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CECW-P

Planning Tribal Partnership Program

FOR THE COMMANDER:

PRETTYMAN-
BECK.YVONNE.J.1
133246963

Digitally signed by PRETTYMAN-
BECK.YVONNE.J.133246963
Date: 2024.02.20 16:49:47 -05'00'

YVONNE J. PRETTYMAN-BECK
Chief of Staff

Purpose. This Engineer Pamphlet establishes an accountable strategy for the planning, design, and construction of projects pursued under the legislative and administrative provisions of the Tribal Partnership Program for the U.S. Army Corps of Engineers under Section 203 of the Water Resources Development Act of 2000, as amended (Section 2269, Title 33 of United States Code).

Applicability. This pamphlet applies to all U.S. Army Corps of Engineers Headquarters elements, Major Subordinate Commands, districts, laboratories, centers of expertise, and field operating activities that have Civil Works planning, engineering, design, construction, and operations and maintenance responsibilities.

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

Proponent and Exception Authority. The proponent of this pamphlet is the Headquarters Civil Works Planning and Policy Division (CECW-P). The proponent has the authority to approve exceptions or waivers to this pamphlet 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.

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Contents (Listed by chapter and page number)

Chapter 1

Program overview, *page 1*

Chapter 2

Program principles, *page 11*

Chapter 3

Project management, *page 27*

Chapter 4

Feasibility phase leading to Congressional authorization, *page 31*

Chapter 5

Programmatic feasibility phase, *page 36*

Chapter 6

Programmatic design and construction phase, *page 40*

Chapter 7

Watershed studies, *page 46*

Chapter 8

Technical assistance and other planning activities, *page 62*

Chapter 9

Non-traditional water resources development projects, *page 65*

Chapter 10

Other provisions, *page 69*

Chapter 11

Real estate, *page 74*

Appendixes

A. References, *page 77*

Table List

Table 2–1: Tribal Partnership Program activities and approval authorities, *page 14*

Table 2–2: Final report package check list for Tribal Partnership Program studies,
page 26

Table 7–1: Decision-making authority for watershed study milestones, *page 56*

Table 7–2: Key tasks to complete before the Shared Vision Milestone, *page 57*
Table 7–3: Products required for the Shared Vision Milestone, *page 58*
Table 7–4: Key tasks to complete before the Recommendations Milestone, *page 59*
Table 7–5: Key tasks to complete before the draft watershed plan is released, *page 60*
Table 7–6: Key tasks to complete before the final report milestone, *page 61*

Figure List

Figure 2–1: Flow chart: study types authorized by the Tribal Partnership Program,
page 13
Figure 7–1: Watershed study milestones, *page 56*

Glossary of Terms

Chapter 1

Program overview

1-1. Purpose

This Engineer Pamphlet establishes an accountable strategy for the planning, design, and construction of projects pursued under the legislative and administrative provisions of the Tribal Partnership Program for the U.S. Army Corps of Engineers under Section 203 of the Water Resources Development Act of 2000, as amended (Section 2269, Title 33 of United States Code).

1-2. Distribution statement

Approved for public release; distribution is unlimited.

1-3. References

References are at Appendix A.

1-4. Associated publications

Policies associated with this pamphlet are found in Chapter 12 of ER 405-1-12, ER 1105-2-102, ER 1105-2-103, ER 1110-2-1150, ER 1110-2-1302, ER 1165-2-119, ER 1165-2-208, and ER 1165-2-217.

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's Records Retention Schedule—Army (RRS-A). Detailed information for all related record numbers is located in the Army Records Information Management System (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.

1-6. Overview

a. Authority.

(1) The Tribal Partnership Program is authorized under Section 203 of the Water Resources Development Act (WRDA) of 2000, as amended. WRDA 2000 is Public Law (PL) 106-541. Section 203 is codified in in Section 2269, Title 33 of United States Code (33 USC 2269).

(2) This pamphlet applies the policies found in Chapter 12 of ER 405-1-12, ER 1105-2-102, ER 1105-2-103, ER 1110-2-1150, ER 1110-2-1302, ER 1165-2-119, ER 1165-2-208, and ER 1165-2-217 to Tribal Partnership Program activities.

(3) This document incorporates guidance provided in the Department of the Army (DA), Assistant Secretary of the Army for Civil Works (ASA(CW)) memorandum (Implementation Guidance for Section 1031(a) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), and for Section 1121 of the Water Resources Development Act of 2016 (WRDA 2016), Tribal Partnership Program), 5 February 2018, and paragraph 5 of the DA, ASA(CW) memorandum (Implementation Guidance for Section 1157 of the Water Resources Development Act of 2018 (WRDA 2018), U.S. Army Corps of Engineers Continuing Authorities Program), 19 April 2019.

(4) Policy, processes, and guidance from specifically authorized programs for each project purpose (flood and coastal storm risk management, navigation, aquatic ecosystem restoration, etc.) may apply to TPP projects. Refer to mission-specific policies and procedures in ER 1105-2-100, ER 1105-2-103 and any successor engineering regulations, pamphlets, or guidance.

b. *Authorized activities.* Tribal Partnership Program (TPP) authorized activities include projects for flood and coastal storm risk management (known in the past authorizations as hurricane and storm damage reduction) including:

- (1) Erosion control
- (2) Environmental restoration and protection (aquatic ecosystem restoration),
- (3) Navigation, and preservation of natural and cultural resources
- (4) Watershed assessments and planning activities
- (5) Technical assistance
- (6) Other projects as the Assistant Secretary of the Army for Civil Works

(ASA(CW)), in cooperation with Tribes and heads of other federal agencies, determines appropriate.

c. *Coordination.* The ASA(CW) is also directed to consult and coordinate with the Secretary of the Interior on any activity under the TPP to consider authorities and other programs of the Department of the Interior (DOI) and other federal agencies in making recommendations. To meet this requirement, districts, in collaboration with Tribal partners, must implement appropriate coordination with the DOI and other federal agencies (or agencies as required under Section 5304 of Title 25 of U.S. Code (25 USC 5304) for Alaska Native Villages) during the study. This coordination will be documented accordingly in the report, for example, including copy(ies) of letter(s) submitted to DOI/Bureau of Indian Affairs (BIA) and other federal agencies.

d. *Planning strategies.* This EP incorporates USACE planning fundamental strategies related to water resource development feasibility and watershed studies, technical services, planning, design, and construction of projects as they are related to the TPP.

e. *Project recommendations.* Recommendations under the TTP must specifically address the determination that the project is feasible and includes the appropriate cost sharing. This determination of feasibility includes that the project is technically feasible; the economic, environmental, and social benefits to the Tribal Nation outweigh the costs; the project is cost-effective; and the project is environmentally acceptable. USACE should consider the breadth of benefits provided including those identified by the Tribal partner. The federal objective for studies and projects under the TPP is to substantially benefit Indian Tribes.

1-7. U.S. Army Corps of Engineers Tribal policy principles

a. USACE has a responsibility to Tribal Nations resulting from Federal Trust Doctrine, as well as from treaties, statutes, regulations, Executive Orders (EOs) and agreements between the Federal Government and Tribal governments. EO 13175 signed by President William J. Clinton on November 6, 2000, compels USACE to engage in meaningful and timely consultation with federally recognized Tribes as a mechanism to meet the Federal trust responsibility.

b. The guiding principles of federal trust responsibility are the basis of the USACE Civil Works Tribal Consultation Policy (DA, ASA(CW) memorandum (Updated U.S. Army Corps of Engineers Civil Works Tribal Consultation Policy), 5 December 2023). The USACE Tribal consultation policy includes six USACE Tribal Policy Principles: Tribal sovereignty; trust responsibility; Government-to-Government relations; pre-decisional and honest consultation; self-reliance, capacity building, and growth; and preserving and protecting natural and cultural resources.

c. The TPP and other Civil Works programs are conducted according to these policy principles to ensure effective and mutually beneficial relationships with Tribal partners. The TPP is a key program that, at its foundation, allows Tribes an essential role to preserve, protect and manage their own resources. The program will ensure that trust obligations to protect trust resources are met by developing projects that acknowledges Tribal sovereignty and allowing Tribal governments to exercise self-determination. The program will involve Tribes in fostering and building Tribal capacity and managing Tribal resources while preserving cultural identities.

1–8. Tribal Partnership Program authorization history

a. Water Resources Development Act of 2000.

(1) In Section 203 of WRDA 2000 (PL 106-541), codified in 33 USC 2269, USACE received authority from Congress to develop and implement the TPP. This is the most expansive and varied authority that USACE has for assisting federally recognized Tribes within the Civil Works program. This authority allows USACE, in cooperation with the Tribes and the heads of other federal agencies, to study and determine the feasibility of carrying out water resources development projects, such as flood and coastal storm risk management, ecosystem restoration, navigation, and preservation of cultural and natural resources. In addition, Congress included language that allows USACE to carry out “such other projects” as the ASA(CW) deems to be appropriate, in cooperation with Indian Tribes and the heads of other federal agencies.

(2) Congress was clear in its intent that projects to be studied will be located primarily within boundaries of reservations, within traditional communities, and otherwise substantially benefit Indian lands or resources, or preserve cultural values. Congress further clarified that traditional communities would include lands that are within the jurisdictional area of an Oklahoma Tribe or lands that are in proximity to Alaska Native Villages.

(3) Congress was also clear that USACE would consider Indigenous Knowledge when formulating project studies.

(4) The TPP has evolved with amendments to the original authority, changes in how USACE conducts planning studies in general, and the addition of cost share waivers. In the early years of the TPP, many districts across the nation with resident Tribes conducted first phase reconnaissance studies, which were 100 percent federally funded. Though many did not result in a cost-shared phase two feasibility study, Tribes valued the information developed for the reconnaissance studies and used the reports for other purposes. For example, Tribes in the Pacific Northwest were able to use a reconnaissance report to leverage U.S. Department of Housing and Urban Development funds for their respective village relocation efforts.

b. Water Resources Development Act of 2007.

(1) WRDA 2007 (PL 110-114) made several small modifications to the TPP, most notably expanding the authorized activities under the TPP to include water-related planning activities and watershed assessments.

(2) Congress amended the TPP to include lands that are within the jurisdictional area of an Oklahoma Indian Tribe, as determined by the Secretary of the Interior, and are recognized by the Secretary of the Interior as eligible for trust land status under Part 151, Title 25, Code of Federal Regulations (25 CFR 151).

(3) WRDA 2007 also extended the authorization of appropriations for the TPP from 2006 to 2012.

c. Water Resources Reform and Development Act of 2014.

(1) WRRDA 2014 (PL 113-121) significantly changed the planning process from a two-phase study process – a reconnaissance study followed by a more detailed feasibility study – to a single-phase feasibility study process. The reconnaissance study was originally used to make a preliminary determination of whether there was a federal interest in further studying the problem. The feasibility study is a more detailed planning effort that may lead to a recommendation for federal investment. This was a paradigm shift, not just for USACE, but for our non-federal partners – in this case, federally recognized Tribes. The new single-phase feasibility study process was less appropriate for Tribes due to the immediacy and higher costs of the cost-share agreement.

(2) Since WRRDA 2014, the demand for TPP studies shifted to primarily watershed assessments, which had been authorized for the TPP in WRDA 2007. Watershed assessments have a lower non-federal cost share of 25 percent, compared to most feasibility studies, where the non-federal cost share is 50 percent. Watershed assessments do not result in a recommendation for federal investment, but do provide a developed strategy to improve watershed resources.

d. Water Resources Development Act of 2016.

(1) The most sweeping changes to the TPP for federally recognized Tribes came in Section 1121 of WRDA 2016 (PL 114-322). With these amendments to 33 USC 2269, TPP went from a study-only authority to one that includes a programmatic design and construction process that does not require further Congressional authorization. The design and construction costs are shared between the Tribe and the Federal Government based on the project purpose, as set out in Sections 101 and 103 of WRDA 1986 (PL 99-662), as amended (33 USC 2211 and 33 USC 2213, respectively). The new programmatic authority allowed USACE to design and construct a project that did not have a federal cost of more than \$10,000,000. Since WRDA 2016, this total federal cost cap continues to be modified by Congress.

(2) The Ability to Pay provision under TPP (33 USC 2269) was also expanded to apply to design and construction as well as to studies, watershed assessments, and planning activities carried out under the TPP.

(3) In addition, Section 1119 of WRDA 2016 amended Section 1156 of WRDA 1986 (33 USC 2310), whose purpose was the reduction of the non-federal share for projects constructed in certain locations (often referred to as the Cost Share Waiver), to include projects for federally recognized Tribes. Section 1119 applied the Cost Share Waiver to all TPP feasibility studies and watershed assessments, and again to projects in the construction phase.

e. *Water Resources Development Act of 2018.*

(1) In WRDA 2018 (PL 115-270), Congress amended the TPP design and construction phase to include not just a project at the federal programmatic limit, but also separable elements of a project. This means a project could potentially have elements that could be constructed and operated independently without the rest of the project and each separable element could be funded to the federal TPP programmatic limit.

(2) In WRDA 2018, Congress also increased the TPP programmatic limit to a federal cost of \$12,500,000 for a project or separable element.

(3) Additionally, Congress further amended 33 USC 2310 to increase the Cost Share Waiver amount to account for inflation through 2018.

f. *Water Resources Development Act of 2020.*

(1) WRDA 2020 (PL 116-260) increased the programmatic limit to \$18,500,000 per project or separable element of a project.

(2) In addition, WRDA 2020 amended c to include an annual inflation adjustment for the Cost Share Waiver. An Economic Guidance Memorandum (EGM) is published in the first quarter of each new fiscal year that shows the updated Cost Share Waiver amount. Refer to the most recent EGM for the amount to be used; the current EGM at the time of publication of this EP is EGM 24-03. The Cost Share Waiver is applied twice: once during the feasibility phase (to include Preconstruction Engineering and Design (PED)) and once during the construction phase.

g. *Water Resources Development Act of 2022.*

(1) Section 8111 of WRDA 2022 (PL 117-263) made significant amendments to the TPP. The amendments directed that the first \$200,000 of a feasibility study will be federally funded.

(2) In addition, the programmatic limit was increased to a federal cost of \$26,000,000 per project or separable element of a project.

(3) Congress authorized technical assistance to an Indian Tribe to be 100 percent federally funded. Examples of the types of technical assistance include:

(a) Assistance for the planning to ameliorate flood hazards, to avoid repetitive flood impacts, to anticipate, prepare, and adapt to changing hydrological and climatic conditions and extreme weather events, and to withstand, respond to, and recover rapidly from disruption due to flood hazards.

(b) The provision of, and integration into planning of, hydrologic, economic, and environmental data and analyses.

(4) Congress further amended the TPP in regard to project justification. Notwithstanding requirement for economic justification established under section 209 of the Flood Control Act of 1970 (PL 91-611) codified in 42 USC 1962-2, the ASA(CW) may implement TPP projects if the project:

(a) Will significantly reduce potential flood or hurricane and storm damage hazards (which may be limited to hazards that may be addressed by measures for erosion mitigation or bank stabilization);

(b) Improve the quality of the environment;

(c) Reduce risks to life safety associated with the hazards of flooding, hurricane and storm risk reduction, including erosion control; or

(d) Improve the long-term viability of the community. This does not apply to projects for ecosystem restoration.

(5) WRDA 2022 also extended the authority of the TPP through fiscal year 2033.

(6) WRDA 2022 further amended the Cost Share Waiver (33 USC 2310) to include watershed assessment under the term “studies” and only reduces the non-federal share of the study and project costs.

1–9. Key concepts and terminology

a. *Cultural and Natural Resources.* The authorization for the TPP allows for water-related planning and activities related to the study, design, and construction of water resources development projects that may address “projects for ... preservation of cultural and natural resources” (33 USC 2269(a)(2)).

(1) 33 USC 2269 does not provide specific definitions for cultural or natural resources.

(2) Indigenous Knowledge can help identify significant cultural and natural resources and should be explored with Tribal partners during scoping. Indigenous Knowledge is further defined in para 1-9d .

(3) Information on certain types of cultural resources related to Tribal Nations is not often recorded and can be extremely sensitive, which presents a challenge in formulating and evaluating alternative plans. Some reservations may be considered cultural resources in their entirety due to the significance to Tribal Nations. Cultural and natural resources may further be recognized through Indigenous Knowledge and may be considered as one and the same by an individual Tribe or by many Tribes as well.

(4) For the purpose of identifying activities under the TPP, cultural resources are those resources identified as culturally significant to the Tribal partner. The goal of the TPP is to preserve cultural and natural resources that substantially benefit or are otherwise important to the Tribes, such as for subsistence, ceremonial or communal events, or other purposes. Project delivery teams (PDTs) should not define what is a cultural or natural resource for inclusion in the TPP.

(5) Cultural resources include historic properties as defined by 36 CFR 800.16(l). Historic properties are a subset of cultural resources that have been evaluated and determined to be eligible for listing or are listed on the National Register of Historic Places (National Register). All resources identified as culturally important through the application of Indigenous Knowledge are eligible for consideration under the TPP. The cultural resources that qualify for authorized activities under the TPP are not required to be evaluated for their eligibility to the National Register or to be listed on the National Register to be considered under the TPP. Once a TPP study is underway, compliance with Section 106 of the National Historic Preservation Act (NHPA) (54 USC 3000101 et seq), codified in 54 USC 306107, will still apply. (See para 10-3).

(6) Natural resources refers to land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources. Similar to cultural resources, the definition of natural resources to be considered under this authority should be as broad as possible and should be identified by Tribal partners through Indigenous Knowledge. While natural resources can include threatened and endangered species, the natural resources under consideration for preservation do not need to be listed as threatened

and endangered species. Natural resources can also be habitats and ecosystems, including areas specifically managed by Tribes as natural areas for use by the Tribe.

b. *Indian country.* The term Indian country generally refers to all lands within a federal Indian reservation, all dependent Indian communities, and all Tribal member allotments, and is defined in 18 USC 1151 as:

(1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and

(3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

c. *Indian Tribe.* A Tribe may serve as a Tribal partner under the TPP and is defined in 25 USC 5304 as any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (ANCSA) (PL 92-203, codified in 43 USC 1601 et seq), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The Secretary of the Interior is required to publish a list annually in the Federal Register a list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their sovereign status (25 USC 5131). In addition to the Tribes on the Secretary of the Interior list, the definition also includes Alaska regional or village corporations as defined in or established pursuant to ANCSA.

d. *Indigenous Knowledge.* Indigenous Knowledge is defined in the White House Council on Environmental Quality (CEQ) and Office of Science and Technology joint memorandum (Guidance for Federal Departments and Agencies on Indigenous Knowledge), 30 November 2022, as the "body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment."

(1) Indigenous Knowledge is applied phenomena across biological, physical, social, cultural, and spiritual systems. Indigenous Knowledge can be developed over millennia, continues to develop, and includes understanding based on evidence acquired through direct contact with the environment and long-term experiences, as well as extensive observations, lessons, and skills passed from generation to generation. Indigenous Knowledge is developed by Indigenous people, including, but not limited to Tribal Nations, Native Americans, Alaska Natives, and Native Hawaiians. Each Tribe or Indigenous community has its own place-based knowledge that may overlap with that of other Tribes.

(2) Use of Indigenous Knowledge for TPP efforts is further discussed in paragraph 2-3b.

e. *Monitoring.* Activities, including data collection and analysis, that are necessary to determine if predicted outputs of the project (aquatic ecosystem restoration only) are being achieved. Archaeological monitoring is used to identify, recover, protect, document, and/or recover cultural resources at a known site or to ensure that a site is

identified and treated appropriately, particularly in sensitive areas for the identification of resources, during project activities, such as construction.

f. *Non-traditional water resources development project.* Other such projects as the ASA(CW), in cooperation with Indian Tribes and the heads of other federal agencies, determines to be appropriate. The ASA(CW) has determined to provide flexibility to include projects that are not typically considered a traditional USACE water resources development project if the project is based on meeting the following criteria: 1) related to a water resource and 2) aligns with USACE capabilities and core competency. (See DA ASA(CW) memorandum (Tribal Partnership Program – Non-Traditional Water Resources Development Projects), 30 November 2022.) Procedures for non-traditional water resources development projects are provided in chapter 9.

g. *Public.* The public refers to any entity outside USACE. The public includes Tribal and local government entities and officials; public and private organizations; individuals; institutions; study sponsor or partner representatives; community groups; and populations of interest in environmental justice or social vulnerability considerations (EP 1105-2-57).

h. *Stakeholders.* Stakeholders include any member of the public that might be able to affect, are affected by, or are interested in, the result of the USACE planning process. They are people or groups who see themselves as having rights and interests at stake, either directly or indirectly. Some people may not realize they are stakeholders, for example, that they are affected by a USACE study, such as those identified as socially vulnerable populations.

i. *Tribal Lands.* The term Tribal Lands is used generally throughout this pamphlet to have one comprehensive term that is generally applicable. Tribal Lands itself is not explicitly defined, but several types of Tribal Lands may be encountered during the feasibility or construction phase, including: Reservation Indian Land, trust lands, restricted fee lands, fee or fee simple lands, allotted lands, and Indian Lands.

(1) Reservation Indian Land are areas reserved for a Tribe, or multiple Tribes, as permanent homelands through treaties, EOs, Acts of Congress, and administrative action. Not all Tribes have a reservation; however, Tribes without reservations could still have land held in trust or restricted fee. Trust, restricted fee, and fee lands may exist within a Tribe's reservation boundaries. Tribes may also have trust, restricted fee, or fee lands outside of reservation boundaries.

(2) Trust lands are lands where the U.S. Government holds legal title to trust land for the benefit of federally recognized Indian Tribes or individual Tribal members.

(3) Restricted fee land refers to land to which a Tribe, or Tribal member, holds legal title subject to a restriction against alienation (sale or transfer) or encumbrance (liens, leases, rights-of-way, etc.) by operation of law. For some purposes, Congress has defined Tribal lands to include trust and restricted fee lands, such as for leasing agricultural lands (25 USC 3703) and rights-of-way (25 USC 323).

(4) Fee or fee simple lands are owned by a person or entity who can freely alienate or encumber the land without federal approval, which may include a Tribe, individual Tribal members, or non-Indians.

(5) Allotted lands, or allotments, can be held in trust or restricted fee status by individual Tribal members, sometimes referred to as allottees or landowners. Allotted lands do not include fee lands. Allotted lands stem from treaties and statutes, including

the General Allotment Act (PL 49-105), that divided land communally held by Tribes and allotted parcels of it to individual Tribal members.

(6) The term Indian Lands means lands of Indian Tribes or Indian individuals, which are either held in trust by the U.S. or subject to a restriction against alienation imposed by the U.S., except for any surface or subsurface interests in lands not owned or controlled by an Indian Tribe or an Indian individual (see 16 USC 470aa-mm).

(7) The term real property interests means lands, easements, and rights-of-way, including those required for relocations, borrow, and dredged material placement areas. Real property interest may also be referred to as lands, easements, rights-of-way, relocations, and disposal areas (LERRDs).

1–10. Program eligibility

a. *Requirements to serve as a Tribal partner.* The Tribal partner for a TPP activity, study, or project is an Indian Tribe as defined in 25 USC 5304, which is the definition referenced in 33 USC 2269: “any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to ANCSA, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.”

b. *Location of Tribal Partnership Program projects.* Projects must be located primarily within Indian country or in the proximity to an Alaska Native Village. For the purposes of the Tribal Partnership Program, Indian country includes lands that are within the jurisdictional area of an Oklahoma Tribe, as determined by the Secretary of the Interior, and recognized by the Secretary of the Interior as eligible for trust land status under 25 CFR part 151. Project siting confirmation should be one of the first actions to validate eligibility of the TPP prior to initiating a feasibility study. If the water resource problem and solution set are not located within Indian country or within proximity to an Alaska Native Village, the district should work with the Tribal partner in identifying other applicable USACE authorities.

c. *Non-federal funds.* The non-federal cost share can be met in certain circumstances by the use of other federal appropriated funds. Other agency funds may be accepted and credited toward the non-federal contribution if the federal agency providing the funds determines that the funds are authorized to be used to carry out the study or project. More detailed information concerning cost share funding may be found in para 2-2.

d. *Real property interests.* The Tribal partner is responsible for providing the real property interests required for the construction, operation, and maintenance of the project. Full coordination between the district and the Tribal partner on the project real estate requirements must occur during early stages of plan formulation and continue, as appropriate, to the conclusion of the acquisition process. See chapter 11 for more information.

1–11. Confidentiality

a. There is no exemption under the Freedom of Information Act (FOIA) (PL 89-487) that protects information and data specifically provided by Tribes to any federal agency, including USACE, unless it meets one of the nine exemptions identified in the

law. FOIA requires federal agencies to maintain and preserve its written record, which could be available to the public. The District Commander, in consultation with the Tribe, should determine if there is an existing law or best practice/protocols that the agency will use to store, share, and access sensitive documents, information, or data.

b. As part of the study initiation, the district and Tribal partner should discuss:

(1) what, if any, information requires confidentiality.

(2) what the district responsibility under FOIA entails.

(3) determining what can be done to protect that information, including the use of Section 304 of NHPA as amended (54 USC 307103) and Section 9 of Archaeological Resources Protection Act (ARPA) of 1979 (16 USC 470hh). Where the NHPA and ARPA cannot be used, the plan should identify if and how USACE can protect Tribal information, as necessary.

c. Strategies to protect sensitive information, if identified, could include the Tribal partner retaining written data on sensitive information. Any FOIA request to the district for the written records would then not include the sensitive information. Limiting the information retained by the district may limit access to this information by the public through FOIA requests.

d. Other recommendations to limit access to sensitive data should be discussed with district counsel and Tribal partners to determine if data sharing agreements and/or non-disclosure agreements can minimize the release of information through FOIA or other requirements.

e. Section 304 of NHPA gives federal agencies the ability to withhold or limit public access to information about historic properties, after consultation with the Secretary of the Interior (54 USC 307103). The information protected, for example, can include the location, character, or ownership of a historic property if disclosure may impede the use of a traditional religious site by practitioners. If it is determined that information can be withheld, this would include both redactions from publicly reviewed reports and exemption from FOIA requests.

(1) To protect information on the location, character, or the previously listed information, the District Commander must consult with the Keeper of the National Register, to determine who may have access to this information. This process pertains only to listed historic properties or those with an existing determination of eligibility. If cultural resources have not been evaluated for their eligibility to the National Register or were determined not to be eligible for the National Register, Section 304 of the NHPA may not be used.

(2) Consultation with the Keeper of the National Register starts with either a request from the public for this information under FOIA or if the district, in consultation with the Tribe, determines that information should be withheld.

(3) The district assembles a draft redacted version of the document(s) and prepares a rationale and/or justification for withholding the information. The district provides this information to the Keeper of the National Register. The Keeper of the National Register will review and agree or suggest additional information and make the final determination. This final determination will include a statement regarding who may have access to the protected information.

(4) This request must be submitted in writing. If information is collected as part of a Section 106 review, the information should identify the threat and harm and identify

project deadlines. If the submission does not have the necessary documentation, the Keeper of the National Register will return the documentation and the review will not occur until the required information is provided.

(5) If the information requiring protection is developed as either a review under Sections 106 or 110 of NHPA (54 USC 306107 and 306108 respectively), the Keeper of the National Register will consult with the Advisory Council on Historic Preservation (ACHP). The ACHP will review the information prepared and provide the Keeper of the National Register with comments, which may include making additional recommendations. The review by the ACHP is advisory to the Keeper of the National Register and may or may not be included in the Keeper of the National Register's response to the district.

f. Section 9 of ARPA (16 USC 470hh) provides for the protection of archaeological resources on public and Indian lands from disclosure to the public. Section 9 provides protection to archaeological resources only, which are defined as any material remains of human life or activities which are at least 100 years of age and which are of archaeological interest. Section 9 does not require sites to have been determined eligible for the National Register. Section 9 only pertains to archaeological resources which include, but are not limited to: pottery, bottles, weapons and projectiles, structures or portions of structures, pit houses, rock paintings and carvings, graves, and human skeletal remains (for a definition of archaeological resources under ARPA, see 16 USC 470bb).

Chapter 2

Program principles

2-1. General principles

a. *Overarching authority.* The ASA(CW), in cooperation with Indian Tribes and the heads of other federal agencies, is authorized under 33 USC 2269 to carry out water-related planning activities, and activities related to the study, design, and construction of water resources development projects, that substantially benefit Tribes and that are primarily within Indian country (including lands within a jurisdictional area of an Oklahoma Tribe) or in the proximity to Alaska Native Villages.

b. *Federal objective.* A federal objective for studies and projects conducted under TPP is to substantially benefit Indian Tribes. A TPP project must meet the requirements of federal interest and USACE responsibility set forth in the authority and have a Tribal partner who is willing and capable of meeting required responsibilities.

(1) The TPP authority includes feasibility studies for the construction of projects for the preservation of cultural and natural resources as a stand-alone objective as long as the project or study is located on Tribal lands, within the jurisdiction of an Oklahoma Tribe or in the proximity of an Alaska Native Village.

(2) These projects are not intended for the development of mitigation resources identified during the planning, design, and/or construction of another construction project.

(3) Projects whose primary purpose is the preservation of cultural and natural resources will be considered policy compliant, producing high-priority outputs from a budgetary standpoint, and will be cost shared as flood risk management, coastal storm

risk management, navigation, or ecosystem restoration, depending on the causal factors necessitating the project. See para 2-3e for further guidance on justification for these types of projects.

c. *Applicability of Section 1001 of the Water Resources Reform and Development Act of 2014 to the Tribal Partnership Program.* Section 1001 of WRRDA 2014 (33 USC 2282c), as amended, provides that, to the extent practicable, the maximum federal cost for a feasibility study is \$3,000,000. USACE policy continues to follow the “3x3x3 rule”, which limits the study duration to three years, the total study cost (the study costs shared by the USACE and the Tribal partner) to \$3,000,000, and requires three levels of USACE vertical team involvement (district, MSC, and Headquarters (HQUSACE)).

(1) The study funding and time limits set forth by 33 USC 2282c are applicable to feasibility reports (as defined in 33 USC 2282) that result in recommendations concerning a project or the operation of a project and that requires specific authorization by Congress in law.

(a) TPP feasibility reports that recommend the construction of a water resources development project under the Tribal Partnership Program programmatic limit or are otherwise not intended to lead to the recommendation of a specific water resources development project are not subject to 33 USC 2282c requirements.

(b) In rare instances a feasibility study being conducted under TPP authority (33 USC 2269), that is specifically funded by Congress and will need a specific Congressional authorization would have to comply with 33 USC 2282c.

(2) The Deputy Commanding General of Civil and Emergency Operations has approved study cost increases up to \$3,000,000 federal cost without further approval from HQUSACE to account for the application of the Cost Share Waiver and the Ability to Pay provision. Feasibility studies cost in excess of \$3,000,000 federal cost, or any subsequent limit enacted by Congress, will require ASA(CW) approval (EP 1105-2-61). The executed copies of the FCSA and accompanying documents must be provided to the MSC TPP program manager, HQUSACE TPP program manager, and the appropriate Regional Integration Team (RIT).

d. *Other U.S. Army Corps of Engineers programs.* Participation in the TPP does not preclude a Tribal partner from participating in any other USACE program, such as the Continuing Authorities Program (CAP), Floodplain Management Services (FPMS), or Planning Assistance to States (PAS). Districts should consider the water resources needs of the Tribal partner and align with the appropriate USACE program prior to initiating requests for funding.

e. *Types of U.S. Army Corps of Engineers missions authorized under the Tribal Partnership Program.* Authorized mission areas authorized under TPP include flood, hurricane and storm damage reduction including erosion control, ecosystem restoration and protection, navigation.

(1) Flood risk management, including both inland and coastal risks, addresses the assessment, management, and communication of current and future flood risk. Flood risk management is performed in a systematic and comprehensive manner to reduce the risk of life loss, reduce economic damages to the public and private sector, and improve the natural environment. Projects for streambank and shoreline damage reduction, including erosion control, are authorized activities under TPP.

(2) Environmental or ecosystem restoration restores and protects aquatic ecosystems. Ecosystem restoration projects assist in the recovery of ecosystems that have been degraded, damaged, or destroyed. These projects focus on establishing the ecological processes necessary to make aquatic ecosystems sustainable, resilient, and healthy under current and future conditions.

(3) Navigation includes the movement of vessels on both inland and coastal waters and addresses the movement of commercial goods along the nation’s coasts and waterways. Benefits to subsistence fishing, hunting, and gathering are important components of this mission, as it supports the long-term stability of Tribal Nations and their associated cultures.

f. *Types of U.S. Army Corps of Engineers studies and activities authorized under the Tribal Partnership Program.* The following are the different types of studies and activities that may be carried out under the TPP. The federal objective for all TPP studies and projects is to substantially benefit Indian Tribes. A flow chart indicating the types of studies and activities authorized under the TPP is found in Figure 2-1. Table 2-1 includes the cost sharing and approval authorities associated with various activities under TPP.

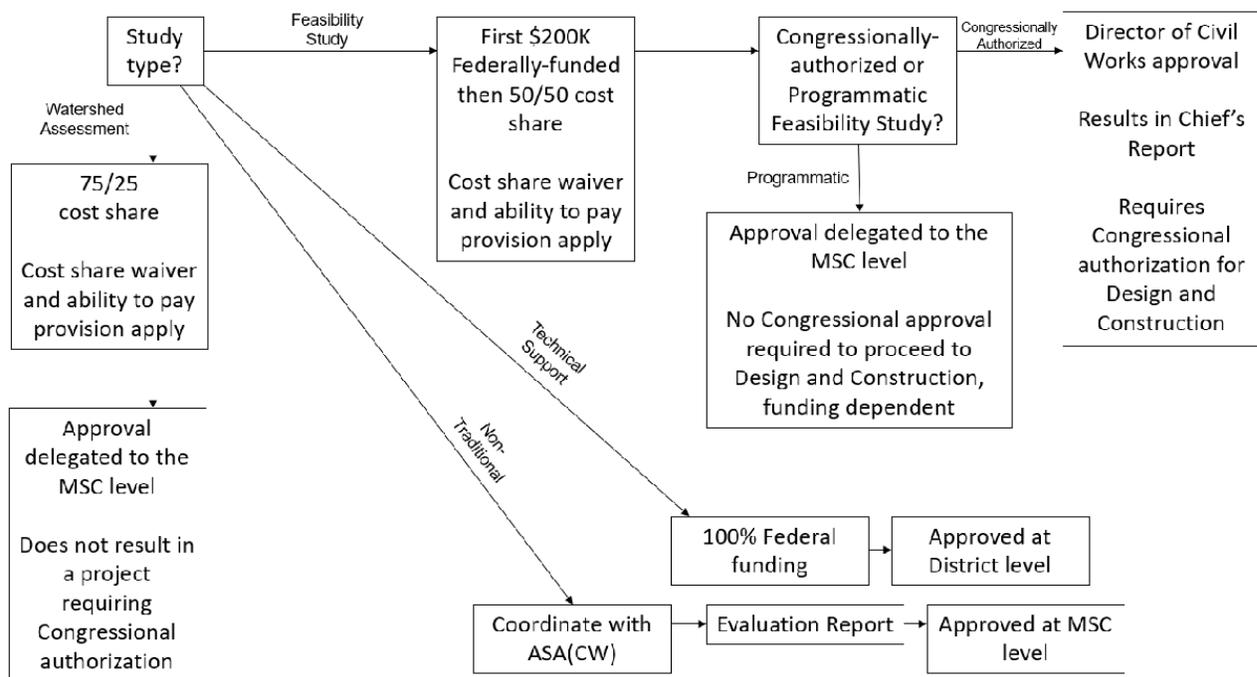


Figure 2–1. Flow chart: study types authorized by the Tribal Partnership Program

**Table 2-1
Tribal Partnership Program activities and approval authorities**

Study type	Cost share	Authorized water resources activities	Approval authority for final decision document
Feasibility study	<p>The first \$200,000 of the costs are at federal expense</p> <p>50 percent federal and 50 percent non-federal</p> <p>33 USC 2310 Cost Share Waiver applies</p> <p>Ability to Pay provision applies, if applicable</p>	<p>Flood and storm damage reduction, including erosion control</p> <p>Environmental restoration and protection (aquatic ecosystem restoration)</p> <p>Navigation</p> <p>Preservation of natural and cultural resources</p> <p>Non-traditional water resources project (above Congressionally authorized per-project limit)</p>	<p>HQUSACE</p> <p>Results in a final feasibility report and Chief's Report</p> <p>Requires Authorization and Appropriations by Congress for Construction</p>
Programmatic feasibility study (See para1-8i)	<p>The first \$200,000 of the costs are at federal expense</p> <p>50 percent federal and 50 percent non-federal</p> <p>33 USC 2310 Cost Share Waiver applies</p> <p>Ability to Pay provision applies, if applicable</p>	<p>Flood, hurricane and storm damage reduction, including erosion control</p> <p>Environmental restoration and protection (aquatic ecosystem restoration)</p> <p>Navigation</p> <p>Preservation of natural and cultural resources</p> <p>Non-traditional water resources project (under Congressionally authorized per-project limit)</p>	<p>MSC</p> <p>Results in a final feasibility report</p> <p>No Congressional approval required to proceed to Design and Construction, funding dependent</p>

**Table 2–1
Tribal Partnership Program activities and approval authorities - continued**

Study type	Cost share	Authorized water resources activities	Approval authority for final decision document
Watershed assessments	75 percent federal and 25 percent non-federal 33 USC 2310, Cost Share Waiver applies Ability to Pay provision applies, if applicable	Watershed Plans in coordination with other federal, state, and local agencies	MSC Does not result in a project requiring Congressional authorization
Technical assistance	100 percent federal and 0 percent non-federal	Examples provided in paragraph 1-8g(2) for the purposes of integrating into planning of hydrologic, economic, and environmental data and analyses	No approval required but signed by District Commander Does not result in a project requiring Congressional authorization
Water Related and Feasibility-Like Reports	The first \$200,000 of the costs are at Federal expense 50 percent Federal and 50 percent non-Federal Ability to Pay provision applies, if applicable	Future planning type documents, or coordination by a Tribe with the DOI or other federal agencies related to water resources planning	No approval required but signed by District Commander Does not result in a project requiring Congressional authorization

(1) A feasibility study that identifies water resources problems, formulates and evaluates solutions, resolves conflicting interests, and prepares recommendations for Congressional authorization for a specific Civil Works project. For additional information, see chapter 4.

(2) A programmatic feasibility study that identifies water resources problems, formulates and evaluates solutions, resolves conflicting interests, and prepares a recommendation that consists of a single project at or below the federal TPP programmatic per project limit or a single project composed of separable elements that are each below the federal programmatic limit, for design and construction without further Congressional authorization. For additional information, see chapter 5.

(3) A watershed assessment that addresses problems, needs, and opportunities within a watershed on a Tribal nation and provide a strategic overview that illustrates how the individual recommendations cohesively tie together to advance the shared

vision and further achieve the desired end-state. For additional information, see chapter 7.

(4) Technical assistance that may be of a more limited scope and is independent of watershed activities. For additional information, see chapter 8.

(5) A feasibility-like study may, but is not required to, contain a recommendation on a specific water resources development project. Depending on the wishes of the Tribal partner, the feasibility-like study will be scoped at the outset for describing an array of alternatives that are determined to be technically feasible and economically justified and environmentally acceptable. For additional information, see chapter 8.

(6) Consistent with the principles inherent in the federal trust responsibility, the TPP will be implemented more broadly to provide the Army the flexibility to include projects that are not typically considered a traditional USACE water resources development project (non-traditional activities). Additional information on non-traditional activities can be found in chapter 9.

(a) These non-traditional activities under TPP must be related to a water resource and align with USACE capabilities and core competencies. PDTs are encouraged to work in cooperation with the heads of Indian Tribes and the heads of other federal agencies to determine if those projects are appropriate to meet the intent of TPP.

(b) A non-traditional feasibility study that may or may not require formulation of a plan for programmatic construction and may be limited to the evaluation of federal interest for construction under TPP authority.

g. *Decision document.* For TTP feasibility studies, decision documents are the consolidated documentation of feasibility, technical, and policy analyses, findings, and conclusions upon which the District Commander bases the recommendation. For programmatic feasibility studies, this recommendation is made from the District Commander to the Major Subordinate Command (MSC) Commander to approve the recommended project for construction. For feasibility studies requiring Congressional authorization, the decision document recommends authorization through the completion of a Report of the Chief of Engineers (Chief's Report). A decision document will be used to support the design agreement, if required, and Project Partnership Agreement (PPA). Minimum decision document requirements are listed in specific chapters for each TPP effort.

h. *Project implementation process.*

(1) TPP projects requiring Congressional authorization are implemented in three phases: the feasibility phase, the PED phase, and construction phase. PED phase work will be funded under separate non-TPP Investigations funds. These studies will follow the standard feasibility study process and requirements according to ER 1105-2-100 and any successor engineer regulations, pamphlets, or guidance. Additional information is provided in chapter 4.

(2) Programmatic TPP projects will be implemented in two phases: the feasibility phase and the design and construction phase. Each phase is carried out under the provisions of a separate cost sharing agreement executed by the District Commander and the Tribal partner. USACE will consider an interim design phase with a design agreement if requested by a Tribal partner or if the total project cost or separable element cost is over \$10,000,000. Additional information for addressing these two phases is set forth in chapters 5 and 6.

(3) For non-traditional water resources projects, the ASA(CW) may approve initiation of a non-traditional feasibility study. If the recommended project for Congressional authorization is anticipated to be above the programmatic limit established by Congress, the project will follow the three-phase process requiring Congressional authorization. Non-traditional water resources projects under the TPP per-project Congressional limit will follow the programmatic two-phase process for implementation.

2-2. Cost Sharing

a. *General program cost sharing.* There is no minimum project size or cost for a project. Large or complex projects where the likely cost of the solution will be beyond the programmatic project and/or separable elements limit of TPP will require Congressional authorization. The federal share of the project is limited to the programmatic limit as established by WRDA. In estimating the federal share, districts must take into consideration any reductions in non-federal cost share requirements from cost share waivers or the ability to pay provision.

(1) Cost Sharing Waiver for Territories and Indian Tribes, 33 USC 2310, applies to American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Puerto Rico, the Trust Territory of the Pacific Islands, and for any Tribe (as defined in 25 USC 5304). It provides a cost share waiver for the Territories and Tribes and is subject to an annual inflation adjustment. The cost share waiver applies to feasibility and watershed studies. The cost share waiver will be excluded from the non-federal share of the study cost and is funded with federal funds. The cost share waiver is applied once during the feasibility study, and once during the construction phase(s). An EGM is published annually in the first quarter of the new fiscal year with the annual inflation adjustment.

(2) Cost sharing agreements for TPP activities are subject to the ability of a Tribe to pay.

(a) The Ability to Pay provision applies to studies, watershed assessments, and planning activities under TPP. It applies to the remaining financial contribution, if any, for design and construction after subtraction of the value of LERRDs. The tribal partner is responsible for the reduced cost share after the application of the Ability to Pay provision and the difference is funded with federal funds.

(b) An annual EGM, Tribal Partnership Program Reduced Cost Share Eligibility Criteria (Ability to Pay), provides the general guideline for determining Tribal partners' eligibility for a reduction in cost share, how to find data for and steps required to determine a Tribal partner's ability to pay, and procedures for figuring the reduced cost share amount. Please refer to the current EGM when determining Ability to Pay reduced cost share amount.

b. *Feasibility phase cost share.* TPP study costs will initially be shared with the Tribal partner equally (50 percent each) pursuant to the terms of the TPP FCSA.

(1) The first \$200,000 of the costs are at federal expense.

(2) The Tribal partner cost share will be further adjusted as applicable by the Cost Share Waiver for Territories and Indian Tribes (33 USC 2310) prior to execution of the agreement, and by the Ability to Pay requirements (Section 203(d)(1) of WRDA 2000, as amended) as applicable.

(3) A floodplain management plan (paragraph 6-19) developed as part of the feasibility study by Tribal partners is cost shared equally (50 percent each) (subject to Cost Share Waiver and, if applicable, Ability to Pay provision) as a part of the feasibility study and must be described in the PMP.

c. *Design and construction phases cost share.* To determine the Tribal partner's financial cost share for design and construction activities:

(1) First determine the Tribe's unadjusted share of the design and construction costs based on the appropriate cost share percentages for the applicable project purpose(s).

(2) Then subtract the value of LERRDs.

(3) Next, apply the Cost Share Waiver by subtracting the adjusted waiver amount from the Tribal partner's share of design and construction costs.

(4) If the Ability to Pay provision is applicable, any remaining cost share for the Tribal partner should be multiplied by 25 percent.

(5) The remaining amount constitutes the Tribal partner's financial cost share for design and construction phase, unless further reduced by the credit that may be afforded for in-kind contributions.

(a) Credit will be afforded toward the required non-federal share of the study costs, or the non-federal share of design or construction costs, for the cost of services, studies, supplies, or other in-kind contributions provided by the Tribal partner.

(b) All costs, except operations, maintenance, repair, rehabilitation, and replacement (OMRR&R) beyond the feasibility phase are considered total project costs and will be cost shared as specified in the authorizing legislation for that purpose. The OMRR&R is solely the Tribal partner's responsibility. The PPA will include provisions to implement the project requirements as set out in the feasibility report.

(6) Flood and coastal storm risk projects will be cost shared using the same cost sharing requirements as projects implemented under specific Congressional authorization.

(a) Bank stabilization to manage streambank and riverine erosion will be considered a flood risk management activity, so these streambank erosion type projects will be implemented using the same cost sharing requirements as structural flood risk management projects implemented under specific Congressional authorization.

(b) For flood and coastal storm risk management projects, the non-federal share of a minimum of 35 percent up to a maximum of 50 percent of construction costs applies during the design and construction period as follows:

1. The Tribal partner must also pay a minimum 5 percent of the total project cost in cash and provide all LERRDs required for the project. The 5 percent cash contribution, as well as any remaining cash contribution, is reduced by the Cost Share Waiver amount (33 USC 2310) and by the TPP Ability to Pay adjustment, if applicable.

2. The remaining minimum 5 percent cash requirement after the application of the Cost Share Waiver and Ability to Pay cannot be further reduced by In-Kind contributions by the Tribe. However, if there is a cash contribution required after payment of the remaining minimum 5 percent, the additional cash contribution may be reduced by In-Kind contributions.

(c) A floodplain management plan (paragraph 6-19) developed during design and construction phase by Tribal partners is completed at 100 percent non-federal cost including any assistance performed by USACE.

d. *Watershed assessment cost share.* The Tribal partner will contribute 25 percent of assessment costs, unless the ability to pay provision applies in which case the Tribal partner will contribute 10 percent, but in both cases the non-Federal contribution is subject to the application of the Cost Share Waiver amount that is in effect at the time of Agreement execution. Depending on the funds required from the Tribal partner to meet its required cost share, the actual amount waived could be less than the maximum waiver amount.

e. *Non-traditional water resources development projects cost share.* The TPP provides USACE the authority to carry out projects that address other such projects as the ASA(CW), in cooperation with Indian tribes and the heads of other federal agencies deem to be appropriate. Should these projects be related to a water resource and align with USACE capabilities and core competencies, the cost sharing should be assigned to the project purposes for which the proposed activity most closely aligns. For example, for a proposed project including an upgrade to a Tribal irrigation system that would reduce evaporative losses, conserve water resources, prevent growth of aquatic weed, and provide power to an irrigation system, the project purpose would most closely align with the agricultural water supply mission and be cost-shared at 65 percent federal and 35 percent Tribal partner.

f. *Other federal funds used as a part of Tribal partner cost share.* A Tribal partner may use, and the ASA(CW) may accept, funds provided by a federal agency under any other federal program, to satisfy, in whole or in part, the non-federal share of the cost of the study or project if the federal agency providing the funds determines that the funds are authorized to be used to carry out the study or project.

(1) A letter must be provided by the federal granting agency stating that it has determined that the funds are authorized to be used to carry out the TPP study or project. The name of the federal agency and the date of the letter should be shown in the agreement checklist provided with the draft agreement package.

(2) An exception to this requirement is for federal funds being administered by the Tribal partner under the Indian Self-Determination and Education Assistance Act of 1975 (codified in 25 USC 46), as amended. These funds do not require further federal approval to be used to satisfy the non-federal cost share. Any cost sharing agreement for a study is subject to the Ability to Pay Provision as authorized under TPP. Reference the current EGM Tribal Partnership Program Reduced Cost Share Eligibility Criteria (Ability to Pay), or the most recent published guidance.

g. *In-Kind contributions.* In-kind contributions may be accepted toward the required Tribal partner share of costs. In-Kind contributions may include the cost of services, studies, supplies, or other contributions provided by the Tribe, which may include Indigenous Knowledge. Non-federal planning, design, or construction activities performed by the Tribal partner in lieu of the federal government during the feasibility phase or design and construction phase, may be considered an In-Kind contribution. See ER 1165-2-208.

(1) Credit afforded for In-Kind contributions reduces or eliminates the non-federal cash contribution, except in the case of the required 5 percent cash contribution for

flood risk management projects and the additional 10 percent payment for navigation projects.

(2) Creditable In-Kind contributions include any initial investigations performed by the Tribal partner to identify the existence and extent of any hazardous, toxic, and radioactive wastes (HTRW) that may exist in, on, or under real property interests required for the project. Creditable In-Kind contributions do not include expenses for HTRW cleanup and response which are always the responsibility of the non-federal partner.

(3) Creditable In-Kind contributions should be distinguished from the costs of participation in a design coordination team or a project coordination team established to discuss significant issues or actions as part of design or construction of the project. These expenses are not shared costs and are not creditable.

(4) Many Tribal partners are as capable, or more capable, as any other partner for a USACE Civil Works project, and in many areas can equal the USACE capabilities. After a TSP decision point in the feasibility study process, a Tribal partner may propose to provide or perform all, or a portion of, the design for a specifically authorized project as an In-Kind contribution. In this situation, the tribal partner will sign an In-Kind Memorandum of Understanding (MOU) with USACE to perform such work in anticipation of a design agreement or PPA. If a Tribal partner proposes to undertake any construction prior to the execution of a PPA for a specifically authorized project, a similar In-Kind MOU process would be followed. These MOUs stipulate that the work will be at the risk of the non-federal party, so should be entered into advisedly.

(5) After completion of the feasibility study for a project that will be carried out under the TPP programmatic limit, a Tribal partner may propose to provide or perform all, or a portion of, the design or construction as an In-Kind contribution., Execution of an In-Kind MOU with USACE to perform such work is not necessary. However, the Tribal partner should work with the USACE district to develop an agreed upon scope of work in order minimize the risk that such work would not be integral or would not be creditable.

(6) If the Tribal partner is an ANCSA Corporation, that ANCSA Corporation and its subsidiaries are in a position to access non-public information. An ANCSA Corporation that acts as a Tribal partner under TPP study or project may not later compete for a contract where its previous status as a Tribal partner would give it an unfair competitive advantage. In this situation, an ANCSA Corporation is prohibited from bidding on study, design, or construction work that may result from any work arising from an agreement for which the ANCSA Corporation was the Tribal partner. This does not prohibit other ANCSA Corporations or federally recognized Tribes from bidding on such work, nor does the ASA(CW) policy modify or supersede any Federal Acquisition Regulation (48 CFR Chapter 1). This prohibition also does not alter any rights a Tribal partner has to seek in-kind contributions allowable by law.

(7) Non-federal feasibility work and non-federal design and construction work for credit may only be provided by the Tribal partner and can be accomplished by the hired labor of the Tribal partner or by contract administered by the Tribal partner. Vertical team discussions should occur when the Tribal partner is a member of a compacted agency in Alaska for crediting purposes.

(8) The value of the non-federal feasibility or programmatic design and construction work will be estimated prior to the initiation of the effort. For the purposes of estimating total study costs or total project costs and projecting the Tribal partner's cash requirement, USACE and the Tribal partner will agree upon a value for such work at the beginning of the study or programmatic design and construction, as applicable. The actual amount of credit to be afforded for non-federal feasibility or programmatic design and construction work will be subject to an audit to determine reasonableness, allowability, and allocability of the costs. The amount of credit to be afforded will not exceed the lesser amount of either 1) the actual costs incurred or 2) the amount of the Federal Government estimate of such work if the work had been performed by the Federal Government. USACE must apply applicable federal regulations, including Office of Management and Budget (OMB) Circulars A-87 or A-122 (for non-profit sponsors). The Tribal partner must comply with applicable federal and state laws and regulations, including the requirement to secure competitive bids for all work to be performed by contract.

(9) The Tribal partner may not receive credit for supervision and administration of work performed by the Federal Government or the Federal Government's contractors. This includes Tribal partners acting as monitors paid by the USACE who observe contractor actions to ensure that cultural or natural resources are not harmed or damaged.

(a) Many of the tasks included in the Supervision and Administration account during the programmatic design and construction phase, including most of the contract management related activities, are inherent Federal Government functions which may not be contracted out or assigned to others to perform (see Federal Acquisition Regulation subpart 7.5, 48 CFR Chapter 1).

(b) The Tribal partner will receive credit for supervision and administration of any contracts that it awards subject to an audit to determine reasonableness, allowability, and allocability of the costs.

(10) Contributed funds are those funds above any statutorily required non-federal cost share provided voluntarily by Tribal partners, with no credit or repayment authorized for such funds for authorized work that is being undertaken by USACE. For the TPP, once federal funds are provided to initiate the study, contributed funds may be accepted for further study, design, construction, and, in the case of navigation, operation and maintenance (O&M) of the project. Congressional notification is required prior to the acceptance of such funds consistent with the process described in the contributed funds implementation guidance. Contributed funds guidance may be found in HQUSACE, CECW Director's Policy Memorandum 2020-01 (Acceptance of Contributed Funds, Advanced Funds, and Accelerated Funds), 19 December 2019.

h. *Cost sharing for preservation of cultural and natural resources projects.*

(1) The feasibility phase for the preservation of cultural and natural resources will be cost shared as shown in table 2-1.

(2) The design and construction of projects for the preservation of cultural or natural resources will be shared according to the cost sharing for flood risk management, coastal storm risk management, or ecosystem restoration, depending on the causal factors necessitating the project.

2–3. Planning principles

a. *General requirements.* The recommendations under TPP must specifically address the determination that the project is feasible and includes appropriate cost sharing. The determination of feasibility includes that the project is technically feasible; the economic, environmental, and social benefits to the Tribal Nation outweigh the costs; the project is cost-effective; and the project is environmentally acceptable. USACE should consider the breadth of benefits provided including those identified by the relevant Tribal Nation. The primary driver in the implementation consideration is whether the project will substantially benefit Indian Tribes.

(1) District staff, in coordination with MSC staff, will determine the appropriate level of detail for analyses required to produce a quality project in a reasonable time and at a reasonable cost. Simplified evaluation procedures may be adopted for low risk/low-cost projects and when the consequences of failure are minimal and do not pose a threat to human life or safety.

(2) District and MSC Commanders cannot deviate from legislative requirements, or from policy without prior written approval from HQUSACE or ASA(CW), environmental compliance, or regulatory requirements of HQUSACE, the DA, the Department of Defense, or other federal agencies. Requests for exceptions from policy should be coordinated through the appropriate RIT to confirm the decision authority and process for approval.

b. *Indigenous Knowledge.* Project delivery teams should consider, where available, Indigenous Knowledge throughout the planning process. The identification of Indigenous Knowledge is achieved through Tribal consultation and collaboration with all appropriate tribal and project delivery team offices and experts. It is recommended that as part of early Tribal consultation, there is an initial discussion regarding the availability of Tribal information and knowledge that would be relevant. As the study progresses, continued consultation and collaboration should identify and consider Indigenous Knowledge to improve study decision-making. Indigenous Knowledge may inform all aspects of a study, including, but not limited to, species and habitats, cultural resources, traditional cultural places, water resources, hydrology, etc.

(1) Project delivery teams and Tribal partners should discuss what information should be kept confidential (not available to the public) and where necessary, determine in advance how this information might be shared and considered.

(2) Where Indigenous Knowledge is to be used, the project delivery team must ensure it has Tribal consent to capture that information in a report and that the information provided is accurately represented.

(3) Project delivery teams should provide to their Tribal partners how Indigenous Knowledge, if provided, was considered in the selection of a final plan.

c. *Plan formulation and evaluation.* Alternative plans will be developed following planning principles and methodologies. Overall, alternatives will be developed using the level of detail necessary to make an informed decision on the practicability, acceptability, and implementability of the plan. The plan will be consistent with federal law and policy, and to the extent that law and policy permit, consistent with the goals of the Tribal partner.

(1) Analyses of comprehensive benefits and cost, risk and uncertainty, cost effectiveness, and incremental cost will be undertaken using procedures appropriate for

the scope of the complexity of the project. As required by the National Environmental Policy Act (NEPA) (42 USC 4321) and other applicable statutes, when formulating measures and plans that will result in the recommendation for a project, the PDT must consider mitigation opportunities to reasonably avoid, minimize or compensate for adverse environmental or other impacts that could occur from the implementation of the project.

(2) All plan formulation must be completed during the feasibility phase, including technical analyses, policy compliance determinations, federal and environmental compliance determinations, and activities required for the approval of the decision document. If it is expected that sufficient information needed for permitting or environmental compliance will not be available to make a final decision until PED, then documentation of coordination with the cooperating and any participating agencies regarding the NEPA analysis must be provided in the final report.

d. *Selection of a plan.* The recommendations under TPP must specifically address the determination that the project is feasible and includes the appropriate cost sharing. This determination of feasibility includes that the project is technically feasible; the economic, environmental, and social benefits to the Tribal Nation outweigh the costs; the project is cost-effective; and the project is environmentally acceptable. Additional guidance is provided in paragraph 2-3f on demonstrating project benefits and selection of a plan.

e. *Project justification.* Notwithstanding any requirements for economic justification established under Section 209 of the Flood Control Act of 1970 (42 USC 1962-2), the ASA(CW) may implement a project (other than a project for ecosystem restoration) using any of the following criteria.

(1) The project will significantly reduce potential flood or hurricane and storm risk hazards. The project may be limited to hazards that may be addressed by measures for erosion mitigation or bank stabilization.

(2) The project will improve the quality of the environment.

(3) The project will reduce risks to life safety associated with the hazards described in paragraph 2-3e(1).

(4) The project will improve the long-term viability of the community.

f. *Benefits to Tribal Nations.* The primary driver in federal interest is if the project will substantially benefit Indian Tribes. As many aspects of Tribal values are not easily quantified or monetized, the benefits of any alternative(s) must include adequate quantitative and/or qualitative analyses to discuss the full range of benefits to the Tribal Nation. PDTs must identify and analyze benefits in total and across a full array of benefit categories to determine which alternatives provide substantial benefit to the Tribe(s). Benefit categories to be considered must encompass economic (national and regional), environmental (national and regional), and social considerations. Economic, social, and environmental benefits, impacts, and costs are to be identified and measured.

(1) When a project is to be justified based on benefits including, but not solely, net National Economic Development (NED) benefit, then great care should be taken to examine the true benefit of the project to the Tribal Nation. This effort can be accomplished using various techniques and methods, but the techniques and methods

used in the underlying analyses should in all cases be scientifically sound and defensible.

(a) These analyses can look individually at general indicators of public well-being, such as: income, employment, access to traditional resources, ecosystem vitality, life safety, cultural health, and social stability. These analyses can also be measurements of a single metric that speaks broadly to some or all of these indicators.

(b) When choosing to use some of these indicators for which there is not a broadly accepted value equating to willingness to pay, PDTs are encouraged to include scientific backing sources for claimed benefits. Scientific sources could include information provided in peer-reviewed scientific journals or other scientifically and/or academically rigorous materials that directly support the claims being made.

(c) In all cases, a clear case should be made for the benefits expected to accrue as a result of the project, why those benefits are significant to the Tribal Nation, and why those benefits are cost effective to realize.

(2) TPP studies to preserve cultural or natural resources do not require project justification using NED or net National Ecosystem Restoration (NER) benefits in addition to the justification categories listed in paragraph 2-3e. These types of studies do not require a policy exception from the ASA(CW) to recommend a plan other than the NED or NER plan.

(3) Decision documents will continue to present the NED analysis for all viable alternatives and identify the NED Plan when one or more alternatives produce net positive NED benefits. If there is no NED Plan and/or the selection of a plan other than the NED Plan is based in part or whole on non-NED benefits, then the selection will be supported by a cost effectiveness/incremental cost analysis consistent with ecosystem restoration evaluation procedures (see Appendix E, Section V, ER 1105-2-100, or successor guidance when available).

(a) When it is known that initial or final array of plans will require a cost effectiveness/incremental cost analysis and justification through an account other than NED, vertical team alignment is documented in a Memorandum for Record. The memorandum should reflect alignment on 1) project justification and 2) a pathway to define metrics and criteria for the cost effectiveness/incremental cost analysis. Documentation on vertical team alignment can as early as the Alternatives Milestone meeting, or at subsequent in-progress reviews.

(b) For feasibility studies recommending a project requiring specific authorization by Congress, an exception request to select a plan other than the NED or NER plan must be submitted to the ASA(CW) through the appropriate RIT prior to the TSP Milestone meeting and must be approved prior to the release of the draft feasibility report. The approved policy exception must be included in the final report package to demonstrate policy compliance of the final report.

(c) For feasibility studies recommending a project for construction under the programmatic limit as set forth by WRDA, an exception to the NED or NER plan does not need to be approved by the ASA(CW). As early as possible, but no later than the TSP Milestone, USACE will notify the ASA(CW) through the appropriate RIT if the recommended project is likely to be justified by net benefits to the Tribe other than NED or NER, and the Office of the ASA(CW) will be invited to the TSP Milestone meeting.

(4) The decision document will present the tradeoffs of impacts in the economic, environmental, and social accounts for the plans in the final array. The document will describe the compelling justification for any plan that is not the NED or NER plan. Special care should be given to the benefit units used in this analysis, particularly when they are not generally accepted and easily quantifiable (such as acres of land, habitat units, etc.). All nonstandard metrics must be coordinated and approved by the vertical team.

2–4. Letter report

a. Letter reports are used to succinctly conclude a study and may be the most appropriate tool to document the information required to support a project for budgetary consideration or to document the completion of the feasibility phase under the TPP.

b. Letter reports may include a few key facts such as study authority, Tribal partner, work completed to date, reasons for concluding the study, and a summary of expenditures to date (non-federal and federal costs).

c. District Commanders can approve the final letter report and transmit to the MSC for endorsement to HQUSACE. Letter reports are not reviewed by HQUSACE but are provided for informational purposes only and will be sent to the ASA(CW) with a Memorandum for Record notifying the ASA(CW) of the conclusion of USACE participation in the study.

d. It would be appropriate to develop a letter report for the following situations.

(1) *Study conclusion.* If a TPP feasibility, watershed, or other study effort must conclude before the final recommendation is developed due to a lapse in funding appropriations or lack of Tribal partner support, a letter report should be developed.

(2) *Watershed planning activities.* Short of a completed final watershed plan, USACE may conduct watershed planning activities. Such investigations would be summarized in a letter report. This is further detailed in paragraph 7-14.

(3) *Feasibility-like, technical assistance, or stand-alone water related studies.* These types of studies or activities may conclude without specific recommendations for design or construction. Additional information is provided in chapter 8 for these types of letter reports.

(4) *Non-traditional water resources development project recommendations.* Studies and projects that the ASA(CW) deems to be appropriate in cooperation with Indian tribes and the heads of other federal agencies may also end in a letter report. Additional information is provided in chapter 9 for these types of letter reports.

2–5. Final report submittal package checklist

Unless a letter report is developed (para 2-4), the final report will be provided to the respective MSC and HQUSACE for further review and approval. Table 2-2 below shows the required documents for transmittal to the MSC.

Table 2-2
Final report package check list for Tribal Partnership Program studies

	Feasibility report for Congressional authorization	Feasibility report for programmatic implementation¹	Watershed assessments	Technical assistance, water-related planning activities, or feasibility-like reports
District transmittal memo with recommendation and request for MSC approval	X	X	X	
District transmittal memo to MSC with recommendation				X
Decision document submittal package checklist	X	X	X	
Final report	X	X	X	
Project guidance memorandum	X	X	X	
Proposed Chief's Report	X			
Proposed responses to Independent External Peer Review (if applicable)	X	X		
Report summary	X	X	X	
Project fact sheet or placemat	X	X	X	X
Certification of District Legal Review	X	X	X	
Review summary (District Quality Control, Agency Technical Review, and if applicable, Independent External Peer Review)	X	X	X	
Cost certification and total project cost summary	X	X		
Finding of No Significant Impact or Record of Decision²	X	X		
Project briefing slide deck	X	X	X	
Tribal partner Letter of Intent	X	X		
Tribal partner self-certification of financial capability	X	X		
Tribal partner self-certification of real estate acquisition capability	X	X		

Notes.

¹ Includes Non-traditional water resources development projects.

² For reports recommending a project for Congressional authorization, the Finding of No Significant Impact or Record of Decision must be transmitted as draft and unsigned until conclusion of ASA(CW)'s Administration review.

Chapter 3 Project management

3–1. Roles and responsibilities

a. *Management of Tribal Partnership Program activities.* MSCs establish the TPP priorities across the districts in the MSC and provide a priority list to the MSC TPP program manager(s).

b. *USACE Headquarters Tribal Partnership Program Manager.* The HQUSACE TPP program manager is responsible for:

- (1) Implementation of the TPP.
- (2) Development of the draft President's budget.
- (3) Allocation of funds.
- (4) Monitoring of policy and procedural compliance.
- (5) Program-wide financial and physical performance measures.
- (6) Funding projects based on availability of funds and ranking all proposed TPP projects.

c. *Major Subordinate Command.* The MSC is responsible for:

- (1) Providing regional leadership of the program.
- (2) Policy compliance.
- (3) Coordinating reviews and approval of TPP decision documents, and including MSC real estate staff and the MSC Tribal Liaison in those processes.
- (4) Supporting the development of a Chief's Report for feasibility studies that recommend a project requiring further authorization by Congress.
- (5) Quality control of project-level data contained with the enterprise USACE project management database and the TPP database.
- (6) Coordinating actions requiring HQUSACE involvement with the appropriate RIT. Decision and approval authority will follow EP 1105-2-61 for product and milestone approvals.

(7) Identifying policy exceptions and coordinating requests to the appropriate RIT and TPP program managers (Policy and Budget) for review and approval of exceptions or other submittals requiring HQUSACE or ASA(CW) approval, as determined to be appropriate by the vertical team.

d. *District.* The District is responsible for execution of all TPP projects.

- (1) Successful execution of TPP projects include:
 - (a) Assignment of a project manager and team members.
 - (b) Early involvement of real estate, counsel, and the district Tribal Liaison to plan, design, and construct TPP projects.
 - (c) Coordination with Tribal partners.
 - (d) Development and submittal of TPP decision documents for approval.
 - (e) Maintenance of project records (the appropriate RIT will coordinate with HQUSACE TPP program managers and maintain TPP project data).
- (2) The district Tribal Liaison is responsible for tasks including, but not limited to:
 - (a) Removing barriers and improving access to USACE programs for Tribes.
 - (b) Improving outreach and engagement with Tribes.
 - (c) Identifying and engaging with Tribes suffering from water resources challenges.

(d) Improving, expanding, and facilitating government-to-government consultation with Tribes.

(e) Coordinating and implementing all relevant Tribal-related activities.

e. *The Tribal partner.* This is the project sponsor and will be included in every aspect of development, including:

(1) Helping to define the water resources problem(s) and opportunities, study scope, task, cost estimates, and schedules.

(2) Participating in study decisions, including determining the type and mix of study objectives, contributing to the development and evaluation of alternatives (plan formulation), and selection of an alternative plan.

(3) Contributing data and resources, such as Indigenous Knowledge, tribal member involvement, or other activities that may be counted toward in-kind work or contracting services to support the study and/or project scope.

(4) Communicating with the Tribal community about the project and assisting with communications about the project.

(5) Contributing to the project design, including environmental and aesthetic features, and ensuring that other factors affecting the community are addressed during the planning phase.

(6) Providing the LERRDs and performing the facility/utility relocations required for the construction and OMRR&R of the project.

3–2. Project management plan

The PMP serves as a road map for the conduct of a study, and, potentially, for the related design and construction of a project. A PMP will be prepared within 90 days after execution of the FCSA for every study and implementation activity, including a Review Plan (or Review Strategy for technical assistance activities, para 8-2d) to outline specific review requirements for planning and engineering products.

a. All PMPs should follow a common standard of quality appropriate for the effort undertaken in TPP. A PMP is a roadmap for quality project delivery and its development is an essential task during the early stages of the feasibility phase. The PMP will identify all actions, review requirements, processes, costs, and schedules as integrated features of the overall project execution and will be coordinated with the Tribal partner.

b. The PMP is signed by the Tribal partner and USACE representatives .

c. The PMP is continually updated throughout the study to reflect changed circumstances based on new information. The district will collaborate with the Tribal partner on all updates to the PMP.

3–3. Schedule

A schedule will be developed for every TPP study and activity. TPP projects are expected to be completed in a timely and efficient manner that meets the Tribal partner's needs and expectations. Further, TPP projects will be developed in consideration of the Tribal partner's own internal processes, which may include, but are not limited to tribal governance requirements, internal public engagement, cultural activities that take precedent over study progress and completion, and subsistence activities. As a general matter, studies will be completed in the timelines listed below. TPP projects are typically small, non-complex, and used to provide solutions for specific

water resource issues. The basic expectations for time required to complete the various phases/steps of a TPP project are as follows (subject to the availability of federal funding and Tribal partner processes):

a. *Feasibility report recommending projects for specific Congressional authorization.* These feasibility efforts are expected to be complete two to three years from execution of the FCSA. The requirements from 33 USC 2282c and requirements for establishing a detailed project schedule (33 USC 2282) apply to these study efforts. TPP feasibility study timelines may be extended consistent with 33 USC 2282c and/or due to external Tribal engagements. Extensions to feasibility study timelines should be elevated to the vertical team as early as possible.

b. *Feasibility report recommending programmatic project design and construction.* These feasibility efforts are expected to be complete one to two years (up to three years) from executing the FCSA. Since these projects do not require additional Congressional authorization, like the CAP projects, 33 USC 2282c and requirements for establishing a detailed project schedule (33 USC 2282) do not apply to these study efforts.

c. *Programmatic design and construction.* Execute the PPA within three to six months of receipt of funds after approval of the decision document, and initiate development of the plans and specifications.

3–4. Review procedures

The district will develop and submit a review plan to the MSC consistent with ER 1165-2-217. The review plan is a component of the district's Quality Management Plan in the PMP. The review plan will describe all appropriate levels of required review including District Quality Control (DQC), Agency Technical Review (ATR), Independent External Peer Review (IEPR), and policy and legal compliance review.

a. In its quality assurance role, the MSC should ensure that the PDT and review teams are appropriately staffed and facilitate the identification of regional and/or national experts if needed. In most cases, the appropriate Planning Center of Expertise (PCX) will serve as the Review Management Organization and endorse the review plan for MSC approval; in some cases, the MSC will serve as the Review Management Organization. For feasibility studies investigating the preservation of cultural and natural resources, the MSC will coordinate with the Tribal Nations Technical Center of Expertise regarding the appropriate Review Management Organization prior to endorsement. Shortly after the initiation of a feasibility study, a policy and legal compliance review team should be assigned for the study duration and participate in the milestone meetings.

b. In identifying the PDT and review teams, appropriate expertise in TPP study delivery and policy should be considered (for example, inclusion of district Tribal Liaison and subject matter experts within Counsel, Real Estate, and HQUSACE-level policy reviewers).

(1) The policy and legal compliance review team rosters should be coordinated between the MSC Planning Chief and the appropriate functional lead at HQUSACE.

(2) The policy and legal compliance review manager will be coordinated between the MSC Planning Chief and the Chief of the HQUSACE Office of Water Project Review.

(3) The policy and legal compliance review team may include the HQUSACE TPP program manager and a senior policy advisor as determined to be appropriate.

(4) The review team will be supplemented with an Office of Water Project Review advisor if there are no Office of Water Project Review staff serving on the review team.

c. The following apply to TPP products:

(1) All TPP deliverables will undergo DQC review.

(2) IEPR is generally not applicable to TPP products except those projects that include an Environmental Impact Statement or meet the mandatory triggers for IEPR (Chief of Engineers has determined the project is controversial; Governor has requested the IEPR; or if the cost of the project is more than \$200 million).

(3) If deemed appropriate in cases where mandatory triggers are present, IEPR exclusions may be approved on a case-by-case basis by the MSC Commander, founded on a risk-informed decision process and may not be further delegated.

(4) Review plans are required for all TPP projects. MSCs are strongly urged to adopt a programmatic approach to the review of TPP projects, such as use of programmatic or model review plans. TPP programmatic or model review plans will be approved by the MSC Commander. Approval of project-specific review plans not requiring an IEPR or safety assurance review may be delegated for approval by the District Commander. Project-specific review plans requiring IEPR or a safety assurance review are approved by the MSC Commander or their delegate.

(5) The Review Management Organization for ATR for TPP projects that require specific Congressional authorization will be the appropriate PCX. The Review Management Organization for ATR of TPP programmatic feasibility studies may be the home MSC in lieu of the PCX. The PCXs will continue to serve in their roles of providing advice and may serve as the Review Management Organization under appropriate agreements with an MSC. The ATR lead is to be outside of the home MSC unless the TPP review plan justifies an exception and is explicitly approved by the MSC Commander.

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

(7) Review by the USACE Risk Management Center is only required for dam and levee safety projects. However, the MSC Commander will ensure that all decision documents involving life safety and flood and coastal related risk reduction measures are fully and appropriately reviewed.

(8) All issues related to risk and uncertainty are to be resolved at a consistent and appropriate level and communicated within the study documents.

(9) Approval of planning models for all TPP feasibility studies is required and should be coordinated with the appropriate Review Management Organization. MSC Commanders remain responsible for assuring the quality of the analyses used in these projects. The ATR certification package will include an explicit statement that says that

the models and analyses are used appropriately and in a manner that is compliant with USACE policy, and they are theoretically sound, computationally accurate, and transparent. The ATR certification package will address any limitations of the model or its use documented in study reports.

3–5. Feasibility cost sharing agreement

a. Authority to approve a FCSA, including any deviations, and to execute FCSA will be consistent with FCSA guidance and with the Annual Budget Execution Engineer Circular. Non-substantive deviations from the model FCSA may be approved by the MSC Commander; substantive deviations will require approval by HQUSACE. Subsequent to execution of the FCSA, no work beyond the initial \$200,000 in federal funds may be initiated until the Tribal partner's appropriate proportional share of costs is made available either in cash or through an agreement on a schedule for the estimated value of non-federal feasibility work that will be required for the feasibility phase.

b. Prior to signing an FCSA, non-traditional TPP activities that are not related to a water resource or align with USACE capabilities and core competencies must be elevated for a decision by the ASA(CW).

c. The Tribal partner will sign the Tribal partner's Self Certification of Financial Capability for Agreements to certify its financial capability to meet its obligations under the FCSA, if a FCSA is required. The executed copies of the FCSA and accompanying documents must be provided to the MSC TPP program manager and the appropriate RIT. For more information, see the HQUSACE Project Partnership Agreements website, <https://www.usace.army.mil/Missions/Civil-Works/> .

Chapter 4

Feasibility phase leading to Congressional authorization

4–1. Purpose

The feasibility phase encompasses the entire range of planning activities required to demonstrate that federal participation in a project is warranted and justified. The feasibility phase is cost shared 50/50 between the Federal Government and the Tribal partner, which may be further reduced by the Cost Share Waiver (33 USC 2310) and if applicable, the Ability to Pay provision. The feasibility phase begins when a FCSA is executed by the Tribal partner and the District Commander. Section 1001 of WRRDA 2014 provides that, to the extent practicable, the maximum federal cost for a feasibility study is \$3,000,000 and is applicable to feasibility studies leading to the recommendation of a project for Congressional authorization. 33 USC 2282 requires an annual report of milestone schedules to Congress and notification of missed milestones to Tribal partners.

4–2. Initial work allowance to negotiate and execute study agreement

Upon receipt of a Letter of Intent from the Tribe, the district must:

- a. Update the TPP database with the Letter of Intent date.
- b. Submit a request for funds, not to exceed \$50,000, to pay the federal costs of preparing a PMP, review plan, and negotiating the FCSA with the Tribal cost sharing

partner. These costs are 100 percent federally funded and are considered the initial allotment of the first \$200,000 in full federal funds.

4-3. Project management plan

Refer to paragraph 3-2.

4-4. Review procedures

Refer to paragraph 3-4.

4-5. Feasibility cost sharing agreement

Refer to paragraph 3-5.

4-6. Feasibility Phase

a. For feasibility studies leading to recommendations for construction of a project or separable element with a federal cost greater than \$26,000,000 (at the time of publication of this EP), the feasibility phase is the project formulation phase. During the feasibility phase planning activities are performed that are required to demonstrate that federal participation in a specific project is warranted. This phase culminates with the approval of a decision document, and a recommendation to Congress of a project or separable element of a project (chapter 4).

b. The feasibility phase includes PED, which includes project design up until the first set of construction plans and specifications. This phase is funded using TPP General Investigation funds.

4-7. Planning milestones

a. *Purpose.* The purpose of the required planning milestones listed below is to ensure that continuing work on the feasibility phase is consistent with the policies, principles, priorities, procedures, and constraints of USACE feasibility studies, thus preventing excessive expenditures on questionable projects.

(1) The requirements that support the determinations at these milestones are scalable to the size and complexity of the proposed study. Additional information on these milestones and decision-making authority is provided in EP 1105-2-61, and ER 1105-2-100, ER 1105-2-103 and any successor engineering regulations, pamphlets, and guidance.

(2) The requirement to consult and coordinate with the Secretary of the Interior on any activity under the TPP as described in paragraph 1-6c should be discussed at each milestone with the vertical team to verify proper coordination and documentation requirements.

b. Alternatives Milestone.

(1) The MSC Planning Chief is the Alternatives Milestone meeting decision-maker. The Alternatives Milestone meeting 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:

(a) The preliminary analysis of the federal interest

(b) The water resource problem(s), planning opportunities, objectives, and constraints;

(c) The preliminary future without project conditions and current conditions for the development of the alternatives; and

(d) the projected scope, schedule, and budget for the study.

(2) The PDT must invite team members with the appropriate expertise in TPP studies to the Alternatives Milestone meeting, including Real Estate and Office of Counsel.

(3) The Alternatives Milestone meeting is held after the PDT has completed at least one full iteration of the risk informed six-step planning process, and the PMP and draft review plan are developed.

(4) A vertical team alignment memorandum will document the clear path forward (scope, schedule, budget) to the TSP Milestone.

c. *Tentatively Selected Plan Milestone.*

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

(2) The MSC Planning Chief is the milestone decision-maker for studies for which the decision making authority is retained at the MSC. The HQUSACE Chief of the Office of Water Project Review is the TSP Milestone decision-maker if the decision making authority is at HQUSACE due to either the need for policy exceptions or a mutual decision between HQUSACE and the MSC based on study complexity and risks.

(3) Prior to the TSP Milestone meeting, the PDT will have completed enough full iterations of the risk-informed planning process to reduce uncertainties and identify a TSP. In addition, prior to the TSP Milestone meeting the PDT has 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 to carry forward, and prepared a scope to develop sufficient cost and design information including mitigation features for the final feasibility-level analysis and feasibility report.

(4) The draft feasibility report and NEPA/NHPA documentation will be largely complete by the milestone meeting and will be ready to release for concurrent review within 60 days of the successful TSP Milestone. Following the TSP Milestone meeting, the PM will update the PMP and review plan with the projected scope, schedule, and budget for completion of the feasibility study.

d. *Release of the draft feasibility report.* The draft feasibility report should be released within 60 days of the TSP Milestone meeting.

(1) If the decision-maker supports moving ahead with the study, the PDT will finalize the draft integrated feasibility report and NEPA/NHPA documentation and prepare to release for concurrent public, technical, legal and policy review and IEPR (if applicable).

(2) 33 USC 2282 requires the District Commander to notify Congress and the Tribal partner if the draft report release date is delayed.

e. *Agency Decision Milestone.* The Agency Decision Milestone marks the corporate endorsement of the recommended plan and proposed way forward to complete feasibility-level design and the feasibility study report package. The Agency Decision Milestone occurs after completion of the concurrent public, technical, legal and policy review, and IEPR of the draft feasibility report and NEPA/NHPA document.

(1) Upon completing an assessment of all comments, the PDT will work to address outstanding issues 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 Agency Decision Milestone meeting with decisions made on how to proceed with resolving these issues to finish the final feasibility report.

(2) Prior to the Agency Decision Milestone meeting, the PMP and review plan are updated, and the PDT has a projected scope, schedule, and budget for completion of the feasibility study.

(3) The MSC Programs Directorate Chief is the decision-maker for studies for which the decision making is delegated to the MSC. If the decision making is elevated to HQUSACE due to exceptions to policy or a mutual decision by the vertical team regarding study complexity or risk, the HQUSACE Chief of Planning and Policy is the decision-maker.

(4) Any policy exceptions required for the study must be transmitted through the appropriate RIT to the ASA(CW) for approval. Examples of policy exceptions include 3x3x3 exceptions, NED exceptions, and Locally Preferred Plan waivers.

f. *District transmittal of final report package for final policy review.* Following current guidance in EP 1105-2-61, ER 1105-2-100, and ER 1165-2-217, the District Commander provides the signed feasibility report and required components (see table 2-2) of the final report package for final policy review. 33 USC 2282 requires the District Commander to notify Congress and the Tribal partner if the final report transmittal date is delayed.

4–8. Decision document requirements and approval

a. *Feasibility report format.* The Feasibility Report Format and Content Guide Version 1.0 (October 2021) should help guide technical and policy decision document requirements.

b. *Decision document requirements.* The decision document and supporting documentation requirements will be scalable to the size and complexity of the proposed project and at a minimum contain the following:

- (1) A clear description of the recommended plan;
- (2) Demonstration of the project justification based on standard USACE or otherwise approved non-standard project justification criteria for the particular project purpose consistent with the general guidance applicable to the project purpose(s);
- (3) Documentation of the results of any request for a policy exception;
- (4) Documentation of compliance with appropriate federal, state, and local environmental and regulatory requirements, such as NEPA, normally included in a feasibility study specifically authorized by the Congress;
- (5) A completed Real Estate Plan consistent with the requirements of chapter 12 of ER 405-1-12;
- (6) The Tribal partner's Self-Certification of Financial Capability for Decision Documents and Letter of Intent;
- (7) District Real Estate certification that the Tribal partner has the capability to acquire and provide the required real estate interests;
- (8) A detailed description of the Tribal partner's local cooperation requirements;
- (9) Identification of the anticipated OMRR&R activities, including estimated costs;

- (10) The feasibility level ATR certification; and
- (11) The District Counsel's statement of legal sufficiency for the decision documentation and NEPA/NHPA process.

c. *Policy exceptions during feasibility phase.* Exceptions are required for any proposed deviation from general Civil Works planning policy as described in ER 1105-2-100 and ER 1105-2-103 including, but not limited to, policies regarding plan formulation and cost sharing, recommendation of a Locally Preferred Plan, limits on recreation costs, and limits on cost shared monitoring.

- (1) The MSC Commander must seek an exception for any deviation from policy.
- (2) Exceptions will be discussed with the vertical team as early as possible and should include the appropriate HQUSACE senior policy advisor(s).
- (3) The MSC Commander must submit the exception request to the RIT with a full explanation of the circumstances for the exception.
- (4) The RIT will prepare a letter responding to the MSC request, which will be coordinated through HQUSACE and the ASA(CW).
- (5) A response is coordinated through HQUSACE and ASA(CW) before approving a decision document containing a deviation from policy.
- (6) In no event will the decision document be approved until all policy deviations are resolved and the written response from the RIT is received by the MSC.

d. *Nonstandard estates.* Any non-standard estates must be submitted by the Real Estate District Chief through the MSC to HQUSACE Real Estate Division for review and approval, consistent with ER 405-1-12, paragraphs 12-9 and 12-10.

e. *Completion of the feasibility phase.* The feasibility phase is complete when:

- (1) All policy and legal compliance issues are resolved; and
- (2) The final decision document is transmitted to HQUSACE. Refer to EP 1105-2-61 for actions that occur after transmittal of the final decision document package to HQUSACE. This includes:

- (a) State and Agency Review.
- (b) Final policy and legal compliance review.
- (c) Preparation of the Documentation of Review Findings.
- (d) Final NEPA/NHPA review.
- (e) Preparation of the final agency response to IEPR (if applicable).
- (3) Signing of the Report of the Chief of Engineers or Director of Civil Works.
- (4) A Report of the Chief of Engineers is transmitted to Congress for authorization (if applicable).

f. *Decision document approval.* Documentation of approval of the decision document is by memorandum from the MSC Commander to the District Commander, with a copy furnished to the RIT. This authority may not be further delegated to the District Commander.

- (1) The approval memorandum certifies that the requirements for approving the decision document have been satisfied (outlined in table 2-2); summarizes the findings, conclusions, and rationale for approving the decision document; and certifies that the project addressed in the decision document is justified and is policy compliant or has received the necessary policy exceptions.

(2) If the decision document is not approved, the report will be returned to the district for revisions to address any deficiencies identified by the vertical team.

g. *Termination of the feasibility phase.* Following coordination with affected Tribal partners, the feasibility phase should be terminated if analyses indicate a lack of federal interest, a lack of public support or if a satisfactory Letter of Intent is not received from a potential Tribal partner within a reasonable length of time, usually not longer than one year (as determined by the MSC Commander in consultation with the District Commander). The phase is officially terminated when the District Commander advises the MSC Commander and the appropriate RIT in writing of termination of the study. The District Commander will also notify Tribal partners when the study is officially terminated.

Chapter 5

Programmatic feasibility phase

5-1. Purpose

a. A programmatic feasibility study identifies water resources problems, provides a recommendation that consists of a single project, or a single project composed of separable elements that are each below the federal programmatic limit, for design and construction without further need of a Congressional authorization.

b. The feasibility phase begins after a FCSA is executed by the Tribal partner and the District Commander.

c. The feasibility phase is initially cost shared 50 percent with the Federal Government and 50 percent with the Tribal partner. The Tribal partner's cost share is then further adjusted by the applicability of the Ability to Pay and Cost Share Waiver.

d. Since projects recommended under the programmatic authority do not require additional Congressional authorization, similar to CAP projects, 33 USC 2282c and requirements for establishing a detailed project schedule (33 USC 2282) do not apply to these study efforts. These studies should, with very few exceptions, meet these cost and duration marks, due to their limited size, scope, and complexity.

e. If at any time during the feasibility phase the federal share of a cost-shared project is anticipated to exceed the programmatic limit, Congressional authorization will be required for the recommended project.

(1) A new feasibility cost sharing agreement (FCSA) is not required; however, notification through the appropriate RIT and the HQUSACE TPP program manager will be required if additional scope is required to complete a final feasibility report and complete a Chief's Report.

(2) Once the final feasibility report is received by HQUSACE, a Chief's Report is developed and reviewed by applicable states and agencies, which is signed by the Chief of Engineers and provided to the Senate Committee on Environment and Public Works and the House Committee on Transportation and Infrastructure for consideration for specific authorization in a future WRDA.

(3) See chapter 4 for development of a feasibility study resulting in a recommendation requiring Congressional authorization.

f. Studies whose total cost of anticipated project or separable elements will exceed the Congressional authorized programmatic limit may continue as a

programmatic feasibility study with a modified alternative or move to a specifically authorized feasibility study. The PDT will coordinate of this determination with the vertical team and Tribal partner. Projects will not be divided into smaller components specifically to fit within the programmatic limits, though flexibility for the Tribe in implementing projects should be maintained.

g. Continued consultation and coordination with the Secretary of the Interior and other federal agencies (or agencies as required under 25 USC 5304 for Alaska Native villages) should be documented at each milestone with the vertical team.

h. Non-traditional water resources development studies and projects will generally follow the following guidelines related to programmatic feasibility studies. Specific guidance is provided in chapter 9 for initiation and completion of these types of TPP efforts.

5–2. Initial work allowance to negotiate and execute study agreement

Upon receipt of a Letter of Intent from the Tribe, the district must:

a. Update the TPP database with the Letter of Intent date.

b. Submit a request for funds, not to exceed \$50,000. The funds will be used to pay the federal costs of preparing a PMP, review plan, and negotiating the FCSA with the Tribal cost share partner. These costs are 100 percent federally funded and are considered the initial allotment of the first \$200,000 in full federal funds.

5–3. Project management plan

Refer to paragraph 3-2.

5–4. Review procedures

Refer to paragraph 3-4.

5–5. Feasibility cost sharing agreement

Refer to paragraph 3-5.

5–6. Required planning milestones

a. *Purpose.* The purpose of the required planning milestones listed below is to ensure that continuing work on the feasibility phase is consistent with the policies, principles, priorities, procedures, and constraints of USACE feasibility studies, thus preventing excessive expenditures on questionable projects.

(1) The requirements that support the determinations at these milestones are scalable to the size and complexity of the proposed study. Additional information on these milestones is provided in EP 1105-2-58.

(2) It is important to remember that programmatic feasibility studies are mostly of limited size, scope, and complexity, and that the level of effort for these milestones should be scoped to what is appropriate for the study. The proper level of effort should be coordinated with the MSC.

b. *Federal interest determination.* The first milestone is the determination that study efforts are likely to lead to project implementation that substantially benefits the Tribal partner. The purpose of the federal interest determination is confirmation that the

feasibility study is likely to result in a policy-consistent project, with a scope appropriate for a programmatic TPP project, and with a willing Tribal partner.

- (1) The federal interest determination analysis is scalable to the size and complexity of the proposed project
- (2) Based on mostly existing information, the federal interest determination will:
 - (a) Identify problems and opportunities.
 - (b) Identify potential solutions.
 - (c) Define preliminary future without project conditions.
 - (d) Indicate whether expected relative costs compared to relative benefits to the Tribal Nation are likely to be reasonable.
 - (e) Identify potential environmental impacts of potential action(s).
 - (f) Provide documentation of consulting and coordination activities with the Secretary of the Interior on any activity under the TPP as described in paragraph 1-6c and other federal agencies (or agencies as required under 25 USC 5304 for Alaska Native villages).
- (3) The federal interest determination will go through DQC review.
- (4) The federal interest determination is completed after execution of the FCSA but early enough in the federally funded portion of the feasibility study (typically within the first \$100,000) to ensure there are no impediments to proceeding with the project.
- (5) If the federal interest cannot be established with the initial \$100,000, the PM should coordinate with the vertical team to discuss if additional feasibility funds may be required.

c. *Tentatively Selected Plan Milestone.* The second milestone takes place after the alternative plans are formulated and prior to the release of the draft decision document for concurrent review.

- (1) The purpose of the TSP Milestone is to ensure that plans are properly formulated, legal and policy issues are identified and a consensus on resolution is reached, and the MSC concurs with the TSP that will likely proceed into the design and construction phase.
- (2) USACE will notify the ASA(CW), through the appropriate RIT, if the recommended project is likely to be justified by net benefits to the Tribe other than NED or NER prior to the TSP Milestone.
- (3) The process and procedure for completing this milestone is at the discretion of each MSC.

5-7. Decision document requirements and approval

a. *Feasibility report format.* The Feasibility Report Format and Content Guide Version 1.0 (October 2021) covering feasibility report content should help guide technical and policy decision document requirements.

b. *Decision document requirements.* The decision document and supporting documentation requirements is scalable to the size and complexity of the proposed project and at a minimum contain the following:

- (1) A clear description of the recommended plan;
- (2) Demonstration of the project justification based on standard USACE project justification criteria for the particular project purpose consistent with the general

guidance applicable to the project purpose(s), or as deemed acceptable by the vertical team (to include ASA(CW) staff) for non-standard project justification as discussed in paragraph 2-3f;

- (3) Documentation of the results of any request for a policy exception;
- (4) Documentation of compliance with appropriate federal, state, and local environmental and regulatory requirements, such as NEPA/NHPA, normally included in a feasibility study specifically authorized by Congress;
- (5) A completed Real Estate Plan consistent with the requirements of chapter 12, ER 405-1-12;
- (6) The Tribal partner sponsor's Self-Certification of Financial Capability for Decision Documents and Letter of Intent;
- (7) District Real Estate certification that the Tribal partner has the capability to acquire and provide the required real estate interests;
- (8) A detailed description of the Tribal Partner's local cooperation requirements;
- (9) Identification of the anticipated OMR&R activities, including estimated costs;
- (10) The feasibility level ATR certification; and
- (11) The District Counsel statement of legal sufficiency for the decision documentation and NEPA/NHPA process.

c. *Policy exceptions during feasibility phase.* Exceptions are required for any proposed deviation from general Civil Works planning policy as described in ER 1105-2-100 and ER 1105-2-103 including, but not limited to, policies regarding plan formulation and cost sharing, recommendation of a Locally Preferred Plan, limits on recreation costs, and limits on cost shared monitoring.

- (1) The MSC Commander must seek an exception for any deviation from policy.
- (2) Exceptions will be discussed with the vertical team as early as possible and should include the appropriate HQUSACE senior policy advisor(s).
- (3) The MSC Commander must submit the exception request to the RIT with a full explanation of the circumstances for the exception.
- (4) The RIT will prepare a letter responding to the MSC request, which will be coordinated through HQUSACE and the ASA(CW).
- (5) A response is coordinated through HQUSACE and ASA(CW) before approving a decision document containing a deviation from policy.
- (6) In no event will the decision document be approved until all policy deviations are resolved and the written response from the RIT is received by the MSC.
- (7) For feasibility studies recommending a project for construction under the TPP programmatic limit, an exception to recommend a plan other than the NED or NER plan does not need to be approved by the ASA(CW). As early as possible, but no later than the TSP Milestone, USACE will notify the ASA(CW) through the appropriate RIT if the recommended project is likely to be justified by net benefits to the Tribe other than NED or NER, and the ASA(CW) staff will be invited to the TSP Milestone.

d. *Nonstandard estates.* Any non-standard estates must be submitted by the Real Estate District Chief through the MSC to HQUSACE Real Estate Division for review and approval, consistent with ER 405-1-12, paragraphs 12-9 and 12-10.

- e. *Completion of the feasibility phase.* The feasibility phase is complete when:
- (1) All policy and legal compliance issues are resolved; and

(2) The final decision document is approved by the MSC Commander. The District Commander will transmit the final report package as required in table 2-2 for approval by the MSC Commander.

f. *Programmatic feasibility decision document approval.* Documentation of approval of the decision document is by memorandum from the MSC Commander to the District Commander, with a copy furnished to the RIT and the HQUSACE TPP program manager. This authority may not be further delegated to the District Commander.

(1) The approval memorandum certifies that the requirements specified in this guidance for approving the decision document have been satisfied (see table 2-2); summarize the findings, conclusions, and rationale for approving the decision document; and certify that the project addressed in the decision document is justified and is policy compliant or has received the necessary policy exceptions.

(2) If the decision document is not approved, the report will be returned to the district for revisions to address any deficiencies identified by the vertical team.

g. *Termination of the feasibility phase.* Following coordination with the affected Tribal partner, the feasibility phase should be terminated if analyses indicate a lack of federal interest, or the Tribal partner requests the termination of the programmatic feasibility study. The phase is officially terminated when the District Commander advises the MSC Commander, the appropriate RIT, and TPP program manager of termination of the study in writing. The District Commander will also notify the Tribal partner when the study is officially terminated.

Chapter 6

Programmatic design and construction phase

6-1. Purpose

Programmatic TPP projects are implemented in two phases: the feasibility phase and the design and construction phase. Each phase is carried out under the provisions of a separate cost sharing agreement executed by the District Commander and the Tribal partner. The guidance in this chapter includes all the activities that are normally included in the PED and construction phases of specifically authorized projects.

a. 33 USC 2269 authorizes the design and construction of projects or separable elements whose federal design and construction cost is not more than the programmatic limit established by Congress.

b. All costs incurred for this phase are shared with the Tribal partner following 33 USC 2211 and 33 USC 2213.

(1) Cost sharing is dependent on the purpose of the project (or in the case of streambank protection, the purpose of the project causing the erosion).

(2) In non-traditional water resource development projects, cost sharing is assigned to the project purpose for which the proposed activity most closely aligns. The preservation of cultural and natural resources projects are cost shared for flood risk management, coastal storm risk management, or ecosystem restoration, depending on the causal factors necessitating the project. Additional information related to non-traditional project implementation and examples can be found in chapter 9.

c. USACE will consider an interim design phase with a design agreement if requested by a Tribal partner or if the total project cost is over the programmatic limit defined in 33 USC 2269 (or per separable element).

(1) Additional coordination through the MSC to HQUSACE TPP program manager and RIT will assess the risks of exceeding the programmatic project cost limit set by Congress with the Office of the ASA(CW).

(2) Determination is made on a case-by-case basis prior to the release of the draft report for the approval of the use of a design and construct PPA in lieu of a design agreement.

d. The cost share provisions of 33 USC 2310 are applied during the construction phase of the project, and if applicable, so is the Ability to Pay provision.

6–2. Initiation of programmatic design and construction phase

For each fiscal year, the HQUSACE TPP program manager will determine which projects are authorized to execute a PPA during the fiscal year.

a. This phase begins upon receipt of initial work allowance for design and construction phase following the MSC Commander approval of the decision document that recommends proceeding into the design and construction phase.

b. The first actions of the design and construction phase are negotiation and execution of a PPA and the update of the PMP.

6–3. Procedures to obtain federal funding for the programmatic design and construction phase

a. *Initial work allowance to negotiate a project partnership agreement.* Upon approval of the decision document by the MSC Commander completing the feasibility phase, the district must:

(1) Update the TPP database with the decision document approval date.

(2) Mark the feasibility phase completed.

(3) Submit a request for funds, not to exceed \$25,000, to pay the federal costs of negotiating and executing the PPA with the Tribal cost sharing partner and initiating PED.

(a) These costs are initially 100 percent federally funded using TPP-Investigation funds to negotiate the PPA and initiate the design. These costs are included in total project costs and shared with the Tribal partner per the terms of the PPA.

(b) No additional funds in excess of the \$25,000 will be allotted to a project until the PPA is executed.

(c) Prior to execution of the PPA, the Tribal partner will sign and submit the Tribal partner's Self Certification of Financial Capability for Agreements to self-certify their financial capability to meet their obligations under the PPA.

b. *Remainder of design and construction phase.* Following the completion of the first set of plans and specifications, the project then moves to the construction phase and funding (see para 6-5). After execution of the PPA, the district must:

(1) Update the TPP database to show capability, by fiscal year, to implement the project.

(2) Update the TPP database to show the actual PPA execution date.

(3) The district must maintain the TPP database and the project schedule on the enterprise USACE project management database.

6–4. Required milestones for design and construction phase

At a minimum, the following milestones are required for design and construction phase. More milestones may be required by the current USACE Civil Works Annual Execution Program Guidance EC (at the time of publishing, that is EC 11-2-228).

- a. PPA execution.
- b. Complete plans and specifications.
- c. Biddability, constructability, operability, environmental, and sustainability reviews.
- d. Contract ready to advertise.
- e. Construction contract award.
- f. Physical completion.
- g. Fiscal completion.

6–5. Project partnership agreement

a. *Design and construction agreements.* The design and construction phases are conducted under the provisions of the design agreement and PPA executed by the District Commander and the Tribal partner.

- (1) Use the appropriate PPA model, when available.
- (2) Authority to approve, deviate from, and execute the PPA, must be consistent with the implementation memo for the appropriate model PPA.

(3) Where approved model agreements exist, the latest must be used.

(4) Model agreements and further guidance are available at the USACE Civil Works Project Partnership Agreements website:

<https://www.usace.army.mil/Missions/Civil-Works/>.

b. *Preconstruction engineering and design.*

(1) For projects or separable elements up to the programmatic limit defined in 33 USC 2269 federal, a design agreement is not required.

(2) The PED phase is funded in the TPP-Investigations program. The PED phase will end with the completion of the first set of plans and specifications for the project. The project will then be funded in the TPP-Construction program.

c. *Construction.*

(1) Work under the PPA is funded in the TPP-Construction account once the first set of plans and specifications are completed.

(2) No Government or Tribal partner construction work will be initiated prior to compliance with all applicable environmental laws and regulations.

(3) The district will give the Tribal partner general written descriptions, including maps as appropriate, of the real property interests that the Government determined the Tribal partner must provide for the project during the construction and OMRR&R of the project.

(a) The description must include the specific estate, acreage, location, and schedule requirements in detail sufficient to enable the Tribal partner to fulfill its obligations as contained in the PPA.

(b) After the Tribal partner completes its acquisition effort, an informed, authorized official of the Tribal partner must execute and provide a completed ENG Form 2803 (Rights-Of-Entry for Construction) for all real property interests for the project to the PM.

d. *No approved model agreements available.* In cases where there is not an approved model agreement, the MSC should contact the HQUSACE TPP program manager for additional coordination with the Office of ASA(CW) for development and approval of a project-specific PPA.

6-6. Preconstruction engineering and design phase activities

a. During the PED phase, verify and document compliance with all applicable environmental laws and regulations evaluated during the feasibility phase including, but not limited to, NEPA, NHPA and regulatory requirements.

b. Value engineering is performed during the programmatic design and construction phase at or before 35 percent design. More information is found in ER 11-1-321.

6-7. Modification of design and construction phases

a. *General.* USACE design and construction standards can be modified to reduce project cost for programmatic projects under TPP provided that the modifications do not result in adverse impacts or effects extending beyond the TPP project area. The basis for modification of standards is a comparison of the risk of failure or improper functioning with the consequences of failure or improper functioning. However, modification of mandatory standards requires a policy exception consistent with ER 1110-2-1150.

b. *Coordination with Tribal partners.* Modification of standards must be discussed with the Tribal partner so they recognize and understand the risk that they may be assuming as part of their responsibilities under the PPA, including any potential effect on their OMRR&R responsibilities. In addition, the Tribal partner will hold and save the United States free from all damages arising from the construction, OMRR&R of the project and any betterments, except for damages due to fault or negligence of the United States or its contractors.

6-8. Solicitation for contracts

a. Solicitations for contracts will not be issued prior to execution of the PPA.

b. Further, solicitations for construction contracts will not be issued until the Chief of Real Estate or Real Estate Contracting Officer has certified in writing that sufficient real property interests are available to support construction under such contracts. However, in exceptional circumstances the District Contracting Officer may proceed and issue a solicitation after full assessment of the risks and benefits of proceeding.

c. In those cases where solicitations are issued without sufficient real property interests, as allowed above, the solicitation documents will advise potential bidders of such facts.

6–9. Contract bid opening

- a. Contract bids will not be opened until the execution of the PPA and receipt of the Tribal partner’s required cash contribution (flood risk management or coastal storm risk management project). There are no exceptions to this requirement.
- b. If the District Contracting Officer issued a solicitation for a construction contract without sufficient real property interests to support a construction contract as described in this EP, sufficient real property interests must be available to support implementation under that contract before submitted bids are opened and considered. The MSC Commander may approve opening bids prior to sufficient real property interests being available after receipt and review of a District Commander’s written request that includes adequate justification and full risk and benefit analysis. Due to concerns regarding liability and fairness to potential bidders, approval of such requests is discouraged and are granted only in exceptional circumstances.

6–10. Award of construction contracts

- a. Construction contracts are not awarded until the District Chief of Real Estate or Real Estate Contracting Officer has certified in writing that sufficient real property interests are available to support implementation of that contract.
- b. HQUSACE will consider limited exceptions to awarding the contract prior to Real Estate certification of sufficient availability of real property interests only after submission of a written request by the District Commander, through and with the concurrence of the MSC Commander, to the appropriate RIT and the HQUSACE TPP program manager. The request must contain clear and persuasive evidence that:
 - (1) The outstanding real property interests will be obtained in a timely manner.
 - (2) Proceeding to award poses no significant liability or risk to the Government.
 - (3) Approval is otherwise appropriate considering all relevant facts and circumstances.

6–11. Additional programmatic design and construction costs

Following the award of construction contracts, additional funds may be requested for supervision and administration of those contracts as well as funds for cost shared monitoring and adaptive management. The TPP database is used to show the capability for these types of activities under the Programmatic Design and Construction Phase.

6–12. Physical completion of the programmatic design and construction phase

- a. The District Commander will notify the Tribal partner in writing when the entire project or functional portion of the project is physically complete. Along with the completion notification, the Tribal partner will be provided an O&M Manual.
- b. Upon receipt of the notice of completion referenced in paragraph 6-11a, the Tribal partner will conduct OMRR&R on the project in a manner consistent with the provided O&M Manual.
- c. For ecosystem restoration projects, cost shared monitoring and adaptive management may be performed after construction is physically complete as long as the federal per-project limit is not exceeded.

6–13. Fiscal close-out

The final audit is conducted after the project is constructed, and any cost shared monitoring and adaptive management activities are performed. The project should be fiscally closed out within 30 days of the final audit.

6–14. Project completion report

The District Commander will transmit the project completion report to the MSC and HQUSACE TPP program manager. The report will contain:

- a. A short description of the project.
- b. The final federal and non-federal costs for the feasibility and the design and construction phases, broken out by phase.
- c. The date the Tribal partner was provided notice of physical completion consistent with the terms of the PPA.

6–15. Project Partnership Agreement

- a. The PPA establishes the responsibilities and obligations of USACE and the Tribal partner with respect to the construction and OMRR&R of the project. Once project construction is initiated, PPAs are generally not terminated.
- b. Suspension or termination of the PPA may occur if the if the Tribal partner fails to fulfill its obligations under the PPA, unless the ASA(CW) determines that continuation of the project is in the interest of the United States or is necessary in order to satisfy agreements with other non-federal interests.
- c. The ASA(CW) may terminate or adjust the rights and privileges of the Tribal partner interest to project outputs under the terms of the PPA.

6–16. Post-construction Federal and Tribal partner responsibilities

Once any project, or separable element, under the TPP is completed, it is treated in the same manner as a completed project that was specifically authorized by Congress. This includes ensuring Tribal partner compliance with PPA responsibilities and the routine and/or periodic inspection of projects.

6–17. After action review and completion report

As part of the HQUSACE responsibility to monitor TPP policy and procedural compliance:

- a. HQUSACE and MSC TPP program managers will meet to conduct policy and procedural after-action reviews of projects with PPAs executed in the last year.
 - (1) The procedural reviews are based on HQUSACE and existing MSC documentation requirements for decision-making.
 - (2) In addition to monitoring policy and procedural compliance, these reviews will serve as a forum for:
 - (a) Identification of management and procedural problems
 - (b) Detection of general policy issues
 - (c) Documentation of successes.
- b. To continue to identify the value to the Nation of the TPP, once the project is constructed, a success story with a brief narrative about the project benefits, including

before and after photos, and the completion report (see para 6-14) are posted to the TPP SharePoint site.

6–18. Real estate

Refer to chapter 11 for guidance related to Real Estate Plan and other lands required for TPP projects.

6–19. Floodplain management plans

a. *Applicability.* The requirement for the development of a floodplain management plan applies to all TPP projects with a structural flood and coastal storm risk management purpose, see ER 1105-2-103. Guidance for the preparation of a floodplain management plan by Tribal partners is found in HQUSACE Policy Guidance Letter (PGL) Number 52 dated 8 December 1997.

b. *Preparation and implementation of a floodplain management plan.* Tribal partners are required to prepare a floodplain management plan within one year of signing a PPA. The Tribal partner is required to implement the plan no later than one year after completion of construction of the project.

Chapter 7 Watershed studies

7–1. Background

a. This chapter incorporates USACE guiding principles related to watershed studies (ER 1105-2-102) as they pertain to the TPP (33 USC 2269). The goal of the TPP is to substantially benefit Tribes located primarily within Indian country. A watershed approach to analysis and decision making facilitates evaluation of a more complete range of potential alternatives and is more likely to identify the best means to achieve multiple goals over the entire watershed. The approach enables the design of alternatives that consider the benefits of water resources for a wide range of stakeholders within and around the watershed.

b. Watershed planning addresses problems, needs, and opportunities within a watershed or regional context; strives to achieve integrated water resource management; and results in general, non-project specific, holistic plans or strategies to address watershed needs. Watershed plans may recommend programs and the initiation of site-specific project implementation studies. USACE is authorized to conduct “watershed assessments” and “watershed planning activities” under ER 1105-2-102 and 33 USC 2269. Both study tracks are outlined in this document.

7–2. Integrated water resources management

Integrated water resource management is an overarching strategy that provides a holistic focus on water resource challenges and opportunities through coordinated development and management of water and related resources.

a. The principles of integrated water resource management are key to a successful watershed assessment or plan. The principles of integrated water resource management include: focusing on multiple objectives and tradeoffs; accounting for uncertainty; accommodating the concepts of adaptive management; stakeholder collaboration; and systems analysis for watershed-scale planning and evaluation.

b. Integrated water resource management involves multi-sector collaboration and adaptive management and planning of land and water resources, and considers economic benefits, ecosystem quality, health, and public safety.

c. Integrated water resource management should be reflected in USACE participation, decision making, and documentation.

7-3. Systems approach

a. Within watersheds, there are many competing demands for available water resources that may or may not interact with one another. A systems approach recognizes that water resources problems and opportunities exist in systems. In utilizing a systems approach within a watershed, the planning effort should identify and characterize the systems of interest to the current and future needs of the watershed. This approach shifts away from limiting the scale of a study using jurisdictional or political boundaries to an integrated and resilient water resource management approach that works across boundaries.

b. Systems that may be considered in watershed planning include, but are not limited to:

- (1) River and drainage systems
- (2) Geomorphic and subterranean resources
- (3) Weather (including climate preparedness and resiliency)
- (4) Water supply and wastewater systems,
- (5) Economic systems
- (6) Institutional systems
- (7) Legal frameworks (for example, governance)
- (8) Regulatory frameworks
- (9) Floodplain management
- (10) Ecosystems
- (11) Water management systems
- (12) Navigation systems
- (13) Any other characterized system pertinent to the needs of the watershed effort.

c. The systems approach shifts the emphasis from identifying individual projects to long-term solutions. Those solutions consider a broader range of impacts and the entire lifecycle of any actions.

d. The systems approach:

- (1) Requires the use of analysis, methodologies, and tools to understand and assess the interconnected nature of watersheds and the economic and ecologic systems they support.
- (2) Includes considerations for water resilience throughout the range of conditions within the watershed, including periods of extended drought.
- (3) Can be scaled to the complexity and level of detail necessary for a specific watershed or watershed planning task.

e. Planners and decision-makers can work with the complexities of a system and evaluate holistic inputs and outputs using this approach.

f. Particular attention should be paid to the interrelationships among land resources, water bodies, and the upstream-to-downstream linkages, which may be

available through Indigenous Knowledge (see para 2-3c). The cumulative effects of any action that may occur among these systems and along these links must be considered during the planning process. The interrelationships across systems, agencies, and programs should be identified. Solutions should be interdependent, long-term, and holistic, regardless of the entity(ies) that might ultimately implement the proposed actions.

7-4. Study area

a. Watershed planning shifts away from limiting the scale of a project using cultural or political boundaries and, by definition, focuses on a geographic area that is defined by a drainage basin or a region of the United States. Most frequently, this geographic area is described using hydrologic cataloging units. The study area should address an area large enough to examine and address the problems, opportunities, and candidate solutions. In some cases, aspects other than hydrologic interaction may contribute to defining the planning area. Watershed planning under the TPP will focus on Tribal lands in the watershed context, ensuring the proper identification of water resources problems, opportunities, causes, and effects.

b. Each watershed assessment under TPP will vary, depending on the location of the Tribal lands and whether there are other landowners within the watershed.

c. Some watershed assessments may be wholly within Tribal lands and limited in focus, size, and scale.

d. Other watershed assessments may include Tribal and adjacent Tribal, federal, state, local, and/or private landowners.

e. The scale at which the study is conducted should be based on the nature of the problems so that opportunities can be accurately identified, and effective solutions proposed.

7-5. Agency and Tribal coordination

a. The TPP specifically requires appropriate coordination and documentation with the DOI and other agencies during the study. Early involvement after the study initiation will increase communication, forge partnerships, and provide for a shared responsibility for watershed management.

b. Note that Tribal sponsored watershed studies may contain confidential and proprietary information, including locations of sacred sites, sacred plants, burials, or traditional cultural landscapes. This information should be kept confidential to the extent allowable, and care should be taken to keep this information out of the public sphere. Refer to paragraph 1-11 for information concerning confidentiality of information from the Tribal partner.

c. Even those studies which are small in scale will benefit from coordination with other federal agencies to identify opportunities to address the Tribe's concerns.

d. In recognition of the unique role of the Secretary of the Interior concerning federal trust responsibilities with Tribes, and in recognition of mutual trust responsibilities, USACE should consult with the BIA while conducting watershed studies under the TPP. The goal of this consultation is to integrate USACE Civil Works activities with activities of other federal agencies to avoid conflicts, duplications of effort, or unanticipated adverse effects on Tribes, as well as consider other federal authorities

and programs. Teams should always document any consultation that occurs with DOI as part of any study.

e. Watershed planning provides a framework for a unified watershed vision and supporting goals. This framework should guide investments in the watershed and empower local resource managers to implement watershed solutions at the local level. Watershed planning should include strategies for implementation (Tribal, federal, and non-federal) to allow programs to work together over time. Coordination with other government entities enables USACE to leverage the expertise, authorities, and resources of those entities in support of the Tribe.

f. Relevant federal, state, Tribal, and local government missions, goals, objectives, funding requirements, and timeframes should be fully identified to ensure implementation efforts are undertaken as an integrated, collaboratively developed plan.

(1) The objective of an integrated plan is to consider and apply various capabilities, programs, resources, and authorities of the different collaborators. This collaboration supports development and implementation of effective watershed strategies or plans using innovative arrangements for shared responsibility in watershed management.

(2) While honoring Tribal sovereignty, data sharing and collaborating can maximize limited resources for a more integrated solution to achieve a greater sum than if the agencies and Tribal members pursued action independently.

7-6. Public involvement and public review

a. The “public” identified for public review may vary from study to study, but at a minimum it should include:

(1) The members of the Tribe

(2) Tribal agencies

(3) Any partnering government agencies or members of the public who may be affected, as appropriate.

b. The public involvement and collaborative partnership strategy must be developed and included in the PMP. This will include a description of the public review strategy for the draft documents, as defined by USACE and the Tribe.

7-7. Watershed planning process

a. Risk-informed planning principles are integral to watershed studies and are a standard USACE business process. PDTs are required to incorporate critical thinking, risk-informed decision making, and early and frequent vertical team engagement throughout the study process.

b. The budget and schedule should be determined based on the size and complexity of the watershed and clearly scoped in the PMP.

c. Data and studies developed by the Tribe for the study should be used to the maximum extent practicable. Producing redundant studies is costly and should be avoided where possible.

d. Alignment with the vertical team on the study approach at the study initiation phase is required.

(1) The agreed upon objectives and scope of watershed assessments are outlined in a negotiated agreement (the PMP).

(2) Watershed documents may be watershed management plans, but if not, the documents must provide information that would feed into subsequent watershed management planning efforts.

(3) The plan should identify actions to be undertaken by the Tribe, pertinent partners or stakeholders to achieve the study objectives.

(4) The planning document may or may not recommend further USACE studies or projects.

(5) Budgetary priority for watershed assessments is not based upon the potential for future USACE projects.

7–8. Watershed assessment studies

More traditional watershed assessments will follow the six-step watershed planning process, as described in ER 1105-2-102. Depending on the needs of the Tribe, however, all six steps may not be completed for a given watershed study. In some cases, the first few steps may be the most beneficial to inform current decision making and planning efforts of the Tribe. Considering information developed by USACE, a Tribe may deliberate internally and make their own recommendations.

a. *Terminology.* For all studies, terminology should remain flexible. For example, a Tribe may request a set of “options” or “best management practices” rather than measures or strategies. This is acceptable as long as the underlying scientific or engineering analyses meet USACE standards.

b. *Identify problems and opportunities.* Determine problems, needs, and opportunities in the watershed by involving the Tribal partner, water and related land resources agencies, and the public (if any members of the public are impacted by the study).

(1) Federal agency partnerships are key to collecting a broad view of the problems, needs, and opportunities. Other agencies can also help identify available projects and programs available to the Tribe for future implementation.

(2) Problems may include institutional barriers, where the associated opportunity is a full partnership by all relevant agencies to examine existing policies and procedures.

(3) Planning is an iterative process, so the problems, opportunities, objectives, and constraints should be reassessed after key decision point milestones.

c. *Inventory and forecasting.*

(1) Quantitative and qualitative description of resources, for both current and future conditions, are used to define and characterize problems and opportunities, as well as define existing and future without-project conditions.

(a) Existing conditions are those at the time the study is conducted.

(b) The forecast of the future without-project condition reflects the conditions expected during the period of analysis.

(c) The future without-project condition provides the basis from which alternative plans are formulated and project impacts are evaluated and assessed. Impact assessments of alternative plans are the basis for plan evaluation, comparison, and selection. Therefore, clear definition and complete documentation of the without-project condition is.

(d) Gathering information about historic and existing conditions requires an inventory.

(e) Gathering information about potential future conditions requires forecasts, which should be made for selected years over the period of analysis to indicate how changes in economic and other conditions are likely to have an impact on problems and opportunities.

(2) Prepare a collaborative inventory of relevant water and related land resources, consistent with the needs of the study, such as:

- (a) Land use
- (b) Multiple agency programs and capabilities
- (c) Jurisdictional boundaries, demands and needs within the watershed
- (d) Existing models
- (e) Existing mapping and data
- (f) Water supply and treatment systems
- (g) Water rights
- (h) Transportation systems
- (i) Any inventory consistent with the needs of the study.

(3) Some inventory and forecast activities may not be directly related to a specific geographic location, but rather would identify gaps in authorities needed to address specific problems.

(4) The forecast period of analysis will typically be between twenty and fifty years in concert with state, regional, and Tribal planning efforts.

(5) Reasonable efforts must be made to obtain and analyze relevant data, even where available data is limited. Inventory is not limited to those areas used to develop analyses directly related to site-specific project planning. Include an examination of anticipated future actions, activities, and outcomes that reflect reasonable risk-informed assessments. Determination of relevant data and analyses should be consistent with the needs of the study, with clearly described assumptions and uncertainties that allow for consideration of the likely effects of a range of activities, decisions, or other courses of action.

d. *Identify and screen management measures.* Develop management measures that address one or more of the problems and opportunities and planning objectives.

(1) Measures may be based on a feature or activity at a site. Some measures may go beyond that which can be constructed or built to include activities such as outreach, proposed regulatory actions, or a programmatic approach to existing requirements.

(2) Measures can be combined or used alone to make strategies that can be considered for recommendations.

(3) Measures will be screened initially by using constraints, expert judgment, metrics, and specific screening criteria to focus on those that will contribute toward meeting the planning objectives.

(4) All measures should be developed based on reputable and readily available science and technical analyses.

e. *Formulate initial array of strategies.* Using the list of measures, provide a clear description of alternative strategies to address identified problems and needs, emphasizing alignment of actions of federal, Tribal, state, interstate, and local government entities. Strategies should be developed in the context of options or choices and their projected outcomes.

f. *Evaluate and refine strategies.*

(1) In consultation with Tribal partners, evaluate the initial alternative strategies to assess how effectively they address the identified problems. Focus the evaluation on the collective values, missions, and the shared vision.

(2) There may be several ways to address the needs within a watershed. A structured assessment of each strategy can be used to inform a tradeoff analysis. Use the four formulation and evaluation criteria (completeness, effectiveness, efficiency, and acceptability) as a framework for comparing strategies from a variety of perspectives.

(3) Cultural and natural resources, the values which are determined independently by the Tribal partner as sacred, traditional and/or unique to their origin story, may also factor into the evaluation.

g. *Strategy comparison and selection.*

(1) Compare the strategies against one another, noting tradeoffs between the strategies, and select the best suited strategy for meeting the watershed study goals and objectives. The strategies must clearly describe the overall benefits toward advancing the shared vision and a general assessment of cost effectiveness, sequencing and priority of actionable items, and associated needs. As the strategies are described in the watershed study, identify the primary responsible federal, non-federal, and Tribal partner(s) and their associated missions, authorities, programs, and sources for potential future funding in order to inform the selection of a strategic roadmap that guides implementation and provides measurable value to the Tribal Nation.

(2) Throughout the collaborative study process, an attempt should be made to achieve alignment of partner and Tribal agencies for the recommended actions whenever possible. For actions that are controversial, the watershed study should frame the recommended actions as those that would be most effective in solving the identified problems, regardless of whether the implementing agency chooses to take action.

(3) Where USACE has authority, recommendations can include activities under FPMS, PAS, TPP, CAP, or other applicable authorities. A separate FCSA, PMP, and review plan are required for a recommended project-specific study. Alternatively, the watershed plan may identify limited or no further USACE involvement.

(4) Regardless of whether there are future actions for USACE, the watershed study should provide a strategic overview that illustrates how the individual recommendations cohesively tie together to advance the shared vision and further achieve the desired end-state that benefits the Tribal partner.

(5) Where USACE actions are recommended, it should also describe how those actions integrate with work being done by others in the watershed.

7–9. Initiating a Tribal Partnership Program watershed study

Watershed studies may be initiated under the TPP and do not require new start determinations.

a. *Watershed study agreement.*

(1) The Model Agreement for Cost-shared Watershed and River Basin Assessments posted on the USACE Civil Works Agreements website should be used (<https://www.usace.army.mil/Missions/Civil-Works/Project-Partnership-Agreements>). Review and approval of an agreement that does not deviate from the approved model is

delegated to the MSC Commander and may be further delegated to the District Commander.

(2) Once a new start TPP watershed study is approved, an initial \$25,000 of Federal funds is provided to scope the PMP and draft and negotiate the cost share agreement. The cost share agreement is then signed and the federal share of watershed study funds can be allocated according to annual capability, subject to availability of funding. Once the PMP is developed, the Tribal partner must provide its funding or in-kind contributions consistent with federal funding and cost-sharing provisions of the study authority.

b. *Watershed study cost-sharing.* Watershed studies are cost shared 75 percent federal and 25 percent non-federal (Tribal). Tribal partners may contribute their share of the costs of the study as in-kind contributions. “In-kind contributions” means those planning activities (including data collection and other services) that:

(1) Are integral to the watershed study.

(2) Would otherwise be undertaken by USACE for the study.

(3) Are identified in the PMP.

(4) Performed or provided by the Tribal partner after the effective date of the watershed study cost sharing agreement.

c. *Ability to pay provision.* The Ability to Pay provision also applies to watershed assessments carried out under the TPP. See EGM 2024-04.

7–10. Project management plan

The development of the PMP should occur within the first six months of the study in collaboration with the Tribal partner on the scope and scale of the study. The PMP is approved by the District Planning Chief. The PMP is to be scaled to the level of USACE involvement and overall planning strategy.

a. *Vertical Team Alignment Memorandum.* A vertical team alignment memorandum will document the clear path forward (scope, schedule, budget) to the Recommendations Milestone.

b. *Scope and scale.* When preparing the study scope and scale for the PMP, consider the following:

(1) Benefit evaluation for watershed plans may be qualitative in nature, with a range of benefits for comparison, or assessments based on qualitative rankings (such as high, medium, or low).

(2) Watershed planning may involve benefit analysis and evaluation including identification of economic and environmental benefits, cost-effectiveness and incremental cost analyses, and tradeoffs at a survey level.

(3) Indigenous Knowledge may inform all aspects of a watershed study, including, but not limited to, species and habitats, cultural resources, traditional cultural places, water resources, and hydrology.

(1) Watershed planning may involve a wide variety of economic methodologies appropriate to the study effort, including monetary and non-monetary assessments based on yielding the highest value or utility for an alternative’s combined objectives and identified needs. USACE economic principles and expertise should be applied in

watershed planning and scaled appropriately to meet the needs of the study. Economic evaluations may include:

- (a) NED assessments
 - (b) Impacts on the local and regional economy including employment and income (Regional Economic Development)
 - (c) Life and safety impacts and other social effects
 - (d) Ecosystem goods and services
 - (e) Environmental quality, including cultural and natural resources
 - (f) Financial analyses
- (2) Use of methodologies adopted by other federal agencies for benefit evaluation may also be appropriate.
- (3) When developing the study scope, uncertainties and assumptions need to be identified, clearly documented, and communicated.

c. *Cost estimates.* Concept screening cost estimates can assist decision-makers in assessing efficient allocation of limited resources. In watershed planning, costs for measures and strategies are pre-budget development and may be Class 5 estimates as defined in ER 1110-2-1302. Costs may also be categorized qualitatively by high, medium, and low to generate a non-quantitative ranking or least cost options and outcomes.

d. *Engineering.* Engineering evaluations tailored to the watershed planning effort based upon the identified needs are appropriate. USACE engineering principles and expertise, including hydrologic and hydraulic modeling, may be applied in watershed planning to meet the needs of the assessment. Use of hydrologic and hydraulic models and expertise outside USACE is also appropriate if it meets the needs of the assessment.

e. *Operations.* Explicit coordination with USACE Civil Works Operations Division is appropriate in all cases where USACE infrastructure operates in the affected watershed(s). Operations professionals offer a unique window into the watershed setting through routine working-level professional relationships within the systems being studied. USACE Civil Works biologists and natural resource professionals in the field may not be used as a substitute for vigorous non-federal collaboration. However, their understanding of the context and ability to interpret input from involved stakeholders should be leveraged.

f. *National Environmental Policy Act, National Historic Preservation Act, and other environmental compliance.* Because a watershed study does not generate a specific recommendation for a federal action that could adversely affect the human environment as defined by NEPA, the preparation of a NEPA document or compliance with Section 106 of the NHPA is not required as part of a watershed study.

(1) Tribal partners may wish to include and/or emphasize the presence and importance of cultural and natural resources in the watershed study, but this is not a requirement to the complete NEPA or NHPA compliance.

(2) Although NEPA compliance is not required, future actions by USACE or other agencies on the recommendations of the study will require NEPA compliance. For example, when a watershed study recommends a site-specific feasibility study, the

subsequent study requires NEPA documentation, the completion of NHPA, and other environmental compliance activities.

g. *Real estate.* Real estate information should be tailored to a level of detail consistent with the watershed planning effort and consideration of potential real estate requirements should be acknowledged where appropriate.

h. *Data quality and model quality assurance.* Models and data developed by other federal agencies, Tribes, and stakeholders may exist in the watershed. Use of existing models and data is encouraged through the collaborative process. While formal model approval is not required, the quality and validity of these models and data must be evaluated and the ATR documented by the appropriate PCX.

i. *Climate preparedness.* Consideration of climate preparedness, including assessments of climate adaptation and resilience, is required for watershed plans. The initial scoping of a qualitative climate preparedness assessment is completed early in the watershed planning process. The qualitative analysis and assessment includes historical climate trends, as well as assessment of future projections. The qualitative analysis should be used to support the assessment of climate change risk to the watershed.

j. *Floodplain management.* In watershed planning, a basin-wide watershed approach to floodplain management that considers the interdependencies of natural systems should be applied, recognizing that watersheds and floodplains are interconnected systems. If project implementation actions are pursued by others during a watershed study, modifications to the floodplain need to fully consider the system impacts that may occur.

7–11. Review processes

The approach to product review for each USACE-led watershed effort must be specified in a review plan as described in ER 1165-2-217. Each review plan will be coordinated, approved, and posted as directed in the existing guidance on independent review processes. IEPR, described in ER 1165-2-217, is not required for watershed plans. In addition, formal model review and approval is not required for watershed plans, although the quality and validity of models and data must be evaluated and the ATR documented by the appropriate PCX. The MSC will document quality assurance requirements and serve as the Review Management Organization.

7–12. Vertical team alignment, annual in-progress reviews, and study milestones

a. *Vertical team alignment.* The PDT is accountable for the scope, schedule, and budget as presented in the PMP and at each milestone. Throughout a watershed study, the PDT will engage the vertical team at the annual in-progress review (IPR). If there is a need to deviate from previously agreed-upon scope, schedule, or budget; or when there are significant policy issues that need resolution vertical alignment meetings will occur more frequently. It is essential for the PDT and vertical team to meet regularly to align expectations.

b. *Annual in-progress reviews.* The decision-maker for watershed study IPRs is the District Planning Chief (see table 7-1).

(1) At least annually, the PDT is expected to participate in vertical team in-progress review meetings and/or milestones, along with the:

- (a) ATR team lead
- (b) PCX representatives (if applicable)
- (c) MSC quality assurance and policy reviewers
- (d) RIT
- (e) Office of Water Project Review policy review team members.
- (f) The Tribal partner must be invited to participate.

(2) IPRs will offer an opportunity to discuss the study status to date, obtain vertical team alignment on decisions, and any draft recommendations that would require additional USACE action, better understand Tribal concerns and priorities, and reaffirm the overall course and direction of the study.

c. *Study milestones.* There are three milestones in single-phase watershed planning: the Shared Vision, Recommendations, and Final Report (figure 7-1). Decision-making authority for watershed study milestones is outlined in table 7-1.

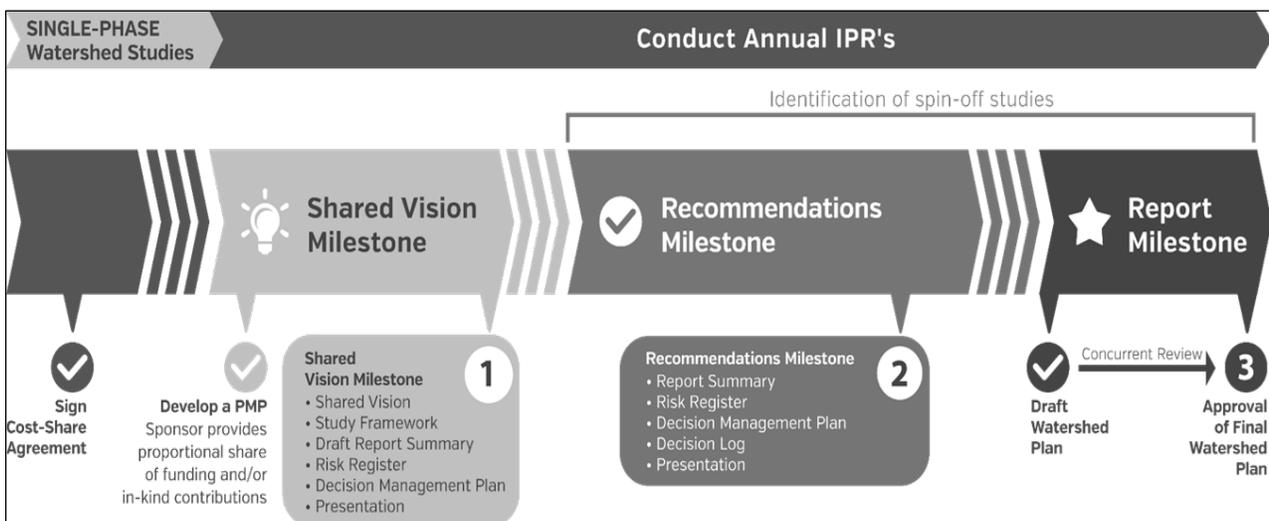


Figure 7-1. Watershed study milestones

**Table 7-1
Decision-making authority for watershed study milestones**

Ongoing	Watershed Study Milestone	Decision-Making Delegation
Vertical Team Engagement	Annual In-Progress Reviews	District Planning Chief
	Shared Vision Milestone	MSC Planning and Policy Chief
	Recommendations Milestone	MSC Planning and Policy Chief
	Final Report Milestone (Watershed Management Plan)	MSC Commander

(1) *Shared Vision Milestone*. The purpose of the Shared Vision Milestone is to define the goals and actions for the watershed, water, and related resources. The shared vision is developed by the Tribal partner, PDT and any other partners involved in the watershed study. A shared vision statement will assist in development of a coordinated study framework and associated activities that clearly support the shared vision. The milestone is an opportunity for the vertical team to weigh in on the purpose of the study and the established scope, schedule, and budget as informed by the shared vision process. Key tasks associated with the Shared Vision Milestone are listed in table 7-2.

Table 7-2
Key tasks to complete before the Shared Vision Milestone

Typical Activities

- Assemble a PDT that includes participation with relevant partners.
 - Define the study area with the Tribe to capture impacts and influences of broadly identified problems and opportunities.
 - Work with the Tribe and relevant partners, if any, to develop a concise Shared Vision Statement.
 - Develop broad study goals and objectives that capture the breadth of interests to be served.
 - Coordinate with BIA to avoid conflicts, duplications of effort, or unanticipated adverse effects on Indian Tribes and consider the authorities and programs of all federal agencies in any potential recommendations. Document this coordination as part of the Shared Vision Milestone, even if the agencies decline to participate.
 - Develop a Study Framework identifying the roles and responsibilities of USACE, the Tribe, and any relevant partners, with associated tasks that will advance the shared vision. In the Study Framework, describe how these tasks incrementally contribute to the shared vision.
 - Consider how various agency authorities may be combined to align and prioritize future water resources actions within the watershed.
-

(a) A Shared Vision Milestone meeting is held with the vertical team once the shared vision statement and study framework are completed (table 7-3). The PDT should reach the Shared Vision Milestone within nine to twelve months from execution of the cost sharing agreement. The Shared Vision Milestone will replace the annual IPR in the year it is conducted.

(b) Potential amendments to the PMP and/or cost sharing agreement are discussed between the vertical team, PDT, and the Tribal partner at or before the Shared Vision Milestone meeting.

(c) The MSC Planning and Policy Chief confirms the level of continued USACE involvement beyond the Shared Vision Milestone.

(d) A Memorandum for Record is prepared and signed by the District Planning Chief to memorialize the decisions made in the Shared Vision Milestone meeting. The Memorandum for Record is transmitted to the MSC and the RIT for information. The Memorandum for Record will include a study schedule and funding stream to complete the draft and final watershed plans.

**Table 7-3
Products required for the Shared Vision Milestone**

Read Ahead Product	Description
Shared Vision Statement	The shared vision statement will be developed through close coordination with the Tribe and any relevant partners. This statement will be broad enough to encompass the goals and objectives of the watershed study with a sufficiently detailed description to allow for subsequent development of specific planning objectives and associated metrics. The shared vision statement will be the basis for establishing the study framework.
Study Framework	The study framework will identify the roles and responsibilities of each partner in the watershed study, designating which entity will perform certain tasks and how the tasks will move the study closer to achieving the shared vision. Execution of the tasks identified in the framework will inform the watershed study. The framework will be used as a reference point for any changes to the agreed-upon path as the study continues.

(2) *Recommendations Milestone.*

(a) Following successful completion of the Shared Vision Milestone, the PDT will complete the tasks identified in the study framework that inform the watershed study (table 7-4). When sufficient analyses are conducted to develop plan recommendations, a Recommendations Milestone is held.

(b) The purpose of the Recommendations Milestone is to ensure vertical team concurrence on recommended strategies that meet the study goals and objectives and shared vision. The Recommendations Milestone will replace the annual IPR in the year it is conducted.

(c) At the Recommendations Milestone meeting, the MSC Planning and Policy Chief will make the determination whether or not to endorse the recommendations and the proposed way forward to complete the final watershed study. This vertical team engagement prior to the release of the draft watershed plan for review will ensure alignment with USACE policies and inform USACE communications with external agencies.

(3) *Draft watershed plan.*

(a) Following a successful Recommendations Milestone, a report documenting the findings of the analyses are developed and released. In most cases, a draft watershed plan will describe the problems, opportunities, objectives, constraints, watershed goals, and how the recommended alternatives and/or strategies advance the shared vision. A description of the data, models, or other information that were used to support the inventory and forecast should be provided, along with evaluation and comparison of alternatives.

(b) Watershed plans should identify actions to be undertaken by the Tribe and relevant partners to meet the objectives of the study. The planning document may or may not recommend further USACE studies, projects, or programs. Budgetary priority for watershed plans are not based upon the potential for future USACE projects.

Table 7-4**Key tasks to complete before the Recommendations Milestone**

Typical Activities

- Identify the hydrologic unit study area as defined by the United States Geological Survey Hydrologic Units Codes.
 - Investigate the problems, needs, and opportunities of a watershed, which may include flood and coastal storm risk reduction, ecosystem restoration, navigation and protection, and preservation of cultural and natural resources.
 - Research historic and current conditions and uses of the watershed.
 - Develop a qualitative assessment of the cumulative effects of various activities in the watershed.
 - Determine the likely future conditions and potential future changes/initiatives in the watershed based upon proposed activities and development, including the identification of resource uses, needs, and conflicts.
 - Evaluate alternative uses of the resources including the positive and negative effects on economic development, the environment, and social well-being based upon factual scientific, social, and economic information.
 - Prioritize water and land-related resource problems and opportunities.
 - Identify and evaluate conflicting uses with monetary and non-monetary tradeoffs.
 - Work with the Tribe and relevant partners to collectively develop possible project measures for recommended future activities.
 - Complete a qualitative assessment of the cumulative effects of various activities in the watershed.
 - Work closely with the Tribe to determine actions to recommend in a watershed study/watershed plan.
 - Complete a qualitative assessment of alternative/strategy costs, benefits, and potential environmental impacts of any recommended activities.
 - Use a decision framework, as agreed upon by USACE and the Tribe, to justify recommendations and to explain how recommended activities would systematically improve integrity of the watershed and advance the shared vision, including consideration of risks and uncertainties.
 - Develop the strategic roadmap, identifying which agencies are best suited for accomplishing each of the recommended actions, including agency programs and funding sources. This information will help the Tribe develop an implementation strategy that leverages federal and non-federal programs.
 - Report the findings of these analyses through preparation of a watershed study/watershed plan.
 - Pursue any studies, projects, or programs for which USACE has authority under normal budget development process (subject to specific authorities, analysis, or decision-making processes).
 - Complete DQC on milestone materials and supporting analyses.
 - Complete ATR on technical products, models, or analyses that are particularly complex and would benefit from a technical review prior to other reviews (public, policy, etc.).
-

(c) The draft watershed plan will provide information that assists the Tribe in the understanding of the relationships between potential next steps and water resources priorities for the watershed. The information is intended to provide the Tribe and relevant partners with a risk-informed understanding of actions that could be taken, accounting for study risks, implementation risks, and potential outcome risks associated with the performance of any future projects, to the extent this information is known.

(d) The draft and final watershed plans will include the following disclaimer, “The information presented in this report is to provide a strategic framework of potential

options to address problems within the [insert name of Tribe] Tribe of the [insert name of watershed] watershed. Options identified will follow normal authorization and budgetary processes of the appropriate agencies. Any costs presented are rough order magnitude estimates used for screening purposes only.”

(e) DQC is conducted on technical products during their development, and ATR is conducted after their development, to ensure the quality and credibility of the scientific information. Situations may arise where complex technical analyses or novel scientific methods would benefit from a review by external experts including other partnering agencies. Such external peer review is not considered Type I IEPR. See ER 1165-2-217.

d. *Report milestones.* There are two report milestones in single-phase watershed planning: the draft watershed plan and the final watershed plan.

(1) *Draft watershed plan.* When the draft watershed plan is complete, it will be released for a 30-day (minimum) concurrent public (if needed), ATR, policy and legal compliance review period, including review by any relevant federal and non-federal partners.

(a) See table 7-5 for key tasks to complete before the draft watershed plan is released.

(b) The policy and legal compliance review team, identified through the collaboration of the MSC Chief of Planning and Policy and the HQUSACE Chief of the Office of Water Project Review, and documented in the review plan, will draw from HQUSACE, the MSC, the PCX, and other review resources as needed. The purpose of the policy and legal compliance review is to ascertain that appropriate considerations have been made and that study conclusions are consistent with overall USACE policy.

Table 7-5
Key tasks to complete before the draft watershed plan is released

Typical Activities

- Provide a strategic roadmap, acknowledging risk and uncertainty that identifies recommended phases of implementation for greatest success to inform future investment decisions by the Tribe and relevant partner agencies.
 - Describe why this study warrants future federal engagement. How can federal agencies help overcome institutional barriers and solve technical problems?
 - Describe how problems can be solved across multiple agencies.
 - Complete legal sufficiency review of draft watershed plan.
 - Complete DQC of draft watershed plan.
 - Complete ATR of draft watershed plan and supporting technical analyses.
-

(2) *Final watershed plan.* The watershed plan is updated to reflect resolution of comments received from the concurrent review. The Documentation of Review Findings will be prepared to document the completed review process.

(a) See table 7-6 for key tasks to complete before the final report milestone.

(b) The District Commander will submit the final watershed plan to the MSC Planning and Policy Chief for approval from the MSC Commander.

(c) Once the final watershed study is approved by the MSC Commander, the MSC will transmit the package to the RIT. The RIT will draft a Memorandum for Record and transmittal letter from the Director of Civil Works to the ASA(CW) for transmittal to Congress.

Table 7-6
Key tasks to complete before the final report milestone

Typical Activities

- Complete Public / Agency Review of draft watershed plan.
 - Complete Legal and Policy Compliance Review of draft watershed plan.
 - Compile and assess review comments, identify actions to resolve comments and document in a review summary.
 - Complete DQC of final watershed plan.
 - Complete legal sufficiency review of final watershed plan.
 - Complete documentation and certification of DQC and ATR.
-

7–13. Considerations for additional study recommendations

33 USC 2269 provides authority for TPP feasibility studies. If one of the recommendations in the watershed study is a follow-on feasibility study, this feasibility study will compete as a new start study under the TPP.

7–14. Letter reports for watershed planning activities

a. *Letter reports.* Short of a completed final watershed plan, USACE may conduct watershed planning activities. Such investigations are summarized in a letter report.

These studies might include:

- (1) Alternative strategies evaluation short of a recommendation;
- (2) Best management practices;
- (3) Hydrology, hydraulics, geomorphology, and/or sediment transport studies;
- (4) Climate resilience and/or drought resilience plans;
- (5) Information on the preservation of natural and/or cultural resources; and
- (6) Other studies as deemed appropriate.

b. *Reporting procedures.*

(1) The letter report and supporting documents are transmitted to the RIT for final processing. The final report is not reviewed by HQUSACE but is provided for informational purposes only.

(2) The letter report is sent to the ASA(CW) with the memorandum notifying the ASA(CW) of the completion of USACE participation in the watershed study. The transmittal package must include an endorsement from the MSC of the final report conclusions, along with the final report.

(3) The RIT will prepare a memorandum for the Director of Civil Works to transmit the final report to the ASA(CW).

7–15. Project closeout.

a. Within 10 days of completion, the District Commander will initiate development of an estimate of the current cost-sharing 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 consistent with the cost-sharing agreement with the sponsor. The MSC office will facilitate revocation of existing funds, adjustments in budget requests, and/or possible study reclassification. The District PDT will coordinate with the District Programs Office to perform final accounting to ensure final balance of the cost share consistent with the cost-sharing agreement with the sponsor. After final accounting is completed, all remaining funds will be returned to HQUSACE.

b. Each RIT will provide, by 5 August of each year, the status of all its watershed plans to the USACE Civil Works, Planning and Policy Division (CECW-P), as required by Section 905 of WRDA 1986, as amended. CECW-P will compile and provide a comprehensive status list, including plans 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 8

Technical assistance and other planning activities.

8-1. Applicability

a. *Study-only water-related planning.* The ASA(CW) is authorized to carry out study-only water-related planning activities and technical assistance. The ASA(CW) may carry out other such projects as the ASA(CW), in cooperation with Tribal partner and heads of other Federal agencies, determines to be appropriate. The project must substantially benefit federally recognized Indian. USACE can provide a service in partnership with federally recognized Tribes on a cost-shared basis.

(1) Technical assistance, water-related planning, and feasibility-like activities under TPP will not be used to supplement efforts under other ongoing or pending USACE programs, such as feasibility studies.

(2) If a water-related planning activity, a feasibility-like study, or technical assistance study identify a potential construction project with Tribal partner, the study should be immediately transferred to a feasibility study within TPP or transferred to the appropriate USACE study program (for example, CAP or General Investigations).

(3) Water-related planning activities and feasibility-like studies may not be used to offset any required state contributions to federal grant programs.

b. *Stand-alone water-related planning activities.* These activities are independent of watershed assessments. Examples include letter reports containing real estate analyses of lands required for authorized USACE mitigation activities on behalf of federally recognized Tribes or assessments of water-related hazardous and toxic waste sites.

c. *Feasibility-like studies without a recommendation for design and construction.* Section 1121 of WRDA 2016 specified that a report provided to a Tribe pursuant to a feasibility study may, but is not required to, contain a recommendation on a specific water resources development project. Depending on the wishes of the Tribal partner, the study may be scoped at the outset to result in a report recommending a project for design or construction. A limited letter report may describe an array of alternatives that

are technically feasible and economically and environmentally justifiable. Such a report may be useful to the Tribal partner for future planning, or for coordination with DOI or other federal agencies, in lieu of design and construction with USACE.

d. *Technical Assistance.* Section 8111 of WRDA 2022 authorizes USACE to provide technical assistance to the Tribal partner. These activities are 100 percent federally funded but may not include the preparation of site-specific designs or construction. Technical assistance activities may include provision of hydrologic, economic, and environmental data and analysis, as well as planning to:

- (1) Ameliorate flood hazards.
- (2) Avoid repetitive flood impacts.
- (3) Anticipate, prepare and adapt to changing hydrological and climatic conditions and extreme weather events.
- (4) Withstand, respond to, and recover rapidly from disruption due to flood hazards.

8–2. Technical assistance, water-related planning activities, feasibility-like study phase initiation

a. *General guidance.* The technical assistance, water-related planning, and feasibility-like study phase under TPP encompasses a large range of planning activities that meet the water resource needs of Tribes.

b. *Initiation of technical assistance.* Initiation of the water-related planning and feasibility-like studies phase is started once HQUSACE issues the initial work allowance. Technical assistance, water-related planning activities, and feasibility-like TPP studies do not require new start determinations or execution of a FCSA and are conducted at 100 percent federal cost.

c. *Project management plan.* A traditional PMP is not required for technical assistance, water-related planning activities, and feasibility-like studies under the TPP. However, the scope of work is to be coordinated with the MSC prior to initiating work. The level of detail for the scoping document is commensurate with the level of work required for the technical assistance. Districts and Tribal partners may write multiyear or multiphase agreements for complex work efforts or where annual federal funding is limited and may require several years to complete. The scope should be divided into work phases that can be accomplished each year to match any funding limits. However, each phase should be accomplished within 1 year of the date the agreement for that phase was signed.

d. *Review plan.* A review plan is not required for technical assistance or water-related technical assistance effort under the TPP. Districts are required to provide DQC for all technical assistance studies. Appropriate additional level of review should be ascertained through the risk-informed decision-making process as outlined in ER 1165-2-217. The scope of the quality and technical reviews should be scalable and customized for each effort, commensurate with the level of complexity of the study. The documentation of the review strategy should be approved by the MSC.

8–3. Vertical team engagement

The purpose of engaging the vertical team is to ensure that continuing work on the water-related planning and feasibility-like study phase is consistent with the policies,

principles, priorities, procedures, and constraints of the TPP, leading to meaningful progress and the completion of these study efforts. The requirements that support the vertical team engagements are scalable to the size and complexity of the analysis. While these studies are intended to be focused and expeditious in nature, at least one IPR is required per year as the study progresses to identify potential issues or determine if federal interest in a project is warranted. The review strategy described in paragraph 8-2d should outline the timing and scope of these vertical team engagements.

8-4. Documentation requirements and approval

a. *General.* The documentation of technical assistance, water-related planning activities, and feasibility-like analyses may take many forms and is intended to culminate in a useful product for the Tribal partner. As these products do not result in a recommendation for construction, these documents do not need to be provided to the public. A summary of the investigation will be documented in a letter report for the purposes of vertical team engagement and study closeout. Subject to the requirements in paragraph 8-4c, the MSC Commander may establish report requirements and formats.

b. *Reports provided to Tribal partners.* Analyses performed for Tribes should be documented in a report that is useful to the Tribal partner. Feasibility-like analyses describing an array of alternatives regarding a water resources problem may support further coordination with DOI or other federal agencies for action outside of USACE. Appropriate review must be conducted of these as outlined in paragraph 8-2d above.

c. *Letter report requirements.* The letter report is scalable to the size and complexity of the proposed project. The report will include the study's purpose and need, study authority, study location, documentation of coordination with DOI or other federal agencies, and recommended next steps for the Tribal partner. The report should include any supporting documentation or technical documents developed during the project.

d. *Letter report approvals.* Approval authority of the letter report is the District Commander. A copy of the approved report is provided to the appropriate RIT and the HQUSACE TPP program manager (see table 2-2).

8-5. Completion of the technical assistance, water-related planning or feasibility-like phase

The technical assistance, water-related planning activity, or feasibility-like study is completed when the letter report is approved by the District Commander. The District Commander will notify the MSC Commander at the conclusion of the activity and will transmit the final report package as required in table 2-2. The MSC will notify the appropriate RIT and HQUSACE TPP program manager of the completion of these activities. The actual date of the letter report approval must be entered in the TPP Database as well as the enterprise USACE project management database.

8-6. Termination of water-related planning or feasibility-like phase

The water-related planning or feasibility-like study phase should be terminated if there is lack of support from the Tribal partner. After coordination with the Tribal partner, the

phase is officially terminated after completion of a termination letter report. The District Commander provides the MSC Commander, RIT, and HQUSACE TPP program manager the termination letter report. The termination letter report will detail reason for termination, study funding allocation summary, and summary of expenditures. The HQUSACE TPP program manager will update the TPP database to show date and rationale of termination, study status as terminated, and future capability amounts as zero.

Chapter 9

Non-traditional water resources development projects

9-1. Applicability

The TPP creates opportunities for USACE to work closely with and support Tribal Nations through the use of USACE capabilities and resources to advance the interests of Tribal communities. Specifically, the TPP authorizes such other projects as the ASA(CW), in cooperation with Indian Tribes and the heads of other federal agencies, determines to be appropriate.

9-2. General principles

a. The TPP provides USACE the flexibility to develop projects that are not typically considered a traditional USACE water resources development project, including project elements that are typically considered to be a non-federal responsibility.

b. The intent of non-traditional water resources development projects is to substantially benefit Indian Tribes for the many water-related needs of their Tribal communities. These “non-traditional” feasibility studies may be determined to be appropriate by the ASA(CW) and do not require approval to initiate a feasibility study.

c. Non-federal costs of design and construction of a non-traditional water resources development project will be assigned to the appropriate project purposes for which the proposed activity most closely aligns, as described 33 USC 2211 and 33 USC 2213.

d. Many of the USACE centers of expertise, including the Tribal Nations Technical Center of Expertise, can be utilized to support projects that substantially benefit Tribal partners. USACE draws expertise ranging from engineering and construction to environmental compliance and is not explicitly limited by the abilities within the Civil Works mission. USACE PDTs are encouraged to consult these specialized areas of expertise with Tribal partners when developing non-traditional water resources projects.

e. A non-traditional water resources project can be implemented within the authorized federal programmatic limit for the TPP established by Congress.

f. USACE should consider the breadth of benefits provided including those identified by the Tribal partner. The primary driver in the implementation consideration is whether the project will substantially benefit Indian Tribes. The recommendations under the TPP must specifically address the determination that the recommended project is feasible and includes the appropriate cost sharing. This determination of feasibility includes that the:

- (1) Project is technically feasible;

- (2) Economic, environmental, and social benefits to the Tribal Nation outweigh the costs;
- (3) Project is cost-effective; and
- (4) Project is environmentally acceptable

9–3. Types of non-traditional projects and considerations under the Tribal Partnership Program

a. Non-traditional water resources development projects are indirectly related to established USACE missions but within the discretion of the ASA(CW). These projects are expected to vary in size, scope, and complexity. For instance, one project may require full-feasibility analysis of a water resources related problem, future without project condition, and alternatives development, evaluation, comparison, and selection. Another project may have concepts developed to a certain degree with another federal agency and only require USACE to evaluate the feasibility of the project and demonstrate federal participation in the project is warranted with appropriate cost share requirements.

b. Non-traditional projects may include executing a traditional USACE project but including non-traditional elements. These projects follow the normal process for traditional projects discussed in this EP. A non-traditional project may recommend cost sharing project elements that are not typically included in the federal project such as:

- (1) Local service facilities in navigation projects;
- (2) Interior drainage (flood discharges with flows less than 800 cubic feet per second at the 0.1 annual exceedance probability event, 1800 cubic feet per second at the 0.01 annual exceedance probability event, or in drainages with an area of less than 1.5 square miles);

(3) Ecosystem restoration projects where the percentage of costs attributable to LERRDs exceeds those traditionally allowed; or

(4) Other such deviations from traditional USACE feature-based cost-sharing limitations.

(5) In some cases, non-structural solutions such as relocation or elevation are the preferable options to reduce flood or erosion risk to structures. In cases where the structure is not sufficiently structurally sound to reasonably accommodate such a treatment or the structure is in a state of disrepair that it no longer meets basic standards for health and safety, the option to demolish the existing structure and constructing a replacement structure may be considered.

(a) In considering structure replacement, designs must meet all minimum existing Army or Tribal regulations (whichever are more stringent) for safety, comfort, and efficiency for dwellings in place at the time of the project.

(b) Designs of replacement structures will be aesthetically pleasing (compliment the natural environment), culturally sensitive (designed for the way of life of those that will inhabit it), and incorporate symbolic cultural elements, at reasonable cost, if requested in writing by the Tribe.

(c) The replacement structure must be in-kind (for example a single-family residence is replaced with a single-family residence or apartment building is replaced with an apartment building) unless there is a compelling cultural, cost, or environmental

reason to adjust the structure type. These changes must be expressly supported, in writing, by the Tribal partner when recommended.

(d) Design of replacement structures must utilize the least cost method of meeting all these requirements.

9–4. Non-traditional water resources development efforts requiring Assistant Secretary of the Army (Civil Works) approval

USACE is encouraged to use maximum flexibility when considering if a non-traditional project meets the intent of the TPP. USACE will elevate those non-traditional water resources efforts as soon as practicable to the ASA(CW) in cooperation with Indian tribes and the heads of other federal agencies.

a. An issue paper outlining the Tribe's request may be helpful in facilitating vertical alignment of the effort within the MSC or HQUSACE. The issue paper should contain a description of the proposed project with explanation of how the proposal fits within TPP authorities (water-resources related planning activities, or activities relating to the study, design, and construction of water resources development projects), documentation of the proposed project purpose and cost share, and documentation of the involvement or coordination with other federal agencies.

b. If the HQUSACE TPP program manager, in coordination with the HQUSACE CECW-P Chief, recommends the elevation of the decision to initiate a non-traditional water resources project. The issue paper will be provided to the ASA(CW) through the appropriate RIT for coordination and decision. The ASA(CW)'s approval will confirm the appropriate project purpose(s) and cost sharing requirements.

c. USACE will elevate non-traditional water resources projects that exceed the current authorized federal programmatic limit for TPP provided by Congress 33 USC 2269 for decision by the ASA(CW) as to how to proceed.

9–5. Non-traditional water resources development feasibility phase

The feasibility phase encompasses the entire range of planning activities required to demonstrate that federal participation in a project is warranted and justified. The feasibility phase is cost shared 50 percent with the Federal Government and 50 percent with the Tribal partner (and is further adjusted by the applicability of the Ability to Pay and Cost Share Waiver provisions) and begins after a FCSA is executed by the Tribal partner and the District Commander. The initial costs of \$200,000 will be provided at federal expense.

a. *Non-traditional water resources development feasibility phase initiation.* Upon receipt of a Letter of Intent from the Tribal partner, the district must update the TPP database with the Letter of Intent date and submit a request for funds, not to exceed \$50,000, to pay the federal costs of preparing a PMP, review plan, and negotiating the FCSA with the Tribal cost sharing partner. These costs are 100 percent federally funded prior to the FCSA. No additional funds in excess of the \$50,000 are allotted to a project until the FCSA is executed.

b. *Project management plan.* For non-traditional feasibility study efforts, the formulation, evaluation, and selection of a recommended plan, refer to paragraph 3-2.

c. *Review plan.* For non-traditional feasibility study efforts, the formulation, evaluation, and selection of a recommended plan, refer to paragraph 3-4. The vertical

team may consider the scope of the non-traditional feasibility study and deem that the review strategy identified for technical assistance in paragraph 8-2d is appropriate.

d. *Feasibility cost sharing agreement.* Refer to paragraph 3-5.

e. *Decision document requirements for non-traditional water resources development feasibility studies that require plan formulation, evaluation, and selection.*

(1) When non-traditional elements are recommended for cost sharing, the recommended plan is first chosen, then alternative plans are formulated for inclusion in the recommended plan.

(a) A plan is chosen based on the results of a cost effectiveness/incremental cost analysis with sufficient documentation of the decision-making process to support these elements' inclusion.

(b) The cost effectiveness/incremental cost analysis must include both the no additional action (no inclusion of non-traditional elements) and the least cost action alternatives plan (lowest plan that reasonably achieves the broader study/project objectives) in addition to any other alternative plans.

(2) For more information, refer to paragraph 5-7.

f. *Required planning milestones.* The use of required planning milestones ensures that work on the feasibility phase for non-traditional water resources development studies are consistent with the policies, principles, priorities, procedures, and constraints of USACE feasibility studies. Vertical team alignment is required to include the ASA(CW) to ensure that the intent of the TPP is met, and to confirm policy or legal concerns at the earliest available opportunity. The requirements that support the determinations at these milestones are scalable to the size and complexity of the proposed study. Additional information on these milestones is provided in EP 1105-2-58. The appropriate level of effort should be coordinated with the MSC.

(1) The federal interest determination milestone generally follows the requirements in paragraph 5-6b. For feasibility studies evaluating the federal interest in constructing a non-traditional water resources project, this milestone follows a scalable scoping meeting which includes the vertical team. This will ensure alignment on the scope of analysis, schedule, and confirmation of review requirements to determining federal interest.

(2) The second milestone is the TSP Milestone which takes place prior to the release of the draft decision document for concurrent review. The TSP Milestone can occur after the alternative plans are formulated, if formulation is required, or when the evaluation of federal analysis is substantively complete. The purpose of the TSP Milestone is to ensure that plans have been properly formulated, legal and policy issues are identified and a consensus on resolution is reached, and the MSC concurs with the TSP that will likely proceed into the design and construction phase. The process and procedure for completing this milestone is at the discretion of each MSC.

g. *Nonstandard estates.* Any nonstandard estates must be submitted by the Real Estate District Chief through the MSC to HQUSACE Real Estate Division for review and approval, consistent with ER 405-1-12, paragraphs 12-9 and 12-10.

h. *Non-traditional feasibility report review and approval.* Refer to paragraphs 5-7e and 5-7f. The District Commander will transmit the final report package as required in Table 2-2 for approval by the MSC Commander.

i. *Termination of the Non-Traditional Feasibility Phase.* Refer to paragraph 5-7g.

9–6. Non-traditional water resources development design and construction phase

Refer to chapter 6.

9–7. Non-traditional water resources development feasibility studies developed with other federal agencies for construction.

The decision document and supporting documentation requirements for a project recommendation that are developed in cooperation with another federal agency can be written as a letter report and are not subject to the thorough analyses from ER 1105-2-100, or subsequent guidance. This letter report should evaluate how the project meets the intent of the TPP and at a minimum include the following information:

- a. Description of the proposed project including project purpose, location, identification of the Tribal partner, and any pertinent background.
- b. Study authority including a summary of how the project meets the intent for non-traditional water resources development projects. Indicate when approval was received from the ASA(CW) to initiate the project and the project purpose.
- c. Summary of coordination with other federal agencies. In some cases, other federal agencies may have already approved a project or may have real estate interests in the area of the proposed project.
- d. Evaluation scope including engineering feasibility of the proposed design, benefits analysis to the Tribal Nation (refer to para 2-3), cost-effectiveness analysis, environmental acceptability analysis (including summary of environmental compliance activities), environmental justice, and summary of public involvement.
- e. ATR of the cost estimate will be conducted by pre-certified district cost personnel within the region or by the Cost Engineering ATR and Mandatory Center of Expertise (MCX) located in the Walla Walla District. A pre-certified list of cost personnel is maintained by the Cost Engineering MCX. The ATR team member responsible for reviewing the cost estimate will coordinate with the Cost Engineering MCX for execution of cost review and cost certification. The Cost Engineering MCX will be responsible for final cost certification and may be delegated at the discretion of the Cost Engineering MCX.
- f. Any recommended changes to the design or cost estimate as a result of engineering analyses, real estate requirements, summary of the OMRR&R requirements, mitigation requirements (if applicable), a summary of risk and uncertainty for the project, summary of Tribal partner requirements.
- g. Proposed project design and construction including construction schedule and project cost sharing. This includes the confirmation of the project purpose (flood risk management, ecosystem restoration, water supply, etc.) and application of any cost share reductions for construction.

Chapter 10 Other provisions

10–1. Multipurpose projects

- a. *General.* To promote comprehensive collaborative planning, the formulation of multi-purpose projects may be accomplished under the TPP. The term “multipurpose

project” often is used to describe three different types of strategies, each involving different formulation.

(1) In the first strategy, a project is formulated as either an NED plan with incidental NER benefits or a NER plan with incidental NED benefits and costs are shared according to one cost sharing formula.

(2) In the second strategy, often referred to as “combined plans,” an NED plan and an NER plan are formulated together and have interdependent features, using a trade-off analysis. Combined plans require complex evaluation and trade-off analyses that may affect the scope of study and construction for TPP studies and projects. Each of these two approaches is appropriate for consideration under TPP.

(3) The third type of strategy involves use of maximizing comprehensive benefits categories using a trade-off or other types of analysis like the second strategy mentioned above. The use of the comprehensive benefits for multipurpose project formation should be coordinated with the vertical team.

b. *Cost allocation between purposes for combined plans.* Consultation with HQUSACE is required prior to proceeding with the combined plan approach. Formulation and evaluation of combined plans will follow the procedures in ER 1105-2-100, or subsequent guidance.

(1) In no case will the cost for a purpose included in the combined plan exceed the statutory federal per-project or separable element limit under the TPP authority for programmatic projects.

(2) If the costs for the purpose exceed the statutory federal per-project or separable element limit under the TPP authority, then Congressional authorization is necessary.

(3) The cost for each purpose will include the separable costs, plus the joint costs allocated to that individual purpose cost allocation is calculated using the separable cost remaining benefits method as described in ER 1105-2-100, or subsequent guidance. The costs for each purpose will be shared according to the cost sharing formula for the project purpose.

(4) For accounting purposes, it is critical to keep track of the costs assigned to each purpose. Consultation with HQUSACE is required prior to proceeding with the combined plan approach.

10–2. Design deficiency corrections for completed projects

In the case of design deficiencies, districts should follow the requirements identified in ER 1165-2-119.

10–3. National Historic Preservation Act, Section 106

TPP projects are required to comply with the environmental and historic preservation laws, including Section 106 of the NHPA for the consideration of effects of the proposed action(s) on historic properties. As a first step, districts should determine whether the TPP constitutes an undertaking as defined in 36 CFR 800.16(y). If the TPP project meets the definition of an “undertaking,” the PDT establishes if the activity has the potential to cause effects on historic properties (36 CFR 800.3(a)(1)).

a. *Section 106 Tribal consultation.* Section 106 Tribal consultation will include consultation with the Tribal office with the responsibility for Tribal cultural resources and

historic properties, regardless if the Tribal cultural resources or historic preservation office has coordinated its program with the National Park Service. Those Tribal historic preservation programs who have collaborated with the National Park Service can assume additional roles as identified in 36 CFR 800 and discussed below. Coordination with the Tribal partner at the start of the study should identify the appropriate office and/or individuals who should be included in Section 106 consultation for the Tribal partner.

b. Identification of the appropriate State Historic Preservation Officer and/or Tribal Historic Preservation Officer.

(1) Some Tribes have established a historic preservation office and program in partnership with the National Park Service. This Tribal office assumes the roles of the State Historic Preservation Officer (SHPO) on Tribal lands. In this instance, the district will consult on undertakings occurring on Tribal land or effects on Tribal land with the Tribal Historic Preservation Officer (THPO) in lieu of the SHPO [(36 CFR 800. 2(c)(2)(i)(A) and 36 CFR 800.3(c)(1); Advisory Council on Historic Preservation November 2013]. For more information see the Role of the Tribal Historic Preservation Officer in the Section 106 Process, available at <https://www.achp.gov/>.

(2) Where a Tribe has not assumed the responsibilities of the SHPO on Tribal lands, consultation with Tribes regarding undertakings occurring on Tribal lands will be in addition to consultation with the SHPO (36 CFR 800.2(c)(2)(i) and 36 CFR 800.3(d)). The district should consult the THPO Program of the National Park Service to determine how consultation will proceed with a designated THPO and, if applicable, SHPO (<https://www.nps.gov/subjects/historicpreservationfund/tribal-historic-preservation-office-program.htm>).

(3) If a Tribe has assumed the functions of the SHPO in the Section 106 process for undertakings on Tribal lands, the SHPO may participate (36 CFR 800.2(c)(1)(ii)). The district, in consultation with the Tribe, should determine if there are any other consulting parties that should be included (36 CFR 800.2(c)). Other consulting parties may be either within or adjacent to the study area.

c. Identification of historic properties.

(1) In consultation with the THPO/SHPO, the district will identify the Area of Potential Effect, review existing information regarding the identification of historic properties within the Area of Potential Effect and gather information, in consultation with the THPO and other Tribal representatives. Tribes may be reluctant to divulge specific information regarding the location, nature, and activities associated with sites of religious and/or cultural significance. The district will work with the THPO to determine the level of detail that can be provided on historic properties, cultural resources, and traditional cultural places. The district will also coordinate with the THPO on how to best keep location and other information confidential, if necessary (see para 1-11).

(2) The district must work with the THPO/SHPO and the Tribe regarding the need to conduct archaeological excavations and other surveys on Tribal lands to identify historic and cultural properties. Any archaeological or other investigations on Tribal lands should meet any standards or requirements identified by the THPO/SHPO. The district will work with the Tribe to develop a strategy to identify historic properties. Cultural resource(s) being considered for preservation under the TPP may be

determined to be eligible for the National Register as part of the Section 106 review for the project, however, such a determination is not required for participation in the TPP.

d. *Participation of Tribal monitors and/or archaeologists.* The district, in consultation with the Tribe, may utilize Tribal monitors and/or Tribal archaeologists as part of surveys, investigations, and assessments to identify historic properties, assess adverse effects and resolve adverse effects, if identified, as in-kind services. If, however, a document or study is prepared by a non-federal party, the district should ensure the content meets applicable standards and guidelines, including those put in place by a THPO/SHPO.

e. *Ownership of collections.*

(1) If in consultation with the Tribe, a collection is made on Indian lands as part of archaeological surveys and investigations, the subsequent archaeological collection, including associated documentation, is the property of the Tribal partner and should be returned to the Tribe at the completion of the study (36 CFR 79.1(a)).

(a) Collections made on Indian lands are the property and responsibility of the Tribe, regardless of if there is or is not a Tribal historic preservation program or THPO/SHPO.

(b) Tribes are not required to maintain archaeological collections made on their land according to (36 CFR 79).

(c) While the district is using any archaeological collection as part of a study or project, the district should care for the collection until it is turned over to the Tribe. The district would not have the responsibility for continued maintenance once the project is completed.

(2) The district should work with the THPO/SHPO to determine the level of effort for analysis, ability to remove collections from Tribal lands for analysis, etc., and provide custody tracking if collections are removed or analysis by the district or its contractor. During analysis by the district and its contractors, the collection should be maintained according to 36 CFR 79. The district will maintain a record of the work completed, copies of deliverables, and documentation of Section 106 compliance.

f. *Assessment and resolution of adverse effects.*

(1) The assessment and resolution of adverse effects should proceed according to 36 CFR 800.5 and 800.6. The ACHP should be notified by the district of findings of adverse effect and be invited to participate in the consultation to resolve those effects. The ACHP has 15 days to advise the district of its participation in the consultation (36 CFR 800.6(a)(1)(iii)).

(2) Execution of any agreement document would require signatures by the district designated official, usually the District Commander, the THPO, where the THPO has assumed the role of the SHPO on Tribal lands, and the ACHP, if they are participating.

(3) The SHPO would only be a signatory for the execution of the agreement if the THPO had not assumed the role. If the proposed undertaking had an adverse effect to historic properties on and off Tribal lands, both the THPO and SHPO signatures would be required to execute the agreement.

(4) If the Tribe has not assumed the role of SHPO, the SHPO would sign the agreement for adverse effects on and off Tribal lands and Tribal representatives could sign the agreement as an invited signatory.

g. Public review requirements.

(1) The NHPA Section 106 review process includes public participation. Agencies must include documentation (36 CFR 800.11) and give the public an opportunity to comment on the proposed undertaking. The ACHP and the CEQ have drafted a process that connects Section 106 and the NEPA process, particularly its elements of public participation and review.

(2) The public involvement requirements of Section 106 can be satisfied by utilizing the NEPA process public review opportunities. This would include, but not be limited to, providing information for scoping meetings and review periods and meetings when a report is released to the public.

(3) As part of the study initiation, the district and Tribal partner should discuss what, if any, information requires confidentiality, and determine what can be done to protect that information, including use of Section 304 of NHPA, and Section 9 of ARPA. Where the NHPA and ARPA cannot be used, the plan should identify if and how the study can protect Tribal information, as necessary. FOIA requires federal agencies to maintain and preserve its written record, which could be available to the public.

(4) Strategies to protect sensitive information, if identified, could include the Tribal partner retaining the written data on sensitive information. Any FOIA request for the written records would not include the sensitive information. Limiting the information retained by the district may limit access to the public through FOIA requests.

(5) Other recommendations to limit access to sensitive data should be discussed with district counsel and Tribal partners to determine if data sharing agreements and/or non-disclosure agreements can minimize the release of information through FOIA or other requirements.

10–4. Archaeological Resources Protection Act

a. ARPA is applicable to federal and Tribal lands. ARPA requires a permit, issued by the federal or Tribal land manager, to excavate or remove archaeological resources located on federal and Indian lands.

b. The issuance of an ARPA permit is not required by employees or contractors working on behalf of the government or tribe for activities conducted on federal or Tribal lands for the purpose of compliance with Section 106 of the NHPA.

c. However, sites damaged, defaced, or removed during construction or other study- or project-related activities necessary for the development of a project or study, other than those associated with Section 106 compliance, would constitute a violation under ARPA (Section 6(a); 16 USC 470ee).

d. Any contracts or other documents identifying field activities should include language regarding the process should post-review and/or unanticipated discoveries be made.

10–5. Native American Graves Protection and Repatriation Act

Should human remains or other items be encountered on federal lands or Tribal lands, Section 3 of the Native American Graves Protection and Repatriation Act applies (25 USC 3002). At the start of a study or project, the district should coordinate with Tribes to develop procedures to address inadvertent discoveries and intentional excavation. Any contracts or other documents identifying field activities should include

language regarding the process should post-review and/or inadvertent discoveries be made. All processes should reflect requirements identified by the THPO or Tribal cultural resources office.

Chapter 11

Real estate

11–1. Real estate plan requirements

The analysis of the nature and extent of Real Estate requirements must be conducted according to chapter 12 of ER 405-1-12, including consideration and identification of the specific interests, estates, and acreage required for the project. All TPP decision documents must contain a Real Estate Plan prepared consistently with ER 405-1-12. The level of detail required for each element required to be discussed in the Real Estate Plan will vary depending on the scope and complexity of the project and will generally match the level of detail contained in the balance of the project decision document.

11–2. Feasibility phase

Lands within Indian country consist of a variety of ownerships, see definitions contained in paragraph 1-9i. Ownership identification may be obtained from the sponsor's Tribal Land Records Office, the Regional BIA Land Department, or the geographic County assessor records. It is critical for the PDT to partner closely with the Tribal partner to identify and define parcel ownerships early in the feasibility phase. Land ownerships within Indian country or Alaska Native Villages must be carefully analyzed but should not be considered a constraint in selecting the TSP.

a. District Realty Specialists must coordinate with the district Tribal Liaison in arranging discussions or engagements with the Tribal partner. Additional coordination with the Tribal Liaison should occur when engaging the BIA. The district Real Estate element must include an estimated value of the LERRDs anticipated to be required for the project within the feasibility report. Values of Tribal land holdings or other land designations may not be readily measured or estimated by standard market valuation techniques and data sources. Estimations of value of LERRDs may be used in developing the feasibility report. However, a professional appraisal will need to be obtained to determine creditable values of LERRDs.

b. During the feasibility phase, District Real Estate will work with the Tribal partner, BIA (or Indian Self-Determination and Education Assistance Act compacting agency for Alaska Native Villages), USACE Office of Counsel and the district Tribal Liaison to determine if any special legal instructions related to valuation should be provided to the appraisers.

c. The PPA template approved for the TPP presupposes that, except for possible relocations of public facilities and utilities, all necessary real property interests to be provided are already owned by the Tribal partner. Where this is not the case, a description of the required real estate interests and their conceptual plan of acquisition should be forwarded to the MSC for review and transmitted to the RIT for further vertical team coordination. This required coordination should occur during the feasibility phase to ensure the conceptual plan of acquisition is implementable according to approved policies and standards.

d. If allotted lands are proposed for incorporation into the project, the submitted plan of acquisition should include a conceptual strategy to utilize a BIA right-of-way grant that must be coordinated with HQUSACE Real Estate Division for concurrence. The language contained in the BIA right-of-way grant must meet the TPP objectives and project requirements, safeguard the project benefits, and protect the federal investment and minimize impacts to allottee beneficiaries.

e. If an ANCSA Corporation is a Tribal partner for a project under TPP but is not the land holding entity with surface rights, the district should explore with the ANCSA Corporation the possibility of the land holder being a co-sponsor. Joint and several liability option language must be added to the agreement at issue. This circumstance should be identified as soon as practicable and discussed with the MSC and the RIT for further vertical team coordination. This coordination should occur during the feasibility study and be discussed at the Agency Decision Milestone prior to finalizing the final feasibility report.

11–3. Construction

Upon execution of the PPA, the District Real Estate Contracting Officer provides the Tribal partner with general written descriptions, including maps as appropriate, of the real property requirements that the Tribal partner must provide for the project.

a. The Tribal partner must obtain, for each real property interest, an appraisal of the value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal must conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared according to the applicable rules of just compensation, as specified by the Government.

b. After the Tribal partner completes its acquisition effort and prior to issuance of the solicitation for each construction contract, the Tribal partner must provide documents evidencing ownership of the requisite real property interests. An informed, authorized, and accountable official of the Tribal partner must execute and provide the district a written Authorization for Entry to all real property requirements that the Government determined the Tribal partner must provide for that contract; and the Tribal partner must provide a resolution from the Tribal governing body and an executed Attorney's Certificate of Authority that recites that the official signing the Authorization for Entry has the authority to furnish such right to the Government. The Certificate of Authority can be found online at: <https://www.usace.army.mil/Missions/Civil-Works/Project-Partnership-Agreements>.

11–4. Nature of title to Indian Allotment Lands

As defined in paragraph 1-9i, allotted lands, or allotments, can be held in trust or restricted fee status by the United States for the benefit of an individual Indian or multiple Indian owners.

a. For Indian allotment lands with an individual Indian owner, the Tribal partner must notify the individual Indian owner and obtain written consent. The Tribal partner must then submit a right-of-way application to the BIA.

b. For Indian allotment lands with multiple Indian owners with fractionated title, the Tribal partner must notify the Indian owners, submit a right-of-way application to the

BIA, and secure written record of consent from the owners of the majority interest in each tract.

11–5. Tribal partner capacity assessment

As part of coordination with the Tribal partner, the district must assess the acquisition needs of the project and the anticipated level of effort required by the Tribal partner. There may be circumstances where the Government acquires the LERRDs on behalf of the Tribal partner. All written requests for acquisition support must be approved with HQUSACE Real Estate Division.

11–6. Credit

Credit for the value of LERRDs provided must be afforded according to the PPA.

11–7. Real Estate Regulations

All real estate activities will follow current USACE regulations, including ER 405-1-4, ER 405-1-11, ER 405-1-16, and ER 405-1-19.

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://www.publications.usace.army.mil/>. Executive Orders, Public Laws, Code of Federal Regulations, and United States Codes are available at <https://www.govinfo.gov>.

ENG Form 2803

Right-of-Entry for Construction

EO 13175

Consultation and Coordination with Indian Tribal Governments

EP 1105-2-57

Stakeholder Engagement, Collaboration, and Coordination

EP 1105-2-58

Continuing Authorities Program

EP 1105-2-61

Feasibility and Post-Authorization Study Procedures and Report Processing Requirements

ER 11-1-321

Army Programs Value Engineering

ER 405-1-4

Appraisal

ER 405-1-11

Acquisition

ER 405-1-12, Chapter 12

Real Estate Handbook

ER 405-1-16

Relocation Assistance Program

ER 405-1-19

Acquisition by Condemnation Proceedings

ER 1105-2-100

Planning Guidance Notebook

ER 1105-2-102

Watershed Studies

ER 1105-2-103

Policy for Conducting Civil Works Planning Studies

ER 1110-2-1150

Engineering and Design for Civil Works Program

ER 1110-2-1302

Civil Works Cost Engineering

ER 1165-2-119

Modifications to Completed Projects

ER 1165-2-208

In-Kind Contribution Credit Provisions of Section 221(a)(4) of the Flood Control Act of 1970, As Amended

ER 1165-2-217

Civil Works Review Policy

Feasibility Report Format and Content Guide

Version 1.0, October 2021 (Available at <https://planning.erdc.dren.mil>)

HQUSACE PGL No. 52

Flood Plain Management Plans, 8 December 1997

(Available at <https://planning.erdc.dren.mil>)

Memorandum, DA ASA(CW)

Implementation Guidance for Section 1031 (a) of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), and for Section 1121 of the Water Resources Development Act of 2016 (WRDA 2016), Tribal Partnership Program, 5 February 2018 (Available at <https://planning.erdc.dren.mil>)

Memorandum, DA ASA(CW)

Implementation Guidance for Section 1157 of the Water Resources Development Act of 2018 (WRDA 2018), U.S. Army Corps of Engineers Continuing Authorities Program, 19 April 2019 (Available at <https://planning.erdc.dren.mil>)

Memorandum, DA ASA(CW)

Tribal Partnership Program – Non-Traditional Water Resources Development Projects, 29 November 2022 (Available at <https://planning.erdc.dren.mil>)

Memorandum, DA ASA(CW)

Updated U.S. Army Corps of Engineers Civil Works Tribal Consultation Policy, 5 December 2023 (Available at <https://planning.erdc.dren.mil>)

Memorandum, HQUSACE (CECW) EGM 24-03
Cost Sharing Waiver for Territories and Tribal Nations
(Available at <https://planning.erdc.dren.mil>)

Memorandum, HQUSACE (CECW) EGM 24-04
Tribal Partnership Program Reduced Cost Share Eligibility Criteria (Ability to Pay)
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Policy Memorandum - Acceptance of Contributed Funds, Advanced Funds, and Accelerated Funds, 19 December 2019 (Available at <https://planning.erdc.dren.mil>)

Memorandum, Office of Science and Technology Policy/Council on Environmental Quality
Guidance for Federal Departments and Agencies on Indigenous Knowledge, 30 November 2022 (Available at <https://planning.erdc.dren.mil>)

OMB Circular A-87
Cost Principles for State, Local, and Indian Tribal Governments
(Available at <https://www.whitehouse.gov>)

OMB Circular A-122
Cost Principles for Non-Profit Organizations (Available at <https://www.whitehouse.gov>)

PL 49-105
General Allotment Act

PL 89-487
Freedom of Information Act

PL 91-611
Flood Control Act of 1970 (also known as 42 USC 1962-2)

PL 92-203
Alaska Native Claims Settlement Act of 1971 (also known as 43 USC 1601 et seq.)

PL 93-251
Water Resources Development Act of 1974

PL 99-662
Water Resources Development Act of 1986

PL 106-541
Water Resources Development Act of 2000

PL 110-114
Water Resources Development Act of 2007

PL 113-121

Water Resources Reform and Development Act of 2014

PL 114-322

Water Resources Development Act of 2016

PL 115-270

Water Resources Development Act of 2018

PL 116-260

Water Resources Development Act of 2020

PL 117-263

Water Resources Development Act of 2022

Project Partnership Agreements

(Available at <https://www.usace.army.mil/>)

Role of the Tribal Historic Preservation Officer in the Section 106 Process

Advisory Council on Historic Preservation, 2 November 2013

(Available at www.achp.gov/)

USACE Civil Works Project Partnership Agreements website

(Available at <https://www.usace.army.mil/Missions/Civil-Works/>)

USACE Tribal Nations website

(Available at <https://www.usace.army.mil/Missions/Civil-Works/>)

25 CFR 151

Land Acquisitions

36 CFR 60

National Register of Historic Places

36 CFR 79

Curation of Federally Owned or Administered Archeological Collections

36 CFR 800

Protection of Historic Properties

48 CFR Chapter 1

Federal Acquisition Regulation

16 USC 470aa-mm

Archaeological Resources and Protection Act of 1979

18 USC 1151

Indian country defined

25 USC 46

Indian self-determination and education assistance

25 USC 323

Rights-of-way for All Purposes Across Any Indian Lands

25 USC 3001 et seq.

Native American Graves Protection and Repatriation Act

25 USC 3002

Ownership

25 USC 3703

American Indian Agricultural Resource Management, Definitions

25 USC 5131

Publication of list of recognized tribes

25 USC 5304

Indian Self-Determination and Education Assistance, Definitions

33 USC 2211

Harbors

33 USC 2213

Flood Control and Other Purposes

33 USC 2269

Tribal Partnership Program

33 USC 2282

Feasibility Reports

33 USC 2282c

Vertical Integration and Acceleration of Studies

33 USC 2310

Cost Sharing for Territories and Indian Tribes

42 USC 1962-2

Congressional statement of objectives

42 USC 4321

National Environmental Policy Act of 1969

43 USC 1601 et seq.

Alaska Native Claims Settlement, Congressional Findings and Declaration of Policy

48 CFR Part 7 Chapter 1
Federal Acquisition Regulation

54 USC 300101 et seq.
National Historic Preservation Act

54 USC 306107
Planning and actions to minimize harm to National Historic Landmarks

54 USC 306108
Effect of undertaking on historic property

54 USC 307103
Access to information

Section II

Prescribed Forms

This section contains no entries.

Glossary of Terms

Ability to Pay

Ability to Pay refers to a set of rules that allows for a non-Federal sponsor or Tribal partner to receive a reduction in their percentage of costs during a study, design, or construction of a project. Current rules are in United States Code at 33 USC 2213(m).

ACHP (Advisory Council on Historic Preservation)

The Advisory Council on Historic Preservation is the independent federal agency who developed the Section 106 process as identified in 36 CFR 800. The roles and responsibilities of the Advisory Council on Historic Preservation in the Section 106 process can be found throughout 36 CFR 800.

Agency Decision Milestone

The Agency Decision Milestone is the planning milestone after the Tentatively Selected Plan milestone. It is the milestone where the agency makes a final decision on the level of environmental analysis and finalizes the selection of a recommended plan.

Allotted lands

Allotted lands, or allotments, can be held in trust or restricted fee status by individual Tribal members, sometimes referred to as allottees or landowners. Allotted lands do not include fee lands. Allotted lands stem from treaties and statutes, including the General Allotment Act (PL 49-105), that divided land communally held by Tribes and allotted parcels of it to individual Tribal members.

Alternatives Milestone

The Alternatives Milestone is the first planning milestone and ensures the project delivery team has a clear and logical formulation and evaluation rationale that indicates the ability to make risk-informed decisions and a vision for a path to the Tentatively Selected Plan milestone.

ANCSA (Alaska Native Claims Settlement Act)

The Alaska Native Claims Settlement Act was enacted in 1971 to settle aboriginal land title claims with Alaska Natives. Part of ANCSA provides for each specific regional or village corporation to select federal lands within their legally defined regions to be conveyed to them. The selection process was completed in the early 1970s, and the US. Bureau of Land Management is currently working through some of the more complicated conveyances and patents.

ARPA (Archaeological Resources Protection Act)

The Archaeological Resources Protection Act governs the excavation, removal, disposal of archaeological artifacts on Federal lands, including lands held in trust by the Federal government for Federally-recognized Tribes.

ASA(CW) (Assistant Secretary of the Army for Civil Works)

The Assistant Secretary of the Army for Civil Works establishes policy direction and provides supervision of the Department of the Army functions relating to all aspects of the Civil Works program of the United States Army Corps of Engineers.

ATR (Agency technical review)

Agency Technical Review is a review conducted by internal USACE experts from a district outside of the one leading the study or project. It ensures the quality and credibility of USACE scientific and technical conclusions.

BIA (Bureau of Indian Affairs)

Under the Department of Interior, the Bureau Indian Affairs provides services directly or through contracts, grants, or compacts to 567 Federally recognized tribes with a service population of about 1.9 million American Indian and Alaska Natives.

Biddability, constructability, operability, environmental and sustainability review

Biddability, constructability, operability, environmental and sustainability reviews are completed during the design phase of a design-bid-build project or during the development of the request for proposal for a design-build project. It ensures that a project can be constructed and operate as intended, that potential bidders will be able to understand the project requirements, that USACE is following its established Environmental Operating Principles, and that sustainability is properly considered and integrated into the project.

CAP (Continuing Authorities Program)

USACE's Continuing Authorities Program is a collection of authorities Congress has given USACE to study and construct various types of projects without further authorization from Congress (which is usually required after completion of a feasibility study) as long as the projects are under a certain dollar amount.

CEQ (Council on Environmental Quality)

A division of the Executive Office of the President that coordinates federal environmental efforts in the United States and works closely with agencies and other White House offices on the development of environmental and energy policies and initiatives.

CFR (Code of Federal Regulations)

The Code of Federal Regulations is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

Cost effectiveness/incremental cost analysis

Cost effectiveness/incremental cost analysis is a decision-making tool for the formulation and evaluation of ecosystem restoration alternative plans; however, it is now more widely used by all USACE business lines for evaluation of actions involving monetary and non-monetary cost and benefits.

Cultural and natural resources

For the purpose of identifying activities under the TPP, cultural resources are those resources identified as culturally significant to the Tribal partner. Cultural resources include historic properties as defined by Title 36 CFR Section 800.16.I. All resources identified as culturally important through the application of Indigenous Knowledge are eligible for consideration under the TPP. Natural resources refers to land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources. While natural resources can include threatened and endangered species, the natural resources under consideration for preservation do not need to be listed as threatened and endangered species. Natural resources can also be habitats and ecosystems, including areas specifically managed by Tribes as natural areas for use by the Tribe.

Design agreement

Design agreements are legally binding agreements that specify the percentage and amount of funding the Federal government and a non-Federal sponsor will both contribute to the design of a project, processes to be followed, and the roles and responsibilities of the parties during design of a project. The phase governed by a design agreement is the preconstruction engineering and design phase.

Deputy Commanding General for Civil and Emergency Operations

The Deputy Commanding General for Civil and Emergency Operations is a Major General who oversees Civil Works and reports directly to the Chief of Engineers. The Deputy Commanding General for Civil and Emergency Operations is responsible for ensuring all Civil Works actions are carried out according to law and policy and otherwise carrying out the orders of the Chief of Engineers.

Decision Document

For TPP feasibility studies, decision documents are the consolidated documentation of feasibility, technical, and policy analyses, findings, and conclusions upon which the District Commander bases the recommendation. For programmatic feasibility studies, this recommendation is made from the District Commander to the MSC Commander to approve the recommended project for construction. For feasibility studies requiring Congressional authorization, the decision document recommends authorization through the completion of a Report of the Chief of Engineers (Chief's Report). A decision document will be used to support the design agreement, if required, and PPA.

DOI (Department of the Interior)

The U.S. Department of the Interior is a Cabinet-level agency that protects and manages the Nation's natural resources and cultural heritage; provides scientific and other information about those resources; and honors its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated Island Communities.

DQC (District quality control)

District quality control is the process of conducting quality checks, detailed peer review of documents, computations, and graphics, and project delivery team reviews. It is the foundation of the USACE quality process and is conducted on all products that are transmitted out of the district or otherwise released for public/external review.

EGM (Economic guidance memorandum)

An annually published memorandum that provides general policies, procedures or guidelines and price level updates for different metrics utilized in USACE economic analyses.

EO (Executive Order)

An executive order is a signed, written, and published directive from the President of the United States that manages operations of the federal government.

FCSA (Feasibility cost sharing agreement)

A legally binding agreement that specifies the percentage and amount of funding the Federal government and a non-Federal sponsor will both contribute to a feasibility study, processes to be followed, and roles and responsibilities of both parties.

Feasibility Phase

The feasibility phase is the project formulation phase during which all planning activities are performed that are required to demonstrate that federal participation in a specific project is warranted, culminating in approval of the decision document, and a recommendation to Congress. The feasibility phase includes PED, which includes project design up until the first set of construction plans and specifications. This phase is funded using TPP General Investigation funds.

Federal Acquisition Regulation

The Federal Acquisition Regulation is the primary regulation for use by all executive agencies in their acquisition of supplies and services with appropriated funds.

Federal interest determination

A federal interest determination is an examination of a problem to determine whether the problem is likely to be within the Federal interest. Specifically, this determination addresses whether USACE has authority to study the problem and whether a project is likely to be economically justified, technically feasible, and environmentally acceptable.

Federal Register

The Federal Register is a publication where all public notices of significant government actions are published for the public to see.

Fee or fee simple lands

Fee or fee simple lands are owned by a person or entity who can freely alienate or encumber the land without federal approval, which may include a Tribe, individual Tribal members, or non-Indians.

Fiscal Year

The Federal Government's annual fiscal year, beginning on 1 October and ending on 30 September each year.

FOIA (Freedom of Information Act)

The Freedom of Information Act provides, upon request, the public a right to access federal agency information subject to statutorily enumerated exemptions and exclusions.

FPMS (Floodplain Management Services)

Floodplain Management Services is a USACE program that provides information to the public on flood hazards to guide floodplain development by advising, recommending, educating, informing, and providing technical support. The purpose is to foster public understanding of the options available to address flood hazards and promote prudent use and management of the Nation's floodplains.

HQUSACE (Headquarters, U.S. Army Corps of Engineers)

The center of operations of the U.S. Army Corps of Engineers located in Washington D.C. The headquarters staff is responsible for Corps of Engineers policy and plans the future direction of all other USACE organizations.

HTRW (Hazardous, toxic, and radioactive waste)

A class of contaminants and pollutants which must be sufficiently cleaned up or otherwise removed from a project site prior to construction of a project, and these activities must be completed at 100 percent non-Federal cost.

IEPR (Independent external peer review)

A review conducted by subject matter experts outside of USACE. It is required by Section 2034 of the Water Resources Development Act of 2007, as amended, for projects costing more than a set dollar amount, if the Governor of an affected state requests it, or if the Chief of Engineers determines the project is controversial in nature.

Indian Country

The term Indian country generally refers to all lands within a federal Indian reservation, all dependent Indian communities, and all Tribal member allotments, and is defined in 18 USC 1151 as:

- (1) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.
- (2) All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
- (3) All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Indian Lands

The term Indian Lands means lands of Indian Tribes or Indian individuals, which are either held in trust by the U.S. or subject to a restriction against alienation imposed by the U.S., except for any surface or subsurface interests in lands not owned or controlled by an Indian Tribe or an Indian individual (see 16 USC 470aa-mm).

Indian Tribe

A Tribe may serve as a Tribal partner under the TPP and is defined in 25 USC 5304 as any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native Village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (ANCSA) (PL 92-203) [43 USC 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The Secretary of the Interior is required to publish a list annually in the Federal Register a list of all Indian Tribes which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their sovereign status (25 USC 5131). In addition to the Tribes on the Secretary of the Interior list, the definition also includes Alaska regional or village corporations as defined in or established pursuant to ANCSA.

Indigenous Knowledge

A body of observations, oral and written knowledge, innovations, practices, and beliefs developed by Tribes and Indigenous Peoples through interaction and experience with the environment.

Initial work allowance

Federal funds allocated to a specific TPP project for use in completing the PMP, review plan, and executing a FCSA.

LERRD (Lands, easements, rights-of-way, relocations, and disposal areas)

Lands, easements, rights-of-way, relocations, and borrow and dredged or excavated materials disposal areas needed for the construction of a water resources development project.

Locally preferred plan

A Locally Preferred Plan is a plan that is supported by the non-Federal partner that is different from the NED, NER, or total net benefits plan.

MCX (Mandatory center of expertise)

USACE centers of expertise that are required to be engaged on any study or project in their specialized areas of expertise. They have unique technical capabilities and policy knowledge and are integral to the proper performance of studies and projects.

Memorandum for Record

A memorandum that documents guidance and decision points in order to establish a common understanding of what has been decided and the path forward for an effort. It is meant to formalize significant information about a study or project's direction or a significant decision point in a way that is easy to cite for others to understand.

Monitoring

Activities, including data collection and analysis, that are necessary to determine if predicted outputs of the project (aquatic ecosystem restoration only) are being achieved. Archaeological monitoring is used to identify, recover, protect, document, and/or recover cultural resources at a known site or to ensure that a site is identified and treated appropriately, particularly in sensitive areas for the identification of resources, during project activities, such as construction.

MOU (Memorandum of Understanding)

An agreement to proceed under a certain set of parameters and how to respond to foreseeable challenges that may require different courses of action depending on the size and scope of the challenge.

MSC (Major Subordinate Command)

A Major Subordinate Command (MSC) is a part of USACE and consists of a Division headquarters, subordinate Districts, and Enterprise Forward Offices (formally, National Staff Organizations). The Division executes its missions within assigned geographical boundaries, and cross boundaries for specifically assigned programs.

Native American Graves Protection and Repatriation Act

The Native American Graves Protection and Repatriation Act is the federal law regarding the repatriation and disposition of certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony (25 USC 3001 et seq).

NED (National Economic Development)

The National Economic Development account displays changes in the economic value of the national output of goods and services.

NEPA (National Environmental Policy Act)

Originally signed into law in 1970, the National Environmental Policy Act requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions and to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach.

NER (National Ecosystem Restoration)

The National Ecosystem Restoration account documents increases (or decreases) in the net quantity and/or quality of desired ecosystem resources.

NHPA (National Historic Preservation Act)

The National Historic Preservation Act of 1966 mandates the preservation of historic and archaeological assets in the United States.

National Register of Historic Places (National Register)

The National Register of Historic Places is the official list of the Nation's historic places worthy of preservation. Authorized by the National Historic Preservation Act of 1966, as amended, the National Park Service's manages the National Register as part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect historic and archaeological resources.

Non-traditional water resources development project

Other such projects as the Secretary (ASA(CW)), in cooperation with Indian Tribes and the heads of other federal agencies, determines to be appropriate. Non-traditional water resources development projects include projects that are not typically considered a traditional USACE water resources development project if the project is based on meeting the following criteria: 1) related to a water resource and 2) aligns with USACE capabilities and core competency.

O&M (Operations & Maintenance)

For USACE projects, activities that are conducted by a non-federal partner or USACE to support the function of a constructed water resources development project.

OMB (Office of Management and Budget)

The Office of Management and Budget mission is to assist the President in meeting policy, budget, management, and regulatory objectives and to fulfill the agency's statutory responsibilities.

OMRR&R (Operation, maintenance, repair, replacement and rehabilitation)

For USACE projects, activities undertaken at a constructed water resources development project to sustain it and make it available or receive benefits as conceived of in the design.

PAS (Planning Assistance to States)

The Planning Assistance to States program authorizes the USACE to cooperate with any State in the preparation of comprehensive plans for the development, utilization, and conservation of the water and related resources of drainage basins, watersheds, or ecosystems located within the boundaries of such State and to submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out such plans. This program does not provide authority for construction.

PCX (Planning Center of Expertise)

A USACE center of expertise charged with ensuring sound planning and policy principles are used in studies. The Planning Centers of Expertise also act as Review Management Organizations and have other responsibilities for developing the agency's technical expertise and policies.

PED (Preconstruction engineering and design)

Once the feasibility phase of a study is complete, the project delivery team will move into preconstruction engineering and design phase. This phase includes in-depth engineering and design development for the first construction contract.

PMP (Project management plan)

The project management plan serves to identify the scope, schedule, and resources needed to accomplish project/program execution. The PMP consists of sections, which detail how the project will be accomplished. The document is developed jointly between USACE and the non-Federal sponsor.

PPA (Project partnership agreement)

Legally binding agreement that specifies the percentage and amount of funding the Federal government and a non-Federal sponsor will each contribute to the construction of a project, processes to be followed, and the roles and responsibilities of the parties both during and after construction.

Public

The public refers to any entity outside USACE. The public includes Tribal and local government entities and officials; public and private organizations; individuals; institutions; study sponsor or partner representatives; community groups; and populations of interest in environmental justice or social vulnerability considerations.

Real property interests

The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations, borrow, and dredged material placement areas.

Reservation Indian Land

Areas reserved for a Tribe, or multiple Tribes, as permanent homelands through treaties, EOs, Acts of Congress, and administrative action. Not all Tribes have a reservation; however, Tribes without reservations could still have land held in trust or restricted fee. Trust, restricted fee, and fee lands may exist within a Tribe’s reservation boundaries. Tribes may also have trust, restricted fee, or fee lands outside of reservation boundaries.

Restricted fee lands

Restricted fee land refers to land to which a Tribe, or Tribal member, holds legal title subject to a restriction against alienation (sale or transfer) or encumbrance (liens, leases, rights-of-way, etc.) by operation of law. For some purposes, Congress has defined Tribal lands to include trust and restricted fee lands, such as for leasing agricultural lands (25 USC 3703) and rights-of-way (25 USC 323).

Review management organization

The designated organization within USACE that is charged with overseeing quality reviews. They endorse the Review Plan and manage reviews including agency technical review, independent external review, and safety assurance review.

Review plan

Documents that lay out how USACE will perform the various reviews, including quality control, quality assurance, and policy and legal compliance reviews, among others as necessary. It specifies roles and responsibilities as well as the timing of reviews.

RIT (Regional Integration Team)

Liaisons between Districts, MSCs and HQUSACE. The Regional Integration Team ensures flow of information and products and provide guidance where appropriate. Each MSC has its own Regional Integration Team dedicated to helping its studies and projects reach completion.

Safety assurance review

The most independent level of review and is applied in cases that meet certain criteria where the risk and magnitude of projects are such that they require a critical examination by external experts to ensure sufficient quality in analyses and recommendations.

Scale, scaled, or scalability

The amount of effort, resources, and time to be invested that should be commensurate with the magnitude, complexity, and cost of the project.

Separable element

Section 103(f) of WRDA 1986 defines “separable element” as a portion of a project (1) which is physically separable from other portions of the project; and (2) which achieves hydrologic effects or produces physical or economic benefits, which are separately identifiable from those produced from other portions of the project.

SHPO (State Historic Preservation Officer)

The official appointed or designated pursuant to Section 101(b)(1) of the National Historic Preservation Act (54 USC 302301) to administer the state historic preservation program or a representative designated to act for the state historic preservation officer. Roles and responsibilities of a SHPO in the Section 106 process are identified throughout 36 CFR 800, Protection of Historic Properties.

Stakeholders

Stakeholders include any member of the public that might be able to affect, are affected by, or are interested in, the result of the USACE planning process. They are people or groups who see themselves as having rights and interests at stake, either directly or indirectly. Some people may not realize they are stakeholders, for example, that they are affected by a USACE study, such as those identified as socially vulnerable populations.

THPO (Tribal Historic Preservation Officer)

The official appointed by the Tribe's chief governing authority or designated by a Tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for the purposes of Section 106 (54 USC 306108) compliance on Tribal lands, under the authorities of Section 101(d)(2) of the National Historic Preservation Act (54 USC 302702). Roles and responsibilities of a THPO in the Section 106 process are identified throughout 36 CFR 800.

TPP (Tribal Partnership Program)

The Tribal Partnership Program is a program within the United States Army Corps of Engineers Civil Works Mission that allows for the Federal Government to directly partner with Tribes to meet their water resource needs, including protection of historic and cultural resources. The target of the mission is constructing infrastructure that directly benefits the Tribes or Tribes with whom the Federal Government is partnering. It was established by Section 203 of WRDA 2000 and is in 33 USC 2269.

Tribal Lands

The term “Tribal Lands” is used generally throughout this pamphlet to have one comprehensive term that is generally applicable. Tribal Lands itself is not explicitly defined, but several types of Tribal Lands may be encountered during the feasibility or construction phase, including: Reservation Indian Land, trust lands, restricted fee lands, fee or fee simple lands, allotted lands, and Indian Lands.

Tribal Partnership Program Manager

The individual tasked with ensuring the Tribal Partnership Program functions as intended and meets the needs of the nation's Federally-recognized Tribes. This person is responsible for prioritizing work, providing oversight and guidance, briefing leadership, and completing budget requests as well as policy development and implementation.

Trust lands

The U.S. Government holds legal title to trust land for the benefit of federally recognized Indian Tribes or individual Tribal members.

TSP (Tentatively selected plan)

The alternative that a project delivery team has identified in the feasibility study as the plan that will likely be recommended to Congress based on a robust screening process that includes considerations of engineering, economic, environmental, social, and other factors. This plan is identified when the feasibility report is released for public review in order to give the general public and stakeholders the opportunity to understand how the plan would affect them or their interests and to provide comment prior to the plan being finalized.

USC (U.S. Code)

The consolidation and codification, by subject matter, of the general and permanent laws of the United States.

WRDA (Water Resources Development Act)

The primary authorizing legislation for the U.S. Army Corps of Engineers. This comprehensive legislative package is typically passed every two years, and may include both Congressional policy direction and authorization for USACE water resources activities including studies, projects, programs, and research activities.

WRRDA (Water Resources Reform and Development Act)

The Water Resources Development Act passed by Congress in 2014 (PL 113-121).