

APPENDIX A

1. Purpose. This section provides guidance for the implementation of Section 1135 of the Water Resources Development Act (WRDA) of 1986, P.L. 99-662, as amended and Section 206 of WRDA 1996, P.L. 104-303. These sections provide programmatic authority for the Corps to undertake cost effective ecosystem restorations that are limited in cost and meet certain other criteria as discussed below.

2. Authorities:

a. The text of section 1135, as amended through WRDA 96 follows:

PROJECT MODIFICATIONS FOR IMPROVEMENT OF ENVIRONMENT

(a) The Secretary is authorized to review water resources projects constructed by the Secretary to determine the need for modifications in the structures and operations of such projects for the purpose of improving the quality of the environment in the public interest and to determine if the operation of such projects has contributed to the degradation of the quality of the environment.

(b) The Secretary is authorized to carry out a program for the purpose of making such modifications in the structures and operations of water resources projects constructed by the Secretary which the Secretary determines (1) are feasible and consistent with the authorized project purposes, and (2) will improve the quality of the environment in the public interest.

(c) RESTORATION OF ENVIRONMENTAL QUALITY. - If the Secretary determines that construction of a water resources project by the Secretary or operation of a water resources project constructed by the Secretary has contributed to the degradation of the quality of the environment, the Secretary may undertake measures for restoration of environmental quality and measures for enhancement of environmental quality that are associated with the restoration, through modifications either 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.

(d) NON-FEDERAL SHARE; LIMITATION ON MAXIMUM FEDERAL EXPENDITURE. - The non-Federal share of the cost of any modifications or measures carried out or undertaken pursuant to

subsection (b) or (c) shall be 25 percent. Not more than 80 percent of the non-Federal share may be in kind, including a facility, supply, or service that is necessary to carry out the modification or measure. Not more than \$5,000,000 in Federal funds may be expended on any single modification or measure carried out or undertaken pursuant to this section.

(e) The Secretary shall coordinate any actions taken pursuant to this section with appropriate Federal, State, and local agencies.

(f) Beginning in 1992 and every 2 years thereafter, the Secretary shall transmit to Congress a report on the results of reviews conducted under subsection (a) and on the programs conducted under subsections (b) and (c).

(g) There is authorized to be appropriated not to exceed \$25,000,000 annually to carry out this section.

(h) DEFINITION - In this section, the term "water resources project constructed by the Secretary" includes a water resources project constructed or funded jointly by the Secretary and the head of any other Federal agency (including the Natural Resources Conservation Service).

b. The text of section 206 of WRDA 96 follows:

#### AQUATIC ECOSYSTEM RESTORATION

(a) GENERAL AUTHORITY. - The Secretary may carry out an aquatic ecosystem restoration and protection project if the Secretary determines that the project -

(1) will improve the quality of the environment and is in the public interest; and

(2) is cost-effective.

(b) COST SHARING. - Non-Federal interests shall provide 35 percent of the cost of construction of any project carried out under this section, including provision of all lands, easements, rights-of-way, and necessary relocations.

(c) AGREEMENTS. - Construction of a project under this section shall be initiated only after a non-Federal interest has entered into a binding agreement with the Secretary to pay the non-Federal share of the costs of construction required by this section and to pay 100 percent of any operation, maintenance,

and replacement and rehabilitation cost with respect to the project in accordance with regulations prescribed by the Secretary.

(d) COST LIMITATION. - Not more than \$5,000,000 in Federal funds may be allotted under this section for a project at any single locality.

(e) FUNDING. - There is authorized to be appropriated to carry out this section \$25,000,000 for each fiscal year.

3. Applicability. This regulation applies to all HQUSACE elements, major subordinate commands (MSCs) and district commands having Civil Works responsibilities.

4. References.

- a. ER 11-2-201
- b. ER 200-2-2
- c. ER 405-1-12
- d. ER 1105-2-100
- e. ER 1165-2-132

5. Definitions.

a. Preliminary Restoration Plan (PRP). A brief document describing the proposed project, the ecosystem to be restored, the elements which have been degraded, the outputs to be produced, the cost of the project and an explicit rationale as to why the value of the outputs is judged to be at least commensurate with the cost of obtaining them, a map of the project location, and a letter of intent from the non-Federal sponsor. The PRP will be forwarded to Headquarters (appropriate CECW-P regional branch) and serve as the basis for approval of the allocation of funds. An approved PRP serves as the foundation of the agreement among the parties regarding the scope and nature of the proposed ecosystem restoration project. PRP preparation costs do not count as part of the total project costs for cost sharing.

b. Non-Federal Sponsor.

(1) Section 206. For projects pursued under the authority of Section 206 of WRDA 96, non-Federal sponsors shall be public

agencies that are able to enter into a cooperative agreement for a project in accordance with the requirements of Section 221 of the Flood Control Act of 1970. These requirements specify that the non-Federal sponsor be "a legally constituted public body with full authority and capability to perform the terms of its agreement and to pay damages, if necessary, in the event of failure to perform."

(2) Section 1135. For projects pursued under the authority of Section 1135 of WRDA 86, as amended, non-Federal sponsors can be public agencies as defined by Section 221 of the Flood Control Act of 1970. Large national non-profit organizations may also be sponsors for these projects, if they can commit to future Operation, Maintenance, Repair, Replacement and Rehabilitation (OMRR&R). In addition, private interests and not for profit organizations may be sponsors, if there will be no requirement for future OMRR&R by the non-Federal sponsor.

c. Implementation. Implementation means all actions required to carry out the approved ecosystem restoration project, from the effective date of the Project Cooperation Agreement (PCA) to the time that the Government notifies the non-Federal sponsor that implementation is complete.

d. Ecosystem Restoration Report (ERR). The report prepared during the feasibility phase.

e. Section 1135/206 Fact Sheet. The fact sheet is a summary document for study or project specific information used throughout the process. Instructions for preparing the fact sheet are contained in Appendix A-B. Fact sheets are to be kept current, reflecting the project's scope, status, schedule and costs. At a minimum fact sheets must be updated at the end of each phase of planning, design and implementation.

6. Objective. The objective of section 1135 and 206 projects should be restoring degraded ecosystem structure, function, and dynamic processes to a less degraded, more natural condition, which will involve consideration of the ecosystem's natural integrity, productivity, stability and biological diversity. Project outputs shall be defined, including the estimated project life. In those situations where a more natural condition cannot be achieved, projects which will improve the existing condition may be considered. For example, as the result of construction and operation of a multipurpose reservoir with hydropower facilities, a warm water stream has been converted to a cold water stream. Modifications to improve the habitat, such as increasing the dissolved oxygen levels in the stream, which would

provide conditions conducive to development of a fishery may be justified.

7. Categories of Projects.

a. Section 1135: In order to be considered for funding under the section 1135 authority, a proposed project must fit at least one of the following categories. A project may incorporate elements that fit more than one of these categories.

(1) Modification of an existing Corps project. Projects which incorporate modifications in the structures, which may include but are not limited to such items as levees, dams, channels or control structures, project fee or easement lands; or operations of a permanent water resources project constructed by the Secretary of the Army in response to a Corps construction authority. For projects involving direct modification of an existing project, there is no requirement to demonstrate that the Corps project contributed to the degradation. However, the proposed modification must be consistent with the authorized project purposes.

(2) Restorations where an existing Corps project has contributed to the degradation of the quality of the environment. Where it is demonstrated that the construction or operation of an existing Corps project has contributed to the degradation of the quality of the environment, projects may be undertaken which contribute to the restoration of the degraded ecosystem. These projects do not need to incorporate features directly modifying the structures or operations of the existing Corps project. However, these measures may not conflict with the authorized project purposes.

(3) Joint projects. Where it is demonstrated that 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 it is demonstrated that the construction or operation of the joint project has contributed to the degradation of the quality of the environment, projects may be undertaken which contribute to the restoration of the degraded ecosystem.

b. Section 206: Projects funded using the section 206 authority must be for restoration of aquatic ecosystem structure and function. This will usually include manipulation of the hydrology in and along bodies of water, including wetlands and riparian areas. No relationship to an existing Corps project is required.

8. Eligibility Criteria. Subsequent to determining that the proposed project fits at least one of the categories defined in paragraph 7., the following criteria must be considered.

a. Project limits applicable to both section 1135 and section 206 projects.

(1) Section 1135 and section 206 projects may be designed to halt erosion, or to control sedimentation, if the primary purpose is to improve aquatic or terrestrial ecosystem structure and functions.

(2) Sections 1135 and 206 should not be used to formulate projects for recreation purposes.

(3) These authorities shall not be used to implement any portion of a project specifically authorized by Congress, including post authorization changes to such projects.

(4) These authorities shall not be used to nullify or change an existing condition of non-Federal responsibility required for a project specifically authorized by Congress.

(5) These authorities shall not be used to adopt a non-Federal project for future maintenance at Federal expense or to accomplish non-Federal maintenance at a Federal construction project.

b. Project limits applicable only to section 1135 projects.

(1) Modifications which provide for the addition of a new project purpose such as water supply, or the addition of waterborne recreation at an existing dry reservoir should not be pursued using section 1135 authority.

(2) Works constructed under the generic Disaster Relief Acts and P.L. 84-99 are not eligible for this program.

(3) The scale of proposed project modifications should be within the scale of the projects being modified or to which degradation is attributed.

c. Results.

(1) A physical and/or operational modification should result from implementation of the proposal.

(2) Study-only proposals will not be funded.

(3) When a feasibility study is ongoing, consideration should be given to the integration of environmental features in the study, in accordance with the guidance contained in ER 1105-2-100, rather than proposing separate projects using either sections 1135 or 206.

(4) Consideration should be given to using an authority other than section 1135 or section 206 to fund studies which may result in an operational-only change which can be accomplished without additional cost.

d. Output considerations.

(1) Non-endemic and Exotic Species. Proposals that would change the existing natural productivity of ecosystems in an area primarily to benefit one or more species not normally, or historically, found in those ecosystems will not be approved.

(2) Multiple resource focus. Rather than maximizing habitat benefits for a single species or a resource commodity, such as game fish or birds, ecosystem restoration planning will consider the roles of plant and animal species populations and their habitats in the larger context of community and ecosystem frameworks. Until ecosystem models become more available, however, it will probably be necessary, or in some cases more appropriate, to continue to use a single species (such as an endangered or sensitive species) or preferably a set of species to represent the restoration objectives and to help characterize the outputs of the project.

e. Contributions to broader objectives. Projects which contribute to the achievement of the goals of other programs such as Coastal America, American Heritage Rivers, the Brownfields initiative and the North American Waterfowl Management Plan are encouraged. Projects which are integral parts of larger watershed initiatives are also encouraged.

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

g. Lands. As a matter of policy, land acquisition should be kept to a minimum. Proposals which consist primarily of land acquisition are not appropriate. As a target, land value should not exceed 25 percent of total project modification cost. Projects with land costs exceeding 50 percent of total project costs are not likely to be given a high priority. High values for project lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas (LERRD) could suggest that the location for the restoration project is not efficient. Where LERRD value exceeds 25 percent, the Ecosystem Restoration Report (combined phase documentation for projects with a Federal cost of  $\leq$ \$300,000) must demonstrate that alternative sites for the project have been considered and that the site recommended is the most cost effective.

h. Engineering. Using the Corps engineering expertise to develop innovative solutions to ecosystem problems is encouraged. Corps design and construction standards can be modified to reduce project costs for environmental projects provided that the modified standards create no substantial increased risk to public health and safety, or with regard to section 1135 projects substantially impact the operation, structure, or purposes of the parent project. The basis for a modification of standards is a comparison of the risk of failure or improper functioning of a project with the consequences of failure or improper functioning. Engineering creativity and innovation should be encouraged in the development of solutions to ecosystem problems. Evaluate decisions to modify standards carefully and fully discuss those decisions with project sponsors so that they recognize and understand the risk that they will be expected to share. Under no circumstance shall this modification of standards extend beyond the ecosystem restoration project. A levee creating a wetlands subimpoundment on an existing project will not need to meet the same criteria as a flood control levee.

i. Mitigation.

(1) Since the purpose of these authorities is ecosystem restoration, section 1135 and section 206 projects should be designed to avoid any requirement for fish and wildlife mitigation.

(2) Projects implemented using these authorities may not be used as wetland banks or mitigation credit for the non-Federal sponsor.

9. Benefits and Costs. Section 1135 and section 206 projects must have monetary and/or non-monetary benefits judged to justify

the monetary and/or non-monetary costs and this must be discussed in the PRP and project documentation. This will not include a traditional benefit to cost ratio, since the benefits associated with the primary output, ecosystem restoration, can rarely be quantified in dollars. Any economic benefits from these projects must be associated primarily with improvements to fish and wildlife resources.

10. Cost Sharing.

a. Section 1135. As required by Section 1135 of P. L. 99-662, as amended, the non-Federal share of the costs of section 1135 modifications shall be 25 percent. The sponsor shall provide LERRD required for the restoration project which are not otherwise available due to the construction and operation of the existing project.

b. Section 206. In accordance with Section 206 of P.L. 104-305, the non-Federal share of the costs of aquatic ecosystem restoration projects shall be 35 percent. The non-Federal sponsor shall provide all LERRD required for the restoration project.

c. Non-Federal Responsibilities. If the value of LERRD provided represents less than the non-Federal sponsor's share of the total project costs, the non-Federal sponsor shall provide, during the period of implementation, a cash contribution and/or allowable work-in-kind in the amount necessary to make its total contribution equal to 25 percent for section 1135, or 35 percent for section 206. The non-Federal sponsor's responsibilities and the provision of credit for LERRD, and work-in-kind, are described in more detail in paragraphs 10-13 below. The specific requirements for each individual project will be detailed in the PCA.

d. Costs Incurred Prior to Execution of the PCA. Preparation of the PRP is a 100 percent Federal cost. Feasibility studies, and combined planning and design phases will initially be fully funded by the Federal Government. Subsequent to project approval, plans and specification costs may be initially fully funded by the Government. For approved restoration projects, the feasibility phase, plans and specification, or combined planning and design phase costs shall be included as part of the total project costs to be shared in the appropriate ratio with the non-Federal sponsor.

e. Reimbursement.

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

(2) Limit on Reimbursement. Program funds will not be provided to local interests or used to reimburse local interests for conducting studies or constructing projects, nor shall contributions be made for features or benefits of projects constructed by another agency or by local interests. Local interests will not be reimbursed for work undertaken by them on an approved project except as approved by inclusion in the PCA.

f. Contracting. Contracting with the non-Federal sponsor is discouraged. Awarding a non-Federal sponsor a sole source contract is not allowed.

g. Limit on use of other Federal funds.

(1) Contributions from other Federal agencies count towards the five million dollar Federal project limit, unless these contributions meet the criterion discussed in 10.g.(2) below.

(2) The non-Federal sponsor shall not use Federal funds to meet its share of the total project costs unless the Federal Granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute. The Department of the Interior has been consulted and Federal Aid in Wildlife Restoration Act (Pittman-Robertson) and Federal Aid in Sport Fisheries Restoration Act (Dingel-Johnson) funds, and North American Wetlands Conservation Act funds (Mitchell Bill) may not be used by states as the non-Federal share of these projects.

11. Real Estate Requirements.

a. Requirements. After consultation with the non-Federal sponsor, the Government must determine what LERRD are required for implementation, operation, and maintenance of the project. In making this determination, two issues must be separately evaluated: the physical area that is necessary and the nature of real property interests required, if any. This will be accomplished in accordance with ER 405-1-12.

(1) Consideration should be given to preservation of the physical integrity of the ecosystem restoration project and to risks associated with achieving the benefits that serve to

justify the project cost. If an interest in land in an area where benefits will accrue is not obtained, the risk of not achieving the expected benefits must be weighed against the costs of acquiring the interest in land.

(2) For projects involving modification of existing projects, the estates acquired for the existing project must be analyzed by the Real Estate Division for sufficiency and availability for project modification purposes and the ERR must reflect this analysis. There may be some cases when existing interests in land of less than fee are available to use for part or all of the project modification land requirements and would satisfy the needs of the project.

(3) Proposals to utilize specific permanent easement interests rather than fee may be approved as a result of approval of the decision document for the project that contains an adequate Real Estate Plan (REP) which includes the specific permanent easement estate proposed and the rationale for its use in lieu of fee. In the alternative, written requests for approval of a specific permanent easement estate can be forwarded through Division to CERE-A for coordination and decision prior to acquisition or use of such estate for the project.

b. Value and Credit. The value and credit for LERRD required to be provided by the non-Federal sponsor for the ecosystem restoration project shall be determined in coordination with the Real Estate Division and pursuant to the terms of the model Project Cooperation Agreements for section 1135 and section 206 projects.

(1) Where the cost of appraising LERRD eligible for credit for a section 1135 or 206 project is estimated to exceed the market value of such interest or interests, the non-Federal sponsor and the Government may stipulate in the PCA for the project that the value, and the credit amount for, the required interest or interests is zero, thereby avoiding the necessity and expense of the appraisal for such interest or interests.

(2) For LERRD provided by the non-Federal sponsor which is estimated by the non-Federal sponsor or the Government to be an uncomplicated valuation and less than \$2,500, formal appraisals for acquisition and credit may not be required. The Real Estate Division should be provided project-specific information to determine whether, and to what extent, flexibility exists according to current regulations.

(3) The non-Federal sponsor will not receive credit (and the value thereof will not be included in total project costs for purposes of cost sharing) for the value of the following categories of LERRD required for the project:

(a) LERRD that has been provided previously as an item of cooperation for another Federal project;

(b) LERRD that is provided using Federal funds unless the Federal granting agency verifies in writing that credit therefor is expressly authorized by statute;

(c) Federal lands provided for the use of the project (exclusive of reasonable incidental costs) unless the non-Federal sponsor paid fair market value to the Federal managing agency for the required real property interest; and

(d) Lands that are available to the project through proper exercise of navigation servitude rights by the Government.

c. Real Estate Plan (REP). A comprehensive REP prepared in accordance with the requirements of Chapter 12 of ER 405-1-12 must be included in the ERR or other decision document for the project. Generally, the REP must sufficiently identify all real estate requirements for the implementation, operation, and maintenance of the project, the estimated value therefor, and all other relevant real estate issues.

d. Operation and Maintenance. For section 1135 projects that include existing project lands owned by the United States and managed by the Corps of Engineers, and the non-Federal sponsor is responsible for the operation and maintenance of the section 1135 project, an appropriate real estate outgrant will be issued to the non-Federal sponsor. If the area is currently under outgrant, then appropriate steps will have to be taken to allow the new use.

12. Work-in-kind. Credit for work-in-kind may not result in any reimbursement of the non-Federal sponsor. The work-in-kind when combined with the non-Federal provision of LERRD cannot exceed the value of the non-Federal sponsor's required share of project costs.

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

b. Section 206. For section 206 projects, the entire non-Federal share of the total project cost may be credited work-in-kind.

c. Eligible Parties. Work-in-kind must be provided by the non-Federal project sponsor and can be accomplished by the staff of the non-Federal sponsor or by contract administered by the non-Federal sponsor.

d. Other Contributions. Contributions of cash, funds, materials and services from other than the non-Federal sponsor may be accepted for the project modification under the provisions of Section 203 of the Water Resources Development Act of 1992. However, such contributions by other than the non-Federal sponsor, including work by volunteers, will not be credited to the non-Federal share of the project but rather will be applied to the entire project and, therefore, reduce both the Federal and non-Federal share of the project cost.

e. Eligible Work. Items eligible for work-in-kind as part of the non-Federal sponsor's share include post feasibility phase design, including plans and specifications, provision of materials, and project construction. There is no mechanism to provide for work-in-kind for feasibility phase studies and no such work will be accepted. Where work-in-kind for post feasibility design is desired, the PCA should be executed before the initiation of the design work.

f. Requirements. With regard to work-in-kind, the non-Federal sponsor will comply with applicable Federal and state laws and regulations, including the requirement to secure competitive bids for all work to be performed by contract. Efforts credited as work-in-kind will be subject to audit. The determination of the dollar value of in-kind products or services will be negotiated, based on a detailed government estimate and sponsor proposal, between the Federal Government and the non-Federal sponsor as fixed fee items, applying applicable Federal regulation, including OMB Circular A-87. The dollar value of the in-kind effort will be established prior to the initiation of the in-kind effort.

### 13. Hazardous, Toxic and Radioactive Waste (HTRW) Concerns.

a. General Guidance. Projects using these authorities should be designed to avoid HTRWs. The guidance contained in ER 1165-2-132, "Hazardous, Toxic and Radioactive Waste (HTRW) - Guidance for Civil Works Projects" is applicable.

b. Responsibilities and Costs After PCA Execution. As between the Government and the non-Federal sponsor, the responsibilities for performance of investigations, the requirements for coordination, the responsibilities for clean-up and response and the assignment of costs after PCA execution are described in detail in the model PCAs for these programs.

14. Operation, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R). The non-Federal sponsor shall be responsible for 100 per cent of the incremental OMRR&R associated with these projects, except as discussed in paragraph 14.b.

a. Non-Federal Responsibility. The non-Federal sponsor shall operate and maintain the restoration project in compliance with applicable Federal, state and local laws and in a manner so that liability will not arise under the Comprehensive Environmental Response, Compensation, and Liability Act.

b. Federal Exception. In those cases where the entire section 1135 modification is on lands for which the Corps has the necessary real estate interest and also is responsible for operation and maintenance (i.e. the land has not been leased to another agency for fish and wildlife purposes), the Corps may assume responsibility for the OMRR&R of the section 1135 project modification. When annual OMRR&R costs for the proposed project modification exceed \$5,000, the MSC commander's approval will be required prior to Corps assumption of this responsibility.

15. Cost Allocation. Costs for implementation and OMRR&R of project modifications undertaken pursuant to section 1135 are incremental to the existing costs of the project being modified. The ecosystem restoration features are in addition to authorized project purposes, and they are not for mitigation. Therefore, the costs of the project modifications should not be allocated to other project purposes, but should be considered solely as ecosystem restoration costs and shared in accordance with the provisions of Section 1135 of WRDA 86, as amended.

16. Federal Funding Limit.

a. Program Limit. The annual Federal program appropriation limit is \$25 million for each of the section 1135 and section 206 authorities. This includes programmatic and project-specific funds.

b. Project Limit. Under these authorities not more than \$5.0 million in Federal funds may be expended on any single ecosystem restoration project. Since the non-Federal sponsor's

share is 25 percent for section 1135 projects and 35 percent for section 206 projects, the maximum total project costs are limited to \$6.66 million for section 1135 projects and \$7.69 million for section 206 projects. Specific authorization should be sought for projects which exceed these limits.

17. Program Management.

a. Headquarters Management. This program will be managed by the Planning Division at HQUSACE in cooperation with other concerned elements. As warranted, Headquarters will conduct regional or national meetings with field staff to discuss significant national issues and changes in guidance or procedures, as well as, to afford an opportunity to exchange information among the various elements.

b. Correspondence. Unless otherwise stated in this regulation, all correspondence to HQUSACE related to this program will be directed to CECW-PM. Subsequent to assignment of a unique, project specific Project Work Item (PWI) number, it will be used as part of the project name in all correspondence dealing with individual projects. Electronic mail is the preferred method of communicating between Headquarters and subordinate commands.

c. MSC Management Responsibilities. The MSC commander will have review responsibilities normally assigned to Headquarters for studies and projects for which the MSC has delegated approval authority as provided in this guidance.

d. Periodic Program Reviews/After-Action Audits. Headquarters will conduct periodic reviews at MSC and district offices to assess the program performance. Performance, policy compliance and technical adequacy of program management of phases and projects completed under the procedures in this guidance will be considered. These reviews will also provide an opportunity to share successes and discuss problems.

e. Funding Status and Schedule Updates. Funding status and schedule updates for every active project which has received funds subsequent to approval of the PRP will be included in the Continuing Authorities Program database submitted by MSC commanders in accordance with ER 1105-2-100. This information will be used to monitor individual project and overall program performance. Additionally, in June and December, MSC commanders will update the funding status and schedule for each of their projects for which construction funds have been committed and

notice of physical completion has not been provided to Headquarters.

f. Baseline Costs and Schedules. Baseline costs and schedules are established upon project approval. The baseline cost is the cost contained in the approved Ecosystem Restoration Report or, for projects with a Federal cost less than or equal to \$300,000, the cost contained in the updated fact sheet accompanying the approved Plans and Specifications.

g. Federal Interest. The cost of a project is a factor to consider when determining if there is a Federal interest in pursuing a project using one of these authorities. Projects with small implementation costs may be more appropriately addressed as a local responsibility or, for section 1135 projects which modify an operating project, be included as part of the maintenance of the project. If the cost of planning and design efforts for the project exceeds the cost of construction, then the Federal interest in the project should be reviewed.

h. Commitments to Accomplish Studies and Projects. HQUSACE funding of a study or project commits USACE elements to completing that stage in a timely manner. Completion of any stage does not commit USACE to initiation of the next stage. Work is limited to the stage for which funds have been specifically allotted. Work funded under this program shall be complete in itself and shall not obligate the Federal government to future work.

i. Reprogramming. Funds may be reprogrammed from one section 1135 project to another one, as long as the gaining project has received an initial work allowance from CECW-PM in the current or the prior fiscal year, the cost estimate for the phase is not exceeded, a new phase is not initiated by reprogramming and the statutory ceiling on Federal cost for projects is not exceeded. Specific guidance on reprogramming is located in ER 11-2-201, "Civil Works Activities - Funding, Work Allowances, and Reprogramming."

j. Revocation of Excess Funds. When work on a stage is completed, or it is determined that available funds may be in excess of current needs, any excess funds must be reprogrammed or offered for revocation by HQUSACE. Excess funds must be revoked as soon as possible in order to assure that these funds can be allocated to and utilized by other studies and projects.

k. Cost Increases. Any funding request which increases the cost of a phase will include an explanation of the change and a revised fact sheet.

18. Procedures. A diagram of the major steps and sequence of events in the process from project initiation to completion is included in Appendix A-A.

a. Coordination Account

(1) Limited funds will be available for non-project specific coordination activities. These funds are for participation in regional meetings and interagency coordination for programs such as Coastal America, as well as, preliminary site visits and discussions with potential sponsors. However, these funds are not to be used as supplements for coordination activities, such as EPA's National Estuary Program, which receive line-item funding.

(2) MSCs submit a request to Headquarters for the funds required by each district for the next fiscal year in September. The funds will be issued directly to the districts similar to other coordination accounts. The amount to be provided each year will be based on an assessment of need, past performance and availability of funds. These funds are not project specific.

(3) Each MSC will establish a mechanism to ensure accountability for the use of these funds. Funds shall not be reprogrammed to or from this account without issuance of a work allowance from Headquarters.

b. Preliminary Restoration Plan

(1) Purpose. The initial step for a proposed ecosystem restoration project using either the section 1135 or section 206 authority is the preparation of a Preliminary Restoration Plan (PRP). Development of PRPs should be coordinated among applicable offices to optimize use of existing data and to generate ideas. In this plan, the proposed project features are identified. For section 1135 projects, this should include a discussion of the existing project features or functions being modified, and/or a description of the degradation attributed to the project. The nature and scope of the ecosystem restoration features are outlined, the outputs projected based on an analysis of with and without project conditions, and the importance of these outputs discussed. Known risk factors, if any, affecting output, quantity, quality and sustainability should be discussed and considered, especially in the with project analysis.

Coordination with a willing non-Federal sponsor is an important element of this phase. The plan will serve as the basis for an understanding among all of the involved parties of the work proposed and as the foundation for eventual project approval. The PRPs will be reviewed and approved by Headquarters to ensure a minimum level of national program consistency. If there are significant unresolved concerns regarding all or part of the proposed project, Headquarters may approve the PRP for initiation of the feasibility or combined phase but retain approval of the ERR, or combined phase documentation, and project. For projects with a Federal cost of \$300,000, or less, the PRP will serve as the basis for initiation of a combined planning and design phase resulting in environmental compliance documentation and plans and specifications.

(2) Funding. Funding will be provided each district for preparation of PRPs. In March and September of each year, MSCs are requested to provide Headquarters a realistic estimate, by district, of the number of PRPs to be initiated during the subsequent 6 months. In addition to the new requests, the status (approved, active or terminated) of previously funded PRPs which were not reported as approved or terminated in the previous report should also be provided. This information will serve as an indication of performance. If a district requires funding for additional PRPs prior to the next scheduled allocation, the MSC may forward an updated request. These funds are solely for the preparation of PRPs and there is a funding limit of \$10,000 per plan. The allocation of funds will be based on the district estimates, past performance, and overall program funding constraints. Each MSC will be responsible for establishing a mechanism to ensure funding accountability. These funds will not be considered part of the total project cost and will not be cost shared.

(3) Contents. MSCs will submit PRPs electronically to HQUSACE (Attn: CECW-P regional branch). The contents of the PRP are discussed in Appendix A-B. The MSC memorandum submitting the PRP to HQUSACE will also act as the funding request for the feasibility or combined planning and design phase and should state the amount requested for the current fiscal year. If additional funds will be required in subsequent years to complete the phase, this will also be clearly indicated.

(a) Letter of Intent. The letter of intent must state the non-Federal sponsor's understanding of its obligations and responsibilities under the program, including OMRR&R as appropriate, and its willingness and ability to participate. Additionally it must contain a reference to the estimated cost of

the proposed modification and the estimated annual cost of O&M. The letter of intent should be current and in no case dated more than one year prior to receipt in Headquarters.

(b) Map. The map must show the major elements of the proposed ecosystem restoration project. For section 1135 projects the relationship of these features to the existing project boundaries must be indicated. Additionally, as applicable, areas where the existing Corps project contributed to the degradation should be clearly indicated. Maps are the most effective way to demonstrate the nature and extent of the proposed ecosystem restoration. More than one map may be necessary, especially for proposals addressing project related degradation. However, these maps may be sketch maps, as long as the features and areas indicated are clearly labeled.

(4) Timing. PRPs may be submitted at any time during the fiscal year. PRPs should be completed as soon as possible after receipt of funding, but should not take longer than 6 months. An average time of 2 months is desirable. If a PRP cannot be completed within 6 months, work on it should be terminated.

(5) Documentation. The contents of the PRP, except the map and letter of intent, shall be submitted in an electronic format. During subsequent phases this information will be revised, as appropriate, and will serve as the Section 1135 or Section 206 fact sheet. Schedule and cost information shall be kept current and shall be consistent with figures in reports and Continuing Authorities Program database entries provided in accordance with paragraph 17.e. above.

c. Feasibility Phase.

(1) General. An Ecosystem Restoration Report (ERR) is required for projects with a Federal cost over \$300,000. Planning will be conducted within the framework established by the principles and economic and environmental guidelines in ER 1105-2-100. The feasibility phase will complete the plan formulation process, including the selection of a plan, generally in accordance with guidance for feasibility studies. Ecosystem restoration studies differ from studies focused on traditional study purposes only in that the benefit evaluation will focus on quantitative and qualitative restoration criteria and any monetary benefits are incidental. Since Section 1135 studies are for the modification of existing projects or to provide ecosystem restoration in areas where the project contributed to the degradation, coordination with the Operations element of the organization is required.

(a) Content and Format. The content of the Ecosystem Restoration Report (ERR) should follow, as appropriate, the guidance covering feasibility report content in ER 1105-2-100, Chapter 2. Procedures, techniques and models used must be documented in a clear and understandable fashion so the decision makers and publics can understand the rationale used, the assumptions that have been made and the sensitivity of the decisions based on these assumptions. Benefits should be quantified in appropriate units such as increased number of nests, habitat units, quantity and quality of acres modified, including acres of specific habitat type, diversity indices, etc. With and without project conditions should be described. Risk factors, if any, affecting output quantity, quality, and sustainability should be discussed. This is particularly important in the with project analysis. If economic benefits can be quantified, such as for commercial fishing or recreation, these should be included as incidental outputs. If there are benefits foregone, i.e., benefits existing or that would exist in the without project condition, these must be described and quantified. The main report must contain a summary of the cost effectiveness and incremental cost analyses performed and a statement regarding the estimated project life. This is not an economic life but the period for which benefits are expected. The study will include a Real Estate Plan in accordance with Chapter 12 of ER 405-1-12. The OMRR&R requirements must be clearly described so that all parties are aware of what is expected and the period of performance. The ERR should also contain a discussion of the procedures to be followed subsequent to a natural catastrophe, such as a hurricane. The report must contain a recommendations section which will contain a clear, concise description of the plan being recommended for implementation, and a summary of the non-Federal sponsor's responsibilities, prefaced by a statement that the complete description is contained in the PCA which has been coordinated with the non-Federal sponsor and which the non-Federal sponsor shall sign prior to implementation. The ERR should be accompanied by a current letter from the non-Federal sponsor indicating support for the negotiated PCA and the project as described in the ERR.

(b) Level of Detail. The level of detail should be consistent with the scope of the study and recommended project. However, the level of detail must be sufficient to proceed directly to the preparation of plans and specifications. Engineering standards for habitat projects are not as rigorous as for other Corps projects such as flood control. For cost estimating, the use of M-CACES is mandatory. However, for projects with a total Federal cost of less than \$2 million,

alternative cost estimating procedures may be used as long as these follow sound cost engineering practices. A value engineering study is required for all projects costing in excess of \$2,000,000. If the district determines that a value engineering study is not cost effective, a waiver must be approved by the Division Commander and a copy provided to CEMP-EV.

(c) Justification. An ecosystem restoration project must be justified through a determination that the combined monetary and non-monetary benefits of the project justify its monetary and non-monetary costs. Units of output must be defined, benefits specified, and costs of production evaluated. Units of environmental outputs must be specified in quantitative terms, such as habitat units or the number of acres that meet specific clearly defined criteria. The models or methodologies used to define and quantify outputs must be clearly explained. If study resources are not sufficient for extensive habitat evaluation, abbreviated techniques are acceptable, including professional judgment. The value of the restoration must be supported in terms of importance as defined in terms of institutional, public and technical recognition (ER 1105-2-100, Chapter 7) and the relative scarcity of the resources should be mentioned. Specific data and documentation supporting this determination of the importance must be provided. The value used is that related to the units of analysis defined previously and is not monetary but ecological.

(d) Cost Effectiveness. Cost efficiency is important and available funds must be used productively. The report must demonstrate how the cost effectiveness of the proposed plan was determined. Several Institute for Water Resources publications provide procedural guidance regarding cost effectiveness analyses.

(e) Incremental Cost Analysis. A variety of implementable plans and various sized plans should be evaluated to attempt to optimize the output within the limits of the sponsor's capabilities. Discussion of only the No Action and Recommended alternatives will rarely be acceptable in an ERR. Formulations should be incremental: management measures should be included sequentially so that the relationship between the quantity of outputs and the unit cost is evident. The analysis should include a brief description of the various increments carried forward for detailed analysis, the outputs for various increments, the cost per increment of output, analysis of the most cost efficient plan and analysis of how the plan addresses the planning objectives and criteria. Additional information

regrading incremental analysis can also be found in several Institute for Water Resources publications.

(f) Monitoring. Post-implementation monitoring of the ecosystem response to the project may be warranted for some of these projects, especially when the risk and uncertainty of achieving the projected outputs is high. The discussion of the recommended plan should include a description of and the rationale for any proposed monitoring. Monitoring should be limited to a 3 to 5 year period. The cost of monitoring will be included in the total project cost and cost shared with the non-Federal sponsor. The non-Federal sponsor will be responsible for maintenance during the monitoring period. The purpose of this monitoring is primarily to determine if the predicted outputs are being achieved and to provide feed back for future projects. To facilitate information exchange, a brief summary of monitoring results should be prepared upon completion of the monitoring and provided to HQUSACE.

(2) Costs and Time. As a target, proposed study costs should be limited to 15 percent of the total project costs for projects costing less than \$1 million and 10 percent of the costs for more expensive projects. If greater study costs are anticipated, the rationale for exceeding these targets should be briefly discussed in the PRP. If during this phase, it is recognized that study costs will exceed the target, written requests explaining the necessity for these costs should be submitted to the appropriate regional branch in CECW-P. Feasibility studies should be completed within 12 months.

(3) Environmental compliance. The ERR shall include evidence of compliance with all applicable Federal environmental statutes and regulations and with applicable state statutes. National Environmental Policy Act (NEPA) compliance will be accomplished in accordance with ER 200-2-2. The normal minimum NEPA requirement for one of these projects will be an Environmental Assessment (EA) and signed Finding Of No Significant Impact (FONSI). The environmental compliance documentation should be integrated into the text of the report unless complex environmental impacts preclude this alternative. Full compliance with all of the applicable Federal and state environmental statutes and HTRW statutes and guidance should be achieved by the end of the feasibility phase, or combined planning and design phase. If full compliance cannot be achieved by the end of the feasibility phase, justification for, and scheduling of post study compliance must be provided in the ERR. Full compliance with environmental statutes must be achieved prior to advertisement for bids for construction.

(4) Financial analysis. A financial analysis, consistent with the complexity of the financing involved, is required. This analysis must accompany the negotiated draft PCA. In most cases, the financial analysis requirements can be satisfied by a statement of financial capability and a financing plan in the form of a letter from the sponsor and a short narrative included in the ERR. In more complicated cases, a preliminary capability statement, financing plan and supporting financial information are required. Ability to pay provisions do not apply to Section 1135 and Section 206 projects.

d. Combined Planning and Design Phase. Projects with an estimated Federal share of \$300,000 or less do not have separate Feasibility and Plans and Specifications phases. Instead formulation, analysis (including incremental cost analysis), justification and design tasks will be accomplished in a single phase at a level of detail appropriate to the scope of the project. NEPA coordination/environmental compliance documentation will occur as part of the one step planning and design process. This process should take no more than 12 months. No formal report is required, however, backup material, including the financial analysis, will be retained in the project files. The district may elect to prepare a short briefing package to coordinate with the local sponsor and other entities. The NEPA documentation will serve as the primary vehicle for coordination of the project. The MSCs will determine the level of documentation required for review and approval for projects with a combined planning and design phase.

e. Report Review and Project Approval. Project approval occurs at the completion of the feasibility phase or upon completion of plans and specifications for projects with a Federal cost of \$300,000 or less.

(1) MSC Approvals of Projects. MSCs are to be involved early in the planning process, to identify and resolve any developing policy issues and to guide decisions that may be made with sponsors throughout the progress of a study. This concept eliminates the need for extensive MSC report review. MSC commanders are authorized to approve the ERR, (or environmental compliance documentation and plans and specifications for projects with a Federal cost of \$300,000, or less) and project when the proposed ecosystem restoration is consistent with the approved PRP unless Headquarters retained the approval authority at the time the PRP was approved. This authority may not be further delegated to the district commander.

(2) MSC Consistency Review. Factors to consider when determining if the recommended project is consistent with the project proposed in the approved PRP are listed below. If ranges of outputs, scope and/or features and costs were discussed in the PRP these should be considered when determining consistency.

(a) Changed without project conditions such as improvements in the area which decrease the difference between the with and without project conditions by 25 percent, or additional degradation which substantially increases the risk of failure of the restoration;

(b) Cost increases of 25 percent or decreases of over 50 percent;

(c) Significant changes in physical scope, such as acreage or structure size changes of greater than 25 percent;

(d) Changes in predicted outputs, such as significant changes in quantity disproportionate to changes in cost and changes in quality, or the types of habitat to be restored;

(e) Changes in project design such as significant changes in location, number, or type of structures;

(f) An increase in LERRDs which causes the value of the LERRDs to exceed 25 percent of the total project costs; and

(g) New policy issues.

A sample table which may facilitate this review is included in Appendix A-C.

(3) HQUSACE Notification of Project Approval. The MSC commander will notify HQUSACE (appropriate CECW-P regional branch) in writing when the project has been approved. A copy of this material, including the enclosures, should also be provided to CECW-PM. The information provided will serve as the basis for draft letters of Congressional Notification which will be provided to ASA(CW). District commanders are responsible for notifying State and local interests of HQUSACE or MSC project approval.

(a) For projects with a Federal cost greater than \$300,000, the notification will consist of a current (no more than one month old) project fact sheet (provided electronically), a copy of the correspondence to the district commander which approved the report and project, a citation of the baseline date for

contract award, estimated date of construction completion, an information copy of the approved ERR, a statement that the model PCA will be used without deviations or that approval for the use of a PCA with deviations is being sought, and the proposed schedule for PCA execution. If the District desires to execute the PCA early in the plans and specifications phase to allow the sponsor to receive credit for work-in-kind, this must be discussed in the memorandum informing HQUSACE of project approval. This documentation will accompany the request for plans and specifications funds.

(b) For projects with a Federal cost of \$300,000 or less, notification will consist of a copy of the current fact sheet, a copy of the correspondence to the district commander which approved the project, a citation of the baseline date for contract award, schedule for construction completion, a statement that the model PCA will be used without deviations or that approval for the use of a PCA with deviations is being sought, and the proposed schedule for PCA execution. A request for commitment of construction funds should also be included. Headquarters, by return electronic mail message, will acknowledge receipt of the project approval notification and provide information regarding the status of the funds commitment.

(4) Approval of Projects which do not meet the Consistency Criteria.

(a) HQUSACE will approve the report and project when the consistency criteria are not met, with the one exception noted below. The MSC commander will submit to HQUSACE (CECW-AR) seven copies of the report, the project fact sheet and a statement that the model PCA will be used without deviations, if that is the case, or that a draft PCA will be submitted following project approval. A copy of the transmittal memorandum, two copies of the report and fact sheet should also be provided to the appropriate regional branch in planning. This process also applies in those cases where Headquarters retained the project approval authority at the time the PRP was approved. The scope of the study and recommended project will be considered in the HQUSACE report review.

(b) If the only criterion that is not met is the one regarding cost increases or decreases, the MSC should provide HQUSACE (CECW-P regional branch) two copies of the ERR, a statement that all of the consistency criteria are met except the one related to costs, a copy of the completed table in Appendix A-C, a current fact sheet and an explanation for the cost increases/decreases. The regional branch in coordination with

CECW-PM and the Chief of Planning will determine if the report and project may be approved by the MSC or must be submitted to HQUSACE for approval. The Chief of Planning may consider factors other than cost in making this determination.

f. Post-Approval Changes. If there are significant changes to the scope, cost or project outputs at any point subsequent to project approval, notification of the nature of the change and rationale for the change must be provided to Headquarters in a timely fashion. The consistency criteria in paragraph 17.e.(1) above should be used as a guide to determine if the post-approval changes are significant.

g. Termination. The study should be terminated if analysis indicates that the monetary and non-monetary benefits do not justify the monetary and non-monetary costs, the proposal is not consistent with authorized project purposes, or the non-Federal sponsor withdraws support. The study is officially terminated when the MSC commander so advises HQUSACE in writing. The termination memorandum will contain the reason for terminating, the cost of the study, and the amount of funds available to be reprogrammed from the study account. As appropriate, the district commander shall notify Congressional delegations and local interests that the study has been officially terminated.

h. Project Cooperation Agreement (PCA) Procedures.

(1) Model PCAs. Model PCAs have been developed for these programs. These PCAs incorporate several options and should be applicable to most projects. The model PCAs should be used whenever possible. The approved model PCAs are in Appendix A-D and electronic versions will be provided to MSCs to facilitate preparation of individual project agreements. Existing guidance on the inclusion of a signed Certificate Regarding Lobbying; if applicable, a completed Disclosure of Lobbying Activities, and the Certificate of Authority should be followed.

(2) Negotiation. The PCA should be negotiated as early in the study process as possible. A draft PCA must be negotiated; agreed to by the project sponsor, in writing; and accompany the ERR to the MSC for projects with a Federal cost greater than \$300,000. For projects with a Federal cost of \$300,000 or less, the draft PCA, along with the sponsor's new letter indicating support of the negotiated PCA, will be provided to the MSC prior to completion of the planning and design stage. The PCA must reference either the approved ERR or the combined phase documentation approved by the MSC.

(3) Processing PCAs with Deviations. Proposed deviations should be kept to a minimum. Subsequent to project approval, the MSC commander will provide to HQUSACE (CECW-AR) six copies of the negotiated draft PCA, with the deviations indicated on marked up copies of the model agreement; an explanation of and discussion of the rationale for the deviations; the Certification of Legal Review from the district; the current fact sheet, and one copy of the approved decision document, including the financial analysis and current letter from the non-Federal sponsor. A copy of the transmittal memorandum, two copies of the marked up PCA, explanation of deviations, and if not previously provided, the fact sheet and decision document should be provided to the appropriate regional branch in CECW-P.

(4) Approval.

(a) The PCA shall be approved by the MSC when the model agreement is used without deviation. This authority may not be further delegated.

(b) HQUSACE will approve all PCAs containing deviations from the model agreements. The district or MSC commander will prepare the final PCA for execution, in accordance with HQUSACE guidance. The MSC commander will review the final PCA prior to its being executed to assure that it is in accordance with HQUSACE approval.

(5) Execution. The PCA must be executed between the sponsor and the district commander only after HQUSACE or MSC project approval and HQUSACE commitment of implementation funds, and before advertisement of the initial construction contract for the project. PCA's will not be executed prior to completion of all pre-construction environmental compliance activities unless the PCA is being executed early in the plans and specifications phase to facilitate work-in-kind. Immediately following PCA execution, the district commander will provide HQUSACE (CECW-PM) written (e-mail is sufficient) notification of the execution date and total project cost.

i. Plans and Specifications.

(1) Initiation. The MSC commander may request plans and specifications funding when notifying HQUSACE of project approval. Subject to availability, initial plans and specifications funds will be provided when the project has been approved and the PCA has been approved by the MSC or is under review at Headquarters. HQUSACE will notify the MSC by providing a copy of the funding action.

(2) Time and Costs. When an ERR has been prepared, plans and specifications generally should be completed within 6 months. In these cases, suggested guidelines for determining the reasonableness of the plans and specifications costs are about 15 percent of the total cost of projects under \$1,000,000, and 10 percent of the total cost for projects greater than \$1,000,000. Time and cost figures will be monitored by HQUSACE and will be discussed at program review meetings.

(3) Approval. MSCs will be responsible for establishing procedures for approval of plans and specifications for projects approved on the basis of an ERR, consistent with engineering guidance. One component of the approval will be certification that the proposed project is essentially the same as that described in the approval document. The consistency criteria in paragraph 18.e.(1) above will serve as guidelines.

j. Implementation.

(1) Commitment of Implementation Funds.

(a) Request for Commitment. After approval of the project and prior to PCA execution, the MSC commander will request commitment of implementation funds. The funds commitment must be received prior to PCA execution. This will normally be towards the end of the plans and specifications phase, unless the non-Federal sponsor desires credit for work-in-kind during the plans and specification phase. The commitment request will be provided Headquarters (CECW-PM) via electronic mail and consist of an updated fact sheet, a schedule of funding needs by fiscal year and an updated schedule for PCA execution and contract award. Subject to funding availability, HQUSACE, by return electronic mail message, will confirm funds commitment.

(b) Expiration of Funding Commitment. Funding commitment expires six months after the baseline date. A separate request is required to extend the commitment. The extension of the commitment will depend on the financial status of the program at that time, and whether there are other approved projects awaiting funds commitment.

(c) Over commitment of Program Funds. If the section 1135 or section 206 program becomes over-committed by more than 10%, HQUSACE will notify all MSC commanders that no new commitments for any stage, including construction new starts, will be made until a national review of requirements has been accomplished. Subsequent commitments will be made as funds allow.

(2) Contract Advertisement. Advertisement for bids shall not be made nor funds allocated for construction, until the PCA has been executed and all pre-construction environmental compliance activities are completed. Advertisement of construction contracts is also contingent upon Real Estate's certification of the availability of LERRD.

(3) Initiation of the Construction Phase. After bid opening and selection of the contractor, the district commander will request via electronic mail, through the MSC commander to HQUSACE, funds needed for that fiscal year. The request for funds will include the current schedule of funding requirements by fiscal year and the ecosystem restoration project fact sheet reflecting the bid amount. The date of the FONSI or EIS must be in the fact sheet accompanying the request for construction funding. Any subsequent request for construction funding will include a revised schedule of requirements by fiscal year. Requests representing an increase over the amount noted in the fact sheet accompanying the original request for construction funds will include a brief explanation of the need for the increased amount.

(4) Continuing construction contracts. Continuing construction contracts should be used instead of lump sum construction contracts when the construction period is expected to extend into the next fiscal year.

(5) Monitoring. If post-implementation monitoring was included in the approved project report, the construction period will be extended to include the monitoring period. The need to correct a restoration project that is not meeting its objectives will be pursued on a case-by case basis in consultation with Headquarters.

k. Project Completion Report.

(1) Notice of Physical Completion. Within 30 days after the final inspection or other event marking the physical completion of the project, the MSC commander will notify HQUSACE, via electronic mail, that the project is physically complete. The message will note any remaining problems such as contractor claims, potential litigation, or sponsor dissatisfaction with the project.

(2) Final Completion Report. A final completion report will be provided to Headquarters within 90 days of the final audit and project fiscal closeout. The report will contain the date on which the project was considered operational and turned

over to the local sponsor for operation and maintenance; a brief description of the completed project; the estimated non-Federal requirements for OMRR&R; the final Federal and non-Federal project costs, broken down by stage; any remaining funds available for revocation; and a copy of the letter of acceptance of project OMRR&R from the local sponsor. The use of before and after photographs to document projects is encouraged.

1. Studies Initiated using General Investigation Funding and Authorities.

(1) Reconnaissance Phase. During the reconnaissance phase of a General Investigation (GI) study, the district may determine that an opportunity exists for implementing a Section 1135 or Section 206 project.

(a) If the proposed Section 1135 or Section 206 project is only one element of a potential project, the rationale for pursuing a separate project instead of incorporating restoration activities in the overall project should be documented, including a description of how the proposed project modification meets the section 1135 or section 206 criteria. The reconnaissance documentation should be forwarded to HQUSACE (CECW-P regional branch) accompanied by a PRP including a letter of intent from a non-Federal sponsor.

(b) If a decision is reached to terminate the reconnaissance study and propose an ecosystem restoration project using one of these authorities, the normal procedures for these projects shall be followed with submission of a PRP to HQUSACE.

(2) Feasibility Phase. If the MSC commander finds during the course of a General Investigation feasibility phase study that further study, or project implementation, should proceed under one of these authorities, then the MSC commander shall seek, in writing, Headquarters approval to proceed under the appropriate authority prior to submission of any report. The MSC request for this approval shall include the rationale for recommending proceeding under either section 1135 or section 206, a statement documenting both the sponsor's understanding of the cost sharing requirements and program limits and a fact sheet. This request should be submitted to the appropriate CECW-P regional branch.

(3) Costs. The section 1135 or 206 costs shall only include those costs incurred subsequent to approval to pursue a section 1135 or 206 study.

19. Withdrawal of Project Approval.

Project approval may be withdrawn by the approving office at any time that it is determined that continued Federal participation is no longer in the Federal interest. This decision will be made after consulting with HQUSACE (CECW-P), the district commander, and the project sponsor(s). Reasons for withdrawing project approval may include:

a. Project sponsors are unwilling or unable to provide the necessary local cooperation.

b. The project is no longer justified under applicable criteria.

c. The project is no longer consistent with Army policies.

The project is officially terminated when the MSC commander so advises Headquarters in writing.