

CHAPTER 3

GENERAL POLICIES

3-1. General. It is the policy of the Corps of Engineers to develop, control, maintain, and conserve the Nation's water resources in accordance with the laws and policies established by Congress and the Administration. In accordance with those laws and policies, the Corps carefully considers and seeks to balance the environmental and developmental needs of the Nation. Actions taken comply with all relevant environmental statutes, have no significant safety problem, and are in the overall public interest. The following guidelines summarize considerations taken to insure that actions taken are in the public interest.

a. Range of Alternative Solutions. The full range of alternative solutions to a problem including their positive and negative impacts should be considered from the outset of the planning activity. Any water resource management proposal should be preceded by a thorough assessment of all relevant alternative means, including conservation, to achieve proposed project objectives and purposes singly or in combinations reflecting different choice criteria. Such an assessment should include a full range of structural and nonstructural alternatives and an unbiased analysis of both Corps and non-Corps means of resolving water and related land use problems; while protecting the environment.

b. With and Without Consequences. The with and without consequences of each feasible alternative should be determined adequately. The net effect of any proposed solution to a water resource problem should be carefully considered under a with and without action framework, using projections of economic, environmental and social impacts. Beneficial and adverse project impacts may be evaluated by measuring the differences between indicator values which result if a proposed plan is implemented, and their values if the natural forces of change continue to develop free of the influence of action by the Corps. Proposed plans should include provisions for protecting unique cultural and biological resources, such as historic and archeological sites and threatened, endangered and otherwise significant species and their habitats.

c. Options Foreclosed. Options foreclosed by the proposed action should be analyzed. Changing national values and priorities will be reflected in different approaches to the future well-being of the general public. In a rapidly changing society the needs of the future cannot be forecast with accuracy. Where evolving technology provides new alternatives a primary tenet of planning should be to maintain flexibility for the future. Phased development or deliberate delay may frequently be better than action for which incremental need has not been demonstrated thoroughly and the resultant effects have not been evaluated adequately. To maintain flexibility it is necessary to devote extra attention to those actions which would irrevocably limit freedom of action to deal with future changes to project-area water development problems and needs. Significant options retained or foreclosed should be specified.

d. Cumulative Effects of the Plan. The cumulative effects of the plan and other similar activities should be analyzed. Each proposed water resource development activity is but a piece of a

large-scale program. The combined beneficial and adverse economic, environmental and social impacts of individual projects, each of which may be relatively minor, can have a significant regional or national impact. At each level of the evaluation and review process it is necessary to assess the cumulative beneficial and adverse effects of individual project impacts. Significant effects should guide the decisions.

e. Public Participation. The civil works program is conducted in an atmosphere of public understanding, trust and mutual cooperation in a manner responsive to public needs and desires. To this end opportunities for public input to the decision making process are provided.

f. Program and Project Proponency.

(1) The Corps is a program proponent of the budgetary priority purposes of commercial navigation, flood damage reduction (including hurricane and storm damage reduction), and ecosystem restoration. For commercial navigation and flood damage reduction, the emphasis of Corps program proponency is promoting national economic development while protecting the Nation's environment. Program proponency also extends to restoration of degraded ecosystem functions and values with a focus on ecological resources and functions associated with, or directly dependent on, the hydrologic regime.

(2) Project proponency is the support of specific action and expenditure of funds to promote navigation, flood damage reduction, or ecosystem restoration. Federal project proponency evolves through the project implementation process. Initially, when a study is started, there is no Corps project proponency even though the non-Federal sponsor may have a project which it supports. When a project recommendation is made, the Corps becomes the proponent for specific Federal investment in that project. This project proponency, however, is necessarily conditioned on the budgetary process. Corps unconditional proponency in advocating that a project should be built cannot be given until construction funds are budgeted and appropriated for the project.

g. Response to Goals and Priorities. The plan should respond to the long-range development goals and priorities for the study area, and to National policies and objectives. Many regions and basins have long-range development goals and priorities, as specified in assessments, framework studies, comprehensive basin studies, ecosystem management plans, and in other sources. Any proposed plan should be consistent with these objectives. To insure this consistency, adequate coordination must be achieved with regional planning bodies and all other interested parties.

3-2. Environmental Impact Statement (EIS). Section 102(2)(C) of NEPA requires a detailed statement to accompany every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The Corps normally prepares EISs for feasibility reports for authorization and construction of major projects, for changes in projects which increase size substantially or incorporate additional purposes, and for major changes in the operation and/or maintenance of completed projects. Environmental assessments are normally prepared for other Corps actions except for certain minor and/or routine

actions which are categorically excluded from NEPA documentation. A finding of no significant impact is prepared by the reporting officer to accompany an assessment when it is determined that an EIS will not be prepared. NEPA documentation is accomplished prior to implementation of emergency work, if practicable. (ER 200-2-2)

a. Notice of Intent. A notice of intent to prepare a draft EIS is published in the Federal Register as soon as practicable after reporting officers decide to prepare a draft EIS. (ER 200-2-2)

b. Record of Decision. A Record of Decision is prepared to document the Corps final decision on a proposed action requiring an EIS. The Record of Decision identifies the reasonable alternatives; designates the environmentally preferable alternative or alternatives and the agency's preferred alternative; the relevant factors including economic and technical considerations, statutory missions, and national policy which were balanced to make the decision; and whether all practicable means to avoid or minimize environmental harm have been adopted, and if not, why not. (ER 200-2-2)

3-3. Opposition by a State. During the period from project conception through construction, a governor or other state official may request termination of a project or delay pending restudy of modifications or alternatives. The views of the state are given great weight in actions taken by the Corps as discussed in the following paragraphs.

a. Projects in Preauthorization Stages. The Corps traditionally defers to adverse views of a governor on a proposed project located in his/her state. A favorable recommendation over the objections of a governor would be justified only if the project: is physically located in more than one state and provides substantial and urgently needed interstate benefits; is an indispensable element of a major river basin plan; or involves compelling circumstances related to national interest or security. The feasibility report would contain a full documentation of the governor's opposition and would be submitted to Congress for its decision.

b. Authorized but Unfunded Projects. Projects in this category are proposed for deauthorization using the authority of Section 1001 of Public Law 99-662 (paragraph 7-5.b). If not eligible for deauthorization under Section 1001, consideration is given to placing them in the inactive category (paragraph 8-4).

c. Projects Funded for Preconstruction Engineering and Design. If gubernatorial opposition to projects in this stage occurs, the Corps generally will phase out and suspend planning as long as the governor remains opposed. Congress is informed during appropriation hearings. If the project meets one of the criteria in paragraph 3-3.a the Corps should propose to continue planning. If a project lacks local support, or if a governor withholds or withdraws necessary assurances or contractual requirements, planning should cease and actions taken to classify the project as inactive. The final decision to terminate planning on projects rests with Congress; the Corps cannot unilaterally terminate planning.

d. Projects with Construction Funds. Appropriation of construction funds is a major project milestone, signifying a decision by Congress to proceed with the project. All non-Federal commitments

have presumably been met, and at that late point a governor's objection should not, in itself, be the grounds for terminating a project. As a practical matter, projects that have been funded for construction but have not proceeded--or have only had minimal land acquisition--are in a somewhat different status than those actually under physical construction. If a governor objects before construction is underway, the Appropriations Committees should be notified and the Corps position outlined. Ordinarily, the Corps defers all contract awards until after the next appropriations hearings in order to give the Committees an opportunity to explore the matter carefully, and construction would proceed if funding is continued. For projects where construction is underway, the Corps cannot, on its own, terminate construction except for engineering reasons. If a governor raises objections to a project physically under construction, existing contracts should be continued. New contracts can be deferred until after appropriation hearings have been conducted, if they do not seriously delay progress on the project. Otherwise, the Corps should inform the Committees of its intention to award new contracts and do so unless instructed not to. Only the courts or Congress can halt a project in this category.

3-4. Identification and Administration of Cultural Resources. The Reservoir Salvage Act of 1960, Public Law 86-523, as amended, provides Federal agencies the authority to expend up to one percent of the amount authorized to be appropriated for the project to conduct cultural resource surveys and follow-on activities on a nonreimbursable basis. The consideration of the effects of projects on cultural resources is initiated in preauthorization studies. Studies are coordinated with the National Park Service; the Advisory Council on Historic Preservation; and the appropriate State Historic Preservation Officer. A primary emphasis is to provide for cultural activities prior to completion of project construction. However, where need for such activities may occur during the operation and maintenance of the project by the Federal Government, it will be undertaken.

a. Identification, Survey, and Evaluation. The costs of identifying, surveying, and evaluating historical properties will be treated as reimbursable planning costs, in accordance with Section 208(l) of Public Law 96-515 (16 U.S.C. 469c-2). Costs of these activities during feasibility studies will be shared with the study cost-sharing partner in accordance with Section 105(a) of WRDA 1986. Costs of these activities during or following preconstruction engineering and design (PED) studies will be shared with the non-Federal sponsor in accordance with Section 1058 of WRDA 1986.

b. Recovery and Mitigation. The costs of recovery and mitigation activities associated with historic preservation will be treated as nonreimbursable project construction costs, up to the one percent limitation specified in Section 7(a) of Public Law 93-291 (16 U.S.C. 469c). Nonreimbursable project costs are to be kept separate from other project construction costs, and are not subject to cost sharing. The costs of recovery and mitigation activities associated with historic preservation which exceed the one percent limitation specified in Section 7(a) of Public Law 93-291 will be treated as follows:

(1) Non-Federal sponsors will be asked to pay a portion of the project costs over the one percent limitation, and waivers will be

obtained to spend more than the one percent on recovery and mitigation activities, as specified in Section 208(3) of Public Law 96-515. Requests for waivers should be referred to HQUSACE (ATTN: CECW-A) along with justification.

(2) Once a waiver is obtained, expenditures for recovery and mitigation activities over the one percent limitation will be shared in the same manner as project costs are shared. For flood control, the cost sharing will be the minimum non-Federal cost-sharing requirement for the underlying flood control purpose (see paragraph 6-5).

3-5. Clean Water Act (CWA). There are two primary requirements of the CWA with regard to Corps water resources projects. Full compliance with the CWA must be attained before the initiation of project construction. (ER 1105-2-100)

a. Section 404. Corps projects involving the discharge of dredged or fill material into the waters of the United States shall be developed in accordance with guidelines promulgated by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army under the authority of Section 404(b)(1) of the CWA (40 CFR 230) unless the activity is exempt under Section 404(f). Procedures for the evaluation of potential contaminant-related impacts associated with the discharge of dredged material, as required by the Section 404(b)(1) Guidelines are contained in the "Evaluation of Dredged Material Proposed for Discharge in the Waters of the U.S. - Testing Manual" commonly referred to as the Inland Testing Manual which was jointly developed by the EPA and the Corps. The investigations and analysis required by the Section 404(b)(1) Guidelines shall be included in feasibility reports. (ER 1105-2-100)

b. State Water Quality Certification. Section 401 of the CWA requires that the Corps obtain certification from the state or interstate water control agencies that a proposed water resources project is in compliance with established effluent limitations and water quality standards. If the state in question has assumed responsibilities for the 404 regulatory program, a state 404 permit would be obtained which would serve as the certification of compliance. Section 404(r) waives the requirement to obtain the state water quality certificate if the information on the effects of the discharge are included in an EIS on the proposed project submitted to Congress before the discharge takes place and prior to either authorization of the project or appropriation of construction funds. It is the general policy of the Corps to seek state water quality certification rather than utilizing the Section 404(r) exemption. (ER 1105-2-100)

3-6. Marine Protection, Research and Sanctuaries Act (MPRSA). For projects involving transportation of dredged material through the territorial sea for the purpose of ocean disposal, or involving dredged material disposal within the territorial seas for the primary purpose of disposal, the discharge will be evaluated under Section 103 of the MPRSA. The disposal must meet the criteria established by the EPA (40 CFR 227 & 228). Procedures for evaluating the potential contaminant-related impacts of disposing dredged material in the ocean are contained in the "Evaluation of Dredged Material Proposed for Ocean Disposal - Testing Manual" jointly developed by EPA and the

Corps. The Corps will generally utilize ocean disposal sites designated by the EPA to the maximum extent practical. Where no EPA designated site is available, the Corps may select a suitable ocean disposal site or sites using procedures and outlined criteria in 40 CFR 228.4(e), 228.5 and 228.6. Potential ocean disposal sites will be specified in feasibility reports and, to the fullest extent practicable, the Section 103 evaluation will be completed during the feasibility study. (ER 1105-2-100)

3-7. National Pollution Discharge Elimination System (NPDES) Storm Water Discharge Permit Requirements. All Corps facilities and activities that meet the definition of an "industrial activity" under 40 CFR 122.26 are subject to the requirement to obtain storm water permits. One Corps activity covered by the storm water rule is any construction activity that disturbs five acres or more of land. The "five acre" rule applies only in those states that do not have an authorized NPDES storm water permit program. In the states where EPA has delegated the NPDES responsibilities, the acreage rule requirements may vary considerably between the states. Storm water permits are issued by the states if they have an authorized NPDES storm water permit program or by EPA for areas not covered by an authorized state program. Activities regulated under Section 404 of the CWA do not require permits under the NPDES program.

3-8. Clean Air Act (CAA) General Conformity Rule. Section 176(c) of the CAA requires that Federal agencies assure that their activities are in conformance with Federally-approved CAA state implementation plans for geographical areas designated as "nonattainment" and "maintenance" areas under the CAA. On 30 November 1993, EPA published its final General Conformity Rule to implement Section 176(c). EPA's final rule addresses how Federal agencies are to demonstrate that activities in which they engage conform with Federally approved CAA state implementation plans. The EPA rule contains a number of "exempted" or "presumed to conform" activities which include a number of Corps activities. As applicable and required, CAA conformity determinations will be completed during feasibility studies and included in feasibility reports.

3-9. Executive Order (E.O.) 11988, 24 May 1977, Flood Plain Management. This order outlines the responsibilities of Federal agencies in the role of flood plain management. Each agency shall evaluate the potential effects of actions on flood plains, and should avoid undertaking actions which directly or indirectly induce growth in the flood plain or adversely affect natural flood plain values. Agency regulations and operating procedures for licenses and permits should include provisions for the evaluation and consideration of flood hazards. Construction of structures and facilities on flood plains must incorporate flood proofing and other accepted flood protection measures. Agencies shall attach appropriate use restrictions to property proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties. (ER 1165-2-26)

3-10. Executive Order (E.O.) 11990, 24 May 1977, Protection of Wetlands. This order directs Federal agencies to provide leadership in minimizing the destruction, loss or degradation of wetlands. Section 2 of this order states that, in furtherance of the National Environmental Policy Act of 1969, agencies shall avoid undertaking or assisting in new construction located in wetlands unless there is no practical alternative.

3-11. Executive Order (E.O.) 12898, 11 February 1994, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. A description of this order is provided in Appendix C (paragraph 50, page C-9). The Corps is developing implementation guidance to address this order and NEPA compliance.

3-12. Executive Order (E.O.) 13007, 24 May 1996, Indian Sacred Sites. Directs each executive branch agency with statutory or administrative responsibility for the management of Federal lands, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, to (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies are to maintain the confidentiality of sacred sites. To implement this E.O., the Corps has adopted the following policy:

a. Goals. Corps Commands will use all reasonable means to accommodate Indian tribes by providing meaningful access to sacred sites on Corps lands. Corps Commands will also ensure that Indian tribes have reasonable opportunities to review plans for activities and programs on Corps lands that could potentially adversely affect sacred sites.

b. To accomplish the above policy goals, Corps Commands will initiate consultation with Indian tribes on E.O. 13007, or will focus ongoing consultation efforts on the requirements of the E.O. Consultation should address current needs and interests of the tribes with regard to sacred places as well as a dialog on the development of procedures for long-term tribal input and comment. The use of Memoranda of Agreement (MOA) may be the most convenient vehicle for both the Corps and the tribes to ensure the protections of the E.O. MOA can clearly delineate the responsible Corps/Indian tribe officials, the responsibilities of all parties with respect to sacred sites and safety issues associated with the accessing and use of sacred places. These MOA can also be used to reinforce or augment government-to-government protocols.

c. The "sacred" nature and "ceremonial use" of an area may imply a multiplicity of meanings. Ceremonial use can include, but is not necessarily limited to, the collection of plants, the clearing of habitat, the gathering of animal parts or feathers, and other types of resource-consuming activities. Corps commanders have the discretion to allow for consumptive use of Indian sacred sites if granting such use is consistent with the functioning of Corps activities at the site. Moreover, authorities other than E.O. 13007, such as treaties, Federal laws, and other E.O.s may require a Corps commander to make accommodations for ceremonial use that include consumption of resources.

d. Accommodating Indian tribes through access to sacred sites may entail closing areas to the general public during particular times of the year, as well as during certain seasons or months. In the absence of a conflict with an essential command function, Corps commanders should extend tribal accommodations to temporary partial closures of narrowly delineated areas. This E.O. does not obligate the Corps to permanently close any areas to the general public, although Indian tribes may make, and Corps commanders may consider,

such requests.

e. A serious concern that all parties share is the confidentiality of information on sacred sites. One way to respond to these concerns is to minimize the information needs regarding sacred sites. There may be some, or indeed many, sacred sites on Corps that have few, if any, outward signs discernable to non-Indians and these sites may not be in jeopardy or threat. These sites might be visited on a regular basis without being physically affected by religious practices. As part of the above consultation process, Corps commands and Indian tribes may agree that for these non-threatened and physically unaffected sites, tribes can continue to visit without reporting the sites' nature or location to Corps officials.

f. For those sacred sites which tribes report to Corps commanders, Corps documentation of the existence and location of these sites may warrant protection from public disclosure under Exemption 3 of the Freedom of Information Act (FOIA), 5 U.S.C.A. ss552(b)(3)(1998), and Section 304 of the National Historic Preservation Act, as amended, 16 U.S.C.A. ss470w-3(a). The former statute governs matters specifically exempted from disclosure by other statutes. The latter allows the head of a Federal agency, under specified circumstances and after consultation with the Secretary of the Interior, to withhold disclosure of "information about the location, character, or ownership of the historic resource." In any event, Corps commanders should not release information on Indian sacred sites without first consulting with counsel.

3-13. Influencing Legislation. 18 U.S.C. 1913 prohibits the use of appropriated funds, directly or indirectly, to pay for any personal service, telegram, telephone, letter, printed matter, or any other device intended to influence a member of Congress to favor or oppose, by vote or otherwise, any legislation by Congress. It is the policy of the Chief of Engineers that the spirit and intent of the referenced statute be fully adhered to by all Corps of Engineers personnel.

3-14. OMB Circular A-76, 4 August 1983, Acquiring Products and Services. This circular sets forth the policies and procedures for determining which method of performance will be used to obtain services that can be performed in-house using Government resources facilities or by contract with private sources. The Government's business is not to be in business. The general policy of the Government is to rely on competitive private enterprise to supply necessary goods and services. However, it is recognized that certain functions are so closely allied with the general public interest that performance by Federal employees is required. Where private performance is possible and no overriding factors require in-house performance, the most economical method is to be chosen. (This is reinforced and reemphasized in E.O. 12615.) It is the policy of the Corps of Engineers to adhere to this policy and the Department of the Army implementing guidance in carrying out its civil works activities. (ER 5-1-3)

3-15. Environmental Efforts.

a. Policy. The Corps conducts its civil works program in full compliance with the NEPA, the CEQ's regulations (40 CFR 1500-1508), and other environmental statutes and executive guidelines.

b. Chief of Engineers Environmental Award Program. The Corps conducts a biennial awards program applicable to all field operating activities (FOA) having civil works and/or military programs construction responsibilities. This is part of the Chief of Engineers Design and Environmental Awards Program. The categories of competition, types of awards, basis of awards, and the procedures are covered in an annual engineer circular. The objectives of the awards program are:

(1) Recognize excellence in the design and environmental achievement of recently completed structures, developments, or demonstrated research by the Corps FOAs and design firms.

(2) Provide an incentive for design and environmental professionals to develop new projects which will exhibit excellence in function, economy, resource conservation, aesthetics and creativity, while being in harmony with the environment.

3-16. Hazardous, Toxic, and Radioactive Wastes (HTRW)(ER 1165-2-132).

a. Definitions.

(1) Except for dredged material and sediments beneath navigable waters proposed for dredging, HTRW includes any material listed as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et seq (CERCLA). Hazardous substances regulated under CERCLA include "hazardous wastes" under Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. 6921 et seq (RCRA); "hazardous substances" identified under Section 311 of the CAA, 33 U.S. C. 1321, "toxic pollutants" designated under Section 307 of the CWA, 33 U.S.C. 1317, "hazardous air pollutants" designated under Section 112 of the Clean Air Act, 42 U.S.C. 7412; and "imminently hazardous chemical substances or mixtures" on which EPA has taken action under Section 7 of the Toxic Substance Control Act, 15 U.S.C. 2606; these do not include petroleum or natural gas unless already included in the above categories.

(2) Dredged material and sediments beneath navigable waters proposed for dredging qualify as HTRW only if they are within the boundaries of a site designated by the EPA or a state for a response action (either a removal or a remedial action) under CERCLA, or if they are part of a National Priority List (NPL) site under CERCLA. Dredged material and sediments beneath the navigable waters proposed for dredging shall be tested and evaluated for their suitability for disposal in accordance with the appropriate guidelines and criteria adopted pursuant to Section 404 of the CWA and/or Section 103 of the MPRSA and supplemented by the Corps of Engineers Management Strategy for Disposal of Dredged Material: Containment Testing and Controls (or its appropriate updated version) as cited in Title 33 Code of Federal Regulations, Section 336.1.

b. Policy. Civil works project funds are not to be employed for HTRW-related activities except as provided below, or otherwise specified in law.

(1) Civil Works Project Construction. Construction of civil works projects in HTRW-contaminated areas should be avoided where practicable. This can be accomplished by early identification of

potential problems in reconnaissance, feasibility, and PED phases before any land acquisition begins. Costs of environmental investigations to identify any existence of HTRW and studies required for formulation of the NED plan, recognizing the existence and extent of any HTRW, and studies required to evaluate alternatives to avoid HTRW will be cost shared the same as cost sharing for the phase the project is in (i.e., feasibility, PED, or construction). Where HTRW contaminated areas or impacts cannot be avoided, response actions must be acceptable to EPA and applicable state regulatory agencies. Table 1 in ER 1165-2-132 provides the policy on cost sharing of activities for HTRW.

(a) For cost-shared projects, the non-Federal sponsor shall be responsible for ensuring that the development and execution of Federal, state, and/or locally required HTRW response actions are accomplished at 100 percent non-project cost. No cost sharing credit shall be given for the cost of the response actions.

(b) For non-cost-shared projects where Federal funds are spent for HTRW response actions, the cost of response actions will be a project cost to be borne by the Department of the Army except when another Federal agency is responsible for the HTRW, in which case the response action should be borne by the responsible agency. A district should not proceed with any response action for which another agency is responsible until appropriate agreements have been reached with that agency regarding funding for the response.

(c) Funding arrangements and responsibilities for HTRW response actions involving Federally owned lands, including those administered by the Department of the Army, will be approved on an individual basis.

(d) Only where the cost of the response action is a project cost will it be part of the economic evaluation.

(2) Non-CERCLA Regulated Contaminants. Costs for necessary special handling or remediation of wastes, pollutants and other contaminants which are not regulated under CERCLA will be treated as project costs if the requirement is the result of a validly promulgated Federal, state, or local regulation. In such cases, land value included in the economic analysis will be the fair market value of the land considering the contamination, and the cost of the required treatment will be a construction cost. The land value to be credited to the sponsor will be the fair market value of the land in the condition acquired. Credit will not be allowed for both costs of the treatment or remediation and for the value of the land as if clean.

(3) Civil Works Project Plans. The plan for, and execution of, each civil works project will routinely include a phased and documented review to provide for early identification of HTRW potential at civil works project sites.

(4) Civil Works "Transition" Projects. On projects in "transition", where no HTRW investigation was conducted and where a Project Cooperation Agreement (PCA) for construction has not been executed, the district may conduct studies to determine the existence and extent of HTRW as part of PED. After a PCA is executed, HTRW investigations must be performed by the sponsor or the sponsor must

provide funds up front to pay for the district's performance of the studies. Costs of the studies will be shared based on the project purpose and the project stage.

(5) Response Actions. Response actions, involving HTRW discovered on lands where the Government has been an owner and/or the Corps has been an operator, will be handled on an individual basis.

3-17. Expenditures on Aesthetics. Incorporating environmental quality into project design, including consideration of the visual quality of the project, continues to be an important goal of the civil works program. Guidance for assessing the aesthetic impacts of civil works projects, and planning and designing projects to make positive contributions to aesthetic quality is provided in the following: ER 1105-2-100; EM 1110-2-38; EM 1110-2-301; EM 1110-2-1205; EM 1110-2-1202; EM 1110-2-1204. However, reasonableness must also be applied in defining the appropriate levels of expenditures for aesthetic quality at civil works projects. Current budgetary constraints and the intense competition for Federal funds dictate a greater level of discipline in meeting our responsibilities to harmoniously blend projects with the surrounding environment while avoiding excessive expenditures. The following principles should be applied in defining the appropriate measures for aesthetic quality at civil works projects at all stages of project development.

a. Project Relationship. Any aesthetic project features must be related to harmoniously blending the project into the project setting and not aimed at "beautifying" the surrounding area. This is not at issue with measures that are integral to project design but is an important consideration for measures that are not integral. For example, plant materials can be used to reduce visual contrast or screen projects. Landscape plantings must be limited to the land required for the project and plantings will not extend to adjacent property even if the adjacent property is a public park or recreation area.

b. Project Setting. The acceptability and compatibility of aesthetic features of project design are affected by the project setting and the expectation of the users and viewers of the project. The land use in the area surrounding the project is an important consideration in determining the appropriate measures for aesthetics. For example, a concrete channel without aesthetic treatment may not be visually objectionable in a heavy industrial area but a concrete channel in a residential area may require texturing and screening with trees and shrubs to be visually compatible with the residential land use. Linear projects such as levees and channels may incorporate different aesthetic features in different reaches of the same project, depending on the visual qualities and land uses of the adjacent property in that reach, with an appropriately designed transition between different treatment reaches.

c. Partnership. Project aesthetic features will be closely coordinated with the non-Federal project sponsor. The objectives, goals, desires, and values of the non-Federal sponsor will be carefully considered in formulating the aesthetic features of the project within the limits of a uniform application of standard Corps practices for aesthetic quality, as defined in the above mentioned ER, EMs, and paragraph 3-17.a-f of this EP. This does not preclude the incorporation of measures into a project that would exceed the

standard Corps practice if the non-Federal sponsor is willing to bear all of the incremental costs of such measures as elements of a locally preferred plan. Equity is also an important consideration in working in partnership with local sponsors. The preservation and enhancement of aesthetic quality must be an important goal in all projects, regardless of the socioeconomic conditions of the project area.

d. Compatibility. All aesthetic measures must be designed so that they are fully compatible with the project purpose and in no way compromise the safety, integrity, or function of the project. For example, it may be appropriate to screen a floodwall with vegetative plantings but it would be inappropriate to plant trees directly on a levee that might endanger its structural integrity or diminish its hydraulic characteristics.

e. Cost Allocation. Costs for aesthetic measures that are in accordance with standard Corps practices are shared as project costs. Cost allocation would be an issue in multi-purpose projects where aesthetic costs would be shared in accordance with the purpose to which the costs are allocated. The addition of recreation as a project purpose may introduce the need for an increased consideration of aesthetics since it results in increased public visibility and use of the project. An example would be a hiking trail on a flood control levee. In these cases, any incremental aesthetic costs associated with the recreation purpose should be allocated to the recreation purpose and cost shared with the non-Federal sponsor on a 50-percent basis.

f. Definition in the Feasibility Phase. Project measures to preserve and restore aesthetic quality should be fully defined (i.e., described and displayed) in the feasibility report with engineering appendix and reflected in the project cost estimate. The report should include a description of the project setting and the relationship of aesthetic features of the project to the setting. To the extent practical, all the incremental costs of the project aesthetic features should be identified, recognizing that some aesthetic considerations are completely integral to the project design and are not separable. This complete description and display of costs will allow any issues on the reasonableness of the aesthetic measures to be addressed prior to project authorization and be reflected in the authorization document. Increases in levels of project costs for aesthetics during pre-construction engineering and design, beyond inflation, will not be approved.

3-18. Mobilization. The Corps of Engineers is one component of the United States Army team. The Congress, by assigning the Chief of Engineers' national missions of civil works for water resources development in addition to the military missions, has provided the nation a vital element of insurance for the rapid mobilization and discharge of military engineering, construction and logistic services in time of emergency. The civil works program and the peacetime military construction program provide the base for maintenance of a well rounded organization providing engineering, construction and logistic services to the Army. In times of emergency those civil works projects not essential to National defense will be rapidly curtailed to provide an immediate working staff to execute military engineering work. Inasmuch as all phases of rapid mobilization depend on rapid construction, appropriate elements of the Corps of Engineers maintain plans for mobilization. The civil works program is

accomplished in a manner which enhances this mobilization capability.
(EP 500-1-2)

3-19. Mitigation Banks for Corps Civil Works Projects. In the context of Federal activities, and in accordance with AFederal Guidance for the Establishment, Use and Operation of Mitigation Banks@ (Federal Register, Volume 60, No. 228, November 28, 1995), mitigation banking means the restoration, creation, enhancement and, in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of providing compensatory mitigation in advance of authorized impact to similar resources. "Authorized impacts" refers to impacts resulting from federally regulated activities or impacts resulting from Federal projects or programs. To date, there is no established Federal policy on the establishment, use and operation of mitigation banks to compensate for impacts on upland resources. Therefore, mitigation banks will not be used to compensate for upland impacts of Corps civil works projects.

a. General Policy. As defined in "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks", the objective of a mitigation bank is to provide for the replacement of the chemical, physical and biological functions of wetlands and other aquatic resources which are lost as a result of authorized impacts. Conceptually, there is no net gain in ecological value as a result of the creation and operation of a mitigation bank. Therefore, the Corps permanent ecosystem restoration authorities under Section 1135 of the WRDA 1986, as amended; Section 1103 of WRDA 1986; Section 204 of WRDA 1992, as amended; and Section 206 of WRDA 1996, will not be used for the creation of mitigation banks. Similarly, funding will not be requested to initiate feasibility studies solely for the creation of mitigation banks, but may be considered for joint ecosystem restoration and mitigation banking projects as discussed below.

b. Exceptions to General Policy. The Corps can participate in implementing joint projects that include both ecosystem restoration and mitigation banking elements as long as the Corps financial participation in the project is limited to the ecosystem restoration element. An exception to the general policy of not budgeting for the creation of mitigation banks will also be considered where a mitigation bank is being established primarily to mitigate for Corps civil works projects. For example, a central mitigation bank could be proposed for Corps implementation to provide credits for compensatory mitigation for multiple projects in the same geographic area or for a large project that is built in stages. Corps implementation of a mitigation bank could also be considered to compensate for the impacts of operation and maintenance activities. These exceptions will be considered on a case-by-case basis. Any Corps bank must be established in accordance with AFederal Guidance for the Establishment, Use and Operation of Mitigation Banks@.

c. Use of Mitigation Banks in Civil Works Projects. While, as a general policy, Corps civil works funds will not be used to finance the creation of mitigation banks, credits from mitigation banks established by others may be used to compensate for environmental impacts from construction or operation and maintenance of Corps civil works projects. The following policies apply to use of credits from mitigation banks.

- (1) Mitigation banks that can be considered for meeting the

mitigation requirements for civil works projects include public and privately sponsored banks. To be eligible for consideration, a bank must have been established and approved in accordance with "Federal Guidance for the Establishment, Use and Operation of Mitigation Banks". This guidance provides for a Corps led interagency process for review and approval of mitigation banks which addresses all relevant issues including accounting procedures, the banking instrument, management, monitoring and contingencies actions in the event of bank failure and default. Where a mitigation bank was established prior to the Federal guidelines, the bank can be considered if it meets the standards established by the Federal guidance.

(2) The use of credits from a mitigation bank to meet the compensatory mitigation requirements for a civil works project must be evaluated in accordance with guidance for mitigation planning and recommendation in paragraph 7-35 of ER 1105-2-100.

(3) Credits from a mitigation bank are a service which is acquired to meet the compensatory mitigation requirements of a civil works project. This service includes acquisition of required lands, easements and rights-of-way; construction and management activities to produce credits; and operation and maintenance of the bank. However, there will be no division of costs for credits into its components for cost sharing purposes. All costs associated with acquisition of credits from a mitigation bank will be classified as construction costs of the civil works project for which the mitigation is being provided. The costs for acquisition of credits will be shared in accordance with the cost sharing applicable to construction costs for that project purpose.

(4) The purchase of mitigation credits must comply with any applicable Federal procurement laws and regulations such as the Federal Acquisition Regulation (FAR) codified at 48 C.F.R.

3-20. Watershed Perspective. The watershed perspective applies to all Civil Works programs through planning, design, construction, operation, maintenance, restoration, rehabilitation, and regulatory activities. The application of this perspective into the Civil Works program encourages opportunities for enhancing the operations and maintenance of existing projects, especially the management of the natural resources. In addition, this perspective facilitates the integration of the nine Civil Works business programs into the identification and development of new Corps initiatives. The perspective recognizes the responsibility of the Corps as a major stakeholder in many of the Nation's watersheds.

a. Definitions. Federal, tribal, State, and local agencies and organizations have varying interpretations of the definition of a watershed, the identification of the range of water resources issues, and the methods of evaluation. They also have differing views on the anticipated purposes and goals of watershed initiatives. These interpretations are based on defining manageable units and specific issues that a particular agency or organization have determined to be appropriate for their individual mission areas and identifying ways to meet their program goals. For the purpose of Corps Civil Works initiatives, the following definitions apply:

(1) Watershed perspective is the viewpoint which requires that

all activities be accomplished within the context of an understanding and appreciation of the impacts of those activities on other resources in the watershed. The watershed perspective encourages the active participation of all interested groups and requires the use of the full spectrum of technical disciplines in activities and decision making. This viewpoint takes into account: the interconnectedness of water and land resources; the dynamic nature of the economy and environment; and the variability of social interests over time. It recognizes that watershed activities are not static, and that the strategy for managing the resources of the watershed needs to be adaptive.

(2) A watershed is an area of land within which all surface waters flow to a single point. It encompasses the area necessary to adequately scope, analyze, and manage related water and land resources.

(3) Watershed management is the administration of and potential adjustments to the level and type of interaction among various human activities and natural processes occurring in the watershed through the application of the watershed perspective. Watershed management includes the planning, development, use, monitoring, regulation and preservation of the water and land resources. It should achieve a desirable balance among multiple, and often competing, watershed goals and objectives.

(4) Watershed studies are planning initiatives that have a multi-purpose and multi-objective scope and that accommodate flexibility in the formulation and evaluation process. The outcome of a watershed study will generally be a watershed management plan, which identifies the combination of recommended actions to be undertaken by various partners and stakeholders in order to achieve the needs and opportunities identified in the study and may or may not identify further Corps studies or implementation projects. However, budgetary priority will be given to those studies likely to result in further Corps activities or which will provide benefits to an existing Corps project whose uses are being impaired by activities or conditions within the watershed. Further consideration for funding will be given to Corps involvement in watershed studies of national importance which do not necessarily lead to a Corps project.

b. Policy. The Corps will integrate the watershed perspective into opportunities within, and among, Civil Works elements. Opportunities should be explored and identified where joint watershed resource management efforts can be pursued to improve the efficiency and effectiveness of the Civil Works Programs. The Corps will solicit participation from Federal, tribal, state, and local agencies, organizations, and the local community to ensure that their interests are considered in the formulation and implementation of the effort. Due to the complexity and interrelation of systems within a watershed, an array of technical experts, stakeholders, and decision-makers should be involved in the process. This involvement will provide a better understanding of the consequences of actions and activities and provide a mechanism for sound decision making when addressing the watershed resource needs, opportunities, conflicts, and trade-offs.