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DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
Washington, DC 20314-1000

CECW-P

EC 1105-2-214

Circular
No. 1105-2-214

30 November 1997

EXPIRES 31 December 1999
Planning
PROJECT MODIFICATIONS FOR IMPROVEMENT OF THE ENVIRONMENT
AND
AQUATIC ECOSYSTEM RESTORATION

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1. Purpose. This circular transmits interim guidance for implementation of Section 1135 of the Water Resources Development Act of 1986, as amended and Section 206 of the Water Resources Development Act of 1996.
2. Applicability. This circular applies to all HQUSACE elements and USACE commands having Civil Works responsibilities.
3. References.
 - a. ER 1105-2-100
 - b. ER 200-2-2
4. Distribution. Approved for public release, distribution is unlimited.
5. Action Required. This document provides consolidated guidance reflecting the Corps commitment to using its engineering expertise to implement ecosystem restoration pursuant to the authorities cited in paragraph 1 above. Any comments regarding improvements and/or clarifications during this interim period are to be submitted to HQUSACE (CECW-PM), Washington, DC 20314-1000.

FOR THE COMMANDER:



ROBERT W. BURKHARDT
Colonel, Corps of Engineers
Executive Director of Civil Works

1 Appendix

TABLE OF CONTENTS

1.	<u>Purpose</u>	A-1
2.	<u>Authorities:</u>	A-1
	PROJECT MODIFICATIONS FOR IMPROVEMENT OF ENVIRONMENT	A-1
	AQUATIC ECOSYSTEM RESTORATION	A-2
3.	<u>Applicability</u>	A-3
4.	<u>References</u>	A-3
5.	<u>Definitions.</u>	A-3
	a. <u>Preliminary Restoration Plan (PRP)</u>	A-3
	b. <u>Non-Federal Sponsor</u>	A-3
	c. <u>Implementation</u>	A-4
	d. <u>Ecosystem Restoration Report (ERR)</u>	A-4
	e. <u>Section 1135/206 Fact Sheet.</u>	A-4
6.	<u>Objective</u>	A-4
7.	<u>Categories of Projects</u>	A-5
	a. <u>Section 1135</u>	A-5
	b. <u>Section 206</u>	A-5
8.	<u>Eligibility Criteria.</u>	A-6
	a. <u>Project limits applicable to both section 1135 and section 206 projects</u>	A-6
	b. <u>Project limits applicable only to section 1135 projects.</u>	A-6
	c. <u>Results.</u>	A-6
	d. <u>Output considerations</u>	A-7
	e. <u>Contributions to broader objectives</u>	A-7
	f. <u>Public interest</u>	A-7
	g. <u>Lands</u>	A-8
	h. <u>Engineering</u>	A-8
	i. <u>Mitigation</u>	A-8
9.	<u>Benefits and Costs</u>	A-8
10.	<u>Cost Sharing</u>	A-9
	a. <u>Section 1135.</u>	A-9
	b. <u>Section 206</u>	A-9
	c. <u>Non-Federal Responsibilities</u>	A-9
	d. <u>Costs Incurred Prior to Execution of the PCA</u>	A-9
	e. <u>Reimbursement</u>	A-10
	f. <u>Contracting.</u>	A-10
	g. <u>Limit on use of other Federal funds</u>	A-10

11.	<u>Real Estate Requirements.</u>	A-10
	a. <u>Requirements.</u>	A-10
	b. <u>Value and Credit.</u>	A-11
	c. <u>Real Estate Plan (REP).</u>	A-12
	d. <u>Operation and Maintenance.</u>	A-12
12.	<u>Work-in-kind</u>	A-12
	a. <u>Section 1135.</u>	A-12
	b. <u>Section 206</u>	A-13
	c. <u>Eligible Parties</u>	A-13
	d. <u>Other Contributions.</u>	A-13
	e. <u>Eligible Work</u>	A-13
	f. <u>Requirements</u>	A-13
13.	<u>Hazardous, Toxic and Radioactive Waste (HTRW) Concerns.</u>	A-13
	a. <u>General Guidance</u>	A-13
	b. <u>Responsibilities and Costs After PCA Execution</u>	A-14
14.	<u>Operation, Maintenance, Repair, Rehabilitation, and Replacement (OMRR&R)</u>	A-14
	a. <u>Non-Federal Responsibility</u>	A-14
	b. <u>Federal Exception</u>	A-14
15.	<u>Cost Allocation</u>	A-14
16.	<u>Federal Funding Limit</u>	A-14
	a. <u>Program Limit</u>	A-14
	b. <u>Project Limit</u>	A-14
17.	<u>Program Management</u>	A-15
	a. <u>Headquarters Management</u>	A-15
	b. <u>Correspondence</u>	A-15
	c. <u>MSC Management Responsibilities</u>	A-15
	d. <u>Periodic Program Reviews/After-Action Audits</u>	A-15
	e. <u>Funding Status and Schedule Updates</u>	A-15
	f. <u>Baseline Costs and Schedules</u>	A-16
	g. <u>Federal Interest</u>	A-16
	h. <u>Commitments to Accomplish Studies and Projects.</u>	A-16
	i. <u>Reprogramming</u>	A-16
	j. <u>Revocation of Excess Funds</u>	A-16
	k. <u>Cost Increases</u>	A-17
18.	<u>Procedures</u>	A-17
	a. <u>Coordination Account</u>	A-17
	b. <u>Preliminary Restoration Plan</u>	A-17
	c. <u>Feasibility Phase.</u>	A-19

d.	<u>Combined Planning and Design Phase</u>	A-23
e.	<u>Report Review and Project Approval</u>	A-23
f.	<u>Post-Approval Changes</u>	A-26
g.	<u>Termination</u>	A-26
h.	<u>Project Cooperation Agreement (PCA) Procedures</u>	A-26
i.	<u>Plans and Specifications</u>	A-27
j.	<u>Implementation</u>	A-28
k.	<u>Project Completion Report</u>	A-29
l.	<u>Studies Initiated using General Investigation Funding and Authorities</u>	A-30
19.	<u>Withdrawal of Project Approval</u>	A-31
Appendix A-A		
	Section 1135 and Section 206 Process	A-A1
Appendix A-B		
	PRELIMINARY RESTORATION PLAN	A-B1
Appendix A-C		
	MATRIX FOR CONSISTENCY DETERMINATIONS	A-C1
Appendix A-D		
	MODEL PROJECT COOPERATION AGREEMENTS FOR SECTION 1135, PROJECT MODIFICATIONS FOR THE IMPROVEMENT OF THE ENVIRONMENT	A-D1
APPENDIX A-E		
	MODEL PROJECT COOPERATION AGREEMENT FOR SECTION 206. AQUATIC ECOSYSTEM RESTORATION	A-E1
APPENDIX A-F		
	MODEL REAL ESTATE LEASE for SECTION 1135 PROJECTS INVOLVING PROJECT LANDS	A-F1

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.

Appendix A-B

PRELIMINARY RESTORATION PLAN

1. Purpose. The Preliminary Restoration Plan (PRP) provides sufficient information and the rationale for determining that a feasibility level study of a potential section 1135 or 206 project is warranted. The PRP consists of a narrative outline containing available project information, a table containing pertinent financial information, a map showing both the vicinity and immediate area of the project, and a letter of intent from a non-Federal sponsor.

2. Submission Requirements. The MSC's shall submit PRP's electronically to the appropriate regional manager in CECW-P. Items such as the letter of intent and map(s) may be provided by fax or mail. Compliance with this requirement will simplify the process of making any necessary corrections and will facilitate processing of the PRP and subsequent project documents and funding requests. During subsequent phases, the main body of the PRP will serve as the ecosystem restoration fact sheet and shall be updated as appropriate.

3. General Instructions.

a. The PRP should be concise but informative.

b. A reproducible map(s). More than one map may be necessary to indicate information specific to the project, such as its nature and extent, and the project's location within the state. For section 1135 projects, the project modification's relationship to the existing project must also be indicated. The map(s) does not need to be in color; a copy of a location or project map from an existing document may be sufficient. **The map must be marked in a fashion that reproduces clearly.** The location of major elements of the proposed project, such as subimpoundments, areas to be planted, channels, etc, should be indicated on the map. Maps should not be fan-folded but more than one page may be used to display the necessary information. An informative map can provide answers to questions for individuals unfamiliar with the project but must be consistent with the data in the text of the PRP.

c. The PRP should be based primarily upon existing data, not new studies. The information presented should address the issues discussed below in a clear, concise and logical fashion. Do not assume that the reader has prior knowledge of the project

being modified (for section 1135), the geographic area, the need for, or benefits of the proposed ecosystem restoration project. The PRP will be the primary source of information considered in making the decision to initiate the feasibility or combined planning and design phase and also provides the non-Federal sponsor with a written description of the proposed project and estimated costs. It provides the foundation for subsequent phases and the baseline against which decisions regarding the appropriate level of project approval will be measured.

d. A letter of intent from a non-Federal sponsor must be included in the PRP. The letter should be project specific and indicate an awareness of the estimated cost, and scope of the project being considered. The letter should mention the estimated cost of the project and state that the sponsor is aware of the requirement to provide either 25 or 35 percent of the total project costs, depending on the authority, which includes the study costs; any necessary additional LERRD's; and 100 percent of the incremental OMRR&R, except for an occasional section 1135 which meets the criteria discussed in paragraph 14 above. The letter should also clearly state that the sponsor is willing and able to meet these requirements, if an acceptable plan is developed. The letter should have been provided within the twelve month period prior to submission to Headquarters.

4. Specific Instructions.

a. Item 1. Project. Bullets may be used to complete this item. Complete sentences are unnecessary.

(1) The name of the ecosystem restoration project is the official name which shall be used in all correspondence concerning the proposed project. The name should be descriptive of the proposed project, yet relatively short. For a section 1135 project this name may be the same as the name of the project being modified but in many cases it will be different. If you plan on referring to a project as "Boyer Chute" or "Duck Island Subimpoundment" or "New Channel Cutoff" use that name here. The projects are being given new PWI numbers so a new, short, name may in fact reduce confusion. This may also be helpful if more than one section 1135 modification may be proposed at a large project.

(2) The PWI number will be assigned at the time the initial work allowance is issued for the feasibility phase, or combined planning and design phase.

(3) For Section 1135 projects:

(i) the "Name of the project being modified" should be the official name of the previously authorized and constructed project.

(ii) The "date constructed" refers to the date that the project being modified was constructed, not the date of construction of the proposed modification.

(iii) The authorization history of the existing project is not required. Simply list the specifically authorized project purposes. For reservoir projects, these purposes should be consistent with those reported to Congress in response to Section 311 of WRDA 90, PL 101-640.

b. Item 2. Location. Use major (generally well-known and recognized) cities as the reference points for location. Also, for section 1135 projects, describe briefly the location of the proposed modification in relationship to the project being modified, for example: on south shoreline of lake 3 miles above the dam in Yellow Creek drainage. However, do not use river miles as the only reference point for location.

c. Item 3. Description of Proposed Ecosystem Restoration. The description of the proposed ecosystem restoration must include a discussion of the following items. To the extent possible, this information should be quantified in absolute rather than relative terms. The project outputs must be clearly described, as well as the method for achieving these results. Additionally, mention how much ecosystem (fish and wildlife habitat) will be restored: 10 acres of wetlands; or two miles of stream suitable for spawning. Ranges may be provided for outputs, scope and number of features, e.g. an increase of 10-20 average annual habitat units, over 30-40 acres, with 1-2 subimpoundments of 5-8 acres each. The importance of the outputs must be addressed in accordance with the guidance in Chapter 7 of ER 1105-2-100. If possible, needs should also be quantified; such as, only five of twenty nests in this area were successful last year due to predation; or 95 percent of the approximately 1 million smolt produced annually were adversely affected by the salinity problem. Simply stating that 5 acres of fresh water marsh will be created is not an adequate description of the proposed project. Alternatives which may be, or have been, considered should be briefly described.

(1) **What is being proposed?** Briefly describe the physical changes to the ecosystem that will result from the proposed

project. (Examples: creation of nesting islands: improved water quality, including temperature, DO levels, etc., behind the weir/dike at river mile 405: managed wetlands)

(2) For section 1135 projects, describe the Corps project feature or operations to be modified; and/or how the Corps project has contributed to the degradation of the quality of the environment in the location where restoration is being proposed.

(3) Describe the major features of the proposed project. This information is essential for establishing a clear understanding of the scope of the project and later for purposes of evaluating approval authority and should include an estimate of the cost of the major elements. (Examples: operational changes and/or structural changes such as modifying previously disposed dredged material: modifying the outflow structures of a dam: the weir/dike will be notched at a location approximately 200 feet from right bank and the notch will be sized to deliver approximately x cubic feet of water per second during normal mid-late summer flows: or shaping the bank and planting riparian vegetation to shade the stream)

(4) Why it is proposed?

(a) Include a brief discussion of the ecosystem degradation recorded in the area. (Examples: reduction in duck populations over several years from historic levels due in part to an absence of adequate nesting habitat: the purpose of notching the dike is to increase the flow of oxygenated water to the slough which has become eutrophic due to high levels of detritus and increased BOD)

(b) The existing ecosystem must be described,

(c) The expected with and without project conditions must be described.

(5) The expected outputs and how these will be measured. Do not assume that decision makers are aware of the intrinsic need for, or benefits provided by wetlands, "green tree reservoirs" or other habitat. While the focus should be on restoration of an ecosystem, one species, such as black ducks, may serve as an indicator of the need for, or success of, an ecosystem restoration. However, the range of potential benefits of the proposed project should be briefly mentioned. This may include benefits to other species, not just the indicator species; and beneficial changes to physical parameters, such as water quality, turbidity reduction, etc. (Examples: five

nests/year: seventeen acres of the slough will be restored to a condition supporting spawning of important fish species a, b and c; additionally supporting increased populations of insects, and small reptiles and amphibians important as food for adult fish, predatory birds d and e, and migratory waterfowl f and g.)

(6) **The importance of the proposed outputs must be mentioned.** Any institutional, technical and/or public indications of importance should be described. This might include the presence of endangered species, location within a priority habitat area as described in the North American Waterfowl Management Plan, inclusion in the Coastal America or American Heritage River Programs. Resource scarcity should also be discussed. (Examples: even though small in number the population is in such critical need every nest is significant: as a result of the modification habitat quality for the indicated species will increase from poor to moderately good.)

(7) **There must be a clear statement regarding LERRD.** Either state that the entire project will be implemented on existing Corps project lands or discuss the need for any additional lands or relocations. Coordinate with Real Estate. Even lands already owned by the non-Federal sponsor may have a value which should be estimated at this stage. Acquisition of additional lands should be minimized.

(8) **The relationship of the proposed project** to other Federal or non-Federal planned or completed projects and regional or watershed plans should be discussed. The relationship to ongoing or planned Corps reconnaissance or feasibility studies must be discussed.

(9) **Alternatives** to the proposed project considered during preparation of the PRP should be mentioned. The types of alternatives to be considered in the subsequent phase should be described. This should include a brief discussion of the likely range of alternatives (e.g., how many) and scales of alternatives (e.g., what sizes).

(10) **Study Methodologies.** Briefly describe the techniques, models, and procedures which will be used to define project outputs, and the associated units of measurement. This should include a discussion of the biological or ecological models that will be used to define and quantify the outputs.

d. Item 4. Consistency Statement for Section 1135 Projects.
By law, Section 1135 project modifications must be consistent

with the authorized project purposes of the project being modified; or if we are not directly modifying the Corps project, the measures must not conflict with the authorized project purposes. The proposed modification should not unacceptably impact the authorized project purposes and it is critical that this be clearly and succinctly discussed.

e. Item 5. Views of Sponsor. Include the name of the sponsor. In addition to the letter of intent the sponsor's interest in the project should be briefly described. If there are any known concerns that might affect execution of a PCA, these should be mentioned. Are there additional interested parties? For example, will some company be contributing money, or some group work with the sponsor on O&M.

f. Item 6. Views of Federal, State and Regional Agencies. At the PRP phase these may be unknown. Views of other agencies might include a discussion of how the proposed project modification relates to specific aspects of the North American Waterfowl Management Plan (not just the general goal of increasing waterfowl populations), discuss U.S. Fish and Wildlife Service support (or lack of) for the proposal, the fact that national or regional organizations such as Ducks Unlimited support the plan, etc. As the project proceeds through planning, the views of agencies formally reviewing the recommended plan through NEPA, E.O. 12372, the National Historic Preservation Act, or the Coordination Act procedures should be summarized. Indicate any action taken in response to these views.

g. Item 7. Environmental Compliance Requirements. This refers to the status of compliance of the proposed project and not of the original project, for a section 1135. This paragraph should include a brief discussion of the status of compliance with all applicable Federal and state statutes, not just the National Environmental Policy Act. Among the items to mention are the status of the Environmental Assessment (EA), dates of filing of the draft and final Environmental Impact Statement (EIS) or date of the Finding of No Significant Impact (FONSI), as appropriate. Only the date of the most recent action is required. For some section 1135 projects, the NEPA documentation for the original project may cover the proposed modification and if so this should be briefly explained. **The date of the FONSI or EIS must be in the fact sheet accompanying the request for construction funding.** Documentation that is more than a few years old should be carefully reviewed to ensure that it meets current requirements.

h. Item 8. Costs and Benefits. This category replaces the more traditional discussion of the NED plan. This is a critical item both in the PRP and the Ecosystem Restoration Report. The expected benefits and costs shall be described. Monetary and/or non-monetary benefits must justify the monetary and/or non-monetary costs. Since the primary output is to be ecosystem restoration, a benefit to cost ratio need not be presented. If a range of outputs, scope and/or features have been discussed the associated range of costs should be included.

(1) The outputs should be displayed in some quantifiable unit such as average annual habitat units or acres of habitat restored or created. Quality should also be discussed. Outputs must be based on comparison of without and with project conditions.

(2) The importance of the outputs provides the principal project justification, in combination with the quantities produced and cost considerations. Importance of outputs is established by reference to technical, institutional, and public recognition (see Chapter 7 of ER 1105-2-100). This would be the place to mention endangered species and support for national programs like the North American Waterfowl Management Plan, American Heritage Rivers or the Brownfields initiative.

(3) Economic benefits from the modifications must be incidental to improvements to fish and wildlife resources. If economic benefits from the project can be quantified, such as for commercial fishing or recreation, these should be included.

(4) Future OMRR&R requirements must be described.

i. Item 9. Schedule. The schedule should be realistic and a reasonable starting date should be indicated. This starting date should be reflected in the table contained in item 11. At a minimum provide estimated times in months for report preparation, plans and specifications, contract award and construction. A brief discussion of the factors contributing to the proposed schedule may be useful. For example, the sponsor requests that construction be staged over two years. Or the project is time of year sensitive and implementation must occur between the months of x and y.

j. Item 10. Supplemental Information. Additional data that will help provide a context for evaluating the proposed project and will aid in making the case for its funding should be presented here. If it is known at this stage that the sponsor is considering contributing part of its share as work-in-kind this

must be discussed in this section, both the approximate amount and nature of the work. The approximate cost, nature, and duration of any proposed post-construction monitoring should also be included.

k. Item 11. Financial Data. **No deviations in this format are permitted.** This section must be consistent with the starting date and schedule discussed in paragraph 4.i. above and the data in the Continuing Authorities Database. In the PRP, if a range of costs has been discussed in item 9, the highest cost should be used in this table.

(1) This section of the PRP and subsequent fact sheet must be complete and up to date at all times. As stages are completed the actual amounts spent should be indicated in the table.

(2) Costs and funding needs should be expressed to no more than three significant figures.

(3) The costs should be based on current year prices and interest rates.

(4) Since the report and plans and specifications are initially federally funded, the non-Federal column should be blank for these rows. The construction costs will reflect the reimbursement from the non-Federal sponsor for its share of the costs incurred prior to construction. For projects approved for one stage planning and design, the report and plans and specification rows will be combined.

(5) An estimate of LERRD and OMRR&R must be provided. At the PRP stage, it is understood that these are estimates. If the sponsor will contribute some work-in-kind the estimated value of this effort should be indicated.

(6) Since the fully funded cost is used in the PCA, this cost should be noted in a separate line to ensure consistency between the various documents.

l. Item 12. Federal Allocations to Date. This item shall be completed on fact sheets accompanying funding requests, Ecosystem Restoration Reports, termination reports and completion reports submitted subsequent to approval of initiation of the feasibility level study. Funds allocated to date shall include reprogrammed funds as well as work allowances received from HQUSACE. These do not include funds received to prepare PRP's under the generic nationwide PWI number. This section must be complete and up to date at all times.

Date:

MSC: (Name)
District: (Name)

Section 1135/206 (choose one) Preliminary Restoration Plan

[Subsequent to receipt of funding for the study phase the title should be: Section 1135/206 (choose one) Fact Sheet]

1. Project: The name of the new project --
PWI No.

For Section 1135: Name of the project being modified, or which contributed to the degradation, and date constructed

For Section 1135: Authorized purposes of project being modified -- fc/ nav/ power

State Congressional District (do not include the representative's name)

2. Location: -- State, city, county, vicinity - major river
3. Description of Proposed Project: what, where, why, (Corps contribution to the degradation, as appropriate) outputs, with and without future (quantity and quality), how achieve the restoration and how measure the outputs, importance, alternatives, methodologies, LERRDs
4. Consistency Statement(for section 1135):
5. Views of Sponsor: attach letter of intent
6. Views of Federal, State, and Regional Agencies:
7. Status of Environmental Compliance: Date of FONSI or EIS
8. Costs and Benefits: Monetary and non-monetary costs and benefits, not a traditional B/C ratio. Outputs, quantity and quality; importance; incidental economic benefits
9. Schedule: Including report preparation and preparation of plans and specifications: in months
10. Supplemental Information: The approximate value and nature of any proposed work-in-kind should be mentioned here. The approximate cost and nature of any proposed monitoring should also be included.

11. Financial Data:

a. (all costs in thousands of dollars)

Report	Totals 100	Non-Federal	Federal 100	Project Modification Costs				Balance to Complete
				Federal Funding Needs				
				FY 100	FY+1	FY+2	FY+3	
P&S	250		250		200	50		
Construction	1250	400	850			600	200	50
Totals	1600	400	1200	100	200	650	200	50

Note: Report and Plans and Specifications are initially Federally financed, and costs distributed as part of the non-Federal share of project costs during implementation.

(Projects with a Federal cost of \$300,000 or less will have a combined entry for planning and design instead of separate report and plans and specifications rows.)

b. Non-Federal Requirements:

LERRD	\$ 10,000
Cash	\$ 390,000
Work-in-kind	\$ 0
Annual OMRR&R	\$ 10,000

c. Fully funded cost as found in the PCA. \$_____

12. Federal Allocations to Date:

Ecosystem Restoration Report:
 Plans and Specifications:
 Implementation (Construction):

Appendix A-C
MATRIX FOR CONSISTENCY DETERMINATIONS

(Name of Project) Date
SUMMARY OF CONSISTENCY WITH APPROVED PRP

Consistency Criterion	Approved PRP - date	ERR/or other documentation for projects with a Federal cost of <\$300,000 - date
WITHOUT PROJECT CONDITION		No change/or describe change
TOTAL PROJECT COST: INCREASES >25% or DECREASES OF >50%	\$XXXX	\$YYYY percent increase or decrease
CHANGES IN PHYSICAL SCOPE (Acres or Structure Size Changes >25%)	Number of acres, or river miles or feet plus very brief mention of any structures that changed.	No change/or describe change
CHANGES IN EST. OUTPUTS, E.G., CHANGES IN QUANTITY DISPROPORTIONATE TO CHANGES IN COST AND CHANGES IN QUALITY, OR THE TYPES OF HABITAT TO BE RESTORED	Summarize expected outputs, such as x habitat units for y species, or z type of habitat or number of miles of stream improved, change in DO	Using the same units as in the PRP- no change/or describe change
CHANGES IN PROJECT DESIGN SUCH AS SIG. CHANGES IN LOCATION, NUMBER, OR TYPE OF STRUCTURES	Brief description of original design. Focus on critical features.	No change/ or briefly describe the change - for example -6 drop structures to 2
INCREASES IN LERRDs WHICH CAUSES THE VALUE OF LERRDs TO EXCEED 25% OF THE TOTAL PROJECT COSTS	LERRDs = 0	LERRDs = 0 Percent change and percent of total project cost.
NEW POLICY ISSUES	NA	NA/or describe

Summary - State your conclusion about appropriate approval category. This may be the place to provide a brief explanation of the cause of the changes. The table should only document the changes not the causality.

Appendix A-D

MODEL PROJECT COOPERATION AGREEMENTS FOR
SECTION 1135, PROJECT MODIFICATIONS
FOR THE IMPROVEMENT OF THE ENVIRONMENT

TO BE PROVIDED SUBSEQUENTLY

APPENDIX A-E

MODEL PROJECT COOPERATION AGREEMENT FOR
SECTION 206. AQUATIC ECOSYSTEM RESTORATION

TO BE PROVIDED SUBSEQUENTLY

APPENDIX A-F

MODEL REAL ESTATE LEASE
for
SECTION 1135 PROJECTS INVOLVING PROJECT LANDS

NO _____

DEPARTMENT OF THE ARMY LEASE

(PROJECT NAME)

(COUNTY/STATE)

THIS LEASE, made on behalf of the United States, between the SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, and (NON-FEDERAL SPONSOR), hereinafter referred to as the Lessee.

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, as amended, and Section 1135(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended, and pursuant to Project Cooperation Agreement between the Department of the Army and the Local Sponsor/Lessee entered into on _____(hereinafter referred to as "PCA"), attached hereto and referred to as Exhibit ____ and for the consideration hereinafter set forth, hereby leases to the Lessee the property identified in Exhibit(s) _____, attached hereto and made a part hereof, hereinafter referred to as the premises, for the implementation, operation, repair, replacement and rehabilitation of the Project Modification.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said premises are hereby granted for so long as the PCA remains in full force and effect.

2. CONSIDERATION

The consideration for this lease is the implementation, operation, repair, replacement and rehabilitation of the Project Modification and the maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. NOTICES

a. All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee to _____, and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division _____, or as may from time to time otherwise be directed in writing by the parties. Any notice, request, demand, or other communication required or permitted to be given under this lease shall be deemed to have been duly given if in writing and either delivered personally, or by telegram, or mailed by first-class, registered, or certified mail.

b. Any notice, request, demand, or other communication made pursuant to this Condition shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include its successors, employees and duly authorized representatives.

5. PROJECT MODIFICATION ACTIVITIES

a. The Lessee shall comply with the approved Ecosystem Restoration Report or other document ("Report") described in Article I of the PCA and the management and development activities described in the Report and in the OMRR&R Manual described in Article VIII of the PCA, both by this reference made a part hereof.

b. The Lessee's operation, management and other project modification activities are subordinate to the operation and management of the Existing Project, as defined in Article I of

the PCA. The Existing Project will have operational priority in any situation where a conflict arises.

c. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

6. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, and use of pesticides. In addition, the Lessee should comply with the specific directions and requirements contained in the OMRR&R Manual referenced in Article VIII of the PCA. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with the provisions of law cited in the granting clause.

b. The Lessee will provide an annual certification that all water systems on the premises, if any, have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitation Act and the Americans with Disabilities Act, as required in the condition on NON-DISCRIMINATION, noting any deficiencies and providing a schedule for correction.

7. CONDITION OF PREMISES

The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

(INCLUDE THE FOLLOWING CONDITION, IF APPLICABLE):

8. AGRICULTURAL AND WILDLIFE CONTROL ACTIVITIES

a. The Lessee may plant or harvest crops, either directly, by service contract, by sharecrop agreements with local farmers, or by agricultural agreements to provide food and/or habitat for wildlife and for the development and conservation of land, fish and wildlife, forests, and other natural resources. Where

feasible, contracts and agreements with third parties shall be by competitive bid procedures.

b. The Lessee may take, trap, remove, stock or otherwise control all forms of fish and wildlife on the premises, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use shall be consistent with the state laws for the protection of fish and wildlife.

9. TRANSFERS, ASSIGNMENTS

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the demised premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease. (INCLUDE THE FOLLOWING SENTENCE IF THE CONDITION ON AGRICULTURAL AND WILDLIFE CONTROL ACTIVITIES WAS INCLUDED ABOVE: Agreements covered by the condition on AGRICULTURAL AND WILDLIFE CONTROL ACTIVITIES are not subject to this condition.)

(THE FOLLOWING CONDITION ON ACCOUNTS, RECORDS AND RECEIPTS IS REQUIRED BY 16 USC 460d AND MUST BE INCLUDED IF THE SALE OF CROPS AS SET OUT IN THE CONDITION ON AGRICULTURAL AND WILDLIFE CONTROL ACTIVITIES AND/OR THE SALE OF TIMBER IS AUTHORIZED)

10. ACCOUNTS, RECORDS AND RECEIPTS

a. All monies received by the Lessee from the sale of timber or crops conducted on the premises may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. The District Engineer shall have the right to perform audits of the Lessee's records and accounts.

b. Payment of direct expenses is authorized for planning and development of optimum wildlife habitat including planting of wildlife food plots, necessary timber clearing, erosion control or habitat improvements such as shelter, restocking of fish and wildlife, and protection of endangered species. Payment of Lessee's employees who are directly engaged in such activities at

the project is also authorized. However, proceeds will not be used for the payment of general administrative expenses.

c. Proceeds derived from the sale of fishing and hunting leases are not subject to this condition.

11. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to the property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

12. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee.

(DELETE THE FOLLOWING CONDITION IF NO NAVIGABLE WATERS ARE WITHIN THE LEASED PREMISES OR NO LIGHTS AND SIGNALS WILL BE REQUIRED)

13. LIGHTS, SIGNALS AND NAVIGATION

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

14. RESTORATION

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom and restore the premises to the aforesaid condition with such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

15. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises because of race, color, religion, sex, age, handicap or national origin. The Lessee will comply with the Americans with Disabilities Act (42 U.S.C. Sections 12101 et seq.) and attendant Americans with Disabilities Act Accessibility Guidelines (ADAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7.

16. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises provided that the proposed grantee of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

17. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the lessee's operations or would be contrary to local law.

18. COMPLIANCE, CLOSURE, AND REVOCATION

a. The Lessee is charged at all times with full knowledge of all the limitations and requirements of this lease and the PCA, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions of either the lease or the PCA and continues and persists in such violation. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, entry upon the premises for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project Modification, or revocation of the lease, after notice in writing of such intent.

b. This lease may be revoked by the Secretary, by giving thirty (30) days notice in writing in the manner described in the Condition on Notices of this lease, in the event the PCA is terminated pursuant to Article XIV of the PCA or the Secretary

determines that the premises identified in Exhibit(s) _____ are no longer required for the implementation, operation and maintenance of the Project Modification.

19. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean and safe condition.

b. In addition to the rights of revocation for noncompliance, the District Engineer, upon discovery of any hazardous conditions on the premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

(INCLUDE THE CONDITION, IF APPLICABLE):

20. PUBLIC USE

No attempt shall be made by the Lessee to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee under this lease to manage the premises and provide safety and security to the visiting public.

21. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premise, except as may be authorized under and pursuant to the Report described in the condition on PROJECT MODIFICATION ACTIVITIES. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

(If the lease authorizes forest management, the lease will need modification to specifically allow timber sales and to state that timber sales shall follow an approved forest management plan.)

22. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provision of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph b.(2) below.

(1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that--

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

c. For Lessee claims of \$50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the District Engineer must within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

d. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

e. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of disputes resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph b.(2) of this clause, and executed in accordance with paragraph b.(3) of this clause.

f. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer received the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

g. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

23. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground, and water. The Lessee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous

materials with the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, State, interstate or local governmental agency are hereby made a condition of this lease.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the lessee, the Lessee shall be liable to restore the damaged property. Lessee shall be considered the operator of the Project Modification for purposes of liability under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Sections 9601 -9675).

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

24. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared by the District Engineer which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition of RESTORATION.

25. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

26. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and

the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

27. HOLD HARMLESS

The Lessee shall hold and save the United States free from damages arising from the implementation, operation, maintenance, repair, replacement and rehabilitation (DELETE "repair, replacement and rehabilitation" if inapplicable), of the Project Modification, and any Project Modification-related betterments, and management of the premises and the facilities and improvements, except for damages due to the fault or negligence of the United States or its contractors.

28. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

29. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

30. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

31. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. Section 403), or Section 404 of the Clean Water Act (33 U.S.C. Section 1344).

(INCLUDE A PROVISION IN THE LEASE USING THE SAME OR SIMILAR LANGUAGE AS THE PCA IF THE NON-FEDERAL SPONSOR/LESSEE IS AN INDIAN TRIBE).

IN WITNESS WHEREOF I have hereunto set my hand by authority of the Secretary of the Army this _____ day of _____, _____.

THIS LEASE is also executed by the Lessee this _____ day of _____, _____.

Signed sealed
in the presence of:
