



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET NW
WASHINGTON, D.C. 20314-1000

APR 8 2008

CECW-P

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Implementation Guidance for Regional Sediment Management – Section 2037 of the Water Resources Development Act of 2007 (WRDA 2007)

1. Applicability. Section 2037 amends Section 204 of the Water Resources Development Act of 1992, as amended, (33 U.S.C 2326) and repeals Section 145 of the Water Resources Development Act of 1976, as amended, (33 U.S.C. 426j) except that the Secretary of the Army may complete projects being carried out under Section 145 on the day before enactment of WRDA 2007. “Section 204” as used in this implementing guidance is Section 204 as amended by Section 2037 of WRDA 2007. The guidance in this memorandum changes guidance contained in Appendices E and F of ER 1105-2-100. The specific guidance changes are: (1) Regional sediment management plans to identify and evaluate opportunities for beneficial uses of sediment from the construction, operation or maintenance of authorized Civil Works projects are accomplished at Federal cost; (2) The purposes for the beneficial use of sediments eligible for Federal participation are structural and non-structural flood control, hurricane and storm damage reduction, and environmental protection and restoration and the cost sharing for the incremental costs to achieve these purposes is established by Section 103 of the Water Resources Development Act of 1986, as amended; (3) The 75 percent Federal and 25 percent non-Federal cost sharing for beneficial use of sediments for the protection, restoration and creation of aquatic habitats and “Section 207” projects is replaced by 65 percent Federal and 35 percent non-Federal cost sharing; (4) Except for “Section 207” projects (see paragraph 6), beneficial use projects implemented under the authority of Section 204 are limited to \$5 million total Federal cost; (5) The U. S. Army Corps of Engineers can, at Federal cost, cooperate with any State in the preparation of a comprehensive State or regional sediment management plans and measures and projects identified in State and regional plans may be recommended to Congress for authorization; and (6) Projects for the purposes of protection, restoration, or creation of aquatic and ecologically related habitat the costs of which do not exceed \$750,000 and which are located in a disadvantaged community may be carried out at Federal expense.

2. General. Except for the participation by the Corps in cooperation with States in the preparation of Statewide or regional sediment management plans as discussed in paragraph 4, Section 2037 presents regional sediment management in the context of using sediment obtained through construction, operation, or maintenance of an authorized

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Federal water resources project for the construction, repair, modification, or rehabilitation of Federal water resources projects for the reduction of storm damages to property and to protect, restore, and create aquatic and ecologically related habitats, including wetlands. Regional sediment management planning is presented as planning for this beneficial use of sediments. The transportation and placement of sediment for beneficial purposes is only one aspect of planning and strategies for regional sediment management in the execution of the Civil Works program of the Corps. Regional sediment management in the broader Civil Works water resources management program context involves a systems-based approach to managing sediment resources through regional strategies that address integrated sediment needs and opportunities. This broader systems based approach will be presented in guidance that is under development. This implementation guidance addresses only the provisions of Section 2037 and should be viewed as addressing one aspect of regional sediment management to be leveraged with other authorities and funding to accomplish more comprehensive and integrated regional sediment management goals.

3. Regional Sediment Management Plans.

a. General. Section 204 provides that the Secretary of the Army shall develop at Federal expense, regional sediment management plans, in cooperation with appropriate Federal, State, regional and local agencies, for sediment obtained through construction, operation, or maintenance of an authorized Federal water resources project. The regional sediment management plans will identify projects for transportation and placement of sediment to reduce storm damages to property and protect, restore, and create aquatic and biologically related habitat including wetlands. Regional sediment management plans, as defined and funded under the authority of Section 204, follow the requirements for a continuing authorities decision document as outlined in Appendix F of ER 1105-2-100.

b. Funding. Section 204 authorizes an appropriation of \$30,000,000 per fiscal year to carry out the provisions of Section 204 of which not more than \$5,000,000 per fiscal year may be used for cooperation with States in the preparation of a comprehensive State or regional sediment management plan as defined in paragraph 4. The total Federal costs for individual projects authorized under Section 204 is limited to \$5,000,000. Section 204 will continue to be administered as a continuing authority program under the guidance of Appendix F of ER 1105-2-100 except for the provisions of Section 204 (d) (see paragraph 6). Priority will be given to studies that leverage the regional sediment management funds under the Section 204 authority with other Federal and non-Federal funds to identify measures to accomplish broad systemic regional sediment management goals. Priority will also be given to regional sediment management studies supporting

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the implementation of the priority projects identified in subsection (f) of Section 204. (See paragraph 7). Budgeting for these programs is subject to the Administration policies, priorities, and criteria in force at the time the budget is proposed.

c. Plan Formulation and Policy. Plan formulation and policy considerations for beneficial use projects will be the same as other continuing authorities projects or specifically authorized projects for the same purposes except that identification of alternatives and identification of the National Economic Development (NED) plan, National Ecosystem Restoration (NER) plan or combined NED/NER plan will necessarily be constrained by the fact that these projects are limited by the sediment available from the construction, operation, or maintenance of an authorized Federal water resources project. Beneficial use projects may involve more than a single year's sediment from an authorized Civil Work's project, for example multiple operation and maintenance dredging cycles from an authorized navigation project as long as the \$5 million Federal cost limit is not exceeded. For projects for placement of sediment on beaches for storm damage reduction, policy requirements for unrestricted public use and adequate public access apply.

4. State and Regional Plans. Subsection (e) of Section 204 provides that the Secretary of the Army may cooperate with any State in the preparation of a comprehensive State or regional sediment management plan within the boundaries of the State, encourage State participation in the implementation of the plan, and submit to Congress reports and recommendations with respect to appropriate Federal participation in carrying out the plan. These are State initiated studies and the Corps role is to participate in the studies in a coordination and collaboration role. Funds for Corps participation in the development of State plans may be requested under the guidance in paragraph 3.b but the aggregate of such funding is limited to \$5 million per fiscal year. Projects for using sediment obtained through construction, operation, or maintenance of an authorized Federal water resources project for the reduction of storm damages to property and to protect, restore, and create aquatic and ecologically related habitats, including wetlands, may be identified under State and regional plans and may be recommended for construction under the procedures described in paragraph 5 to the extent that the projects are consistent with the criteria established for the Section 204 program. Other measures and projects for the budgetary priority purposes of commercial navigation, flood and coastal storm damage reduction, and aquatic ecosystem restoration identified in State and regional plans may be recommended for authorization for Federal participation in reports submitted to the Congress. Any measure and project recommended for authorization for Corps participation must be consistent with Corps policy. State and regional feasibility reports

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should be produced in close coordination with the Corps and generally follow the requirements for preparation and processing Corps led feasibility studies in ER 1105-2-100 to facilitate expedited consideration of recommended projects, operational changes or other implementation actions that may be undertaken through the Civil Works program. These plans may also identify recommendations regarding related sediment management to be undertaken by others.

5. Beneficial Use of Sediment Projects.

a. General. Section 204 authorizes the beneficial utilization of sediments obtained through the construction, operation, or maintenance of an authorized Federal water resources project to construct, repair, modify, or rehabilitate projects for reduction of storm damages to property and protection, restoration and creation of aquatic and biologically related habitat including wetlands. Beneficial use projects will be recommended for implementation in accordance with the studies and reports described in paragraph 3 and 4. Except for the projects developed under the authority of Section 204(d) (see paragraph 6), beneficial use of sediment projects will be designed, approved and implemented under the continuing authorities program in accordance with the guidance in Appendix F of ER 1105-2-100 including signing of a Project Partnership Agreement, except that the study would be funded as described.

b. Costs. Costs of beneficial use of sediment projects shall be limited solely to construction costs that are in excess of the Base Plan or Federal Standard. The Base Plan is the cost necessary to carry out the dredging and disposal for the construction, operation, or maintenance of an authorized Federal water resources project that is the source of the sediments in the most cost-effective way, consistent with economic, engineering, and environmental criteria. The cost of the project up to the limit of the cost of the Base Plan established under the above guidance will be funded and cost shared as a construction or operation and maintenance cost, as applicable, of the water resources project that is the source of the sediment. The total Federal costs associated with a beneficial use of sediments project shall not exceed \$5 million. This cost limit refers to the incremental cost over the Base Plan.

c. Cost Sharing of the Beneficial Use Increment. The non-Federal share of the costs of beneficial use of sediments projects for the increment of costs above the base Plan shall be determined as provided in subsections (a) through (d) of Section 103 of the

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Water Resources Development Act of 1986, as amended (33 U.S.C. 2213). Where a project serves more than one purpose the costs should be allocated to the appropriate purpose using established cost allocation procedures and shared accordingly. There are four potential non-Federal shares applicable to beneficial use of sediments projects as follows:

(1) Flood Control (Structural) – (For example, raising or construction of flood control levees with placement of dredged and dewatered sediment.) Non-Federal responsibilities are: (a) pay 5 percent cash during construction; (b) provide all lands, easements, rights-of-way, relocations and dredged material disposal areas (LERRD); (c) pay any cash contribution during construction necessary so that the total contribution of the non-Federal interest including 5 percent cash, value of LERRD, and additional cash contribution will be 35 percent of the cost of the project; (d) pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) cost of the beneficial use project; and (e) hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors. The non-Federal sponsor shall receive credit for the value of in-kind contributions against the requirement for additional cash to bring the non-Federal share of the project to at least 35 percent but not against the 5 percent cash requirement in accordance with the provisions of SEC. 2003 of WRDA 2007 and the implementing guidance that will be issued for that provision.

(2) Non-Structural Flood Control Projects. (For example, using dredged and dewatered sediment for raising structures to reduce flood damages.) Non-Federal responsibilities are: (a) provide all LERRD; (b) pay any cash contribution during construction necessary so that the total contribution of the non-Federal interest including value of LERRD will be 35 percent of the cost of the project; (c) pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) cost of the beneficial use project; and (e) hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors. Where the value of LERRD and the non-Federal cash contribution will exceed 35 percent, any additional cost of the project shall be a Federal responsibility not to exceed 65 percent of the project costs. The non-Federal sponsor shall receive credit for the value of in-kind contributions against the requirement for additional cash to bring the non-Federal share of the project to 35 percent in accordance with the provisions of SEC. 2003 of WRDA 2007 and the implementing guidance that will be issued for that provision.

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(3) Hurricane and Storm Damage Reduction. (For example placing dredged sand on a beach or shoreline to provide for hurricane and storm damage reduction.) Non-Federal responsibilities are: (a) provide all LERRD; (b) pay any cash contribution during construction necessary so that the total contribution of the non-Federal interest including value of LERRD will be 35 percent of the cost of the project; (c) pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) cost of the beneficial use project; and (e) hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors. The non-Federal sponsor shall receive credit for the value of in-kind contributions against the requirement for additional cash to bring the non-Federal share of the project to 35 percent in accordance with the provisions of SEC. 2003 of WRDA 2007 and the implementing guidance that will be issued for that provision. The authority of Section 204 will not be used to renourish authorized Federal shore protection projects.

(4) Environmental Protection and Restoration. (For example, creation of a wetland with dredged material.) Non-Federal responsibilities are: (a) provide all LERRD; (b) pay any cash contribution during construction necessary so that the total contribution of the non-Federal interest including value of LERRD will be 35 percent of the cost of the project; (c) pay 100 percent of the operation, maintenance, repair, replacement, and rehabilitation (OMRR&R) cost of the beneficial use project; and (e) hold and save the United States free from damages due to the construction or operation and maintenance of the project, except for damages due to the fault or negligence of the United States or its contractors. It is anticipated that projects to beneficially use sediments for protection, restoration and creation of aquatic and biologically related habitat including wetlands will not require extensive land acquisition. The non-Federal sponsor shall receive credit for the value of in-kind contributions against the requirement for additional cash to bring the non-Federal share of the project to 35 percent in accordance with the provisions of SEC. 2003 of WRDA 2007 and the implementing guidance that will be issued for that provision. Note that the 75 Federal and 25 non-Federal cost sharing for protection, restoration and creation of aquatic and biologically related habitat including wetlands originally contained in section 204 has been eliminated by the modification of Section 204 in Section 2037 of WRDA 2007. The new cost sharing applies to any Section 204 project where a project partnership agreement has not been signed as of the date of enactment of WRDA 2007 (November 8, 2007).

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d. Funding and Special Cost Sharing Rule. Projects for the purposes of protection, restoration, or creation of aquatic and ecologically related habitat the costs of which do not exceed \$750,000 and which are located in a disadvantaged community may be carried out at Federal expense. Not more than \$3 million of any annual appropriation for Section 204 may be used for these projects. Projects recommended for disadvantaged communities under this special cost sharing rule shall be identified in regional sediment management plans. The plans must justify the designation of the project as being located in a disadvantaged community by presentation of information on per capita income, employment, and other relevant factors and the approval of the project for special cost sharing will be accomplished in conjunction with the Alternative Formulation Briefing for the study.

6. Selection of Dredged Material Disposal Method for Environmental Purposes. Section 204 (d) of amended Section 204 authorizes that in developing and carrying out a Federal water resource project involving the disposal of dredged material the Secretary of the Army may select, with the consent of the non-Federal interest, a disposal method that is not the least cost option, if the Secretary determines that the incremental costs of the disposal method are reasonable in relation to the environmental benefits, including the benefits to the aquatic environment to be derived from the creation of wetlands and control of shoreline erosion. This provision generally parallels the language of Section 204 (e) of the provision before its WRDA 07 modification. The provision was added to Section 204 by Section 207 of the Water Resources Development Act of 1996. The guidance on implementation of “Section 207” was originally issued in Policy Guidance Letter 56 dated 5 November 1999 and later incorporated in Paragraph E-14 g of Appendix E of ER 1105-2-100. As indicated in that guidance the authorities established by “Section 207” are separate and distinct from the authority established by Section 204 and are most applicable for adding environmental beneficial use in connection with new navigation projects or in conjunction with maintenance dredging when the incremental cost is large. Projects under the Section 207 authority are separately budgeted and do not count toward the Section 204 programmatic limit. This previous guidance remains applicable to Section 204(d) except that Section 204(d) provides that cost sharing will be accordance with Section 103 of the Water Resources Development Act of 1986 (33 U.S.C. 2213). That means that the environmental protection and restoration cost sharing of 65 percent Federal and 35 percent non-Federal will apply as presented in paragraph 4C (4). Existing guidance provides for 75 percent Federal and 25 percent non-Federal cost sharing as authorized by the previous Section 204 before its amendment in WRDA 2007 and is no longer applicable.

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7. Priority Areas. Section 2037 provides that a regional management project will be given priority in vicinity of the following locations. These areas will be considered in establishing priorities for Section 204 programmatic funding.

- a. Little Rock Slackwater Harbor, Arkansas
- b. Fletcher Cove, California
- c. Egmont Key, Florida
- d. Calcasieu Ship Channel, Louisiana
- e. Delaware River Estuary, New York and Pennsylvania
- f. Fire Island Inlet, Suffolk County, New York
- g. Smith Point Park Pavilion and the TWA Flight 800 Memorial, Brookhaven,
New York
- h. Morehead City, North Carolina
- i. Toledo Harbor, Lucas County, Ohio
- j. Galveston Bay, Texas
- k. Benson Beach, Washington

8. Applicability. The amendments to Section 204 are applicable upon the date of enactment of WRDA 2007 (8 November 2007) except that the Secretary may complete any project being carried out under Section 145 of the Water Resources Development Act of 1976 on the day before the date of enactment of this Act. The execution of a Project Cooperation Agreement (Project Partnership Agreement) will constitute a project being “carried out” under Section 145. Section 204 and Section 145 studies being cost shared under the terms of Feasibility Cost Sharing Agreements (FCSA’s) executed before the enactment of the amendments to Section 204 (prior to 8 November 2007) will continue to be cost shared in accordance with the terms of the executed FCSA’s. Section 204 projects being constructed under the terms of Project Cooperation Agreements executed prior to 8 November 2007 will be completed under the terms of the Project Cooperation Agreements.

9. Permanent Guidance. The guidance in this memorandum will be incorporated into the permanent guidance of ER 1105-2-100 as the ER is updated.

FOR THE COMMANDER:



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Director of Civil Works

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