of the Federally funded \$100,000 to prepare the PMP, negotiate and execute the FCSA with the non-Federal sponsor, and continue the feasibility study. Any *feasibility phase* costs greater than \$100,000 will be shared 50/50 with the non-Federal sponsor pursuant to the terms of a CAP FCSA, except for Sections 204 and 111. Refer to paragraph F-6.a. If the *feasibility phase* can be completed for less than \$100,000, a CAP FCSA is not required, but is recommended.

(3) Cost Shared Portion of *Feasibility Phase*. Upon execution of the CAP FCSA (see paragraph F-11.d. of this Appendix), the district must request the Federal funds (above the \$100,000 Federally funded portion) required for obligation during that fiscal year. The *feasibility phase* must be completed within 18 months of executing the FCSA.

b. Project Management Plan. A PMP will be prepared prior to execution of the FCSA. A PMP is a roadmap for quality project delivery. The PMP will identify all actions, review requirements, processes, costs, and schedules as integrated features of the overall project execution. The development of the PMP is an essential task during the early stages of the *feasibility phase* and is critical to the cost shared feasibility study negotiations. The PMP supports the FCSA and is the District's project management document. Some MSCs require the draft FCSA, including PMP, to be submitted for review prior to execution of the FCSA.

c. Review Plan. The District will develop and submit a review plan (RP) in accordance with paragraph F-4.g.(3). The RP is a component of the District's Quality Management Plan (QMP) in the PMP. The RP will describe all appropriate levels of review including District Quality Control (DQC), Agency Technical Review (ATR), Independent External Peer Review (IEPR), and Policy and Legal Review that will be required.

d. Feasibility Cost Sharing Agreement. A CAP FCSA is not 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, except for Sections 204 and 111. Refer to paragraph F-6.a. . The model FCSA agreement for CAP projects must be used for drafting all FCSAs. Authority to approve a CAP FCSA, including any deviations, and to execute the CAP FCSA will be in accordance with the CECW-P implementation memorandum dated May 19, 2016 and the Annual Budget Execution EC. Information and templates for HQ guidance, Model

Agreements, history, and applicability are in the following location: http://www.usace.army.mil/Missions/CivilWorks/ProjectPartnershipAgreements/model_cap.aspx. 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. Once the FCSA is executed the district must update the CAP database with the actual date and to show capability by fiscal year. The District must keep information in the CAP Database current. 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 the estimated value of non-Federal feasibility work (see paragraph F-16 of this Appendix) that will be required for the *feasibility phase*. The non-Federal sponsor will sign the Non-Federal Sponsor's Self Certification of Financial Capability for Agreements to certify its financial capability to meet its obligations under the FCSA.

e. Required Planning Milestones. The purpose of the two required planning milestones listed below is to ensure 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 requirements that support the determinations at these milestones will be *scalable to the size and complexity* of the proposed study. The MSC Commander may delegate submittal of the FID from the district Planning Chief and approval through the MSC Planning Chief. 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. Based on mostly existing information, the FID will identify problems and opportunities, identify potential solutions, indicate whether expected relative costs compared to relative benefits are reasonable, identify environmental impacts of potential action(s), and determine whether a Feasibility Cost Share agreement (FCSA) will be required. This analysis of Federal interest will go through DQC review and will be *scalable to the size and complexity* of the proposed project and result in a policy-consistent project with a scope appropriate for a CAP project with a willing and capable sponsor. The FID will be accomplished within the initial \$50,000 and early enough in the Federally funded portion of the *feasibility phase* to ensure that there are no impediments to proceeding with the project. If Federal interest is determined, an additional \$50,000 (Federally funded) must be requested by the District to prepare, negotiate, and execute the FCSA package to continue the feasibility study.

(2) MSC Decision Meeting (MDM). The second milestone is an MDM which 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 MDM 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 tentatively selected plan that will likely proceed into the *design and implementation phase*. The process and procedure for completing this milestone is at the discretion of each MSC.

f. *Decision Document* Requirements and Approval.

(1) General. Subject to the minimum requirements set forth in the next paragraph, 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 *decision document* and supporting documentation requirements will be *scalable to the size and complexity* of the proposed project and at a minimum contain the following: 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-11.f.(4) below; documentation of compliance with appropriate Federal, State, and local environmental and regulatory requirements such as NEPA, etc. (see Appendix C), 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's Self-Certification of Financial Capability for *Decision Documents* and Letter of Intent; 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 ATR 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 National Economic Development (NED) and/or National Ecosystem Restoration (NER) plan if requested by the non-Federal sponsor and approved by ASA (CW). The *decision document* may recommend a locally preferred plan (LPP) formulated using the same procedures for specifically authorized projects. Before a *decision document* recommending a LPP is approved, a waiver request prepared in accordance with paragraph F-11.f.(4) below 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 ASA (CW) staff before he or she can approve a *decision document* containing a deviation from policy. Waivers will be discussed with the vertical team as early as possible. 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 paragraph F-7.b.(1) of this Appendix), recommendation of a LPP (see paragraph F-11.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 paragraph F-26.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 ASA (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 PPA. 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 paragraph F-7.b.(1) of this Appendix) due to cost escalation identified during any design performed prior to execution of the PPA. 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 ASA (CW) staff. In no event will the PPA be executed until the written response from the HQ RIT has been received by the MSC. If the waiver is not approved, then conversion to Investigations may be required as per paragraph F-9.d

(c) Nonstandard Estates (NSE's): Any non-standard estates must be submitted by the Real Estate District Chief through the Division/MSC to HQUSACE CEMP-CR for review and approval, consistent with ER 405-1-12, Chapter 12, 12-9 and 12-10. See also this Appendix paragraph F-20.

(5) *Decision Document Approval*. Approval of the *decision document* will be by letter from 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 the *decision document*, addressing a plan formulated in accordance with the Principles and Guidelines, or a successor, has been approved by the MSC Commander. The actual date of the *decision document* approval must be entered in the CAP Database as well as in P2.

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, usually not longer than one year (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 CAP database must be updated to show project status as terminated, with the date and the reason why, and all future capability amounts will be reduced to zero. The District Commander will also notify non-Federal interests when the study has been officially terminated.

F-12. 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. The level of effort in this phase will be *scalable to the size and complexity* of the proposed project.

b. Initiation of *Design and Implementation (DI) Phase*. This phase begins upon receipt of *initial work allowance* for DI following the MSC Commander approval of the *decision document* that recommends proceeding into the *design and implementation phase*. The first action of the DI phase is negotiation and execution of a PPA and the update of the PMP.

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

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

execution of the PPA, the non-Federal sponsor will sign and submit the Non-Federal Sponsor's Self Certification of Financial Capability for Agreements to self-certify their financial capability to meet their obligations under the PPA.

(2) Remainder of *Design and implementation phase*. After execution of the PPA, the District must update the CAP Database to show capability by fiscal year (FY) to implement the project, and to show the actual PPA execution date. The District must keep the CAP Database current as well as the project schedule in P2.

d. PPA. The DI phase will be conducted under the provisions of the PPA executed by the District Commander and the non-Federal sponsor. The appropriate Model PPA will be used, when available. Authority to approve the PPA, including any deviations, and to execute the PPA shall be in accordance with the implementation memo for the appropriate Model PPA. Where approved Model agreements exist, the latest version of the appropriate Model Agreement must be used. Model agreements and further guidance are available at this location:

http://www.usace.army.mil/Missions/CivilWorks/ProjectPartnershipAgreements/model_cap.aspx. For each FY, the HQ CAP manager will determine which projects are authorized to execute a PPA during the FY.

(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 PPA, in an orderly manner pursuant to the provisions of the PPA. 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 PPA unless approved in advance by the MSC Commander following the District's written request.

(2) Further, solicitations for construction contracts will not be issued until the appropriate Chief of Real Estate has certified in writing that sufficient real property interests are available to support construction under such contracts. Some Divisions require the MSC Division Chief of Real Estate approval while other Divisions require only the District Chief of Real Estate approval. 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 PPA execution, as allowed above, the solicitation documents will advise potential bidders of such facts.

f. Contract Bid Opening.

(1) No contract bids will be opened prior to execution of the PPA 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-12e.(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 will 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. Additional DI costs. Following the award of construction contracts, additional funds may be requested for supervision and administration (S&A) of those contracts as well as funds for cost shared *monitoring* and adaptive management. The CAP Database will be used to show the capability for these types of activities under the DI phase.

i. Physical Completion of the *Design and Implementation phase*. When the entire project or a functional portion of the project is physically complete, the District Commander will notify the non-Federal sponsor in writing that construction of the project or a functional portion of the project is complete, and will provide the non-Federal sponsor with an OMRR&R Manual. Upon receipt of the notice of completion of construction of the project or a functional portion of the project, the non-Federal sponsor will operate, maintain, repair, rehabilitate, and replace the project in accordance with the OMRR&R Manual. Cost shared *monitoring* and adaptive management may be performed after construction is physically complete as long as the Federal per-project limit is not exceeded.

j. Fiscal Completion. After project completion, including any cost shared *monitoring* and adaptive management to be performed after physical construction is complete, and the final audit has been completed, the project should be fiscally closed out.

k. Project Completion Report. 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 PPA.

l. Termination. A termination can only occur if the project has not been constructed and the terms for termination in the PPA are fully met and the PPA is formally terminated.

F-13. Approval Authorities for Decision Documents and Agreements.

a. *Decision Documents.* As discussed in detail in paragraph F-11.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 for which necessary policy waivers have been received (see paragraph F-11.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. A model agreement is a template/model that has been approved through the ASA(CW) office and signature authority has been delegated to the Corps of Engineers as long as no substantial changes are made to the model agreement. The authority to approve a CAP FCSA or PPA, 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 agreement. For each FY, the HQ CAP manager will determine which projects are authorized to execute FCSAs and PPAs during the FY.

(2) Authorities without Approved Model Agreements. In cases where there is not an approved model agreement, the MSC should contact the HQUSACE CAP Manager for guidance on how to proceed.

F-14. 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 PPA responsibilities and the routine and/or periodic inspection of projects.

F-15. After Action Review and Completion Report. 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 PPAs 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. To continue to identify the value to the nation of CAP, once the project has been constructed, a success story with a brief narrative about the project benefits including before and after photos, and a Completion Report shall be posted to the CAP Share Point Site.

F-16. Non-Federal Feasibility Work and Non-Federal Design and Implementation Work.

a. *In-Kind Work.* 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,” see ER 1165-2-208. 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 PPA, respectively, such as performance of activities related to acquisition of lands, easements, rights-of-way, or disposal areas (LERRD), investigation or response actions under the Hazardous Substances Article in the PPA, and certain audit-related activities. 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.

(1) If a non-Federal sponsor elects to perform work-in-kind during the feasibility study, an In-Kind Memorandum of Understanding (MOU) for planning may be executed once a PMP has been developed and the MSC has approved the initiation of the feasibility study.

(2) If a non-Federal sponsor proposes to provide or perform all or a portion of the design for a project as in-kind contributions, a PPA addressing both design and construction is required.

(3) If a non-Federal sponsor proposes to undertake any construction prior to the execution of a PPA, an In-Kind MOU is required.

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) Under Section 105(a) of WRDA 1986, 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) of WRDA 1986 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 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. Design and Implementation Phase. Pursuant to Section 221 of the Flood Control Act of 1970, 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, 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 PPA for participation in the 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, 100 percent of the non-Federal sponsor's share may now be performed as non-Federal design and implementation work.

(3) For Sections 14, 204 with FRM (structural) purpose, 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. **Contributed Funds.** Contributed Funds are those funds above any statutorily required non-federal cost share provided voluntarily by states, or a political subdivision thereof, or other non-Federal interests, with no credit or repayment authorized for such funds for authorized work that is being undertaken by USACE. For CAP, once Federal funds have been provided to initiate the study, contributed funds may be accepted for further study, design, construction and operations and maintenance of the project. Congressional notification is required prior to the acceptance of such funds in accordance with the process described in the Contributed Funds implementation guidance.

F-17. 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 will 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.

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 approval by the appropriate Real Estate Chief after consultation with the Project Manager or other appropriate office about any applicable PPA provisions or cost sharing requirements.

F-18. Multi-Purpose CAP Projects.

a. General. To promote comprehensive collaborative planning, the formulation of multi-purpose 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 an 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 and have interdependent features, using a trade-off analysis. Combined Plans require complex evaluation and trade-off 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 will 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 that individual purpose. Cost allocation will be performed using the separable cost remaining benefits (SCRB) 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 CAP authority other than Section 103. Section 204 will not be used in conjunction with any CAP authority other than 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 below.

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 will be formulated in accordance with current policies and procedures governing recreation (see 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 lands, easements, rights-of-way, relocation, and disposal areas (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 nonstructural flood risk management projects is not constrained by the limitation of increased Federal cost for recreation (see paragraph 3-7.b.(4) of this ER); and

(4) Where a policy waiver has been approved in accordance with paragraph F-11.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-17 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 will 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 Chapter 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 of the project by the general public in ways consistent with the ecosystem restoration purpose, members of the general public will generally 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 Title. 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 a non-standard estate.

(3) Estate Required. Once the appropriate interest is determined, the corresponding standard estate must be used as explained and identified in Chapter 12 to ER 405-1-12. Any non-standard estates must be submitted by the Real Estate District Chief through the Division/MSC to HQUSACE CEMP-CR for review and approval, consistent with ER 405-1-12, Chapter 12, 12-9 and 12-10. 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 concert with other ecosystem restoration measures 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 land values. The Corps ecosystem restoration mission is to apply its planning, hydrologic, and engineering expertise to solve large and/or complex restoration problems. Generally land values should not exceed 25 percent of total project costs. If the estimated land 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. 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 will 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 PPA 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. In accordance with reference F-2.b, all ecosystem restoration projects (Section 206, 1135 and 204 projects with ecosystem restoration purpose) initiated under CAP will include a plan for *monitoring* the success of the recommended ecosystem restoration alternative developed during the *Feasibility Study Phase*. Monitoring includes the systematic collection and analysis of data that provides information useful for assessing project performance and determining whether ecological success has been achieved. Monitoring will continue until such time as the Secretary determines that the success criteria is met.

b. Adaptive Management. In addition to the *monitoring* plan, an adaptive management plan (i.e., a contingency plan) will also be developed for ecosystem restoration projects (Section 206, 1135 and 204) initiated under CAP. The adaptive management plan will be appropriately *scoped to the scale* of the project. The reasonableness and the cost of the plan will be reviewed as part of the *decision document*. After construction is complete, any changes to an adaptive management plan in an

approved decision document must be coordinated with HQUSACE Chief of Planning. If during the adaptive management period, adaptations are identified which could result in a change in the needed real estate interests and/or footprint, it is imperative that any new necessary real estate interests be identified and necessary planning and real estate actions take place before the adaptive management changes are implemented.

c. Cost sharing. The cost for *monitoring and/or adaptive management* are included as part of the *total project cost* and may be cost shared accordingly, as long as the Federal per-project limit is not exceeded. Monitoring shall be a cost-shared project cost within the period of ten years from completion of the construction. Any additional monitoring required beyond 10 years will be a non-Federal responsibility.

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 percentage 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 percentage, 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 PPA, the investigation and remediation of any design deficiency correction will be carried out and cost shared under the project PPA. The Federal share of all work on the project, including the deficiency correction, cannot exceed the statutory Federal per-project participation limit in place at the time of initial implementation unless the DCW has provided specific approval to use the current per-project participation limit. The District would request use of current per-project limit through Division/MSD to HQ RIT for DCW review/approval.

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 MSD 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. 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 PPA, 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 applicable CAP Section. However, if there is not an existing PPA 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 that was in place at the time of initial implementation unless the DCW has provided specific approval to use the current per-project participation limit. The District would request use of current per-project limit through Division/MSD to HQ RIT for DCW review/approval. None of the costs of the work financed under Inspection of Completed Works will be counted against the applicable CAP per-project limit.

F-23. Value Engineering. WRRDA 2014 repeals the requirement that the Corps of Engineers reevaluate government cost estimates immediately after initial cost estimates have been completed. There is no requirement for Value Engineering during Feasibility. Value engineering will be performed during the DI phase at or before 35 percent design. More detailed information will be found in the WRRDA 2014 Implementation Guidance for Section 1004.

F-24. Flood Plain Management Plans (FPMP).

a. Applicability. This requirement applies to all CAP projects with a structural flood risk management purpose, see paragraph 3-3.b.(10)(b) in this ER. Guidance for the preparation of Flood Plain Management Plans (FPMP) by non-Federal sponsors may be found in Policy Guidance Letter 52 dated 8 Dec 1997.

b. Preparation of FPMP by Non-Federal Interests during the Feasibility Study. Information for the FPMP that is developed as part of the feasibility study will be cost shared 50/50 as part of the feasibility study and must be described in the PMP.

c. Preparation of FPMP by Non-Federal Interests after Feasibility Study is Completed. The non-Federal sponsor may elect not to pursue development of a FPMP while the feasibility study is ongoing. However, any assistance provided by the Corps after the feasibility study is completed will be 100 percent non-Federal cost.

d. Agreements. The requirement for the preparation and implementation of a FPMP pursuant to Section 202(c) of WRDA 96 must be highlighted in the "Definitions" Article of the FCSA and the PPA signed by the non-Federal sponsor.

e. Preparation and Implementation of FPMP. Non-Federal interests are required to prepare a FPMP within one year of signing a PPA and to implement the plan NLT one year after completion of construction of the project.

F-25. Executive Order (EO) 11988 Flood Plain Management and EO 13690 Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input.

a. Applicability. Where a floodplain may be affected, the policies and procedures of the executive orders are applicable to the planning and design of projects under CAP.

The most current guidance (engineer regulation or engineer circular) for their implementation must be followed for CAP projects. (See ER 1165-2-26 for Corps policy on this directive.)

SECTION III – SPECIFIC GUIDANCE FOR PROJECT AUTHORITIES

Reminder: 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.

F-26. Section 14, Flood Control Act of 1946, as amended – Emergency 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 must be 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 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 will focus on the least-cost alternative solution. The least-cost alternative plan is considered to be justified if the total cost 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 PPA is executed.

f. Project Cost Sharing. Projects implemented under this authority have the same project cost sharing requirements as structural flood risk management 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 PPA, the non-Federal sponsor must pay 5 percent of total project costs in cash, provide all LERRD required for the project, 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 percent 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-2 and paragraph F-7.b. of this Appendix).

g. Risk and Consequence. Evaluation of Risk and Consequence must be performed on all Section 14 projects. This evaluation is used for prioritization and funding decisions; see the annual execution EC.

F-27. Section 103, River and Harbor Act of 1962, as amended – Coastal Storm Risk Management.

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 Coastal Storm Risk Management, in accordance with current policies and procedures governing projects of the same type which are specifically authorized by Congress (see Appendix E of this regulation). Any policies and procedures applicable to Federal participation in projects involving beach nourishment 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 Coastal Storm Risk Management projects implemented under specific congressional authorization. The non-Federal sponsor is responsible for 35 percent of total project costs assigned to coastal storm risk management, 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 E of this regulation and ER 1165-2-130 for more detailed guidance regarding cost sharing of coastal storm risk management projects. In accordance with the terms of the PPA, the non-Federal sponsor must provide all LERRD required for the project, 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 percent 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-2 and paragraph F-7.b. of this Appendix).

F-28. 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 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 will be converted to an Investigations study unless a waiver is obtained pursuant to paragraph F-7.b(1) and paragraph F-11.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 50 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 50 feet during the design and implementation period. In accordance with the terms of the PPA, the non-Federal sponsor will 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 50 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-2 and 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 PPA, the non-Federal sponsor must provide all LERRD required for

the project, 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 percent 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-2 and 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 during the Federally funded portion of the *feasibility phase*. The fact sheet will be submitted electronically to the HQ CAP Manager and appropriate HQ RIT for review. After consultation with the HQ RIT, the CAP Manager will make recommendations to the director of Civil Works with respect to policy compliance. The CAP FCSA, or the PPA if a CAP FCSA is not required or has already been executed as of 31 January 2006, will not be executed until the Director of Civil Works has concurred or non-concurred that the project is in compliance with policy. Policy compliant projects will be funded before other projects. 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 attached sample format for a Section 107 Fact Sheet.

F-29. Section 111, River and Harbor Act of 1968, as amended – Shore Damage Prevention or Mitigation.

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.

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 paragraph F-18 of this Appendix or under an authorized coastal storm risk management 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 coastal storm risk management study or 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 \$10,000,000 or less (Feasibility phase costs are shared in the same proportion as the cost-sharing provisions applicable to construction of the Federal Navigation project causing the shore damage in accordance with 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 \$10,000,000, 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 \$10,000,000. If at any time it becomes apparent that the Federal share of total project costs would definitely exceed \$10,000,000, the Section 111 work may not proceed or continue as a Federal undertaking without specific Congressional authorization, and the work should be converted to Investigations in accordance with paragraph F-9 of this Appendix.

h. Items of Non-Federal Cooperation.

(1) Cost Sharing. The costs of implementing measures under this section must be shared in the same proportion as the cost sharing provisions applicable to the Federal Navigation project(s) 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 will 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-30. Section 204, Water Resources Development Act of 1992, as amended – Regional Sediment Management (Beneficial Use Of Dredged Material).

a. General. Section 204 provides two distinct authorities for the beneficial use of sediment obtained from the construction, operation, and maintenance of authorized projects, other Federal sources, and non-Federal sources, subject to the requirement that any sediment obtained from a non-federal source shall not be obtained at Federal expense. One authority provides for the use of the sediment in the construction, repair, rehabilitation, or modification of water resources projects for the purposes to reduce storm damage to property; to protect, restore, and create aquatic and ecologically related habitats including wetlands; and to transport and place suitable sediment for the purposes of improving environmental conditions in marsh and littoral systems, stabilizing stream channels, enhancing shorelines, and supporting State and local risk management adaptation strategies. The other authority (Section 204(d)) provides that in carrying out a

Federal water resources project involving the disposal (placement) of dredged material, the Secretary may select, with the consent of the non-Federal sponsor, a disposal method that is not the least cost option if the Secretary determines the incremental costs of the disposal method are reasonable in relation to the flood and storm damage and flood reduction benefits, including shoreline protection, protection against loss of life, and damage to improved property and the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetland and control of shoreline erosion.

b. Projects. For Section 204 CAP projects, regional sediment planning is defined as planning for the beneficial use of this sediment and follows the requirements for the planning, design and implementation of such projects, as well as the preparation of a continuing authorities decision document, as described in this Appendix, and must be formulated to provide a complete solution to the identified problem.

It must be determined at the beginning of the feasibility study process if the authority in Section 204(d) will be used. If 204(d) will be used, the decision criteria below applies. Prior guidance for the traditional Section 204 program applies if Section 204(d) is not used.

(1) Decision-making Criteria for Environmental Benefits. The decision-making criteria that will be used in determining whether to use an environmentally beneficial disposal method that is not the least cost alternative is whether the incremental cost is reasonable in relation to the environmental benefits achieved. Where the incremental federal costs do not exceed the lesser of 25% of total Base Plan disposal costs or \$300,000, the incremental costs are judged to be "reasonable" in relation to the environmental benefits without the need for detailed analysis including incremental analysis. For environmentally beneficial disposal methods that have incremental federal costs which exceed the lesser of 25% of total Base Plan disposal costs or \$300,000, the incremental costs must be justified by demonstrating that the monetary and non-monetary benefits (outputs) of the ecosystem restoration project justify its incremental costs above the Base Plan. Where the environmentally beneficial use involves separable increments, each increment must be justified.

It must be demonstrated that the environmental resources to be protected, restored, or created are valuable, the environmental outputs can be quantified and described, and federal and state resource agencies support the environmentally beneficial disposal method. The environmental disposal method would be subject to appropriate environmental compliance requirements to include the National Environmental Policy Act requirements.

(2) Decision-making Criteria for Flood or Storm Benefits. The decision-making criteria that will be used in determining whether to use a disposal method with flood or storm damage reduction benefits that is not the least cost option is whether the incremental cost is reasonable in relation to the flood or storm risk reduction benefits achieved and the reduced risk against loss of life and damage to improved property. Where the incremental

federal costs are the lesser of 25% of total Base Plan disposal costs or \$300,000, the incremental costs are judged to be "reasonable" in relation to the flood or storm risk reduction benefits without the need for detailed analysis. For beneficial disposal methods that have incremental federal costs which exceed the lesser of 25% of the Base Plan or \$300,000, the incremental costs must be justified by demonstrating that the benefits of the project justify its incremental costs by having a benefit-to-cost ratio of 1.0 or greater. Where the beneficial use involves separable increments, each increment must be justified.

It must still be demonstrated that the benefits achieved are those that would normally be considered in a flood risk reduction or coastal storm risk reduction project and that all necessary conditions for federal participation, in accordance with the project purpose, are met. Federal and state resource agencies must support the selected disposal method. The disposal method would be subject to appropriate National Environmental Policy Act requirements.

(3) Cost Sharing. Preparation of the *decision document* is at full Federal expense. The *Design and Implementation* of an approved Section 204 plan is cost shared under one of the four potential non-Federal shares applicable to beneficial use of sediments projects: Flood Risk Management(Structural), Non-Structural Flood Risk Management, Coastal Storm Risk Management, and Environmental Protection and Restoration, in accordance with Section 103 of WRDA 1986, as amended (33 U.S.C. 2213). Regardless of the project purpose, the cost of beneficial use of sediment projects shall be limited solely to construction costs that are in excess of the Base Plan; any incremental cost above the Base Plan will be cost shared with the non-Federal sponsor.

(4) Base Plan, The Base Plan is the cost necessary to carry out the dredging and disposal for the construction, operation, or maintenance of an authorized Federal water resources project that is the source of the sediments in the most cost-effective way, consistent with economic, engineering, and environmental criteria. The cost of the project up to the limit of the cost of the Base Plan established under the above guidance will be funded and cost shared as a construction or operation and maintenance cost, as applicable, of the water resources project that is the source of the sediment. The total Federal costs associated with a beneficial use of sediments *project* shall not exceed \$10,000,000. This cost limit refers to the incremental cost over the Base Plan.

(5) Project Cost Sharing. The *Design and Implementation* of an approved Section 204 project is cost shared under one of the four potential non-Federal shares applicable to beneficial use of sediments projects: Flood Risk Management(Structural), Non-Structural Flood Risk Management, Coastal Storm Risk Management, and Environmental Protection and Restoration

(i) Flood Risk Management (Structural) – Non-federal responsibilities are: (a) pay 5 percent cash of the incremental costs above the cost of the Base Plan during design

and implementation; (b) provide all LERRD; (c) pay any cash contribution during design and implementation necessary so that the total contribution of the non-Federal interest including 5 percent cash, value of LERRD, and additional cash contribution will be 35 percent of the incremental costs above the cost of the Base Plan; (d) pay 100 percent of the OMRR&R cost of the beneficial use project; and (e) hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors. The non-Federal sponsor shall receive credit for the value of in-kind contributions against the requirement for additional cash to bring the non-Federal share of the project to at least 35 percent but not against the 5 percent cash requirement in accordance with the provisions of Section 2003 of WRDA 2007 and the implementing guidance issued for that provision.

(ii) Non-Structural Flood Risk Management Projects. With the exception of the 5 percent cash contribution required for Structural Flood Control Projects, the provisions of a Non-Structural Flood Control Project are the same as a Flood Control (Structural) Project.

(iii) Coastal Storm Risk Management Projects. Non-Federal responsibilities are: (a) provide all LERRD; (b) pay any cash contribution during design and implementation necessary so that the total contribution of the non-Federal interest including the value of LERRD will be 35 percent of the incremental costs above the cost of the Base Plan; (c) pay 100 percent of the OMRR&R cost of the beneficial use project; and (d) hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors. For 204(d) placements involving shoreline or beach nourishment, permanent conditions of public use and access, as described in 6h of ER 1165-2-130, are a prerequisite to federal participation in the incremental costs of beneficial use exceeding the Base Plan. The non-Federal sponsor may fund all costs associated with beneficial placement of material on beaches where permanent conditions of public use and access have not been established. The non-Federal sponsor shall receive credit for the value of in-kind contributions against the requirement for additional cash to bring the non-Federal share of the project to 35 percent in accordance with the provisions of Section 2003 of WRDA 2007 and the implementing guidance issued for that provision. The authority of Section 204 will not be used to re-nourish authorized Federal shore protection projects.

(iv) Environmental Protection and Restoration. Non-Federal responsibilities are: (a) provide all LERRD; (b) pay any cash contribution during design, implementation, and *monitoring* necessary so that the total contribution of the non-Federal interest including the value of LERRD will be at 35 percent of the incremental costs above the cost of the Base Plan; (c) pay 100 percent of the OMRR&R cost of the beneficial use project; and (d) hold and save the Government free from all damages arising from design, construction, operation, maintenance, repair, rehabilitation, and replacement of the Project, except for damages due to the fault or negligence of the Government or its contractors. These types of projects generally will not require extensive land acquisition.

For 204(d) placements justified on environmental benefits, required lands must generally be owned in fee by the non-Federal sponsor or another non-Federal public body for purposes compatible with environmental restoration. In cases where required lands are subject to permanent restrictive easements or covenants designed to protect and conserve habitat values, approval of non-standard interest and estates will be required. The non-Federal sponsor shall receive credit for the value of in-kind contributions against the requirement for additional cash to bring the non-Federal share of the project to 35 percent in accordance with the provisions of Section 2003 of WRDA 2007 and the implementing guidance issued for that provision. Ten years after ecological success has been determined, the responsibility of the non-Federal sponsor to conduct O&M on the nonstructural and nonmechanical elements of the project will cease. OMRR&R of the structural and mechanical elements of the project will continue as outlined in the operations manual. Cessation of those O&M activities does not alter the non-Federal sponsor's obligation to retain public ownership on the real property interests required for the project.

c. Section 204(d) Selection of Dredged Material Disposal Method for Environmental Purposes (Placement) or Storm Damage and Flood Reduction. Section 204(d), as amended, provides that in developing and carrying out a Federal water resources project involving the disposal of dredged material, the Secretary may select, with the consent of the non-Federal interest, a disposal method for the purposes related to ecosystem restoration and storm and flood damage reduction that is not the least cost option if the Secretary determines the incremental costs of the disposal method are reasonable in relation to 1) the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetland and control of shoreline erosion; or 2) the flood and storm damage and flood reduction benefits, including shoreline protection, protection against loss of life, and damage to improved property.

(1) The study performed to determine benefits of a single or periodic placement shall be at 100% Federal cost and will be the minimum necessary to make a placement decision.

(2) Project cost sharing of the single or periodic placement shall be in accordance with Section 103 of WRDA 1986, as amended (33 U.S.C. 2213).

(3) Work performed primarily as a single one-time basis and shall not require operation and maintenance. Multiple placements may be considered for the same site over several years but would require justification for each placement. Multiple placement for disposal of material at a single site will be subject cumulatively to the per project federal participation limit of \$10,000,000.

(4) The Secretary may accept funds from the non-Federal interest to dispose of dredged material as provided under section 103(d)(1) of WRDA 1986, as amended (33 U.S.C. 2213).

d. Special Cost Sharing Provision. Projects for the purposes of protection, restoration, or creation of aquatic and ecologically related habitat and the costs of which do not exceed \$750,000 and which are located in a disadvantaged community may be carried out at full Federal expense. Not more than \$3 million of any annual appropriation for Section 204 may be used for these projects. Projects recommended for disadvantaged communities under this special cost sharing provision shall be identified in regional sediment management plans. The plans must justify the designation of the project as being located in a disadvantaged community by presentation of information on a per capita income, employment, and other relevant factors. Approval to proceed at full Federal expense will be accomplished during the MSC Decision Meeting for the study.

e. State and Regional Sediment Management Plans. The Corps can, at Federal cost, cooperate with any State or group of States in the preparation of a comprehensive State or regional sediment management plan, and measures and projects identified in State and regional plans may be recommended to Congress for authorization. These are State initiated studies, and the Corps role is to participate in the studies in a coordination and collaboration role. The aggregate of such funding is limited to \$5 million per fiscal year.

f. Section 204(d) and Programmatic Limits. Placement of material under section 204(d) will be considered a separate activity within the Section 204 Program, and expenditures will count against the Section 204 programmatic limit.

F-31. Section 205, Flood Control Act of 1948, as amended – Flood Risk Management.

a. General. Projects implemented under this authority are formulated for structural or non-structural measures for flood risk management in accordance with current policies and procedures governing projects of the same type which are specifically authorized by Congress (see Appendix E of this regulation). Section 1150 of WRDA 2016 added authority under Section 205 for the planning, design, construction, and monitoring of structural and nonstructural technologies and measures for preventing and mitigating flood damages associated with ice jams.

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

(1) Structural Flood Risk Management 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 PPA, the non-Federal sponsor must pay 5 percent of total project costs in cash, provide all LERRD required for the project, 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 percent 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-2 and paragraph F-7.b. of this Appendix).

(2) Non-Structural Flood Risk Management 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 PPA, the non-Federal sponsor must provide all LERRD required for the project, 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 percent 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-2 and paragraph F-7.b. of this Appendix).

F-32. 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 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 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, implementation, and *monitoring* period. In accordance with the terms of the PPA, the non-Federal sponsor must provide all LERRD required for the project, 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 percent 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-2 and paragraph F-7.b. of this Appendix). Ten years after ecological success has been determined, the responsibility of the non-Federal sponsor to conduct O&M on the nonstructural and nonmechanical elements of the project will cease. OMRR&R of the structural and mechanical elements of the project will continue as outlined in the operations manual. Cessation of those O&M activities does not alter the non-Federal sponsor's obligation to retain public ownership on the real property interests required for the project.

c. Section 206 Transitional Cost Sharing Guidance

(1) If a *decision document* was approved by the MSC on or before September 30, 2013, the feasibility level work will be completed with 100 percent Federal financing of *feasibility phase* costs and follow the procedures in this Appendix for design/construction of the project. Once authority is provided by HQUSACE to proceed with a Project Partnership Agreement (PPA), the PPA will be negotiated and executed. All *feasibility phase* costs, except for the costs of the Independent External Peer Review (IEPR) panel, if applicable, will be included in total project costs and shared in accordance with the cost sharing percentage in the PPA.

(2) If a *decision document* was not approved by the MSC by September 30, 2013, all feasibility level work will be stopped except for negotiation and execution of a Feasibility Cost Share Agreement (FCSA). The FCSA will provide for 50/50 cost sharing of all *feasibility phase* costs incurred after execution of FCSA, except for the costs of the IEPR panel, if applicable. Upon execution of the FCSA, resume the remaining feasibility level work. Upon approval of the feasibility report, follow the procedures in this Appendix for design/construction of the project. None of the *feasibility phase* costs will be included in total project costs in the PPA. However, the PPA will include a provision requiring the sponsor to pay their 50 percent share of *feasibility phase* costs, in excess of \$100,000, incurred prior to execution of the FCSA, in four equal payments over a two year period.

F-33. Section 208, Flood Control Act of 1954, as amended – Snagging and Clearing for Flood Risk Management.

a. General. This authority provides for minimal measures to reduce nuisance flood damages caused by debris and minor shoaling of rivers. A project under this authority is treated as a flood risk management 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 risk management 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 PPA, the non-Federal sponsor must pay 5 percent of total project costs in cash, provide all LERRD required for the project, 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 percent 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-2 and paragraph F-7.b. of this Appendix).

F-34. 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, implementation, and *monitoring* period. In accordance with the terms of the PPA, the non-Federal sponsor must provide all LERRD required for the project, 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 percent 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-2 and paragraph F-7.b. of this Appendix).

d. Section 1135 Transitional Cost Sharing Guidance

(1) If a *decision document* was approved by the MSC on or before September 30, 2013, the feasibility level work will be completed with 100 percent federal financing of *feasibility phase* costs and follow the procedures in this Appendix for design/construction of the project. Once authority is provided by HQUSACE to proceed with a Project Partnership Agreement (PPA), the PPA will be negotiated and executed. All *feasibility phase* costs, except for the costs of the Independent External Peer Review (IEPR) panel, if applicable, will be included in total project costs and shared in accordance with the cost sharing percentage in the PPA.

(2) If a *decision document* was not approved by the MSC by September 30, 2013, all feasibility level work will be stopped except for negotiation and execution of a Feasibility Cost Share Agreement (FCSA). The FCSA will provide for 50/50 cost sharing of all *feasibility phase* costs incurred after execution of FCSA, except for the costs of the IEPR panel, if applicable. Upon execution of the FCSA, the remaining feasibility level work will be resumed. Upon approval of the feasibility report, follow the procedures in this Appendix for design/construction of the project. None of the

feasibility phase costs will be included in total project costs in the PPA. However, the PPA will include a provision requiring the sponsor to pay their 50 percent share of *feasibility phase* costs, in excess of \$100,000, incurred prior to execution of the FCSA, in four equal payments over a two year period.

e. Non-Federal Design and Implementation Work. For all Section 1135 projects, non-Federal design and implementation work can be credited toward 100 percent of the non-Federal sponsor's share of total project costs.

f. 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 will be documented in the *decision document* and appropriate language will be included in the PPA addressing Government performance of OMRR&R.

g. 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.

ATTACHMENT A - ACRONYM LIST

ASA (CW)	Assistant Secretary of the Army (Civil Works)
ADM	Agency Decision Milestone
AR	Army Regulation
ATR	Agency Technical Review
CAP	Continuing Authorities Program
CSRM	Coastal Storm Risk Management
CWRB	Civil Works Review Board
DD	Decision Document
DI	Design and Implementation
DQC	District Quality Control
EC	Engineering Circular
EIS	environmental impact statement
EO	Executive Order
EPA	Environmental Protection Agency
ER	Engineering Regulation
F	Feasibility
FCSA	Feasibility Cost Sharing Agreement
FID	Federal Interest Determination
FPMP	Flood Plain Management Plans
GI	General Investigations
GNF	general navigation features
HQ RIT	Regional Integration Team located in Washington DC
HQUSACE	Headquarters, U.S. Army Corps of Engineers
I	Investigations Program
IEPR	Independent External Peer Review
LERR	Lands, Easements, Rights-of-Way and Relocations
LERRD	Lands, Easements, Rights-of-Way, Relocations, and Disposal Areas
LPP	Locally Preferred Plan
LSF	local service facilities
MDM	MSC decision milestone
MOU	Memorandum of Understanding
MSC	Major Subordinate Command (synonymous with “Division”)
NED	National economic development

NER	National ecosystem restoration
NEPA	National Environmental Policy Act
NOI	notice of intent
NSE	Nonstandard Estate
OMB	Office of Management and Budget
O&M	Operation and Maintenance
OMRR&R	Operation, Maintenance, Repair, Rehabilitation, and Replacement
P2	USACE project management software suite based on Primavera
P&S	plans and specifications
PCX	National Planning Center of Expertise
PDT	Project Delivery Team
PED	Preconstruction Engineering and Design
PMP	Project Management Plan
PPA	Project Partnership Agreement
REP	Real Estate Plan
RMO	Review Management Organization
RP	Review Plan
S&A	supervision and administration
SCRB	Separable Costs Remaining Benefits
USC	US Code
VE	Value Engineering
WRDA	Water Resources Development Act
WRRDA	Water Resources Reform and Development Act

ATTACHMENT B - 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 potential alternative, explain why a potential 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. Schedule (key milestones):
Execution of FCSEA:
Approval of Feasibility Study:
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. General Navigation feature (GNF) Costs:
Total: \$ (Federal share: \$)

(Implementation: \$)

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
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FYxx

FYxx

FYxx

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.

OUTLINE OF CAP PHASE DETAILS & MILESTONES

General. All submittals will go to or through the MSC CAP Manager. All submittals will include the hard copies and electronic copy as directed by your MSC. An electronic copy of the executed FCSA and PPA shall be provided to the MSC and HQ RIT within 14 days of execution.

(1) Project Requests:

- Need Sponsor's Letter of Request for Assistance
- Perform site visit using Coordination funds to verify that site is potentially eligible and verify that sponsor is aware of their responsibilities and is willing/able
- Create a project in P2 using the CAP template, once a program code is provided, add to the CAP DB.
- Enter capability for feasibility, enter remarks with date of LOR, Site visit, verification that site is potentially eligible, Sponsor is ready, as well as District and MSC priority rank

Action: Work with MSC to request initial funding (up to \$50K).

- HQ must determine if new start is affordable

FEASIBILITY PHASE (F)

(2) Federal Interest Determination (FID) – Planning Milestone (CW170)

HQ provides initial Feasibility work allowance for new starts.

Action: Determine early in the process (not to exceed 4 Months from receipt of funding)

Submission requirement (can be delegated to Planning Chief level):

- Cover memo, include a summary of relevant findings and a District recommendation
- CAP Fact Sheet, identifying problems and opportunities, are expected relative costs vs. benefits reasonable, define the scope of the remaining efforts, and including a projection of whether a Feasibility Cost Sharing Agreement (FCSA) is expected to be required, go through DQC review
- Letter of Request from Sponsor
- After MSC approval, update the CAP Database with the Actual FID date
- Request additional funding through MSC CAP Manager
- For Section 107, Submit Sec 107 Fact Sheet to HQ RIT for review and CECW-Z concurrence, required before FCSA is executed or completing feasibility, if less than \$100k
- If Feasibility can be completed for less than \$100k, continue feasibility and proceed to step (5).

(3) Feasibility Cost Sharing Agreement (FCSA) - Requirement for all CAP Feasibility studies over \$100K. The FCSA must be executed within the first \$100k, no additional funding provided.

Action: Check HQ current fiscal year list for "authority to sign" plus the following requirements must be completed before approval of all FCSAs:

- Financial Capability Self Certification (study)
- Certification Regarding Lobbying
- Certification of Sponsor's Legal Review
- Disclosure of Lobbying Activities

- Project Management Plan (required by some MSCs)
- Review Plan (usually model or programmatic)

Follow MSC guidance for using Model CAP FCSA.

FCSAs with minor deviations require MSC approval and substantive deviations require USACE approval, submit the materials above plus:

- Cover Memo
- Updated Fact Sheet
- Location map
- FCSA - A marked up copy of approved model or latest draft model along with final draft FCSA listing any deviations

(4) FCSA Execution – Milestone (CW130)

Should occur within 6 Months of FID

Action: Request for funding based on capability

Submission requirements:

- Update the CAP Database with actual FCSA date
- Request additional funding through MSC CAP Manager
- Update P2 Milestone and the CAP Database with execution date

(5) MSC Decision Meeting (MDM) – Planning Milestone (CW190)

replaces Alternatives Formulation Briefing (AFB)

Action: MDM meeting, covering information needed for MSC to concur with tentatively selected plan – submit info to MSC based on your MSC requirements (MDM should occur within 12-18 Months of FCSA execution).

Submission requirements, pre-briefing

- Summary read ahead info, including ATR comments and planned resolution
- Any draft documents the team believes relevant to MDM discussion

Submission requirements, post-briefing

- Memorandum for the record, including topics discussed and any resolutions
- Update P2 Milestone with actual date
- With MSC approval of tentatively selected plan, NEPA documents can go through public review process

(6) Decision Document (Detailed Project Report, Feasibility Report)

Action: DE submits the Decision Document for Division review and approval (within 18-24 Months of FCSA execution)

Submission requirements:

*****Confirm all copies and scanned documents are signed versions.**

- Cover Memo with recommendation and request for approval
- Final Feasibility Report
- Decisions Document submittal package checklist
- Final NEPA Documentation with signed FONSI or ROD (or draft if applicable to state rules)
- Updated CAP Fact Sheet with Table 1
- Certification of ATR and IEPR, if required
- Certification of COE Legal Review

- Non-Federal Sponsor's Real Estate Acquisition Capability

(7) Decision Document Approval – Milestone (CW170)

- Update P2 Milestone and CAP Database with actual date

Action: Response to any Division comments

Submission requirements:

- Any additional information requested by Division to clarify issues or comments raised
- Spreadsheet indicating how comments were addressed

DESIGN AND IMPLEMENTATION (DI)

(8) Initiate DI Phase and Complete PPA negotiations

Action: Request Initial DI funds (\$100K maximum, and PPA needs to be scheduled within the FY)

Submission requirements:

- Update and maintain CAP Database with scheduled PPA date, current capabilities based on executing PPA, developing P&S, awarding construction contract(s), S&A, monitoring, adaptive management, closeout, etc.
- Request DI funds through MSC CAP Manager

(9) PPA execution – Milestone (CW130)

Action: Check HQ current fiscal year list for “authority to sign”

Submission requirements: follow MSC guidance for using Model PPA (except Sections 103, 107, 111). After PPA is signed (be sure all appropriate documents are scanned with original signature)

- Signed PPA
- Counsels findings of no deviation and Certification of COE Legal Review
- Self Certification of Financial Capability (agreements)
- Certification of sponsor's legal review
- Signed CAP PPA check list
- Update P2 Milestone and CAP Database with execution date

For Sections 103, 107, 111, or deviations to Approved Model or Approved Draft Model (requiring Division and/or Headquarters Approval):

- Cover Memo with recommendation and request for approval and delegation signature authority to District Commander
- Decision Document w/ draft or final EA or EIS
- Negotiated draft PPA
- Deviations noted in red on a copy of the negotiated draft agreement
- CAP PPA Checklist, with signature
- Certification of COE Legal Review
- Explanation of the deviations
- Self Certification of Financial Capability (agreements)
- Current letter of intent from the non-Federal sponsor, signed
- The date that all environmental compliance was completed or will be complete
- Actual date or estimated date of certified LERRDs
- District (and Division) Counsel concurrence via email of the PPA prior to forwarding to HQUSACE

(10) Plans and Specifications (P&S) and contract documents

Action: prepare P&S and contract documents for pre-award and construction activities.

Requirements:

- Prepare P&S and Contract documents
- NEPA Documentation, including the Signed Finding of No Significance (FONSI) supporting project approval decision or ROD if an EIS has been filed by the District
- Statement signed by the District Commander with appropriate justification that existing physical features or conditions at the site have not changed sufficiently to require additional NEPA or other regulatory compliance documentation, if more than 3 fiscal years have elapsed since the approval of the decision document
- Certification of LERRDs before solicitation
- Follow District/MSD procedure for P&S approval and solicitations

(11) Contract Award – Milestone (CC800)

- Update P2 Milestone with actual date

(12) Schedule and Cost Change Requests (SACCR) – possible MSD requirement

Action: Based on established MSD procedure, requests for additional funding or schedule discrepancy may require a SACCR.

Submission requirements:

- Statement(s) explaining reason(s) for cost/schedule increases

(13) Physical Completion

Action: The entire Project, or a functional portion of the Project, is substantially complete. The Contracting Officer has accepted the work. (Warranty work, turf establishment, etc., may remain ongoing)

- Prepare OMRR&R Manual
- Written notification from District Commander, deeming project, or a functional portion of the Project is complete (CW450)
- Sponsor begins OMRR&R responsibilities

(14) Project Completion – Milestone (CW480)

Action: Submit completion report and follow close out process

Submission requirements:

- Update P2 Milestone with actual date and enter in CAP DB
- Prepare Project Completion Report
- AAR and Success Story, loaded onto district/MSD shared drive, successes will be shared with HQUSACE and loaded onto CAP Share Point site

(15) Monitoring and Adaptive Management

Action: For Aquatic Ecosystem Restoration Projects, follow monitoring and adaptive management plan. Monitoring will be used for assessing project performance and determining whether ecological success has been achieved, DE memo required.

(16) Fiscally Complete

- All post construction requirements have been fulfilled
- Project is fiscally closed in CEFMs
- CAP Database: Cost and Allocation information is correct, Stage and Project Status are marked as “C” completed

Pre-Publication DRAFT