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Planning
**Feasibility and Post-Authorization Study Procedures
and Report Processing Requirements**

FOR THE COMMANDER:

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Purpose. This Engineer Pamphlet describes the development of feasibility and post-authorization reports as well as report processing requirements. This pamphlet describes the decisions and processes associated with feasibility studies and their milestones, including review procedures, for the following types of decision documents: feasibility reports, post-authorization change reports (for example general reevaluation reports), and other reports supporting project authorization or budgetary decisions.

Applicability. This EP applies to all U.S. Army Corps of Engineers elements, Major Subordinate Commands, districts, laboratories, centers, and field operating activities.

Distribution Statement. Approved for public release; distribution is unlimited.

Proponent and Exception Authority. The proponent of this pamphlet is the Civil Works Planning & Policy Division. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. Only the proponent of a publication or form may modify it by officially revising or rescinding it.

*This EP supersedes Appendix H of ER 1105-2-100.

Contents (Listed by chapter and page number)

Chapter 1

Study and Report Overview, *page 1*

Chapter 2

Feasibility Study Planning Program Management, *page 3*

Chapter 3

Procedures to Initiate a Feasibility Study, *page 11*

Chapter 4

Feasibility Study Milestones, *page 12*

Chapter 5

Completion or Termination of Feasibility Studies, *page 24*

Chapter 6

Post-Authorization Studies, *page 27*

Chapter 7

Studies of Water Resources Development Projects by Non-Federal Interests, *page 28*

Chapter 8

Planning Activities During Design, *page 28*

Chapter 9

Overview of Planning Reviews, *page 29*

Chapter 10

Review Roles and Responsibilities, *page 33*

Chapter 11

Policy and Legal Compliance Review, *page 35*

Chapter 12

District Transmittal of Final Report Package for Final Policy Review, *page 38*

Chapter 13

State and Agency and Final National Environmental Policy Act Review, *Page 39*

Chapter 14

Finalizing and Processing the Chief's and Director's Reports, *Page 41*

Appendixes

A. References, *page 44*

Table List

Table 2–1: Summary of Exceptions Approval Authorities for Studies Initiated After 10 June 2014, *page 5*

Table 2–2: Budget Summary Table Example, *page 9*

Table 4–1: Milestone Decision-Making Delegation/Report Approval Level, *page 13*

Table 4–2: Key Feasibility Study Tasks (Not all-inclusive), *page 14*

Table 12–1: Final Report Submittal Package, *page 38*

Table 13–1: ROD/FONSI Signature Level, *page 41*

Glossary of Terms

Chapter 1

Study and Report Overview

1–1. Purpose.

This Engineer Pamphlet (EP) describes the development of feasibility and post-authorization reports as well as report processing requirements. This EP describes the decisions and processes associated with feasibility studies and their milestones, including review procedures, for the following types of decision documents: feasibility reports, post-authorization change reports (for example general reevaluation reports), and other reports supporting project authorization or budgetary decisions.

1–2. Applicability.

This EP applies to all U.S. Army Corps of Engineers (USACE) elements, Major Subordinate Commands (MSCs), districts, laboratories, centers, and field operating activities.

1–3. Distribution Statement.

Approved for public release. Distribution is unlimited.

1–4. References.

References are at Appendix A.

1–5. Records Management (Recordkeeping) Requirements.

The records management requirement for all record numbers, associated forms and reports required by this regulation are addressed in the Army Records Retention Schedule—Army (RRS–A). Detailed information for all related record numbers, forms and reports are located in ARIMS/RRS–A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

1–6. Background.

Investigations are initiated upon appropriation of funds through Energy and Water Development Appropriations Acts, or other appropriations Acts, that are based on a budget from the President, modified as desired by the Congress, and enacted by the President. Rather than conducting these investigations from a central location such as USACE Headquarters (HQUSACE), the Chief of Engineers allocates funding through the Commander of a regional MSC to a Commander of a local USACE district. Using the allocated funds, and any required non-federal funding and resources, the assigned USACE district conducts an investigation that will ultimately inform the recommendation of the Chief of Engineers.

a. Decision documents are the basis for approval to spend or receive funds as a result of entering into agreements with other agencies or organizations including those to obtain Congressional authorization. This EP applies to specifically authorized projects and programs but does not supersede any requirements contained in the authorizing language for those projects and programs.

b. This EP supersedes Appendix H of ER 1105-2-100, Planning Guidance Notebook; Director's Policy Memorandum 2019-01, Policy and Legal Compliance Review (P&LCR); Planning Bulletin (PB) 2012-2, Planning SMART Guide; PB 2014-01, Application and compliance of SMART Planning and the 3x3x3 Rule; PB 2015-02, Single Phase Planning Studies; PB 2018-01, Feasibility Study Milestones; PB 2018-01(S), Feasibility Study Milestone Supplemental Guidance; and PB 2018-02, Exception Procedures for Planning Studies Exceeding Cost and Schedule Limits.

c. EP 1105-2-58, Continuing Authorities Program, addresses requirements for Continuing Authorities Program (CAP) decision documents unless a CAP study or project is specifically authorized. Specifically authorized CAP studies follow normal feasibility study processes.

d. Guidance for watershed studies is covered under ER 1105-2-102, Watershed Studies.

e. ER 1165-2-502, Delegation of Review and Approval Authority for Post-Authorization Decision Documents, addresses requirements for decision documents with review and approval authority delegated to the MSCs.

f. ER 1165-2-217, Civil Works Review Policy, establishes a seamless process for review of all Civil Works projects from initial planning through design, construction, and Operation, Maintenance, Repair, Replacement and Rehabilitation.

1-7. Prerogative of the Chief of Engineers.

In making a recommendation to Congress, the Chief of Engineers has the prerogative to concur entirely with the reporting officers (the District and MSC Commanders), concur principally with the reporting officers but with modification of the recommendations, or to disagree with the recommendations of the reporting officers and recommend a completely different solution.

1-8. Objective of Decision Documents.

Decision documents are prepared to document project evaluations and facilitate acceptance of the study conclusions and recommendations by the sponsor, public, state, and local agencies, Tribes, and the Federal government. Technical, policy, environmental, and legal compliance reviews are an integral part of the process for developing a justified and acceptable project and ensuring preparation of the appropriate and necessary decision and implementation documents. Approvals or decisions to forward recommendations to higher authorities occur only after technical, policy, legal compliance reviews determine that the proposed study or project complies with existing professional practices, Administration policy, and federal law. This EP presents both the report development and processing requirements and an overview of the higher-level review procedures.

1-9. Feasibility Study Processes.

Chapters 2-8 provide information associated with the USACE feasibility study process including Civil Works Planning program management and feasibility report procedures, which include milestone decision meetings, report submittals, and study approvals. These chapters describe the processes from initiating a feasibility study through report approval and authorization.

1–10. Review Processes.

Chapters 9-14 provide information on the review processes associated with USACE feasibility studies. The goal of the various reviews conducted throughout the development of the reporting officers' report is to present the Chief of Engineers with legally and policy compliant recommendations for technically correct solutions that can be endorsed without modification to the Administration and the Congress.

Chapter 2

Feasibility Study Planning Program Management

2–1. Purpose.

The Civil Works Planning Program focuses on programs and projects within the primary USACE water resources missions: navigation, flood risk management, coastal storm risk management, and aquatic ecosystem restoration, as well as hydropower and water supply. Execution of the Civil Works Planning Program relies on deliberate management of project requirements and schedules, commitment of the resources required to complete a planning project, and coordination at all levels of the organization between the Planning and Policy, Program and Project Management, Engineering and Construction, Operations and Regulatory, Real Estate and Resource Management Divisions, and other functional areas as appropriate for a given program or project.

2–2. Classification, Phase, Status, and Type of Studies.

The annual Civil Works Direct Program Development Policy Guidance provides policy guidance for the development and submission of the Corps of Engineers direct Civil Works budget. Appendix B of the program development guidance includes specific guidance and procedures for studies activities within the Investigations and Mississippi River and Tributaries appropriations. The guidance, updated annually, also includes information related to definitions and guidance on types of studies, types of phases, status, support documentation for budgetary consideration, requirements for new start and new phase studies, and other information such as preparation of justification material. For the latest definitions and guidance, please refer to the most recent published Civil Works Direct Program Development Policy Guidance. In this document, guidance on feasibility studies applies to studies that may lead to a feasibility report or a general reevaluation report.

2–3. Study Conversion to/from Continuing Authorities Program.

See EP 1105-2-58, Continuing Authorities Program. If during the feasibility study it appears that one or more projects could be pursued more efficiently under CAP, conversion to a CAP project is encouraged. Requests for conversion of an Investigations account-funded study to CAP or a CAP project to an Investigations account-funded study should come through the MSC to HQUSACE. Continuation of a feasibility study with the intent to implement the project under CAP following report approval must be approved by the HQUSACE Chief of Planning and Policy.

a. If it becomes apparent that the scope or scale of an ongoing CAP study will exceed CAP authorities, then the study may: 1) attempt to rescope to fit within CAP

limits, 2) seek conversion to an Investigations account-funded feasibility study, or 3) be terminated. If a CAP study seeks conversion to an Investigations account-funded feasibility study, it must compete as a new start study.

b. If the feasibility study is completed but the recommendation is to implement the project under CAP, the report approval by the MSC Commander for a delegated approval or the report approval by the HQUSACE Chief of Planning and Policy will be coordinated with the Congressional authorizing committees' staff by the HQUSACE Future Directions Branch.

2–4. Feasibility Study Cost and Duration Requirements and Exception Policy.

a. The 2012 memorandum titled Civil Works Feasibility Study Program Execution and Delivery established the need for Deputy Commanding General for Civil and Emergency Operations (DCG-CEO) approval of an exception when total study cost exceeds \$3 million and/or when schedule duration exceeds 3 years. Additionally, the “3x3x3 Rule” established that vertical team coordination will be utilized, as necessary, through study completion.

b. Section 1001 of WRRDA 2014 (33 USC §2282c) provides that, to the extent practicable, USACE final feasibility reports will be completed in three years and will have a maximum federal cost of \$3 million. Section 1001, as amended, provides further that the Secretary of the Army may extend the timeline for up to 3 years at a time and/or approve federal costs greater than \$3 million, subject to the notification of the non-federal interest (NFI) and the Senate Committee on Environment and Public Works and the House of Representatives Committee on Transportation and Infrastructure (Committees).

c. If the study cost exceeds \$3 million federal or the study duration exceeds 3 years, the exception must document the determination is necessary based on the criteria listed in 33 USC §2282.c.(c)2. Criteria including the type, size, location, scope, and overall cost of the project as well as consideration of the following:

(1) Whether the project will require significant action by other Federal, State or local agencies

(2) Whether there is significant public dispute as to the nature or effects of the project; and,

(3) Whether there is significant public dispute as to the economic or environmental costs or benefits of the project.

d. The costs included in the calculation of total federal study cost are those costs funded by USACE that are directly related to performance of the study and completion of the decision document through the end of the study phase. Federally-funded Independent External Peer Review costs are not included in the calculation of the \$3M federal cost maximum. USACE costs for audits and participation on the study coordination team, while not included in shared study costs, are funded with study funds and are included in the calculation of the \$3M federal cost maximum.

e. The study duration is defined as the time elapsed between the execution of the Feasibility Cost Sharing Agreement (FCSA), or for those feasibility studies for which a FCSA is not required, when federal funding is allocated to initiate the study, and the signing Chief's Report, Director's Report or Memorandum, or termination of the study. The maximum duration for a study is three years. If an exception request to extend the

study duration is approved for a study, the decision maker for future milestone meetings and report approval will reside at HQUSACE.

f. Exception time can be requested in increments of up to 3 years at a time. Therefore, studies should not initially be scoped to extend beyond 6 years. If, during the course of the study, another time exception is determined as being required, then a new request and justification for the exception is required to be submitted to the Assistant Secretary of the Army (Civil Works) (ASA(CW)) for approval at that time.

g. The calculation of the study duration cannot be paused and includes study delays where no work is being performed due to insufficient funding and study pauses requested by the NFI.

2–5. Exception Approval Levels.

Approval levels depending on the nature of the exception request are summarized in Table 2-1.

Table 2-1

Summary of Exceptions Approval Authorities for Studies Initiated After 10 June 2014

	<\$1.5M Federal	\$1.5M - \$3M Federal	>\$3M Federal***
< 3 years	N/A	DCG-CEO approval of study cost increase.**	DCG-CEO recommendation for ASA(CW) approval of study cost increase.
> 3 years	DCG-CEO recommendation for ASA(CW) approval of schedule exception*	DCG-CEO recommendation for ASA(CW) approval of schedule exception*	DCG-CEO recommendation for ASA(CW) approval of schedule exception*
<p>* Congressional and NFI notification requirements apply. ** Notification to ASA(CW) Management & Budget and Project Planning & Review offices. *** This column also applies to non-cost shared, 100% federally funded studies exceeding \$3 million. Note: Procedures for exceptions from the DCG-CEO prior to the Alternatives Milestone Meeting (AMM) are different than procedures after the AMM.</p>			

2–6. Allocation of Funds.

While the ASA(CW) approval of a schedule exception or approval of more than \$3 million in federal funds is not required in advance of budgeting for additional work, the DCG-CEO and ASA(CW) approvals must be granted prior to the allocation of funds for the work covered by these approvals.

2–7. Vertical Team Alignment Memorandum.

A Vertical Team Alignment Memorandum (VTAM) is used to document the current study scope, budget, and schedule recommended by the MSC Commander. The overall intent of the VTAM is to ensure development of an adequate study scope, establish a realistic schedule and budget early in the study process, and actively manage towards achieving the schedule and budget. Success is defined as executing studies within the identified schedule and budget.

a. Any time changes to the budget or schedule are proposed, regardless of whether the change would require an exception for additional money or time, the VTAM will be updated.

b. The VTAM will also be used to support any 3x3 exception requests.

c. The MSC Commander will review, in depth, the VTAM with the District Commander to ensure command attention and a culture to deliver studies on schedule and budget, and to ensure timely command visibility that will enable efficient execution of planning studies.

d. The MSC Commander will certify their approval of the study scope, schedule, and budget for every study by signing the VTAM.

2–8. Vertical Team Alignment Memorandum Critical Analyses Requirements.

A VTAM is prepared for each new planning phase study and updated when there is a changed scope, schedule, or budget. This requirement applies to all new and ongoing feasibility, post-authorization change, validation, and watershed studies. The VTAM must include the following items:

a. Brief summary of project.

b. Study schedule and cost, including adequate schedule and funding contingency.

c. Numerical Modeling Tools and Software.

(1) Identify the suite of engineering and planning numerical modeling tools and software selected for use or to be developed specifically for the study, along with their approval/certification or validation requirements and a timeline within the project delivery schedule for conducting additional approval/certification and/or model validation, if applicable.

(2) Identify potential significant engineering and planning issues associated with numerical modeling and a path to resolution for each.

(3) Confirm the experience and capability of those staff running the certified and approved models are appropriate for the level of complexity of the study.

(4) The VTAM must indicate that the appropriate Planning Center of Expertise (PCX) has endorsed the level of effort needed for approval/certification or validation requirements of any models, software, or tools that will be used, via written communication to the MSC Planning Chief.

d. Risk and Uncertainty Summary.

(1) The VTAM must indicate if all applicable and known study risks have been evaluated, risk mitigation plans and contingencies (time and cost) have been developed, and a risk management option has been selected and will be implemented for each risk.

(2) The risk summary included in the VTAM will highlight any high risks that remain for the study and will identify ranges of potential schedule delays or cost increases.

Each high risk must identify a risk mitigation option. If a high risk will be tolerated, then the district must explain why the risk mitigation options are not feasible to mitigate the risk.

(3) The VTAM should also document if there are any items in the study scope that are included to account for uncertainty related to high risk items, as well as any relevant trigger points during the course of the study when a reduction in scope could occur if these risk items are not realized. For example, if there is a good likelihood but not certainty that an environmental impact statement (EIS) would be required for the study, the scope could include the necessary time and budget to produce an EIS. However, the VTAM would then document the potential reduction in scope if it is later determined that an EIS is not needed, as well as when in the study that determination would likely be made.

2–9. Vertical Team Alignment Memorandum: Other Considerations.

In developing the VTAM, the following items and activities must be evaluated and included in the study scope, budget, and schedule:

a. Within 90 days after FCSA execution, convening the required interagency meeting of all federal, Tribal, and state agencies that have jurisdiction over the project, or that may be required by law to conduct or issue a review, analysis or opinion on or to make a determination concerning a permit or license for the study. Information needs from the USACE, cooperating and participating agencies discussed at this meeting will inform the scope and schedule.

b. Required National Environmental Policy Act (NEPA), Endangered Species Act (ESA) coordination and other required coordination for a timely and coordinated environmental review process.

c. Robust involvement of the National Marine Fisheries Service (NMFS) and U.S. Fish and Wildlife Service (USFWS, collectively, the Services) as an active member of the team throughout the entire study process as a cooperating agency, and in accordance with the Fish and Wildlife Coordination Act (FWCA), if applicable.

d. Required real estate requirements, Tribal consultation activities, cultural resources requirements, and that coordination for these items is initiated during scoping activities.

e. Ensure compliance with Section 1184 of the Water Resources Development Act (WRDA) of 2016, Consideration of Measures (33 USC §2289a), and 29 September 2017 implementation guidance which requires, with consent of the non-Federal sponsor, consideration of natural features, nature-based features, nonstructural measures, and structural measures, as appropriate.

f. Ensure compliance with 5 January 2021 Policy Directive - Comprehensive Documentation of Benefits in Decision Document on the comprehensive assessment and documentation of benefits in the formulation of water resources project alternatives.

g. Ensure consistency with the ASA(CW)'s 15 March 2022 Implementation of Environmental Justice and the Justice40 Initiative interim guidance.

h. Ensure availability and competency of technical resources; and acquisition strategy if leveraging resources from other districts and the enterprise.

2–10. Vertical Team Alignment and the Vertical Team Alignment Memorandum.

a. Any non-alignment concerns by the Regional Integration Team (RIT), policy and legal compliance review team members, or appropriate PCX representative will be clearly documented in the VTAM with the reason for disagreement and why alignment could not be reached.

b. Document district and MSC functional chief concurrence with scope, schedule, and budget. This concurrence should be informed by input from the policy and legal compliance review team and the PCX.

2–11. Vertical Team Alignment Memorandum Signature.

The VTAM is signed by the MSC Commander and transmitted to the appropriate HQUSACE RIT. If the VTAM is to support a 3x3 exception, then it will be further processed per paragraph 2-12 or 2-13.

2–12. Exception Process.

a. Initial exception requests prior to the Alternatives Milestone Meeting. Initial exception requests are those that are requested at the start of the study, based on a vertically aligned scope, schedule, and budget developed prior to the AMM. If the total study cost exceeds \$3 million and/or the total study time exceeds 3 years, the necessary details to support an exception request will be briefed at the AMM. For an AMM where a 3x3 exception is being requested, the PDT will provide the draft VTAM, risk register, and project management plan (PMP) to the vertical team, in addition to the other AMM submittal requirements, at least one week prior to the milestone. Unless directed by the MSC, specific courses of action are not necessary as the AMM presentation and PMP will clearly lay out a vertically aligned detailed scope, schedule, and budget that includes all necessary actions and resources to select a Tentatively Selected Plan and complete a decision document.

b. After the Alternatives Milestone Meeting. Within a vertically aligned time period following the AMM, but generally with a target of no more than 30 days, the MSC Commander will transmit the signed VTAM to the appropriate HQUSACE RIT. If greater than 30 days after an AMM is necessary, the MSC Chief of Planning and Policy will notify the Chief of OWPR of the reasons for delay and estimated time for completion.

(1) The RIT Deputy will review the VTAM to ensure compliance with guidance and completeness. Upon completion of review and confirmation that the VTAM is complete, the VTAM will be routed for endorsement by the DCG-CEO to the ASA(CW), if required.

(2) An updated budget summary table (see Table 2-2) must also be provided through the appropriate RIT to the HQUSACE Investigations Planning Portfolio manager within 30 days of study cost approval.

Table 2-2
Budget Support Summary Table Example

Milestone Schedule for < Project Name>	
Milestone	Date
Feasibility Cost Share Agreement Execution	<DD MMM YYYY>
Alternatives Milestone	DD MMM YYYY>
In Progress Review (if applicable)	DD MMM YYYY>
Tentatively Selected Plan Milestone	DD MMM YYYY>
Draft Report Release	DD MMM YYYY>
Agency Decision Milestone	DD MMM YYYY>
Final Report Signed by District Engineer	DD MMM YYYY>
Chief's Report Signed	DD MMM YYYY>

Funding Stream (Budget) Projection for <Project Name>	
Fiscal Year (FY)	\$
<Current FY>	<\$100,000>
<FY +1>	<\$1,900,000>
<FY +2>	<\$600,000>
<FY +3>	<\$400,000>
Total	\$3,000,000

c. Exception requests requiring ASA(CW) approval. For exception requests requiring ASA(CW) approval (see Table 2-1), the following items, in addition to the VTAM, will be submitted by the MSC Commander to HQUSACE for the exception package:

(1) Project Management Plan. The PMP must include revised start/finish dates and an accurate Work Breakdown Structure that reflects the information in the exception request.

(2) Report Summary including discussion of the criteria listed in paragraph 2-4.c.

(3) Risk Register

(4) Briefing Slides. The briefing slides must provide the following:

(a) Alternative Courses of Action (only for exceptions following the initial exception request). At least three risk-informed courses of action will be provided. Documentation will be provided that indicates how risk and uncertainty, and any other relevant factors, for the courses of action were evaluated.

(b) Risk Summary. The risk summary will highlight any high risks that remain for the study and will identify ranges of potential schedule delays or cost increases. Each high risk must identify a risk mitigation option. If a high risk will be tolerated, then the district must explain why the risk mitigation options are not feasible to mitigate the risk. The risk summary should also document any activities in the study scope that were included to mitigate for high risk items, as well as any relevant trigger points during the course of the study when a reduction in scope could occur if these risks are not realized.

(5) Statement signed by the District Commander indicating that the NFI has been consulted and concurs with the proposed increases in time or cost for the study.

(6) Draft House and Senate Committee Letters. Draft notification letters to the Committees are prepared by the RIT Planner and will explain the factors and complexities affecting the study cost and/or schedule. The notice will clearly outline the cause of the delay, what efforts were undertaken to make up for the delay, and how much additional time is needed to complete the study. In addition, the notice will briefly summarize the factors supporting the exception based on the criteria listed in paragraph 2-4.c.

(7) DCG-CEO Draft Transmittal Memorandum requesting the exception. The RIT will develop the draft transmittal letter for the exception package.

d. Exception packages for the ASA(CW) will be logged by HQUSACE into the Department of the Army tracking system and then delivered to the Project Planning and Review office for review and processing.

e. An updated budget summary table (Table 2-2) must also be provided through the appropriate RIT to the HQUSACE Investigations Planning Portfolio manager within 30 days of study cost approval.

2–13. Subsequent Exception Requests.

All exception requests following an initial request at the start of the study will have the same submittal requirements as described for initial exception requests in paragraph 2-12.a., with the VTAM, Risk Register, and PMP updated as needed to reflect the new request. However, the following additional processing steps are required:

a. Chief, HQUSACE Planning and Policy Division Review. Within one week of receipt of the exception package, the appropriate RIT will review the package for completeness and provide the package to the HQUSACE Chief, Planning and Policy Division. The HQUSACE Chief, Planning and Policy Division, may request a briefing by the District Planning Chief and invite other senior leaders to that meeting as needed. The HQUSACE Chief, Planning and Policy Division, must endorse the package for transmission to the DCG-CEO. Endorsement may be delegated as appropriate.

b. DCG-CEO. After endorsement by the HQUSACE Chief, Planning and Policy Division, an exception briefing with the DCG-CEO will be held at the earliest opportunity. Briefings will be conducted by the District Commander. Additional senior leader panels are not required. If the approval level is at the ASA(CW), the RIT Planner will prepare an approval memo for DCG-CEO approval.

2–14. Timing of Exception Request.

The timing of the exception request will be coordinated with the vertical team at the earliest indication that the study will exceed the previously approved budget or schedule and must occur at least six months before the end of the approved study time limit.

2–15. Exception Requests After Submission of a Signed Final Report.

If the final signed feasibility report package will be submitted to HQUSACE within the approved study completion date, but additional time is necessary to complete Policy and Legal Compliance Review, State and Agency Review (if applicable), and routing for the Chief of Engineers or Director of Civil Works signature, the MSC Commander will provide an appropriate MFR with the report package.

2–16. Other Reporting.

a. The District Commander to whose district a particular study is assigned will be responsible for the required reports. The MSC Commander may recommend, and the Director of Civil Works (DCW) may designate, another district to assume study and reporting responsibility. The District Commander or other designated person will sign and date the report prior to reproduction, immediately below the recommendations.

b. The District Commander will transmit the reports to the MSC Commander, except for reports on the Mississippi Rivers and Tributaries project or features thereof, in which case the report must be transmitted to the President, Mississippi River Commission.

Chapter 3

Procedures to Initiate a Feasibility Study

3–1. Feasibility Cost Sharing Agreement (FCSA).

Upon notification of an Office of Management and Budget (OMB) investment decision for current fiscal year (FY) appropriations, or upon signing of a current FY appropriations bill into law that contains a study or official release of a Work Plan, the project manager should contact the NFI to outline the FCSA execution process.

a. The project manager will inform the MSC of the anticipated timeframe for FCSA execution, as well as any risks to timely execution. In addition, the project manager will coordinate with the District Planning Chief who will identify a lead planner for the study, as well as work with other functional area supervisors to identify required project delivery team (PDT) members. Per ER 1110-2-1150, Engineering and Design for Civil Works Projects, the PDT should include the technical personnel necessary to develop the project to ensure quality and reduce potential impacts to budget and schedule. The technical chief may designate a lead engineer.

b. It is the responsibility of the district project manager to work alongside the PDT to prepare the FCSA package for MSC review and approval prior to execution. Contents of the FCSA package may be found on the HQUSACE Agreements website.

3–2. Feasibility Cost Sharing Agreement Execution.

Upon MSC approval to execute the FCSA (or in the case of an FCSA with substantial deviations, approval by the ASA(CW)), the project manager will provide the Certificate of Authority, Certification Regarding Lobbying, and FCSA to the NFI for signature. Upon the return of these documents, the project manager will route the FCSA to the District Commander for signature. Once the District Commander has signed the FCSA, the agreement will be in effect and the feasibility study will begin. Upon execution of the agreement, the project manager will provide a scanned copy of the executed FCSA to the MSC and the RIT, and an original will be mailed to the NFI.

a. The project manager is responsible for ensuring the NFI understands its financial obligations under the agreement, including the provision of providing not less than \$25,000 within 15 days of FCSA execution to initiate the study and develop the PMP. If more funds are needed to initiate the study and develop the PMP, the project manager will provide a written request to the NFI for the additional funds.

b. If the FCSA needs to be amended over the course of the study, it will be the responsibility of the project manager to coordinate the development and execution of

the amended agreement with the NFI, district Offices of Counsel and Resource Management, District Planning Chief, and the USACE vertical team.

Chapter 4

Feasibility Study Milestones

4–1. Product Milestones.

There are three significant feasibility report milestones that will be used for notification and reporting purposes as required by the 33 USC §2282(g), Detailed Project Schedule. These three product milestones are:

- a. Release of draft feasibility report for public comment and concurrent review;
- b. District Commander transmittal of final feasibility report; and
- c. Signed Chief's Report or signed Director's Report.

4–2. Decision Milestones.

During the course of a feasibility study, three decision milestones mark the confirmation and endorsement of key planning decisions made by the PDT: the AMM is the acknowledgement and acceptance of identified study and implementation risks and uncertainties and the strategies to manage those risks including the PDT's proposed path forward; the tentatively selected plan (TSP) milestone is the confirmation of the scope, schedule, and budget to complete the feasibility study; and the agency decision milestone (ADM) marks the corporate endorsement of the recommended plan and proposed way forward to complete feasibility-level design.

- a. Beginning with study initiation, vertical team engagement is required throughout the study to provide assurance to the PDT that key study decisions reflect vertical team engagement from all functional areas.
- b. Designated decision-makers for study milestones may designate an alternate to replace them if they are unable to participate in a scheduled milestone decision meeting. Study milestone meetings should not be delayed due to the lack of availability of the decision-maker or other members of the vertical and review teams.
- c. In all cases, read ahead submittals will go from the district to the decision-making authority, district support team, and the RIT without an intervening review beyond that outlined in the quality management plan.

4–3. Milestone Approvals.

Decision-making authority for the milestones is outlined in Table 4-1. HQUSACE may delegate its milestone meeting decision-making authority to the MSC. The MSC cannot delegate its milestone meeting decision-making authority. If the study meets any of the three criteria defined in paragraph 5-4, the milestone decision-making authority will reside at HQUSACE:

Table 4-1
Milestone Decision-Making Delegation/Report Approval Level

Ongoing	Feasibility Decision Milestone	Decision-Making Delegated to MSC	Decision Making Resides at HQ
Vertical Team Engagement	AMM	MSC Planning & Policy Chief	MSC Planning & Policy Chief
	TSP Milestone	MSC Planning & Policy Chief	Chief, Office of Water Project Review (OWPR)
	ADM	MSC Programs Directorate Chief (SES)	HQ Chief, Planning and Policy

4–4. General Requirements for All Milestone Meetings.

a. Logistics. Milestone meeting scheduling and logistics will be coordinated by the decision-making command. MSC-based milestone decision meetings will be coordinated by the MSC, who will also inform the RIT Planner; HQ-based milestone decision meetings will be coordinated by the appropriate RIT. Teleconference and web meeting are the preferred methods for conducting milestone meetings. An in-person meeting can be held by exception, with the approval of the decision-maker.

b. Read Ahead Materials for Decision Milestones. The required read ahead materials for decision milestones are the report summary, draft presentation slides, and signed study issue checklist appropriate for the milestone (available on the Planning Community Toolbox website). Though the risk register, decision log, and decision management plan are not required to be submitted as read ahead materials, these tools, or similar, are used to inform the report summary and risk and uncertainty discussion at the milestone meetings and will be provided to the vertical team upon request. Read ahead materials will be provided to the coordinating MSC and RIT Planner no later than one week prior to the milestone meetings. Read ahead material is informational for the decision-maker and will not be reviewed for the purposes of requiring revisions, or comment and responses. Draft presentation slides are acceptable in the read ahead package, but final presentation slides are expected to be provided no later than 24 hours prior to the milestone meeting.

c. Required Milestone Meeting Participants. Required milestone meeting participants include the milestone decision-maker (see Table 4-1), the District Planning Chief (lead presenter), and the policy and legal compliance review manager. The Office of the ASA(CW) (OASA(CW)), other federal agencies including cooperating agencies, and Tribal Nations may also be invited to the meeting. Any study involving the potential acquisition, modification, or operation and maintenance (O&M) of specific Civil Works real property assets must include a representative from the appropriate business line and USACE Civil Works Asset Management.

d. Memorandum for Record. After each milestone meeting, or other in-progress review or issue resolution meeting involving the vertical team, a Memorandum for Record (MFR) will be produced documenting meeting participants, key items discussed, actions directed, and decisions made. Production of the MFR is mandatory. The MFR should also include, as appropriate, documentation of study scope including any agreed-upon changes, the study, schedule, funding (including funding sources), and resources. The MFR will serve as the source document for the budget support

summary, which is the required support documentation for future budget requests and funding decisions. The proponent for the meeting is responsible for preparing the MFR, which should be finalized no later than seven calendar days after the meeting takes place. For milestone meetings, the district executing the study is responsible for preparing and coordinating the MFR.

e. In addition to the milestone MFR, a budget support summary will be prepared for all milestone meetings to summarize the current study schedule and funding stream. This includes feasibility studies, post-authorization change reports, validation reports, and watershed studies. The budget support summary will provide the following information:

- (1) Brief summary of project.
- (2) Schedule and funding stream (see Table 2-2).

4–5. Key Feasibility Study Tasks.

Table 4-2 contains a list of commonly required and performed feasibility study tasks. This list is not all-inclusive.

Table 4-2
Key Feasibility Study Tasks (Not all-inclusive)

Milestone	Task
To be completed before the AMM	<ul style="list-style-type: none"> • Establish initial team, early engagement with other PDT disciplines (for example counsel, real estate, cultural resources, engineering and construction) • Within 90 days of study start, invite cooperating agencies, as well as other federal and state agencies, and hold interagency meeting to develop environmental compliance timeline • Invite water quality certifying authority (for example the state or Tribe) to the 90-day interagency meeting, which will also serve as the pre-filing application meeting • Negotiate Scope of Work for FWCA Report • Develop species list and initiate informal consultation¹ for the ESA • Initiate habitat model to inform cost effectiveness & incremental cost analyses for ecosystem restoration or mitigation and initiate certification activities with PCX, as necessary. • Initiate NEPA scoping activities¹ • Initiate Section 106 National Historic Preservation Act (NHPA) literature and records search and identification of the Area of Potential Effects • Conduct at least one iteration of risk-informed planning process (six steps): develop problems, opportunities, objectives, and constraints, define the future without project (FWOP) conditions, develop formulation strategies to formulate measures and combine these measures into an initial array of alternatives. The PDT will conduct preliminary screening of the alternatives to develop a focused array of alternatives

Milestone	Task
	<ul style="list-style-type: none"> • Initiate coordination with the appropriate PCX or the Risk Management Center to discuss the scope of reviews and any planning model review and approval/certification needs • Develop a PMP, including the draft Review Plan and a communication strategy, that generally describes how the study will be completed but with specific details to achieve the TSP milestone and NEPA/NHPA compliance (documented scope and schedule to TSP Milestone) • Use the pre-AMM study issue checklist to identify potential policy issues and conduct vertical coordination as needed
To be completed before the TSP Milestone	<ul style="list-style-type: none"> • Publish Notice of Intent to develop an EIS¹ • Independent External Peer Review (IEPR) Exclusion Request¹ • Environmental Compliance Activities⁴: <ul style="list-style-type: none"> > Initiate consultation under Section 106 (NHPA) with State / Tribal Historic Preservation Officer (SHPO/THPO) > Define Section 106 Area of Potential Effects; identify and evaluate historic properties within the Area of Potential Effects. > Prepare Draft Conceptual Mitigation Proposals > Prepare Draft Biological Assessment¹ > Prepare Essential Fish Habitat (EFH) Assessment¹ > Seek FWCA Report > Develop draft Clean Water Act 404(b)(1) report • Obtain habitat and other planning model approvals or certification¹ • As many additional iterations of risk-informed planning process (six steps) as necessary to distinguish among alternatives and communicate level of uncertainty with the TSP; plan formulation activities resulting in identification of the TSP (and potential Locally Preferred Plan (LPP)) • Identify potential policy exceptions required by ASA(CW), including 3x3 exception, LPP waiver, etc.^{1, 3} • PMP and review plan updated; document scope and schedule to final report transmittal • Use the general pre-TSP/Final Report and mission specific pre-TSP study issue checklists to identify potential policy issues and conduct vertical coordination as needed.
To be completed before the draft feasibility report is released	<ul style="list-style-type: none"> • Conduct appropriate surveys to support Section 106 NHPA to assess and determine effects of TSP and initiate, as applicable, consultation on determination of effects, to include preliminary agreement document to resolve adverse effects. • Legal Sufficiency Review of Draft Feasibility Report / NEPA document • District Quality Control (DQC) of Draft Feasibility Report / NEPA document

Milestone	Task
	<ul style="list-style-type: none"> Secure ASA(CW) exception if there is no National Economic Development plan (NED) plan generating a positive economic benefit-cost ratio
To be completed before the ADM	<ul style="list-style-type: none"> Agency Technical Review (ATR) of Draft Feasibility Report / NEPA document including cost estimates Public/Agency Review of Draft Feasibility Report / NEPA document IEPR of Draft Feasibility Report / NEPA document ^{1,2} Policy and Legal Compliance Review of Draft Feasibility Report / NEPA document completed with comments documented in a Project Guidance Memorandum (PGM) Draft PDT responses to all Policy and Legal Compliance Review comments contained in the PGM Receive concurrence from SHPO/THPO on NHPA Section 106 determination of effect and continue consultation on agreement document, if applicable Critical or High Significance comments from all reviews compiled, assessed, and actions to resolve determined and documented in a review summary PMP and review plan updated; document scope and schedule including proposed level of detail to final report transmittal Any required policy exceptions submitted to ASA(CW), including 3x3, LPP, etc. ^{1,3} Update the appropriate study issue checklists to highlight remaining policy issues and conduct vertical coordination as needed.
To be completed before Final Report Package	<ul style="list-style-type: none"> Any required policy exceptions from ASA(CW) signed, including 3x3, LPP, etc. ^{1,3} Additional iteration(s) of risk-informed planning process (six steps); engineering, real estate, economics, and environmental analysis to complete feasibility report and decision document for recommended plan. DQC of Final Feasibility Report / NEPA Document Legal Sufficiency Review of Final Feasibility Report / NEPA document Environmental Compliance Activities⁴: <ul style="list-style-type: none"> > Formal ESA consultation¹ to include a review of draft biological opinion > Response to EFH conservation recommendations > Final FWCA Report and response to comments/ recommendations > Conclude consultation with SHPO/THPO, Advisory Council on Historic Preservation (ACHP), if participating, and consulting parties with either concurrence of no adverse effect or, for adverse effect, an executed Memorandum of Agreement (MOA) or Programmatic Agreement; include any requirements from the MOA or PA in the

Milestone	Task
	<p>draft Finding of No Significant Impact (FONSI)/ Record of Decision (ROD)</p> <ul style="list-style-type: none"> > Clean Water Act Water Quality Certification or Letter of Confirmation from State Water Quality Agency on Section 401(c) water quality certification > Consistency determination from State Coastal Zone Management Agency under Coastal Zone Management Act • Cost certification and total project cost summary • Documentation and certification of DQC, ATR, and IEPR¹ • Draft agency response to IEPR¹ • Update the appropriate study issue checklists to highlight resolution of policy issues and conduct vertical coordination as needed.
<p>Notes</p> <ol style="list-style-type: none"> 1. If applicable. 2. The IEPR panel has up to 60 days after the end of the public review of the draft report to submit the final IEPR report, and longer at the discretion of the Chief, therefore, the final IEPR report may not be completed by the ADM. 3. The District Commander will submit a policy exception package no less than 60 days before the end of the 36-month time frame. The package will consist of the PMP, Report Summary, Risk Register Summary, summary slides showing comparison of cost and schedule changes, and the most recent milestone MFR. Documentation of the vertically aligned scope, schedule, and budget should be included and submitted to the RIT for processing. 4. This list is not inclusive of all environmental laws or requirements. 	

4–6. Alternatives Milestone.

The AMM marks the decision-maker's acknowledgement and acceptance of identified study and implementation risks and the strategies to manage those risks. The decision-maker affirms the PDT's preliminary analysis of the federal interest, and the projected scope, schedule, and budget for the study.

a. Timing of the Alternatives Milestone. The AMM will be held after the PDT has identified preliminary federal interest in a project; developed problems, opportunities, objectives, and constraints; defined the FWOP conditions; developed formulation strategies to formulate measures; combined these measures into an initial array of alternatives; conducted screening to develop a focused array of alternatives, at least one full iteration of the risk-informed six-step planning process (see the Planning Manual Part II: Risk Informed Planning); and has a clear path forward (scope, schedule, cost) to the TSP milestone.

b. Project Management Plan. The PMP and draft review plan have been developed; the PDT has a projected scope, schedule, and budget for completion of the feasibility study; and the non-federal interest has been notified of the schedule of key product milestones. The PDT has engaged the vertical team as needed for in-progress reviews and has completed DQC review of milestone read ahead materials. The District Planning Chief, in consultation with the MSC Planning and Policy Chief, determines the readiness for conducting the milestone meeting. For most studies, the AMM would be

expected within approximately the first 90-180 days of the study, however, the AMM should not be held until at a minimum the items to be completed prior to an AMM as listed in Table 4-2 are completed. The PDT will engage the vertical team via in-progress reviews or other means to identify and remove obstacles to move the study forward.

c. **Study Scoping.** A planning effort begins with development of a clear scope to describe the purpose of the work which is different from the NEPA scoping requirement. Study scoping process includes collaboration and engagement with the non-federal sponsor, the public, agencies, and potentially affected stakeholders, including Tribes. The scope should be developed with a systems perspective to understand the economic, social, and environmental interactions in the watershed, to the extent practicable.

d. **National Environmental Policy Act Scoping.** NEPA scoping should be concurrent with study scoping activities. Prior to NEPA scoping, an interagency meeting must be held within ninety (90) days of study start with the cooperating and participating agencies and the non-federal sponsor for early coordination of environmental compliance activities and development of the environmental compliance timetable.

(1) Cooperating agencies will be requested for an Environmental Assessment (EA) or an EIS. NEPA scoping can start soon after the initial interagency meeting and will occur prior to the AMM to ensure any reasonable alternatives developed from the public (based on the study authority, purpose and need, objectives, and opportunities including alternatives with equal consideration of economic, social, and environmental categories) are included in the initial array of alternatives. This process determines the scope of the EIS and is intended to ensure that problems are identified early and properly studied. It assures that issues of little significance do not consume time and effort.

(2) The NEPA scoping process should identify the environmental issues and alternatives to be examined in the EIS while eliminating nonsignificant issues. Study scoping meetings and NEPA scoping meetings (described in EP 1105-2-60) will be integrated.

e. **Decision-Maker.** The decision-maker for the AMM is the MSC Planning and Policy Chief.

f. **Decision at the Alternatives Milestone meeting.** The decision-maker at the AMM will acknowledge and evaluate identified study and implementation risks and uncertainties and the district's strategies to manage those risks. The decision-maker affirms the soundness of PDT's preliminary analysis of the federal interest, the Class 5/4 costs (see ER 1110-2-1302, Civil Works Cost Engineering), benefits, and environmental impacts of the focused array of alternatives, and the projected scope, schedule, and budget for the study. The decision-maker will affirm whether the PDT is prepared to move forward with a clear path to identify the TSP, with an appropriate scope, schedule, and budget to the TSP milestone. The decisions made at the milestone meeting will be documented in the MFR.

g. To support the decision, the District Planning Chief (lead presenter) will describe the PDT's scoping process to ensure significant decision-making factors are addressed, unnecessary analyses are avoided, risks are identified, and meaningful and efficient analysis and selection of alternative plans can occur. The presentation and discussion will include:

(1) A concise description of the problem.

- (2) Study authorization.
 - (3) The understanding of FWOP conditions, including uncertainty.
 - (4) The formulation of a representative array of distinctly different solutions, and how that array will be evaluated to reduce uncertainties and identify the TSP. If there is a likely LPP, that should be identified and discussed.
 - (5) The federal and USACE interest in the problem and potential solution.
 - (6) Status of environmental compliance activities.
 - (7) Study scope, schedule (including permitting timeline), and funding stream.
 - (8) Whether the study will be completed within 3x3 requirements. If the study will exceed \$3 million in total cost or 3 years and a 3x3 exception is needed, then the presentation and discussion must include all necessary information to inform a decision.
- h. Post-Meeting Activities.* If the decision-maker supports moving ahead with the study, the PDT will proceed with reducing uncertainties and identifying the TSP. Feasibility study activities will include, but are not limited to: conducting further analyses of the FWOP condition to enable appropriate comparison with alternatives; evaluating and comparing the focused array of alternatives, including NEPA analysis; selection of a TSP; identification of a LPP, if applicable; continuing environmental and cultural compliance documentation and activities (NEPA, FWCA, ESA, NHPA, etc.); continuing coordination with cooperating agencies and developing the draft feasibility report in preparation for concurrent review.

4–7. Tentatively Selected Plan Milestone.

The TSP Milestone marks the PDT's recommendation of, and the decision-maker's endorsement of, a TSP (and LPP, if applicable), and that the PDT is prepared to release the draft feasibility report and draft NEPA documentation for concurrent public review, technical review, policy and legal compliance review, and IEPR (if applicable).

a. Locally Preferred Plans. Consistent with established policy, if the NFI does not support the NED plan, the National Ecosystem Restoration (NER) plan, or combined NED/NER plan, or other federally recommended plan, a LPP may be requested. The PDT should notify the vertical team of a likely LPP prior to the TSP milestone, present the likely LPP at the TSP milestone meeting, and ensure NEPA compliance documentation in the draft feasibility report includes the LPP, including its impacts, as an alternative. HQUSACE will notify the ASA(CW) of the potential for a LPP as soon as discussion have occurred with the NFI. The OASA(CW) will be invited to the TSP Milestone meeting. The formal request of the ASA(CW) to allow the District Commander to recommend a LPP will be required prior to the ADM.

b. Nonstructural Alternative. PDTs must consider nonstructural and structural measures alone and in combination with each other when formulating, evaluating, and comparing alternatives in all studies. (33 USC 2289a and 33 USC 701b-11).

(1) For flood risk and coastal storm risk projects, nonstructural measures generally are those that alter the human exposure or vulnerability to flooding with little effect on the characteristics of the flood (for example elevating a structure, floodproofing the lowest floor of a structure, or purchasing a structure for purposes of removing it which is referred to as a buyout).

(2) Structural measures are those that alter a flood's characteristics and reduce the probability of flooding at the location (for example a levee or berm that diverts flood water away from a community).

c. **Natural and Nature-based Features.** Natural and nature-based features, which can be either structural or nonstructural features, must be considered when formulating, evaluating, and comparing flood risk, coastal storm risk, and aquatic ecosystem restoration alternatives.

(1) Natural features are those that are created through the action of physical, geological, biological, and chemical processes over time.

(2) Nature-based features are those created by human design, engineering, and construction that work in concert with natural processes or to mimic as closely as possible conditions which would occur in the area absent human changes to the landscape or hydrology in order to achieve study objectives.

d. **Alternatives from Other Entities.** Alternatives submitted during scoping from Tribal, state, and local governments and other public commenters are required to be considered in an EIS. They need to be included in the initial array for consideration with all other feasible alternatives.

e. **Timing of the Tentatively Selected Plan Milestone.** The PDT is ready for the TSP milestone when it has completed enough iterations of the risk-informed planning process (see the Planning Manual Part II: Risk Informed Planning) to reduce uncertainties and identify a TSP. The PDT should have completed the evaluation and comparison of a focused array of distinctly different strategies for achieving the water resources objectives in the study area, identified a TSP and possibly a LPP to carry forward, and prepared a scope to develop sufficient design and cost information for the final feasibility-level analysis and feasibility report.

(1) The draft feasibility report / NEPA documentation should be largely complete by the milestone meeting and will be ready to release by the district for concurrent review within 60 days of a successful TSP milestone.

(2) The PMP and review plan should also be updated to reflect the projected scope, schedule, and budget for completion of the feasibility study. While coordination with federal and state resource agencies occurs regularly throughout the planning process, the PDT should be prepared to summarize coordination activities, identified concerns, and the proposed way forward for addressing concerns during the milestone meeting.

(3) Prior to the milestone meeting, the PDT will have engaged the vertical team as necessary and completed DQC review of milestone read ahead materials. The District Planning Chief, in consultation with the MSC Planning and Policy Chief, determines the readiness for conducting the TSP Milestone meeting.

(4) In a 3-year study, the TSP Milestone would be expected within the first 12 months of the study.

f. **Decision-Maker.** The decision-maker for the TSP milestone meeting is the MSC Planning and Policy Chief. When decision-making authority has been retained by HQUSACE, the Chief of OWPR is the decision-maker.

g. **Decision at the Tentatively Selected Plan Milestone.** At the TSP Milestone meeting, the decision-maker either: supports the selection of the TSP (or LPP, if applicable), the proposed way forward, and the release of the draft feasibility report / NEPA documentation for concurrent public, technical, legal and policy review, and IEPR (if applicable); requests additional information required to support a decision; or terminates the study. If the decision-maker requires additional work before a decision regarding the release of the draft feasibility report, the release will follow confirmation of

the adequacy of the work using agreed upon DQC/quality assurance (QA) practices and approval of release by the decision-maker. The decision-maker at the TSP Milestone meeting will acknowledge and evaluate identified study and implementation risks and the district's strategies to manage those risks. The decision-maker will affirm whether the PDT is prepared to move forward with an appropriate scope, schedule and budget to the ADM and for the full study. The decisions made at the milestone meeting will be documented in an MFR.

(1) The presentation and discussion will include the PDT's alternative evaluation, comparison, and selection process to ensure significant decision-making factors are addressed, unnecessary analyses are avoided, and risks and uncertainties are identified. The District Planning Chief will describe the results of the qualitative risk assessment of the TSP, including study risks and implementation risks and uncertainties, and highlight potential impacts and proposed mitigation measures. The Planning Chief will also discuss the likelihood the study will be completed within the vertically aligned scope presented at AMM.

(2) If the study is unlikely to meet these constraints, the PDT's next steps for the exception process will be discussed, including the VTAM. The participants in the meeting must indicate additional measures that could or should be taken within acceptable risk to lower study costs and/or shorten the study schedule.

4–8. Release of Draft Feasibility Report.

The draft feasibility report should be released within 60 days of a successful TSP Milestone meeting. If the decision-maker supports moving ahead with the study, the PDT will finalize the draft feasibility report and draft NEPA documentation and prepare to release these documents for concurrent public, technical, legal and policy review, and IEPR (if applicable). If an EIS is required, a Notice of Availability of the draft NEPA document will be published according to U.S. Environmental Protection Agency (USEPA) current directions (usually on the USEPA website) after notification letters have been sent to cooperating and participating agencies.

a. After the successful TSP Milestone meeting, the PDT will finalize the draft feasibility report / NEPA documentation and prepare to release these documents for concurrent public, technical, legal and policy review, and IEPR (if applicable).

b. Release of the draft feasibility report is contingent on confirmation of the adequacy of the work following agreed upon DQC and QA practices (including adequacy of DQC and scope of the ATR)); legal sufficiency review of the draft feasibility report performed by the district is required before release. Unless otherwise specified in the review plan, no materials are required to be part of a draft feasibility report "package" beyond the draft feasibility report with all appendices, draft NEPA documentation, and DQC documentation including the legal sufficiency review.

c. If the draft feasibility report has not been released within 60 days of the TSP Milestone meeting and release beyond 60 days was not agreed to at the TSP milestone meeting, the District Commander will meet with the HQUSACE Chief of Planning and Policy and the TSP Milestone meeting decision-maker to discuss the rationale for the study delay and secure approval of the new release date for the draft feasibility report.

d. After concurrent review, the PDT will prepare a review summary that highlights significant comments and potential risks associated with agency endorsement of the TSP in preparation for the ADM meeting. The PDT will provide draft responses to the

policy and legal compliance review manager to comments in the PGM. If significant changes to the TSP presented in the draft feasibility report are likely after concurrent review, the PDT may be required to address the comments and repeat the concurrent review process prior to the ADM.

4–9. Agency Decision Milestone.

The ADM marks the corporate endorsement of the recommended plan and proposed way forward to complete feasibility-level design and the feasibility study report package.

a. If, by the ADM meeting, the estimated project costs of the potential recommended plan (agency supported plan or LPP) exceed the estimated project benefits when calculated using a real discount rate of seven (7) percent, the district will inform the NFI that the OMB review required by Executive Order (EO) 12322, Water Resources Projects, may advise the ASA(CW) that the project is not consistent with the policy and programs of the President and that as a result, the project may not receive Administration support for authorization after the completion of the feasibility study and reports of the Chief of Engineers and follow-on project funding.

(1) The benefit to cost ratio at the seven (7) percent discount rate as required by OMB is used only to inform the NFI and provide transparency; it is not to be included in the feasibility study or Report of the Chief of Engineers.

(2) The district would follow procedures in Chapter 5 of this EP to terminate the study should it be determined that termination is the appropriate course of action.

b. Timing of the Agency Decision Milestone. The ADM occurs after completion of the concurrent public, technical, and policy and legal compliance review of the draft feasibility report / NEPA document. If the study requires IEPR, the milestone will be scheduled to follow receipt of the IEPR panel's findings, which could be up to 60 days after the public comment period, or longer if an extension is approved by the Chief of Engineers. Upon completing an assessment of all comments, the PDT will work to address outstanding issues (technical, policy, or legal) raised during the concurrent review that can be addressed without additional technical analyses or design; issues requiring additional technical analyses or design may be discussed at the ADM meeting but will be addressed after the milestone meeting. The PMP and review plan will also be updated to reflect the projected scope, schedule, and budget for completion of the feasibility study.

(1) The District Planning Chief, in consultation with the MSC Planning and Policy Chief, confirms the readiness for the ADM meeting, including that the analyses in the draft feasibility report and the recommendations as a result of the concurrent reviews are expected to be compliant with policy and that there is an NFI(s) ready to support project implementation in terms of meeting all cost-share, real estate, operation, maintenance, or any other requirements defined by law or guidance.

(2) If any outstanding technical, policy, or legal issues preclude confirmation or raise doubts as to the identification of the recommended plan, the decision-maker may require that certain technical analyses be completed to address those issues prior to holding the ADM. However, if the ADM is held prior to vertical team concurrence on the path forward for resolving any open policy or technical issues, the policy and legal compliance review manager and/or ATR manager(s) will present at the ADM the views of the reviewers as to how these issues should be addressed.

(3) If significant delays are anticipated in the date of the ADM the PDT is expected to engage the vertical team via in-progress reviews or other means to identify and remove obstacles to move the study forward.

c. Decision-Maker. The decision-maker for the ADM meeting is the MSC Programs Directorate Chief (SES). When decision-making authority has been retained by HQUSACE, the decision-maker for the ADM meeting is the HQUSACE Chief of Planning and Policy.

(1) The decision-maker will assemble a panel of senior leaders to inform their decision, including each discipline with high potential impact to the study/project (for example real estate, engineering & construction, dam and levee safety, operations, or planning). The decision-maker can solicit feedback from invited members of the panel in advance of the meeting if they are not available to attend. Invited members of the panel may appoint a substitute to participate on their behalf

(2) The OASA(CW) will also be invited to participate in the ADM meeting.

(3) The appropriate PCX must be invited to participate in the ADM meeting.

d. Decision at the Agency Decision Milestone Meeting. At the ADM meeting, the decision-maker affirms the recommended plan and proposed way forward, acknowledging remaining uncertainties and the study and project risk management strategies that will be used in development of feasibility-level design and cost for inclusion in the final feasibility report. If the recommended plan and path forward is not endorsed, the decision-maker will identify required actions of the PDT and the study will not proceed into the feasibility-level analysis phase until the decision-maker endorses the recommended plan.

(1) The ADM marks the decision-maker's acknowledgement and acceptance of identified study and implementation risks and the strategies to manage those risks. To support the decision, the District Commander or Deputy District Engineer for Programs and Management along with the District Planning Chief will present the recommended plan.

(2) The presentation and discussion will focus on the recommended plan and a qualitative risk assessment of the key uncertainties and study and implementation risk associated with the recommended plan; the objective evaluation of the significant public, technical, policy and legal compliance comments; the PDT's plan to address or resolve significant comments; and the path forward to develop sufficient design and cost information on the recommended plan for the final feasibility report. If the recommended plan is an LPP, then design and costs must be prepared for both the LPP and the NED or NER Plan. The presentation and discussion will consider high or significant risks and uncertainties and management of those risks related to both the conduct of the study and the recommended plan.

e. Post-Meeting Activities. If the decision-maker supports moving ahead with the study, the PDT will develop sufficient cost for authorization purposes and design information on the recommended plan (and NED or NER Plan if the recommended plan is an LPP) and continue environmental and cultural compliance documentation and activities (NEPA, FWCA, ESA, NHPA, etc.) for the final feasibility report / NEPA document. If there are significant changes to the TSP presented in the draft feasibility report, the public review (NEPA) may need to be repeated. The final feasibility report / NEPA document will be completed, and all appropriate reviews completed and

documented, including DQC, ATR, and IEPR. The final policy and legal compliance review will be conducted after district transmittal of the final report package, whose contents are listed in Chapter 12, Table 12-1.

4–10. Transparency in Feasibility Studies.

The following requirements will be summarized in the executive summary and detailed more fully in the main report and corresponding appendices.

a. The study document will adequately describe and justify the models, analytical choices, assumptions, and data used. The report must assess how plausible adjustments to each key analytical choice variable and assumption affects the estimate of the economic results and the comparison of alternatives. The report will also explain the implications of the limitations in the data used.

b. For numerical analysis, the report must show the statistical variability of the key data elements underlying the estimates of the economic quantities and the resulting uncertainty in the estimated economic values. The report will display the variability and uncertainty with distributions and ranges.

c. Uncertain values must, at a minimum, be reported by reasonable upper and lower limit estimates. When quantitative data are available the five-number summary (minimum, first quartile, median, third quartile and maximum) values will be displayed and explained as necessary. Additionally, statistical confidence intervals will be shown. Likelihood statements about critical decision values, such as net NED benefits greater than zero, benefit-cost ratios greater than two, and the like, should be provided. Finally, the report must show the effects of this uncertainty on the comparison of alternatives.

d. Ensuring that these best practices for transparency are followed must be part of DQC, and each district must establish controls to ensure they are met. To ensure understanding, a narrative description must be provided that relays the combination of things that must happen to realize the upper end of the range of a decision criterion. Likewise, a description of the combination of things that must happen to realize the lower end of the range must be provided.

Chapter 5

Completion or Termination of Feasibility Studies

5–1. Objective.

This guidance applies to all feasibility studies, including studies to reformulate an already authorized project.

5–2. Completion of Feasibility Study.

The feasibility study is complete when the Chief's Report or Director's Report is signed.

a. Report of the Chief of Engineers. A Chief's Report is required for a plan recommending authorization of a water resources project, including additional authorization required if a significant change to an existing authorization is proposed.

b. Director of Civil Works Report. A Director's Report is required for recommending a modification to an existing authorization.

c. In terms of fiscal completion, closeout will be performed at the end of the feasibility phase, after the ASA(CW) transmits the Chief's Report or the Director's Report to Congress.

5–3. Active Feasibility Studies.

Active studies are defined as authorized studies that have received a federal allocation; have a commitment from ASA(CW) to support continued sequential federal study funding; have a NFI (if applicable) committed to funding their share; have federal interest; have reasonable prospects for a federal project; and are proceeding according to a vertical team aligned scope, schedule and budget as documented in the VTAM.

5–4. Study Approvals.

If the study meets any of the three criteria listed below, the final report will be approved at HQUSACE by the DCW. If the study does not meet any of the three criteria listed below, the final report will be approved at the MSC by the MSC Commander. This approval authority cannot be further delegated. See Table 4-1 for delegated milestone decision-making.

- a. The draft feasibility report / NEPA document has been released before 3 May 2018 (ref: Director's Policy Memorandum Civil Works Program 2018-05, Subject: Improving Efficiency and Effectiveness in USACE Civil Works Project Delivery (Planning Phase and Planning Activities)); or
- b. A policy exception from the ASA(CW) is required to complete the study, including ASA(CW) approval to exceed 3 years or \$3 million federal; or
- c. The vertical team makes a mutual recommendation based on the study complexity and risks.

5–5. Termination of Feasibility Studies.

When a District Commander, MSC, or HQUSACE determines that a feasibility study does not meet the definition of an active study, the study will be terminated, and the district will follow the termination notification process provided below. Once the decision is made to terminate a study, only limited funding to facilitate an orderly close out and termination is allowed. While the particular study effort is terminated, the underlying study authorization remains.

- a. Termination of Feasibility Studies initiated after 10 June 2014 (the date of enactment of WRRDA 2014). 33 USC 2282c provides that, to the extent practicable, a feasibility study will result in a completion of a final feasibility report within three years but provides further that the ASA(CW) may extend the timeframe. Districts should proceed with the termination process for any study not completed within the time frames approved by the ASA(CW). For example, if an exception to exceed three years was not granted by ASA(CW) upon request, and the study cannot be completed within that timeframe, the study should be terminated.
- b. Termination of Feasibility Studies initiated prior to 10 June 2014, to include Watershed Plans or Comprehensive Studies. A study will be terminated if the study has not received federal appropriations during the last two full FYs unless the NFI provides contributed funds to complete the study. The contributed funds must match a usable capability request.

5–6. Study Closeout.

Within 10 days of completion or termination, the district will initiate development of an estimate of current cost share balance, along with a study specific plan to accomplish fiscal closeout for approval. The district PDT will coordinate with the district Programs

office to perform final accounting to ensure final balance of the cost share is consistent with the cost sharing agreement with the sponsor. The MSC will initiate revocation of existing funds and adjustments to budget requests. All remaining funds will be returned to HQUSACE within 90 days of completing final accounting.

a. If a NFI and the District Commander agree to pursue a new feasibility study for a study effort that has been or should have been terminated, the study will compete as a new start, or new phase for a general reevaluation study, consistent with current budgetary guidance.

b. If the NFI and the District Commander agree to pause the work effort anytime during the study, the work effort must resume within 180 days of the date of the pause, or the study will be terminated immediately. A pause in the study should only be considered when there is a serious mitigating circumstance that can be quickly resolved. A pause of work does not extend the approved timeline of the study unless an extension is approved by the ASA(CW). The district will notify the RIT and HQUSACE Chief of Planning and Policy, through the MSC, in writing of the rationale and start date for the pause of work.

5–7. Termination Notification Process.

The District Commander will follow the procedures below to complete the feasibility process.

a. Termination Memo. The District Commander will sign the termination memo which will include reasons for termination of the study and summary of expenditures (non-federal and federal costs).

b. Internal Notification. The District Commander will notify the MSC, HQUSACE, and the OASA(CW) points of contact within two days of the termination memo being signed. The notification will include a copy of the termination memo. Internal notification must proceed notification of the NFI, congressional members, stakeholders, or issuance of a public notice.

c. Public Notification. Upon confirmation of internal notifications being completed, the District Commander will notify the NFI, congressional delegation, and appropriate stakeholders in writing within five days. The District Commander will issue any required public notices. The notice of termination will be posted on the district's external web page.

d. Federal Register Notice. A Federal Register notice will be published by the MSC Commander, consistent with the ASA(CW) Federal Register delegation memorandum, Signature of Federal Register Documents for the U.S. Army Corps of Engineers, dated November 2, 2020, within 30 days of receiving written notification of study termination from the District Commander terminating the EIS and withdrawing the Notice of Intent to prepare an EIS, if an EIS was being prepared.

e. Final Termination Package. Within 30 days of the signing of the termination memo, the District Commander will submit to the MSC Commander and the RIT a final termination package. The final termination transmittal package must include:

- (1) District termination memo.
- (2) Documentation of public notice and Federal Register notice (if applicable).
- (3) Copy of signed, dated letters of notification that were sent to the NFI, congressional members, and any stakeholders.

5–8. Additional Reporting Requirements.

Each RIT will provide, by August 5 of each year, the status of all its feasibility studies to HQUSACE Planning and Policy Division, as required by 33 U.S.C. §2282. HQUSACE Planning and Policy Division will compile and provide a comprehensive status list, including studies recommending no further federal action, to the ASA(CW) by 30 August each year for submittal to the Committee on Environment and Public Works of the Senate and Committee on Transportation and Infrastructure of the House of Representatives.

Chapter 6

Post-Authorization Studies

6–1. Modification of Existing Authorizations.

Decision documents recommending modification of existing project authorizations other than raising the cost limit established by Section 902 of WRDA 1986 or projects that lack delegated approval authority will follow the review and approval procedures outlined in ER 1165-2-502, Delegation of Review and Approval Authority for Post-Authorization Decision Documents. The MSC will forward the final report which will incorporate existing, tiered, or supplemental NEPA documentation as appropriate, with the peer review and legal review certifications, to the RIT for submittal to ASA(CW) for review and coordination with OMB as appropriate for submission to Congress. Refer to EP 1105-2-62, Planning Studies, Reports and Program, Chapter 4 for more details on types of post-authorization studies and reports.

6–2. Projects Authorized Without a Report.

Decision documents for projects or project modifications authorized without the benefit of the ASA(CW)-approved feasibility-level report and without contingent actions will use the same review and approval process described for feasibility reports, except that a Chief's Report and State and Agency Review will generally not be necessary. A Director's Report is required. The final report submittal package requirements in Table 12-1 will apply.

6–3. Projects Authorized Contingent upon Completion of a Chief of Engineers Report.

The requirements described in this EP apply to reports for projects or project modifications authorized subject to the completion of a Chief of Engineers Report, except that the transmittal letters, Report Summary, Chief's Report, and briefing slides will describe the contingent authorization language. The final report submittal package requirements in Table 12-1 will apply.

6–4. Projects Authorized Subject to a Determination by the ASA(CW) Acting on Behalf of the Secretary of the Army.

The requirements previously described in this EP apply to reports for projects or project modifications authorized subject to a determination by the Secretary, except that a Chief's Report and State and Agency Review will generally not be necessary. A Director's Report will recommend and forward the final report to the ASA(CW). The final report submittal package requirements in Table 12-1 will apply.

6–5. Delegated Post-Authorization Decision Document Approval Authorities.

ER 1165-2-502 provides guidance on the delegated review and approval of post-authorization decision documents. The submittal of MSC approved documents to the RIT for budget clearance should comply with the annual budget guidance and include a copy of the decision document checklist described in ER 1165-2-502. Submittal requirements to support project partnership agreement actions are addressed in ER 1165-2-131, Local Cooperation Agreements for New Start Construction Projects.

Chapter 7

Studies of Water Resources Development Projects by Non-Federal Interests

7–1. Section 203 of the Water Resources Development Act of 1986, as amended.

Section 203 of WRDA of 1986, as amended (33 USC §2231), authorizes NFIs to undertake federally authorized feasibility studies of proposed water resources development projects or, in certain cases, feasibility studies of modifications to a water resources development project constructed by USACE. Under Section 203, the NFI submits its feasibility study to the ASA(CW), who provides an assessment of the NFI feasibility study, as well as any recommendations that the ASA(CW) may have concerning the plan or design of the project and any conditions that the ASA(CW) may have for construction of the project, to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives (authorization committees). See ER 1165-2-209, Studies of Water Resources Development Project by Non-federal Interests, for more information.

7–2. Technical Assistance and Review.

Section 203 authorizes the Secretary, if requested by the NFI, to provide technical assistance related to any aspect of a feasibility study if the NFI pays all costs of providing such assistance. Section 203 also authorizes the Secretary to accept funds provided by the NFI to undertake reviews, inspections, certifications, and other activities that are the responsibility of the Secretary, including activities to comply with federal environmental laws and regulations.

7–3. Procedures.

For general study requirements, report processing requirements, and information on acceptance of funds by the NFI for technical assistance or to undertake reviews, inspections, certifications, and other activities, refer to ER 1165-2-209.

Chapter 8

Planning Activities During Design

8–1. Background.

In general, the Preconstruction Engineering and Design (PED) phase is the phase during which the project design is finalized, the project's plans and specifications are prepared, any tiered or supplemental environmental compliance is completed, and construction contracts are prepared for advertising. The PED phase also includes any document or work product prepared for the purpose of implementing a project in line with its authorization such as the Operations and Maintenance Manual and detailed

engineering reports. This phase of project development requires the review of the earlier study data, obtaining current data, evaluating any changed conditions, establishing the most suitable plan for accomplishing the improvement and establishing the basic design of the project features in final detail. Some environmental compliance and other planning activities performed as part of a study may continue in the design phase.

8–2. Preconstruction Engineering and Design.

The Investigations account is used to fund PED work leading up to development of plans and specifications for the first significant construction contract. The basic scope of a project is established in the decision document if PED begins after the feasibility phase and the project has not been authorized, or in the specific project authorization and, if necessary, reaffirmed in a subsequent design memorandum or other post-authorization report. Environmental compliance, engineering decisions, or analyses deferred to PED may require additional ATR. PED can start once the ASA(CW) reviews the completed feasibility report and determines the project is justified. PED begins with the issuance of PED funds. For guidance related to PED funding and budget development, refer to the annual Civil Works Direct Program Development Policy Guidance.

8–3. Deviations from Planning Documents.

Continuous participation of key members of the feasibility study PDT is required so that all project features are designed consistent with the authorized project. If there are deviations from the authorized project, continued coordination and collaboration with the PDT is required to appropriately analyze and mitigate (if needed) those deviations. The feasibility study report, environmental compliance documents, including ROD or FONSI, and the NHPA Section 106 project Programmatic Agreement or MOA, if applicable, need to be reviewed to incorporate any required conditions or best management practices into the design.

a. Coordination with the PDT to evaluate if deviations are a minor or significant deviation from the authorized project, for example, but not limited to:

(1) Ecological considerations, including actions to preserve critical habitats of fish and wildlife; accomplish sedimentation and erosion control; maintain water quality; regulate streamflow, runoff, and groundwater supplies; and avoid or mitigate actions whose effect would be to reduce scarce biota, ecosystems, or basic resources. In developing individual project features, consideration is given to the needs for architectural design, land treatment, or other resource conservation measures.

(2) Developing measures for realizing the full scenic potential of the project feature as it affects the overall project. This is accomplished by providing for cover reforestation, erosion control, landscape planting, management of vegetation, healing of construction scars, prevention of despoilment, and other related activities for all project lands.

(3) Continued historic properties investigations to fulfill agreements made during feasibility are likely and may include, but would not be limited to, archaeological investigations along feature alignments, equipment staging areas, and other locations; architectural surveys of structures and buildings slated for non-structural flood-proofing and other features; other surveys and documentation of historic properties; and

continued consultation and coordination with relevant SHPOs, Tribes and signatories, and consulting parties as applicable. Changes during design and construction may also result in the amendment of existing agreements.

b. Minor Deviations. Any changes from these documents need to be assessed to determine if supplemental environmental compliance is required or changes to the approved mitigation plan, real estate plan, or other pertinent documents are necessary.

c. Significant Deviations. If the deviations are significant from the authorized project, the PDT may need to prepare a post authorization change report for additional authorization.

Chapter 9

Overview of Planning Reviews

9–1. Types of Reviews.

There are generally three major types of reviews that will occur during the development of the decision document: technical review, legal review, and policy review. USACE review processes are essential to confirming the planning analyses, validating the design, and ensuring project safety, reliability, and quality of the decisions and products USACE provides to the Nation. Reviews determine the appropriateness of the problems and opportunities addressed, the plans considered, and the solution recommended. Analyses and recommendations must be consistent with policy, laws, and statutes, result in a recommended solution that warrants federal participation, and be supported by an NFI(s) that is willing and able to fulfill the non-federal responsibilities of project implementation.

a. Reviews are conducted within USACE at the local, regional, and national level and by experts outside of USACE. The success of the review process is often judged by how well these reviews complement each other and how efficiently these reviews can be completed. (See ER 1165-2-217 Civil Works Review Policy.)

b. DQC is the backbone of the USACE quality process. It is an internal review process of basic science and engineering work products focused on fulfilling the project quality requirements defined in the PMP.

(1) All work products and reports, evaluations, and assessments must undergo necessary and appropriate DQC. The assigned district will manage DQC and appoint a DQC lead.

(2) Documentation of DQC activities is required and must be consistent with the quality manual of the district and the responsible MSC; product issues identified via DQC must be resolved prior to ATR and IEPR. The DQC of products and reports must also cover the necessary NEPA documentation (EA or EIS) and other environmental compliance products and any in-kind services provided by the NFI.

c. Technical reviews are the most extensive and diverse of the three major types of reviews. They are a means of checks and balances that include peer reviews and public reviews, reviews conducted internal to USACE, and reviews conducted by external experts. Technical review focuses on the methodology and analysis of results specific to particular professional areas of expertise. Internal to USACE, these reviews consist of DQC and ATR. External to USACE, these reviews include three statutorily directed reviews: IEPR required by WRDA 2007 (33 USC 2343), public reviews required by

NEPA, and State and Agency Review required by the 1944 Flood Control Act (33 USC 701-1).

(1) ATR is mandatory for all draft and final decision and implementation documents. ATR is undertaken to ensure the quality and credibility of the government's scientific information used to support the decision-making process in the development of the study. ATR will be conducted by a qualified team of senior, highly experienced experts in the type of work being reviewed. ATR reviewers will be from outside of the home district, and not involved in the day-to-day production of the study. The use of Community of Practice certified or approved reviewers for ATR is mandatory.

(a) The level of ATR will be commensurate with the significance of the information being reviewed and conducted in a risk-informed manner. ATR will also cover any necessary environmental compliance products including NEPA documents and any in-kind services provided by the NFI. ATR may be conducted on discrete analyses or evaluations and does not have to wait until a draft or final report is completed. ATR may be required during PED if engineering decisions or technical analyses were deferred to PED.

(b) For high-risk tasks, focused ATR provides an opportunity to review the analyses by the appropriate ATR member before incorporating the results in the alternative evaluation and comparison.

(2) IEPR is the most independent level of review and is applied in cases that meet certain criteria where the remaining risk and magnitude of the proposed project are such that a critical examination by a qualified team outside of USACE is warranted.

d. Legal review begins at the start of the study process so that issues are identified and addressed promptly, with elevation to higher authority consistent with HQUSACE Office of Counsel procedures. Legal authorities empower and set the stage for plan formulation, and legal requirements establish the constraints in which plan formulation, as well as the study process itself, must evolve. These reviews, therefore, ensure the compliance of the investigations, reports, and recommendations with laws that govern the development of water resources solutions, including environmental laws such as NEPA; project specific and general provisions from WRDAs, River and Harbor Acts, and/or Flood Control Acts; and adherence to study resolutions, among others. PDTs must seek legal counsel during project development.

(1) Legal sufficiency by district Counsel is required prior to release of the draft decision document for public review, and district legal review must continue as the final report is developed, with specific focus on changes in the decision document. All final decision documents must be legally certified by the district. The MSC or HQUSACE Office of Counsel also performs legal review during the policy and legal compliance review of the draft and final reports.

(2) Final legal compliance review for purposes of issuing a Chief's Report or a Director's Report is performed by HQUSACE Office of Counsel. Where approval authority for a decision document is delegated to the MSC, MSC Counsel has direct responsibility for the delivery of legal services to the decision-maker. Where approval authority remains at HQUSACE (such as for issuing a Chief's Report or Director's Report), HQUSACE Counsel has direct responsibility for the delivery of legal services to the decision-maker. In all cases, vertical counsel coordination must occur on legal

issues and other issues with legal implications from the start of the scoping process through all iterations to final project delivery to assure an aligned agency legal position.

e. Policy reviews verify compliance of the investigations, reports, and recommendations with prevailing policies that were developed in response to laws, E.O.s, and other directives governing the development of water resources solutions. Policy review involves the analysis of decision factors and assumptions used to determine the extent and nature of federal interest, project cost sharing and cooperation requirements, and related issues. It ensures that established policy and procedures are applied uniformly nationwide and identifies policy issues that must be resolved in the absence of established criteria, guidance, regulations, laws, codes, principles, and procedures or where judgment plays a substantial role in decision making.

(1) Policy compliance review also confirms that the proposed action is consistent with the overall goals and objectives of the Civil Works Program. The policy review team is engaged throughout project development to identify potential policy conflicts, to address conflicts when they can be most efficiently and effectively addressed, and to ensure that the ultimate recommendations of the reporting officers are policy compliant so that they can be supported by the ASA(CW). Every draft and final report receives a policy review.

(2) The MSC or HQUSACE Office of Counsel also performs its legal review in conjunction with this policy review, as a member of the policy and legal compliance review team. Additional information on policy and legal compliance review is provided in Chapter 11.

9–2. Timing of Reviews.

The USACE planning process includes specific points for conducting technical, legal, and policy reviews, in addition to comprehensive DQC. At the TSP milestone, the decision-maker endorses a TSP, the proposed way forward, and the release of the draft report and draft environmental compliance documentation for concurrent public, technical, policy and legal compliance review, and IEPR (if applicable). The final report will undergo DQC and ATR prior to submitting the final report package signed by the District Commander for policy and legal compliance review.

9–3. Review Plan.

The review plan is a living document updated by the PDT throughout the study process and approved by the MSC Commander. The review plan will be developed and implemented following current Civil Works Review guidance (ER 1165-2-217). The PMP must include the review plan and the appropriate scope and level of reviews scheduled and funded according to the review plan. The development of the review plan is the responsibility of the project manager of the PDT, in concert with the Review Management Organization.

a. The review plan encompasses all appropriate types of review, including DQC, technical review (ATR and IEPR), and policy and legal compliance review. For each type of review, the review team and scope must be documented in the review plan.

b. The MSC Chief of Planning and Policy will notify the district of the policy and legal compliance review team for the study so the roster can be identified in the review plan.

c. The draft review plan will be completed and made available within thirty (30) days following study initiation to inform the effort leading to the Alternatives Milestone.

Chapter 10

Review Roles and Responsibilities

10–1. Coordination Within the Vertical Team.

Open, proactive, and positive communication enables early identification and resolution of concerns so delays may be avoided or minimized. This requires early and continuous involvement by the entire vertical team, which is comprised of key personnel from the OASA(CW), HQUSACE, the geographic MSC, and the district performing the study. Vertical teams are encouraged to communicate frequently with well-focused meetings to ensure vertical team engagement and alignment on key decisions for the feasibility. In addition to regular communication, the vertical team will participate in the three feasibility study decision milestones meetings (described in Chapter 4): the AMM, the TSP Milestone, and the ADM.

10–2. Study and Report Quality Responsibilities.

a. District Commanders are responsible for obtaining documented technical review, policy and legal compliance review, and for assuring that all public safety aspects of the project's functions have been fully considered and communicated to stakeholders.

b. District Commanders are responsible for the preparation of decision documents and will ensure that decision documents are prepared with full multidisciplinary involvement consistent with the Project Delivery Business Process (see ER 5-1-11, USACE Business Process). It is critical that all policy and legal issues are identified, addressed, and resolved by the vertical team as early as possible during the development of the decision document. Each PDT must include district personnel that are knowledgeable of Civil Works policies and procedures.

c. The district and MSC Planning leaders are responsible for documenting DQC and QA, respectively, for ensuring the resolution of all public safety issues of the project's functions with the district and MSC Dam Safety Officers or Levee Safety Officers, and for ensuring the resolution of all policy, legal, and technical issues.

10–3. Districts.

Districts are responsible for producing quality planning decision documents through active and continuous engagement of the vertical team and for identifying in coordination with the vertical team any known and potential technical, legal, or policy-sensitive issues as early as possible. Districts are responsible for developing documents consistent with the procedures and policies set forth in all USACE ERs and ECs or other official applicable guidance. District representation on the vertical team includes district leadership, for example Section, Branch, and Division Chiefs, the District Commander and Deputies, etc. Districts will assign focused teams as well as the appropriate technical disciplines to the PDT and the DQC team. Both the PDT and DQC team must include counsel. PDT and DQC team members may be selected from outside of the district.

a. DQC teams can be comprised of representatives of district leadership or other qualified personnel such as senior expert positions and regional technical specialists.

The DQC team can help ensure concerns and advice from the vertical team is understood by the PDT.

b. District Commanders are responsible for ensuring the quality of their decision documents and fully documenting quality control actions, including technical, policy and legal compliance. Ultimate accountability for a quality product lies with the District Commander.

10–4. Major Subordinate Commands.

MSCs perform QA, provide oversight for policy and legal compliance review when delegated, and are responsible for vertical and horizontal coordination consistent with ER 5-1-11, USACE Business Process. QA is a process review, not a product review. Each MSC will establish and enforce a QA program that ensures that projects are developed properly and that quality and complete decision documents are prepared consistent with technical, policy, and legal requirements. QA will be achieved through early, continuous involvement in the process and support of PDTs by MSC staff. The MSC's QA responsibility includes an assessment of the capabilities and needs of the PDT and the DQC team and ensuring that adequate and capable resources are assigned to both teams.

a. The MSC Planning and Policy Chiefs are responsible for documenting QA by performing audits annually of district processes and ability to carry out delegated tasks. QA standard operating procedures may include the following questions: Are the right reviews planned (what is the status of the review plan)? Are the right people assigned to the PDT and DQC teams? Is training needed?

b. MSC Commanders are responsible for ensuring and documenting technical, policy, and legal compliance for decision documents that have been delegated to MSCs for review and approval.

c. The MSC Commander is responsible for providing the VTAM (Chapter 4) and updating it if there are any changes to study scope, schedule, or funding stream. The budget support summary will serve as the required support documentation for funding requests such as budget, work plan, and reprogramming.

10–5. Planning Centers of Expertise.

HQUSACE has designated several national PCXs and identified their roles in support of plan formulation and complex technical evaluations. PCXs provide specialized planning skills and knowledge to enhance and supplement the capabilities of the districts. The PCXs provide a critical role in coordinating ATR and the IEPR of decision documents (see ER 1165-2-217, Civil Works Review Policy), and in the approval for use and certification of planning models. When acting in the role of Review Management Organization, PCXs assess the quality of DQC during ATR through the review and summary of significant findings. The PCXs also develop and continuously update standard operating procedure documents and other tools to promote consistency and the use of best practices in technical reviews.

10–6. USACE Headquarters.

HQUSACE is responsible for enforcing technical, policy, and legal compliance requirements for projects developed for consideration by Washington-level decision-

makers, generally the DCW, Chief of Engineers, or the ASA(CW). Key HQUSACE roles include:

a. Regional Integration Teams (RITs). RITs provide a single point of contact at the HQUSACE level for the MSCs and districts, both internal and external stakeholders for the USACE, and serve as the MSC's representative resolving issues at the HQUSACE level. RITs coordinate directly with the MSC to resolve issues and respond to regional concerns and issues at the Washington-level. Each RIT is responsible for the various actions necessary to process decision documents to the appropriate decision-maker, usually the DCW, Chief of Engineers, or the ASA(CW). This includes advising the field on Washington-level processes and the status of actions in Washington, facilitating the resolution of policy and planning issues, consulting with the field, coordinating ASA(CW) participation in in-progress review meetings and issue resolution conferences, and checking district and MSC submittals for completeness.

b. Office of Water Project Review. OWPR is responsible for providing policy and legal compliance review team members for review of project and program documents; the policy and legal compliance review team may also be comprised of team members from other HQUSACE functional elements (for example Engineering, Office of Counsel, and Real Estate), MSCs, and PCXs. HQUSACE provides support for policy compliance reviews for certain decision documents for projects requiring new authorization or modification of existing authorizations, and other decision documents that MSCs cannot approve under delegated authority (see ER 1165-2-502, Delegation of Review and Approval Authority for Post-Authorization Decision Documents).

10–7. Office of Assistant Secretary of the Army for Civil Works.

The ASA(CW) is responsible for establishing policy direction and providing supervision of the Department of Army functions relating to all aspects of the USACE Civil Works Program. OASA(CW) plays an integral role on the vertical team and actively contributes to the decision-making process guiding federal investments. The OASA(CW) is responsible for coordination of Civil Works efforts, to include actions that will be decided at the ASA(CW), OMB, and Congress.

Chapter 11

Policy and Legal Compliance Review

11–1. Objective.

The intent of policy and legal compliance review is to identify and resolve policy issues early and to clarify existing policies and procedures so that projects are developed appropriately, and final reports are approved or cleared in a timely manner by HQUSACE, ASA(CW), and OMB as needed. The objectives of policy compliance review are to:

a. Confirm that the appropriate water resource problems and opportunities are being addressed consistent with the study authority;

b. Confirm that the recommended solution warrants USACE participation; is appropriately cost shared; consistent with current policies; can be implemented consistently with applicable law and regulation, including but not limited to environmental requirements; and has a NFI willing and able to fulfill the non-federal responsibilities; and

c. Appropriately represents the views of the USACE, the Army, and the President. This review process is critical to achieve corporate agreement at all levels in the Administration on the recommended project.

11–2. Policy and Legal Compliance Review Team.

A single team of policy and legal experts will provide advice and support to PDTs and decision-makers at the district, MSC, HQUSACE, and ASA(CW) levels. The policy and legal compliance review team is drawn from HQUSACE, MSC, PCX, and other review resources as needed to take full advantage of the enterprise's breadth of experience and to enhance knowledge management.

a. Team Identification. At the start of each study, and as needed throughout study execution, the MSC Chief of Planning and Policy and the HQUSACE Chief of OWPR will ask the MSC and HQUSACE functional chiefs/leaders to collaborate to identify the policy and legal compliance review team representatives for their functional area.

(1) The identification of Counsel members of the policy and legal compliance review team will follow the procedures set forth by the USACE Chief Counsel, as coordinated by the HQUSACE and MSC Counsel functional leaders. Except for Counsel resources, if adequate or capable resources are not available within the MSC or HQUSACE, the HQ functional lead may coordinate with other MSCs, PCXs or other review resources for assistance.

(2) A specific number of MSC or HQUSACE representatives on the policy and legal compliance review team will not be mandated. All policy and legal compliance review teams are expected to be capable regardless of the team members' duty stations.

(3) For new start feasibility studies, review team members should generally be identified prior to the signing of the FCSA or within thirty (30) days of receipt of funds for studies that do not have a FCSA. Once the policy and legal compliance review team has been identified, the MSC Chief of Planning and Policy will notify the district so that members of the team can be identified in the review plan.

b. Policy and Legal Compliance Review Manager. The MSC Chief of Planning and Policy and the Chief of OWPR will collaborate to identify and endorse a policy and legal compliance review manager for each study that will lead the team and serve as the team's point of contact for issues and concerns regarding the status and content of the review. However, the Chief of OWPR will have the ultimate decision as to the selection of the team's review manager.

(1) The review manager will serve the project through study completion, including the Administration's endorsement of a signed Chief's Report or Director's Report to the Congress. The review manager may be an MSC, PCX, or HQUSACE employee and preferably will come from outside the MSC that has oversight of the study, if the review manager is an MSC employee.

(2) It is highly recommended that the review manager be selected from among the members of the policy and legal compliance review team; in rare instances where the review manager comes from outside the assigned reviewers, they must still be a fully qualified review manager reviewer and also review the report themselves to ensure they have the appropriate context for performing review manager duties such as facilitating policy issue resolution and preparing the PGM and Documentation of Review Findings (DoRF). The review manager will be documented in the review plan.

c. Team Funding. Reviewers will typically be funded from General Expense funds. There may be opportunities to use other sources of funding, including training funds if appropriate. Under no circumstances will project funding be used to fund the policy and legal compliance review team.

d. OWPR Policy Advisor. If the policy and legal compliance review team does not include any reviewers from the HQUSACE OWPR, the Chief of OWPR will assign an OWPR team lead to serve as a policy advisor to the policy and legal compliance review team and decision-makers. The policy advisor's responsibilities do not include providing formal review comments on decision documents. The policy advisor counsels the decision-makers and policy and legal compliance review team, helps ensure national consistency in policy compliance, and provides HQUSACE situational awareness for the development of the report of the DCW or the Chief of Engineers.

11-3. Policy and Legal Compliance Review Team Responsibility.

The responsibility of the policy and legal compliance review team is to help guide the PDTs through project development and the completion of policy and legally compliant documents, identifying policy and legal issues as early as possible so that such issues can be addressed while minimizing impacts to study and project costs and schedules. In addition, the policy and legal compliance review team:

a. Engages both the MSC and HQUSACE levels, ensuring that the vertical teaming aspect of risk-informed planning is maintained, even if none of the policy and legal compliance review team members are from HQUSACE. Functional leaders at the MSC and HQUSACE levels will be appropriately engaged to support the policy and legal compliance review teams, for example through recurring meetings between HQUSACE and MSC functional leaders to discuss the status of functional work, policy issues;

b. Provides impartial and unbiased recommendations, advice, and support to decision-makers. Policy and legal compliance review teams work independently of and are uninfluenced by the district, MSC and HQUSACE command structure, providing unfiltered and unedited views on policy and legal compliance concerns;

c. Participates in issue resolution conferences, in-progress reviews, and other efforts to resolve outstanding issues. The policy and legal compliance review team, under the lead of the review manager and with input from the district, is responsible for documenting the resolution of draft report and final report policy and legal compliance review issues via the PGM, and ultimately, the DoRF; and

d. Upon completion of the final decision document, the policy and legal compliance review manager is responsible for drafting and finalizing the Chief's Report or the Director's Report and finalizing the Agency Responses to IEPR (if applicable), with the support of the policy and legal compliance review team, RIT, and PDT.

11-4. Team Oversight.

The MSC Chief of Planning and Policy and/or the HQUSACE Chief of OWPR provide direction to the policy and legal compliance review team on the timing and duration of reviews, as well as the resolution of review comments and issues that cannot be addressed by the team or the review manager.

a. For milestones or feasibility reports where the approval level is the MSC, the policy and legal compliance review team will work under the general oversight of the

MSC Chief of Planning and Policy until the final report is submitted to HQUSACE. Any changes to standard policy and legal compliance review report review times (either lengthening or shortening the period) must be made in consultation with the Chief of OWPR for delegated studies and through the Chief of OWPR for non-delegated studies. Oversight by the Chief of OWPR may overlap with the oversight by the MSC Chief of Planning and Policy if the State and Agency Review of the proposed Chief's Report and final environmental compliance to include NEPA review are initiated prior to MSC Commander approval of delegated feasibility reports.

b. For milestones or feasibility reports where the approval level is HQUSACE, the policy and legal compliance review team will work under the general oversight of the HQUSACE Chief of OWPR.

c. Regardless of the level of report approval authority, the HQUSACE oversight role is critical since the USACE Chief of OWPR is responsible for the Chief's Report or the Director's Report.

Chapter 12

District Transmittal of Final Report Package for Final Policy Review

12-1. Objective.

The District Commander provides the feasibility report and other required components of the final report package for final policy review. The final report submittal package includes the items listed in Table 12-1.

Table 12-2

Final Report Submittal Package

- District Commander's Signed Transmittal Letter
- NFI's signed letter indicating support for the recommended plan
- NFI's Self-Certification of Financial Capability for Design Documents
- Report summary
- Final report with EIS or EA and appendices, signed by District Commander
- Unsigned draft ROD or draft FONSI
- Cost Certification and Total Project Cost Summary
- Project Briefing Slides for ASA(CW)/OMB
- Project "Placemat" briefing document, including a map of the study area
- Documentation and certification of DQC, ATR and, if applicable, IEPR
- Draft agency response to IEPR (if applicable) or approved IEPR Exclusion
- Section 106 NHPA Letter of no historic properties affected/no adverse effect, or MOA/Programmatic Agreement executed by district and SHPO/THPO, with ACHP, Tribes, and other signatories as required.
- District Legal Review Certification
- Signed Project Study Issue Checklist
- PGM

12–2. Policy and Legal Compliance Review of the Final Feasibility Report.

When the decision-making authority resides at HQUSACE, final feasibility report packages will be transmitted from the district to the RIT without an intervening review beyond that outlined in the review plan. When the decision-making authority resides with the MSC, the district will provide the report to the appropriate MSC point of contact who will coordinate with the policy and legal compliance review team. The policy and legal compliance review team will conduct the final policy compliance review and the policy and legal compliance review manager will prepare the PGM. The PGM will be signed by the MSC Chief of Planning and Policy for delegated studies and an OWPR team leader for reports approved at HQUSACE. For studies where the decision-making authority resides with the MSC, the MSC Commander will submit a report or memorandum to HQUSACE documenting their approval of the report.

12–3. Documentation of Review Findings.

The DoRF summarizes the reviews conducted on the feasibility report and includes the final PGM as an enclosure. The policy and legal compliance review manager will prepare the DoRF for signature by the Chief of OWPR. The DoRF for post-authorization change reports leading to a Director's Report will be prepared upon receipt of the MSC Commander's approval memorandum. The DoRF for feasibility reports leading to a Chief's Report will be prepared following the completion of the State and Agency Review and final environmental compliance to include NEPA reviews. The DoRF will be formally transmitted to the appropriate RIT Deputy with copy furnished to the policy and legal compliance review team, prior to the signing of the Chief's Report or Director's Report. The DoRF will be provided to Washington-level decision-makers including the DCW, Chief of Engineers, and ASA(CW) to inform the consideration of the proposed Chief's Report or Director's Report.

Chapter 13

State and Agency and Final National Environmental Policy Act Review Process

13–1. Objective.

The purpose of this chapter is to clarify procedures associated with the State and Agency Review and final environmental compliance processes, to include NEPA review. These reviews are HQUSACE-led processes, with assistance from the district.

a. **State and Agency Review.** The State and Agency Review is required by the Flood Control Act of 1944, as amended (33 USC 701-1). USACE is required to transmit a copy of the proposed Chief's Report to the Governor of each affected state. If the recommended plan is concerned with the use or control of waters which rise in whole or in part west of the ninety-seventh meridian, USACE is also required to transmit a copy of the proposed Chief's Report to the Secretary of the Interior. The proposed Chief's Report is accompanied by the District Commander's final report and NEPA document and should be posted on the district's website.

b. **National Environmental Policy Act Review.** NEPA EIS mailing is separate from State and Agency Review mailing. For those projects including an EIS, the district will electronically file the draft and final EIS with the USEPA for review concurrent with the State and Agency Review. The district and RIT will provide notification to the policy and legal compliance review manager and OWPR Environmental Team Lead of the

published date of the Notice of Availability of the final feasibility report / EIS in the Federal Register.

(1) Final EISs should be provided for review only. There is no mandatory public comment period for a final EIS. A Notice of Availability for the final EIS will be published in the Federal Register after consideration and resolution of any internal or agency comments received from the State and Agency Review .

(2) Public comments will not be solicited except in extraordinary circumstances as part of the Notice of Availability of the final EIS. Any request to solicit public comments on a final EIS must be submitted for approval by the ASA(CW).

13–2. Approval for Release for State and Agency Review and Final National Environmental Policy Act Review.

a. The policy and legal compliance review manager and RIT will coordinate with the PDT to determine the state and federal agencies that will receive the proposed Chief's Report and accompanying final feasibility report and NEPA document. Transmittal letters will generally identify the policy and legal compliance review manager as the agency POC and be drafted for signature by the Chief of OWPR.

b. The Chief of OWPR will approve the release of the proposed Chief's Report and the accompanying final decision and NEPA documents, unless specified otherwise by the HQUSACE Chief of Planning and Policy. The RIT will schedule a briefing for the Chief of OWPR to get approval for release. Prior to the briefing, the Chief of OWPR will be provided a draft of the proposed Chief's Report that has been drafted by the policy and legal compliance review manager and reviewed and concurred with by the policy and legal compliance review team. If the Chief of OWPR identifies additional work or clarifications that are needed, the review manager will address the concerns and make any necessary changes to the report and submittal materials, coordinating with the policy and legal compliance review team, RIT, and PDT as needed. The State and Agency Review will not be initiated until the review manager concurs that the Chief of OWPR's requirements have been met. At that time, the Chief of OWPR will sign the transmittal letters electronically.

13–3. State and Agency Review.

Once the proposed Chief's Report is approved for release and the letters are signed, they will be provided by email to the pertinent agencies. Per the 1944 Flood Control Act, the State and Agency Review lasts for thirty (30) calendar days. The policy and legal compliance review manager, environmental reviewer, and Office of Counsel reviewer will evaluate letters sent in response to the review to determine if responses or document revisions are required. The district may be asked to provide draft response letters in support of these reviews. The HQUSACE Chief of Planning and Policy will sign letters to the Governors of affected states and the Chief of OWPR will sign the remainder of the responses.

a. Should public comments be received in response to the Notice of Availability of the final EIS, then after State and Agency Review, USACE will include such comments as part of the Administrative Record and will provide the decision-maker with copies of the comments and a summary of any substantive comments received regarding the final EIS and how they were addressed.

b. A final decision of approval of the FONSI until thirty (30) days after the final EA is approved by the decision-maker or in the case of a ROD, no earlier than thirty (30) days after the Notice of Availability of a final EIS was published in the Federal Register. No actions implementing the recommended plan can be taken prior to signing the ROD. See Table 15-1 for signature authority for RODs and FONSI.

13–4. Signature of Record of Decision / Finding of No Significant Impact.

The ASA(CW) retains authority for signature of the ROD or FONSI unless delegated. For projects that do not require additional Congressional authorization, the DCW or MSC Commander will generally sign the FONSI or ROD. Specific questions about signature authority should be coordinated through the RIT. (Table 13-1)

a. The ASA(CW) normally signs the ROD after the Chief's or Director's Report has been approved and delegates the FONSI to be signed by the MSC or District Commander, however this decision would be made by the ASA(CW) at that time. ASA retains approval authority for any action that will result in a recommendation for congressional action.

b. For projects requiring congressional authorization, the ASA(CW) may sign the FONSI or ROD with any modifications that may be needed and will transmit the Chief's Report, State and Agency Review letters, decision document (final report), and final EA/EIS to Congress. The district will then notify the NFI, state(s), interested agencies and other parties of the signed Chief's Report and ROD or FONSI.

c. For projects that do not require additional authorization, the DCW will sign the FONSI or ROD and forward a copy to ASA(CW) to include in the transmittal to Congress for notification.

Table 13-3
ROD/FONSI Signature Level

Type of Report	ROD/FONSI Signature
Chief's Report (Congressional Authorization needed)	ASA(CW)
Director's Report, 902 Report (Congressional Authorization needed)	ASA(CW)
Director's memo (No Congressional Authorization needed)	DCW
Delegated approval reports (No Congressional Authorization needed)	MSC Commander

Chapter 14

Finalizing and Processing the Chief's and Director's Reports

14–1. Finalizing the Chief's Report.

The policy and legal compliance review manager, working with the RIT, policy and legal compliance review team, and PDT, edits and finalizes the Chief's Report, incorporating any changes from the State and Agency Review and final NEPA review. The review manager will provide copies of the Chief's Report, DoRF, draft FONSI/ROD, and agency responses to IEPR (if applicable) to the policy and legal compliance review team for final review. Once completed, the DoRF and transmittal memorandum will be

forwarded to the Chief of OWPR for signature and transmittal to the RIT. The RIT Planner will incorporate the documents into the Chief's Report package.

14–2. Finalizing the Director's Report.

The process for development is similar to development of a Chief's Report except for a few differences. A Director's Report does not require State and Agency Review. Once the policy and legal compliance review team has confirmed that the final report is policy and legally compliant and review of the Final EIS is completed (if applicable), the policy and legal compliance review manager will provide the RIT copies of the Director's Report, DoRF (approved and signed by the Chief, OWPR), unsigned FONSI/ROD, and agency responses to IEPR (if applicable). Similar to the Chief's Report package, the above documents will be provided to the policy and legal compliance review team for review and input prior to being provided to the RIT. The RIT will compile the Director's Report package for staffing. The policy and legal compliance review manager and policy and legal compliance review team may be asked to participate in the briefing to the DCW.

14–3. Transmittal of Signed Chief's Report or Director's Report/Memorandum to ASA(CW).

The feasibility study is complete with the signature of the Chief's Report or Director's Report. The Chief of OWPR will certify policy compliance after completion of comment letters received during State and Agency Review and final environmental compliance reviews. The HQUSACE team will finalize the Chief's Report for the Chief's review and action. The HQUSACE team will also finalize the ROD or FONSI for review and action by the ASA(CW).

a. After the Chief's Report or Director's Report has been signed, notification letters forwarding the Report to the chairpersons of the Senate Committee on Environment and Public Works and the House of Representatives Committee on Transportation and Infrastructure, and notification letters to Members of Congress representing the project area are prepared and delivered. A Director's Memorandum does not require transmittal to Congress.

b. The RIT assembles a package for the DCW to submit to the ASA(CW) that includes the signed Chief's Report, Director's Report or Director's Memorandum, the final feasibility report and final EIS, the body of draft letters transmitting the report to OMB and Congress (if applicable) under the ASA(CW) signature, the unsigned draft FONSI or ROD, all State and Agency Review letters and any responses to those letters, ASA(CW)/OMB briefing slides, Report Summary, and DoRF. In addition, the RIT will e-mail ASA(CW) staff the electronic versions (scanned signed documents and text files for unsigned letters) of each of these documents.

14–4. ASA(CW) Approval.

The ASA(CW) will review the documents submitted with the Chief's Report to determine the level of Administration support for the Chief of Engineers recommendation. The ASA(CW) may formally provide the report to OMB per EO 12322.

a. OMB may review the report to determine its relationship to the program and policies of the Administration. OMB may provide a letter to ASA(CW) either clearing the

release of the report to Congress subject to whatever changes OMB deems necessary or objecting to the release.

b. Consistent with OMB instructions, the ASA(CW) may submit the Chief's Report or Director's Report to the Congress or provide the DCW with guidance on necessary actions which could range from revising the recommendation, revising the final report, redoing part of the study, to terminating the study outright. The ASA(CW) and OMB may request briefings to aid their decision-making. The RIT normally provides these briefings and any other supplemental information that ASA(CW) or OMB may need, assisted as needed by the vertical team. If the needed information is not readily available in HQUSACE, the district may be asked to provide it.

14–5. Public Review of Changes to Report Recommendations.

Depending on the extent of changes in the recommendations it may be necessary to provide an opportunity for the NFI, state(s), interested federal agencies, and other parties including the public to review and comment on the changes prior to finalizing the report. Significant changes may require additional plan formulation and supplemental environmental compliance documentation consistent with Council on Environmental Quality regulations on Procedures for Implementing NEPA (33 Code of Federal Regulations 230). Notification and scheduling requirements will be determined on a case-by-case basis since the need for coordination will vary with the degree of change.

14–6. Project Implementation and Study Closeout

Final decision documents recommending the authorization of new projects and/or modification of existing projects must be approved by the appropriate decision-maker and have a signed Chief's Report or Director's Report prior to the execution of design agreements or project partnership agreements, and the subsequent obligation and expenditure of funds for design or construction. Fiscal closeout will be performed after the ASA(CW) transmits the Chief's Report or Director's Report to Congress.

Appendix A References

Section I

Required Publications

Unless otherwise indicated, all U.S. Army Corps of Engineers publications are available on the USACE website at <https://publications.usace.army.mil>.

Public Law 78-534

1944 Flood Control Act (Available at www.govinfo.gov)

Public Law 92-500

Clean Water Act of 1977 (Available at www.govinfo.gov)

Public Law 93-205

Endangered Species Act of 1972 (Available at www.govinfo.gov)

Public Law 113-121

Water Resources Reform and Development Act (WRRDA) 2014, Section 1003
Expedited Completion of Reports (Available at www.govinfo.gov)

Public Law 115-270

WRDA 2018, Section 1117 Inclusion of Project of Facility in Corps of Engineers
Workplan (33 U.S.C §549b) (Available at www.govinfo.gov)

Public Law 115-270

WRDA 2018, Section 1330(b) Project Deauthorization and Study Extensions (Available
at www.govinfo.gov)

Public Law 89-775

National Historic Preservation Act, Section 106 Effect of Federal undertakings upon
property listed in National Register (16 USC §470f) (Available at www.govinfo.gov)

16 USC 661-666c

Protection and Conservation of Wildlife: Game, Fur-bearing Animals, and Fish (Fish and
Wildlife Coordination Act) (Available at www.uscode.house.gov)

33 USC 701-1

Flood Control: Declaration of Policy of 1944 Act (Available at www.uscode.house.gov)

33 USC 701b-11

Flood Control: Flood Protection Projects (Available at www.uscode.house.gov)

33 USC 2280

Water Resources Development: Maximum Cost of Projects (Available at www.uscode.house.gov)

33 USC 2282

Water Resources Development: Feasibility Reports (Available at www.uscode.house.gov)

33 USC 2282c

Water Resources Development: Vertical Integration and Acceleration of Studies (Available at www.uscode.house.gov)

33 USC 2289a

Water Resources Development: Consideration of Measures (Available at www.uscode.house.gov)

33 USC 2343

Water Resources Development: Independent Peer Review (Available at www.uscode.house.gov)

33 USC 2344

Water Resources Development: Safety Assurance Review (Available at www.uscode.house.gov)

33 USC 2348

Water Resources Development: Project Acceleration (Available at www.uscode.house.gov)

42 USC Chapter 55

National Environmental Policy (Available at www.uscode.house.gov)

33 CFR 230

Procedures for Implementing NEPA (Available at www.govinfo.gov)

EO 12322

Water Resources Projects (Available at <https://www.archives.gov>)

Memorandum for Commander General, USACE

Implementation Guidance for Section 1184 of the Water Resources Development Act of 2016 (WRDA 2016), Consideration of Measures
(<https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

Memorandum for Commander General, USACE

Implementation of Environmental Justice and the Justice40 Initiative, March 15, 2022
(<https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

Memorandum for Commander General, USACE

Signature of Federal Register Documents for the U.S. Army Corps of Engineers,
November 2, 2020 (<https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

Memorandum for Commander General, USACE

Policy Directive - Comprehensive Documentation of Benefits in Decision Document, 5
January 2021 (<https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

Memorandum for Major Subordinate Commands

U.S. Army Corps of Engineers Civil Works Feasibility Study Program Execution and
Delivery, February 8, 2012
(<https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

DPM CW 2018-05

Improving Efficiency and Effectiveness in USACE Civil Works Project Delivery (Planning
Phase and Planning Activities)
(<https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

DPM CW 2019-01

Policy and Legal Compliance Review
(<https://planning.erdc.dren.mil/toolbox/library.cfm?Option=Start>)

ER 5-1-11

USACE Business Process

ER 1105-2-102

Watershed Studies

ER 1110-2-1150

Engineering and Design for Civil Works Projects

ER 1110-2-1302

Civil Works Cost Engineering

ER 1165-2-131

Local Cooperation Agreements for New Start Construction Projects

ER 1165-2-209

Studies of Water Resources Development Projects by Non-federal Interests

ER 1165-2-217

Civil Works Review Policy

ER 1165-2-502

Delegation of Review and Approval Authority for Post-Authorization Decision
Documents

EP 1105-2-58

Continuing Authorities Program

EP 1105-2-60

Environmental Evaluation and Compliance

EP 1105-2-62

Planning Studies, Reports and Programs

Section II**Prescribed Forms**

This section contains no entries.