

7. PLAN IMPLEMENTATION

This report was originally prepared under the authority and budgeting criteria for General Investigations, but it is being recommended for approval as a Section 205, Flood Control, Continuing Authorities Program (CAP) Detailed Project Report. This recommendation is based on the reasons outlined below.

1. The total cost of the feasibility studies, design, and construction is within the limits of the Section 205 Continuing Authorities Program.
2. Design is expected to be approximately 18 months in duration and construction is expected to have a duration of less than one year
3. The implementation schedule would be accelerated by at least one year with a move from the standard General Investigations schedule to the Construction General authority and appropriations schedule.

As non-Federal project partner, NJDEP must sign a Project Cooperation Agreement that will carry the project through the completion of construction, which includes development of Plans and Specifications (P&S). Funds must be budgeted by the Federal Government and the non-Federal partner to support these activities. A Project Management Plan (PMP) has been prepared to identify tasks, responsibilities, and financial requirements of the Federal Government and the non-Federal partner through completion of construction. A project schedule will be established based on reasonable assumptions for the design and construction schedules.

7.1 General

The completion of this Detailed Project Report and recommendation by the District Engineer is the first step toward implementing construction of the Passaic River at Long Hill Township Flood Control project. The New York District will complete a Quality Control / Quality Assurance review, respond to comments from other agencies and interested parties, and then submit the final version of the Detailed Project Report to the North Atlantic Division Commander for approval. The project will be considered for inclusion in the president's budget on the basis of national priorities, magnitude of the Federal commitment, economic and environmental feasibility, level of local support, willingness of the non-Federal partner to fund its share of the project cost, and budgetary constraints that may exist at the time of funding.

7.2 Local Cooperation

In accordance with Section 105 (a)(1) of WRDA 1986, the Passaic River at Long Hill Township Feasibility Study was cost shared 50 percent between the Federal Government and the State of New Jersey. The fact that funds were contributed by the non-Federal project partner, NJDEP, indicates their intent to support a project for flood control at Long Hill Township, New Jersey.

A fully coordinated Project Coordination Agreement (PCA) package, which will include the non-Federal partner's financing plan, would have to be prepared subsequent to the approval of the feasibility phase. It will reflect the recommendations of this Detailed Project Report. The non-Federal partner, NJDEP, has indicated support for recommendations presented in this Detailed Project Report and its desire to execute a PCA for the selected plan. Other non-Federal interests, such as Long Hill Township, New Jersey, has indicated their support of the project.

As the non-Federal project partner, NJDEP must comply with all applicable Federal laws and policies and other requirements, including but not limited to:

- Provide all lands, easements, rights-of-way, and relocations and disposal/borrow areas (LERRD) uncontaminated with hazardous and toxic wastes.
- If the value of the sponsor's LERRD contributions, plus the 5 percent minimum cash contribution, do not equal at least 35 percent of the total project cost, then the sponsor is required to provide an additional cash contribution necessary to equal a total of 35 percent. The sponsor is required to pay the additional cash contributions during construction at a rate proportional to Federal expenditures. If the value of the sponsor's LERRD contributions, plus the 5 percent minimum cash contribution, exceeds 35 percent of the total project cost, then the Federal contribution is reduced accordingly. If the value of the sponsor's LERRD contributions, plus the 5 percent minimum cash contribution, exceeds 50 percent of the total project cost, the project is cost shared at 50 percent Federal, 50 percent non-Federal cost.
- Provide of all improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the construction, operation, and maintenance of the project.
- For so long as the project remains authorized, operate, maintain, repair, replace, and rehabilitate the completed project, or functional portion of the project, including mitigation features, at no cost to the Government, in a manner compatible with the project's authorized purposes and in accordance with applicable Federal and State laws and any specific directions prescribed by the Government in the Operations, Maintenance, Replacement, Repair and Rehabilitation (OMRR&R) manual and any subsequent amendments thereto.
- Provide of the Federal Government a right to enter, at reasonable times and in a reasonable manner, upon property that the non-Federal project partner, now or hereafter, owns or controls for access to the Project for the purpose of inspection, and, if necessary after failure to perform by the non-Federal project partner, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Federal Government shall operate to relieve the non-Federal project partner of responsibility to meet the non-Federal project partner 's obligations, or to preclude the Federal Government from pursuing any other remedy at law or equity to ensure faithful performance.
- Hold and save the United States free from all damages arising from the construction, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the United States or its contractors.
- Keep, and maintain books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the Project in accordance with the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 Codes of Federal regulations (CFR) Section 33.20.

- Perform, or cause to be performed, any investigations for hazardous substances as are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Public Law (PL) 96-510, as amended, 42 U.S.C. 9601-9675, that may exist in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be required for the construction, operation, and maintenance of the Project. However, for lands that the Federal Government determines to be subject to the navigational servitude, only the Federal Government shall perform such investigations unless the Federal Government provides the non-Federal project partner with prior specific written direction, in which case the non-Federal project partner shall perform such investigations in accordance with such written direction.
- Assume complete financial responsibility, as between the Federal Government and the non-Federal project partner for all necessary cleanup and response costs of any CERCLA regulated materials located in, on, or under lands, easements, or rights-of-way that the Federal Government determines to be necessary for the construction, operation, or maintenance of the Project.
- As between the Federal Government and the non-Federal project partner, the non-Federal project partner shall be considered the operator of the project for the purpose of CERCLA liability. To the maximum extent practicable, operate, maintain, repair, replace and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.
- Comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way, required for the construction, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.
- Comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense directive 5500.11 issued pursuant thereto, as well as Army regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."
- Provide the non-Federal share of that portion of the costs of mitigation and data recovery activities associated with historic preservation, that are in excess of 1 percent of the total amount authorized to be appropriated for the project, in accordance with the cost sharing provisions of the agreement.
- Participate in and comply with applicable Federal flood plain management and flood insurance programs and comply with the requirements in Section 402 of the Water Resources Development Act of 1986, as amended.
- Not less than once each year inform affected interests of the extent of protection afforded by the Project.

- Publicize flood plain information in the area concerned and provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with the protection provided by the project.
- Provide and maintain necessary access roads, parking areas, and other public use facilities, open and available to all on equal terms.
- Provide, during construction, any additional funds needed to cover the non-Federal share of costs.
- Grant the Government a right to enter, at reasonable times and in a reasonable manner, upon land which the non-Federal project partner owns or controls for access to the project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing or rehabilitating the project.
- Comply with Section 221 of Public Law 91-611, Flood Control Act of 1970, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, which provides that the Secretary of the Army shall not commence the construction of any water resources project or separable element thereof, until the non-Federal project partner has entered into a written agreement to furnish its required cooperation for the project or separable element.
- Prevent obstructions of or encroachments on the project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) which might hinder its operation and maintenance, or interfere with its proper function, such as any new development on project lands or the addition of facilities which would degrade the benefits of the project.
- Perform, or cause to be performed, any investigations for hazardous substances that are determined necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USC 9601-9675, that may exist in, on, or under lands, easements or rights-of-way necessary for the construction, operation, and maintenance of the project; except that the non-Federal sponsor shall not perform such investigations on lands, easements, or rights-of-way that the Government determines to be subject to the navigation servitude without prior specific written direction by the Government.
- Participate in and comply with applicable Federal flood plain management and flood insurance programs.
- Do not use Federal funds to meet the non-Federal sponsor's share of total project costs unless the Federal granting agency verifies in writing that the expenditure of such funds is authorized.

In an effort to keep the non-Federal project partner involved and the local government informed, meetings were held throughout the feasibility phase. Coordination efforts will continue, including coordination of this study with other State and Federal agencies. It is currently anticipated that public meetings will be held upon release of the Draft and Final Detailed Project Reports. As the project proceeds from design and into construction, regular public meetings will

be scheduled to provide a continued opportunity for the non-Federal sponsor and the affected public to provide input to the design process.

7.3 Cost Sharing

The fully funded cost of the Project, escalated to the base year of 2007 is shown in Table 7-1. Table 7-2 displays the apportionment of cost sharing responsibilities between the Federal government and the non-Federal sponsor, NJDEP. The table includes costs associated with flood damage reduction features and environmental mitigation features. The total project first costs - including Lands, Easements, Rights-of-way, Relocations, and Disposal areas (LERRD) - are shared on a 65 percent basis by the Federal government and a 35 percent basis by the non-Federal partner. As indicated in Table 7-2, the Federal share of the entire project's total first cost is \$3,534,213; the non-Federal share is \$1,903,037. The Federal Government will design the project, prepare detailed plans/specifications and construct the project, exclusive of those items specifically required of the non-Federal partner.

The non-Federal partner is responsible for all LERRD costs, mitigation costs for the State's required compensatory mitigation, which are not considered total project costs; and all O&M costs. The LERRD costs are applicable to the non-Federal share of the initial project costs. For example, the total project LERRD costs of \$542,700 (total of Accounts 01 and 02 minus escalated real estate costs from the NJDEP Compensatory mitigation: \$674,700 – \$132,000) borne by the non-Federal partner are applicable to the \$1,903,037 share of total initial non-Federal project costs.

Table 7-1
Fully Funded Cost Estimate – Selected Plan

Item	Cost	Contingencies	Escalation	Fully Funded Cost
01 Lands & Damages	324,400	81,100	41,500	447,000
02 Roadway Relocations	163,700	40,900	23,100	227,700
03 Mobilization & Site Prep	234,000	58,400	32,800	325,200
06 Wetlands Mitigation	325,600	81,400	47,400	454,400
11 Levees and Floodwalls	1,579,300	394,900	222,000	2,196,200
15 Tributary Closures	437,600	109,400	61,500	608,500
30 Engineering and Design	750,000	187,500	155,000	1,092,500
31 Construction Management	300,000	75,000	69,700	444,700
Total Cost of Selected plan	4,114,600	1,028,600	653,000	5,796,200
Less NJDEP Compensatory Mitigation Costs	258,360	64,590	36,000	358,950
Total Project Cost of Selected Plan	3,856,240	964,010	617,000	5,437,250

**Table 7-2
Cost Apportionment
Federal and Non-Federal Responsibilities**

Federal Project Cost (65%)	\$ 3,534,213
Non-Federal Project Cost (35%)	
5% Cash	\$ 271,863
LERRD	\$ 674,661
Cash Balance	\$ 956,513
Non-Federal Project Cost Total (35%)	\$ 1,903,037
Total Project Cost (100%)	\$ 5,437,250
Non-Federal Compensatory Mitigation Cost	\$ 358,950
Total Cost	\$ 5,796,200

7.3.1 Application of Passaic River Wetlands Bank Credit

The New Jersey Department of Environmental Protection (NJDEP), as non-Federal sponsor has indicated via a letter dated 16 April 2003 (presented in Section 9 of this Feasibility Report) that it intends to use credits available in the Passaic River Wetlands Bank for the Upper Passaic River and Tributaries, Long Hill, New Jersey project. The credit is applicable to this project as per Section 101 (a)(18)(C) of the Water Resources Development Act of 1990 (Public Law 101-640) as amended by Section 102(p) of the Water Resources Development Act of 1992 (Public Law 102-580).

The NJDEP currently has sufficient approved credit in the Passaic River Wetlands Bank to apply to the Upper Passaic River and Tributaries, Long Hill, New Jersey project. The cost apportionment for the project including this credit is shown in Table 7-3 below.

Table 7-3
Cost Apportionment Federal and Non-Federal Responsibilities
Including Wetlands Bank Credit

Federal Project Cost (65% plus credit)	\$ 4,490,726
Non-Federal Cost (35% less credit)	
5% Cash	\$ 271,863
LERRD	\$ 674,661
Cash Balance	\$0
Non-Federal Project Cost Total (35% Less Credit)	\$ 946,254
Total Project Cost	\$ 5,437,250
Non-Federal Compensatory Mitigation Cost	\$ 358,950
Total Cost	\$ 5,796,200

It should be noted that the costs presented are estimated and that actual costs and credits will be determined based upon financial accounting as stipulated in the construction Project Cooperation Agreement that will be executed with the NJDEP prior to actual construction of the recommended plan.

7.4 Implementation Schedule

A preliminary implementation schedule was developed for the selected plan. The schedule is based on information available to date, and is largely dependent on whether the Project is funded in the Continuing Authorities Program, under Section 205 for Flood Control. The estimated implementation schedule is provided below:

- Plans and Specifications Development – April 2004 to July 2005
- Project Cooperation Agreement Execution – April 2005 - July 2005
- Real Estate Acquisition - July 2005 – April 2006
- Construction - May 2006 – April 2007

7.5 Financial Analysis

For purposes of executing the Project Cooperation Agreement (PCA), the New Jersey Department of Environmental Protection (NJDEP) has stated its intention to act as the non-Federal partner. The state will provide funds in increments appropriate to the proportion of the amount of Federal funds to be expended on the project each year. State funds will be derived through the State's annual budget process. The State has indicated its intent to enter into a PCA at the conclusion of this study. The State of New Jersey has secured funding for the first year of the construction phase.

7.6 Views of Non-Federal Partners and Other Agencies

The selected plan has received strong support from the non-Federal project partner, NJDEP, as well as other agencies of the State of New Jersey. The affected local government, Long Hill Township, New Jersey also has expressed their support for the project. This support is documented in Section 9 of this Feasibility Report. Through project planning and NEPA scoping, a variety of other Federal agencies have been involved in this investigation.

7.7 Areas Of Concern

There are no outstanding areas of concern regarding the selected plan for the Passaic River at Long Hill Township flood damage reduction. The plan is fully supported by the non-Federal project partner, NJDEP, as well as affected local governments and interested Federal agencies. These parties have full confidence in the anticipated performance of the selected plan in terms of flood damage reduction and impacts on the environment.