U.S. Army Corps of Engineers
Washington, DC 20314-1000

Engineer Regulation
No. 1165-2-209 4 February 2016

Water Resource Policies and Authorities
STUDIES OF WATER RESOURCES DEVELOPMENT PROJECTS BY NON-FEDERAL INTERESTS

1. Purpose. This regulation provides policy guidance for implementation of Section 203 of the Water Resources Development Act (WRDA) of 1986, as amended by Section 1014(a) of the Water Resources Reform and Development Act (WRRDA) of 2014 (33 U.S.C. § 2231). Section 203 authorizes non-Federal interests to undertake feasibility studies of proposed water resources development projects for submission to the Secretary of the Army. Separate guidance will be provided on the construction of water resources development projects under Section 204 of WRDA 1986, as amended by Section 1014(b) of the WRRDA 2014 (33 U.S.C. § 2232).

2. Applicability.

a. This regulation applies to all Headquarters, U.S. Army Corps of Engineers (HQUSACE) elements, major subordinate commands, districts, laboratories and all field operating agencies having Civil Works responsibilities. This regulation broadens applicability to all water resources projects and supersedes Engineer Regulation (ER) 1165-2-122, Studies of Harbors or Inland Harbor Projects by Non-Federal Interests, dated 26 August 1991.

b. This regulation and the referenced documents constitute the guidelines to assist non-Federal interests in conducting policy-compliant studies and should be provided to any non-Federal interest that intends to undertake a feasibility study pursuant to Section 203.

3. Distribution Statement. Approved for public release. Distribution is unlimited.

4. References.

a. Section 203 of WRDA 1986, as amended by Section 1014 of WRRDA 2014 (33 U.S.C. § 2231). Section 203, as amended, is attached as Appendix A.

b. ER 200-2-2 (33 CFR 230), Procedures for Implementing National Environmental Policy Act (NEPA).

c. ER 1105-2-100, Planning Guidance Notebook.

d. ER 1140-1-211, Support for Others.

This Engineer Regulation supersedes ER 1165-2-122, dated 26 August 1991

e. ER 1100-2-8162, Incorporating Sea-Level Change in Civil Works Programs.

f. ER 1105-2-501, Civil Works Ecosystem Restoration Policy.

g. ER 1165-2-130, Federal Participation in Shore Protection.

h. ER 1165-2-26, Implementation of Executive Order 11988 on Flood Plain Management.

5. Background. The traditional study process is for the U.S. Army Corps of Engineers to carry out a water resources development feasibility study using, in addition to the cost share provided by the non-Federal interests, funding provided by the Congress. The premise of Section 203 is that certain non-Federal interests may be capable of producing a feasibility study of a proposed water resources development project without involvement of the Corps of Engineers. Section 203 provides that a non-Federal interest can submit a completed feasibility study to the Secretary of the Army for review to determine if the study, and the process under which the study was developed, each comply with Federal laws and regulations applicable to feasibility studies of water resources development projects. Section 203 provides that within 180 days of receipt of the non-Federal feasibility study, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that includes the results of the Secretary's review of whether the feasibility study and the process under which the study was developed comply with Federal law and regulations; a determination of whether the project is feasible; any recommendations concerning the plan or design of the project; and any conditions that the Secretary may require for construction of the project.

a. A non-Federal Interest must meet the requirements of Section 221(b) of the Flood Control Act of 1970, as amended (42 U.S.C. § 1962d-5b(b)) to be eligible to carry out a feasibility study under Section 203.

b. Section 203 addresses feasibility studies developed by non-Federal interests that will require Congressional authorization for construction. Therefore, Section 203 does not apply to studies under the Continuing Authorities Program, which are not submitted to the Congress for authorization. In addition, Section 203 does not apply to studies related to environmental infrastructure assistance projects, which are not water resources development studies of projects within the primary mission programs of the Corps of Engineers, are not submitted to the Congress for authorization, and are not formulated in accordance with the Water Resources Council's Economic and Environmental Principles and Guidelines (P&G) for Water Resources and Related Land Resources Implementation Studies, March 10, 1983.

c. Section 203 provides that if a project for which a feasibility study developed by non-Federal interests is authorized after the Secretary submits the report to the Congress, the Secretary shall credit toward the non-Federal share of the cost of construction of such project an amount equal to the portion of the cost of developing the study that otherwise would have been

the responsibility of the United States if such study had been developed by the Secretary. The costs of the non-Federal interests are subject to audit to determine allowability, allocability, and reasonableness. Under the Corps of Engineers SMART Planning policy and the "3x3x3 rule" established by Planning Bulletin 2014-01, in general, $3 million is the maximum total cost of feasibility studies undertaken by the Corps of Engineers. Therefore, for a feasibility study undertaken by a non-Federal interest, credit may not exceed $1.5 million, which would have been the maximum Federal cost for a feasibility study, unless a greater amount for credit is specifically authorized in law.

6. General Study Requirements, Review, and Process Requirements. Once the non-Federal interest submits the Section 203 feasibility study to the Assistant Secretary of the Army (Civil Works) (ASA(CW)), the ASA(CW) will review the study to determine whether it complies with Federal laws and regulations applicable to Corps of Engineers water resources development feasibility studies and to enable the ASA(CW) to make appropriate recommendations on the study to the Congress. In order to comply with Federal laws and regulations applicable to feasibility studies of water resources development projects, the Section 203 feasibility study must contain the information described in Appendix B. Appendix B also addresses the policy and process requirements the non-Federal interest must follow in preparation and submission of a feasibility study. If at any time after the non-Federal interest has submitted a complete feasibility report to the ASA(CW) the ASA(CW) determines that the feasibility study is deficient and does not meet the basic requirements of the feasibility study and would result in the ASA(CW) transmitting a negative report recommendation to the Congress, the ASA(CW) will notify the non-Federal interest accordingly and provide the non-Federal interest the opportunity to withdraw the feasibility study.

7. Limited Technical Assistance. Unlike other authorities that allow for non-Federal interests to carry out certain studies or projects, Section 203 does not authorize the provision of assistance from the Corps of Engineers. In very limited circumstances, it may be possible for the Corps of Engineers to provide technical assistance to non-Federal interests under the Intergovernmental Cooperation Act (IGCA), as modified by Section 211 of WRDA 2000 (commonly referred to as the Thomas Amendment). Provision of technical assistance pursuant to the IGCA is subject to the non-Federal interest certifying, with adequate facts to establish, that the requested services are not reasonably and quickly available through ordinary business channels. In addition, the ASA(CW) must certify, with adequate facts to establish, that Corps of Engineers is uniquely equipped to perform such services. Many environmental statutes, such as the Endangered Species Act, Fish and Wildlife Coordination Act, and National Historic Preservation Act, require the lead Federal agency to consult and coordinate with State and Federal agencies as well as affected Tribes. Other environmental statutes require specific analysis and determinations by the lead Federal agency, such as NEPA and Section 404(b)(1) of the Clean Water Act. Undertaking such consultation or coordination are the types of assistance that may not be reasonably and quickly available through ordinary business channels and for which the Corps of Engineers is

uniquely equipped. The provision of assistance pursuant to the IGCA requires approval of the ASA(CW) and execution of a Memorandum of Agreement, with the non-Federal interest paying all costs of such assistance upfront. Additional guidance addressing the IGCA is provided in ER 1140-2-211.

FOR THE COMMANDER:

D. PETER HELMLINGER
COL, EN
Chief of Staff

2 Appendices
Appendix A. Section 1014 - PL113-121
Appendix B. General Study Guidelines

Appendix A

Section 203 of the Water Resources Development Act of 1986, as amended (33 U.S.C. § 2231)

Section 203. Study of water resources development projects by non-federal interests

(a) Submission to Secretary.
(1) In general. A non-Federal interest may undertake a feasibility study of a proposed water resources development project and submit the study to the Secretary.
(2) Guidelines. To assist non-Federal interests, the Secretary, as soon as practicable, shall issue guidelines for feasibility studies of water resources development projects to provide sufficient information for the formulation of the studies.

(b) Review by Secretary. The Secretary shall review each feasibility study received under subsection (a)(1) for the purpose of determining whether or not the study, and the process under which the study was developed, each comply with Federal laws and regulations applicable to feasibility studies of water resources development projects.

(c) Submission to Congress. Not later than 180 days after the date of receipt of a feasibility study of a project under subsection (a)(1), the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that describes--

(1) the results of the Secretary's review of the study under subsection (b), including a determination of whether the project is feasible;

(2) any recommendations the Secretary may have concerning the plan or design of the project; and

(3) any conditions the Secretary may require for construction of the project.

(d) Credit. If a project for which a feasibility study has been submitted under subsection (a)(1) is authorized by a Federal law enacted after the date of the submission to Congress under subsection (c), the Secretary shall credit toward the non-Federal share of the cost of construction of the project an amount equal to the portion of the cost of developing the study that would have been the responsibility of the United States if the study had been developed by the Secretary.

THIS PAGE INTENTIONALLY LEFT BLANK

Appendix B

GENERAL STUDY GUIDELINES INCLUDING REPORT REVIEW, SUBMITTAL AND PROCESSING REQUIREMENTS

1. General. The non-Federal feasibility study submitted to the Assistant Secretary of the Army (Civil Works) (ASA (CW)) pursuant to Section 203 of Water Resources Development Act (WRDA) 1986, as amended, will be reviewed to determine whether it meets the basic requirements of a feasibility study. If at any time the ASA(CW) determines that the feasibility study is deficient, the ASA(CW) will notify the non-Federal interest of the specific deficiencies and provide the non-Federal interest the opportunity to withdraw the feasibility study. In order to comply with Federal laws and regulations applicable to feasibility studies of water resources development projects, the Section 203 feasibility study must contain the information required by ER 1105-2-100, ER 200-2-2 and any related guidance. The policies and procedures for the evaluation of proposed projects, including cost sharing, related to each mission area (navigation, flood risk reduction, hurricane and storm damage risk reduction, and ecosystem restoration) are contained in Appendix E of ER 1105-2-100 and must be consulted as these are the key factors in establishing the Federal Interest. Appendix D of ER 1105-2-100 covers the economic and social considerations that must be addressed during the planning process. Highlights of key requirements are described below.

2. General Study Guidelines.

a. Identify the Problem(s).

(1) The feasibility study should describe why there is a need for the project and provide the basis for Federal participation and Congressional authorization.

(2) The identification of problems and opportunities should not prescribe a particular alternative, and should facilitate formulating all reasonable alternatives that would potentially satisfy the need for a project.

b. Future Conditions. The key assumptions underlying the predicted “without project” conditions over time, including effects of sea level change, should be documented and justified as the most likely “without project” condition.

c. Description of Alternatives. All reasonable project alternatives should be developed which provide full or partial relief to the problem(s) as stated in (1) above. For each alternative the key assumptions underlying the predicted “with project” conditions over time should be documented and justified as the most likely “with project” condition.

d. Primary Mission Programs.

(1) Navigation. The Federal participation in navigation is limited to the navigable waters of the United States. The Corps of Engineers may participate financially in general navigation features while all other features and facilities are non-Federal responsibilities as generally described below. Alternatives for navigation projects should be described in detail and should include, but is not limited to, the following information:

(a) Federal portion of the project. Federal participation in a navigation project is limited to general navigation features and aids to navigation (U.S. Coast Guard expense) that are described in ER 1105-2-100, Appendix E, Section II. These include such things as channels, jetties, breakwaters, locks and dams, harbor entrance channels and associated protective works, dredged material disposal areas, mitigation features including associated lands, primary access channels to the harbor, basins, and anchorages that are needed for the transit of said channels, and benefit more than one single owner/user or benefit a facility owned by a state, county, municipality, or other public entity.

(b) Non-Federal portion of the project. Local service facilities to serve vessels and commerce may be needed to achieve the benefits of a navigation project, as well as lands, easements, and rights-of-way, and relocations (LERR). These are a responsibility of the non-Federal interests and are an integral part of the project. Examples of such facilities include piers, wharves and other waterfront structures and associated local access channels, berthing, mooring, and anchorage areas and related local disposal capacity. Local service facilities and LERR are described further in ER 1105-2-100, Appendix E Section II.

(c) Non-commercial navigational features. The proposed project must be justified entirely by commercial navigation benefits for it to be recommended by ASA(CW) for Federal authorization. However, there may be features of the proposed project which are intended for use by other than commercial navigation (such as recreational navigation). These features, if they become part of the Federally authorized project, will be cost shared at different rates than for general commercial navigation.

(2) Flood Risk Reduction. The Federal participation in flood risk reduction relates to improvements to manage flood waters to reduce damages to property and to provide life safety protection. ER 1105-2-100 paragraph 3-3 addresses policies related to minimum flows, minimum drainage areas, urban drainage, and single properties and Corps of Engineers participation in flood risk reduction projects. Alternatives for flood risk reduction projects should be described in detail and include, but not limited to, the following information:

(a) Discussion of structural and non-structural alternatives evaluated. Non-structural alternatives focus on measures that reduce flood risks without significantly altering the nature and extent of flooding while structural alternatives focus on physical measures designed to reduce the frequency of flood inundation. Structural and non-structural alternatives must be

given equal consideration in plan formulation. If any alternative is screened out it must be based on its ability to meet planning criteria, and not solely based on a lack of support or interest.

(b) Description of any induced flooding, and identification of any mitigation. Federal interest in mitigation of induced flooding is appropriate when economically justified or there are overriding reasons of safety, or determination of real estate taking has been made. However, non-Federal interests may be responsible for the mitigation of induced flooding beyond the Corps of Engineers standard that are required by other statutes such as the Federal Emergency Management Agency's National Flood Insurance Program requirements. These costs will be documented in the report separately from the project first cost and the benefit-cost analysis.

(c) A floodplain management plan must be prepared.

(d) The study must demonstrate that the project is compliant with Executive Order 11988, Floodplain Management, see ER 1165-2-26.

(3) Hurricane and Storm Damage Risk Reduction. The Federal participation in hurricane and storm damage risk reduction projects relates to the reduction of damages caused by wind and tidal generated waves and currents resulting from hurricanes and storms and life safety considerations. Reducing flooding on, or erosion to, undeveloped lands is not a high priority; and Federal participation in protection of privately owned, undeveloped shores, will not be pursued. Alternatives for hurricane and storm damage risk reduction projects may include structural and non-structural measures and should be described in detail and include, but is not limited to, the following information:

(a) Shore protection alternatives should include a description of shoreline ownership. Federal involvement in shore protection has developed historically in relation to beaches. It is intended that beaches receiving public aid should not provide exclusively private benefits and meet appropriate requirements for general public access and parking.

(i) Evaluation of potential impact relative to sea level change on alternatives.

(ii) Identification of any monitoring and periodic re-nourishment requirements needed to achieve the expected benefits over the period of economic analysis for the project.

(b) Non-shore protection hurricane and storm damage risk reduction alternatives requirements are similar to flood risk reduction project requirements above.

(c) Recreation is not a primary purpose of a hurricane and storm damage risk reduction project. However, incidental recreation benefits (particularly for those projects featuring beach fill) may be considered up to the level of hurricane and storm damage risk reduction benefits (or 50 percent or less of the total benefits) toward project justification. The benefits and costs of a

hurricane and storm damage risk reduction project will be shown with no recreation, with recreation limited to hurricane and storm damage benefits, and with unlimited recreation.

(4) Ecosystem Restoration. The Federal participation in ecosystem restoration is to restore degraded significant ecosystem structure, function, and dynamic processes to a less degraded, more natural condition. Restoration opportunities that are associated with wetlands, riparian and other floodplain and aquatic systems are most appropriate for Corps of Engineers involvement. Alternatives for ecosystem restoration projects should be described in detail and include, but are not limited to, the following information:

(a) Discussion of significance of ecosystem outputs as defined by the Water Resources Council's Economic and Environmental Principles and Guidelines (P&G) for Water and Related Land Resources Implementation Studies, March 10, 1983.

(b) Description of ecological success as well as any monitoring and adaptive management requirements to achieve the outputs of the proposed project.

(c) Land acquisition in ecosystem restoration projects must be kept to a minimum. In general, land acquisition should not exceed 25 percent of total project costs. Projects consisting primarily of land acquisition and preservation are not appropriate.

(d) Water quality is an important component of ecosystem structure and water quality improvement can be considered as an output of an ecosystem restoration project. However, projects or features that would result in treating or otherwise abating pollution problems caused by other parties where those parties have, or are likely to have a legal responsibility for remediation or other compliance responsibility shall not be recommended for implementation.

(e) Recreation associated with ecosystem restoration projects can be recommended if the proposed recreation features do not degrade the viability of the restoration effort and its sustainability.

e. Public Involvement and Coordination. The Corps of Engineers has established procedures for public involvement in the Corps of Engineers own study process, partly because of legal and regulatory requirements, but also because a general policy of openness and public involvement enhances credibility and acceptability of the final recommendations. Non-Federal studies will be evaluated in part on the degree to which the study process was similarly open to the public. Appendix B of ER 1105-2-100 provides guidance on developing a public involvement strategy.

f. Cost Analysis. The National Economic Development (NED)/National Ecosystem Restoration (NER) cost of each alternative must capture all opportunity costs. Typically, NED/NER costs include three types of costs: implementation costs, other direct costs and associated costs.

(1) Project implementation cost estimates should include Project First Cost (preconstruction engineering and design, construction management, engineering and design during construction, construction, lands, easements, relocations, rights of way, damages, and mitigation), and costs of operation, maintenance, repair, rehabilitation, replacement, and monitoring.

(2) Other direct costs are costs required for the implementation of the project, but for which no financial outlays are made (including the market value of land donated for the project, and unmitigated damages).

(3) Associated costs are expenditures necessary for production of project outputs for which no project expenditure is made (such as local service facilities, and aids to navigation).

(4) All NED/NER cost estimates (including financial outlays in the future) must be developed on a constant dollar basis, using the price levels prevailing at the time of the study, or immediately before project implementation.

(5) All NED/NER costs (and if applicable, benefits) must be computed at their present value at the time of the base year using the using the annual discount rate for water and related land resources projects. All costs occurring prior to base year will be compounded forward to the base year, and all costs occurring after the base year will be discounted backward to the base year. The annual Federal discount rate to be used for project formulation and evaluation is published by HQUSACE each year under an economics guidance memorandum. The most recent memorandum is dated 15-October-2014; subject "Economic Guidance Memorandum, 15-01, Federal Interest Rates for Corps of Engineers Projects for Fiscal Year 2015." The amortized value of NED costs must be computed over the period of analysis using this discount rate.

(6) Cost estimate terminology presented in the report must be in accordance with Corps of Engineers Memorandum dated 25-August-2011, subject Corps of Engineers Civil Works Cost Definitions and Applicability. A firm cost estimate on construction costs for the proposed project is to be presented in the report and will be the basis to establish the maximum project cost limit pursuant to Section 902 of WRDA 1986.

g. Benefit Analysis.

(1) For navigation, flood risk management, and hurricane and storm damage risk reduction projects the economic analysis should be designed to show that the proposed project is consistent with the economic standards contained in the Water Resources Council's Economic and Environmental Principles and Guidelines (P&G) for Water and Related Land Resources Implementation Studies, March 10, 1983.

(a) Scaling and scoping of the recommended project must be determined using NED criteria, except as modified by other explicitly-stated criteria in accordance with the P&G, including consistency with protecting the Nation's environment.

(b) Supporting documentation to allow reviewers to understand the models and assumptions used to estimate project benefits and costs should be provided. Basic economic assumptions, such as the price level, the current discount rate applied and the period of analysis should be stated clearly.

(c) Identification of the NED plan should be based on optimization of net benefits and/or consideration of the most cost-effective plans for providing different levels of output or service. The plan, that reasonably maximizes net economic benefits, consistent with protecting the nation's environment, is designated as the NED plan, where net benefits are defined as annual benefits minus annual costs. As a minimum, the benefit/cost ratio for the NED Plan and recommended plan if different is to be computed using the current Federal discount rate.

(d) The sensitivity of key assumptions used in the analysis on project justification must be identified and analyzed. Sensitivity analysis results for such critical parameters should be clearly displayed and fully discussed.

(2) The benefits evaluation for ecosystem restoration measures the increase in net quality or quantity of ecological resources. For ecosystem restoration projects, the NER Plan will be recommended. The NER plan for ecosystem restoration projects should be the justified alternative and scale having maximum excess of monetary and non-monetary beneficial effects over monetary and non-monetary costs.

(3) Multipurpose projects combining ecosystem restoration with other project authorities may recommend a combined NED/NER plan. Tradeoff analysis can be used to compare and evaluate alternatives containing monetary and non-monetary benefits.

(4) Benefit to cost ratios must be prepared for all projects purposed for the NED objective. For projects purposed under the NER objective, the report must include the NED cost per unit of output. Benefit to cost ratios must be prepared for multipurpose projects. The NED benefit for NER components of a multipurpose project is equal to the NED cost allocated to NER components. Benefit to cost ratios must be displayed separately, for the main project purpose and for the recreation portion of the project.

h. Environmental Analysis.

(1) ER 200-2-2 and ER 1105-2-100 provide guidance on the requirements to comply with the National Environmental Policy Act (NEPA) and other applicable Federal environmental laws and regulations. Some environmental compliance requirements involve determinations that can only be made by the Army, and others require the involvement of the Army in coordination or consultation with other agencies or Tribes. In order to facilitate the submission of the non-Federal interest's feasibility study and environmental compliance documents to the ASA(CW), the non-federal interest should consider when and how to seek the involvement of the Army to address those elements of environmental compliance. It may be more streamlined for the non-

Federal interest to coordinate with the appropriate Corps of Engineers district early in the project development process to establish an environmental compliance strategy that involves the Corps of Engineers undertaking certain environmental compliance requirements under an IGCA agreement. However, if the non-Federal interest elects to forego any coordination with the Corps of Engineers, the non-Federal interest may submit its feasibility study and drafts of all required environmental compliance documentation to the ASA(CW) for that office's review and address any outstanding environmental compliance matters after the ASA(CW) completes its review of the feasibility study. In order to fulfil the intent of NEPA and to comply with Corps of Engineers policy applicable to feasibility studies, the non-Federal interest should document their decision-making process involved in developing the proposed project in a manner that would comply with NEPA. The Army will review and utilize that analysis when developing the official NEPA documents, which will address the ASA(CW)'s determination of the feasibility of the project and associated recommendations and conditions in the report to Congress. Final environmental compliance decisions will be made by the ASA(CW) once the non-Federal interest has submitted the Section 203 feasibility study and draft environmental compliance documents to the ASA(CW) for review and after the Army has completed any required Federal-to Federal or Federal-to-Tribal consultation or coordination procedures.

(2) In accordance with Section 906(d) of WRDA of 1986, as amended, any report, submitted to Congress for authorization, shall not select a project alternative unless such report contains a specific recommendation with a specific plan, if required, to mitigate fish and wildlife losses. It is the policy of the Army to demonstrate that damages to all significant ecological resources, both terrestrial and aquatic, have been avoided and minimized to the extent practicable, and that any remaining unavoidable damages have been compensated to the extent possible. Ecosystem restoration projects should be designed to avoid the need for fish and wildlife mitigation to the maximum extent practicable. Compensatory mitigation may be necessary for temporary or permanent unavoidable impacts to other resources of concern such as compliance with the NHPA, ESA. Clean Water Act, or temporary traffic, noise, or public utility impacts associated with construction. Complete draft mitigation plans including adaptive management plans shall be developed. The Army's coordination and consultation with concerned Federal and State agencies on mitigation and other ecological, cultural, and historical preservation matters shall be documented. Corps of Engineers memorandum, dated 31 August 2009, subject: Implementation Guidance for Section 2036(a) of WRDA of 2007 – Mitigation for Fish and Wildlife and Wetland Losses provides additional clarification mitigation planning policy.

i. Study Conclusions and Recommendations. If the feasibility study's recommendation is not the NED or NER plan, the basis for the recommended deviation or conditions for construction should be documented and justified.

j. Quality and Technical Accuracy.

(1) The non-Federal interests must certify the quality and technical accuracy of the feasibility study and the construction cost estimate for the project that would serve as the basis

for the section 902 limit, if the project is subsequently authorized by Congress. This should be done by documenting the quality control, quality assurance, and technical reviews that were conducted for all information presented in the feasibility study. In addition, the study must meet the requirements for independent peer review. A copy of the most recent Civil Works review guidance may be obtained from the local Corps of Engineers district office.

(2) Planning Model Quality Assurance. For feasibility studies that it undertakes, the Corps of Engineers requires use of models certified or approved by the appropriate Planning Center of Expertise and HQUSACE. For those studies being undertaken by non-Federal interests under Section 203, the study should specify whether the model used was approved or certified by the Corps of Engineers. A non-Federal interest may contact the local Corps of Engineers district office to determine which planning models are currently certified or approved.

3. Processing and Review Requirements.

a. Preparations, Coordination, and Processing of Environmental Documents. Under Section 203, the Secretary must determine whether the study and the process under which the study was developed comply with Federal laws and regulations applicable to such studies, whether the project is feasible, and whether any conditions may be required for construction are Federal actions. As such, draft environmental compliance documents are required to be submitted with the feasibility study. Non-Federal interests conducting a Section 203 feasibility study will be responsible for developing and documenting all information necessary to assess the existing environmental conditions, any potential impacts of the proposed project, and evaluate reasonable alternatives. The feasibility study should contain information sufficient to show the consideration given to the environment in the project formulation. This must be accomplished in a manner that preserves the determinations made in the environmental documents as those of the Secretary rather than as those of the non-Federal interest. Upon ASA(CW) determination that the information submitted is adequate for release of a draft NEPA document for public review, the ASA(CW) will direct his or her representative to circulate the draft environmental compliance document to other agencies, organizations, and the public for review and comment, and the final document filed with the U.S. Environmental Protection Agency (EPA) or a Finding of No Significant Impact (FONSI) will be made available to the public.

b. Report Submittal, Review, and Processing.

(1) General Requirements. The ASA(CW) is required to submit to Congress an analysis of the feasibility study submitted under Section 203 within 180 days of receipt of the feasibility study. Given the short time requirements, the schedule and review process described in paragraphs C.2b through C.2.g below, must be sufficiently flexible to meet the review requirements of each report. Since the Section 203 feasibility study is a non-Federal interest product, Smart Planning Milestone Meetings, a Civil Works Review Board, and a Report of the Chief of Engineers are not required.

(2) Report Submittal to the ASA(CW). The non-Federal interest will submit 15 copies of its feasibility study, including all relevant environmental compliance documents and mailing list of interested parties, directly to the Assistant Secretary of the Army (Civil Works) at the following address: Room 6S91, GAO Building, 441 G. Street, N.W., Washington DC 20314. Additionally, the non-Federal interest will provide 15 CD's containing electronic copies of the feasibility study. Additional copies may be required to satisfy the NEPA process.

(3) Review Procedures. Upon receipt of a non-Federal interest Section 203 feasibility study, the ASA(CW) will refer the feasibility study to the Chief of Engineers for review and comments to be furnished within an 80-day period. The Office of Water Project Review (OWPR) will prepare HQUSACE review comments. HQUSACE and ASA(CW) staff will concurrently review the report when it is received.

(4) Coordination with the Public, States, and other Federal Agencies. Within 15 days of receipt of a Section 203 feasibility study and subject to determination that the basic requirements of a feasibility study are met, including compliance with relevant Federal laws and regulations, OWPR will dispatch letters transmitting information regarding the project proposal, draft environmental compliance documents (Environmental Assessment (EA) or Environmental Impact Statement (EIS)), and related documents to State and Federal agencies for comment, and to designated addressees for information. The notice shall request that comments shall be submitted to OWPR within 30 days. Any draft or final EIS will be filed with EPA.

(5) Furnishing Analysis of Project Proposal to Non-Federal Interest. A preliminary analysis prepared by HQUSACE and transmitted by the ASA(CW) will be provided to the non-Federal interest by the ASA(CW) within 120 days of receipt of the Section 203 feasibility study by the ASA(CW). The analysis will address the study findings and the conformity of the study and proposal with applicable Federal laws and regulations. If the Secretary determines that the feasibility study document is insufficient to make a recommendation, or that the recommendation would be negative the non-Federal entity will be notified of this status and will be given the option to withdraw the report for revisions and re-submittal.

(6) Non-Federal Request for Deferral. At any time, non-Federal interests may request deferral of further feasibility study processing and return of the feasibility study for revisions or other actions. When a feasibility study is later resubmitted by the non-Federal interest, it will be considered as a new feasibility study.

(7) Action by the ASA(CW). After review of comments from State and Federal agencies on the Section 203 feasibility study and draft NEPA document, HQUSACE will prepare final recommendations and conditions for the ASA(CW)'s consideration, including responses to comments from States and agencies and final NEPA decision document. To close out the NEPA process a Finding of No Significant Impact or Record of Decision will be prepared by HQUSACE for the signature of the ASA(CW). The ASA(CW) will submit its recommendation, including any conditions, along with the non-Federal interest feasibility study to the Office of

Management and Budget for their views before transmitting the report and the final recommendations of the ASA(CW) to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives.